SALEM

REVISED

CODE

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OFFICIALS

of the

CITY OF

SALEM, OREGON

AT THE TIME OF THIS RECODIFICATION

Chuck Bennett
Mayor

Cara Kaser, Ward 1
Tom Andersen, Ward 2
Brad Nanke, Ward 3
Steve McCoid, Ward 4
Matt Ausec, Ward 5
Chris Hoy, Ward 6
Sally Cook, Ward 7
Jim Lewis, Ward 8
Council

Steve Powers
City Manager

Dan Atchison
City Attorney

Ruth Ann Stellmacher
City Recorder

PREFACE

This Code constitutes a recodification of the general and permanent ordinances of the City of Salem, Oregon.

Source materials used in the preparation of the Salem Revised Code were the Prior Salem Revised Code, as supplemented, and ordinances subsequently adopted by the Council. The source of each section is included in the history note appearing in parentheses at the end thereof. The absence of such a note indicates that the section is new and was adopted for the first time with the adoption of the Salem Revised Code. By use of the comparative tables appearing in the back of this Code, the reader can locate any section of the Prior Code, as supplemented, and any subsequent ordinance included herein.

The Salem Revised Code is a Title arrangement by chapter with chapters consecutively numbered under each Title. The chapters of the Salem Revised Code have been conveniently arranged in numerical order, and the various sections within each chapter have been catchlined to facilitate usage. Notes which tie related sections of the Salem Revised Code together and which refer to relevant state law have been included. A table listing the state law citations and setting forth their location within the Salem Revised Code is included at the back of this volume.

Chapter and Section Numbering System

The chapter and section numbering system used in this Code is the same system used in many state and local government title arranged codes. Each section number consists of two parts separated by a decimal point. The figure before the decimal point refers to the chapter number, and the figure after the dash refers to the position of the section within the chapter. Thus, the second section of chapter 1 is numbered 1.020, and the first section of chapter 6 is 6.010. Under this system, each section is identified with its chapter, and at the same time new sections can be inserted in their proper place by using the decimal system for amendments. For example, if new material consisting of one section that would logically come between sections 6.010 and 6.020 is desired to be added, such new section would be numbered 6.015. New chapters may be included by using one of the reserved chapter numbers. Care should be taken that the title arrangement of chapters is maintained when including new chapters.

Page Numbering System

The page numbering system used in this Code is a prefix system. The letters to the left of the colon are an abbreviation which represents a certain portion of the volume. The number to the right of the colon represents the number of the page in that portion. In the case of a chapter of the Salem Revised Code, the number to the left of the colon indicates the number of the chapter. In the case of an appendix to the Code, the letter immediately to the left of the colon indicates the letter of the appendix. The following are typical parts of codes of ordinances, which may or may not appear in the Salem Revised Code at this time, and their corresponding prefixes:

CHARTER CHT:1
CHARTER COMPARATIVE TABLE CHTCT:1
CODE SRC1:1
CODE APPENDIX SRCA:1
CODE COMPARATIVE TABLES CCT:1
STATE LAW REFERENCE TABLE SLT:1
CHARTER INDEX CHTi:1
CODE INDEX SRCi:1

Indexes

The indexes have been prepared with the greatest of care. Each particular item has been placed under several headings, some of which are couched in lay phraseology, others in legal terminology, and still others in language generally used by local government officials and employees. There are numerous cross references within the indexes themselves which stand as guideposts to direct the user to the particular item in which the user is interested.

Looseleaf Supplements

A special feature of this publication is the looseleaf system of binding and supplemental servicing of the publication. With this system, the publication will be kept up to date. Subsequent amendatory legislation will be properly edited, and the affected page or pages will be reprinted. These new pages will be distributed to holders of copies of the publication, with instructions for the manner of inserting the new pages and deleting the obsolete pages.

Keeping this publication up to date at all times will depend largely upon the holder of the publication. As revised pages are received, it will then become the responsibility of the holder to have the amendments inserted according to the attached instructions. It is strongly recommended by the publisher that all such amendments be inserted immediately upon receipt to avoid misplacing them and, in addition, that all deleted pages be saved and filed for historical reference purposes.

Acknowledgments

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The publisher is most grateful to Daniel Atchison, City Attorney; Katrina Brown, Thomas Cupani, Douglas Hanson, Jason Ramey, Marc Weinstein, and Natasha Zimmerman of the City Attorney's Office; Ruth Ann Stellmacher, City Recorder; Amy Johnson, Deputy Recorder; and the other members of the city staff for their cooperation and assistance during the progress of the work on this publication. It is hoped that their efforts and those of the publisher have

resulted in a Code of Ordinances which will make the active law of the City readily accessible to all citizens and which will be a valuable tool in the day-to-day administration of the City's affairs.

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CITY OF SALEM

CHARTER*

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PART I

CITY OF SALEM CHARTER*

***Editor's note—**Printed herein is the Charter for the City of Salem, Oregon, adopted by referendum on May 21, 1996, and effective on July 1, 1996. Amendments to the Charter are indicated by parenthetical history notes following the amended provisions. The absence of a history note indicates that the provision remains unchanged from the original Charter. Obvious misspellings have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines and citations to state statutes has been used. Additions made for clarity are indicated by brackets.

State Constitution reference—Municipal charters, art. XI, §§ 2, 5.

State law reference—Charters, ORS 250.255, 250.265—250.346; enforcement of the Charter provisions, ORS 221.315.

PREAMBLE

We, the people of Salem, Oregon, in order to avail ourselves of self-determination in municipal affairs to the fullest extent now or hereafter possible under the constitutions and laws of the United States and the state of Oregon, through this charter confer upon the city the following powers, subject it to the following restrictions, prescribe for it the following procedures and governmental structure, and repeal all previous charter provisions of the city except as provided in Section 58 of this charter.

CHAPTER I. NAMES AND BOUNDARIES

Section 1. Title of Charter.

This charter may be referred to as the 1996 Salem Charter.

Section 2. Name of City.

The city of Salem, Oregon, continues under this charter to be a municipal corporation with the name City of Salem.

Section 3. Boundaries.

The city includes all territory within its boundaries as they now exist or hereafter are modified pursuant to state law. An accurate, current description of the boundaries shall be available for public inspection in the city hall during regular city office hours.

State law reference—Boundary changes and annexations, ORS 222.005 et seq.

CHAPTER II. POWERS

Section 4. Powers of the City.

The city has all powers that the constitutions, statutes, and common law of the United States and of this state now or hereafter expressly or impliedly grant or allow the city, as fully as though this charter specifically enumerated each of those powers.

Section 5. Construction of Powers.

In this charter, no specification of a power is exclusive or restricts authority that the city would have if the power were not specified. The charter shall be liberally construed to the end that the city has and may exercise fully all powers necessary or convenient for the conduct of its affairs, including all powers possible under this charter and under United States and Oregon law. All powers are continuing unless a specific grant of power clearly indicates the contrary.

Section 6. Distribution of Powers.

Except as this charter prescribes otherwise and as the Oregon Constitution reserves municipal legislative power to the voters of the city, all powers of the city are vested in the council.

CHAPTER III. FORM OF GOVERNMENT

Section 7. Council.

The council consists of a mayor and one councilor representing each ward. There shall be eight wards.

Section 8. Councilors.

The term of office of a councilor in office when this charter is adopted is the term of office for which the councilor has been elected or appointed before adoption of the charter. At each general election after the adoption, four councilors shall be elected, each for a four-year term.

Section 9. Mayor.

The term of office of the mayor in office when this charter is adopted continues until the beginning of the first odd-numbered year after that time. At each subsequent general election, a mayor shall be elected for a two-year term.

Section 10. Terms of Office.

The term of office of a mayor or councilor who is elected at a general election begins at the first council meeting of the year immediately after the election and continues until the successor to the office assumes the office.

Section 11. Appointive Offices.

Appointive offices of the city are the city manager and such other appointive offices as are created by ordinance. The council appoints the city manager, who holds office during the pleasure of the council. The city manager appoints all other appointive officers, who hold office at the pleasure of the city manager.

CHAPTER IV. COUNCIL

Section 12. Rules.

(1) The council shall prescribe rules to govern its meetings and proceedings.

(2) No rule shall be suspended without the concurrence of two-thirds of the members present, except that unanimous consent of the members present shall be required to suspend a rule requiring unanimous consent for council action.

(3) No rule shall be adopted or amended without giving at least ten days' notice and the concurrence of two-thirds of the members present.

Section 13. Meetings.

The council shall meet in the city regularly at least twice a month at a time and place which it designates, and may meet at other times in accordance with the council rules.

~~**State law reference**—Council meetings, ORS § 221.909.~~

Section 14. Quorum.

A majority of the council constitutes a quorum for its business, but a smaller number of the council may meet and compel attendance of absent councilors as prescribed by council rules.

Section 15. Record of Proceedings.

A record of council proceedings shall be kept and authenticated.

Section 16. Mayor's Functions at Council Meetings.

(1) When present at council meeting the mayor shall:

(a) Preside over deliberations of the council;

(b) Preserve order;

(c) Enforce council rules; and

(d) Determine the order of business under the rules.

(2) Notwithstanding subsection (1) of this section, the mayor may temporarily cease to chair a council meeting and delegate the functions described in subsection (1) to another council member.

(3) The mayor is a voting member of the council.

Section 17. Council President.

(1) At its first meeting after this charter takes effect and at its first meeting of each year, the council shall appoint a president from its councilors.

(2) Except in voting on questions before the council, the president shall function as mayor when the mayor is:

(a) Absent from a council meeting; or

(b) Unable to function as mayor.

Section 18. Vote Required.

Except as sections 12, 20, 23, 24 and 51 of this charter prescribe otherwise, the express concurrence of a majority of the council members present and constituting a quorum is necessary to decide affirmatively a question before the council.

Section 19. Vacancies: Occurrence.

The office of a member of the council becomes vacant:

(1) Upon the incumbent's:

(a) Death;

(b) Adjudicated incapacity; or

(c) Recall from office; or

(2) Upon declaration by the council of the vacancy in case of the incumbent's:

(a) Failure, following election or appointment to the office, to qualify for the office within ten days after the time for his or her term of office to begin;

(b) Absence from the city for 30 days without the council's consent or from all meetings of the council within a 60 day period;

(c) Ceasing to reside in the city in the case of the mayor;

(d) Ceasing to reside in the ward represented by the incumbent, in the case of a councilor, except that ceasing to reside in a ward due to a change in ward boundaries during a term of office shall not be grounds for declaring a vacancy during that term;

(e) Ceasing to be a qualified elector under state law;

(f) Conviction of a public offense punishable by loss of liberty; or

(g) Resignation from the office.

~~**State law reference**—Vacancies, ORS § 221.904.~~

Section 20. Vacancies: Filling.

(1) Except when, at the time a vacancy occurs, there is more than one year to the next primary election, a vacancy in the council shall be filled by appointment by a majority of the council. The appointee's term of office runs from the time of his or her qualifying for the office after the appointment and until expiration of the term of the predecessor who has left the office vacant. During a council member's disability to serve on the council or during a member's absence from the city, a majority of the other council members may by appointment fill the vacancy pro tem.

(2) When, at the time a vacancy occurs, there is more than one year to the next primary election, the vacancy shall be filled at a special election at the next available date. Those persons presenting nominating petitions as required by ordinance shall be placed on the ballot, and the person receiving the highest number of votes shall be elected for the unexpired term of the predecessor who has left the office vacant.

CHAPTER V. POWERS AND DUTIES OF OFFICERS

Section 21. Councilor's Interest in Contracts with City.

(1) No member of the council shall participate in any decision or deliberation of the council or other city committee, advisory body, officer, or employee respecting any contract in which that council member has any interest if the expenses of that contract are to be paid out of the city treasury or the funds of any agency of the city. No member of the council shall engage in any activity which may reasonably be taken as attempting to influence city or agency action to further any interest such council member has in the award, administration or enforcement of any contract if the expenses of that contract are to be paid out of the city treasury or the funds of any agency of the city.

(2) Any contract with respect to which any member of the council violates [sub]section (1) of this section is voidable at the discretion of the council; provided, however, that the contractor shall be compensated for the reasonable value of work performed and expenses that were necessarily incurred and cannot be avoided, if such work and expenses were done and incurred before the council member's prohibited activity.

(3) Any council member who violates [sub]section (1) of this section shall, upon conviction before the council after public hearing, be punished by expulsion from the council upon a majority vote thereof.

Section 22. Mayor.

The mayor shall appoint:

(1) Members of committees; and

(2) Members of boards or commissions if so provided by ordinance or this charter.

Section 23. City Manager.

(1) The city manager is the administrative head of the city government.

(2) A majority of the council shall appoint and may remove the manager. The appointment shall be without regard to political considerations and solely on the basis of administrative and management qualifications.

(3) No person elected or appointed to membership on the council shall, subsequent to such election or appointment, be eligible for appointment as city manager until one year has elapsed following the expiration of the person's council term.

(4) The manager need not reside in the city or the state when appointed, but promptly thereafter shall become, and during his or her tenure of office remain, a resident of the city.

(5) The manager shall be appointed for an indefinite term and may be removed by the council at its pleasure. When a vacancy occurs in the office, the council shall fill the vacancy by appointment as expeditiously as possible.

(6) The manager or designee of the manager shall:

(a) Attend all council meetings unless excused by the council or mayor;

(b) Keep the council advised of the affairs and needs of the city;

(c) See that the provisions of all ordinances are administered to the satisfaction of the council;

(d) See that all terms of franchises, leases, contracts, permits, and privileges granted by the city are fulfilled;

(e) Appoint, discipline and remove appointive personnel;

(f) Supervise and control appointive personnel in their service to the city;

(g) Organize and reorganize the departmental structure of city government;

(h) Prepare and transmit to the council an annual city budget;

(i) Supervise city contracts;

(j) Supervise operation of all city-owned public utilities and property; and

(k) Perform other duties as the council prescribes consistent with this charter.

(7) The manager may not control:

(a) The council; or

(b) The municipal judge in the judge's judicial functions.

(8) The manager and other personnel whom the council designates may sit with the council but may not vote on questions before it. The manager may take part in all council discussions.

(9) When the manager is absent from the city for a substantial period of time as determined by the council or disabled from acting as manager, or when the office of manager becomes vacant and until a manager is appointed under subsection (5) of this section, the council shall appoint a manager pro tem, who has the powers and duties of manager.

(10) Except in council meeting, no council member may directly or indirectly, by suggestion or otherwise, attempt to influence the manager or a candidate for the office of manager in the appointment, discipline, or removal of personnel or in decisions regarding city property or contracts. A violator of this prohibition may be removed from office by a court of competent jurisdiction. In council meeting, members of the council may discuss with, or suggest to, the manager anything pertinent to city affairs.

Section 24. Municipal Court and Judge.

(1) The municipal judge shall be an elective officer of the city. The municipal judge shall hold, within the city a court known as the Municipal Court for the City of Salem, Oregon.

(2) The municipal judge shall have jurisdiction and power like a justice of the peace within the limits of the city.

(3) Except as this charter or city ordinance prescribes to the contrary, proceedings of the court shall conform to general laws of this state governing justices of the peace and justice courts.

(4) All area within the city and, to the extent provided by state law, area outside the city is within the territorial jurisdiction of the court.

(5) The municipal court has original jurisdiction over every offense that an ordinance of the city makes punishable. The court may enforce forfeitures and other penalties that such ordinances prescribe.

(6) The municipal judge may:

(a) Render judgments and, for enforcing them, impose sanctions on persons and property within the court's territorial jurisdiction;

(b) Order the arrest of anyone accused of an offense against the city;

(c) Commit to jail or admit to bail anyone accused of such an offense;

(d) Issue and compel obedience to subpoenas;

(e) Compel witnesses to appear and testify and jurors to serve in the trial of matters before the court;

(f) Penalize contempt of court;

(g) Issue process necessary to effectuate judgments and orders of the court;

(h) Issue search warrants; and

(i) Perform other judicial and quasi-judicial functions prescribed by ordinance.

(7) The council may, upon recommendation of the municipal judge, appoint municipal judges pro tem for terms of office not to exceed two years set by the municipal judge or the council.

(8) The term of office of the municipal judge in office when this charter is adopted is the term of office for which the municipal judge has been elected before adoption of the charter. At the 1998 November election, and every fourth year thereafter, a municipal judge shall be elected for a term of four years.

(9) Except when, at the time a vacancy in the office of municipal judge occurs, there is more than one year to the next primary election, the vacancy shall be filled by appointment by a majority of the council. The appointee's term of office runs from the time of his or her qualifying for office after the appointment and until expiration of the

term of the predecessor who has left the office vacant. During the municipal judge's disability to serve as a municipal judge or during the municipal judge's absence from the city, a majority of the council may by appointment fill the vacancy pro tem.

(10) When, at the time a vacancy in the office of the municipal judge occurs, there is more than one year to the next primary election, the vacancy shall be filled at a special election at the next available date. Those persons presenting nominating petitions as required by ordinance shall be placed on the ballot, and the person receiving the highest number of votes shall be elected for the unexpired term of the predecessor who has left the office vacant.

State law reference—Municipal courts, ORS 221.336 et seq.

CHAPTER VI. PERSONNEL

Section 25. Qualifications.

(1) An elective city officer shall be a qualified elector under the state constitution and shall have resided in the city during the 12 months immediately before being elected or appointed to the office. In this subsection "city" means area inside the city limits at the time of the election or appointment. In addition, a councilor shall have resided in the ward the councilor represents during the 12 months immediately before being elected or appointed to the office.

(2) No person may be a candidate at a single election for more than one elective city office.

(3) No city officer or employee who receives compensation from the city shall hold a city elective office other than the office of municipal judge. No person who holds the office of municipal judge shall hold other city office.

(4) The council is the final judge of the election and qualifications of its members.

(5) The qualifications of appointive officers of the city are whatever the city manager prescribes or authorizes, except as provided by ordinance.

Section 26. Compensation.

The mayor and councilors shall receive no compensation for their services. The council shall prescribe the compensation of all other city officers. The council may prescribe a plan for reimbursing city personnel for expenses that they incur in serving the city.

Section 27. Merit System.

Subject to all collective bargaining agreements between the city and one or more groups of its employees, the council or the city manager as provided by ordinance shall approve rules governing recruitment, selection, promotion, transfer, discipline, demotion, suspension, layoff, and dismissal of city employees, all of which shall be based on merit and fitness.

Section 28. General Purpose.

The purpose of sections 28 through 48 of this charter is to provide for a Civil Service System of Personnel Administration for the Fire Service of the City of Salem.

Section 29. Definitions.

As used in sections 28 through 48 of this charter, unless the context requires otherwise:

(1) "Appointing Authority" means the Chief of the Fire Department.

(2) "Appointment" includes all means of selecting, appointing, or employing any person to hold any office, place, position, or employment subject to sections 28 through 48 of this charter.

(3) "Career Status" means the status of a person who has successfully completed a probationary period.

(4) "City" means the City of Salem.

(5) "Chief Examiner" means the individual designated by the City Manager.

(6) "Commission" means the Civil Service Commission created under Section 31 of this charter.

(7) "Commissioner" means a member of the Civil Service Commission.

(8) "Fire Service" means those uniform positions in the Salem Fire Department, except for the Fire Chief and Division Chiefs.

(9) "Uniform positions" includes those positions who are directly involved in fire fighting, emergency medical services, fire prevention, fire inspection and training.

Section 30. Subject Employees.

The classified Civil Service of the City shall include uniform positions of the Fire Service as defined in section 29 of this charter. In the event a question arises as to whether or not a position or type of work is subject to the provisions of sections 28 through 48 of this charter, the council, after giving due consideration to the recommendations of the Appointing Authority, the City Manager, the Commission and employee representatives shall determine if the position or type of work shall be included in or excluded from the classified Civil Service of the City.

Section 31. Civil Service Commission; Qualifications, Appointment, Term of Office, and Meetings of Civil Service Commission.

(1) There is hereby created a Civil Service Commission composed of three members appointed by the mayor with approval of the council.

(2) The term of office of such Commissioners shall be three years, or until their successors are appointed and qualified, and each shall serve without compensation. In the event a Commissioner is unable to complete a term of office, a replacement shall be appointed for the remainder of the term. No Commissioner shall serve more than two consecutive terms.

(3) No member of the Commission shall hold any other public office, place, position or employment with the City. No person shall be appointed a member of the Commission who is not a citizen of the United States and a resident of the City. The persons appointed shall be known to believe in the principles of the Civil Service.

(4) Any member of the Commission may be removed from office by the Council for incompetency, conflict of interest, dereliction of duty or malfeasance in office, or other good cause after notice in writing of the charges against the member and an opportunity to be heard on such charges before the council.

(5) Two members of the Commission shall constitute a quorum, and the votes of any two Commissioners concurring shall be sufficient for decision in all matters and transactions under sections 28 through 48 of this charter, unless otherwise specifically provided.

(6) The Commission shall elect one of its members as chair at the first meeting following July 1 of each year.

(7) The Commission shall hold a regular public meeting at least once a month, and may hold such additional meetings as may be required in the proper discharge of their duties.

Section 32. Responsibility of the Civil Service Commission.

(1) The Civil Service Commission shall be responsible for the administration of the Civil Service System. The Chief Examiner shall assist the Commission in the administration of this system and keep the records of the Commission.

(2) The Commission shall make suitable rules and regulations not inconsistent with sections 28 through 48 of this charter to carry out the provisions thereof. The rules and regulations shall include, but not be limited to, providing in detail the manner in which examinations shall be held and appointments, promotions, transfers, reinstatements, suspensions, and discharges shall be made. Such rules and regulations may be changed from time to time and, together with all changes, shall be made available for public inspection. Notice of proposed rule changes shall be posted in the Fire Department for two weeks prior to action by the Commission.

Section 33. Employee Records.

Employee records shall be maintained in accordance with the appropriate state law.

Section 34. Creation of New Positions and Classifications of Positions.

(1) All positions subject to sections 28 through 48 of this charter shall be created by the council and the council shall fix the compensation of all Civil Service positions; the Council shall provide for the classification of all positions in the Civil Service. The classifications shall be based upon the functions of the positions. The classifications may, from time to time be amended, added to, consolidated, or abolished.

(2) The Commission may submit recommendations concerning the creation of Civil Service positions and the classification of positions in the Fire Service.

Section 35. Examinations.

(1) Except as otherwise expressly provided in sections 28 through 48 of this charter, the appointment and promotion of persons to Civil Service positions shall be made solely upon merit, efficiency, and fitness which shall be ascertained by competitive examinations among qualified personnel.

(2) Examinations shall be given only to persons who possess such qualifications as to age, health, education, experience, and citizenship as are prescribed by the Commission.

(3) The Commission shall in its rules and regulations adopt minimum length of service requirements for promotion.

(4) Competitive examinations shall be held to ascertain the fitness of applicants for positions in the Civil Service. Examinations shall be given as necessary to meet the staffing requirements of the Fire Service. Notice of title, salary, and qualifications of each classification open for examination shall be posted in at least three public places, including the Fire Department, in the city for not less than two weeks prior to the closing date.

(5) The Chief Examiner shall supervise all examinations and shall designate the persons who shall act as examiners at any examination.

(6) Examinations shall be practical in character and shall relate only to those matters which fairly test the relative fitness of persons examined to discharge the duties of the positions for which they are applicants.

(7) No question in any examination shall relate to partisan political or religious preference, affiliation, or opinion.

Section 36. Eligible Lists.

(1) Eligible lists of all persons whose general average standing upon examinations is not less than a minimum passing grade shall be maintained and prepared by the Chief Examiner. Such persons shall take rank upon the register, as candidates, in the order of their relative standing as determined by examinations. Candidates of equal standing shall take rank upon the register according to the order in which their applications were filed.

(2) Entrance eligible lists shall be kept in effect for 12 months and may be extended for an additional six months at a time to a maximum of 24 months with the approval of the Appointing Authority and Chief Examiner, from the effective date thereof. In the event entrance lists are augmented or open continuous examinations are held, each candidate shall remain on the appropriate eligible list for a period of 12 months.

(3) Promotion eligible lists shall be kept in effect for 24 months unless exhausted or depleted. No promotion eligible list shall be augmented.

(4) The Commission, if it deems advisable for the good of the service, may cancel an eligible list.

(5) The various eligible lists provided for by this act shall contain the following persons:

(a) Entrance eligible lists shall contain those qualified candidates who are seeking entrance into the Fire Service.

(b) Promotion eligible lists shall contain those qualified candidates who are presently in the Fire Service and are seeking advancement.

(c) Layoff eligible lists shall contain those persons who have held career status and have been laid off or demoted from positions because of a reduction in force. The order of the names of such persons shall be in inverse order of their layoff.

(d) Reemployment eligible lists shall contain the names of employees who have resigned from the Fire Service in good standing provided they have requested re-employment within one year after the effective date of their resignation, the Appointing Authority approves re-employment, the employee meets the minimum requirements for the position including the appropriate certifications, and has previously held that position after the completion of probation.

Section 37. Certification of Candidates.

Whenever an appointing authority desires to fill a vacancy in any position in the Civil Service, the appointing authority shall notify the Chief Examiner. The Chief Examiner shall thereupon certify to the Appointing Authority:

(1) If the vacancy be in a promotive position, the Chief Examiner shall certify first from the layoff list, then from the promotion eligible list the name of the candidate standing highest upon the appropriate eligible list. When more than one vacancy is to be filled, the number of names submitted shall equal the number of vacancies.

(2) If the vacancy be in an entrance position, the Chief Examiner shall certify first from the layoff eligible list, then from the re-employment eligible list or entrance eligible list. The number of names certified from the layoff and re-employment or entrance eligible list shall equal the number of vacancies. The Chief Examiner shall certify no more than five for each vacancy to be filled.

Section 38. Appointments and Probationary Period.

(1) The Appointing Authority shall appoint certified candidate(s) to the vacant position.

(2) Candidates appointed from other than the layoff eligible list shall serve a probationary period of six full calendar months. The Appointing Authority may, with the concurrence of the Chief Examiner, extend an employee's probationary period for a specified time not to exceed an additional three months.

(3) The Commission may adopt rules or procedures whereby the Appointing Authority may request an extension of the probationary period for candidates appointed to entrance positions.

(4) The Commission shall adopt procedures and criteria whereby an Appointing Authority may reject the names of candidates certified to an entrance position.

(5) The Commission shall adopt procedures whereby candidates on the eligible list may waive appointment or have their names temporarily withdrawn from the eligible list.

(6) If any candidate appointed on a probationary appointment is not discharged during the period of probation, the appointment will be considered permanent and shall be accorded career status.

(7) When there is no candidate upon an eligible list from which a position may be filled, the appointment authority may, with the consent of the Commission, fill such position by a provisional appointment. Provisional appointments shall be valid only until there are available candidates on the appropriate eligible list. Examinations shall be given within 90 days from which to fill vacancies filled by provisional appointment.

(8) In the event that there are no qualified career employees applying for a promotional examination, the Appointing Authority may request to establish a list by an open competitive examination in which the general public may apply. If open to the public, only those persons meeting the minimum qualifications for the classification will be considered.

Section 39. Leaves of Absence.

Leave of absence shall be approved by the Appointing Authority.

Section 40. Disciplinary Action.

(1) Any action which reflects discredit upon the Fire Service or is a hindrance to the effective performance of city functions, shall be considered cause for disciplinary action. Cause for disciplinary action may also include misconduct, inefficiency, incompetency, insubordination, indolence, malfeasance, the willful giving of false information or withholding information with intent to deceive when making application, or willful violation of published departmental or City rules, sections 28 through 48 of this charter, or rules and regulations of the Commission. No person shall be dismissed, demoted, suspended without pay or deprived of special privileges for

partisan political, racial, or religious reasons.

(2) Disciplinary action may consist of dismissal, demotion, suspension without pay, withdrawal of special privileges, written reprimand or oral reprimand.

(3) No person subject to this act who has attained career status under this act shall be dismissed, demoted, suspended without pay or deprived of special privileges except for cause, and then only upon the signed written accusation of the Appointing Authority. A written statement of the accusation shall be served forthwith upon the accused.

(4) If the person on probation is a new appointee, the Appointing Authority may take disciplinary action against that person without regard to sections 41 and 42 of this charter.

(5) If a person has been appointed to a position in a higher classification on probation and fails to qualify for the position in the higher classification within the probationary period, the person shall not lose status in the lower classification from which such promotion was made, but shall be reinstated in such lower classification.

Section 41. Appeals, Investigations, and Hearings from Disciplinary Actions; Enforcement of Act and Rules.

(1) Any employee who has attained career status who has been dismissed, demoted, suspended without pay or deprived of special privileges may, within ten days, file with the Chief Examiner a signed, written appeal for a hearing before the Commission; the Chief Examiner shall schedule a hearing at a date and time approved by the Commission. The employee shall be notified within 30 days as to the date and time of hearing. The hearing shall be held as expeditiously as possible. The employee may appear without a representative or be represented by counsel, or by the employee's union representative. The hearing shall be confined to the determination of the question of whether the disciplinary action was made in good faith for cause.

(2) When any citizen of the City, or any person subject to Civil Service alleges in a certified petition that an abuse or abuses of the provisions of sections 28 through 48 of this charter or rules and regulations of the Commission exist, the Commission shall:

(a) Investigate the enforcement and effect of sections 28 through 48 of this charter and the rules and regulations of the Commission;

(b) Ascertain whether sections 28 through 48 of this charter or the rules and regulations are being violated;

(c) Where violations are found to exist, the Commission shall take such action as necessary to enforce compliance.

(3) The Commission may upon its own initiative make any investigation which it deems advisable to enable them to carry out the provisions of this act.

(4) In the course of an investigation, the Commission, designated Commissioner, or Chief Examiner shall have the power to administer oaths, subpoena witnesses and compel the production of books, papers, documents, and accounts pertinent to the investigation.

(5) The Commission may cause the depositions of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil suits and actions.

(6) Oaths administered and subpoenas issued hereunder shall have the same force and effect as the oaths administered by the Municipal Judge of the City of Salem in a judicial capacity.

(7) The failure upon the part of any person so subpoenaed to comply with the subpoena's provisions shall be deemed a violation punishable under section 45 of this charter.

(8) All hearings and investigations before the Commission are governed by this section and by the rules and regulations adopted by the Commission; and in the conduct thereof, the Commission is not bound by the technical rules of evidence.

(9) No informality in any hearing or investigation or in the manner of taking testimony shall invalidate any order, decision, rule, or regulation made, approved, or confirmed by the Commission.

(10) The Commission may conduct any civil suit or action which may be necessary for the proper enforcement of sections 28 through 48 of this charter and rules and regulations of the Commission. The Commission shall be

represented by the City Attorney or the City Attorney's assistant in such suits or actions.

Section 42. Commission Findings on Disciplinary Appeals.

After a hearing, the Commission may affirm, disaffirm or modify the action taken by the Appointing Authority. If the Commission disaffirms the dismissal or suspension of an employee, reinstatement shall be retroactive and entitle the employee to pay or compensation and special privileges from the time of the action of the Appointing Authority. If the Commission modifies the action taken by an Appointing Authority, reinstatement may be retroactive and may entitle the employee to pay or compensation or special privileges from the time of the action of the Appointing Authority. The action of the Commission shall be certified in writing to the Appointing Authority and immediately enforced by it.

Section 43. Prohibited Activity.

No person shall:

(1) Alone or in cooperation with one or more persons defeat, deceive, or obstruct any person in respect to the person's right of examination;

(2) Falsely mark, grade, estimate, or report upon the examination or proper standing of any person examined, registered, or certified pursuant to this act, or aid in so doing, or make any false representation concerning the same or concerning the person examined;

(3) Furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person to be examined or certified;

(4) Impersonate another or permit or aid in any manner another to impersonate the person in connection with any examination, application or request to be examined.

Section 44. Political Activity.

No employee subject to sections 28 through 48 of this charter shall be a candidate for an elective office of the City.

Section 45. Punishment for Violation of Act.

The council shall enact suitable ordinances to carry into effect the provisions of sections 28 through 48 of this charter, including providing for the punishment by fine and imprisonment of persons who may violate any such provisions.

Section 46. Commissioners to Carry Over.

The terms of office of the Commissioners in office when this charter is adopted are the terms for which they have been appointed before adoption of the charter.

Section 47. Incumbents to Carry Over.

Employees holding positions in the classified Civil Service herein immediately prior to adoption of this charter shall be continued in their respective positions without further examination, until separated from their positions as provided for herein. Nothing herein shall preclude the reclassification as provided by this charter of any position held by any such incumbent. Nothing herein shall permit employees to be subject to the Civil Service provisions of this charter unless they are uniform employees of the Fire Service.

CHAPTER VII. ELECTIONS*

***State law reference—**Elections, ORS 246.012 et seq., 250.005 et seq., and 254.005 et seq.

Section 48. State Law.

Except as this charter or a city ordinance prescribes to the contrary, a city election shall conform to state law applicable to the election.

Section 49. Nominations.

A person may be nominated in a manner prescribed by general ordinance to run for an elective office of the

city. All elective offices of the city shall be nonpartisan.

CHAPTER VIII. ORDINANCES

Section 50. Ordaining Clause.

The ordaining clause of an ordinance shall be "The City of Salem ordains as follows:"

Section 51. Passage by Council.

(1) Except as subsection (2) of this section allows adoption at a single meeting, an ordinance shall be read by title in open council meeting on two different days before being passed by council.

(2) The council may pass an ordinance at a single meeting by the express unanimous votes of all council members present.

(3) At least five affirmative votes shall be necessary to pass an ordinance bill.

(4) Upon the passage of an ordinance, the ayes and nays of the council members shall be entered in the record of council proceedings.

(5) After passage of an ordinance, the custodian of city records shall attest it with its date of passage and the custodian's name and title of office.

Section 52. Effective Date.

A non-emergency ordinance takes effect on the thirtieth day after its adoption or on a later day the ordinance prescribes. An ordinance adopted to meet an emergency may take effect as soon as adopted.

CHAPTER IX MISCELLANEOUS PROVISIONS

Section 53. Urban Renewal Revenue Bonds.

The council may, for the purpose of assisting in the planning or the undertaking and carrying out of an urban renewal or redevelopment project, issue from time to time revenue bonds of the City of Salem, to be paid to the extent permitted, or to be permitted by law, solely from the following sources:

(1) Revenues from an urban renewal or redevelopment project; or

(2) From the sales of property involved in an urban renewal or redevelopment project; or

(3) From tax revenues attributable to the increased valuation of improvements existing or subsequently constructed on property in an urban renewal or redevelopment project; or

(4) From tax revenues exceeding a specified level within such project to the extent that such is permitted by law; or

(5) From any combination of such methods of repayment; and to that end, the council may, to the extent permitted or to be permitted by law, pledge such tax revenues or other revenues, as hereinbefore mentioned; provided, however, that not more than $5 million face value of such revenue bonds shall be outstanding at any one time. Such bonds shall be issued by the council in accordance with the procedures established by law and as the council may prescribe by ordinance, and shall bear the facsimile signatures of the mayor and director of finance and be known as "Urban Renewal Bonds or Redevelopment Bonds."

State law reference—Urban renewal, ORS 457.010 et seq.

Section 54. Prohibition on Participation in Hotel and Convention Center.

(1) As used in this section:

(a) "Hotel" means a property, however owned, in which rooms or suites of rooms generally are rented as transient lodgings.

(b) "Transient lodging" means a room or suite of rooms which is occupied not as a principal residence:

(A) By persons for periods of less than 30 consecutive days; or

(B) With which the services normally offered by hotels, including, but not limited to, daily or bi-daily maid and linen service, a front desk and a telephone switchboard, are provided, regardless of the length of occupancy of the person.

(c) "Convention Center" means a property composed of a collection of meeting rooms designed to attract individuals living outside Marion County and the geographically contiguous counties, or designed to accommodate groups larger than could reasonably be expected to be generated by such counties.

(d) "Riverfront Property" means the City-owned land within the region bordered on the West by the Willamette River, on the East by Front Street, on the North by the Marion Street Bridge, and on the South by Pringle Creek.

(2) The council shall not contribute, trade, lease, loan, pledge or in any way transfer money, or property obtained directly or indirectly with money provided by this section, nor shall it provide any in-kind contributions including but not limited to staff assistance, office supplies, and postage costs funded by money provided by this section, to assist in any way construction or operation of a hotel or convention center within the boundaries of the Riverfront property.

(3) Notwithstanding any authority, express or implied, granted by any other section of this charter or by any ordinance adopted by the City of Salem, the restrictions contained in Subsection 2 of this section apply to all public funds and in-kind contributions controlled by the council regardless of the source of such funds or services.

Section 55. Regional Shopping Center.

The council shall enact no ordinance or enter into any intergovernmental agreement which prohibits the construction of a regional shopping center of less than one million square feet of leasable space outside the central business district. Any existing land use, comprehensive plan, ordinance, zoning provision, and intergovernmental agreement that currently prohibits said construction shall be void.

Section 56. Transient Occupancy Tax.

Any tax on the privilege of occupying a room or rooms in a hotel inn, tourist home or house, motel, or other transient lodging space and occupying space in mobile home or trailer parks for transient rentals shall not exceed nine percent of the rent charged by the operator. Revenues from such a tax shall be used for:

(1) Enhancement and beautification of vehicular and pedestrian entrance-ways to the city;

(2) Urban beautification generally;

(3) Improvements to or operation of major tourist attraction or cultural facilities;

(4) Activities performed directly by the city or through contracts which promote use of Salem for conventions, conferences, seminars or for general tourism. (As amended by a vote of the people on May 18, 1999, Ballot Measure 24-27)

State law reference—Transient lodging tax, ORS 320.300 et seq.

Section 57. Continuation of Ordinances.

Insofar as consistent with this charter, and until amended or repealed, all ordinances in force when the charter takes effect retain the effect they have at that time.

Section 58. Repeal.

All charter provisions adopted before this charter takes effect are hereby repealed, save and except that portion of Section 8 of the 1899 charter, as amended by a vote of the people on May 17, 1946 (Ordinance 3680), pertaining to the jurisdiction and power of the municipal judge which is reproduced as Section 24(2) of this charter.

Section 59. Severability.

The terms of this charter are severable. If a part of the charter is held invalid, that invalidity does not affect another part of the charter, except as the logical relation between the two parts requires.

Section 60. Time of Effect.

This charter takes effect July 1, 1996. (Revised Charter approved by a vote of the people on May 21, 1996, Ballot Measure 24-65)

Section 61. Voter Approval of Annexations.

Annexations, including delayed annexations to the city, must be approved by the voters of the city except when annexation contracts were signed before this charter amendment, or when annexations are necessitated by failing septic systems or health hazards, or when annexations are mandated by state law. (Approved by a vote of the people on May 16, 2000, Ballot Measure 24-34)

Section 62. Ethical Standards for Decision-Making.

(1) In order to ensure public confidence in the impartiality of elected or appointed city officials, the following ethical standards for decision-making are hereby adopted. Any elected or appointed city official, who participates as a decision-maker in any decision that is made at a public hearing and that is reasonably likely to result in a pecuniary benefit to any person or entity, must disclose any and all of the following, if applicable:

(a) Any past or present business relationships, within the last four (4) years, and family relationships, if any, between the elected or appointed official and one or more of the persons or entities, or a representative of one of such persons or entities, who or which participates in the decision-making process; and

(b) Any direct and indirect campaign contributions or gifts given to the elected or appointed official that:

(A) Are from one or more of the persons or entities, or a representative of one of such persons or entities, who or which participates in the decision-making process; and

(B) Total $501.00 or more during the preceding two (2) years, respecting the Mayor, or the preceding four (4) years for all other elected or appointed officials; and

(C) Are known or should have been known to the elected or appointed official.

(c) For the purpose of subsection (b) above, an "indirect campaign contribution" is "given to the elected or appointed official" when one or more of the persons or entities, or a representative of one of the persons or entities, who or which participates in the decision-making process, or an opponent of the action being requested, makes a contribution to other persons or entities, who or which then makes a direct campaign contribution to the elected official, and the relationship between the contributor, the public official, and the intervening persons or entities is such that it creates the appearance of an effort to avoid this Section in the mind of a reasonable person.

(2) If any of the material facts set forth in subsection (1) exists, then:

(a) The official must disclose on the record such relationship, contribution, or gift at the commencement of each public hearing.

(b) All persons and entities participating in the decision-making process shall also disclose on the record the facts of any relationships, contributions, or gifts that require disclosure or recusal under this Section. However, failure to make these disclosures does not obviate the responsibility of public officials to disclose such relationships, contributions, or gifts that require disclosure.

(3) As used in this Section:

(a) "Family relationship" means the relationship between the elected or appointed official and the official's spouse, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, cousin, stepparent, stepchild, grandparent or grandchild;

(b) "Representative" means a person who represents a person or entity, who or which participates in the decision-making process, including, but not limited to, an attorney, planning consultant, expert witness, or employee;

(c) “Business relationship" includes employer, employee, partnerships, contractor, lessor, lessee, current and prospective parties to contracts and professional representation or acting as another's agent or any other business relationship which a reasonable person would conclude raises ethical concerns under these

provisions;

(d) "Gift" is defined as set forth in ORS 244.020(8), excluding the exceptions listed therein; the meaning of a "gift" does not include voluntary work of the nature that is not required to be disclosed under laws on Contributions and Expenditure Reports.

(4) Unless absolutely necessary to render an effective decision, no elected or appointed city official shall participate as a decision-maker in any decision that is made at a public hearing and that is reasonably likely to result in a pecuniary benefit to any person or entity, if the business relationships, the family relationships, the campaign contributions, or the gifts disclosed in accordance with subsection (1) above would create the appearance of bias or impropriety in the mind of a reasonable person. If the elected or appointed city official's action is absolutely necessary in order to render an effective decision, then such elected or appointed official shall participate in the decision-making process after disclosure, notwithstanding this subsection. When two or more officials have recused themselves as a result of these provisions, and at least one additional official's participation is absolutely required in order to render an effective decision, then all such recused officials may participate, provided the required disclosures are made.

(5) Notwithstanding subsections (1), (2), (3) and (4) above, unless participation is prohibited under ORS chapter 244 or SRC Chapter 12, an elected or appointed official may participate, including by voting, in the making of a decision that is made at a public hearing and that is reasonably likely to result in a pecuniary benefit to any person or entity if all persons participating in the proceeding expressly waive any objection to participation by an official whose recusal is required under subsection (4), hereinabove. When a reasonable person would conclude that campaign contributions were made or disclosed or waivers granted or withheld in order to manipulate the composition of the voting members of a decision-making body, then the decision-makers shall participate or recuse themselves as necessary to achieve the purpose of public confidence in the high ethical standards for government officials. The basis for their recusal or participation under this subsection shall be disclosed and made a part of the record of the decision.

(6) Parties to a public hearing decision-making process in this City have an important and substantial right to a decision made in compliance with these ethical standards. A violation of subsections (1), (2)(a) or (4), above, would prejudice the substantial rights of the parties to the proceeding. Any appropriate court, agency, board or commission with jurisdiction to review the decision, when presented with a timely appeal, should rule accordingly.

(7) Any court, agency, board or commission, required to apply these provisions upon appeal, shall interpret the words of these provisions in ways that set the highest ethical standards for officials governed by its provisions.

(8) If any phrase, clause, section, part or application of this Section is declared unconstitutional or otherwise unenforceable by a court of competent jurisdiction, the remaining phrases, clauses, sections, parts and applications shall remain in full force and effect. (Approved by a vote of the people on May 21, 2002, Ballot Measure 24-78)

State law reference—Ethics, ORS 244.010 et seq.

PART II
CODE OF ORDINANCES

Title I

GOVERNMENT

CHAPTER 1. GENERAL PROVISIONS

Sec. 1.010. How Code designated and cited.

All ordinances embraced in the following chapters and sections shall constitute and be designated the "Salem Revised Code," and may be so cited. Individual sections may be cited by using the ~~symbol~~ acronym "SRC" followed by the section number.

(Prior Code, § 1.010)

~~**State law reference**—Printed compilation of ordinances, ORS 221.928.~~

Sec. 1.020. Definitions and rules of construction.

In the construction of this Code and all other ordinances of the City, the following rules shall be observed, unless such construction would be inconsistent with the manifest intent of the Council or the context clearly requires otherwise:

Charter. The term "Charter" means the 1996 Salem Charter printed as Part I of this volume.

Charter reference—Title of Charter, § 1.

~~(a)~~*City*. The ~~words~~ term "the City" or "this City" shall be construed as if followed by the words "of Salem, Oregon."

~~(b)~~ *Code*. The ~~words~~ term "the Code" or "this Code" ~~shall~~ means the "Salem Revised Code," or "SRC."

~~(c)~~*Computation of time.* The time within which an act is to be done is computed by excluding the first day and including the last, unless the last day falls upon any legal holiday or on Saturday, in which case the last day is also excluded.

State law reference—Similar provisions, ORS 174.120(1).

~~(d)~~ *Council.* Whenever the ~~word~~ term "Council" is used, it shall be construed to mean the Council of the City of Salem, Oregon.

~~(e)~~*County*. The ~~words~~ term "the County" or "this County" ~~shall~~ means Marion County, Oregon, or Polk County, Oregon, whichever is applicable under the circumstances.

~~(f)~~*Day*. A day is the period of time between any midnight and the midnight following.

~~(g)~~ *Daytime, nighttime.* "Daytime" is the period of time between sunrise and sunset. "Nighttime" is the period of time between sunset and sunrise.

~~(h)~~ *Department, board, commission, office, officer, or employee.* Whenever any department, board, commission, office, officer, or employee is referred to, it shall mean a department, board, commission, office, officer, or employee of the City ~~of Salem~~, unless the context clearly indicates otherwise. ~~Whenever a director of any city department is referred to, director shall mean the director or the director's designee, unless the context clearly indicates otherwise.~~

Director. The term "Director" means the City Manager, or the department director charged by the City Manager with the implementation and enforcement of the applicable chapter of the Code or as imposed by the Code, or that department director's designee."

~~(i)~~ *Gender*. The masculine gender includes the feminine and neuter, and vice versa.

~~(k)~~ *Health Officer*. The term "Health Officer" means the City Manager, or the department director charged by the City Manager with the implementation and enforcement of the chapter, or that department director's designee. ~~The Director of the Department of Administrative Services of the City of Salem, or the Director's designee.~~

~~(j)~~ *In the City*. The ~~words~~ term "in the City" ~~shall~~ means and includes all territory over which the City now has or shall hereafter acquire jurisdiction for the exercise of its police powers or other regulatory powers.

~~(l)~~ *Joint authority.* All words giving joint authority to three or more persons or officers shall be construed as giving such authority to a majority of such persons or officers.

~~(m)~~ *Month.* The ~~word~~ term "month" ~~shall~~ means a calendar month.

~~(n)~~ *Number*. The singular number includes the plural and the plural includes the singular, unless the context specifically indicates otherwise.

~~(o)~~ *Oath.* The term "oath" includes affirmation.

~~(p)~~ *Offense.* The doing of any act or thing prohibited or the failing to do any act or thing commanded to be done in this Code within the corporate limits of the City is hereby declared to be an offense against the public peace, safety, morals, and general welfare of the people of the City.

~~(q)~~ *Official time.* Whenever certain hours are named in this Code, they shall mean the standard of time as set out in ORS 187.110.

~~(r)~~ *Or; and.* The term "or" may be read "and," and the term "and" may be read "or," if the context specifically demands.

ORS. The abbreviation "ORS" and references to the state law following ORS mean and refer to the latest edition or supplement of the Oregon Revised Statutes.

~~(s)~~ *Owner*. The ~~word~~ term "owner," applied to a building or land, ~~shall~~ includes any part owner, joint owner, tenant in common, joint tenant, or tenant by the entirety of the whole or of a part of such building or land, or vendee in possession under a land sale contract.

~~(t)~~ *Person.* The term "person" includes individuals, corporations, limited liability companies, associations, firms, partnerships, joint stock companies, and any other entity in law or fact.

~~(u)~~ *Personal property*. The term "personal property" includes every species of property, except real property, as defined in this section.

~~(v)~~ *Preceding, following.* The ~~words~~ terms "preceding" and "following" mean next before and next after, respectively.

~~(w)~~ *Process.* The term "process" includes a writ or summons issued in the course of judicial proceedings of either a civil or criminal nature.

~~(x)~~ *Property*. The ~~word~~ term "property" ~~shall~~ includes real and personal property.

~~(y)~~ *Public place*. The ~~words~~ term "public place" ~~shall~~ means any public place or building or any private place, business, or building, open to and frequented by the public.

~~(z)~~ *Real property.* The ~~words~~ term "real property" ~~shall~~ includes lands, tenements, and hereditaments.

~~(aa)~~ *Shall; may.* The term "shall" is mandatory and the term "may" is permissive.

~~(bb)~~ *Signature* or *subscription by mark.* The term "signature" or "subscription" includes a mark when the signer or subscriber cannot write, such signer's or subscriber's name being written near the mark by a witness who writes his or her own name near the signer's or subscriber's name; but a signature or subscription by mark can be acknowledged or can serve as a signature of subscription to a sworn statement only when two witnesses so sign their own names thereto.

SRC. The abbreviation "SRC" means and refers to the Salem Revised Code.

~~(cc)~~ *State*. The ~~word~~ term "the State" or "this State" shall be construed to mean the State of Oregon.

~~(dd)~~ *Tenant* or *occupant.* The ~~words~~ term "tenant" or "occupant," applied to a building or land, shall include any person holding a written or an oral lease of or who occupies the whole or a part of such building or land, either alone or with others.

~~(ee)~~ *Tenses.* The present tense includes the past and future tenses, and the future includes the present.

~~(ff)~~ *To.* The term "to" means "to and including" when used in reference to a series of sections of this Code or when reference is made to the Oregon Revised Statutes.

~~(gg)~~ *Week.* A week consists of seven consecutive days.

~~(hh)~~ *Writing.* The term "writing" includes any form of recorded message capable of comprehension by ordinary visual means. Whenever any notice, report, statement, or record is required or authorized by this Code, it shall be made in writing in the English language, unless it is expressly provided otherwise.

~~(ii)~~ *Year.* The ~~word~~ term "year" ~~shall~~ means a calendar year, except where otherwise provided.

(Prior Code, § 1.020; Ord. No. 57-05; Ord. No. 31-06)

Sec. 1.022. References and editor's notes.

State law references, Charter references and editor's notes following certain sections of this SRC are inserted as an aid and guide to the reader and are not controlling or meant to have any legal effect.

Sec. 1.024. History notes.

The history or source notes appearing in parentheses after sections in this SRC are not intended to have any legal effect, but are merely intended to indicate the source of matter contained in the section.

Sec. 1.026. References to chapters or sections.

All references to chapters or sections are to the chapters or sections of this SRC unless otherwise specified.

State law reference—Construction of statutory references, ORS 174.010.

Sec. 1.030. Provisions considered as continuations of existing ordinances.

The provisions appearing in this Code, so far as they are the same as those of ~~Code of Ordinances and~~ ordinances existing at the time of the effective date of this Code, shall be considered as continuations thereof and not as new enactments.

(Prior Code, § 1.030)

Sec. 1.040. Effect of repeal of ordinances.

The repeal of an ordinance shall not revive any ordinances in force before or at the time the ordinance repealed took effect. The repeal of an ordinance shall not affect any punishment or penalty incurred before the repeal took effect, nor any suit, prosecution, or proceeding pending at the time of the repeal, for any offense committed under the ordinance repealed.

(Prior Code, § 1.040)

Sec. 1.050. Severability of parts of Code.

It is hereby declared to be the intention of the Council that the sections, paragraphs, sentences, clauses, and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph, or section of this Code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Code.

(Prior Code, § 1.050)

Sec. 1.060. Catchlines of sections.

The catchlines of the several sections of this Code printed in boldface type are intended as mere catchwords to indicate the contents of the section and shall not be deemed or taken to be titles of such sections, nor as any part of the section, nor, unless expressly so provided, shall they be so deemed when any of such sections, including the

catchlines, are amended or reenacted.

(Prior Code, § 1.060)

Sec. 1.062. Code does not affect prior offenses, rights, etc.

(a) Nothing in this Code or the ordinance adopting this Code shall affect any offense or act committed or done, or any penalty or forfeiture incurred, or any contract or right established or accruing before the effective date of this Code.

(b) The adoption of this Code shall not be interpreted as permitting any use or the continuance of any use of a structure or premises in violation of any ordinance of the City in effect on the date of adoption of this Code.

Sec. 1.064. Certain ordinances not affected by Code.

(a) Nothing in this Code or the ordinance adopting this Code shall affect any ordinance:

(1) Promising or guaranteeing the payment of money for the City, or authorizing the issuance of any bonds of the City or any evidence of the City's indebtedness, or any contract or obligations assumed by the City;

(2) Granting any right or franchise;

(3) Dedicating, naming, establishing, locating, relocating, opening, paving, widening, vacating, etc., any street or public way in the City;

(4) Making any appropriation or adopting or amending the budget;

(5) Levying or imposing taxes not contained in this Code;

(6) Establishing or prescribing grades of streets in the City;

(7) Providing for local improvements and assessing taxes therefor;

(8) Dedicating or accepting any plat or subdivision in the City;

(9) Extending or contracting the boundaries of the City;

(10) Prescribing the number, classification, benefits or compensation of any city officers or employees, or any personnel policies and procedures;

(11) Approving or prescribing rates, charges and fees, including rates for garbage collection service or for public utilities;

(12) Any ordinance prescribing through streets, parking and traffic regulations, speed limits, one-way traffic, limitations on load of vehicles or loading zones;

(13) Any ordinance calling an election;

(14) Any ordinance regarding rezoning land and any ordinance regarding land use, subdivision, zoning and the Development Code;

(15) Any ordinance which is temporary although general in effect;

(16) Any ordinance which is special although permanent in effect;

(17) Any ordinance the purpose of which has been accomplished; or

(18) Any other ordinance in place at time of adoption, the subject matter of which is not addressed or replaced by these Code sections; and

all such ordinances are hereby recognized as continuing in full force and effect to the same extent as if set out at length in this Code.

(b) Such ordinances are on file in the City Recorder's Office.

Sec. 1.066. Amendments or additions to Code.

(a) All ordinances passed subsequent to this Code which amend, repeal or in any way affect this Code may be numbered in accordance with the numbering system of this Code and printed for inclusion therein. When

subsequent ordinances repeal any chapter, section or subsection, or any portion thereof, such repealed portions may be excluded from the Code by omission from reprinted pages. The subsequent ordinances as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time as this Code and subsequent ordinances numbered or omitted are readopted as a new Code by the ~~City~~ Council.

(b) Amendments to any of the provisions of this Code shall be made by amending such provisions by specific reference to the section number of this Code in the following language: "~~That section _____ of the Salem Revised Code is hereby amended to read as follows:…. "~~ Section _____ of the Salem Revised Code is hereby amended to read as follows: . . .. " The new provisions shall then be set out in full as desired.

(c) In the event a new section not heretofore existing in the Code is to be added, the following language shall be used: ~~"That the Salem Revised Code is hereby amended by adding section which shall read as follows: ____. , to be numbered _____, which said section reads as follows:…." The new section shall then be set out in full as desired~~ The Salem Revised Code is hereby amended by adding section _____, which shall read as follows: . . .. The new section shall then be set out in full as desired.

(d) All sections, chapters or provisions of this Code desired to be repealed should be specifically repealed by section or chapter number, as the case may be.

Sec. 1.068. Supplementation of Code.

(a) By contract or by city personnel, supplements to this Code shall be prepared and printed whenever authorized or directed by the City. A supplement to the Code shall include substantive permanent and general parts of ordinances adopted during the period covered by the supplement and all changes made thereby in the Code. The pages of a supplement shall be so numbered that they will fit properly into the Code and will, where necessary, replace pages which have become obsolete or partially obsolete, and the new pages shall be so prepared that, when they have been inserted, the Code will be current through the date of the adoption of the latest ordinance included in the supplement.

(b) In preparing a supplement to this Code, all portions of the Code that have been repealed shall be excluded from the Code by the omission thereof from reprinted pages.

(c) When preparing a supplement to this Code, the codifier (meaning the person, agency or organization authorized to prepare the supplement) may make formal, nonsubstantive changes in ordinances and parts of ordinances included in the supplement, insofar as it is necessary to do so to embody them into a unified Code. For example, the codifier may:

(1) Organize the ordinance material into appropriate subdivisions;

(2) Provide appropriate catchlines, headings and titles for sections and other subdivisions of the Code printed in the supplement, and make changes in such catchlines, headings and titles;

(3) Assign appropriate numbers to sections and other subdivisions to be inserted in the Code and, where necessary to accommodate new material, change existing section or other subdivision numbers;

(4) Change the words "this ordinance" or words of the same meaning to "this chapter," "this section," etc., as the case may be, or to "sections _____ to _____" (inserting section numbers to indicate the sections of the Code which embody the substantive sections of the ordinance incorporated into the Code); ~~and~~

(5) Change capitalization and spelling for the purposes of uniformity, and correct manifest clerical, grammatical or typographical errors; and

(6) Make other nonsubstantive changes necessary to preserve the original meaning of ordinance sections inserted into the Code; but in no case shall the codifier make any change in the meaning or effect of ordinance material included in the supplement or already embodied in the Code.

Charter reference—Ordinances, ch. VIII.

Sec. 1.070. General penalty; continuing violations.

(a) Wherever in this Code or in any other ordinance of the City, any act is prohibited or is made or declared to be unlawful or an offense, or the doing of any act is required or the failure to do any act is declared to be unlawful or an offense, the violation of any such provisions of the Code or any other ordinance of the City shall be either a

misdemeanor or an infraction, and shall be punished as provided in this section.

(b) Maximum penalties for offenses defined in this Code shall be as follows:

(1) Misdemeanor: Six months imprisonment or a fine of $500.00, or both such fine and imprisonment.

(2) Infraction: A forfeiture of $250.00, or such lesser sum as may be provided in the ordinance defining the offense.

(c) Where an offense is defined in this Code, and no other penalty is provided, the offense shall be deemed a misdemeanor.

(d) Every day any violation of this Code or any other ordinance of the City shall continue shall constitute a separate offense.

(e) Notwithstanding anything in this section or any other ordinance to the contrary, no greater penalty shall be imposed for any violation of city ordinance than the maximum penalty prescribed under Oregon statute for the same act or omission.

(f) For purposes of facilitating disposition of infractions, the municipal judge may promulgate a schedule of forfeitures for particular infractions, and the person charged with such an infraction may deposit with the court the amount so scheduled, waive further appearance, and have the sum so deposited forfeited as on a plea of "no contest." The court shall not, however, be bound by the schedule on appearance and admission by the person charged, or on trial and judgment against the person charged; the court in such a case may impose any forfeiture allowed by subsection (b) of this section.

(Prior Code, § 1.070; Ord. No. 104-76; Ord. No. 193-79; Ord. No. 17-2000)

State law reference—Authority to specify penalty for violations, ORS 153.025.

Sec. 1.080. Violation of civil service provisions of Charter.

It shall be unlawful for any person to violate any of the civil service provisions of the City Charter. Any penalty imposed for the violation of this section shall be in addition to any reprimand, demotion, suspension, removal, discharge or other discipline which may be imposed. Violation of this section is an infraction.

(Prior Code, § 1.080; Ord. No. 3117; Ord. No. 193-79; Ord. No. 51-96; Ord. No. 30-97)

Charter reference—Civil service system for Fire Service, § 28 et seq.; ordinance regarding punishment for violation, § 45.

Sec. 1.090. Legal situs of City.

The seat of the government of the City is now maintained, and since the incorporations of the City has been maintained in Marion County, Oregon, the legal situs of the City is in Marion County.

(Prior Code, § 1.090; Ord. No. 4074)

Sec. 1.100. Base of grades.

In the execution of all field work, maps, profiles, and the like, in reference to the grades and streets in the City, the "base of grades" shall be mean sea level as established by the National Geodetic Survey (NGS).~~United States Coast and Geodetic Survey.~~

(Prior Code, § 1.100; Ord. No. 105; Ord. No. 160-69)

Sec. 1.110. Salaries of city officers and employees.

The wages and salaries of all city officers and employees shall be as established from time to time by the Council.

(Prior Code, § 1.110)

Charter reference—Compensation prescribed by council, § 26.

Sec. 1.120. City seal and flag.

The City does hereby adopt a seal and flag, a replica of which is on file with the City Recorder and by this reference is made a part of this section.

(Prior Code, § 1.120; Ord. No. 5521; Ord. No. 104-72)

CHAPTER 2. ADMINISTRATION*

***Charter reference—**Council, art. IV; mayor, § 22; city manager, § 23; municipal court and judge, § 24; personnel, art. VI; elections, art. VII; ordinances. art. VIII.

~~**State law reference**—Council meetings, notices, etc., ORS 221.908, 221.909.~~

Sec. 2.001. Hours during which city offices to be open.

Except on Saturdays, Sundays, and legal holidays, all city officers, except the municipal judge, shall keep their offices open to the public from 8:00 a.m. to 12:00 noon, and from 1:00 p.m. to 5:00 p.m.; provided, however, that the City Manager may, for the convenience of the public or when public need requires, designate other hours when the offices are open for business. The police and fire departments shall be open and available to the public at all times.

(Prior Code, § 2.001; Ord. No. 4716; Ord. No. 3269; Ord. No. 51-96; Ord. No. 42-09)

~~**Sec. 2.005. Minimum time officers and employees to devote to duties.**~~

~~All full-time City officers and employees shall devote at least eight hours each day or, if authorized by the employee's department head forty hours per week according to a flex-time schedule, to the performance of their duties, but the hours of service of members of the police and fire departments shall be as fixed by the City Manager or the chiefs of such departments.~~

~~(Prior Code, § 2.005; Ord. No. 4716; Ord. No. 51-96; Ord. No. 42-09)~~

Sec. 2.010. Councilors Pro Tempore generally.

~~Pursuant to the Charter §§ 19 and 20,~~ Whenever a Councilor is absent from the City ~~without the council's consent~~ for more than 30 days, the Council may appoint a Councilor Pro Tempore to serve during such absence. Whenever a Councilor desires a leave of absence from the City, the Council may grant the same and, in the event the extent of the absence shall exceed 30 days and the Councilor informs the Council of that fact, the Council immediately may appoint a Councilor Pro Tempore to serve during such absence.

(Prior Code, § 2.0010; Ord. No. 4451; Ord. No. 51-96; Ord. No. 42-09)

Sec. 2.015. Temporary appointive officers and member of commission and boards.

Whenever any appointive officer of the City or a member of any commission or board shall be absent from the City for more than 30 days, the Council, or the authority having the power to appoint the officer absent, may appoint an officer or commissioner pro tempore to serve during such absence.

(Prior Code, § 2.015; Ord. No. 4451; Ord. No. 42-09)

Charter reference—Council appointments, §§ 11, 23, 38; mayor appointments, § 22; city manager appointment, § 23.

Sec. 2.020. Temporary appointments in cases of disability.

Whenever any officer of the City, including the Mayor and members of the Council, or any member of any board or commission of the City, because of illness or injury, becomes incapacitated or unable to perform the duties of office, and such facts shall be made to appear by the affidavit of one or more physicians, duly licensed by the State Board of Medical Examiners to practice in this State, and filed in the office of the City Recorder, the Council or officer having the power to fill a vacancy in the office may appoint some competent and qualified person who shall serve until the termination of such incapacity shall have been evidenced in the same manner such incapacity was originally evidenced, or until the expiration of the term of office, whichever shall occur first. No pro tempore Councilor shall be appointed under this section until the regular Councilor shall have been incapacitated 30 days.

(Prior Code, § 2.020; Ord. No. 4451; Ord. No. 51-96; Ord. No. 42-09)

Charter reference—Disability to serve on the council, § 20.

Sec. 2.025. Temporary appointment; qualifications, terms, etc.

A person given a temporary or pro tempore appointment to any office, board, or commission shall have the qualifications required by law, Charter, or ordinance of persons seeking or holding the position for which the temporary appointment is made, shall take an oath of office and give bond where that is required, shall receive such compensation as the Council may provide, shall perform the duties of the officer or commission in whose stead he or she serves, and shall deliver to his or her principal the office and the property and records thereof whenever the absence or incapacity of the principal terminates. Any such temporary or pro tempore office or commissioner shall serve until the termination of the absence or disability of the officer or commissioner in whose stead he or she was named, or until the expiration of the term of office of such officer or commissioner, whichever shall first occur, or until the pro tempore officer or commissioner is removed.

(Prior Code, § 2.025; Ord. No. 4451; Ord. No. 42-09)

Sec. 2.030. Duties as Mayor Pro Tempore.

Whenever the Mayor is absent from a Council meeting, the President shall preside and, whenever the Mayor is unable, on account of absence from the City or disability, to perform the functions of this office, the President of the Council shall act as Mayor Pro Tempore; provided, however, that, in case of death, resignation, or otherwise the office of Mayor becomes vacant, the President of the Council shall not automatically become Mayor, but shall act as such until a Mayor is appointed or elected to fulfill the unexpired term. Within the meaning of this section, the Mayor shall not be deemed incapacitated on account of injury or illness or inability to perform the duties of office unless such fact shall be made to appear by the affidavit of one or more physicians, duly licensed by the State Board of Medical Examiners to practice in this State, and filed in the office of the City Recorder, and the termination of such incapacity on the part of the Mayor may be evidenced in the same manner.

(Prior Code, § 2.030; Ord. No. 4476; Ord. No. 51-96; Ord. No. 42-09)

HEARINGS OFFICER

Sec. 2.035. Office of Hearings Officer created; qualifications; duties and powers.

(a) There is hereby created the position of Hearings Officer. The City ~~Council~~ Manager shall appoint one or more qualified persons to serve as Hearings Officer, who shall serve at the pleasure of the City ~~Council~~ Manager. The Hearings Officer shall have the authority to hear any matter committed to the Hearings Officer by the Salem Revised Code, or referred to the Hearings Officer by the ~~City~~ Council.

(b) Hearings Officers shall be members in good standing of the Oregon State Bar.

(c) Hearings Officers shall have the power to conduct quasi-judicial hearings, to serve as the expedited land division referee, to administer oaths or affirmations, to serve as a special master and make findings of fact in matters referred by the ~~City~~ Council, to prepare a record of quasi-judicial proceedings, and to make findings of fact and conclusions of law in all quasi-judicial proceedings heard by the Hearings Officer.

(Prior Code, § 2.035; Ord. No. 42-75; Ord. No. 51-96; Ord. No. 42-09)

Secs. 2.040—2.190. Reserved.

CITY MANAGER*

***Charter reference—**Appointment of city manager, § 11; city manager, § 23.

Sec. 2.200. Office of City Manager; rulemaking; delegation of authority.

(a) The City Manager shall administer and provide for the enforcement of the provisions of the Salem Revised Code, and shall have the authority to adopt rules and procedures necessary for its proper administration.

(b) The City Manager is hereby delegated the authority to negotiate and consummate the following real estate transactions without further action by the ~~City~~ Council:

(1) The acquisition of easements and right-of-way for streets, trails, and utilities, if the acquisition has been authorized in the approved city budget.

(2) The acceptance of dedications or donations of property to the City, if acquisition of the property is part of an approved city budget, master plan, or other similar document, and the acceptance does not create

an ongoing financial obligation or other liability to the City.

(3) Quitclaim deeds releasing easements held by the City that are no longer needed for public purpose.

(4) The grant of temporary or permanent easements across city-owned real property if the easement will not unreasonably disrupt current or future public use of the property.

(5) Leases, where the form of lease has been subject to prior approval by the ~~City~~ Council, and there is no modification of the rent or any other material term or condition in the lease.

(c) The authority delegated under subsection (b) of this section may not be sub-delegated if the value of the interest in real estate to be acquired or transferred exceeds $10,000.00, or if the acquisition is not part of an approved city budget, master plan, or other similar document.

(Prior Code, § 2.200; Ord. No. 42-09)

Sec. 2.205. Deputy City Manager; creation.

There is hereby created the position of Deputy City Manager, who shall be appointed by, responsible to and removable by the City Manager. The Deputy City Manager shall perform such duties as are assigned or delegated by the City Manager, imposed by the Salem Revised Code, or imposed by other applicable law.

(Prior Code, § 2.205; Ord. No. 46-08; Ord. No. 42-09)

Sec. 2.210. Salem Public Library Division created; administration of Division.

There is hereby created a Salem Public Library Division within the office of the City Manager. The Salem Public Library Division shall be headed by the Library Services Manager, who shall be appointed by, responsible to and removable by the ~~Deputy~~ City Manager. The Library Services Manager shall perform such duties as may be assigned by the ~~Deputy~~ City Manager, imposed by the ~~Salem Revised~~ Code, or imposed by other applicable law.

(Prior Code, § 2.210; Ord. No. 51-96; Ord. No. 42-09)

Sec. 2.215. Liquor license application review.

(a) The ~~City~~ Council hereby delegates to the City Manager the authority granted to the ~~City~~ Council pursuant to ORS 471.166 to investigate and review applications for the issuance of new liquor licenses and renewals of liquor licenses, and to make recommendations to the Oregon Liquor Control Commission.

(b) When making a recommendation to the Oregon Liquor Control Commission, the City Manager shall review the application for compliance with ORS ch. 471 and the criteria established by Oregon Liquor Control Commission administrative rules. The City Manager may conduct such an investigation as the City Manager deems necessary to determine whether a favorable or unfavorable recommendation should be made to the Oregon Liquor Control Commission, and may request an extension of time from the Oregon Liquor Control Commission to consider the application.

(c) Notice of the City Manager's decision shall be provided to the applicant, each City Councilor, and the chair of the neighborhood association for the geographical area within which the licensed premises lies, no later than five business days before the recommendation is to be provided to the Oregon Liquor Control Commission. Notice may be by personal delivery, first class mail, facsimile transmission, or electronic mail. Notice to the applicant shall be sent to the applicant's address stated in the application. If the City Manager's decision is to provide an unfavorable recommendation, the notice shall state the grounds for the unfavorable recommendation, and advise the applicant that the City Manager's decision may be appealed to the ~~City~~ Council by filing a written notice of appeal with the City Recorder within five business days of the date of the City Manager's decision.

(d) If, before the date the decision is to be provided to the Oregon Liquor Control Commission, the City Manager receives a request for appeal from an unfavorable recommendation by the applicant, or an objection to a favorable or unfavorable recommendation from a ~~City~~ Councilor or the chair of the neighborhood association for the geographical area within which the licensed premises lies, the City Manager shall schedule a public hearing before the ~~City~~ Council on the application.

(e) Notice of the hearing shall be published in a newspaper of general circulation in the City. The notice shall specify the time, date, and location of the hearing and the business name and address of the applicant, and

shall contain a statement that public testimony may be given for or against the application and that written comments may be submitted to the City Recorder at any time prior to the hearing.

(f) Notice of the hearing shall be provided to the applicant and the chair of the neighborhood association for the geographical area within which the licensed premises lies, no later than five business days prior to the hearing. Notice may be by personal delivery, first class mail, or electronic mail. Notice to the applicant shall be sent to the applicant's address stated in the application, and shall be deemed provided upon mailing. In addition to the information required under this subsection, the notice shall contain a statement that the applicant may be represented by legal counsel at the hearing, which shall be provided at the applicant's sole expense.

(g) The hearing shall be conducted according to the procedures for hearings established by ~~City~~ Council Rules for quasi-judicial hearings. In determining whether to make an unfavorable recommendation to the Oregon Liquor Control Commission, the ~~City~~ Council shall apply the criteria established by ORS ch. 471 and the criteria established by Oregon Liquor Control Commission administrative rules.

(Prior Code, § 2.215; Ord. No. 48-09)

State law reference—Recommendation from city council on licensing, ORS 471.166.

Secs. 2.220—2.290. Reserved.

CITY ATTORNEY

Sec. 2.300. Office of City Attorney created; administration of department.

There is hereby created a legal department of the City ~~of Salem~~. The legal department shall be headed by a City Attorney, who shall be appointed by, responsible to and removable by the City Manager. The City Attorney shall perform such duties as are imposed by law, by this Code, by any other ordinance of the City ~~of Salem~~, or by the City Manager.

(Prior Code, § 2.300; Ord. No. 3370; Ord. No. 4275; Ord. No. 51-96; Ord. No. 42-09)

Charter reference—City manager appointment authority, § 23.

Sec. 2.305. Assistant, generally.

The City Attorney shall have one or more assistants, appointed by the City Attorney, who shall perform such duties of the City Attorney as the latter may direct.

(Prior Code, § 2.305; Ord. No. 4275; Ord. No. 51-96; Ord. No. 42-09)

Sec. 2.310. ~~To be~~ Law officer.

The City Attorney shall be the law officer of the City.

(Prior Code, § 2.310; Ord. No. 4275; Ord. No. 51-96; Ord. No. 42-09)

Sec. 2.315. ~~To be~~ Member of State Bar.

The City Attorney and assistant City Attorneys shall be members in good standing of the Oregon State Bar.

(Prior Code, § 2.315; Ord. No. 4275; Ord. No. 51-96; Ord. No. 42-09)

Sec. 2.320. Duties relative to suits and other proceedings.

The City Attorney shall appear, commence, prosecute, or defend for the City all causes or proceedings in any court in which the City is a party or interested when, in the City Attorney's discretion, the same may be necessary or advisable, and shall, when requested by the Council, the City Manager, or any board or commission of the City by Charter having the power to direct the City Attorney, appear, commence, prosecute, or defend any action, suit, matter, cause, or proceeding in any court or before any commission or officer in which the City is a party or has an interest.

(Prior Code, § 2.320; Ord. No. 4275; Ord. No. 51-96; Ord. No. 42-09)

State law reference—Prosecution of violation of charter or ordinances in circuit or justice court by city attorney, ORS 221.315.

Sec. 2.325. Civil forfeiture counsel.

The City Attorney is hereby appointed forfeiture counsel to represent the City ~~of Salem~~ in any forfeiture of property seized by or through the assistance of the Salem Police Department or City Attorney.

(Prior Code, § 2.325; Ord. No. 11-90; Ord. No. 42-09)

Sec. 2.330. Duty to give opinion and advice.

(a) The City Attorney shall, when requested by the Mayor, the Council, the City Manager, the head of any department ~~of the city government~~ or by any board or commission ~~of the city~~, give an opinion upon any question in which the City has an interest, and shall, when requested, give legal advice to the Council or any of such officers, boards, or commissions.

(b) The City Attorney may, when requested by the Council, the City Manager, or the head of any department ~~of the city government~~, and upon approval by the City Manager, give legal advice to a committee established by the requestor. As used in this subsection, a committee is a standing or special committee advisory to the requestor and containing individuals other than members of Council.

(Prior Code, § 2.330; Ord. No. 4275; Ord. No. 51-96; Ord. No. 28-2002; Ord. No. 42-09)

Sec. 2.335. Preparation of contracts, bonds, etc.

The City Attorney shall, when requested to do so by the Council, the City Manager, or any board or commission, prepare contracts, bonds, forms, and other proceedings which may be requested for the use of the City, or any department or officer thereof.

(Prior Code, § 2.335; Ord. No. 4275; Ord. No. 51-96; Ord. No. 42-09)

Sec. 2.340. Preparation of bills for ordinances.

The City Attorney shall prepare bills for ordinances, when requested by the Council or any member thereof or by the City Manager.

(Prior Code, § 2.340; Ord. No. 4275; Ord. No. 51-96; Ord. No. 42-09)

Sec. 2.345. Attendance at Council meetings.

The City Attorney shall attend the meeting of the Council.

(Prior Code, § 2.345; Ord. No. 4275; Ord. No. 42-09)

CITY RECORDER

~~**State law reference**—Duties of city recorder, ORS § 221.918 et seq.~~

Sec. 2.350. Office of City Recorder created; duties; authority.

(a) *General.* There is hereby created within the legal department of the City ~~of Salem~~ the office of City Recorder. The City Recorder shall perform such duties as are imposed by law, by this Code, or by the City Attorney. The City Recorder shall be appointed by, responsible to and removable by the City Attorney. The City Recorder may, with approval of the City Attorney, designate a deputy City Recorder, who shall perform such duties as the City Recorder or City Attorney may direct.

(b) *Clerk of the Council.* The City Recorder shall attend meetings of the Council; keep accurate minutes of the proceedings of the Council; file and keep all ~~papers and books~~ records connected with the business of the Council not specifically assigned to the custody of some other officer, and submit ~~documents and~~ records to the inspection of the Mayor or any member of the Council when requested.

(c) *Records Custodian.* The City Recorder shall be the Records Custodian for the City ~~of Salem~~, and, in the exercise of such duties, shall:

(1) Maintain, monitor and update a Citywide records retention schedule;

(2) Review requests for new records equipment;

(3) Assist in establishing and oversee the maintenance of storage facilities;

(4) Keep updated on public records law and procedures and educate ~~department supervisors~~ employees in

any changes;

(5) Accept and process public records requests submitted to the City Recorder, and assist or advise other departments in processing public records requests;

(6) Maintain and retain public records according to schedules promulgated by the Oregon State Archivist; and

(7) Engage in such other duties as may be required by Oregon Public Records Law.

(d) *Codification of ordinances.*

(1) The City Recorder shall record all ordinances enacted ~~in the ordinance book~~, and shall publish, distribute, and establish policies for codifying, indexing and revising the Salem Revised Code.

(2) In preparing ordinances for codification and distribution, the City Recorder may, after consultation with the City Attorney ~~and notice to the council~~, renumber sections and parts of sections for consistency; change reference numbers to agree with renumbered ordinances, sections or other parts; delete references to repealed sections; substitute the proper subsection, section or chapter or other division numbers; change capitalization and spelling for the purpose of uniformity; and correct manifest clerical, grammatical or typographical errors, but shall not, in the exercise of such authority, alter the sense, meaning, effect or substance of any ordinance.

(e) *Administrative rulemaking.* The City Recorder may adopt such rules as are necessary to carry out the duties and authority conferred under this section.

(Prior Code, § 2.350; ~~Formerly 2.200, 2.210, 2.220 and 2.1232,~~ Ord. No. 17-2003; Ord. No. 42-09)

~~ADMINISTRATIVE SERVICES DEPARTMENT~~

~~Sec. 2.355. Administrative services department; Creation.~~

~~There is hereby created the Administrative Services Department for the City of Salem. The functions of the Administrative Services Department shall include the provision of products, services, and support to the operations of City government, and such other functions as may be assigned to the Administrative Services Department by the City Manager.~~

~~(Prior Code, § 2.355; Ord. No. 31-06; Ord. No. 42-09)~~

~~Sec. 2.360. Administrative Services Director.~~

~~The Administrative Services Department shall be headed by the Administrative Services Director, who shall be appointed by, responsible to and removable by the City Manager. The Administrative Services Director shall perform such duties as may be assigned by the City Manager, imposed by the Salem Revised Code, or imposed by other applicable law.~~

~~(Prior Code, § 2.360; Ord. No. 31-06; Ord. No. 42-09)~~

Sec. 2.365. ~~Administrative Services Director~~ City Manager to be Finance ~~Director~~ Officer.

The ~~Administrative Services Director~~ City Manager or the City Manager's designee shall~~, in addition to such other duties as may be assigned by the City Manager,~~ be the Finance ~~Director~~ Officer for the City ~~of Salem~~, and shall receive, account for, manage, and safely keep all moneys belonging to the City and shall~~, subject to approval by the City Manager,~~ authorize the lawful disbursements thereof. In the exercise of such duties, the ~~Administrative Services Director~~ City Manager or the City Manager's designee, as the Finance Officer, shall, in addition to such other duties imposed by the ~~City Manager, the~~ Salem Revised Code~~,~~ or other applicable law:

(a) Maintain assets, liabilities, reserves, surpluses, and cash balances and revenues in separate accounting entities termed "funds";

(b) Maintain records of all receipts and expenditures according to generally accepted accounting principles for governmental units;

(c) Pay all bonds, warrants, bond coupons and certificates of participation in the order of their presentation;

(d) Invest surplus money of the City in securities specified in ORS 294.035—294.046 and with the local government investment pool under ORS 294.805—294.895;

(e) Maintain a docket of city liens, recording all special assessments, taxes, judgments and other charges by the City that liens upon property;

(f) Provide~~, at the request of the City Manager,~~ reports on the amount of deposits in custodian or depository banks;

(g) Receive and maintain all receipts issued by custodian banks or depository banks;

(h) Delegate to designees the authority to issue disbursements and to sign checks on behalf of the City;

(i) Adopt administrative rules as necessary to carry out the duties as the City's Chief Financial Officer;

(j) Comply, or ensure compliance with, all laws applicable to the public financial administration of the City, including, but not limited to, ~~Title 28 of the Oregon Revised Statutes~~ ORS title 28.

(Prior Code, § 2.365; Ord. No. 31-06; Ord. No. 42-09)

Sec. 2.370. Bond required.

~~(a) The Administrative Services Director shall, before entering upon the duties of office, execute a bond in such sums as the City Manager may fix, with a surety or sureties approved by the City Manager, conditioned upon the faithful performance of the duties of Finance Director.~~

~~(b) The Administrative Services Director may designate employees, or classes of employees, to~~ Prior to performing any duties of office, the Finance Officer shall execute a bond in ~~such sums as the City Manager may fix~~ an amount of not less than $200.00, with a surety or sureties ~~approved by the City Manager~~ authorized to do business in the State, conditioned upon the faithful performance of the duties ~~of office~~ as Finance Officer.

(Prior Code, § 2.370; Ord. No. 31-06; Ord. No. 42-09)

Sec. 2.375. Receipt and payment of money.

(a) All banks designated by the ~~Administrative Services Director~~ Finance Officer as depository banks are hereby authorized to honor checks for the payment of money drawn by the City ~~of Salem~~ as maker. All such designated depository banks shall be entitled to honor and to charge the City ~~of Salem~~ for all such checks regardless of by whom and by what means the facsimile signature is affixed if the facsimile signature is identical to the facsimile specimen duly certified or filed with the depository bank by the ~~Administrative Services Director~~ Finance Officer.

(b) The ~~Administrative Services Director~~ Finance Officer shall collect a dishonored electronic payment processing fee of $35.00 for any dishonored electronic payment made to the City. For purposes of this subsection, the term "dishonored electronic payment" is any payment made by electronic means, including, but not limited to, credit and debit card payments, but not including an electronic check governed by ORS 30.701, where the effect of the dishonor is a chargeback to the City's account or where the City is otherwise required to remit moneys to a bank or other financial institution. A dishonored electronic payment is considered a debt to the City, and will be added to the amount otherwise due on the account for which the payment was made. The ~~Administrative Services Director~~ Finance Officer may establish rules for administering and waiving the dishonored electronic payment processing fee.

(Prior Code, § 2.375; Ord. No. 31-06; Ord. No. 42-09; Ord. No. 16-12)

Sec. 2.380. ~~Purchasing Administrator~~ Contracts and Procurement Manager.

(a) The ~~Administrative Services Director~~ City Manager, or the ~~Director's~~ City Manager's designee, shall be the ~~Purchasing Administrator~~ Contracts and Procurement Manager for the City ~~of Salem~~. The ~~Purchasing Administrator~~ Contracts and Procurement Manager shall perform such duties as may be required by the City Manager~~, or~~ and as may be prescribed by the City of Salem's Public Contracting Rules, by the Salem Revised Code, or by other applicable law.

(b) Contractor disclosure. The ~~Purchasing Administrator~~ Contracts and Procurement Manager shall include in all invitations to bid, prepared by the ~~Purchasing Administrator~~ Contracts and Procurement Manager, the

requirement that prior to contract award, the low bidder shall provide answers to the following five questions:

(1) Within the last three years, have you, your company, or any officers, agents or employees working for you or your company been found by any agency or court to be in violation of any governmental environmental rule, regulation, ordinance or statute, whether local, state or federal? Include any resolution or settlement of any allegation of such a violation by civil compromise, settlement, consent decree, mutual agreement and order (MAO) or otherwise. If so, please explain in detail.

(2) Within the last three years, have you, your company or any officers, agents or employees working for you or your company been convicted or found at fault for any personal injury or property damage as a result of a product liability claim relating to any product that will be provided under this solicitation? If so, please explain in detail.

(3) Within the last three years, have you, your company or any officers, agents or employees working for you or your company been found in violation of any rule, regulation, ordinance or statute, whether local, state or federal, respecting wages, prevailing wages requirements, or conditions of employment? If so, please explain in detail.

(4) During the last year, did you or your company provide employees with bona fide health and retirement plans? Failure to do so will not disqualify you from consideration.

(5) Do you, or does your company, participate in a training program related to your trade? Failure to do so will not disqualify you from consideration.

(c) The ~~Purchasing Administrator~~ Contracts and Procurement Manager may adopt rules necessary to carry out the provisions of this section.

(Prior Code, § 2.380; Ord. No. 61-2002; Ord. No. 80-2002; Ord. No. 81-2002; Ord. No. 23-2003; Ord. No. 33-2003; Ord. No. 37-2003; Ord. No. 32-05; Ord. No. 31-06; Ord. No. 42-09)

COMMUNITY DEVELOPMENT DEPARTMENT

Sec. 2.385. ~~Community development department;~~ Creation.

There is hereby created the Community Development Department for the City ~~of Salem~~. The functions of the Community Development Department shall include land use, building and safety, code enforcement, and such other functions as may be assigned to the Community Development Department by the City Manager.

(Prior Code, § 2.385; Ord. No. 125-73; Ord. No. 71-74; Ord. No. 51-96; Ord. No. 46-08; Ord. No. 42-09)

Sec. 2.390. ~~Community Development~~ Director.

The Community Development Department shall be headed by the ~~Community Development~~ Director, who shall be appointed by, responsible to and removable by the City Manager. The Community Development Director shall perform such duties as may be assigned by the City Manager, imposed by the Salem Revised Code, or imposed by other applicable law.

(Prior Code, § 2.390; Ord. No. 125-73; Ord. No. 71-74; Ord. No. 51-96; Ord. No. 46-08; Ord. No. 42-09)

Sec. 2.395. Planning Division; Planning Administrator.

There is hereby created the Planning Division within the Community Development Department. The Planning Division shall be headed by the Planning Administrator, who shall be appointed by, responsible to and removable by the ~~Community Development~~ Director. The Planning Administrator shall perform such duties as may be assigned by the ~~Community Development~~ Director imposed by the Salem Revised Code, or imposed by other applicable law.

(Prior Code, § 2.395; Ord. No. 71-74; Ord. No. 186-82; Ord. No. 51-96; Ord. No. 42-09)

Sec. 2.400. Building and Safety Division; Building Official.

There is hereby created a Building and Safety Division within the Community Development Department. The Building and Safety Division shall be headed by the Building Official, who shall be appointed by, responsible to and removable by the ~~Community Development~~ Director. The Building Official shall administer SRC chapter 56, and shall perform such duties as may be assigned by the ~~Community Development~~ Director, imposed by the Salem

Revised Code, or imposed by other applicable law.

(Prior Code, § 2.400; Ord. No. 72-74; Ord. No. 42-09)

FIRE DEPARTMENT

Sec. 2.405. ~~Fire department;~~ Creation.

There is hereby created the Salem Fire Department. The functions of the Fire Department shall include the provision of fire and life safety to the residents of the City, and such other duties consistent therewith as may be assigned to the Fire Department by the City Manager.

(Prior Code, § 2.405; Ord. No. 51-96; Ord. No. 42-09)

Sec. 2.410. Fire Chief.

The Fire Department shall be headed by a Fire Chief, who shall be appointed by, responsible to and removable by the City Manager. The Fire Chief shall perform such duties as may be assigned by the City Manager, are imposed by the Salem Revised Code, or imposed by other applicable law.

(Prior Code, § 2.410; Ord. No. 51-96; Ord. No. 42-09)

HUMAN RESOURCES DEPARTMENT*

***Charter reference—**Personnel, ch. VI.

Sec. 2.415. ~~Human resources department;~~ Creation.

There is hereby created the Human Resources Department for the City ~~of Salem~~. The functions of the Human Resources Department shall include the provision of personnel services and support to the operations of City government, and such other functions as may be assigned to the Human Resources Department by the City Manager.

(Prior Code, § 2.415; Ord. No. 81-67; Ord. No. 51-96; Ord. No. 46-08; Ord. No. 42-09)

Sec. 2.420. ~~Human Resources~~ Director.

The Human Resources Department shall be headed by the ~~Human Resources~~ Director, who shall be appointed by, responsible to and removable by the City Manager. The ~~Human Resources~~ Director shall perform such duties as may be assigned by the City Manager, imposed by the Salem Revised Code, or imposed by other applicable law. The ~~Human Resources~~ Director shall:

(a) Administer the City's human resources program and personnel rules.

(b) Meet from time to time with representatives of the City employees to consider information as well as suggestions and recommendations regarding the personnel policies and practices of the City.

(Prior Code, § 2.420; Ord. No. 81-67; Ord. No. 51-96; Ord. No. 46-08; Ord. No. 42-09)

Sec. 2.425. Personnel rules.

The ~~Human Resources~~ Director shall prepare personnel rules, and necessary amendments or revisions thereof, for approval by the City Manager. Any rule which will have any financial impact shall first be approved by the ~~City~~ Council. Personnel rules include, but are not limited to, the following:

(a) A position classification plan, including provisions for reclassifications and for employees to appeal the allocation of their position to a particular class.

(b) A compensation plan, including provisions for in-range salary adjustments and overtime compensation.

(c) Provisions for the appointment, reappointment, and promotion of employees which shall include the use of various screening and selection techniques to obtain the best qualified persons available; provided that there shall be no discrimination against any person seeking employment because of any considerations of political or religious affiliation or belief, nonaffiliation or nonbelief, or because of race, sex, or military status.

(d) Provisions for preference in promotions to present career employees.

(e) Provisions for a probationary period for new employees or promoted employees during which they may be discharged or demoted without appeal, and for an extension of the probationary period.

(f) Provisions that the continued employment of every employee shall be conditioned on good behavior and the satisfactory performance of duties and that an employee may be disciplined by suspension, demotion, dismissal, or other appropriate action and providing for the appeal of disciplinary actions by career employees.

(g) Provisions for the manner in which lay-offs shall be made whenever there is a lack of work or inadequate budget resources that require reductions in the number of employees.

(h) Provisions for a grievance procedure.

(i) Provisions covering the accrual and use of sick leave and vacation time and relating to holidays and days off.

(j) Provisions relating to fringe benefit programs, including health insurance, retirement, training, and other fringe benefit programs determined to be necessary and desirable for the general welfare of the employees.

(k) Provisions covering the adoption, amendment, and addition of personnel rules.

(l) Such other matters as may be deemed desirable in order to provide a modern human resources program.

(Prior Code, § 2.425; Ord. No. 81-67; Ord. No. 51-96; Ord. No. 42-09)

Charter reference—Personnel rules, § 27.

Sec. 2.430. Merit system.

Pursuant to sections 28 through 47 of the Salem City Charter, the provisions of this section shall apply to the Fire Service for the City ~~of Salem~~. Subject to sections 28 through 47 of the Salem City Charter, the ~~Human Resources~~ Director shall implement the merit system provision of the City Charter to achieve for the Fire Service the following objectives:

(a) Provide and maintain a system of personnel administration, including appeal procedures in which the appointment of persons in, and the dismissal of persons from employment in the Fire Service shall be effected on the basis of merit and fitness.

(b) Establish and maintain a position classification plan which shall group all positions in employment in the Fire Service into classes based upon their duties, authorities, and responsibilities.

(c) Provide for a compensation plan for employees in the Fire Service which shall include for each class a minimum and maximum rate and such intermediate rates as are considered necessary and equitable.

(d) Provide just and equitable incentives and conditions of employment in the Fire Service to promote efficiency, economy, and public responsiveness in the operation of the City government.

(e) Provide that the tenure of employees in the Fire Service covered by sections 28 through 47 of the Salem City Charter and this section shall be subject to good behavior, the satisfactory performance of work, necessity for the performance of work, and the availability of funds.

(Prior Code, § 2.430; Ord. No. 81-67; Ord. No. 51-96; Ord. No. 42-09)

Charter reference—Merit system, § 27.

Sec. 2.435. Career service and exempt service positions.

All offices and positions of the City shall be classified as career service or exempt service.

(a) The career service shall be comprised of all budgeted offices and positions not classified as exempt service.

(b) The exempt service is:

(1) All elected officials and members of boards and commissions;

(2) The City Manager and immediate assistants to the City Manager;

(3) The City Attorney;

(4) Directors of city departments;

(5) Persons serving the City as independent contractors;

(6) Consultants and counsel rendering temporary professional service;

(7) Volunteer personnel and personnel appointed to serve without pay;

(8) Persons employed to render the City expert service of occasional character;

(9) Positions involving seasonal, temporary, or part-time employment as defined in the personnel rules.

(Prior Code, § 2.435; Ord. No. 81-67; Ord. No. 51-96; Ord. No. 30-97; Ord. No. 42-09)

INFORMATION TECHNOLOGY DEPARTMENT

Sec. 2.440. ~~Information technology department;~~ Creation.

There is hereby created the Information Technology Department for the City ~~of Salem~~. The duties of the Information Technology Department shall include provision of information technology products, services, and support to the operations of City government, and such other functions as may be assigned to the Information Technology Department by the City Manager.

(Prior Code, § 2.440; Ord. No. 41-06; Ord. No. 42-09)

Sec. 2.445. ~~Information Technology~~ Director.

The Information Technology Department shall be headed by the ~~Information Technology~~ Director, who shall be appointed by, responsible to and removable by the City Manager. The ~~Information Technology~~ Director shall perform such duties as may be assigned by the City Manager, imposed by the Salem Revised Code, or imposed by other applicable law.

(Prior Code, § 2.445; Ord. No. 41-06; Ord. No. 42-09)

POLICE DEPARTMENT

Sec. 2.450. ~~Salem police department;~~ Created.

There is hereby created the Salem Police Department. The duties of the Salem Police Department shall include the public safety for the residents of the City, and such other functions consistent therewith as may be assigned to the Salem Police Department by the City Manager.

(Prior Code, § 2.450; Ord. No. 51-96; Ord. No. 42-09)

Sec. 2.455. Police Chief.

The Police Department shall be headed by the Chief of Police, who shall be appointed by, responsible to and removable by the City Manager. The Chief of Police shall perform such duties as may be assigned by the City Manager, imposed by the Salem Revised Code, or imposed by other applicable law.

(Prior Code, § 2.455; Ord. No. 51-96; Ord. No. 42-09)

Sec. 2.460. Chief of Police; oath of office.

Before entering into service as the Chief of Police, the person appointed thereto shall subscribe to an oath or affirmation of office, to the effect that the appointee will support the Constitution and laws of the United States, and of the State ~~of Oregon~~, and of the Charter and ordinances of the City ~~of Salem~~, and will faithfully perform the duties of such office.

(Prior Code, § 2.460; Ord. No. 3387; Ord. No. 93-91; Ord. No. 30-97; Ord. No. 42-09)

Sec. 2.465. Powers and duties, generally.

The Chief of Police shall exercise the powers and duties conferred upon the office of Police Chief in such manner as will best preserve the peace and serve the interests of the City.

(Prior Code, § 2.465; Ord. No. 3387; Ord. No. 42-09)

Sec. 2.470. Police officers, generally.

It shall be the duty of all police officers to aid the Chief of Police in preserving the peace and good order of the City; to patrol the City; and, in addition to the duties imposed upon them by the state law as peace officers, they shall make arrests for violations of City ordinances; attend the Municipal Court when necessary; and generally attend to the duties common to police officers in incorporated cities. In the discharge of all their duties, they shall be under the control and direction of the Chief of Police.

(Prior Code, § 2.470; Ord. No. 3387; Ord. No. 30-97; Ord. No. 42-09)

Sec. 2.475. Police officers; oath of office.

Before entering into service, each police officer shall subscribe to an oath or affirmation of office, to the effect the person will support the Constitution and laws of the United States, and of the State ~~of Oregon~~, and of the Charter and ordinances of the City ~~of Salem~~, and will faithfully perform the duties of such office.

(Prior Code, § 2.475; Ord. No. 42-09)

Sec. 2.480. Establishment of police reserves.

The Council hereby authorizes and establishes a reserve police force in addition to the regular police force, the personnel of which are to be appointed by the Chief of Police. Such persons shall be citizens of the United States, residents of the State ~~of Oregon~~, 21 years of age or over, of good moral character, and shall meet such physical, educational, and training requirements as the Chief of Police may impose.

(Prior Code, § 2.480; Ord. No. 51-71; Ord. No. 42-09)

State law reference—Police reserve officer must be 21 years of age, ORS 181A.395.

Sec. 2.485. Police reserves as peace officers.

Reserve police officers shall have the power, authority, and responsibility of peace officers under the laws of the State ~~of Oregon~~. They may wear a uniform and display a badge similar to those worn by regular police officers, except that such uniform and badge shall clearly indicate by appropriate markings that the wearer is a reserve police officer.

(Prior Code, § 2.485; Ord. No. 51-71; Ord. No. 30-97; Ord. No. 42-09)

State law reference—Certification of reserve officer, ORS 181A.490.

Sec. 2.490. Oath of office; removal.

Upon appointment, each reserve police officer shall subscribe an oath of office. A reserve police officer shall be subject to removal by the Chief of Police without any proceedings or hearing.

(Prior Code, § 2.490; Ord. No. 51-71; Ord. No. 30-97; Ord. No. 42-09)

Sec. 2.495. Reserve police officers not to be compensated.

Reserve police officers shall receive no salary, wage, or other direct compensation for their regular services, except they shall not by this section be denied compensation as set by law or ordinance for their attendance as witnesses at any hearing; and further excepting that such reserve police officers may receive reasonable compensation for special assignments beyond their regular service where such assignment and compensation is approved in advance by the Chief of Police.

(Prior Code, § 2.495; Ord. No. 51-71; Ord. No. 30-97; Ord. No. 42-09)

Sec. 2.500. City employee as reserve police officer.

Any employee of the City ~~of Salem~~ may be appointed to the position of reserve police officer, as provided in SRC 2.480, for specialized assignments, provided the officer's duties in connection therewith do not involve full-time enforcement of the general criminal laws of the State ~~of Oregon~~ and ordinances of the City ~~of Salem~~, even though such assignments may from time to time involve limited law or ordinance enforcement duties and functions. Nothing in SRC 2.495 shall prohibit such employees from receiving their regular salary in connection with their

employment, and insofar as they may act as peace officers they shall act under the direction and authority of the Chief of Police.

(Prior Code, § 2.500; Ord. No. 51-71; Ord. No. 42-09)

DEPARTMENT OF PUBLIC WORKS

Sec. 2.505. ~~Public works department;~~ Creation.

There is hereby created the Public Works Department of the City ~~of Salem~~. The duties of the Public Works Department shall include engineering services, operation and management of municipal utilities, public facilities and parks construction and management, and such other functions as may be assigned to the Public Works Department by the City Manager.

(Prior Code, § 2.505; Ord. No. 5672; Ord. No. 72-74; Ord. No. 51-96; Ord. No. 42-09)

Sec. 2.510. ~~Public Works~~ Director.

The Public Works Department shall be headed by the ~~Public Works~~ Director, who shall be appointed by, responsible to and removable by the City Manager. The ~~Public Works~~ Director shall perform such duties as may be assigned by the City Manager, are imposed by the Salem Revised Code, or imposed by other applicable law.

(Prior Code, § 2.510; Ord. No. 5672; Ord. No. 72-74; Ord. No. 51-96; Ord. No. 42-09)

URBAN DEVELOPMENT DEPARTMENT

Sec. 2.515. ~~Urban development department;~~ Creation.

There is hereby created the Urban Development Department for the City ~~of Salem~~. The functions of the Urban Development Department shall include urban revitalization activity and economic development services, and such other functions as may assigned to the Urban Development Department by the City Manager. The duties of the Urban Development Department include, but are not limited to:

(a) Administration of urban revitalization, conservation, and rehabilitation activities and services by the City;

(b) Preparation of applications for, and the administration of, state or federal grants and aid for community development, redevelopment, and urban improvement activity;

(c) Provision of relocation services to displaced persons and businesses, as required by state and federal law;

(d) Administration of intergovernmental agreements entered into to further and carry out the purposes set forth in this section.

(Prior Code, § 2.515; Ord. No. 55-05; Ord. No. 42-09)

Sec. 2.520. ~~Urban Development~~ Director.

The Urban Development Department shall be headed by the ~~Urban Development~~ Director, who shall be appointed by, responsible to and removable by the City Manager. The ~~Urban Development~~ Director shall perform such duties as may be assigned by the City Manager, are imposed by the Salem Revised Code, or imposed by other applicable law.

(Prior Code, § 2.520; Ord. No. 55-05; Ord. No. 42-09)

Sec. 2.525. Airport Division; Airport Manager.

There is hereby created an Airport Division within the Urban Development Department. The Airport Division shall be headed by an Airport Manager who shall be appointed by, responsible to and removable by the ~~Urban Development~~ Director. The Airport Manager shall:

(a) Supervise the operation and maintenance of airports owned or operated by the City.

(b) Enforce all ordinances and rules and regulations applicable to aircraft and aviation at airports owned or operated by the City.

(c) Collect all moneys due the City from the operation of the airports owned or operated by the City.

(d) Keep the City Manager, ~~Urban Development~~ Director, and the Airport Advisory Commission fully informed about the operation and the condition of airports owned or operated by the City.

(e) Perform such other duties and possess such qualification as may be imposed by law, by the Salem Revised Code, or by the City Manager or the ~~Urban Development~~ Director.

(Prior Code, § 2.525; Ord. No. 101-67; Ord. No. 93-82; Ord. No. 58-88; Ord. No. 10-93; Ord. No. 51-96; Ord. No. 42-09; Ord. No. 22-12)

BOARDS AND COMMISSIONS

Sec. 2.530. Definitions.

~~As used in SRC 2.530-2.655 the following mean:~~ The following words, terms and phrases, when used in SRC 2.530 through 2.655, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Board* or *commission* means a group of persons to whom the ~~City~~ Council has given official authorization to perform certain functions or to undertake certain duties.

~~(b)~~ *Budget Committee* means the body established pursuant to ORS ~~294.336~~ 294.414 to review and recommend the City's budget.

~~(c)~~*Committee* means a group of persons to whom consideration of a matter has been committed by the ~~City~~ Council.

(Prior Code, § 2.530; Ord. No. 42-09)

Sec. 2.535. Creation.

All boards and commissions shall be created by ordinance or resolution of the ~~City~~ Council. The resolution or ordinance creating a board or commission shall specify whether the Mayor or the ~~City~~ Council appoints the members. For purposes of SRC 2.530 through 2.655, the Budget Committee shall be deemed a board or commission. Committees may be created by ordinance, resolution, or motion of the ~~City~~ Council, and shall be either standing committees or ad hoc committees.

(Prior Code, § 2.535; Ord. No. 42-09)

Sec. 2.540. Appointments.

(a) The Mayor shall appoint the members of all committees.

(b) The Mayor shall appoint the members of boards and commissions if so provided in the ordinance or resolution creating the board or commission.

(c) The ~~City~~ Council shall appoint the members of boards and commissions if so provided in the ordinance or resolution creating the board or commission, or if the ordinance or resolution is silent as to appointment authority.

(Prior Code, § 2.540; Ord. No. 10-93; Ord. No. 51-96; Ord. No. 67-96; Ord. No. 26-2002; Ord. No. 42-09)

Charter reference—Mayor appoints members of committees, § 22.

Sec. 2.545. Authority of boards and commissions.

(a) Unless the ordinance or resolution creating the board or commission specifically provides, boards and commissions are only advisory to the ~~City~~ Council.

(b) Except as to recommendations to the ~~City~~ Council as provided herein, no board or commission shall take, advocate, promote or oppose positions on issues or advocate, promote, endorse or oppose candidates for public office or matters to be voted on by the electors pursuant to the initiative and referendum power. Boards and commissions may make recommendations to the ~~City~~ Council regarding positions on issues affecting the City.

(c) No board or commission shall hold a public hearing upon its own motion on a matter if the ~~City~~ Council or another board or commission is required to conduct a public hearing on the same matter.

(Prior Code, § 2.545; Ord. No. 10-93; Ord. No. 42-09)

Sec. 2.550. Attendance.

If a member of a board, commission or committee fails to attend at least 75 percent of the meetings within a consecutive six-month period, the following procedure shall be followed:

(a) The City Manager shall inquire to determine the cause of nonattendance. If the cause of nonattendance is not of an excusable and temporary nature, including, but not limited to, illness, vacation or work, the City Manager shall remind the member that commitment to attendance is a key responsibility of membership.

(b) If the member fails to attend at least 75 percent of the meetings within the next following six-month period, the Mayor shall ask the member to resign.

(c) If the member refuses to resign upon request under subsection (b) of this section, the Mayor shall forward a report to the ~~City~~ Council recommending that the member be removed pursuant to SRC 2.555. Nothing in this section shall limit, or shall be deemed to limit, the ~~City~~ Council's authority to remove a member under SRC 2.555.

(Prior Code, § 2.550; Ord. No. 10-94; Ord. No. 42-09)

Sec. 2.555. Removing board, commission, or committee members.

(a) Except as may otherwise be required by law, members of boards, commissions and committees serve at the pleasure of the ~~City~~ Council, and a member of any board, commission, or committee may be removed therefrom upon majority vote of the ~~City~~ Council.

(b) The ~~City~~ Council may, before acting on removing a member of any board, commission, or committee, afford to such member a hearing upon request.

(Prior Code, § 2.555; Ord. No. 10-84; Ord. No. 110-85; Ord. No. 10-94; Ord. No. 51-96; Ord. No. 42-09)

Secs. 2.560—2.640. Reserved.

Sec. 2.650. Completing unexpired term.

Notwithstanding any other ordinance or resolution of the City, an individual who is appointed to complete an unexpired term of a member of a board, commission or committee shall be considered to have served one full term when at least two-thirds of the unexpired term remains on the date of appointment and the individual completes the unexpired term.

(Prior Code, § 2.650; Ord. No. 10-94; Ord. No. 42-09)

Sec. 2.651. Committee, board or commission military leave; pro tem appointment.

(a) ~~As used in this section:~~ The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

~~(2) The term "~~*Serve*~~"~~ or ~~"~~*service*~~"~~ means the performance of duty on a voluntary or involuntary basis in a Uniformed Service and includes active duty, active duty for training, initial active duty for training, inactive duty training, or full-time National Guard duty.

~~(1) The term "~~*Uniformed Services*~~"~~ means the Armed Forces of the United States; the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty; the commissioned corps of the Public Health Service; and any other category of persons designated by the President in time of war or national emergency or the Governor in time of state of emergency.

(b) Any member of a committee, board or commission shall be allowed a leave of absence from the person's duties as a member of the committee, board or commission to serve in the Uniformed Services. The leave of absence shall be allowed upon the person notifying the City of the person's intent to take a leave of absence, and shall extend for the time the person is engaged in service; provided such leave of absence shall not extend beyond the person's regular term of appointment to the committee, board or commission.

(c) When the person allowed the leave of absence returns from service in the Uniformed Services, the person shall notify the City in writing within 30 days of the date their service ends and provide the City with a date certain,

not to exceed 30 days from the date of the notification to the City, upon which the person intends to resume the person's appointment. The person shall thereupon resume the person's duties on the committee, board or commission for the remainder of the person's term.

(d) Pro tem appointment. Upon receiving notice that a member of a committee, board or commission intends to take a leave of absence, the appointing authority may make a pro tem appointment to fill the person's position on the committee, board or commission for the duration of the leave of absence. The member pro tem shall serve until the person returns from the leave of absence, or until the expiration of the term of appointment, whichever occurs first. The process for the pro tem appointment shall follow the same appointment process used for regular appointments to vacancies on the committee, board or commission for which the leave was granted. The pro tem member shall have the same powers and duties as any regular member of the committee, board or commission.

(Prior Code, § 2.651; Ord. No. 21-11)

Sec. 2.655. Bylaws.

Boards and commissions may adopt bylaws for their government and procedure consistent with the laws of the State ~~of Oregon~~ and with the Charter and ordinances of the City ~~of Salem~~. Where not inconsistent with such bylaws or where such bylaws are not adopted, Robert's Rules of Order Newly Revised (10th Ed., 2000) shall apply.

(Prior Code, § 2.655; Ord. No. 63-95A; Ord. No. 58-2002; Ord. No. 42-09)

Sec. ~~2.660~~ 2.656. Use of staff time.

A member of a board or commission who desires major policy, or records research, or other staff assistance requiring more than one hour of staff time, must first raise the issue at a meeting of the board or commission. The board or commission must approve the request before staff time is utilized. The City Manager, or the City Manager's designee, retains the authority to not fulfill the request, either in whole or in part, if the request would utilize too much staff time or City resources, or if the nature of the request is not within the scope of authority of the board or commission.

(Ord. No. 26-15, § 1, 11-9-2015)

Sec. ~~2.665~~ 2.657. Request for exceptions to Council policy or guideline.

Requests for exceptions to adopted Council policies or program guidelines shall first be considered by the ~~City~~ Council. A board or commission shall defer consideration of a recommendation of any such request until requested to do so by the ~~City~~ Council.

(Ord. No. 26-15, § 2, 11-9-2015)

Sec. ~~2.670~~ 2.658. Scope of items for board or commission recommendation.

The authority and purpose of each city board or commission are established by the ordinance or resolution creating the board or commission. A recommendation from a board or commission to the ~~City~~ Council shall not be forwarded to the ~~City~~ Council for its consideration if it is clearly not within the scope of the authority of the board or commission.

(Ord. No. 26-15, § 3, 11-9-2015)

EMERGENCY MANAGEMENT*

***State law reference—**Emergency management, ORS 401.025 et seq.

Sec. 2.660. Creation of Emergency Management Agency; definitions.

(a) Pursuant to ORS 401.305, there is hereby created within the City an Emergency Management Agency to be under the direction of the Emergency Program Manager.

(b) The Emergency Management Agency shall, in addition to the Emergency Program Manager, be staffed by such employees of the various departments of the City as may be designated by the Emergency Program Manager pursuant to the plan adopted pursuant to SRC 2.675.

(c) Except as set forth herein, the definitions set forth in ORS 401.025 apply to terms used in SRC 2.460 through 2.480.

(1) A “weather event emergency” occurs when circumstances create an immediate need to provide adequate, safe, and habitable shelter to persons experiencing homelessness; the Emergency Program Manager may declare that a weather event emergency exists. A weather event emergency is a health and safety emergency.

(A) A “warming/cooling station” is defined as a temporary facility that operates when temperatures or a combination of precipitation, wind chill, wind and temperature become dangerously inclement. Their primary purpose is the prevention of death and injury from exposure to the elements.

(B) A “mass shelter” is defined as a temporary facility that, in addition to the functions of warming/cooling station, provides emergency lodging and/or food for the duration of a weather event emergency.

(2) The declaration of weather event emergency does not:

(A) Create any inherent rights for the users or operators of any facilities authorized by this section; or

(B) Exempt the operator from any other required permits such as sanitation facility permits or electrical permits.

(d) The Emergency Program Manager shall be the City Manager, or, in the absence of the City Manager, the person designated to succeed the City Manager in the plan adopted under SRC 2.675.

(Prior Code, § 2.660; Ord. No. 50-88; Ord. No. 51-96; Ord. No. 8-98; Ord. No. 42-09; Ord. No. 26-16, § 1, 12-12-2016)

Sec. 2.665. Powers of Agency.

The provisions of ORS ch. 401 relating to emergency management and services are intended to enable local response to emergencies notwithstanding provisions of local Charter and ordinance which would otherwise inhibit such response. The Emergency Management Agency shall, therefore, have and exercise all powers granted to such agencies under applicable provisions of ORS ch. 401, notwithstanding any contrary provision of the Salem Revised Code or the Charter of the City ~~of Salem~~.

(Prior Code, § 2.665; Ord. No. 50-88; Ord. No. 42-09)

Sec. 2.670. Declaration of a state of emergency.

(a) The Emergency Program Manager is authorized to determine and declare a state of emergency to exist when an emergency has occurred or is threatened to occur within the City.

(b) The Emergency Program Manager shall:

(1) Submit a request to declare an emergency to Council at a regular or special meeting of the Council; or

(2) Immediately declare an emergency in writing, if the Emergency Program Manager determines there is not adequate time to present the request to Council. The Emergency Program Manager must, as soon as practical, request that Council ratify the declaration of emergency. If Council declines to ratify the declaration of an emergency, the declaration shall expire immediately. Any contracts or agreements shall executed by the City in reliance on the Emergency Program Manager’s declaration of an emergency shall continue to be valid and enforceable notwithstanding Council’s refusal to ratify the declaration.

(c) A declaration shall do all of the following:

(1) State the nature of the emergency.

(2) Describe the location or geographic area affected.

(3) Describe emergency conditions or threatened emergency conditions.

(4) Describe damage or potential damage, if any.

(5) Describe the resources committed and actions initiated by the City to alleviate the situation.

(Prior Code, § 2.670; Ord. No. 8-98; Ord. No. 42-09)

Sec. 2.675. Emergency management plan.

(a) The City Manager shall adopt, and may revise from time to time, a plan for response to emergencies directly or indirectly involving the City; and for provision of emergency services, both directly and in coordination with other public and private agencies.

(b) Such plan shall include provisions for temporary reassignment of city personnel, equipment and supplies to emergency services functions under lines of authority designated in the plan; for the emergency acquisition of necessary equipment, materials and services; and for the assignment of duties relating to pre-planning, training, and on-going support for the Emergency Management Agency.

(c) Upon adoption of and any amendment to the plan, the Emergency Program Manager shall file a copy with the City Recorder for the information of the Council.

(Prior Code, § 2.675; Ord. No. 50-88; Ord. No. 8-98; Ord. No. 42-09)

Sec. 2.680. Emergency orders.

(a) Whenever a state of emergency is declared to exist within the City, the Emergency Program Manager is empowered to order any of the following measures when necessary for public safety or when necessary for the efficient conduct of activities that minimize or mitigate the effects of the emergency:

(1) Redirecting City funds for emergency use and suspending standard City procurement procedures.

(2) Establishing a curfew which fixes the hours during which all persons other than officially authorized personnel may not be upon the public streets or other public places.

(3) Prohibiting or limiting the number of persons who may gather or congregate upon any public street, public place, or any outdoor place.

(4) Barricading streets, prohibiting vehicular or pedestrian traffic, or regulating such traffic on any public street leading to the emergency area for such distance as may be deemed necessary under the circumstances.

(5) Mandatory evacuation of persons, which shall be enforceable by peace officers, fire officials, and firefighters.

(6) Curtailing or suspending commercial activity.

(7) Such other measures as are necessary for the protection of the public health, safety or welfare, or for the recovery from the emergency.

(b) The City Manager may delegate authority to order the measures described in subsections (a)(4) and (5) of this section to city personnel in the plan adopted as provided in SRC 2.675.

(c) In the case of a weather event emergency, the Emergency Program Manager may:

(1) Utilize city-owned resources;

(2) Designate persons to coordinate the work of public, private, or nonprofit relief agencies responding to the housing emergency;

(3) Provide temporary or permanent housing by purchase, lease or otherwise;

(4) Order such other measures as may be necessary to protect the life, safety and health of persons, property or the environment;

(5) Direct the expeditious issuance of permits necessary to address issues that arise from the emergency;

(6) Enter into contracts to the extent authorized by the Salem Revised Code;

(7) Waive provisions of the Salem Revised Code or City administrative rules to the extent necessary to respond to the weather emergency;

(8) Promulgate rules regarding the location, hours of operation, size, limitation on the number of persons utilizing the facility, and duration of operation of warming/cooling stations or mass shelters. In no case may a facility be operated for more than 90 days without authorization by Council; and

(9) Activate emergency plans.

(d) Warming or cooling stations and mass shelters may be allowed notwithstanding the standards described in SRC Title X ~~of the Salem City Code~~ as temporary activities for the duration of the emergency upon declaration of a weather event emergency.

(e) Within ten days of the date of the order, any person aggrieved by an emergency order may request a hearing before the Municipal Court to determine whether issuance of the order was an abuse of discretion. The Municipal Court shall hear the matter within 30 days of the request for hearing.

(f) Failure to obey an emergency order is a misdemeanor.

(Prior Code, § 2.680; Ord. No. 8-98; Ord. No. 42-09; Ord. No. 26-16, § 2, 12-12-2016)

Secs. 2.690—2.780. Reserved.

REAL PROPERTY RELOCATION*

***State law reference—**Relocation of persons displaced by public acquisition of real property, ORS 35.500 et seq.

Sec. 2.785. Real property relocation benefits and assistance.

(a) Whenever a program or project is undertaken by the City that will result in the acquisition of real property, persons who are displaced by the acquisition shall be provided fair and reasonable relocation payments and assistance as required by ORS 35.510(1). In addition, the City shall provide such other programs, assistance, payments, and reimbursement as required by ORS 35.510(2)—(6).

(b) Except as otherwise provided in this section, in providing payments, reimbursement and assistance for relocation resulting from the acquisition of real property, the City Manager shall follow the procedures established by Code of Federal Regulations, Part 49, §§ 24.1—24.603.

(c) Any person who applies for relocation benefits or assistance shall receive a written decision from the ~~Urban Development~~ Director awarding or denying benefits. The decision shall be mailed to the person, by first class mail, postage prepaid, or delivered by personal service. The notice of decision awarding or denying benefits shall contain the following:

(1) A statement of the amount awarded;

(2) A statement of any findings of fact made in arriving at the decision;

(3) A reference to the legal authority that is the basis for award of relocation benefits;

(4) A statement of the person’s right to appeal the decision of the Director;

(5) A statement of the authority under which the appeal will be held.

(d) Appeals of final decisions by the ~~Urban Development~~ Director are contested cases as defined in SRC 20J.020. The applicant may appeal the final decision by filing a notice of appeal by following the procedures set forth in SRC 20J.220. The appeal shall be held according to procedures set forth in SRC chapter 20J.

(Prior Code, § 2.785; Ord. No. 39-76; Ord. No. 42-09)

State law reference—Duty of public entity acquiring certain properties, ORS 35.510.

MULTIPLE-UNIT HOUSING TAX INCENTIVE PROGRAM

Sec. 2.790. Generally.

(a) The provisions of ORS 307.600 to ~~307.691~~ 307.687 are hereby adopted to stimulate the construction, or addition of or conversion to multiple-unit housing in the designated core area of the City ~~of Salem~~; and to improve the balance between the residential and commercial nature of the area; and it is found that multiple-unit housing meeting the qualifications of ORS 307.606(4) would not otherwise be built in the designated core area without the benefits provided by ORS 307.600 to ~~307.691~~ 307.687.

(b) The tax exemption may be approved for up to ten consecutive years beginning July 1 of the tax year after completion of construction.

(c) The term "applicant," as used in SRC 2.790 through 2.835, ~~shall~~ means the person seeking the property

tax exemption provided by this chapter.

(Prior Code, § 2.790; Ord. No. 71-76; Ord. No. 55-96; Ord. No. 10-06; Ord. No. 42-09)

State law reference—Duration of exemption, ORS 307.612.

Sec. 2.800. Eligible property.

To be eligible for the property tax exemption provided by SRC 2.790 through 2.835 a structure must:

(a) Be dwelling units, not designed or used as transient accommodations and not including hotels and motels but including such design elements benefitting the public as described in SRC 2.790 through 2.835 and approved by the ~~City~~ Council.

(b) Be housing which is constructed after January 1, 2012, and completed on or before January 1, 2022.

(c) Be located within the designated core area, to wit:

Beginning at the point of intersection of the east bank of the Willamette River and the westerly projection of the south right-of-way line of Academy Street Northeast; thence easterly along the westerly projection of the south right-of-way line of Academy Street Northeast to the intersection with the west right-of-way line of Water Street Northeast; thence southerly along the west right-of-way line of Water Street Northeast to the intersection with the south right-of-way line of South Street Northeast; thence easterly along the south right-of-way line of South Street Northeast to the intersection with the west right-of-way line of Front Street Northeast; thence southerly along the west right-of-way line of Front Street Northeast to the intersection with the westerly extension of the South Line of Lot 7, Block 21, North Salem Addition, as recorded in Volume 1, Page 34, Book of Town Plats, City of Salem, Marion County, Oregon; thence easterly along the westerly extension of the South Line and the easterly extension of said line to a point on the West Line of Church Street; said point being the midpoint of Block 48, North Salem Addition; southerly along the west right-of-way line of Church Street Northeast to the intersection with the north right-of-way line of Gaines Street Northeast; thence westerly along the north right-of-way line of Gaines Street Northeast to the intersection of the west right-of-way line of the North-South Alley running between Fifth Street Northeast and Church Street Northeast; thence southerly along the west right-of-way line of said alley to the intersection of the south right-of-way line of Market Street Northeast; thence westerly along the south right-of-way line of Market Street Northeast to the intersection of the west right-of-way line of Fifth Street Northeast; thence southerly along the west right-of-way line of Fifth Street NE to the intersection with the south right-of-way line of D Street Northeast; thence easterly along the south right-of-way line of D Street Northeast to the intersection with the west right-of-way line of Fourteenth Street Northeast; thence southerly along the west right-of-way line of Fourteenth Street to the intersection with the north right-of-way line of Mission Street Southeast; thence westerly along the north right-of-way line of Mission Street Southeast to the intersection with the east line of Winter Street Southeast; thence northerly along the east right-of-way line of Winter Street Southeast to the intersection with the north right-of-way line of Bellevue Street Southeast; thence westerly along the north right-of-way line of Bellevue Street Southeast to the intersection with the east right-of-way line of Church Street Southeast; thence northerly along the east right-of-way line of Church Street Southeast to the intersection with the north right-of-way line of Trade Street Southeast; thence westerly along the north right-of-way line of Trade Street Southeast to the intersection with the west right-of-way line of Commercial Street Southeast; thence southerly along the west right-of-way line of Commercial Street Southeast to the intersection with the westerly projection of the north right-of-way line of Mission Street Southeast; thence westerly along the westerly projection of the north right-of-way line of Mission Street Southeast to the intersection with the east bank of the Willamette River and Willamette Slough; thence northerly along the east bank of the Willamette River and the Willamette Slough to the point of beginning.

(Prior Code, § 2.800; Ord. No. 71-76; Ord. No. 56-80; Ord. No. 150-84; Ord. No. 55-96; Ord. No. 20-99; Ord. No. 10-06; Ord. No. 42-09; Ord. No. 35-11)

Sec. 2.805. Preapplication conference.

(a) The applicant shall request that the ~~Urban Development~~ Director schedule a preapplication conference

no later than September 1 of the calendar year immediately prior to the first assessment year for which the exemption is requested. Each applicant shall submit in writing, on forms furnished by the ~~Urban Development~~ Director, the following information:

(1) The applicant's name, address, and telephone number.

(2) A preliminary sketch, drawn to approximate scale of one inch equals 20 feet, which shows the site plan and major features of the proposed development.

(3) A written statement which generally describes the location of the proposed development; the number, size, and type of dwelling units; dimensions of structures; public and private access; parking and circulation plans; landscaping; uses; and a description of the public benefit(s) the applicant proposes to include in the project.

(b) Prior to the preapplication conference, the Urban Development Department shall review the information supplied by the applicant and contact, for purposes of facilitating the application process, advisory bodies, departments, or agencies which may be affected by or have an interest in the proposed development.

(c) The applicant shall meet with staff of the Urban Development Department in the preapplication conference and discuss the applicant's proposed development. After this conference, the Urban Development Department shall provide the applicant with a written summary of the meeting, including recommendations to inform and assist the applicant in preparation of the exemption application.

(Prior Code, § 2.805; Ord. No. 71-76; Ord. No. 71-2002; Ord. No. 55-05; Ord. No. 10-06; Ord. No. 42-09)

Sec. 2.810. Application procedure.

(a) The applicant shall apply to the Urban Development Department no later than December 1 of the calendar year immediately prior to the first assessment year for which the exemption is requested. The applicant shall submit an application for exemption in writing on forms furnished by the ~~Urban Development~~ Director which must show:

(1) The applicant's name, address, and telephone number.

(2) A legal description of the property and the assessor's property account number for the site, and indication of site control.

(3) A detailed description of the project, including the number, size, and type of dwelling units; dimensions of structures, parcel size, proposed lot coverage of buildings, and amount of open space; type of construction, public and private access; parking and circulation plans; landscaping; uses; a description of the public benefit(s) which the applicant proposes to include in the project; and economic feasibility studies or market analysis when appropriate.

(4) A description of the existing use of the property, including a justification for the elimination of existing sound or rehabilitable housing.

(5) A site plan and supporting materials, drawn to a minimum scale of one inch equals 20 feet, which shows in detail the development plan of the entire project, showing streets, driveways, sidewalks, pedestrian ways, off-street parking, and loading areas, location and dimension of structures, use of land and structures, major landscaping features, and design of structures.

(6) A letter from the City Public Works Department stating that the proposed use can be served by existing sewer and water services.

(7) A description and the monetary value of any other public assistance, including, but not limited to, grants, loans, loan guarantees, rent subsidies, fee waivers, or other tax incentives, which the property is receiving or which the applicant plans to seek.

(b) At the time the application is submitted, applicants shall pay an application fee as prescribed by resolution of the ~~City~~ Council. The ~~Urban Development~~ Director shall pay the County Assessor for each application which is approved an amount provided for in the resolution.

(Prior Code, § 2.810; Ord. No. 71-76; Ord. No. 51-91; Ord. No. 51-96; Ord. No. 55-96; Ord. No. 71-2002; Ord. No. 55-05; Ord. No. 10-06; Ord. No. 42-09)

Sec. 2.815. Public benefits.

(a) In order to qualify for the exemption provided by SRC 2.790 through 2.835, the applicant must propose and agree to include in the proposed project one or more design elements benefitting the general public which may consist of, but not be limited to:

(1) Units at sales prices or rental rates which are accessible to a broad income range of the general public;

(2) Recreation facilities;

(3) Open spaces;

(4) Common meeting rooms;

(5) Day care facilities;

(6) Facilities supportive of the arts;

(7) Facilities for the handicapped;

(8) Service or commercial uses which are permitted and needed at the project site but not available for economic reasons;

(9) Special architectural features;

(10) Dedication of land or facilities for public use;

(11) Development or redevelopment of underutilized or blighted property;

(12) Provision of pedestrian-oriented design features;

(13) Extra costs associated with infill or redevelopment projects, such as land assembly, environmental cleanup, demolition, and infrastructure replacement or expansion;

(14) Development in structures that may include ground level commercial space;

(15) Development on sites with existing single-story commercial structures;

(16) Development on existing surface parking lots;

(17) Leadership in Energy and Environmental Design (LEED) Certification by the Green Building Council of the project;

(18) Provision of parking spaces within the structure; or

(19) Provision of amenities and/or programs supportive of the use of mass transit.

(b) Public benefits provided by this section are not necessarily required to be available to the public at large if the ~~City~~ Council finds the design elements proposed by the applicant provide sufficient public benefit.

(Prior Code, § 2.815; Ord. No. 71-76; Ord. No. 51-96; Ord. No. 55-96; Ord. No. 55-05; Ord. No. 10-06; Ord. No. 42-09)

Sec. 2.820. Change of use.

Notwithstanding the zone of the property on which the proposed project is to be located, no change of occupancy permit or building permit for change of use of dwelling units constructed under the provisions of this ~~ordinance~~ chapter will be issued unless specifically authorized by the Council. Such a change may be authorized by the ~~City~~ Council on the basis of the owner's justification of need to remove the housing resource. No such change of use will be considered within the approved ten-year exemption period.

(Prior Code, § 2.820; Ord. No. 71-76; Ord. No. 51-96; Ord. No. 55-96; Ord. No. 10-06; Ord. No. 42-09)

Sec. 2.825. Review of the application.

(a) The ~~City~~ Council may approve the application if it finds, in accordance with standards and guidelines adopted by resolution of the ~~City~~ Council, that:

(1) The property is eligible as provided in SRC 2.800;

(2) The applicant has agreed to include in the construction as a part of the multiple-unit housing one or more design elements benefitting the general public which are deemed sufficient by the ~~City~~ Council;

(3) The project is in conformance with the comprehensive plan and zoning regulation; and

(4) The public benefit the property will receive pursuant to this program will be reasonable when considered in combination with other public benefits it is receiving or for which the owner plans to apply.

(b) The ~~City~~ Council shall review the application within 180 days of filing and approve, deny, or approve subject to reasonable conditions, the application. Final action by the ~~City~~ Council shall be by resolution that shall contain the owner's name and address, a description of subject multiple-unit housing, either the legal description of the property or the assessor's property account number, and the specific conditions upon which the approval of the application is based. An application not acted upon within 180 days following the date of application shall be deemed approved.

(c) If the application is denied, a notice of denial shall be sent to the applicant within ten days following the denial. The notice shall state the reasons for denial.

(d) If the application is approved, on or before April 1 following approval, the ~~Urban Development~~ Director shall file with the County Assessor and send to the applicant at the applicant’s last known address a copy of the resolution approving the application. In addition, for each application which is approved, the ~~Urban Development~~ Director shall file with the County Assessor on or before April 1 following approval, a document listing the same information otherwise required to be in an ordinance approving an application under this chapter.

(Prior Code, § 2.825; Ord. No. 71-76; Ord. No. 51-96; Ord. No. 55-96; Ord. No. 71-2002; Ord. No. 55-05; Ord. No. 10-06; Ord. No. 42-09)

State law reference—City findings for approval, ORS 607.618.

Sec. 2.830. Termination.

(a) If, after an application has been approved, the ~~Urban Development~~ Director finds that construction of multiple-unit housing was not completed on or before January 1, 2022, or that any provision of SRC 2.790 through 2.835 is not being complied with, or any agreement made by the owner or requirement made by the ~~City~~ Council is not being or has not been complied with, the ~~Urban Development~~ Director shall send a notice of termination of the exemption to the owner's last known address.

(b) The notice of termination shall state the reasons for the proposed termination, and shall require the owner to appear before the ~~City~~ Council at a specific time, not less than 20 days after mailing the notice, to show cause, if any, why the exemption should not be terminated.

(c) If the owner fails to appear and show cause why the exemption should not be terminated, the ~~Urban Development~~ Director shall further notify every known lender and shall allow the lender a period of not less than 30 days, beginning with the date that the notice of failure to appear and show cause is mailed to the lender, to cure any noncompliance or to provide assurance that is adequate, as determined by the ~~Urban Development~~ Director to assure the City that the noncompliance will be remedied.

(d) If the owner fails to appear and show cause why the exemption should not be terminated, and a lender fails to cure or give adequate assurance that any noncompliance will be cured, the ~~City~~ Council shall adopt a resolution stating its findings and terminating the exemption. A copy of the resolution shall be filed with the County Assessor and a copy sent to the owner at the owner's last known address, and to any lender at the lender's last known address, within ten days after its adoption.

(Prior Code, § 2.830; Ord. No. 71-76; Ord. No. 27-90; Ord. No. 51-96; Ord. No. 55-96; Ord. No. 55-05; Ord. No. 10-06; Ord. No. 42-09; Ord. No. 35-11)

State law reference—Termination of exemption, ORS 307.624.

Sec. 2.835. Extensions.

Notwithstanding SRC 2.830, if the ~~City~~ Council finds that construction, or addition of, or conversion to, the multiple-unit housing was not completed by January 1, 2022, due to circumstances beyond the control of the owner, and that the owner has been acting and could reasonably be expected to act in good faith and with due diligence, the ~~City~~ Council may extend the deadline for completion of construction for a period not to exceed 12 consecutive months.

(Prior Code, § 2.835; Ord. No. 71-76; Ord. No. 27-90; Ord. No. 7-95; Ord. No. 55-96; Ord. No. 10-06; Ord. No. 42-09; Ord. No. 35-11)

AMBULANCE SERVICE

Sec. 2.840. Ambulance service on public streets.

(a) *Franchise or agreement required.* The City ~~of Salem~~ shall have the exclusive right and privilege to operate all ambulances providing ambulance service within the City, and it shall be unlawful for any ambulance company to operate an ambulance on, over, and along the public streets within the corporate limits of the City, without first having entered into a franchise or other agreement with the City to provide such service; provided, however, no such franchise or agreement is required for the following:

(1) Ambulances being used by an ambulance company that provides services only outside of the City, while rendering temporary assistance during a major catastrophe or emergency;

(2) Ambulances dispatched by an ambulance company that provides services only outside of the City, while being used to render temporary assistance at the scene of an accident;

(3) An ambulance company that provides services only outside of the City, while transporting persons only from points without the City to points within the City, or transporting persons only through the City; and

(4) An ambulance licensed to the Oregon State Hospital for patient transport from Oregon State Hospital facilities to destinations outside of the City.

(b) *Definitions.* As used in this section, the term "ambulance" means a motor vehicle that is licensed through the Oregon Health Authority, constructed or equipped for, and intended to be used for, emergent and non-emergent transportation of persons because of, or in connection with, an illness, injury, or disability. As used in this section, the term "ambulance company" means a person, corporation, or any other legal entity that provides transportation of persons in an ambulance.

(c) *Ambulance memberships.* As an alternative to billing transported patients individually, the City Manager may establish a program for the prepayment of ambulance services from persons within the City's individual or joint area of operation. Ambulance membership shall be available to any person or family residing in the service area. Fees for membership shall be prescribed by resolution of the ~~City~~ Council. The program may include membership terms and conditions, transferability, covered services, enrollment periods, and related program features.

(d) *Violation.* Provision of ambulance service in violation of subsection (a) of this section is an infraction, and shall be subject to a fine equal to twice the current Advanced Life Support (ALS) transport rate set by resolution of the ~~City~~ Council.

(Prior Code, § 2.840; Ord. No. 23-80; Ord. No. 12-99; Ord. No. 19-13)

CHAPTER 3. RESERVED

CHAPTER 4. MUNICIPAL COURT*

***Charter reference—**Municipal court, municipal judge, § 24.

State law reference—Municipal courts, ORS 221.336 et seq.; qualifications of municipal judge, ORS 221.142.

Sec. 4.001. Municipal Court, generally.

The Municipal Court is the judicial tribunal of the City ~~of Salem~~, and shall exercise jurisdiction over offenses as provided by this chapter and the laws of the State ~~of Oregon~~, and over such other matters as provided by the Salem Revised Code. The municipal judge is the presiding judge of the Municipal Court and shall have such judicial authority and such powers as are conferred by this chapter, the Charter of the City ~~of Salem~~, the laws of the State ~~of Oregon~~ and the U.S. Constitution.

(Prior Code, § 4.001; Ord. No. 6-08)

State law reference—Jurisdiction, ORS 221.339.

Sec. 4.005. Definitions.

~~Unless the context otherwise specifically requires, as used in this Chapter, the following mean:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*City Attorney* means the City Attorney, the Deputy City Attorney, or an Assistant City Attorney appearing before the Municipal Court.

~~(b)~~ *Counsel* means an attorney for a defendant, or an attorney appointed by the Municipal Court to act as a legal advisor to an indigent defendant who is appearing pro se.

~~(c)~~*Defendant* means either the person charged with an offense in a proceeding in Municipal Court, or, if the person is represented, that person's counsel.

~~(d)~~ *Judge* means the municipal judge or a municipal judge pro tempore.

~~(e)~~*Municipal Court* or *Court* means the Municipal Court of the City ~~of Salem~~, or any judge exercising the power of a judicial officer in the Municipal Court.

~~(f)~~*Municipal judge* means the municipal judge holding elective office of the City ~~of Salem~~.

~~(g)~~ *Offense* means any matter over which the Municipal Court has jurisdiction pursuant to SRC 4.010.

(Prior Code, § 4.005; Ord. No. 6-08)

Sec. 4.010. Jurisdiction of Municipal Court.

The Municipal Court shall have jurisdiction over all offenses made punishable under the ordinances of the City ~~of Salem~~; all violations, as defined by ORS 153.005(3); and all traffic offenses, as defined by ORS 801.555, that are made punishable under ~~Title 59 of the Oregon Revised Statues~~ ORS title 59, other than felony traffic crimes.

(Prior Code, § 4.010; Ord. No. 6-08; Ord. No. 28-10)

Charter reference—Jurisdiction, § 24(5).

State law reference—Jurisdiction, ORS 221.339.

Sec. 4.015. Qualifications of municipal judge and municipal judge pro tempore.

(a) No person shall be eligible for ~~to~~ the office of municipal judge unless the person is at least 21 years of age, a citizen of the United States, a resident of the City ~~of Salem~~ for one year immediately ~~next~~ preceding election or appointment and an active member in good standing of the Oregon State Bar.

(b) No person shall be eligible for appointment as municipal judge pro tempore unless the person is at least 21 years of age, a citizen of the United States, and an active member in good standing of the Oregon State Bar.

(Prior Code, § 4.015; Ord. No. 6-08)

State law reference—Qualifications of judges of municipal courts, ORS 221.142.

Sec. 4.020. Commencement of term of office.

(a) The term of office for municipal judge shall begin on the first business day in January following the election of the municipal judge.

(b) The term of office for municipal judge pro tempore shall begin upon the date the Municipal judge pro tempore takes the oath of office following appointment by the ~~City~~ Council. A municipal judge pro tempore shall serve a term not to exceed two years. The length of term shall be recommended by the municipal judge and set by the ~~City~~ Council at time of appointment.

(Prior Code, § 4.020; Ord. No. 6-08)

Sec. 4.025. Oath of office.

Before entering upon the duties of municipal judge or municipal judge pro tempore, whether upon election or appointment, the person must take and subscribe, and submit to the City Recorder, an oath in the following form:

> I, _____, do solemnly swear or affirm that I will support the Constitution of the United States, the Constitution of the State of Oregon, and the Charter of the City of Salem, and that I will faithfully and impartially discharge the duties of judge of the Municipal Court of the City of Salem, according to the best of my ability.

(Prior Code, § 4.025; Ord. No. 6-08)

Sec. 4.030. Private practice of law by municipal judge prohibited; municipal judge pro tempore or partner thereof prohibited from acting as attorney in Municipal Court.

(a) During his or her tenure of office, the municipal judge shall not engage in the practice of law, and shall devote full time to carrying out the duties of the office of municipal judge.

(b) No municipal judge pro tempore or partner of a municipal judge pro tempore may act as an attorney in the Municipal Court.

(Prior Code, § 4.030; Ord. No. 6-08)

Sec. 4.035. Municipal Judge Compensation Commission.

(a) There is hereby created a Municipal Judge Compensation Commission, which shall be comprised of three members. The Commission shall consist of the City Manager, one attorney of good standing who is a member of the Marion or Polk County Bar Association, and one member of the general public of good character. The ~~City~~ Council shall appoint all members, other than the City Manager. The term of office shall be four years.

(b) The Municipal Judge Compensation Commission shall review and make recommendations to the ~~City~~ Council regarding the salary of the municipal judge and compensation for municipal judges pro tempore, based on the following criteria:

(1) The qualifications and skills necessary for office.

(2) The level of responsibility implicit in the office.

(3) The cost of living.

(4) The total compensation, including benefits other than salary.

(5) Budget limitations.

(6) Any other factors the Commission may consider to be reasonable, appropriate and in the public interest.

(c) The Municipal Judge Compensation Commission shall meet biennially, commencing with the 2008 calendar year, and shall make a recommendation to the ~~City~~ Council within 60 days of the date the Commission concludes its review. The ~~City~~ Council shall review the recommendation and determine whether to accept the recommendation. If accepted, the recommendation shall become effective during the next fiscal year.

(d) The compensation for the municipal judge, and any municipal judge pro tempore, shall not be diminished during the term of office.

(Prior Code, § 4.035; Ord. No. 6-08)

Sec. 4.040. Authority to administer oaths.

In addition to such other powers as may be conferred by law, any judge of the Municipal Court has the power to administer oaths in an action, suit or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers or the performance of its duties.

(Prior Code, § 4.040; Ord. No. 6-08)

Sec. 4.045. Contempt proceedings.

In the exercise of the power to punish contempt under the Charter of the City ~~of Salem~~ and the laws of the State ~~of Oregon~~, the Municipal Court may impose a remedial or punitive sanction for contempt of court, in the manner provided by ORS 33.015—33.155.

(Prior Code, § 4.045; Ord. No. 6-08)

Sec. 4.050. Disqualification for prejudice.

No judge of the Municipal Court shall hear or try any action, matter or proceeding if a party thereto, or an attorney appearing therein, moves the Court for a change of judge on grounds of prejudice. The motion shall be supported by an affidavit stating that the judge before whom the action, matter or proceeding is pending is prejudiced against the party or attorney, and that the affiant or the client of the affiant cannot, or believes that the affiant or the client of the affiant cannot, have a fair and impartial trial or hearing before the judge, and that such motion is made in good faith and not for the purpose of delay. The motion shall be filed before, or within five days after, a question of fact arises in the action, matter or proceeding is to be tried or heard, or within ten days after the assignment, appointment and qualification or election and assumption of office of another judge to preside over such action, matter or proceeding. A question of fact arises upon a plea of not guilty by a defendant. No party or attorney shall make more than one application in any action, matter or proceeding.

(Prior Code, § 4.050; Ord. No. 6-08)

Sec. 4.055. Means to carry jurisdiction into effect; adoption of suitable process or mode of proceeding.

When jurisdiction on a matter is conferred on the Municipal Court, all the means to carry such jurisdiction into effect is also given to the municipal judge; and in the exercise of such jurisdiction, if the rules of procedure are not specifically identified or made applicable to the Municipal Court under this chapter, any suitable process or mode of proceeding may be adopted by the municipal judge which may appear most conformable to the exercise of such jurisdiction.

(Prior Code, § 4.055; Ord. No. 6-08)

Sec. 4.060. Rules of procedure.

(a) The municipal judge may adopt rules necessary for the prompt and orderly conduct of the business of the Municipal Court. Rules adopted by the municipal judge pursuant to this section shall be consistent with the provisions of ORS ch<u>s</u>. 153, ORS ~~ch.~~ 156, and any rules adopted by the Oregon Supreme Court pursuant to ORS 153.033.

(b) A certified copy of any rule adopted by the municipal judge shall be filed with the City Recorder and shall be published upon the Municipal Court's website. No rule, or amendment thereof, shall be effective unless so filed, and shall become effective upon the date of filing and publication. The City Recorder shall maintain copies of all rules filed pursuant to this section and shall keep a record of the date of filing.

(Prior Code, § 4.060; Ord. No. 6-08)

Sec. 4.065. Municipal Court docket.

The Municipal Court shall maintain a docket, which may be maintained in electronic form. <u>A</u> ~~the~~ clerk of the court shall enter the following information in the docket:

(a) The title of every action or proceeding commenced in the <u>Municipal Court</u>, with the names of the parties thereto and the time of commencement thereof.

(b) The date of making or filing any pleading.

(c) An order allowing a provisional remedy, and the date of issuing and returning the summons or other process.

(d) The time when each party appears, or a party's failure to do so.

(e) If defendant waived counsel, the fact of such waiver and the basis for the Court's conclusion that such waiver was knowing and voluntary.

(f) Every postponement of a trial or proceeding, upon whose application and to what time.

(g) The demand for a jury, if any, or the waiver of the right to jury trial, and by whom made.

(h) The order for a jury and the time appointed for trial.

(i) The return of an order for a jury, the names of the persons impaneled and sworn as a jury and the names of all witnesses sworn and at whose request.

(j) The verdict of the jury and when given or, if the jury disagrees and is discharged without giving a verdict, a statement of such disagreement and discharge.

(k) The judgment of the Court and when given.

(l) The date on which any judgment is entered ~~docketed~~ in the docket.

(m) The fact of an appeal having been made and allowed, and the date thereof, with a memorandum of the undertaking, and the justification of the sureties.

(n) Satisfaction of the judgment or any part thereof.

(o) A memorandum of all orders relating to security release.

(p) All other matters that may be material or specially required by any statute.

(Prior Code, § 4.065; Ord. No. 6-08)

State law reference—Municipal court docket, ORS 221.352.

Sec. 4.070. Violations bureau; establishment; authority of violations clerk.

(a) In addition to, and not in lieu of, any authority conferred upon the Municipal Court of the City ~~of Salem~~ under ORS 153.800, the municipal judge may establish a violations bureau and designate a ~~the~~ clerk ~~or deputy clerk~~ of the Municipal Court or any other appropriate person to act as a violations clerk for the violations bureau. The violations clerk shall serve under the direction and control of the municipal judge.

(b) A violations clerk may exercise authority over any violation. The municipal judge shall by order specify the violations that are subject to the authority of the violations clerk.

(c) Except as provided in subsection (f) of this section, the violations clerk shall accept written appearances, waivers of trial, and pleas of guilty for violations that are subject to the authority of the violations clerk.

~~(1)~~written appearance~~s~~, waiver~~s~~ of trial, and plea~~s~~ of guilty and payment of fine, costs and assessments for violations that are subject to the authority of the violations clerk; ~~or~~

~~(2) Payment of base fine amounts for violations that are subject to the authority of the violations clerk.~~

(d) The municipal judge shall establish schedules, within the limits prescribed by law, of the amounts of penalties to be imposed for first, second and subsequent violations, designating each violation specifically or by class. The order of the municipal judge establishing the schedules shall be prominently posted in the place where penalties established under the schedule are paid. All amounts must be paid to, receipted by and accounted for ~~by the violations clerk~~ in the same manner as other payments on money judgments are received by the City ~~of Salem~~.

(e) Any person charged with a violation within the authority of the violations clerk may:

(1) Upon signing an appearance, plea of no contest ~~guilty~~ and waiver of trial, pay ~~the violations clerk~~ the penalty established for the violation charged, including any costs and assessments authorized by law.

(2) Pay ~~the violations clerk~~ the ~~base~~ presumptive fine amount established for the violation. Payment of the ~~base~~ presumptive fine amount under this ~~paragraph~~ subsection constitutes consent to forfeiture of the

~~base~~ presumptive fine amount and disposition of the violation by the violations clerk as provided by the rules of the Municipal Court. Payment of the ~~base~~ presumptive fine amount under this ~~paragraph~~ subsection is not consent to forfeiture of the ~~base~~ presumptive fine amount if the payment is accompanied by a plea of not guilty or a request for hearing.

(f) A person who has been found guilty of, or who has signed a plea of ~~guilty or~~ no contest to, one or more previous offenses in the preceding 12 months within the jurisdiction of the Municipal Court shall not be permitted to appear before the violations clerk unless the municipal judge, by general order applying to certain specified offenses, permits such appearance.

(g) As used in this section, the term "violation" means any violation, as defined by ORS 153.005(3) ~~008~~, over which the Municipal Court has jurisdiction pursuant to SRC 4.010.

(Prior Code, § 4.070; Ord. No. 6-08)

State law reference—Authority to establish a violations bureau, ORS 153.800.

Sec. 4.075. Criminal procedure statutes to govern generally.

(a) Except as otherwise specifically provided in ORS ch. 153, this chapter, and the criminal procedure statutes of the State ~~of Oregon~~, a violation proceeding in Municipal Court shall be commenced and shall proceed to final determination, and the judgment therein shall be enforced, in the manner provided in ORS ch. 153 and this chapter.

(b) Except as specifically provided in this chapter, a misdemeanor proceeding in Municipal Court shall be commenced and shall proceed to final determination, and the judgment therein shall be enforced, in the manner provided in the criminal procedure statutes of the State ~~of Oregon~~.

(c) Notwithstanding subsections (a) and (b) of this section, the procedures described in this section shall not apply to violations that govern the parking of vehicles and that are created by ordinance or administrative rule, and the municipal judge shall adopt rules for the conduct of such proceedings.

(Prior Code, § 4.075; Ord. No. 6-08)

State law reference—Procedures, ORS 153.030 et seq.

Sec. 4.080. Right to trial by jury.

(a) The defendant in the trial in the prosecution of any misdemeanor shall have the right to a public trial by an impartial jury.

(b) The Court shall advise the defendant of the right to trial by jury at the time of arraignment, and shall ask whether the defendant wishes to waive the right. The defendant may elect to waive trial by jury and agree to a trial by a judge alone, provided the election is in writing and has been approved by the judge as a knowing and voluntary waiver.

(c) The jury shall consist of six persons selected in the manner prescribed in this chapter. The verdict of the jury shall be unanimous, and shall be in writing and signed by the foreperson.

(Prior Code, § 4.080; Ord. No. 6-08; Ord. No. 59-09)

State law reference—Defendant may submit written or oral request for a trial by jury, ORS 153.061(3)(a); trial by jury, ORS 153.070 et seq.; number and selection of jurors, ORS 221.354.

Sec. 4.085. Right to counsel.

(a) Any person charged in the Municipal Court with an offense for which a sentence of imprisonment may be imposed has ~~ve~~ the right to counsel.

(b) If the defendant appears for arraignment without counsel, the defendant shall be informed by the Court that the defendant has a right to have counsel before being arraigned, and shall be asked if the defendant desires the aid of counsel.

(c) If the defendant indicates a desire to obtain counsel, the Court shall allow the defendant a reasonable time and opportunity to obtain counsel. If the defendant wishes to waive counsel, the Court shall determine whether

the defendant has made a knowing and voluntary waiver of counsel. If the Court determines the defendant has made a knowing and voluntary waiver of counsel, such fact shall be noted on the Municipal Court docket for the matter.

(d) If the Court accepts a defendant's waiver of counsel, the Court may allow an attorney to serve as the defendant's legal advisor, and may, in accordance with SRC 4.090, appoint an attorney as the defendant's legal advisor.

(e) Appointment of counsel, including a legal advisor, is subject to SRC 4.090 and ~~SRC~~ 4.095.

(Prior Code, § 4.085; Ord. No. 6-08)

State law reference—Defendant's right to counsel, ORS 135.040; waiver or appointment of counsel, ORS 135.045; eligibility for court-appointed counsel, ORS 135.050.

Sec. 4.090. Court-appointed counsel.

(a) Suitable counsel for a defendant shall be appointed by the Municipal Court if:

(1) The defendant has been charged with an offense for which a sentence of imprisonment may be imposed or is before the Court in any proceeding concerning an order of probation where a sentence of imprisonment may be imposed, including, but not limited to, revoking or amending the order of probation; ~~and~~

(2) The defendant requests aid of counsel; ~~and~~

(3) The defendant provides the Court with a written and verified financial statement; and

(4) It appears to the Court that the defendant is financially unable to retain adequate representation without substantial hardship in providing basic economic necessities to the defendant or the defendant's dependant family. In making such determination, the Court may question the defendant, under oath, regarding the defendant's verified financial statement and any matter bearing upon the defendant's inability to pay for counsel. ~~( ) The defendant is determined to be financially eligible under ORS 151.485 (Financial eligibility) and the standards established by the Public Defense Services Commission under ORS 151.216 (Duties); or~~

~~(B) The court finds, on the record, substantial and compelling reasons why the defendant is financially unable to retain adequate representation without substantial hardship in providing basic economic necessities to the defendant or the defendant's dependent family despite the fact that the defendant does not meet the financial eligibility standards established by the commission.~~

(b) Appointed counsel may not be denied to any defendant merely because the defendant's friends or relatives have resources adequate to retain counsel or because the defendant has deposited or is capable of depositing security for release. However, appointed counsel may be denied to a defendant if the defendant's spouse has adequate resources which the Court determines should be made available to retain counsel.

(c) The defendant's financial statement under subsection (a) of this section shall include, but not be limited to:

(1) A list of bank accounts in the name of the defendant or defendant's spouse, and the balance in each;

(2) A list of defendant's interests in real property and those of the defendant's spouse;

(3) A list of automobiles and other personal property of significant value belonging to the defendant or defendant's spouse;

(4) A list of debts in the name of the defendant or defendant's spouse, and the total of each; and

(5) A record of earnings and other sources of income in the name of the defendant or defendant's spouse, and the total of each.

(d) Unless otherwise ordered by the Court, the appointment of counsel under this section shall continue during all criminal proceedings resulting from defendant's arrest through acquittal or the imposition of punishment. ~~The court may not substitute one appointed counsel for another, except pursuant to the policies, procedures, standards and guidelines adopted by the Public Defense Services Commission under ORS 151.216.~~

(e) If, at any time after counsel has been appointed, the Court finds that the defendant is financially able to pay, or to make partial payment, for counsel, the Court may terminate the appointment of counsel and require payment or partial payment for counsel, and order the defendant to pay the City such amounts as the City has paid for assistance of counsel to the person. If, at any time during the criminal proceedings, the Court finds that the defendant is financially unable to pay counsel whom the defendant has retained, that Court may appoint counsel as provided in this section.

(f) In addition to any criminal prosecution, a civil proceeding may be initiated by the City Attorney within two years of judgment if the City has expended moneys for the defendant's legal assistance and the defendant was not qualified for legal assistance in accordance with this section. Any such civil proceeding shall be subject to the exemptions from execution as provided by Oregon law.

~~(g) (11) As used in this section unless the context requires otherwise, counsel includes a legal advisor appointed under ORS § 135.045.~~

(Prior Code, § 4.090; Ord. No. 6-08)

State law reference—Similar provisions, ORS 135.050.

Sec. 4.095. Compensation and expenses of appointed counsel.

(a) Counsel appointed pursuant to SRC 4.090 shall be paid fair compensation by the City for representation in the case.

(b) Compensation payable to appointed counsel under subsection (a) of this section may not be less than $50.00 per hour.

(c) A person determined to be eligible for appointed counsel is entitled to necessary and reasonable fees and expenses for investigation, preparation and presentation of the case for trial, negotiation and sentencing.

(d) Non-routine fees; preauthorization.

(1) The person or the counsel for the person shall upon written request secure preauthorization to incur fees and expenses that are not routine to representation but are necessary and reasonable in the investigation, preparation and presentation of the case, including, but not limited to, non-routine travel, photocopying or other reproduction of non-routine documents, necessary costs associated with obtaining the attendance of witnesses for the defense, investigator fees and expenses, expert witness fees and expenses and fees for interpreters and assistive communication devices necessary for the purpose of communication between counsel and a client or witness in the case.

(2) The request must be in the form of a motion to the Court. The motion must be accompanied by a supporting affidavit that sets out in detail the purpose of the requested expenditure, the name of the service provider or other recipient of the funds, the dollar amount of the requested expenditure that may not be exceeded without additional authorization and the date or dates during which the service will be rendered or events will occur for which the expenditure is requested.

(3) Entitlement to payment of non-routine fees and expenses is dependent upon obtaining preauthorization from the Court. Preauthorization to incur a fee or expense does not guarantee that a fee or expense incurred pursuant to the preauthorization will be determined to be necessary or reasonable when the fee or expense is submitted for payment.

(e) Review by Court; certification; payment.

(1) Upon completion of all services, the appointed counsel shall submit to the Court a statement of all necessary and reasonable fees and expenses of investigation, preparation and presentation and legal representation, supported by appropriate receipts or vouchers and certified by the appointed counsel to be true and accurate.

(2) The total fees, expenses and verification submitted by appointed counsel are subject to the review of the Court. The Court shall determine whether the amount submitted is necessary and reasonable reimbursement for fees and expenses for representation in the case. After such review and determination, the Court shall certify to the ~~Director of Finance~~ Finance Officer the amount that the Court determines

was necessary and reasonable and that the amount is properly payable out of public funds. Upon the receipt of such certification, the amount of the fees and expenses certified by the Court shall be paid to the appointed counsel by the City.

~~(f~~11) ~~As used in this section unless the context requires otherwise, counsel includes a legal advisor appointed under ORS § 135.045.~~

(Prior Code, § 4.095; Ord. No. 6-08)

State law reference—Similar provisions, ORS 135.055.

Sec. 4.100. Qualifications of jurors.

To act as a juror in Municipal Court, the person shall have the qualifications to serve as a juror in a circuit court proceeding as prescribed in ORS 10.030, and must have been a resident of the City ~~of Salem~~ for not less than three months preceding the date the person is summoned for jury service.

(Prior Code, § 4.100; Ord. No. 6-08)

State law reference—Eligibility of jurors, ORS 10.030.

Sec. 4.105. Master jury list; time and manner of preparation; term of prospective jurors.

(a) The municipal judge shall cause to be prepared a master jury list containing names selected at random from the latest jury source lists used by the Marion County and Polk County Circuit Courts; provided, however, that the names used for the preparation of the master jury list from such source lists shall be limited to the names of persons residing within the corporate boundaries of the City ~~of Salem~~, and the number of names in the master jury list from each county is approximately proportional to the population of the City ~~of Salem~~ residing in Marion County and Polk County, as established by the latest census available at the time the master jury list is prepared.

(b) Except as provided in SRC 4.115, a master jury list shall be prepared and certified once each year prior to ~~the last day of~~ January 31, unless circumstances make such preparation not feasible, in which case the master jury list shall be prepared as soon thereafter as possible. The jury service term shall be the period of time between the filing of the certification of master jury list and the date of the next such filing.

(c) The number of names on the master jury list shall be sufficient to meet the projected need for jurors, but shall be composed of not less than 1,000 qualified persons. The master jury list may be prepared and maintained by means of electronic equipment.

(d) In preparing the master jury list, names drawn of persons known or believed to be disqualified as jurors or who are exempt from jury duty under the provisions of the laws of the State ~~of Oregon~~ or who are believed to be unavailable shall be deleted. The master list shall contain the name and residence address of each person named therein.

(e) Any person whose name is selected for the master jury list shall be subject to service as a juror from the effective date of the list as provided in SRC 4.110(b) until the effective date of the next term's master jury list, even though the date set for trial may be after certification of the next term's master jury list.

(Prior Code, § 4.105; Ord. No. 6-08)

State law reference—Master jury lists, ORS 10.215.

Sec. 4.110. Certification of master jury list.

(a) When the master jury list is complete, and the municipal judge is satisfied that there are no persons thereon who the municipal judge knows to be incompetent to serve as jurors, the municipal judge shall certify that master jury list in substantially the following form:

> I, (name of municipal judge), certify that I am the duly elected (appointed) and acting municipal judge of the City of Salem, Oregon; and that the foregoing master jury list is composed of the names of persons selected in accordance with the provisions of SRC 4.105.
>
> DATED this day of , 20__.

(b) Upon certification of the master jury list, the municipal judge shall cause the same to be filed in the

records of the Municipal Court, at which time, the list shall become effective.

(Prior Code, § 4.110; Ord. No. 6-08)

Sec. 4.115. Selection of additional names for master jury list.

(a) The municipal judge may, at any time in the municipal judge's discretion, and shall, whenever the number of the names on the master jury list falls below 350, cause the names of additional persons to be selected as a supplement to the master jury list. The additional names shall be selected using the same source lists and in the same manner as the master jury list, as provided in SRC 4.105.

(b) Upon selection of additional names as provided in subsection (a) of this section, the municipal judge shall certify the supplement to the master jury list of those additional names and file the list in the Municipal Court records as provided in SRC 4.110. From the date of such filing, the jurors may be chosen to serve during the jury service term of the master jury list.

(Prior Code, § 4.115; Ord. No. 6-08)

State law reference—Additional jurors, ORS 10.235.

Sec. 4.120. Selection of jury panel.

If trial by jury has not been waived pursuant to SRC 4.080, a ~~the~~ clerk of the court shall generate, by means of electronic equipment or other random selection method, a list of not less than 22 persons from the master jury list, who shall comprise the jury panel for a particular date.

(Prior Code, § 4.120; Ord. No. 6-08; Ord. No. 59-09)

State law reference—Random selection of jurors, ORS 10.205.

Sec. 4.126. Juror questionnaire; eligibility to serve as juror; discharge from jury service.

(a) A person whose name is included on the preliminary jury list shall be notified that he or she has been selected for jury service. Before or at the time a person is scheduled to appear for jury service, a judge or a ~~the~~ clerk of the court shall question the person as to the person's competency to act as a juror under SRC 4.100. If a judge or clerk of the court determines that a person so questioned is incompetent to act as a juror, the person shall be discharged from jury service.

(b) A person may be questioned about the person's competency to act as a juror either in person or by mail.

(1) To question a person in person about the person's competency to act as a juror, a judge or a ~~the~~ clerk of the court shall first require the person to declare by oath or affirmation that the answers to the questions about the person's competency to act as juror shall be truthful.

(2) To question a person by mail about the person's competency to act as a juror, the municipal judge may cause to be mailed or delivered, with or without a juror's summons, a juror questionnaire along with instructions for completion of the questionnaire and return of the completed questionnaire by mail or personal delivery to a ~~the~~ clerk of the court. A completed juror questionnaire shall contain the questioned person's signed declaration that the responses to the questions on the form are true to the best of the person's knowledge. Notarization of a completed questionnaire shall not be required.

(3) Copies of completed questionnaires shall be provided to legal counsel at the time of trial. The specific address of the juror shall be redacted from the questionnaire before distribution, but sufficient information shall be provided to allow legal counsel to identify the area of town where the juror resides.

(c) A person who knowingly makes a false statement of material fact in response to a question regarding the person's competency to serve as a juror may be punished for contempt.

(d) If a person fails to return a properly completed juror questionnaire as instructed, a judge may direct the person to appear forthwith and properly complete a questionnaire. If the person fails to appear as directed, the judge may order the person to appear and show cause for that failure. If the person fails to appear pursuant to the order or appears and fails to show good cause, the person may be punished for contempt.

(e) Before or at the time a person reports for jury service, or at the time jurors are being examined by legal counsel pursuant to SRC 4.140, a judge or a ~~the~~ clerk of the court may discuss with the person any questions on the

juror questionnaire and the grounds for any incompetency of the person to act as a juror. Any pertinent information so acquired may be noted on the form.

(Prior Code, § 4.126; Ord. No. 59-09)

Sec. 4.130. Summons of jurors.

(a) The Court shall issue a summons for each person on the final jury panel. Not less than 20 days prior to the date set for trial, a ~~the~~ clerk of the court shall cause the summons to be served on each person on the final jury panel by first class mail, or by forwarding the summons to the Chief of Police, together with an order signed by the Court commanding the Chief of Police to cause personal service to be made upon the person identified on the summons, and make true return thereupon.

(b) Any person summoned to appear as a juror may be punished by the Court for contempt of court if:

(1) The person fails to attend the Court as required or fails to give a valid excuse for not attending;

(2) The person fails to give attention to matters before the jury;

(3) The person leaves the Court without permission of the Court while the Court is in session; or

(4) The person fails to complete jury service without valid excuse.

(Prior Code, § 4.130; Ord. No. 6-08; Ord. No. 59-09)

Sec. 4.135. Persons ineligible for jury service; excuses from jury duty.

(a) When it appears to the Court that the person called for jury service is dead or lacks the qualifications to serve as a juror, as established by SRC 4.100, the person's name shall be removed from the jury panel and another name may be selected from the master jury list to replace such person.

(b) The Court may excuse a person from jury service upon a showing of undue hardship or extreme inconvenience to the person, the person's family, the person's employer or the public served by the person. In granting excuses, the Court shall carefully consider and weigh both the public need for juries that are representative of the full community and the individual circumstances offered as a justification for jury service.

(c) If the person is dead or lacks the qualifications to serve as a juror, that person's name shall be removed from the master jury list; in all other cases, the person's name shall remain on the master jury list, and may later be called for jury service.

(Prior Code, § 4.135; Ord. No. 6-08)

Sec. 4.140. Jury selection; peremptory challenges.

(a) At the time of trial, the prospective jurors shall be examined as to their qualifications, first by the defendant and then by the City Attorney. After the prospective jurors have been passed for cause, peremptory challenges, if any, shall be exercised as provided in subsection (b) ~~(c)~~ of this section. Each party may take any number of challenges for cause and three peremptory challenges, unless the judge grants additional peremptory challenges. When two or more defendants are tried together, each must join in any peremptory challenge or it cannot be taken, unless the judge grants additional peremptory challenges. When several defendants are tried together, the defendants are entitled to the number of challenges they would have had if each defendant had been tried separately. When two or more defendants are tried together, the City is entitled to the same total number of peremptory challenges as the sum of the peremptory challenges the defendants could have exercised.

(b) Peremptory challenges shall be taken in writing by secret ballot as follows:

(1) The defendant may challenge one juror and the City Attorney may challenge one, alternating until the peremptory challenges are exhausted.

(2) After each challenge, the jury panel shall be filled and the additional juror passed for cause before another peremptory challenge is exercised. Neither party shall be required to exercise a peremptory challenge unless the full number of jurors is in the jury box at the time.

(3) The refusal to challenge by either party in order of alteration does not prevent the adverse party from exercising the party's full number of peremptory challenges, and refusal of a party to exercise the party's

peremptory challenge in proper turn concludes the party as to the jurors once accepted by the party. If the party's right of peremptory challenge is not exhausted, the party's further challenges shall be confined, in the party's proper turn, to such additional jurors as may be called.

(c) Notwithstanding subsection (b) of this section, the defendant and the City Attorney may stipulate to taking peremptory challenges orally.

(d) If the peremptory challenges of the moving party are not already exhausted, the Court may, for good cause shown, permit a peremptory challenge to be taken to any juror before the jury is complete and sworn, notwithstanding the juror challenged may have been previously accepted.

(Prior Code, § 4.140; Ord. No. 6-08; Ord. No. 59-09)

State law reference—Peremptory challenge, ORS 136.230.

Sec. 4.145. Procedure when less than six jurors remain after voir dire.

If, after voir dire, less than six jurors remain, the Court may:

(a) Upon its own motion, or the motion of either party, order the Chief of Police, or any police officer of the City ~~of Salem~~, other than an officer called as witnesses for the trial, to go out upon the streets and bring before the Court up to three persons, who shall, if qualified after voir dire, sit as jurors; or

(b) Upon its own motion, or the motion of either party, continue the cause for trial on a later date with a new jury, excusing those jurors still remaining.

(Prior Code, § 4.145; Ord. No. 6-08)

Sec. 4.150. Peremptory and challenges for cause to be exclusive.

No challenges other than peremptory challenges or challenges for cause shall be allowed in the selection of jurors.

(Prior Code, § 4.150; Ord. No. 6-08)

Sec. 4.155. Compensation of jurors.

Persons summoned as jurors who appear at the time set for selection of the jury and are not empanelled shall receive as compensation for such appearance the sum of $10.00. Persons empanelled to serve as jurors shall receive as compensation the sum of $10.00 per day of jury service.

(Prior Code, § 4.155; Ord. No. 6-08)

State law reference—Fees payable to certain jurors, ORS 10.061.

Sec. 4.160. Subpoenas.

(a) It shall be the duty of any person subpoenaed in any proceeding pending before the Municipal Court to appear and testify in accordance with such subpoena.

(b) Any person who refuses to appear or to testify as required by subsection (a) of this section may be held in contempt, and the Court may issue a warrant for the arrest of such person, and, upon being brought before the Court, unless the person shows good cause why the person was unable to attend or testify, the Court shall impose one or more of the sanctions authorized by ORS 33.105.

(Prior Code, § 4.160; Ord. No. 6-08)

Sec. 4.165. Witness fees.

Witness fees and mileage shall be paid by the City as provided in ORS 44.415.

(Prior Code, § 4.165; Ord. No. 6-08)

State law reference—Witness fees and mileage, ORS 44.415.

Sec. 4.170. Assessment of Court costs.

(a) *Court to collect costs.* The Court shall, upon conviction, collect any costs authorized by law.

(b) *Court appointed counsel fees as costs.*

(1) Except in the circumstances set forth in ORS 151.505, the Court, only in the case of a defendant for whom it enters a judgment of conviction, may include in its sentence thereunder a provision that the convicted defendant pay as costs expenses specially incurred by the City in prosecuting the defendant. Costs include a reasonable attorney fee for counsel appointed pursuant to SRC 4.090 and a reasonable amount for fees and expenses incurred pursuant to preauthorization under SRC 4.095(d). A reasonable attorney fee is presumed to be the amount certified to the ~~Assistant Director of Finance~~ Financial Services Manager or designee ~~Finance Officer~~ under SRC 4.095(e). Costs do not include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of the Court that must be made by the public irrespective of specific violations of law.

(2) The Court may not sentence a defendant to pay costs under this section unless the defendant is or may be able to pay them. In determining the amount and method of payment of costs, the Court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(3) A defendant who has been sentenced to pay costs under this section and who is not in willful default in the payment of costs may at any time petition the Court that sentenced the defendant for remission of the payment of costs or of any unpaid portion of costs. If it appears to the satisfaction of the Court that payment of the amount due will impose manifest hardship on the defendant or the immediate family of the defendant, the Court may remit all or part of the amount due in costs, or modify the method of payment under SRC 4.180.

(c) *Fee for dishonored payments.* The Court shall, in the event of a defendant who makes a check that is dishonored, collect the fee authorized by ORS 30.701, or who makes a dishonored electronic payment, as defined by SRC 2.375(b), collect the dishonored electronic payment processing fee authorized by SRC 2.375(b), which shall be added to the judgment of a case without further notice to the debtor or further order of the Court.

(Prior Code, § 4.170; Ord. No. 6-08; Ord. No. 16-12)

Sec. 4.175. Standards for imposing fines.

In determining whether to impose a fine and its amount, the Court shall consider:

(a) The financial resources of the defendant and the burden that payment of a fine will impose, with due regard to the other obligations of the defendant; and

(b) The ability of the defendant to pay a fine on an installment basis or on other conditions to be fixed by the Court.

(Prior Code, § 4.175; Ord. No. 6-08)

Sec. 4.180. Time and method of execution and satisfaction of judgment.

(a) When a defendant, as a part of a sentence or as condition of probation or suspension of sentence, is required to pay a sum of money, the Court may order payment to be made immediately or within a specified period of time or in specified installments. If a defendant is sentenced to a term of imprisonment, any part of the sentence that requires the payment of a sum of money is enforceable during the period of imprisonment from posted bail, security or other assets, if the Court expressly finds that the defendant has assets to pay all or part of the amounts ordered.

(b) When a defendant whose sentence requires the payment of a sum of money for any purpose is also sentenced to probation or imposition or execution of sentence is suspended, the Court may make payment of the sum of money a condition of probation or suspension of sentence.

(c) When a defendant is sentenced to probation or imposition or execution of sentence is suspended and the Court requires as a part of the sentence or as a condition of the probation or suspension of sentence that the defendant pay a sum of money in installments, the Court, or a ~~the~~ clerk of the court, shall establish a schedule of payments to satisfy the obligation. A schedule of payments shall be reviewed by the Court upon motion of the defendant at any time, so long as the obligation remains unsatisfied.

(d) When a person sentenced to pay a fine is financially unable to pay or to make suitable arrangements with the Court for installment payments, upon application of such person the Court may, in its discretion, permit such person to work at community service projects~~,~~ and satisfy such fine at a reasonable hourly rate set by the municipal judge. Failure to report for work without good cause, or failure to perform assigned tasks faithfully and productively, shall be grounds for discontinuance of the privilege~~,~~ or revocation of any probation, and may be punished as contempt of court.

(e) When a person has been sentenced to a term of imprisonment, and such sentence is to be executed, either upon judgment or upon revocation of probation, the Court shall, by warrant, commit the person to the custody of the supervisory authority of Marion County ~~jailer~~. The Court shall order in open Court as part of the sentence imposed that the defendant may be considered by the supervisory authority for any form of alternative sanction authorized by law, including placement in the Marion County Work Center if deemed appropriate by the supervisory authority, unless the Court finds in open Court substantial and compelling reasons to order that the defendant not be considered for alternative sanctions. The Court may, in the Court's discretion, order that the sentence be served on such days as the Court may deem appropriate. Prisoners shall be accorded the privileges of credit for good behavior, temporary leave, and credit for work performed provided in ORS 169.110 to 169.120.

(Prior Code, § 4.180; Ord. No. 6-08; Ord. No. 24-15, 10-26-2015)

Sec. 4.185. Effect of nonpayment of fines, restitution or costs or failure to comply with terms of probation.

(a) When a defendant who has been sentenced or ordered to pay a fine, to make restitution or to pay costs, defaults on a payment or installment ordered by the Court, or when a defendant who has been placed on probation fails to comply with the terms of such probation, the Court, upon motion of the City Attorney or upon its own motion, may require the defendant to show cause why the default should not be treated as contempt, and may issue a show cause citation or a warrant of arrest for the appearance of the defendant.

(b) If the Court finds that the default in payment or failure to comply with the terms of probation constitutes contempt, the Court may impose one or more of the sanctions authorized by ORS 33.105. Notwithstanding ORS 33.105, the term of confinement for contempt for nonpayment of fines, failure to make restitution, or to pay costs shall be set forth in the commitment order, and shall not exceed one day for each $25.00 of the fine or restitution or 30 days if the fine or order of restitution was imposed upon conviction of the offense, whichever is the shorter period.

(c) If it appears to the satisfaction of the Court that the default in payment of a fine or restitution is not contempt, the Court may enter an order allowing the defendant additional time for payment, reducing the amount of the installments due on the payment, or suspending the fine, restitution, or costs in whole or in part.

(d) A default in the payment of a fine, restitution, or costs or a default on an installment on a fine, restitution, or costs may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution or garnishment shall not discharge a defendant confined for contempt until the amount of the fine, restitution or costs has actually been collected.

(e) Except as otherwise provided in this section, proceedings under this section shall be conducted:

(1) As provided in ORS 33.055, if the Court seeks to impose remedial sanctions as described in ORS 33.015 to 33.155; and

(2) As provided in ORS 33.065, if the Court seeks to impose punitive sanctions as described in ORS 33.015 to 33.155.

(f) Confinement under this section may be custody or incarceration, whether actual or constructive.

(Prior Code, § 4.185; Ord. No. 6-08)

State law reference—Enforcement of judgments, ORS 221.346; remedial sanctions, ORS 33.055; contempt of court, ORS 33.105.

ADMINISTRATIVE WARRANTS*

***State law reference—**Search warrants, ORS 133.525 et seq.; inspection warrants, ORS 654.202 et seq.; fire hazards inspection warrants, ORS 476.150 et seq.

Sec. 4.190. Administrative warrant defined.

An administrative warrant is an order signed by the municipal judge or a municipal judge pro tempore, directed to a city official charged with the responsibility of enforcing the provisions of the Salem Revised Code authorizing an inspection required or authorized by, or necessary to enforce, any provision of the Salem Revised Code.

(Prior Code, § 4.190; Ord. No. 6-08)

Sec. 4.195. Grounds for issuance of administrative warrant.

An administrative warrant shall be issued only upon a showing of probable cause, which shall be based either on specific evidence that a violation of the Salem Revised Code has occurred or is occurring, or on a showing that reasonable legislative and administrative standards for conducting an inspection are satisfied with respect to a particular property or properties. The administrative warrant shall be supported by an affidavit particularly describing the premises to be inspected and the purpose for which the inspection is made, and shall contain a statement that consent to inspect has been sought and refused or that other facts or circumstances set forth in the affidavit reasonably justify the inability to obtain such consent.

(Prior Code, § 4.195; Ord. No. 6-08)

Sec. 4.200. Issuance of administrative warrant.

(a) Before issuing an administrative warrant, the judge may examine the applicant and any other witnesses under oath. If the judge is satisfied that probable cause for the inspection exists, the judge shall issue the administrative warrant, particularly describing the premises to be inspected and designating the purpose of, and limitations on, the inspection.

(b) The official executing or attempting to execute an administrative warrant shall identify himself or herself and his or her authority, and shall read and show the original copy of such warrant at the time and place of execution to the owner or occupant of the premises described in the administrative warrant.

(Prior Code, § 4.200; Ord. No. 6-08)

Sec. 4.205. Limitations on administrative warrants.

(a) An administrative warrant shall be effective for the time specified therein, but in no event for a period of more than 14 days, unless extended or renewed by the judge for good cause shown.

(b) An inspection pursuant to an administrative warrant shall be made between the hours of 8:00 a.m. and 6:00 p.m. and shall be made in the presence of either the owner of the premises or of a lawful occupant thereof over the age of 18 years, unless the judge has specially determined upon a showing that it cannot be effectively executed between those hours and the warrant specifies otherwise.

(c) An inspection pursuant to an administrative warrant shall not be by forcible entry, except that the judge may, by an endorsement on the face of the warrant, expressly authorize execution by forcible entry where the affidavit, or a supplemental affidavit supplied after the warrant has been issued, contains information sufficient to satisfy the judge that reasonable grounds to believe one or more of the following exists:

(1) A probable violation of any provision of the Salem Revised Code that poses an imminent threat to public health, safety, or welfare; ~~or~~

(2) Where prior attempts to serve the warrant have met with refusal by the owner or occupant of the premises to be inspected; or

(3) Where reasonable attempts have been made to secure the cooperation of the owner of unoccupied premises that are to be inspected, and entry cannot occur without the owner's cooperation ~~or by force~~, and the owner has refused to cooperate.

(Prior Code, § 4.205; Ord. No. 6-08)

Sec. 4.210. Notice of inspection by forcible entry.

(a) No forcible entry shall be made pursuant to an administrative warrant unless the owner or occupant of the premises to be inspected has been given at least 24 hours prior notice. Such notice shall be given in writing by

personal delivery to the owner or occupant, except as provided in subsection (c) of this section. Notice in person to any person over the age of 18 years who is an occupant of the premises described in the administrative warrant shall be sufficient notice to all occupants. Notice in person to the manager, agent, or other person in charge of any premises occupied by a business or multifamily dwelling unit shall be sufficient notice to the owner.

(b) The notice required in subsection (a) of this section shall include a copy of the administrative warrant, properly endorsed for execution by forcible entry, certified to be a true copy of the original administrative warrant by the judge. Such notice shall specify the name of the city official who is to conduct the inspection, and shall specify the date and time of the intended inspection.

(c) Where at least three diligent attempts, not less than two hours apart, have been made within a 24-hour period to give notice to the owner or occupant, and such notice cannot be given, notice may be given by posting the same in some prominent place upon the exterior of the place described in the administrative warrant, and the administrative warrant may be executed not less than 24 hours thereafter. Notice to the owner shall be made to the address of the owner as set forth in the tax records of the appropriate county, or to the owner's last known address, if different.

(d) This section shall not apply, and no notice need be given, in the case of administrative warrants endorsed for execution by forcible entry upon the grounds specified in SRC 4.205(c).

(Prior Code, § 4.210; Ord. No. 6-08)

Sec. 4.215. Execution of administrative warrant by forcible entry.

(a) In the execution of a properly endorsed administrative warrant by forcible entry, any city official acting under the administrative warrant shall be accompanied by a police officer, who shall execute the administrative warrant by gaining entry, and who shall stand by to prevent any interference during the inspection.

(b) In the execution of an administrative warrant by forcible entry, the police officer has the same power and authority to use all necessary and proper means to overcome any forcible resistance or to call any other person to the officer's aid in the execution or service of a warrant of arrest.

(Prior Code, § 4.215; Ord. No. 6-08)

Sec. 4.220. Return of administrative warrant.

An administrative ~~search~~ warrant must be executed and returned to the judge within ten days from the date issued, unless the judge, before the expiration of such time, extends the time for five days by endorsement thereon. The return shall certify the day and time of execution of the administrative warrant, the names of all city officials, including police officers, assisting in the inspection, the time and manner of giving any notice required by SRC 4.210, and whether or not forcible entry was necessary. After expiration of the time prescribed by this ~~sub~~section, the warrant, unless executed, is void.

(Prior Code, § 4.220; Ord. No. 6-08)

Sec. 4.225. Interfering with execution of administrative warrant.

(a) It shall be unlawful for any person to knowingly ~~in any way~~ hinder, delay, impede, or otherwise interfere with any city official or a police officer acting in the official's or officer's official capacity in the course of executing or attempting to execute an administrative warrant which is facially valid, or of making or attempting to make any inspection authorized by the administrative warrant.

(b) Violation of this section is a misdemeanor.

(Prior Code, § 4.225; Ord. No. 6-08)

Sec. 4.230. Emergency inspection without administrative warrant.

Nothing in SRC 4.190 through 4.225 shall prohibit, or be construed as prohibiting, an inspection without an administrative warrant in an emergency where immediate access is necessary to protect public health, safety, or welfare.

(Prior Code, § 4.230; Ord. No. 6-08)

CHAPTER 5. CITIZENS ADVISORY TRAFFIC COMMISSION

Sec. 5.010. Citizens Advisory Traffic Commission created.

There is hereby created a City traffic advisory body which shall be known as the Citizens Advisory Traffic Commission.

(Prior Code, § 5.010; Ord. No. 183-66)

Sec. 5.020. Composition; appointments and terms of members.

The Citizens Advisory Traffic Commission shall consist of nine members to be appointed by the ~~City~~ Council. The appointive members shall serve for a term of three years. No appointive members shall serve more than two consecutive terms. The Traffic Commission shall select one of the appointive members as chairman, and the Traffic Engineer of the ~~Department of~~ Public Works Department shall act as non-voting secretary to said Commission. A representative of the Salem Police Department shall attend and act as a technical advisor at all commission meetings as requested.

(Prior Code, § 5.020; Ord. No. 183-66; Ord. No. 69-72; Ord. No. 101-74; Ord. No. 127-76; Ord. No. 9-84; Ord. No. 139-84; Ord. No. 66-2002)

Sec. 5.030. Advisory functions of Citizens Advisory Traffic Commission.

~~(a)~~ The Citizens Advisory Traffic Commission shall be an advisory body, which functions to advise Council, upon request of Council, and the ~~director of Public Works~~ Director, as appropriate, on all matters related to traffic and parking control within the City's transportation system. The Citizens Advisory Traffic Commission shall hold hearings, investigate, and make reports and recommendations to the ~~director of Public Works~~ Director, on all matters before them. Controversial traffic issues, as determined by the Citizens Advisory Traffic Commission, shall be referred to Council with the recommendation and report of the Citizens Advisory Traffic Commission within 30 days, unless additional time be granted. Recommendations shall be through the ~~director of Public Works~~ Director and City Manager to the Council.

~~(b) The Citizen's Traffic Advisory Commission shall serve as the appeals body for vision clearance decisions by the director of public works under SRC 76.170.~~

~~(1) Appellants shall be limited to interested persons as defined in SRC 76.005(f).~~

~~(2) Requests for appeals must be in writing and shall be filed with the director of public works within 15 days of the written decision by the director, and shall specify how the director's decision was in error. Failure to file an appeal within the specified time limits shall constitute a waiver of all appeal rights.~~

~~(3) Unless reviewed by the council pursuant to subsection (4) of this section, decisions by the Citizen's Advisory Traffic Commission shall be final.~~

~~(4) Decisions by the Citizen's Advisory Traffic Commission shall be reported to the council within 30 days of the decision. The council may, by majority vote, initiate a review of the decision no later than the next session following report of the decision.~~

(Prior Code, § 5.030; Ord. No. 183-66; Ord. No. 41-88; Ord. No. 51-96; Ord. No. 30-97; Ord. No. 60-2002)

CHAPTER 6. SALEM PLANNING COMMISSION*

***State law reference—**Planning Commission, ORS 227.010 et seq.

Sec. 6.010. Salem Planning Commission; composition; term of office; vacancies in office; removal from office.

(a) The Salem Planning Commission is hereby created.

(b) The Commission shall consist of nine members to be appointed by the ~~City~~ Council, not more than one of whom shall be a nonresident of the City ~~of Salem~~. If the ~~City~~ Council appoints a nonresident member, that member shall reside within the Salem/Keizer Urban Growth Boundary. Not more than two members of a City Planning Commission may be city officers, who shall serve as ex officio non-voting members. No more than two members shall be engaged principally in the buying, selling, or developing of real estate for profit as an individual or be a member of any corporation that is engaged principally in the buying, selling, or developing of real estate for profit. No more than two members shall be engaged in the same kind of business, trade, or profession. In making appointments to the Commission, the ~~City~~ Council shall encourage, but not require, geographic distribution of members throughout the City ~~of Salem~~.

(c) The term of office for a member shall be four years, or until a successor is appointed and qualified. Terms shall be staggered so that the term of office of not more than three members will expire in the same calendar year. No member shall serve more than two consecutive terms.

(d) Any vacancy in office shall be filled by appointment made by the ~~City~~ Council for the unexpired portion of the term. Members shall qualify by taking an oath to uphold the Constitution of the United States and the State ~~of Oregon~~, the laws of the State ~~of Oregon~~, the ~~Salem~~ City Charter and the ordinances of the City ~~of Salem~~, and to faithfully and impartially perform the duties of office to the best of their ability.

(e) A member may be removed by the ~~City~~ Council, after hearing, for misconduct or nonperformance of duty. Any member who misses more than four consecutive regular meetings without having been given a leave of absence by the ~~City~~ Council shall be removed by the ~~City~~ Council without a hearing, and another member shall be appointed to complete the unexpired term of such member.

(f) Members shall receive no compensation for their service on the Commission, but shall be reimbursed for duly authorized expenses.

(Prior Code, § 6.010; Ord. No. 5843; Ord. No. 139-69; Ord. No. 164-73; Ord. No. 180-74; Ord. No. 10-93; Ord. No. 51-96; Ord. No. 47-06; Ord. No. 22-14)

Sec. 6.020. Organization.

(a) At the first regular meeting of each calendar year, the Commission shall elect from its members a president and a vice-president. The president shall preside at meetings of the Commission, and shall have the right to vote. The vice-president shall, in case of absence or disability of the president, perform the duties of presiding officer. Officers shall serve for terms of one year or until their successors are regularly elected and take office.

(b) ~~Four~~ Five members shall constitute a quorum. The concurring vote of a majority of members present shall be required for approval or disapproval of any motion or other action of the Commission.

(c) The Commission shall meet at least once each month.

(d) The Commission shall adopt, and may alter, rules of procedure for the governance of its meetings consistent with the laws of the State ~~of Oregon~~ and with the ~~Salem~~ City Charter and ordinances of the City of Salem.

(Prior Code, § 6.020; Ord. No. 5843; Ord. No. 169-74; Ord. No. 47-06)

Sec. 6.030. Annual report to Council.

The Commission shall, not later than ~~the first day of~~ October 1 of each calendar year, file a report with ~~City~~ Council, providing a comprehensive review of its activities during the preceding fiscal year.

(Prior Code, § 6.030; Ord. No. 5843; Ord. No. 47-06)

Sec. 6.040. Powers and duties.

It shall be the duty of the Commission, and it shall have the power, except as otherwise provided by law:

(a) To recommend and make suggestions to the ~~City~~ Council and to all other public authorities concerning the laying out, widening, extending, parking, and location of streets, sidewalks, and boulevards, the relief of traffic congestion, the betterment of housing and sanitation conditions and the establishment of zones or districts limiting the use of premises and the use, height, area and bulk of buildings and structures related to land development;

(b) To recommend to the ~~City~~ Council the establishment and alteration from time to time of building setback lines on private property adjacent to any alley, street, or other public way;

(c) To recommend to the ~~City~~ Council and all other public authorities plans for the regulations of the future growth development and beautification of the municipality in respect to its public and private buildings and works, streets, parks, grounds, vacant lots, and plans consistent with the future growth and development of the City ~~of Salem~~, in order to secure to the City ~~of Salem~~ and its inhabitants sanitation, proper services of all public utilities, harbor, shipping, and transportation facilities;

(d) To do and perform any and all other acts and things necessary or proper to carry out the provisions of this chapter;

(e) To recommend to the ~~City~~ Council and all other public authorities plans for promotion, development, and regulation of the industrial and economic needs of the community in respect to private and public enterprises engaged in industrial advantages and opportunities of the municipality and the availability of real estate within the City ~~of Salem~~ for industrial settlement, and on the encouragement of industrial settlement within the City ~~of Salem~~;

(f) To study the needs of existing local industries with a view to strengthening and developing the local industries and stabilizing employment conditions;

(g) To serve as the committee for citizen involvement as described in statewide planning goal 1, responsible for assisting the ~~City~~ Council with the development of a program that promotes and enhances citizen involvement in land-use planning, assisting in the implementation of the citizen involvement program, and evaluating the process being used for citizen involvement;

(h) To exercise any and all powers, functions, and authority delegated to or conferred upon the Commission by the laws of Oregon, the ~~Salem~~ City Charter, this chapter, and any other ordinances of the City ~~of Salem~~; and

(i) To, in general, study and propose such measures as may be advisable for the promotion of the public interest, health, morals, safety, comfort, convenience, and welfare of the City ~~of Salem~~ and the area for six miles adjacent thereto, except where by law such powers and duties devolve upon some other public body as to the area outside of the City ~~of Salem~~.

(Prior Code, § 6.040; Ord. No. 5843; Ord. No. 47-06)

State law reference—Commission powers and duties, ORS 227.090.

CHAPTER 7. DOWNTOWN PARKING DISTRICT

Sec. 7.010. District created.

For financing and administering in the central business district of the City ~~of Salem~~, a program of economic promotion and a program of public parking for motor vehicles, in that part of the City described as follows, is hereby designated the Downtown Parking District, to wit:

"Beginning at the intersection of the north line of Marion Street NE and the west line of Front Street NE; thence easterly along the north line of Marion Street NE to the west line of Liberty Street NE; thence northerly along the west line of Liberty Street NE to the north line of Union Street NE; thence easterly along the north line of Union Street NE to the east line of High Street NE; thence southerly along the east line of High Street NE to a point which measures 207.39 feet more or less from the intersection of the southeast corner of Union Street NE and High Street NE; thence easterly to the west line of the alley between Union Street NE and Marion Street NE; thence northerly along the west line of said alley to a point which measures 96.44 feet more or less from the intersection of the south line of Union Street NE and the west line of said alley between Union Street NE and Marion Street NE; thence easterly to the east line of Church Street NE; thence southerly along the east line of Church Street NE to the south line of Trade Street SE; thence westerly along the south line of Trade Street SE to the west line of Front Street SE; thence northerly along the west line of Front Street SE to the point of intersection of the west line of Front Street SE and the north line of Ferry Street SE; thence westerly to a point on the top of the east bank of the Willamette Slough and River; thence northerly along the top of said bank to a point on the north line of Marion Street NE; thence easterly along the north line of Marion Street NE to the point of beginning; Save and except Block 60 of Salem Addition as recorded in Volume 1, page 20, Book of Town Plats, City of Salem, Marion County, Oregon."

(Prior Code, § 7.010; Ord. No. 117-76; Ord. No. 91-77; Ord. No. 68-86; Ord. No. 34-88; Ord. No. 72-88)

Secs. 7.020—7.050. Reserved.

Sec. 7.060. Grievances.

Any person aggrieved by an action of the City Manager, or the City Manager's designee, regarding the administration of the Downtown Parking District, shall file a petition in writing to the City Manager, or the City Manager's designee. The City Manager, or the City Manager's designee, shall make a final decision on the matter within 60 days of receiving the petition. A person aggrieved by the final decision rendered by the City Manager, or the City Manager's designee, may appeal to Council by filing a notice of appeal with the City Manager, or the City Manager's designee, within ten days of the serving or the mailing of the notice of the final decision. The City Manager, or the City Manager's designee, shall transmit said notice of appeal, together with the file of said appealed matter, to the Council, who shall fix a time and place for hearing such appeal from the decision of the City Manager, or the City Manager's designee. The Council shall give the appellant not less than ten days' written notice of the time and place of hearing of said appealed matter. Action by the Council on appeals shall be by resolution.

(Prior Code, § 7.060; Ord. No. 117-76; Ord. No. 51-96; Ord. No. 49-04)

Sec. 7.070. Downtown Parking Fund.

All proceeds from ad valorem and ~~business and occupation~~ business, profession and occupation taxes specially levied in the Downtown Parking District, and all proceeds from the sales of parking permits for parking within the Downtown Parking District, shall be credited to a fund known as the Downtown Parking Fund.

(Prior Code, § 7.070; Ord. No. 117-76; Ord. No. 10-93; Ord. No. 49-04)

Sec. 7.080. Administrative duties.

Except as provided in SRC 7.150 through ~~SRC~~ 7.240, administration of the parking district shall be the responsibility of the City Manager, or the City Manager's designee.

(Prior Code, § 7.080; Ord. No. 117-76; Ord. No. 10-93; Ord. No. 49-04; Ord. No. 12-15)

Sec. 7.090. Definitions.

~~Unless the context otherwise specifically requires, as used in this Chapter, the following mean:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(c)~~*Common areas* means those areas within a multi-tenant building which are outside the retail or office space occupied by the taxpayer, such as stairways, hallways, restrooms, elevator areas, general unloading facility areas, and lunchroom areas.

~~(a)~~*Economic promotion* means any activity, event, or undertaking that furthers economic activity within the boundaries of the Downtown Parking District, including, but not limited to, the following:

(a) Advertising the area within the Downtown Parking District as a place to shop, dine, seek entertainment, and do business;

(b) Enhancing the appearance of the area within the Downtown Parking District through decorations, banners, signs, planters, flower baskets, benches, trash cans, and other similar amenities;

(c) Planning, organizing, and managing events that showcase businesses and cultural activities within the Downtown Parking District;

(d) Cleaning and maintaining public spaces within the Downtown Parking District;

(e) Providing safety and security measures within the Downtown Parking District.

~~(f)~~*Fiscal year* or *tax year* means a consecutive 12-month period commencing July 1.

~~(b)~~ *Gross floor area* means:

(a) The retail or office space occupied by the taxpayer for business, occupational, or professional use; and

(b) If such retail or office space lies within a multi-tenant building having a common entryway on the ground floor, the term "gross floor area" shall also include that portion of the total common areas in the building which the taxpayer's square footage in the building bears to the other taxpayers' total square footage within the entire building.

~~(d)~~ *Person* means individuals, corporations, limited liability companies, associations, firms, partnerships, limited liability partnerships, and any other entity in law or fact, controlling gross floor area by deed, contract, or rental agreement, written or otherwise.

~~(e)~~*Taxpayer* means any person subject to the tax imposed by this chapter.

(Prior Code, § 7.090; Ord. No. 163-78; Ord. No. 112-79; Ord. No. 17-12)

Sec. 7.100. ~~Business occupation~~ Business, profession and occupation tax imposed.

Each person who is not exempt under state law from municipal taxation and who engages in a profession, occupation, or business in the Downtown Parking District ~~on or after September 1, 1978~~, shall pay to the City ~~of Salem, Oregon~~, a tax for each tax year computed in the manner provided by SRC 7.090 to 7.250.

(Prior Code, § 7.100; Ord. No. 163-78; Ord. No. 112-79)

Sec. 7.110. Budget and tax rate.

(a) ~~By August 31, 1978, and thereafter~~ On or before June 30 of each year, the Council shall by resolution adopt a budget for the Downtown Parking District and set the tax for each fiscal year commencing July 1, to finance the operation and administration of the Downtown Parking District. Increased annual assessments to finance the operation of the Downtown Parking District are capped at the lesser of the percentage increase in the Bureau of Labor Statistics general consumer price index for Portland, Oregon, metropolitan area for the preceding calendar year or 2.0 percent.

(b) Said resolution shall set forth:

(1) The rate of tax for the district;

(2) The total tax levied for district;

(3) The amount of total tax levied for district apportioned to parking structure operation and administration;

(4) The percentage of total tax levied attributed to a public parking structure operation and administration;

(5) The total customer parking demand; and

(6) The minimum tax.

(c) The rate of tax is the tax per parking space. The rate of tax is computed by dividing the total tax required to operate and administer the Downtown Parking District for each fiscal year by the total customer parking demand by the taxpayers in the Downtown Parking District. The customer parking demand shall be reviewed for any adjustment each fiscal year the Council adopts the budgets for the district. The decision of the Council is final after taking into consideration the total customer demand by the taxpayers in the Downtown Parking District less the number of free off-street customer parking spaces provided by the taxpayers within 200 feet of the district.

(Prior Code, § 7.110; Ord. No. 163-78; Ord. No. 51-96; Ord. No. 30-97; Ord. No. 49-04; Resolution No. 2013-68)

Sec. 7.120. Method of computing tax.

(a) Each person subject to SRC 7.100 shall compute the tax due to the City. Except as provided in ~~paragraph~~ subsection (b) of this section, the amount of the tax shall be determined as follows:

(1) Divide the gross floor area of the taxpayer by 1,000.

(2) The quotient determined under ~~paragraph~~ subsection (a)(1) of this ~~sub~~section shall be multiplied by the taxpayer's applicable parking demand factor in accordance with the parking demand table set forth in SRC 7.140 to arrive at the gross number of parking spaces required by the taxpayer.

(3) The gross number of spaces determined under ~~paragraph~~ subsection (a)(2) of this ~~sub~~section shall be multiplied by the tax rate for each parking space as determined by ordinance passed by the Council under SRC 7.110 to arrive at the basic tax due.

(b) If the taxpayer's business is a hotel or motel the amount of the tax shall be determined as follows:

(1) The number of hotel or motel units shall be multiplied by the taxpayer's applicable parking demand factor in accordance with the parking demand table set forth in SRC 7.140 to arrive at the gross number of parking spaces required by the taxpayer.

(2) The gross number of spaces determined under ~~paragraph~~ subsection (b)(1) of this ~~sub~~section shall be multiplied by the tax rate for each parking space as determined by ordinance passed by the Council under SRC 7.110 to arrive at the basic tax due.

(c) A credit shall be allowed against the tax computed in ~~paragraph~~ subsection (a) or (b) of this section for the number of free off-street customer parking spaces provided by the taxpayer within the Downtown Parking District, or within 200 feet of the Downtown Parking District. The credit shall be computed by multiplying the number of free off-street customer parking spaces by the rate of tax.

(d) In addition to the tax determined under ~~paragraphs~~ subsections (a) and (b) of this section, a taxpayer shall pay a tax based on an access factor for any sky bridges connecting the building the taxpayer occupies floor space in, to an off-street public parking structure. Said additional tax applies to any sky bridge under construction.

(e) Said additional tax required by ~~paragraph~~ subsection (d) of this section shall be determined as follows:

(1) The percentage of the total tax levied attributed to the public parking structure as determined under SRC 7.110(c)(4) shall be multiplied by the taxpayer's basic tax due less any credit computed under ~~paragraph~~ subsection (c) of this section.

(2) The amount thus obtained under ~~paragraph~~ subsection (e)(1) of this ~~sub~~section shall be multiplied by the sky bridge access factor set forth in the parking demand table in SRC 7.140 to arrive at the additional tax.

(Prior Code, § 7.120; Ord. No. 163-78; Ord. No. 51-96; Ord. No. 29-05)

Sec. 7.130. Tax credit.

(a) A taxpayer conducting a business or profession in the district for less than the full tax year shall receive

a credit against the tax for that portion of the tax as the part of the fiscal year in which no profession, occupation, or business was conducted by said taxpayer within the Downtown Parking District bears to the whole of the fiscal year.

(b) If a taxpayer's category is retail or service and more than 40 percent of the occupied gross floor area is storage of materials and supplies as related to such retail or service, the taxpayer shall be allowed a credit against the tax otherwise due of the difference between the tax as computed on that portion of said gross floor area in storage that is in excess of said 40 percent and the tax on such storage area as computed with a 0.1 parking demand factor for every 1,000 square feet of gross floor area.

(c) Any taxpayer whose business is open to the public less than one day in each week or 20 hours in any one week between 9:00 a.m. and 7:00 p.m., shall receive a credit of 50 percent of the tax.

(d) Any taxpayer eligible for a credit under subsection (a) of this section may file a written request for such credit on a form approved by the Finance Officer ~~Director of Finance~~. The written request shall be filed with the Finance Officer ~~Director of Finance~~ within 60 days of the taxpayer becoming eligible for such credit. Failure to file a written request for a credit as provided in this section shall be a waiver of all right to receive the credit for that fiscal year.

(Prior Code, § 7.130; Ord. No. 220-78; Ord. No. 112-79; Ord. No. 69-80; Ord. No. 12-15)

Sec. 7.135. Minimum tax.

Notwithstanding that a lower tax or no tax is due as determined under SRC 7.120 and 7.130(c) and (d), a taxpayer shall pay the minimum tax set forth in the budget resolution passed under SRC 7.110. However, a taxpayer subject to the minimum tax is entitled to the tax credit set forth in SRC 7.130(a) and (b) for engaging in a business or profession in the Downtown Parking District for less than the entire tax year.

(Prior Code, § 7.135; Ord. No. 112-79; Ord. No. 69-80; Ord. No. 69-81; Ord. No. 39-83; Ord. No. 58-86; Ord. No. 45-92; Ord. No. 30-97)

Sec. 7.140. Parking demand table.

The parking demand factor for each taxpayer computing the tax under SRC 7.120 is as follows:

~~GOVERNMENT~~

Category Substantially Related to Taxpayer's Profession, Occupation or Business	Units 1,000 GFA*	Parking Demand Factor (customer spaces needed for every 1,000 square feet of gross floor area)
Manufacturing/wholesale	1,000 GFA	0.1
Warehousing	1,000 GFA	0.1
Auto sales/service	1,000 GFA	0.1
General office/business schools	1,000 GFA	0.4
Attorneys, accountants, stockbrokers	1,000 GFA	0.8

Service (service and repair businesses also include florists, office supplies, printers, trust companies, theaters, travel, beauty schools, finance companies, barbers)	1,000 GFA	1.4
Retail furniture	1,000 GFA	1.6
Restaurant/tavern	1,000 GFA	1.8
Bank/savings and loan	1,000 GFA	2.0
Medical/dental/optical	1,000 GFA	2.4
Retail – General (including, but not limited to, wearing apparel, accessories, gifts, shoes, books, records, stationery, hobby, hardware, sporting goods, drugs, stereo, camera, music and musical instruments, jewelry, appliances, variety, antiques, plants, fabrics, paint, stamps and coins, bicycles, food sales, pharmacies, and department stores)	1,000 GFA	2.6
Hotel/motel	Units	1.0 per unit
Sky bridge access factor		0.5
Health club/fitness center	1,000 GFA	3.6
*GFA - Gross Floor Area		

(Prior Code, § 7.140; Ord. No. 163-78; Ord. No. 112-79; Ord. No. 73-95)

Sec. 7.150. Due date for tax.

(a) The tax imposed by SRC 7.100 and ~~SRC~~ 7.135 shall be payable to the Finance Officer ~~Director of Finance~~ and due by July 30 of each year in accordance with the following minimum payment schedule:

Payment Frequency	Payment Due Dates (on or before)
Annual	July 30
Semi-annual	1st installment – July 30 2nd installment – January 30
Quarterly	1st installment – July 30 2nd installment – October 30 3rd installment – January 30 4th installment – April 30
Monthly	30 of each month

A taxpayer electing to pay by other than a lump sum annual payment shall indicate their payment choice on the taxpayer's return and shall submit both the return and the first payment by July 30 of the year.

(b) If the taxpayer fails to make one or more payments of the tax according to subsection (a) of this section, the Finance Officer ~~Director of Finance~~ may declare that the full amount of the tax immediately due and payable.

(Prior Code, § 7.150; Ord. No. 163-78; Ord. No. 112-79; Ord. No. 12-15)

Sec. 7.160. Returns, extensions.

(a) The return shall be filed on forms as the Finance Officer ~~Director of Finance~~ may prescribe for the payment of the tax. Returns shall show the amount of tax due for the reporting fiscal year. There shall be annexed to the return a statement verified by a written declaration of the taxpayer making the return to the effect that the statements contained therein are true.

(b) The taxpayer shall deliver the return and remit the minimum payment amount of the tax due as provided in SRC 7.150 to the City's Finance Office. Returns and remittance may be delivered by first class mail or electronically. A return or remittance shall be deemed received upon actual receipt by the City's Finance Office.

(c) For good cause shown, the Finance Officer ~~Director of Finance~~ may extend the time for making any return or payment of tax for a period not to exceed 30 days. No further extension shall be granted, except by the Council. Any person to whom an extension is granted shall pay interest at the rate of one percent per month on the amount of tax due without proration for a fraction of a month. If a return is not filed and the tax and interest due is not paid by the end of the extension granted, then the interest shall become a part of the tax for computation of penalties described elsewhere in this chapter.

(d) A return shall be filed by the taxpayer with the Finance Officer ~~Director of Finance~~ 30 days immediately following the day the taxpayer becomes subject to the tax during the fiscal year, and thereafter by July 30 of each year.

(Prior Code, § 7.160; Ord. No. 163-78; Ord. No. 51-96; Ord. No. 12-15)

Sec. 7.170. Penalties and interest.

(a) Any taxpayer who has not been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by this chapter prior to delinquency shall pay a penalty of ten percent of the amount of the tax due in addition to the amount of the tax.

(b) If the Finance Officer ~~Director of Finance~~ determines that the nonpayment of any remittance due under this chapter is due to fraud or intent to evade the provisions hereof, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated in subsection (a) of this section.

(c) In addition to the penalties imposed, any person subject to tax who fails to remit any tax imposed by this chapter shall pay interest at the rate of one percent per month or fraction thereof without proration for portions of a month, on the amount of the tax due, from the date on which the remittance first became delinquent until paid in full.

(d) Every penalty imposed and such interest as accrues under the provisions of this section shall be merged with and become a part of the tax herein required to be paid.

(e) Any taxpayer who fails to remit the tax herein levied within the times set forth in this chapter shall pay the penalties and interest herein stated; provided, however, that the taxpayer may petition the Finance Officer ~~Director of Finance~~ for waiver and refund of the penalty and interest or any portion thereof within 30 days from the date the penalty and interest were assessed. The Finance Officer ~~Director of Finance~~ may, if a good and sufficient reason is shown, waive and direct a refund of the penalty and interest or any portion thereof.

(Prior Code, § 7.170; Ord. No. 163-78; Ord. No. 112-79; Ord. No. 12-15)

Sec. 7.180. Collection.

Any amount due the City as a tax under SRC 7.100 or as a penalty under SRC 7.170 shall constitute a debt of the person from whom the amount is due. The City may bring action in a court of competent jurisdiction to enforce payment of the debt.

(Prior Code, § 7.180; Ord. No. 163-78; Ord. No. 29-91)

Sec. 7.190. Deficiency determinations; fraud, evasion, taxpayer's delay.

(a) If the Finance Officer ~~Director of Finance~~ determines that a return is incorrect, the Finance Officer ~~Director of Finance~~ shall compute and determine the amount of tax required to be paid based upon the facts contained in the return or returns or based upon any information in the Finance Officer's ~~Director of Finance's~~ possession. One or more deficiency determinations may be made of the amount due for one, or more than one period, and the amount so determined shall be due and payable immediately upon service of notice as herein provided after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in SRC 7.170.

(b) The Finance Officer ~~Director of Finance~~ shall give to the taxpayer a written notice of the determination. The notice may be served personally or by first class mail; if by mail, the notice shall be addressed to the taxpayer at the taxpayer's address as it appears in the records of the Finance Officer ~~Director of Finance~~. Any notice served ~~by~~ shall be deemed received three business days after the date mailed, if to an address within the State ~~of Oregon~~, and seven business days after the date mailed, if sent to an address outside the State ~~of Oregon~~.

(c) Except in the case of fraud or intent to evade this chapter, every deficiency determination shall be made and notice thereof mailed within three years after the return is filed.

(d) Any determination shall become due and payable immediately upon receipt of the written notice and shall become final 30 days after notice is deemed received; provided, however, the taxpayer may challenge the determination if a petition is filed before the determination becomes final.

(Prior Code, § 7.190; Ord. No. 163-78; Ord. No. 12-15)

Sec. 7.200. Redeterminations.

(a) Notwithstanding SRC 7.060, a taxpayer may file with the Finance Officer ~~Director of Finance~~ a petition for redetermination and refund of a determination made under ~~SRC 7~~ this chapter.

(b) If a petition for redetermination and refund is filed within the allowable period, the Finance Officer ~~Director of Finance~~ shall reconsider the determination, and, if the person has so requested in the petition, shall grant the petitioner an oral hearing before the Finance ~~Director~~ Officer and shall give the petitioner ten days' notice of the time and place of the hearing.

(c) The Finance Officer ~~Director of Finance~~ may decrease or increase the amount of the determination as a result of the hearing. If an increase is determined, such increase shall be payable immediately upon delivery of the order or decision of redetermination, or upon the conclusion of an appeal to ~~City~~ Council as set forth in SRC 7.220 if appealed.

(d) The order or decision of redetermination shall be delivered to the person or sent to the person by first class mail addressed to the person's last known residence address, or the person's last known address, if different. Any order or decision of redetermination served by mail shall be deemed received three business days after the date mailed, if to an address within the State ~~of Oregon~~, and seven business days after the date mailed, if sent to an address outside the State ~~of Oregon~~.

(e) The order or decision of the Finance Officer ~~Director of Finance~~ upon a petition for redetermination and refund becomes final upon expiration of the time for filing a notice of appeal as set forth in ~~SRC 7~~ this chapter.

(f) No petition for redetermination and refund or appeal therefrom shall be effective for any purpose unless the taxpayer has first complied with the payment provisions of this chapter.

(Prior Code, § 7.200; Ord. No. 163-78; Ord. No. 51-96; Ord. No. 49-04; Ord. No. 12-15)

Sec. 7.210. Rules, inspections.

(a) The Finance Officer ~~Director of Finance~~ shall enforce provisions of this ~~ordinance~~ chapter and shall have the power to adopt rules and regulations not inconsistent with this ~~ordinance~~ chapter to aid in enforcement.

(b) The Finance Officer ~~Director of Finance~~ or any person authorized in writing by the ~~Director~~ Finance Officer may examine the floor area occupied by the taxpayer and any records related to the return during normal

business hours, after notification to the taxpayer, in order to verify the accuracy of any return made, or if no return is made by the taxpayer, to ascertain and determine the amount required to be paid.

(Prior Code, § 7.210; Ord. No. 163-78; Ord. No. 10-93; Ord. No. 49-04)

Sec. 7.220. Appeals to Council.

Except as provided in SRC 7.200, a taxpayer may appeal a decision or order of the Finance Officer ~~Director of Finance~~ to the Council by filing a notice of appeal with the Finance Officer ~~Director of Finance~~. The notice of appeal must be filed within 15 business days after the date the notice of the order or decision of redetermination is delivered to the person or the person is deemed to have received the notice. The Finance Officer ~~Director of Finance~~ shall transmit said notice of appeal, together with the file of said appealed matter, to the Council, who shall fix a time and place for hearing such appeal. The appellant shall be given not less than ten days' prior written notice of the time and place of the hearing.

(Prior Code, § 7.220; Ord. No. 163-78; Ord. No. 51-96; Ord. No. 12-15)

Sec. 7.230. ~~Severability~~ Reserved.

~~If any section, subsection, paragraph, sentence, clause, or phrase of this ordnance, or any part thereof, is for any reason held to be unconstitutional (or otherwise invalid), such decision shall not affect the validity of the remaining portions of this ordinance or any part thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional (or otherwise invalid).~~

~~(Prior Code, § 7.230; Ord. No. 163-78)~~

Sec. 7.240. Failure to furnish returns; false returns.

It is unlawful for any person so required to fail or refuse to furnish any return required to be made or other data required by the Finance Officer ~~Director of Finance~~ under this ~~ordinance~~ chapter or to render a false or fraudulent return. No person required to make, render, sign, or verify any report shall make any false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this ~~ordinance~~ chapter.

(Prior Code, § 7.240; Ord. No. 163-78)

Sec. 7.250. Violations.

Violation of any of the provisions of this chapter is an infraction.

(Prior Code, § 7.250; Ord. No. 163-78; Ord. No. 193-79)

CHAPTER 8. SALEM HUMAN RIGHTS AND RELATIONS ADVISORY COMMISSION

Sec. 8.010. Human Rights and Relations Advisory Commission created.

(a) The Salem Human Rights and Relations Advisory Commission is hereby created. The Commission shall consist of 15 members to be appointed by the Mayor, said appointments to be representative of the residents of the City ~~of Salem~~. The Commission shall have the powers and duties hereinafter set forth. Except as provided in subsection (b) of this section, the term of office of the appointive members shall be three years, or until their successors are appointed and qualified. Their terms shall be staggered so that the term of office of not more than five members will expire in the same year. Any vacancy in said Commission shall be filled by appointment made by the Mayor for the unexpired portion of the term. Members may be reappointed, except that a member who has served two full three-year terms may not be reappointed until after the expiration of one full year from the date of expiration of his or her immediate previous term of office. The members of the Commission shall receive no compensation for their services.

(b) Commencing with the first vacancy to be filled on the Commission after March 9, 1998, one member shall be the youth member. The youth member shall be not younger than 15 and not older than 21 years of age at the time of appointment. The term of the youth member shall be one year, except that the first appointment after March 9 may be for a term of less than one year. The youth member may be reappointed for not more than one additional one-year term.

(Prior Code, § 8.010; Ord. No. 113-67; Ord. No. 59-75; Ord. No. 40-76; Ord. No. 56-77; Ord. No. 64-85; Ord. No. 10-93; Ord. No. 46-96; Ord. No. 13-98; Ord. No. 26-98)

Sec. 8.020. Organization of Commission.

(a) The Commission shall elect a president and a vice-president who shall hold office at the pleasure of the Commission.

(b) The City ~~of Salem~~ shall provide a secretary to the Commission and other necessary staff. The secretary shall keep an accurate record of all proceedings of the Commission and shall perform such other duties as may be imposed by the Commission.

(c) The Commission shall meet at least four times each year and at such other times as it may provide by its bylaws.

(d) The Commission may make, establish, and alter bylaws for its government and procedure consistent with the laws of the State ~~of Oregon~~ and with the Charter and ordinances of the City ~~of Salem~~.

(Prior Code, § 8.020; Ord. No. 113-67)

Sec. 8.030. General powers and duties of the Commission.

The Commission shall have no executive or administrative powers or authority except as herein provided, and this ~~ordinance~~ chapter shall not be construed as depriving any city, county, or school district elected or appointed official of any power they may have under the laws of the State or the Charter of the City. The Commission shall be advisory and shall have powers, duties, and functions as follows:

(a) Promote harmonious intergroup relations within the City ~~of Salem~~ by enlisting the cooperation of various racial, religious, and nationality groups, business, community, labor, and governmental organizations, fraternal and benevolent associations, educational and other groups.

(b) Examine sources of tension, practices of discrimination and acts of prejudice in the City ~~of Salem~~.

(c) Perform such conciliatory services as would not conflict with the functions of any other government agency.

(d) Make recommendations concerning solutions to specific problems of prejudice or discrimination.

(e) Recommend to the ~~City~~ Council, action, policies, and legislation to be considered by state and local

governments.

(f) Take action upon alleged violations of SRC chapter 97 ~~of this Code~~ as provided in this chapter.

(g) Make such reports to the Council as the Council may request.

(Prior Code, § 8.030; Ord. No. 113-67; Ord. No. 60-72; Ord. No. 40-76; Ord. No. 56-77; Ord. No. 11-84; Ord. No. 61-93; Ord. No. 51-96)

CHAPTER 9. AIRPORT*

***State law reference—**Airports and fields for landing aircraft, ORS 836.005 et seq.

Sec. 9.001. Nature of chapter.

This chapter shall be deemed a regulatory measure; and the provisions herein provided shall be for the purpose of operation, regulation, and control of the Salem Municipal Airport, known as McNary Field and referred to in this chapter as "the Airport."

(Prior Code, § 9.001; Ord. No. 102-2367; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.005. Definitions.

~~Unless the context otherwise specifically requires, as used in this Chapter, the following terms mean:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Airport* means the Salem Municipal Airport, commonly known as McNary Field.

~~(b)~~ *Airport Manager* means the City Manager, or the department director designated by the City Manager with responsibility and authority for the management and direction of the Airport, or that department director's designee.

~~(c)~~*Airport master plan* means the current approved layout of the Airport property, indicating current and proposed usage for each identifiable segment, as approved by the ~~City~~ Council and amended from time to time.

~~(d)~~ *Airport rules and regulations* means any rule or procedure for the operation of the Airport promulgated pursuant to SRC 9.010.

~~(e)City: The Airport Manager.~~

~~(f)~~*Commercial aeronautical activity* means an operation or service performed for compensation which is conducted on or based at the Airport, excepting those activities specifically designated herein as noncommercial operations. This definition applies to, but is not necessarily limited to:

(a) Any service for compensation by a licensed mechanic, flight instructor, or commercial pilot.

(b) The short-term rental of aircraft to multiple users.

(c) The sale of aircraft, parts, fuel, accessories, and/or aviation equipment.

~~(g)~~ *Commercial operator* means any person involved in a commercial activity.

~~(h)~~ *Employee* means any individual performing services for another person and designated as an employee for the purpose of federal/state unemployment insurance, Federal Social Security, or federal/state withholding.

~~(i)~~ *FAA* means the Federal Aviation Administration.

~~(j)~~ *Fixed base operator* means a proprietor of a commercial operation offering aeronautical related activities and services to the general public.

~~(k)~~ *Noncommercial aeronautical activity* means any Airport activity which does not involve the providing of aviation goods or services for compensation. This includes the use and maintenance of an aircraft by its registered owner or owners and the following activities specifically designated as noncommercial:

(a) The sale of an aircraft, its parts, or accessories by the registered owner or owners, providing ~~then~~ the owner or owners have not sold an aircraft, similar part, or accessory within the preceding 12 months. Prior written approval of the City will be required for the second such sale within a 12-month period on a noncommercial basis. Such approval will be withheld only in those cases where the City determines the sale to be part of a continuing sales activity by the owner or owners.

(b) The rental of aircraft from a nonprofit flying club by registered members.

(c) Flight instruction provided to a flying club member by another flying club member, provided such instruction is provided for nonmonetary compensation.

(d) Maintenance performed on an aircraft owned or controlled by a flying club by a member of that flying club, provided such service is provided for nonmonetary compensation.

~~(l)~~ *Noncommercial aeronautical operator* means any person involved in a noncommercial aeronautical activity.

~~(m)~~ *Person* means any person, corporation, limited liability company, partnership, limited liability partnership, cooperative, association, trust, or other entity in law or fact.

(Prior Code, § 9.005; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.010. Rulemaking; enforcement; fees and charges.

(a) The Airport Manager shall administer this chapter, and shall have the authority to render written and oral interpretations of this chapter, to adopt administrative rules and procedures necessary for its proper administration and enforcement, and to create classes of licenses for commercial and noncommercial activity at the Airport.

(b) The Airport Manager shall enforce this chapter and the Airport rules and regulations adopted pursuant to subsection (a) of this section. Appeals of final decisions by the Airport Manager in the enforcement of this chapter or the Airport rules and regulations are contested cases under SRC 20J.020. Any person who has received an enforcement order may appeal the final decision of the Airport Manager by filing a notice of appeal according to the procedures set forth in SRC 20J.220. The appeal shall be held according to procedures set forth in SRC chapter 20J.

(c) All license fees, rental rates, and other charges authorized by this chapter shall be set by resolution of the ~~City~~ Council.

(Prior Code, § 9.010; Ord. No. 101-67; Ord. No. 51-96; Ord. No. 10-12)

Sec. 9.015. Construction consistent with rules adopted by FAA.

The provisions of this chapter, and any rules adopted pursuant to SRC 9.010, shall be construed so as to be consistent with any rules adopted by the FAA and, in the event of any conflict between the provisions of this chapter and any rules adopted pursuant to SRC 9.010 and FAA rules, the FAA rules shall control.

(Prior Code, § 9.015; Ord. No. 10-12)

Sec. 9.020. License required.

(a) *License required.* Except as provided in subsection (b) of this section, no commercial aeronautical activity shall be offered or performed at the Airport without a license for such commercial aeronautical activity having first been obtained from the Airport Manager.

(b) *Temporary commercial aeronautical activities.* Commercial aeronautical activities conducted on the Airport that are temporary, and not of a recurring nature, shall have a temporary license upon approval of an application therefor by the Airport Manager. The application must include all pertinent information needed to evaluate the applicant's operations, including required licenses and evidence of required insurance coverage. A temporary license shall be valid only for a period not exceeding 60 days.

(c) *Exemption.* Aeronautical activities of scheduled airlines and municipal, state, and federal agencies are exempt from requirements of this section.

(d) *Rental of hanger space not included.* As used in this section, commercial aeronautical activity shall not be deemed to include the rental of hangar space.

(Prior Code, § 9.020; Ord. No. 102-67; Ord. No. 176-69; Ord. No. 62-79; Ord. No. 10-93; Ord. No. 35-95; Ord. No. 51-96; Ord. No. 10-12)

GENERAL PRIVILEGES AND RIGHTS

Sec. 9.025. In general.

In addition to any specific requirements contained in this chapter for a particular category of operation, the requirements set forth in SRC 9.030 to 9.065 shall be common requirements of all operators, permittees, licensees, and lessees on the Airport.

(Prior Code, § 9.025; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.030. Activities per agreement.

Each licensee on the Airport is granted the right to conduct only one integrated activity per agreement. Services offered by fixed based operators shall be enumerated in their leases. This does not preclude a licensee from applying for another concession or privilege; provided, however, that this concession or privilege will be the subject of a separate agreement. The licensee must meet the standard qualifications for the particular operation category regarding related experience, quality and depth of management, personnel, etc.

(Prior Code, § 9.030; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.035. Activity limitation.

Each licensee is hereby prohibited from conducting any activity at the Airport other than that provided by agreement. Any commercial user of Airport facilities is hereby restricted from entering into any other commercial activity at the Airport without the prior written consent of the City.

(Prior Code, § 9.035; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.040. Nondiscrimination.

In the operation and use of the facilities at the Airport, no licensee shall discriminate or permit discrimination against any person or group of persons in any manner on the grounds of race, color, or national origin.

(Prior Code, § 9.040; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.045. Licenses subject to laws and regulations.

(a) Each licensee and his or her officers, agents, and employees shall carry on his or her activities and operations on said Airport in compliance with federal laws and Federal Aviation Administration regulations, state statutes, the rules and regulations governing the use of the Airport, and all other applicable City ordinances. Each licensee shall be responsible for the actions of his or her officers, agents, and employees.

(b) Each licensee shall designate in writing to the City the name and title of the officer or manager responsible for such actions.

(Prior Code, § 9.045; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.050. Operations covenants.

All agreements granting commercial privileges at the Airport shall include covenants that govern the hours of operation, the type of operation, the extent of services to be offered, and the quality of performance required of the licensee. Each licensee to whom a concession is granted shall operate the premises for the use and benefit of the public. This shall include, but not be limited to:

(a) Furnishing goods, and prompt and efficient service adequate to meet normal demands for its service at the Airport.

(b) Furnishing such service on a fair, equal, and nondiscriminatory basis to all users.

(c) Charging fair, reasonable, and nondiscriminatory prices for each unit of sale of service, provided that the operator may make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

(d) Having telephone service and offices on the Airport, if the licensee is leasing space or real property from the City.

(e) Maintaining a current registry with the Airport Manager of officers and supervisory employees and their telephone numbers for emergency use.

(Prior Code, § 9.050; Ord. No. 62-79; Ord. No. 35-95; Ord. No. 10-12)

Sec. 9.055. Ground space leasing.

(a) Licensees for activities at the Airport who are required to provide ground space and structures for such activities shall enter into leases with the City for the rental of such space or into subleases with a lessee previously approved by the City. Subleases may be used in lieu of leases with the City to meet the building and lot requirements of SRC 9.185 through 9.210. Subleases shall comply with SRC 9.155. Ground space allocations to licensees under leases will be made in accordance with the airport master plan or other site-specific planning or development documents.

(b) Termination of a licensee's ground lease without other satisfactory arrangements having been made with the Airport Manager shall automatically revoke a license for an activity, service, or operation.

(Prior Code, § 9.055; Ord. No. 62--79; Ord. No. 175--82; Ord. No. 10-93; Ord. No. 51-96; Ord. No. 10-12)

Sec. 9.060. Right of aircraft service.

No right or privilege granted a licensee shall in any way interfere with or prevent any person, firm, or corporation operating on the Airport from performing any FAA approved services on its own aircraft with its own employees as are compatible with the Airport rules and regulations established by the City and with the appropriate building and fire codes.

(Prior Code, § 9.060; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.065. Privileges, uses, rights, and interests.

In addition to specific privileges, uses, rights, and interests granted to persons by a license or lease, the following privileges, uses, rights, and interests shall be granted to all licensees and lessees:

(a) The loading and unloading of aircraft in any lawful commercial or noncommercial activity in designated areas and locations.

(b) The nonexclusive use of the public Airport facilities and navigational aids for purpose of commercial and noncommercial landings, takeoffs, and taxiing of aircraft.

(c) The right by a lessee for ingress to and egress from lessee's leased premises.

(d) The nonexclusive use of common-use areas which shall be kept clear at all times.

(Prior Code, § 9.065; Ord. No. 62-79; Ord. No. 10-12)

RATES AND CHARGES

Sec. 9.070. User pay policy.

It is hereby declared that the policy underlying the establishment of rates and charges shall be that each licensee at the Airport and each user of the landing area pay an appropriate rate or fee for such license or use. To ensure the calculation of proper rates and charges, the City will continue to generate cost data through the City's cost accounting system to serve as a valid basis for negotiating rates and charges.

(Prior Code, § 9.070; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.075. Policy to reduce expenses for Airport operation.

Reduction of expenses for Airport operation shall be the basic policy of sound Airport fiscal management. This policy shall be implemented in leases through requirements regarding lessees' and City's maintenance and operational obligations.

(Prior Code, § 9.075; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.080. Rents; concessions.

Rents shall be either a standard or variable rate. The standard rate will be incorporated into any lease for space owned by the Airport, or for ground rentals. The variable rate will be incorporated in so far as is feasible into concession agreements, such as the sale of consumer goods and services on the Airport. A variable rate can be either

a "percentage of gross revenue" or fuel flowage fee.

(Prior Code, § 9.080; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.085. Guaranteed minimum.

All agreements which specify a variable rate (percentage of gross, fuel flowage) shall include a negotiated minimum, which should be an amount that is below the average projected monthly payment, at a level consistent with the City's desire to encourage each operator to provide the highest possible level of public service.

(Prior Code, § 9.085; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.090. Audits.

When an agreement specifies a percentage of gross revenue, the City shall, in addition to the right of confidential review of records, have the right to audit the accounts and records of the licensee. Should a discrepancy of five percent or more be found in gross receipts reported to the City, the cost of such an audit will be borne by the licensee. The gross sales of any major concession on the Airport shall be verified by an unqualified opinion of a certified public accountant.

(Prior Code, § 9.090; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.095. Rents and fees.

With regard to the various users of the Airport, the following policy shall apply:

(a) *Airport space and ground leases.*

(1) All hangar and self-constructed building area leases shall be required to pay a ground rental for the gross area leased, including any exclusive-use aprons, parking area, etc.

(2) All lessees of space in city-owned airport buildings shall pay a rental rate per square foot of space leased, plus any additional user fees appropriate to the lessee's use. Rents shall be fixed in the lease between the City and lessee.

(3) The rates or charges for aircraft parking and tie-down (permanent or transient) shall be set by the ~~City~~ Council, unless set in a lease. Storage charges made by licensees may be determined by the licensees, subject to the approval of the Airport Manager and subject further to the requirement that all such rates or charges shall be reasonable and be equally and fairly applied to all users of the services. The City shall receive not less than 50 percent of all aircraft tie-down and parking fees collected by the licensee on any city-owned aircraft ramp area managed (but not leased) by the licensee.

(b) *Concessions.* Any food or restaurant concessionaire shall pay a percentage of gross revenue or a minimum annual guarantee, whichever is greater.

(c) *Landing area and field-use fees.* All users of the landing area shall pay a field-use fee in addition to any other Airport space or ground rentals that they may currently be paying. The following basic policy will apply:

(1) For scheduled commuter airline users, a specific landing fee will be negotiated on the basis of maximum approved gross landing weight of aircraft operated, which will then be charged for each and every landing aircraft, regardless of whether such landings are extra sections, training flights, etc.

(2) For general aviation aircraft users, a fuel flowage fee shall be established by resolution of the ~~City~~ Council, which shall provide for a return to the City by owners or operators of fuel storage tanks. The resolution shall establish a schedule of fees for each gallon of various classes of product delivered to any Airport premises.

(3) For military and government users, a service charge shall be negotiated with the appropriate agency on the basis of the type of missions and the aircraft operated, if on a continual basis.

(d) *Special use permits.*

(1) For any off-Airport user desiring airfield access, a special airfield use agreement shall be negotiated, including specific provisions requiring the user to pay the cost of any taxiway extended to the Airport boundary, a fuel flowage fee, and a special Airport access fee.

(2) Other special use permits may be issued by the City on a case-by-case basis and be subject to any appropriate fees, charges, or conditions deemed reasonable by the City.

(Prior Code, § 9.095; Ord. No. 62-79; Ord. No. 133-79; Ord. No. 21-87; Ord. No. 10-12)

MAINTENANCE AND OPERATIONAL OBLIGATIONS

Sec. 9.100. Maintenance obligations.

Lessees shall be responsible for the following maintenance obligations:

(a) In the landing area, the City will maintain all public-use runways, taxiways, and aprons. Exclusive-use aprons, taxiways, or ramps will be maintained by the lessee.

(b) In the hangar and building area, the City shall not provide any maintenance of gross area leased from the City, or of buildings or facilities erected by a lessee. All leases of city-owned buildings (single tenant) will be negotiated on a "net" basis, with the lessee required to assume the responsibility for providing its own day-to-day services, including, but not limited to:

(1) Provide and pay for all light, gas, electric current, water, janitorial, and sewer charges used or incurred in or about the leased premises.

(2) Keep all leased area facilities and structures in an acceptable state of repair and maintained at all times. The lessee shall be responsible for maintaining all leased areas, landscaping, facilities, and structures in an acceptable state of repair and in good appearance, as established in the Airport rules and regulations.

(c) Net lease agreements shall be used for hangar and building areas.

(d) A covenant shall be included in each lease stipulating that the City shall be the sole judge of the quality of maintenance and that, upon 30-day written notice, the City may require the lessee to perform all necessary maintenance. In the event such maintenance is not undertaken as required, the lease shall further provide that the City may perform such maintenance upon behalf of the lessee and at the lessee's expense, plus ten percent for administration.

(Prior Code, § 9.100; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.105. Operational obligations.

Lessees and licensees shall be responsible for the following items, as appropriate:

(a) Obtain permits from appropriate agencies as necessary to conduct business operations on the Airport. Licensees and lessees must conform to all applicable federal, state, and local laws regarding industrial, building, safety, health, fire, and sanitation.

(b) To the extent necessary to protect the rights and interest of the City or to ascertain compliance with these standards and the Airport rules and regulations, the Airport Manager shall have the right to inspect, during reasonable hours, all aircraft, equipment, structures, premises, facilities, and improvements on the Airport.

(c) Where a licensee is authorized to conduct one or more types of activity, multiple use may be made of the same office space, passenger lounge, public telephones, and restrooms.

(d) Licensees shall be required to remove promptly from any public landing area any of their owned or leased disabled aircraft as soon as permitted or directed by the FAA, National Transportation Safety Board, or the City.

(Prior Code, § 9.105; Ord. No. 62-79; Ord. No. 35-95; Ord. No. 10-12)

Sec. 9.110. Tax obligations.

Each lessee, licensee, and concessionaire shall pay all taxes and assessments against land and against any buildings or other structures placed on the premises by lessee, licensee, or concessionaire, and all taxes and assessments against the real and personal property used by lessee, licensee, or concessionaire in lessee's, licensee's, or concessionaire's operations.

(Prior Code, § 9.110; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.115. Insurance obligations.

(a) All lessees, licensees, and concessionaires shall provide at their sole cost the insurance coverage for the category of the licensed operation, as shown in Appendix 1 of this chapter, in a manner and form acceptable to the Airport Manager, and underwritten by a responsible insurance carrier or carriers authorized to provide such coverage in Oregon.

(1) Third-party comprehensive general liability coverage for bodily injury and property damage, including owned and nonowned vehicles and/or aircraft.

(2) Products liability coverage in addition to the foregoing comprehensive general liability insurance where licensee or concessionaire operates a food service or offers goods or merchandise for sale.

(3) Statutory workers' compensation and employer's liability coverage.

(4) Fire and extended coverage and vandalism and malicious mischief insurance, as provided by the lease, for damage or destruction of real property or leasehold improvements, where the City has, or will have, an interest in such property by virtue of an existing lease.

(5) Hangarkeeper's liability coverage where the licensee operates a fixed base operation.

(6) All licensees shall provide a lease bond of an amount equaling to six months' rent on all leases.

(b) Each policy shall name the City as an additional insured and require that the insurance carrier underwriting such coverage give the City 30 days' written notice of cancellation of or material alteration to the policy.

(c) Each lessee, concessionaire, and licensee shall provide the City with a certificate of insurance evidencing the coverage in effect, including limits and expiration date. Such policy or policies shall be maintained in full force and effect during all terms of existing leases, licenses, contracts, or agreements, and renewals or extensions of same. A copy of the policy shall be delivered to the Airport Manager. In addition, the City shall receive an endorsement to the policy that the City is an additional insured and the insurance carrier will give the City 30 days' written notice of cancellation of or alteration to the policy.

(d) In addition to providing liability insurance, the lessee, concessionaire, or licensee shall agree to indemnify and hold the City harmless from all claims and liabilities occasioned by the activities arising out of or connected with the lease, concession agreement, or license.

(e) The City shall have the right to restrict the lessee, concessionaire, or licensee from conducting any activity or storing inflammable materials or substances, which would increase the City's insurance rate or cause an insurance policy of the City to be canceled.

(f) Where licensee is authorized to conduct more than one type of activity, licensee shall obtain the largest single coverage established for each type of insurance required for each specific activity.

(g) All agreements with a term in excess of three years shall provide a suitable means for adjusting the insurance coverages based on then current industry standards.

(Prior Code, § 9.115; Ord. No. 62-79; Ord. No. 10-12)

PRIVATE DEVELOPMENT

Sec. 9.120. In general.

(a) Any new development at the Airport, wherever possible, should be undertaken upon the basis of a net ground lease, with the lessee privately financing all improvements.

(b) The available building area should be platted with all utilities and improvements extended to the limits

of the platted area on an as-required basis. The building areas of the Airport shall be divided into zones, with structural and design standards established for the construction of hangars or buildings within each zone. Each lease shall specify the minimum improvement standards required, which shall be consistent for each general class of lessee.

(c) If required by any federal, state, or local agency, lessees shall prepare and submit an environmental impact statement to measure the effect of the proposed project on the ecology of the area.

(d) Each lessee shall be solely responsible for all costs required for utility connections. All lessees will pay a rental for the area effectively leased, including any auto parking area, apron areas, or other areas exclusively used.

(Prior Code, § 9.120; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.125. Lease form.

The standard form of lease for ground leases at the Airport shall be approved by ~~City~~ Council.

(Prior Code, § 9.125; Ord. No. 10-12)

Sec. 9.130. Initial lease term.

The initial length of term for any ground lease at the Airport shall be of sufficient length to allow the cost of construction of the new hangar to be amortized over the term of the agreement.

(Prior Code, § 9.130; Ord. No. 10-12)

Sec. 9.140. Appraisal.

(a) Not less frequently than every six years, the City shall have all leasable land at the Airport appraised by an MAI certified appraiser for the purpose of determining the rental rates for applicable ground leases. Land at the Airport may be appraised as separate leased parcels or as part of a larger area, as designated by the Airport Manager.

(b) Notice of appraisal. Notice of the appraisal will be mailed to applicable lessees prior to the effective date of the rental rate adjustment. Notice of the rental rate adjustment based on appraisal shall include:

(1) The date the notice is mailed;

(2) A description of the land area covered by the appraisal;

(3) A brief summary of the appraiser's conclusion as to market value rental rate;

(4) The date the rental rate adjustment will become effective;

(5) The date and time by which an appeal must be filed, a brief statement explaining how to file an appeal, and where further information may be obtained concerning the appeal process; and

(6) A statement that the appraisal is available for review, where it may be reviewed, and the name and telephone number of the staff member to contact about reviewing the appraisal.

(c) All lessees subject to the new rental rate based on the City's appraisal shall have the right to appeal the adjusted rental rate. The notice of appeals shall be accompanied by an appeal fee.

(d) Appeal.

(1) Only lessees leasing land subject to the rental rate adjustment based on the appraisal are entitled to notice of the appraisal and have standing to appeal the rental rate adjustment.

(2) An appeal of an appraisal is to the Salem Hearings Officer.

(3) A person with standing to appeal, and who desires to appeal an appraisal, shall file a notice of appeal with the City Recorder, and shall file a copy with the Airport Manager within seven days of the date appearing on the notice of rental rate adjustment.

(4) A notice of appeal shall be accompanied by an appeal fee in the amount set by a resolution of the ~~City~~ Council. Failure to submit an appeal fee at the time the notice of appeal is filed shall result in the summary rejection of the notice of appeal.

(5) As supplemented in this section, proceedings on the appeal of an appraisal shall be conducted as set forth

for contested cases in SRC chapter 20J.

(6) Any lessee who appeals an appraisal shall provide at the hearing an appraisal performed by an MAI certified appraiser and obtained by the lessee appealing the City's appraisal.

(7) The filing of an appeal shall not toll, or otherwise effect, the imposition of the new rental rate as determined by the City's appraisal. Any adjustment in rental rate as determined by the Hearings Officer shall relate back to the time the new rental rate based on the City's appraisal was imposed.

(8) The decision of the Hearings Officer on an appeal under this section is the final decision of the City.

(Prior Code, § 9.140; Ord. No. 10-12)

Sec. 9.150. Legal descriptions.

A legal description or site map describing the leased area shall be appended to the lease.

(Prior Code, § 9.150; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.155. Assignment and subleasing.

(a) No lessee shall sublease any premises leased from the City, or assign such lease without the prior written approval of the Airport Manager. Any such subletting or assignment shall be subject to all of the minimum standards set forth in this chapter. In the event the lessee sublets any portion of the premises, the sublessee must assume the full obligations of the lease and must fully cooperate with the City in seeing that these standards are complied with.

(b) Approval of any sublease or assignment by the City, upon complete and thorough investigation of the proposed sublessee or assignee, will be based upon the following:

(1) The sublease or assignment shall be only to individuals, firms, or corporations who can meet the required qualifications and stipulations of this chapter.

(2) Conformity with the airport master plan or other site-specific planning documents.

(3) Continuity of performance standards.

(c) The City shall reserve the right to assign, pledge, or hypothecate any lease with or without the consent of the other party. For example, the sale of revenue bonds at a later date for Airport expansion could possibly require the formation of an authority to which all leases would be assigned.

(Prior Code, § 9.155; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.160. Subordination.

All leases shall be subordinated to any present or future sponsor's assurance agreement with the Federal Aviation Administration. A covenant to this effect will be included in any new lease or in any amendment to an existing lease.

(Prior Code, § 9.160; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.165. Construction of improvements.

(a) All ground leases shall specifically provide that, in addition to having the right to build, the lessee is obligated to construct facilities within a reasonable time period as determined jointly by the lessee and the City.

(b) All construction undertaken upon the basis of a ground lease shall obligate the lessee to meet a minimum improvement standard as established by the City which shall require compatible and aesthetically pleasing development.

(c) All buildings or structures constructed on leased premises at the Airport shall be constructed in a manner to conform to all safety regulations of the State ~~of Oregon~~ and the City and shall be in compliance with the requirements of current building codes and fire regulations.

(Prior Code, § 9.165; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.170. Removal of improvements upon termination of leasehold.

Each lease shall require removal of all lessee-constructed improvements and restoration of the premises by

the lessee at lessee's sole cost upon termination of the lease. The City shall in no circumstances be required to accept obsolete improvements or any financial liability for removing such improvements and restoring the premises. Title to improvements shall at all times remain in the lessee, but the City shall have the option on termination of the lease to take title in lieu of removal.

(Prior Code, § 9.170; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.175. Relocation.

The facilities of any lessee shall be subject to relocation at the cost of the City to a suitable alternate location at the Airport if the then currently leased premises are required by the City for the development of the Airport.

(Prior Code, § 9.175; Ord. No. 62-79; Ord. No. 10-12)

COMMERCIAL OPERATOR STANDARDS, GENERAL AVIATION

Sec. 9.180. General requirements.

The City shall require that any person desiring to provide general aviation commercial services comply with all applicable elements (insurance, maintenance, and operational obligations, etc.) of the lease policies set forth in this chapter. Additionally, the person shall be required to comply with the minimum standards applicable to the services provided as set forth in SRC 9.185 through 9.220.

(Prior Code, § 9.180; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.185. Providing multiple services.

Nothing in these standards shall preclude a person from applying for and providing services in more than one category assuming that all appropriate provisions and specifications are met for each proposed service. In conjunction with multiple service licenses, the maximum cumulative requirements shall be of sufficient size to operate the services, as determined by the Airport Manager, and a building or buildings sufficient to operate each proposed service. Additionally, the person shall not be required to duplicate the stipulated public convenience requirements (lounge, restrooms, telephone).

(Prior Code, § 9.185; Ord. No. 62-79; Ord. No. 35-95; Ord. No. 10-12)

Sec. 9.190. Aircraft repair and maintenance.

A commercial aircraft repair and maintenance operation shall provide, at a minimum:

(a) *Personnel.* One FAA certified repairman or mechanic, licensed for type of repair work to be performed.

(b) *Lot size.* Sufficient square feet of ground area shall be leased from the Airport, as approved by the Airport Manager.

(c) *Building.*

(1) Sufficient hangar space, in an approved occupancy usage hangar, to house any aircraft upon which airframe and/or engine maintenance is being performed.

(2) Sufficient space for office, customer lounge, parts storage, restrooms, and public telephone.

(d) *Hours of operation.* Minimum personnel specified in subsection (a) of this section on duty a minimum of eight hours per day, five days per week. "On-call" mechanic service until 10:00 p.m. daily and seven day coverage will be on a scheduled basis as developed by the Airport Manager on a rotating basis in consultation with all FBOs holding repair and maintenance concessions.

(e) *Equipment and parts.* The minimum stock of equipment and readily expendable spare parts or adequate arrangements for securing spare parts required for the type of aircraft and models to be serviced.

(f) *Other.*

(l) Aircraft washing, polishing, and cleaning service.

(2) Capability for removal of disabled aircraft from the Airport. The combined capabilities of all such operators must provide suitable equipment assistance to remove promptly any general aviation

disabled aircraft upon request of Airport Manager.

(3) The following additional commercial aircraft maintenance operations are allowed:

(A) Employees of repair facilities, not located at the Airport, may perform such work on the Airport, as required to prepare an aircraft for ferry from the Airport, provided that such employees are properly licensed by the FAA and acceptable proof of minimum insurance and bonding, as specified in Appendix 1 of this chapter, is provided to the Airport Manager.

(B) Pre-purchase inspections of aircraft may be performed by FAA licensed aircraft mechanics without the need for a city aircraft maintenance/repair license.

(C) Manufacturers of home built aircraft may utilize the services of FAA licensed aircraft mechanics, who are paid home built kit manufacturer's representatives, in the production or maintenance of their aircraft in compliance with existing Federal Aviation Regulations. Manufacturers of home built aircraft may perform, on their own aircraft, all activities and maintenance allowed by the FAA.

(Prior Code, § 9.190; Ord. No. 62-79; Ord. No. 35-95; Ord. No. 10-12)

Sec. 9.195. Aircraft sales.

A commercial operator in this category shall be required to provide, ~~as~~ at a minimum:

(a) Assurance that the operator meets all the FAA requirements concerning the type of aircraft offered for sale.

(b) At least one pilot with current certificates and ratings appropriate for the aircraft offered for sale.

(Prior Code, § 9.195; Ord. No. 62-79; Ord. No. 101-91; Ord. No. 35-95; Ord. No. 10-12)

Sec. 9.200. Instruction and aircraft rental.

A commercial instruction and aircraft rental operation shall provide, at a minimum:

(a) *Qualifications.*

(1) Instruction for private, commercial, and instrument ratings and a continuing ability to meet FAA requirements for the flight training proposed.

(2) Adequate facilities for storing, parking, servicing, and repairing all its aircraft or satisfactory arrangements with other operators on the Airport licensed or otherwise permitted by the City to provide such services.

(b) *Personnel.*

(1) At least one full-time (eight hours per day, six days per week) properly certificated flight instructor for the types and models of aircraft in which instruction is given.

(2) A properly certificated ground school instructor capable of providing ground school instruction sufficient to enable students to pass the FAA written examination for private, commercial, and instrument ratings.

(3) There shall be available, at least during eight hours of the working day, a properly certificated pilot capable of checking out rental aircraft.

(c) *Lot size.* Sufficient square feet of ground area shall be leased from the Airport, as approved by the Airport Manager.

(d) *Building.* Sufficient for suitable office space, classroom, ground training space, lounge, restrooms, and public telephone.

(e) *Hours of operation.* In addition to specifications for personnel set forth in subsection (b) of this section, the office shall be open for business eight hours per day, six days per week during normal Airport hours appropriate to season.

(f) *Equipment and parts.*

(1) At least one dual equipped single-engine aircraft properly equipped and maintained for flight instruction and such additional types of aircraft as may be required to give flight instruction of the kind advertised.

(2) For rental, at least one airworthy aircraft suitably maintained and certificated, which may be used to meet the requirement ~~paragraph~~ subsection (f)(1) of this ~~sub~~section.

(3) Any aircraft utilized to meet the requirements of subsection (f)(1) and/or ~~subsection~~ (2) of this section which is available to the operator on a lease-back agreement must be on an exclusive-use agreement.

(Prior Code, § 9.200; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.205. Aviation fuel and petroleum products sales.

A commercial aviation fuel and petroleum products sales operator shall provide, at a minimum:

(a) *Qualifications.* A major national or regional petroleum company franchise.

(b) *Personnel.* One properly trained service person qualified as follows:

(1) Valid commercial driver's license.

(2) Competent in all fueling and safety equipment operation and aircraft fueling procedures, as required by the FAA regulations and the Uniform Fire Code.

(3) Capable and trained to provide all required ancillary services.

(4) Supplemented as level of business activity required by additional equally-qualified personnel.

(c) *Lot size.* Sufficient square feet of ground area, including all building and storage areas, shall be leased from the Airport, as approved by the Airport Manager.

(d) *Building.* Sufficient for suitable office space, restrooms, public telephone, customer lounge, and proper storage for required petroleum products (other than oil and fuel) and equipment required for other services.

(e) *Hours of operation.* Minimum personnel as specified in subsection (b) of this section shall be available to provide aircraft fuel and required services from 7:00 a.m. to sunset daily on a seven day a week basis, or longer hours if business warrants same. Operators will be required to furnish on-call services after sunset on a rotating scheduled basis as developed by the Airport Manager and agreed to among all authorized operators.

(f) *Storage.* Provide suitable, adequate, and proper storage of fuel and oil which meets all applicable fire codes; and federal, state, and local laws, statutes, ordinances, rules, and regulations pertaining to fire safety; with a minimum capacity of 5,000 gallons for each grade of fuel.

(g) *Equipment and parts.* Provide suitable and adequate mobile fuel dispensing equipment meeting all NFPA criteria to service aircraft of at least 500-gallon total capacity.

(1) Operator must dispense all required grades of fuel from appropriately marked equipment having separate meters and filters for each grade of fuel.

(2) Each mobile fuel dispensing facility shall be equipped with fire extinguishers that comply with the FAA regulations and the Uniform Fire Code.

(3) Proper equipment for repairing and inflating aircraft tires; servicing struts; changing engine oil; washing aircraft, aircraft windows, and aircraft windshields; and recharging or energizing discharged aircraft batteries and starters.

(h) *Other.* Personnel shall also be able to provide:

(1) The directing of transient aircraft to a transient tie-down upon request of owner and the registering of aircraft with the Airport Manager, as necessary for collection of applicable fees and charges.

(2) Upon request of transient pilots and crews, information as to available maintenance service,

automotive transportation, and other helpful information an aircraft owner or pilot may need to have the aircraft properly attended and to assist in finding transportation, housing, and food if desired.

(3) All services utilizing equipment listed in subsection (g) of this section.

(Prior Code, § 9.205; Ord. No. 62-79; Ord. No. 35-95; Ord. No. 10-12)

Sec. 9.210. Air taxi and charter services.

A commercial air taxi and charter services operation shall provide, at a minimum:

(a) *Qualifications.* Hold a current FAR Part 135 Air Taxi-Commercial Operator Certificate with ratings appropriate to the services to be provided.

(b) *Personnel.* A person representing the air taxi and charter service shall be located at the Airport and available to respond to customer inquiries directly and by telephone, during the hours of operation as delineated in subsection (e) of this section, and this operation shall have a suitable, properly certificated and qualified operating pilot or crew.

(c) *Lot size.* Sufficient square feet of ground area to be leased from the Airport as approved by the Airport Manager.

(d) *Building.* Sufficient for suitable office space, restrooms, public telephone, customer lounge, and adequate table, desk, or counter for checking in passengers, handling ticketing or fare collection, and handling luggage.

(e) *Hours of operation.* Minimum personnel as specified in subsection (b) of this section on duty a minimum of eight hours per day, five days per week during normal Airport hours appropriate to season. The on-Airport office shall be open for business at all times during the same hours.

(f) *Equipment.* One aircraft meeting all requirements of the air taxi-commercial operator certificate held must be owned or available under exclusive lease agreement and must meet all the relevant requirements of Part 135 of the Federal Aviation Regulations.

(Prior Code, § 9.210; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.215. Commuter air carrier service.

A commercial operation in this category shall be required to provide, ~~as~~ at a minimum:

(a) *Qualifications.*

(1) Provide satisfactory evidence of reliability and responsibility, including a current FAA operating permit and current Oregon Public Utilities Commission Permit.

(2) Publish and fly scheduled operations at published rates.

(3) Establish, man, and operate an adequate terminal facility, i.e., ticket counters manned in such a manner as to provide proper service before and after each scheduled flight.

(b) *Personnel.*

(1) Flight crews and ground personnel with appropriate and current FAA certification as required for class of operations.

(2) Properly trained passenger service and counter personnel to provide minimum hours of service.

(c) *Hours of operation.*

(1) Reservations services, either by phone or at ticket counter, not less than one hour prior to first scheduled flight of the day and continuously thereafter until one hour after the last scheduled flight of the day.

(2) Counter personnel available to the public not less than one hour prior to each scheduled flight of the day continuing until one-half hour after each scheduled flight of the day.

(d) *Other.*

(1) The applicant shall not begin flight operations at Salem Municipal Airport until an Airport Use Agreement is executed by both parties and the performance bond and insurance certificate at the proper value has been received by the Airport Manager.

(2) Operator shall furnish operational reports on a monthly basis to the Airport Manager.

(Prior Code, § 9.215; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.220. Specialty services.

(a) *General.* Commercial operations in this category shall include, but not necessarily be limited to:

(1) Agricultural chemical applicators.

(2) Aerial survey, mapping, and photography.

(3) Aerial firefighting and pipeline/power line patrol.

(4) Aerial advertising.

(5) Aeronautical research.

(6) Aircraft painting.

(7) Aircraft storage.

(8) Aviation mechanic schools.

(9) Avionics repair and maintenance.

(10) Helicopter services.

(11) Propeller repair and maintenance.

(b) *Qualifications.*

(1) Provide satisfactory evidence of technical competency to provide proposed services.

(2) Hold all necessary licenses or permits and meet all requirements of any governmental agency having jurisdiction over the proposed services.

(c) *Other.*

(1) Because of the anticipated limited nature and proposed location of these activities, the City shall review each application for commercial operations in these categories and establish specific requirements based on the applicant's proposal.

(2) Operators with these categories shall be encouraged to be tenants or sublessees of existing operators; however, leases for separate facilities will be considered if desired by the operator.

(3) The review of applications for these services shall be in accordance with the provisions of SRC 9.270 to 9.285.

(Prior Code, § 9.220; Ord. No. 62-79; Ord. No. 10-12)

NONCOMMERCIAL OPERATIONS

Sec. 9.225. In general.

The categories set forth in SRC 9.230 and 9.235 have been designed to allow for bona fide noncommercial activities that take place on the Airport. The standards in this category are also designed to preclude any advantage being taken of the noncommercial status of the operators or lessees by requiring that commercial operations be conducted in accordance with applicable standards.

(Prior Code, § 9.225; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.230. Flying clubs.

A noncommercial operation in this category shall be required to comply with the following:

(a) *Qualifications.*

(1) A flying club must be a nonprofit corporation or organization as evidenced by articles of incorporation or appropriate legal documents. It may own or lease aircraft. Aircraft cannot be leased from club members or anyone who has a voice or interest in the operation of the flying club; provided, however, one aircraft may be leased at any one time from a club member if said member is not at the same time leasing aircraft to other clubs. A verification of nonprofit status shall be submitted to the City annually by forwarding a Federal Internal Revenue Service Form 990 (if required according to IRS regulations) or a properly notarized statement signed by a club officer affirming the club's continuing nonprofit status.

(2) The club's aircraft will not be used by other than bona fide members for rental and by no one for commercial operations as defined by these standards.

(3) A licensee under this section may be exempt from SRC 9.190 and 9.200 of the standards in so far as they pertain to flight instruction and maintenance, provided such services are rendered by a properly certificated individual who:

(A) Is a bona fide member; and

(B) Does not receive monetary compensation for such services.

(b) *Personnel.* The club will file and keep current with the Airport Manager a complete list of the club's officers, directors, and general membership and shall list its members qualified to perform the services enumerated in SRC 9.230(a)(3) and the investment share held by each member. Additionally, any change to the membership list shall be reported to the Airport Manager within 60 days of the change.

(c) *Equipment and parts.* Except as provided by SRC 9.230(a)(1), all aircraft shall be owned by the nonprofit corporation or owned in common by all members. Such ownership shall be evidenced by a copy of each club aircraft's current FAA certificate registration, which shall be filed with the Airport Manager.

(Prior Code, § 9.230; Ord. No. 62-79; Ord. No. 35-95; Ord. No. 10-12)

Sec. 9.235. Corporate, business, and personal aviation.

A noncommercial operation in this category shall be required to comply with the following:

(a) *Qualifications.*

(1) The activities conducted at the Airport must be of a completely noncommercial nature and related only to the conduct of business off the Airport premises and in no manner competitive with any commercial operator licensed or having a contract with the City to provide aviation services or products on a commercial basis, nor shall any aviation services be offered to the public on any basis.

(2) Maintenance of owned aircraft may be provided by the aircraft owner or the owner's bona fide employee(s), provided that all applicable FAA certifications and standards are adhered to and a building provided which meets all applicable building and fire code provisions and other applicable sections of these standards.

(3) Fueling of owned aircraft may be permitted, provided that:

(A) Approved proper storage facilities are constructed and that such fueling operations are performed by the aircraft owner or the owner's bona fide employee(s); or

(B) In the case of planes specifically modified to accept automotive fuel, the owner pays such licensing fees and adheres to such requirements as are set forth in Airport Rules and Regulations.

(b) *Equipment and parts.*

(1) If fueling facilities are desired, provide suitable, adequate, and proper storage of fuel and oil which meets all applicable fire codes, federal, state, and local laws, statutes, ordinances, rules, and regulations pertaining to fire safety.

(2) Comply with all applicable current fuel flowage fee assessments and fueling procedures as set forth

in the Airport Rules and Regulations.

(Prior Code, § 9.235; Ord. No. 62-79; Ord. No. 42-90; Ord. No. 35-95; Ord. No. 10-12)

Sec. 9.240. Fuel tank installation and operation.

(a) *General.* A noncommercial operator or commercial operator may own, install, and operate fuel tanks as provided in this section. Any fuel tank shall be for the exclusive use of the operator's own aircraft and no fractional or co-op ownership of fuel tanks is allowed.

(b) *Self-fueling license.*

(1) Any noncommercial operator or commercial operator that wishes to conduct self-fueling operations shall first obtain a self-fueling license issued in accordance with this section. A self-fueling license is nontransferable and is in addition to an operators license issued pursuant to SRC 9.270 through 9.290. Self-fueling licenses shall be valid for a period of five years from the date of issuance.

(2) An application for a self-fueling license shall be made on forms provided by the Airport Manager, and shall be accompanied with a license fee, in the amount set by resolution of the ~~City~~ Council.

(3) The Airport Manager shall issue a self-fueling license if the applicant meets the following criteria:

(A) The installation and location of the tank will comply with the requirements of this section and SRC chapter 58.

(B) The applicant's personnel have satisfied all of the training, inspection, safety, and environmental requirements of this section.

(C) The aircraft owner demonstrates proof of financial responsibility through bonding and/or insurance requirements. The aircraft owner shall carry commercial (public liability) insurance in the amount set in Appendix 1 of this chapter or the aircraft owner's current lease, whichever is higher. The commercial (public) liability insurance shall include, at a minimum, premises/operations, products/completed operations, contractual, or hangarkeeper's liability, and shall name the City ~~of Salem~~ as an additional insured and provide a waiver of subrogation in favor of the City ~~of Salem~~.

(4) Every self-fueling license shall be subject to the following conditions:

(A) The Airport Administrator has the authority to inspect fueling equipment to ensure safety, environmental protection, and adequate training.

(B) Self-fueling operations shall be conducted by the licensee's employees only.

(C) Self-fueling operations shall be conducted only on premises the licensee has leased with the City or has subleased from a person having a lease with the City at the Airport or on areas specifically designated by the Airport Manager and designed for fueling.

(D) Self-fueling shall be dispensed only into aircraft owned, leased, or controlled by the licensee.

(E) The licensee shall pay the current applicable fuel flowage fee to the City on all fuel dispensed.

(F) The licensee shall continue to maintain in effect the bonding and/or insurance required by subsection (b)(3)(C) of this section.

(G) Operation, installation, and maintenance of the fueling operation is performed in compliance with the provisions of this section and SRC chapter 58.

(c) *Self-fueling operations.*

(1) Licensee's self-fueling operations shall be conducted in compliance with all applicable federal, state, and local laws and regulations, including, but not limited to:

(A) FAA Advisory Circular 150/5230-4, Aircraft Fuel Storage, Handling, and Dispensing on Airports.

(B) FAA Advisory Circular 00-34A, Aircraft Ground Handling and Servicing.

(C) SRC chapter 58, "Fire Prevention."

(D) National Fire Protection Association NFPA 415 – Standard on Fuel Ramp Drainage.

(E) Federal Environmental Protection Administration regulation CFR 40, part 280 involving fuel systems.

(F) Oregon Department of Environmental Quality (DEQ) Guidelines.

(2) Any person dispensing fuel at the Airport shall be trained and certified by the FAA through the FAA examination process on fuel handling and safety. Certifications must be kept current. A copy of certification shall be kept on file with the licensee and shall be provided for inspection by the Airport Manager upon demand. Certified personnel shall attend a refresher course on fuel handling and safety every three years. A copy of refresher course certificates shall be kept on file with the licensee and shall be provided for inspection by the Airport Manager upon demand.

(d) *Fuel tank standards.*

(1) Licensee's fuel tank installation shall be made in compliance with all applicable federal, state, and local laws and regulations, including, but not limited to:

(A) FAA Advisory Circular 150/5230-4, Aircraft Fuel Storage, Handling, and Dispensing on Airports.

(B) FAA Advisory Circular 00-34A, Aircraft Ground Handling and Servicing.

(C) SRC chapter 58, "Fire Prevention."

(D) National Fire Protection Association NFPA 415 – Standard on Fuel Ramp Drainage.

(E) Federal Environmental Protection Administration regulation CFR 40, part 280 involving fuel systems.

(F) Oregon Department of Environmental Quality (DEQ) Guidelines.

(2) In addition to the other requirements of this subsection (d), licensee's fuel tank installation shall:

(A) Satisfy the requirements of the American Petroleum Institute Recommended Practice 1540.

(B) Have a spill protection control containment plan approved by the Airport Manager.

(3) In addition to the requirements of this subsection (d), licensee's fuel tanks shall be located and installed as follows:

(A) An above ground storage tank (AST) may be located adjacent to the licensee's hangar if the tank meets the following conditions:

(i) The AST must be installed a minimum of 50 feet from hangars or taxiways.

(ii) The AST must be blast shield protected.

(iii) The AST must conform with Underwriter's Laboratory 2085 standards.

(iv) The AST must contain an electronic monitor system for leaks, with 24-hour monitoring.

(v) The AST must have a transfer containment system.

(B) A below ground storage tank (UST) may be located under the licensee's hangar apron if the tank meets the following conditions:

(i) The UST must conform to Underwriter's Laboratory 58 standards for steel tanks or Underwriter's Laboratory 1316 standards for fiberglass tanks.

(ii) The UST must be contained in an underground vault that is accessible for inspection.

(iii) All underground line joints for the UST must be contained in an accessible vault.

(iv) Both the UST and vault must contain an electronic monitor system for leaks.

(v) Fueling apparatus must be located a minimum of 50 feet from taxiways.

(vi) The UST must have a transfer containment system.

(e) *Suspension and revocation.*

(1) If the Airport Administrator finds that a licensee is failing to comply with the term of a self-fueling

license or this section, the Airport Manager shall send a notice of noncompliance to the licensee identifying the deficiencies, and the corrective action which would be necessary. Suspension shall be effective upon delivery of the notice to the licensee, unless a later time is specified in the notice of noncompliance. Upon receipt of a notice of noncompliance, the licensee shall immediately cease self-fueling operations, unless a later time is specified in the notice of noncompliance, and, within 15 days of the notice, notify the Airport Manager of the date the corrective action will be completed, which shall be a date not more than 30 days from the date the notice of noncompliance was issued. If corrective action is not completed within the 30-day period, the self-fueling license shall be suspended.

(2) A licensee who has had a license suspended pursuant to this subsection (e) may request reinstatement by filing a request with the Airport Manager, in writing, not later than 60 days from the date the notice of noncompliance was provided by the Airport Manager. The request shall include documentation demonstrating that the licensee has corrected all deficiencies, and shall identify adequate measures that the licensee has implemented to prevent future deficiencies. If the Airport Manager finds that the licensee's request demonstrates that all deficiencies have been corrected, and that adequate measures to prevent future noncompliance have been initiated, the Airport Manager shall issue a notice of reinstatement. A self-fueling license shall be revoked if the licensee fails to timely request reinstatement as provided in this ~~paragraph~~ subsection, fails to demonstrate that the licensee has corrected all deficiencies, or fails to identify adequate measures to prevent future deficiencies.

(f) *Appeals.* Appeals of final decisions by the Airport Manager denying, suspending, or revoking a license are contested cases, as defined in SRC 20J.020. The licensee may appeal the final decision by filing a notice of appeal, according to the procedures set forth in SRC 20J.220. The appeal shall held according to procedures set forth in SRC chapter 20J.

(Prior Code, § 9.240; Ord. No. 47-09)

Secs. 9.250, 9.260. Reserved.

APPLICATION PROCEDURE

Sec. 9.270. Submission.

An applicant desiring a lease or license to engage in any commercial or noncommercial operation at the Airport shall submit a written application to the City two months prior to the desired occupancy date. The applicant shall submit all information and material necessary or requested by the City to establish to the satisfaction of the City that the applicant will qualify and will comply with these standards. The application shall be signed and submitted by a party owning an interest in the business, or partner of a partnership, or a director or an officer of a corporation or organization.

(Prior Code, § 9.270; Ord. No. 62-79; Ord. No. 35-95)

Sec. 9.275. Support documents to be submitted on request.

If requested by the City, the applicant shall submit the following supporting documents to the City, together with such other documents and information as may be requested by the Airport Manager:

(a) *Financial statement.* A current financial statement certified by a certified public accountant.

(b) *Assets.* A written listing of the assets owned or being purchased which will be used in the business on the Airport.

(c) *Credit report.* A current credit report covering all areas in which the applicant has done business during the past five years.

(d) *Authorization for release of information.* A written authorization for the FAA and all aviation or aeronautical commissions, administrators, or departments of all states in which the applicant has engaged in aviation business to supply to the City all information in their files relating to the applicant or his or her operation. The applicant shall execute such forms, releases, and discharges as may be requested by any of these agencies.

(Prior Code, § 9.275; Ord. No. 62-79; Ord. No. 35-95; Ord. No. 10-12)

Sec. 9.280. Certain standards to be met.

Every applicant for a lease, license, or concession at the Airport shall meet the following standards, if applicable:

(a) The applicant has a history of management and personnel ability in conducting the same or similar or comparable type of service or activity in a good and workmanlike manner.

(b) The applicant has the financial responsibility and ability to provide facilities and services proposed.

(c) The applicant has or can reasonably secure necessary certificates from the FAA or other authority where the same are required for the activity proposed.

(d) The applicant is capable of meeting all policy requirements and standards as set forth in this chapter, the Airport rules and regulations and the lease.

(Prior Code, § 9.280; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.285. Evaluation of application.

In reviewing an application, the City will evaluate the data submitted by the applicant on the basis of compliance with the lease policy and standards, as well as the items listed below. Within 60 days allowed for review, the City will respond in writing indicating approval of the application, disapproval of the application, or a conditional approval of all or part of the application. In the latter cases, the City will identify those areas which resulted in the disapproval or conditional approval in order that the applicant may correct the items and revise the application for a resubmission, if desired.

(a) *Not qualified.* The applicant for any reason cannot meet the lease policy qualifications and standards as established herein.

(b) *Safety hazard.* The applicant's proposed operations or construction will create a safety hazard on the Airport.

(c) *City expenditure.* The granting of the application will require the expenditure of City funds, or the supplying of City labor or materials in connection with the proposed operations which will result in a financial loss to the City when compared to the proposed financial gain from the operations.

(d) *Availability.* There is no appropriate, adequate, or available space or building on the Airport to accommodate the entire activity of the applicant at the time of the application.

(e) *Noncompliance with master plan.* The proposed operation or Airport development or construction does not comply with the master plan of the Airport.

(f) *Congestion.* The development or use of the area requested by applicant will result in depriving existing operators of portions of the area in which they are operating, or will result in a congestion of aircraft or buildings, or will result in unduly interfering with the operations of any present operator on the Airport through problems in connection with aircraft traffic or service, or preventing free access to another operator's area.

(g) *Misrepresentation.* Any party applying or with interest in the business has supplied the City with any false information or has misrepresented any material fact in the party's application or in supporting documents or has failed to make full disclosure on the application or in supporting documents.

(h) *History of violations.* Any party applying or with interest in the business has defaulted in the performance of any lease or other agreement with the City.

(i) *Poor credit report.* Any party directly applying or with interest in the proposed business has a credit report which contains derogatory information and who does not appear to be a person of satisfactory business responsibility and reputation.

(j) *Lack of finances.* The applicant does not appear to have, or have access to, the finances necessary to conduct the proposed operation for a minimum of six months.

(k) *Undesirable reputation.* Any party applying or with interest in the business has been convicted of any crime or violation of any ordinance of such nature that it indicates to the City that the applicant would

not be a desirable operator on the Airport.

(l) *Ecological considerations.* The protection of the health, welfare, or safety of the inhabitants of the City ~~of Salem~~ requires such denial.

(Prior Code, § 9.285; Ord. No. 62-79; Ord. No. 35-95; Ord. No. 10-12)

Sec. 9.290. Suspension or revocation of lease, license, or concession.

The City may suspend or revoke any lease, license, or concession agreement covering a commercial or noncommercial operation for any cause or reason provided by this chapter; the Airport rules and regulations; the lease, license, or concession agreement itself; or upon the happening of one or more of the following:

(a) Filing a petition of voluntary or involuntary bankruptcy with respect to the operator.

(b) The making by the operator of any general assignment for the benefit of creditors.

(c) The abandonment or discontinuance of any operation at the Airport by the commercial operator.

(d) The failure by the lessee, licensee, or concessionaire to conduct any service, operation, or activity which is to be provided under the terms of the lease, license, or concession agreement. If this condition exists for a period of ten days without prior written consent of the City, it will constitute an abandonment of the land or facilities, and the lease, license, or concession agreement shall become null and void.

(e) The failure of the lessee, licensee, or concessionaire, or that person's employee or agent, to remedy any default or breach or violation of this chapter, the Airport Rules and Regulations, or the lease, license, or concession agreement within 30 days after notice from the Airport Manager.

(f) Failure to maintain current licenses required for the lessee's, licensee's, or concessionaire's operation.

(g) Intentionally supplying the City with false or misleading information or misrepresenting any material fact on the application or documents, or in statements to or before the City; or intentional failure to make full disclosure on financial statements, or other required documents.

(Prior Code, § 9.290; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.295. Violation.

(a) It shall be unlawful for any person to violate any provision of this chapter, or the Airport Rules and Regulations, or to have or maintain an aircraft at the Airport or to make use of the Airport, in violation of this chapter, the Airport Rules and Regulations, any other City ordinances, or Federal Aviation Regulation.

(b) A violation of this section is an infraction.

(Prior Code, § 9.295; Ord. No. 62-79; Ord. No. 10-12)

Sec. 9.300. Airport Advisory Commission.

An Airport Advisory Commission is hereby created. Said Commission shall have seven members to be appointed by the Mayor, who shall serve at his or her pleasure. The Commission shall elect a Chairperson and Vice-Chairperson annually, at the first Commission meeting held in a new calendar year, and they shall serve for the remainder of that calendar year. At least two members of the Commission shall be active pilots holding a current valid pilot’s license with a rating of private pilot or higher. At least one member shall be a resident of the ward in which the Airport is located. One member shall be an individual who is appointed by the Mayor as a representative of the Army Aviation Support Facility after considering the recommendation of the Adjutant General. The Commission shall not receive any compensation for their services. Commission members shall serve terms of three years and under no circumstances will be eligible to serve more than two consecutive terms or six years total. Initially, two members shall be appointed for terms of one year, two members for a term of two years, and one member for a term of three years, and for terms of three years thereafter on terminations of such initial appointments.

(Prior Code, § 9.300; Ord. No. 101-67; Ord. No. 58-88; Ord. No. 10-93; Ord. No. 10-94; Ord. No. 35-95; Ord. No. 10-12)

Sec. 9.305. Duties of the Airport Advisory Commission.

(a) The Airport Advisory Commission shall serve in an advisory capacity only, shall have no executive or administrative powers or authority, and this chapter shall not be construed as depriving the Council or City Manager

of any power they may have under the laws of Oregon or the City Charter. The Commission shall advise the Council, the City Manager, the Salem Planning Commission, the Director ~~of Community Development~~, and the Airport Manager, and such other public bodies, groups or officials as may be interested in aviation or aviation development, improvement, and use of the Salem Municipal Airport, or any other airport under the jurisdiction of the City ~~of Salem~~, regarding aviation and airports.

(b) Said Airport Advisory Commission shall advise all above-listed officers of the City in regards to comprehensive and orderly programs for the development and achievement of Airport improvements and betterments and the enhancement of commercial, business, and general aviation within the Salem community.

(c) In case of vacancies on the Commission, the Mayor shall appoint a successor to fill out the unexpired term.

(d) The Airport Manager shall serve as secretary to the Airport Advisory Commission.

(Prior Code, § 9.305; Ord. No. 101-67; Ord. No. 93-82; Ord. No. 58-88; Ord. No. 10-93; Ord. No. 51-96; Ord. No. 10-12)

APPENDIX I

CITY OF SALEM - MINIMUM INSURANCE AND BONDING COVERAGE REQUIREMENTS

TYPE OF INSURANCE AND BONDING[1]		Aircraft Repair/ Maintenance & Aircraft Sales (New & Used)[2]	Instruction and Aircraft Rental[3]	Aviation Fuel/ Petroleum Product Sales[2]	Air Taxi & Charter Service[3]	Commuter Air Carrier Service	Flying Clubs[3]	Corporate Business, and Personal Aviation	Specialty Sales and Service
AIRCRAFT LIABILITY									
Bodily Injury									
Each Person	$200,000	X	X	None	X	$200,000	X	None	None
Each Occurrence	$500,000	X	X	None	X	$1,000,000	X	None	None
Property Damage									
Each Accident	$500,000	X	X	None	X	$500,000	X	None	None
Passenger Liability									
Each Passenger	$200,000	X	X	None	X	$200,000/Seat	X	None	None
HANGARKEEPER'S LIABILITY									
Each Occurrence (as Indicated)		$200,000	None	$200,000	None	None	None	None	$100,000
PRODUCTS LIABILITY									
Bodily Injury									
Each Person	$200,000	X	None	X	None	None	None	None	X
Each Occurrence	$500,000	X	None	X	None	None	None	None	X
Property Damage									
Each Accident	$200,000	X	None	X	None	None	None	None	X

COMPREHENSIVE GENERAL LIABILITY									
Bodily Injury									
Each Person	$200,000	X	X	X	X	X	X	X	X
Each Occurrence	$500,000	X	X	X	X	X	X	X	X
Property Damage									
Each Accident	$200,000	X	X	X	X	X	X	X	X
BONDING									
Construction (10% of Cost)		X	X	X	X	X	None	X	X
Lease (as indicated)		6 months	6 months	6 months	6 months	6 months	6 months	2 months	6 months
OR									
Performance (6 months estimated revenue)		X	X	X	X	X	X	None	X

[1] "X" Indicates Minimum Insurance or Bonding Required or as Specified.

[2] If required repair and maintenance operators do not engage in flying aircraft in connection with this activity, they are not required to carry minimum insurance specified for aircraft liability.

[3] Operators using "leaseback" aircraft for these activities must carry Aircraft Liability and Hangar keeper's Insurance for such aircraft.

(Prior Code, App. 1; Ord. No. 48-90)

~~Aircraft Repair/ Corporate~~

~~Maintenance & Aviation Fuel/ Commuter Business, and~~

~~Aircraft Sales Instruction and Petroleum Air Taxi & Air Carrier Flying Personal Specialty Sales~~

~~(New & Used)[2] Aircraft Rental[3] Product Sales[2] Charter Service[3] Service Clubs[3] Aviation and Service~~

~~TYPE OF INSURANCE~~

~~AND BONDING[1]~~

~~AIRCRAFT LIABILITY~~

~~Bodily Injury~~

~~Each Person $200,000 X X None X $ 200,000 X None None~~

~~Each Occurrence $500,000 X X None X $1,000,000 X None None~~

~~Property Damage~~

~~Each Accident $500,000 X X None X $ 500,000 X None None~~

~~Passenger Liability~~

~~Each Passenger $200,000 X X None X $200,000/Seat X None None~~

~~HANGARKEEPER'S LIABILITY~~

~~Each Occurrence (as Indicated) $200,000 None $200,000 None None None None $100,000~~

~~PRODUCTS LIABILITY~~

~~Bodily Injury~~

~~Each Person $200,000 X None X None None None None X~~

~~Each Occurrance $500,000 X None X None None None None X~~

~~Property Damage~~

~~Each Accident $200,000 X None X None None None None X~~

~~COMPREHENSIVE GENERAL~~

~~LIABILITY~~

~~Bodily Injury~~

~~Each Person $200,000 X X X X X X X X~~

~~Each Occurrance $500,000 X X X X X X X X~~

~~Property Damage~~

~~Each Accident $200,000 X X X X X X` X X~~

~~BONDING~~

~~Construction (10% of Cost) X X X X X None X X~~

~~Lease (as indicated) 6 Months 6 Months 6 Months 6 Months 6 Months 6 Months 2 Months 6 Months~~

~~OR~~

~~Performance (6 months~~

~~estimated revenue) X X X X X X None X~~

[1] "X" Indicates Minimum Insurance or Bonding Required or as Specified.

[2] If required repair and maintenance operators do not engage in flying aircraft in connection with this activity, they are not required to carry minimum insurance specified for aircraft - liability.

[3] Operators using "leaseback" aircraft for these activities must carry Aircraft Liability and Hangarkeeper's Insurance for such aircraft. (Ord 48-90) (Prior Code, App. 1; Ord. No. 48-90)

CHAPTER 10. RESERVED

CHAPTER 11. ELECTIONS*

***Charter reference—**Elections, chapter VII.

Constitution law reference—Elections, art. II.

State law reference—Elections, ORS 246.012 et seq.

Sec. 11.005. Intent and purpose.

It is the intent and purpose of this chapter to exercise to the fullest extent possible all available power and authority granted to municipalities by the Oregon Constitution for holding and conducting elections, and to provide a complete procedure for nomination and election of officers and for the voters to exercise initiative and referendum power.

(Prior Code, § 11.005; Ord. No. 201-79; Ord. No. 41-82)

State constitutional law reference—City elections held same time as state and county, art. II, § 14a.

Sec. 11.010. Elections when held.

(a) Nominating elections for the nomination of candidates for the elective offices of the City and regular or general elections for the election of such officers shall be held biennially at the same time that the primary nominating and general biennial election for state and county officers are held; provided that whenever a vacancy occurs in the office of Mayor or Councilor and at that time there is not more than one year to the next primary election, the Council shall fill the vacancy in the manner provided by Council rule.

(b) Initiative and referendum measures shall be submitted to the voters at such dates as provided in SRC 11.276. Measures proposed by the Council shall be submitted to the voters at such dates as may be determined and declared by the Council.

(Prior Code, § 11.010; Ord. No. 3842; Ord. No. 201-79; Ord. No. 41-82; Ord. No. 92-89; Ord. No. 51-96)

State constitutional law reference—City elections held same time as state and county, art. II, § 14a.

State law reference—Time of elections for city offices, ORS 254.035.

Sec. 11.020. Nominating petitions; generally.

(a) The names of all candidates for elective city officers to be voted upon at the primary nominating election shall be presented for nomination by individual nominating petitions. No petition shall present more than one candidate. Before or at the time of beginning to circulate any such petition, the candidate shall file with the City Recorder a copy of his or her petition for nomination, signed by the candidate. Such petition shall set forth the name of the candidate, place of residence, including street address, and, in the case of a candidate for Councilor, shall also set forth the number or name of the ward within which he or she resides and for which the candidate seeks to represent in the Council. Such petition shall make no reference to any party ballot or to the party affiliation of the candidate. Such petition shall be in forms as provided by the City Recorder.

(b) Every such petition shall be signed by the candidate in the City Recorder’s presence, prior to collection of signatures.

(c) Before such petition is offered for filing, the candidate shall have the signatures of each sheet thereof certified as to their genuineness by the County Clerk and such clerk's certificate of authentication shall be attached to and made a part of the petition. Only such signatures as are thus certified to be genuine signatures of registered voters shall be considered and counted by the City Recorder. It shall be unlawful for an elector to knowingly sign more than once the petition of any candidate, or to sign to any such petition any name other than his or her own. An elector may sign the petition of more than one candidate.

(Prior Code, § 11.020; Ord. No. 3842; Ord. No. 201-79; Ord. No. 129-87; Ord. No. 30-97)

Charter reference—Nomination for nonpartisan office, § 49.

Sec. 11.030. Petitions; number of signatures required.

Nominating petitions for candidates for offices elective from the City at large shall be signed by not less than 200 qualified electors residing within the City and shall include electors residing in at least one-fifth of the voting precincts in the City. Nominating petitions of candidates for the office of Councilor shall be signed by not less than 50 qualified electors residing within the ward in which the candidate resides and which the candidate seeks to represent in the Council.

(Prior Code, § 11.030; Ord. No. 3842; Ord. No. 51-96)

Sec. 11.040. Petitions, when to be filed.

All nominating petitions, together with such attached certificates of the County Clerk as are required by SRC 11.020, shall be filed with the City Recorder not less than 70 days nor sooner than 250 days before the day of the primary election.

(Prior Code, § 11.040; Ord. No. 15-68; Ord. No. 129-87)

Sec. 11.050. Certification of candidates in primary election.

Not less than 61 days before the day fixed by law for the primary nominating election, the City Recorder shall arrange the names and other information concerning all the candidates named in valid nominating petitions which have been filed and the City Recorder shall:

(a) Prepare certifications of such information under the seal of the City and file the same with the appropriate County Clerk and in the City Recorder's Office; and

(b) Post a duplicate thereof in a conspicuous place in the City Recorder's Office.

(Prior Code, § 11.050; Ord. No. 15-68; Ord. No. 201-79)

State law reference—Statement of candidates filed on or before 61st day before election, ORS 254.095.

Secs. 11.060—11.090. Reserved.

Sec. 11.095. Certificate of nomination.

The two candidates receiving the highest number of votes for each office shall be entitled to a certificate of nomination as the nominees for such office, and their names shall appear on the ballot at the general election; provided, however, that whenever any candidate shall receive a majority of all votes cast for the office for which he or she is a candidate, that person shall be the only nominee for such office and only that person shall receive such certificate of nomination and his or her name only shall be printed on the general election ballot. The City Recorder shall file with the Council a report of the canvass of the election as may be submitted by the respective County Clerks.

(Prior Code, § 11.095; Ord. No. 201-79)

State law reference—Certificate of nomination, ORS 254.565.

Sec. 11.100. Procedure in case of tie votes.

Whenever at a primary nominating election two or more candidates receive an equal number of votes and, on account thereof, it is impossible to determine the nominees, the determination shall be made by lot as between the candidates having received the same number of votes. Whenever at a general election two or more candidates have an equal and the highest number of votes, the result shall be determined by lot. The City Recorder shall notify the candidates receiving the same number of votes to attend at his or her office at a time appointed by him or her, and at such time the City Recorder shall publicly decide by lot which candidate of those having received an equal number of votes shall be declared nominated or elected and the person thus declared nominated or elected shall be entitled to receive a certificate of nomination or certificate of election, as the case may be.

(Prior Code, § 11.100; Ord. No. 4615; Ord. No. 92-89)

State law reference—Tie vote decided by lot, ORS 254.575(1).

Sec. 11.110. Withdrawal of candidates.

Any person who has been nominated to an elective office, as provided in this chapter, may cause his or her name to be withdrawn from nomination not later than the 69th day prior to the general election, by a written statement declining the nomination, stating the reason, which such person shall sign and file with the City Recorder.

(Prior Code, § 11.110; Ord. No. 3842; Ord. No. 92-89)

Constitutional law reference—Death of candidate before election, art. II, § 24.

Sec. 11.120. Nominations after primary.

In case any candidate nominated at the primary nominating election shall die, withdraw, or for any reason be ineligible, or if there shall occur a vacancy by death, resignation, or otherwise in any elective officer, on or after the day set by law for holding primary nominating elections, or if such vacancy occurs before such nominating election, but within such time that a candidate for such vacancy could not be nominated at such election, candidates for such elective office shall be nominated by individual nominating petitions in the same manner as provided for the presentation of candidates for nomination at the primary nominating election, and the same form of petition, as far as applicable, may be used; provided that no slogan or declaration of principles shall appear on the ballot. No elector shall sign more than one petition for any office when a nomination is made pursuant to this section. The name of any candidate so nominated shall be printed on the official ballot in the same manner as the names of candidates nominated at the primary nominating election. Completed nominating petitions filed pursuant to this section shall be filed with the City Recorder not more than 100 days and not less than 70 days before the day of the general election.

(Prior Code, § 11.120; Ord. No. 3842)

Constitutional law reference—Death of candidate before election, art. II, § 24.

Sec. 11.130. Roster of candidates for general elections.

After the primary nominating election and before the general election, within the time fixed by law, the City Recorder shall arrange the names and other information concerning all the candidates contained in the certificates of nomination which have been filed according to the provisions of this chapter, and the City Recorder shall forthwith certify the same and file the same in the City Recorder's Office. The City Recorder shall also post a duplicate thereof in a conspicuous place in said office and keep the same posted until after the general election has taken place.

(Prior Code, § 11.130; Ord. No. 201-79; Ord. No. 30-97)

Sec. 11.140. Procedures for primary and general elections.

At the primary and general elections, the election boards for state and county elections shall be the election boards for the city elections, and as far as practicable the ballots used for state and county elections shall be arranged to include the names of city officers and measures to be voted upon at the City election. Except as in this chapter otherwise provided, the laws of the State relating to primary nominating elections and general elections shall govern the nomination and election of elective city officers.

(Prior Code, § 11.140; Ord. No. 15-68; Ord. No. 201-79)

Sec. 11.145. Certificate of election.

Upon the counting and canvassing of votes cast at the general election, the candidate receiving the highest number of votes for a particular office shall be entitled to a certificate of election for said office.

(Prior Code, § 11.145; Ord. No. 201-79)

Secs. 11.150—11.230. Reserved.

WARD BOUNDARIES

Sec. 11.231. Adoption of ward boundary map.

The ward boundaries for the eight wards of the City ~~of Salem~~ are hereby declared to be as shown on that certain map entitled "City of Salem Council Wards," dated November 1, 2011, attached to Ordinance Bill No. 34-11 as "Exhibit 1," and by this reference, adopted and made part of this section as if fully reproduced herein.

(Prior Code, § 11.231; Ord. No. 68-2001; Ord. No. 34-11)

Sec. 11.232. Assignments to Ward 1 upon annexation.

In the event property is annexed to the City ~~of Salem~~ in the west ~~Salem, that~~ portion of the City in the area northerly of Cameo Drive NW, easterly of the centerline of Wallace Road NW, westerly of the centerline of the Willamette River and southerly of the easterly extension of the northern line of Tulip Farm Homes, a duly recorded subdivision in Polk County, to the urban growth boundary (UGB) line, and in that area southwesterly of the centerline extended of Rosewood Drive NW, southerly of the Salem-Dallas Highway, and northerly and westerly of the centerline of the Willamette River, electors residing within the annexed area shall be assigned to Ward 1.

(Prior Code, § 11.232; Ord. No. 68-2001; Ord. No. 1-12)

Sec. 11.233. Assignments to Ward 2 upon annexation.

In the event property is annexed to the City ~~of Salem~~ in the southeast portion of the City in the area southerly of State Street and northerly of a line defined as follows: beginning at the intersection of the east line of the Interstate Highway 5 right-of-way and the centerline extended of Munkers Street SE; thence along the centerline extended and centerline of Munkers Street SE to the intersection of the centerline of Connecticut Avenue SE; thence southerly along the centerline of Connecticut Avenue SE to the intersection of the centerline of Macleay Road SE; thence easterly along the centerline of Macleay Road SE to the north line of Macleay Village, a duly recorded subdivision in Marion County; thence northeasterly along the north line of Macleay Village to the north line of Evergreen Village, a duly recorded subdivision in Marion County; thence along the north line of Evergreen Village to the UGB line, and in that area that is northerly of State Street, southerly of Center Street NE and westerly of Lancaster Drive NE, electors residing within the annexed area shall be assigned to Ward 2.

(Prior Code, § 11.233; Ord. No. 68-2001; Ord. No. 1-12)

Sec. 11.234. Assignments to Ward 3 upon annexation.

In the event property is annexed to the City ~~of Salem~~ in the southeast portion of the City in the area southerly of a line defined as follows: beginning at the intersection of the east line of the Interstate Highway 5 right-of-way and the centerline extended of Munkers Street SE; thence along the centerline extended and centerline of Munkers Street SE to the intersection of the centerline of Connecticut Avenue SE; thence southerly along the centerline of Connecticut Avenue SE to the intersection of the centerline of Macleay Road SE; thence easterly along the centerline of Macleay Road SE to the north line of Macleay Village, a duly recorded subdivision in Marion County; thence northeasterly along the north line of Macleay Village to the north line of Evergreen Village, a duly recorded subdivision in Marion County; thence along the north line of Evergreen Village to the UGB line, and northerly and easterly of a line defined as follows: beginning at the intersection of the east line of the Interstate Highway 5 right-of-way and the centerline of Kuebler Boulevard SE and running southerly along the east line of the Interstate Highway 5 right-of-way to the intersection of the centerline extended of Boone Road SE; thence easterly along the centerline extended and the centerline of Boone Road SE to the centerline of the Union Pacific Railroad; thence southeasterly along the centerline of the Union Pacific Railroad to the centerline of Eastland Avenue SE; thence southerly along the centerline of Eastland Avenue SE to the centerline of Markham Street SE; thence southeasterly along the centerline of Markham Street SE extended to the UGB line, electors residing within the annexed area shall be assigned to Ward 3.

(Prior Code, § 11.234; Ord. No. 68-2001; Ord. No. 1-12)

Sec. 11.235. Assignments to Ward 4 upon annexation.

In the event property is annexed to the City ~~of Salem~~ in the southerly portion of the City in the area southerly and westerly of a line defined as follows: beginning at the intersection of the east line of the right-of-way of Interstate Highway 5 and the centerline of Kuebler Boulevard SE and running southerly along the east line of the right-of-way of Interstate Highway 5 to the intersection of the centerline extended of Boone Road SE; thence easterly along the centerline extended and the centerline of Boone Road SE to the centerline of the Union Pacific Railroad; thence southeasterly along the centerline of the Union Pacific Railroad to the centerline of Eastland Avenue SE; thence southerly along the centerline of Eastland Avenue SE to the centerline of Markham Street SE; thence southeasterly along the centerline of Markham Street SE extended to the UGB line; and that area easterly of the centerline of Liberty Road S, electors residing within the annexed area shall be assigned to Ward 4.

(Prior Code, § 11.235; Ord. No. 68-2001; Ord. No. 1-12)

Sec. 11.236. Assignments to Ward 5 upon annexation.

In the event property is annexed to the City ~~of Salem~~ in the northeast portion of the City in the area easterly of the City of Keizer and northerly of Silverton Road NE, electors residing within the annexed area shall be assigned to Ward 5.

(Prior Code, § 11.236; Ord. No. 68-2001)

Sec. 11.237. Assignments to Ward 6 upon annexation.

In the event property is annexed to the City ~~of Salem~~ in the eastern portion of the City in the area southerly of Sunnyview Road NE, northerly of State Street and easterly of Lancaster Drive NE, electors residing within the annexed area shall be assigned to Ward 6. In the event property is annexed to the City ~~of Salem~~ in the northeast portion of the City in the area southerly of Silverton Road NE, northerly of Sunnyview Road NE and easterly of Interstate Highway 5, electors residing within the annexed area shall be assigned to Ward 6.

(Prior Code, § 11.237; Ord. No. 68-2001; Ord. No. 1-12)

Sec. 11.238. Assignments to Ward 7 upon annexation.

In the event property is annexed to the City ~~of Salem~~ in the area westerly of Liberty Road South and southerly of the centerline of the Willamette River, electors residing within the annexed area shall be assigned to Ward 7.

(Prior Code, § 11.238; Ord. No. 68-2001)

Sec. 11.239. Assignments to Ward 8 upon annexation.

In the event property is annexed to the City ~~of Salem~~ in the area northerly and westerly of the centerline of Wallace Road NW and northerly of the Salem-Dallas Highway; and in that area easterly of the centerline of Wallace Road NW, westerly of the centerline of the Willamette River, and northerly of the easterly extension of the northern line of Tulip Farm Homes, a duly recorded subdivision in Polk County to the UGB line, electors residing within the annexed area shall be assigned to Ward 8.

(Prior Code, § 11.239; Ord. No. 68-2001; Ord. No. 1-12)

INITIATIVE AND REFERENDUM*

***Constitutional law reference**—Certain measures to be adopted by greater than majority vote, art. II, § 23; initiative and referendum powers reserved to citizens of cities, art. IV, § 1(2), (3), (5).

State law reference—Initiative and referendum for Charter amendments, ORS 221.210; effective date, ORS 221.310; exercise of power of initiative and referendum, ORS 250.265 et seq.

Sec. 11.240. Resolution submitting measure to voters.

Whenever the Council shall deem it expedient to submit to the legal voters of the City a municipal measure or amendment to the Charter, the Council shall declare the same by resolution prior to the date when the City Recorder is required to furnish a statement of the measure to the County Clerk pursuant to state law.

(Prior Code, § 11.240; Ord. No. 1464; Ord. No. 5280; Ord. No. 5587; Ord. No. 201-79; Ord. No. 133-85; Ord. No. 129-87; Ord. No. 30-97)

Secs. 11.250, 11.260. Reserved.

Sec. 11.262. Form of petition.

(a) The form of petition for any ordinance or amendment to the Charter proposed by the initiative or petition for referendum to the people on any ordinance passed by the Council shall be as provided by the City Recorder.

(b) An initiative or referendum petition shall designate the name and residence address of not more than three persons as chief sponsors, or, if the sponsor is an organization, its name and address and the name and address of each of the principal officers of the organization. Before circulation of an initiative or referendum petition the cover thereof shall contain a ballot title provided by the City Attorney under SRC 11.266. Each sheet of signatures on a referendum petition shall contain the number of the ordinance to be referred, and the date it was passed by the

Council. Each sheet of signatures shall contain the caption of the ballot title in the foot margin and there shall be attached thereto a full and correct copy of the measure to be initiated or referred.

(c) Not more than 20 signatures on each sheet of the initiative or referendum petition shall be counted. Each signature sheet shall be verified on its face by the signed statement of the circulator that the individuals signed the cover or sheet in the presence of the circulator and that the circulator believes each individual is a registered elector and resident of the City.

(d) The forms given in subsections (a) and (c) of this section are not mandatory and, if substantially followed in any petition, it shall be sufficient, provided signatures on a petition sheet shall not be counted unless:

(1) A copy of the measure or ordinance is attached thereto at the time of the signing; and

(2) They are verified as required pursuant to subsection (c) of this section.

(Prior Code, § 11.262; Ord. No. 201-79; Ord. No. 41-82; Ord. No. 48-83; Ord. No. 129-87; Ord. No. 92-89; Ord. No. 51-96; Ord. No. 30-97; Ord. No. 79-98)

~~**Sec . Compliance with constitutional provisions.**~~

Sec. 11.264. Submitting prospective petition.

(a) Before circulating a petition to initiate or refer a City measure, the petitioner shall deposit with the City Recorder a prospective petition on a form as provided by SRC 11.262.

(b) Upon the depositing of a prospective petition, the City Recorder shall:

(1) Check the prospective petition for compliance with this chapter and ORS 250.270, and if it ~~does not, advise the person depositing the petition how to correct it~~ complies, accept the petition, and:

(~~2~~ A) Date and time stamp the prospective petition and specify the form on which the petition shall be printed for circulation;

(~~3~~ B) Send a copy to the City Attorney as prescribed by SRC 11.266; and

(~~4~~ C) Retain a copy thereof in the City Recorder's Office.

(2) If the prospective petition does not comply with this chapter or ORS 250.270, provide a written rejection of the petition to petitioner, and advise the petitioner of the reasons for the rejection and how, if possible, to correct it.

(Prior Code, § 11.264; Ord. No. 201-79; Ord. No. 131-80; Ord. No. 41-82)

Sec. 11.266. Preparation of ballot title; appeal.

(a) When a prospective petition to initiate or refer a City measure is deposited with the City Recorder, the City Recorder immediately shall send ~~two copies~~ a copy of the prospective petition to the City Attorney.

(b) Not later than the fifth business day after receiving a copy of the prospective petition, the City Attorney shall provide a ballot title for the City measure to be initiated or referred and return one copy of the prospective petition and the ballot title to the City Recorder. A copy of the ballot title shall be furnished by the City Recorder to the chief sponsor.

(c) When the Council refers a measure to the voters, the City Recorder shall send ~~two copies~~ a copy to the City Attorney on the date the resolution referring the measure is passed. Not later than the fifth business day after receiving the copies the City Attorney shall provide a ballot title for the measure, and send a copy of it to the Council and the City Recorder.

(d) Any registered voter of the City not satisfied with the title may, within five business days after it is prepared and deposited with the City Recorder, appeal to the municipal judge by a written appeal filed with the City Recorder, requesting a different ballot title for the measure and stating why the title prepared is unsatisfactory. Within eight business days after the ballot title is prepared and deposited with the City Recorder, the municipal judge shall provide the appellant a hearing and either approve the title or prescribe another ballot title for the measure. The title thus adopted shall be the ballot title for the measure.

(Prior Code, § 11.266; Ord. No. 201-79; Ord. No. 41-82; Ord. No. 129-87; Ord. No. 92-89; Ord. No. 68-93; Ord. No. 51-96; Ord. No. 30-97)

Sec. 11.270. Reserved.

Sec. 11.272. Number of signatures required.

An initiative petition for a proposed ordinance or Charter amendment shall be signed by registered voters of the City ~~of Salem~~ in number not less than 15 percent of the votes cast for the office of Mayor at the last preceding election. A referendum petition shall be signed by registered voters in number not less than ten percent of the votes cast for the office of Mayor at the last preceding election.

(Prior Code, § 11.272; Ord. No. 201-79; Ord. No. 41-82)

Sec. 11.274. Filing requirements.

(a) ~~No later than the 100th day after the initiative is filed with the City Recorder, an initiative or referendum petition relating to a city measure shall be deposited with the Marion and Polk County Clerks for signature verification. Within ten days after a duly prepared petition is deposited with the Marion and Polk County Clerks, the Marion and Polk County Clerks shall verify the number and genuineness of the signatures and the voting qualifications of the persons signing the petition by reference to the registration books in the offices of the Marion and Polk County Clerks. If the Marion and Polk County Clerks determine that there is an insufficient number of signatures, the petition shall be returned to the sponsor or person offering the petition for filing.~~ An initiative or referendum petition relating to a City measure must be filed with the City Recorder, to be deposited with the ~~Marion and Polk County Clerks~~County Elections Official no later than the 100th day after the petitioner has been approved to circulate the petition for signature gathering.

(b) No initiative or referendum petition shall be accepted for filing unless:

(1) It contains 100 percent of the required number of signatures;

(2) Prior to its circulation, a copy of a prospective petition was deposited with the City Recorder pursuant to SRC 11.264;

(3) As circulated, it complies with the requirements of SRC 11.262;

(4) ~~The signatures on an initiative petition have been deposited with the City Recorder within 110 days after the date stamped on the prospective petition by the City Recorder under SRC 11.264~~ The signatures on the petition have been filed with the City Recorder within 100 days of the date the petitioner was approved to circulate the petition for signature gathering; and

(5) The petition relates to a measure involving municipal legislation.

(c) In addition to the requirements provided in subsections (a) and (b) of this section, a referendum petition must be filed with the City Recorder not later than the 30th day after passage of the legislation sought to be referred.

(d) A petition which fulfills the requirements of this section shall be so certified by the City Recorder and filed.

(Prior Code, § 11.274; Ord. No. 201-79; Ord. No. 131-80; Ord. No. 41-82; Ord. No. 92-89; Ord. No. 22-94; Ord. No. 30-97)

Sec. 11.276. Procedure following filing petition.

(a) An initiative or referendum petition certified and filed by the City Recorder pursuant to SRC 11.274(d) shall be forwarded to the Council at its next regular meeting.

(b) In the case of an initiative petition not proposing a tax levy, bond issue, Charter or Charter amendment, the Council, not later than the 30th day after the measure is forwarded to it, shall adopt or reject the measure. If the measure is not adopted, or if the measure proposed a tax levy, bond issue, Charter or Charter amendment, the City Recorder shall submit it to the voters on the next available election date in May or November after the City Recorder certifies and files the petition. The Council may refer a competing measure to the voters at the same election at which the initiated measure is submitted. If the Council refers a competing measure to the voters, it must prepare the measure not later than the 30th day after the initiated measure is filed with it.

(c) Referendum petitions filed within 30 days after the passage of the ordinance against which the referendum has been invoked shall be submitted to the voters of the City on the next available election date in May or November unless Council calls a special election for the purpose of submitting the measure.

(Prior Code, § 11.276; Ord. No. 201-79; Ord. No. 41-82; Ord. No. 48-83; Ord. No. 92-89; Ord. No. 51-96)

Sec. 11.278. Certifying and designating measures.

(a) The City Recorder shall certify measures consecutively in the order in which the measures are filed with the City Recorder to be printed on the ballot.

(b) The City Recorder shall prepare and furnish to the County Clerk in each county a certified statement of the City measures to be voted on, and the ballot title for each measure, not later than the times specified in ORS 254.095.

(c) Measures referred to the voters by petition shall be designated "Referendum ordered by petition of the people." Measures proposed by initiative shall be designated "Proposed by initiative petition." Charter amendments and measures submitted by the Council without initiative petitions shall be designated "Measures submitted to the voters by the Council."

(Prior Code, § 11.278; Ord. No. 201-79; Ord. No. 129-87; Ord. No. 92-89)

Sec. 11.280. Reserved.

Sec. 11.282. Retention of petition materials.

The City Recorder shall retain the signature sheets of a filed initiative or referendum petition with a copy of the City measure. If the measure is approved by the voters, a copy of the measure shall be preserved as a permanent public record, and the signature sheets shall be preserved for six years.

(Prior Code, § 11.282; Ord. No. 201-79)

Sec. 11.284. Referendums under Uniform Revenue Bond Act.

Any petition deposited or filed with the City pursuant to ORS 288.815(5) shall be governed by ORS 288.815, this section and SRC 11.262 through 11.450, provided that SRC 11.272, 11.274(b)(4) and (5), 11.274(c) and 11.276(b) and (c) shall not apply to such a petition. In addition, if the City Recorder has certified and filed a petition meeting the requirements of ORS 288.815 and this section, the Council may refer a competing revenue bond or general obligation bond measure to the voters at the same election at which the petitioned measure is submitted.

(Prior Code, § 11.284; Ord. No. 4-94)

Secs. 11.290, 11.300. Reserved.

Sec. 11.310. Number of affirmative votes required.

No measure shall be adopted unless it shall receive the affirmative majority of the total number of lawful votes cast on such measure and entitled to be counted thereon.

(Prior Code, § 11.310; Ord. No. 1464)

Sec. 11.320. Adoption of conflicting measures.

If two or more laws on the same subject or containing provisions that are conflicting shall be approved by the voters at the same election, the act receiving the greatest number of affirmative votes shall be, and shall be proclaimed to be, the law adopted.

(Prior Code, § 11.320; Ord. No. 1464)

Sec. 11.330. Reserved.

Sec. 11.340. Proclamation of results.

(a) Immediately upon receipt of the canvass of the votes in an election, the Mayor shall proclaim the results of the election, the adoption of each measure which shall have received the majority of the votes cast thereon, and proclaim the law adopted as provided for in SRC 11.320, with reference to two or more laws on the same subject

or containing provisions that are conflicting. In cases of ordinances which have been passed by the Council and voted upon by referendum, proclamation of the result of such vote shall also be made, and such ordinance shall be in effect or cease to be in effect according to such result.

(b) The City Recorder shall give public notice of the proclamation by posting a copy thereof at the City Hall.

(c) The proclamation shall be filed with the measure in the office of the City Recorder.

(d) A measure becomes effective 30 days after the day on which it is enacted or approved by the majority of the votes cast thereon, or such later date as is prescribed in the measure.

(Prior Code, § 11.340; Ord. No. 1464; Ord. No. 41-82; Ord. No. 30-97)

Secs. 11.350—11.440. Reserved.

Sec. 11.450. Unlawful acts.

(a) It shall be unlawful for any person to:

(1) Sign any name other than his or her own to a petition;

(2) Knowingly sign his or her name more than once for the same measure at one election;

(3) Sign any petition when said person is not, at the time of signing, a registered voter of the City;

(4) Knowingly circulate or deposit at the office of the City Recorder a petition that contains a signature signed in violation of this chapter; or

(5) Procure or attempt to procure a signature on a petition by fraud.

(b) Violation of this section is a misdemeanor.

(Prior Code, § 11.450; Ord. No. 1464; Ord. No. 193-79; Ord. No. 41-82)

CHAPTER 12. ETHICS FOR PUBLIC OFFICIALS*

***Charter reference—**Interest in contracts of council members, § 21; ethical standards, § 62.

State law reference—Ethics, ORS 244.010 et seq.

Sec. 12.010. Purpose.

The proper operation of democratic government requires that public officials be independent, impartial, and responsible to the people; ~~the~~ that government decisions and policy be made in the proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. In recognition of these goals, a Code of Ethics is hereby established for all public officials, whether elected or appointed, paid or unpaid. The purpose of this Code is to establish ethical standards of conduct for all such officials by setting forth those acts or actions that are incompatible with the best interests of the City and by directing disclosure by such officials of private financial or other interests in matters affecting the City. The provisions and purpose of this Code and such rules and regulations as may be established are hereby declared to be in the best interest of the City.

(Prior Code, § 12.010; Ord. No. 5633; Ord. No. 36-96)

Sec. 12.015. Definitions.

~~As used in this Chapter, unless the context requires otherwise:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Actual conflict of interest* means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private benefit or detriment of the person or the person's relative or any business with which the person or the person's relative is associated unless the pecuniary benefit or detriment arises out of circumstances described ~~in SRC 12.015(d)(1) through (3)~~ under the definition of the term "potential conflict of interest" in this section.

~~(b)~~ *Business* has the meaning defined in ORS 244.020(2).

~~(c)~~*Business with which the person is associated* has the meaning defined in ORS 244.020(3).

~~(d)~~ *Potential conflict of interest* means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private benefit or detriment of the person or the person's relative, or a business with which the person or the person's relative is associated, unless the benefit or detriment arises out of the following:

~~(1)~~ (a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

~~(2)~~ (b) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabitants of the State, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or the person's relative is associated, is a member, or is engaged.

~~(3)~~ (c) Membership in or membership on the Board of Directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

~~(e)~~*Public official* means any person who, when an alleged violation of this chapter occurs, is serving the City as an elected official, appointed official, officer, employee, agent or otherwise, and irrespective of whether the person is compensated for such services.

~~(f)~~*Relative* has the meaning defined in ORS 244.020(16).

(Prior Code, § 12.015; Ord. No. 36-96; Ord. No. 51-06)

State law reference—Similar definitions, ORS 244.020.

Sec. 12.020. Responsibilities of public officials generally.

Public officials are agents of public purpose and hold office for the benefit of the public. They are bound to uphold the Constitution of the United States and the Constitution of this State and to carry out impartially the laws of the Nation, State, and municipality and thus to foster respect for all government. They are bound to observe in their official acts the highest standards of morality and to discharge faithfully the duties of their office regardless of personal consideration, recognizing that the public interest must be their primary concern. Their conduct in both their official and private affairs should be above reproach.

(Prior Code, § 12.020; Ord. No. 5633; Ord. No. 36-96)

Sec. 12.030. Reserved.

Sec. 12.040. Fair and impartial fulfillment of duties.

(a) *Interest in appointments.* Contacting members of the Council, directly or indirectly, in order to obtain preferential consideration in connection with any employment by the City service shall disqualify the candidate for employment except with reference to the City Manager's position.

(b) *Use of public property.* No public official shall request, use or permit the use of city-owned vehicles, equipment, materials, or property for personal convenience or profit except when such services are available to the public generally or are provided as municipal policy for the use of such official in the conduct of official duties.

(c) *Preferential treatment to individuals generally.* No public official shall grant any special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen.

(Prior Code, § 12.040; Ord. No. 5633; Ord. No. 36-96)

State law reference—Use of official position or office prohibited, ORS 244.040.

Sec. 12.050. Conflicts of interest.

When met with an actual or potential conflict of interest, a public official shall act as provided in ORS 244.120, except that a public official shall not be eligible to vote when met with any actual conflict of interest.

(Prior Code, § 12.050; Ord. No. 5633; Ord. No. 156-81; Ord. No. 29-95; Ord. No. 36-96)

State law reference—Handling conflicts of interest, ORS 244.120.

Sec. 12.051. Disclosure of confidential information.

No public official shall, without proper legal authorization:

(a) Disclose confidential information concerning the property, government or affairs of the City; or

(b) Use information described in subsection (a) of this section to advance the financial or other private interest of himself or herself or others.

(Prior Code, § 12.051; Ord. No. 36-96)

Sec. 12.052. Representing private interests before City agencies or courts.

No member of the Council or employee whose salary is paid in whole or in part by the City shall appear on behalf of private interests before any agency of the City. He or she shall not represent private interests in any action or proceeding against the interests of the City in any litigation to which the City is a party. A member of the Council may appear before City agencies on behalf of constituents in the course of his ~~or her~~ duties as a representative of the electorate or in the performance of public or civic obligations. However, no member of the Council or employee whose salary is paid in whole or in part by the City shall accept a retainer or compensation that is contingent upon a specific action by a City agency.

(Prior Code, § 12.052; Ord. No. 36-96; Ord. No. 13-16, § 1, 10-24-2016)

Sec. 12.060. Restrictions on political activities.

(a) No appointed public official shall simultaneously hold an elective public office or position without first obtaining the approval of the Council after recommendation by the City Manager. Any denial of such a request shall be based upon a showing that the City has a compelling governmental interest warranting such action.

(b) No public official shall promise an appointment to any municipal position, favorable treatment or the influence of the public official's office or other favor or reward in return for partisan political activity on the official's behalf, or on behalf of any candidate or cause.

(Prior Code, § 12.060; Ord. No. 5633; Ord. No. 3-74; Ord. No. 159-74; Ord. No. 40-81; Ord. No. 36-96)

Sec. 12.070. Applicability.

A public official who has doubt as to the applicability of a provision of this Code to a particular situation should apply to the Hearings Officer for an advisory opinion and be guided by that opinion when given. The public official shall have the opportunity to present an interpretation of the facts at issue and of any applicable provision of this chapter before such advisory decision is made. This chapter shall be operative in all instances covered by its provisions except when superseded by an applicable statutory or Charter provision or when the application of a statutory or Charter provision is discretionary but determined by the Hearings Officer to be more appropriate or desirable.

(Prior Code, § 12.070; Ord. No. 5633; Ord. No. 36-96; Ord. No. 13-16, § 1, 10-24-2016)

Sec. 12.080. Effect of violation.

Violation of any provisions of this Code should raise conscientious questions for the public official concerned as to whether voluntary resignation or other action is indicated to promote the best interest of the City. Violation may constitute a cause for removal from office or other disciplinary action.

(Prior Code, § 12.080; Ord. No. 5633; Ord. No. 36-96)

~~**BOARD OF ETHICS**~~

Sec. 12.090. Powers and duties of Hearings Officer.

The Hearings Officer shall have the following powers and duties:

(a) To receive and investigate complaints of violations of this chapter, and transmit findings and recommendations, if any, to the City Manager or Council, as appropriate; and

(b) To issue decisions in the form of advisory opinions or interpretations with respect to application of this chapter.

(c) ~~The Board of Ethics may by rule~~The Hearings Officer may by order limit the minimum size of, or otherwise establish criteria for, or identify, the smaller classes that qualify under this exception; provided, however, that if the public official has obtained an opinion from the Oregon Government Standards and Practices Commission as to that public official's membership in a class, the public official may rely upon that opinion in determining whether a class exists under this ~~paragraph~~ subsection.

(Prior Code, § 12.090; Ord. No. 5634; Ord. No. 36-96; Ord. No. 13-16, § 3, 10-24-2016)

CHAPTER 13. PARKS AND RECREATION ADVISORY BOARD

Sec. 13.010. Definitions.

As used in ~~sections~~ SRC 13.010 to 13.080, the ~~word~~ term "Board" ~~shall~~ means the Parks and Recreation Advisory Board.

(Prior Code, § 13.010; Ord. No. 4414; Ord. No. 4724; Ord. No. 141-69)

Sec. 13.020. Created.

A Parks and Recreation Advisory Board is hereby created.

(Prior Code, § 13.020; Ord. No. 4724; Ord. No. 141-69)

Sec. 13.025. Policy.

It is hereby declared to be the policy of the City ~~of Salem~~ that all matters relating to public parks, playgrounds, and related activities and programs shall be submitted to the Board for counsel and advice.

(Prior Code, § 13.025; Ord. No. 73-76)

Sec. 13.030. Composition; appointment and term of members.

The Board shall consist of nine voting members appointed by the ~~City~~ Council. Board members shall serve for a term of three years, but the terms shall be staggered so that not more than three ~~thereof~~ terms shall expire in any one year. No appointive member shall serve more than two consecutive terms. One member shall be chosen to represent the Salem-Keizer School District, and at least one member shall have expertise in urban forestry, arboriculture, or horticulture, to the extent that professionals meeting these standards are available in the community. Members shall be chosen from among such persons concerned with and interested in the development of public parks and playgrounds and like public places in the City. Members shall be residents of or have their places of business in the City. The ~~Public Works~~ Director shall serve as ex officio, non-voting secretary to the Board. In case of vacancy, the ~~City~~ Council shall appoint a successor to fill out the unexpired term.

(Prior Code, § 13.030; Ord. No. 181-66; Ord. No. 141-69; Ord. No. 173-72; Ord. No. 38-74; Ord. No. 52-77; Ord. No. 10-93; Ord. No. 42-09; Ord. No. 23-15, § 4, 10-12-2015)

Sec. 13.040. Compensation of members.

The members of the Board shall not receive any compensation for their services.

(Prior Code, § 13.040; Ord. No. 4724)

Sec. 13.050. Reserved.

Sec. 13.055. Organization.

(a) The Board shall establish the time and place of meetings which shall be open to the public, and shall adopt bylaws for the conduct of its business consistent with the Charter and this Code.

(b) The Board shall annually elect a chairman and vice-chairman.

(c) Five members of the Board shall constitute a quorum.

(d) At least once each year the Council shall meet in joint sessions with the Board to review existing and changing policies, review Board bylaws, and tour facilities and programs.

(Prior Code, § 13.055; Ord. No. 73-76)

Sec. 13.060. Reserved.

Sec. 13.070. Meeting place.

The City Manager shall make available to the Board a convenient meeting place.

(Prior Code, § 13.070; Ord. No. 4724; Ord. No. 51-96)

Sec. 13.080. Function and duties.

It shall be the function of the Board to be advisory and it shall have the following duties:

(a) Recommend and advise the Council, Planning Commission and other bodies, groups or officials on all matters referred to it.

(b) To act in the role of community catalyst in the formation and achievement of a comprehensive community-wide parks and recreation system and program to serve the horticultural, environmental, historical, cultural, and leisure needs of all the City residents.

(c) To make and issue reports respecting its studies, research, examination, and other activities to the Council as may be required by the Council.

(d) Those duties as set forth under SRC chapter 86.

(Prior Code, § 13.080; Ord. No. 4414; Ord. No. 4685; Ord. No. 73-76; Ord. No. 51-96; Ord. No. 23-15, § 5, 10-12-2015)

CHAPTER 14. PIONEER CEMETERY

Sec. 14.010. Named.

The old I.O.O.F. cemetery within the City shall hereafter be known as Salem Pioneer Cemetery.

(Prior Code, § 14.010; Ord. No. 4693)

TRUST FUND

Sec. 14.020. Defined.

As used in SRC 14.010 to 14.110, the ~~words~~ term "trust fund" ~~shall~~ means the Salem Pioneer Cemetery Trust Fund.

(Prior Code, § 14.020)

Sec. 14.030. Created; purpose.

There is hereby created and established the Salem Pioneer Cemetery Trust Fund for the operation, maintenance, care, preservation, and protection of the Pioneer Cemetery.

(Prior Code, § 14.030; Ord. No. 4693)

Sec. 14.040. Composition.

The trust fund shall consist of such moneys and other property as may be contributed by gifts, donations, legacies, devices, and moneys from any source contributed for the purpose for which the fund is created and established. No moneys derived from taxation shall be placed in this fund.

(Prior Code, § 14.040; Ord. No. 4693)

Sec. 14.050. Custodian.

The ~~Director of finance~~ Finance Officer shall be the custodian of the trust fund.

(Prior Code, § 14.050; Ord. No. 4693)

Sec. 14.060. Receipts not considered as County or City revenue.

Money received for the trust fund shall not be considered as revenue either for the County or City.

(Prior Code, § 14.060; Ord. No. 4693)

Sec. 14.070. Gifts, generally.

The ~~Director of finance~~ Finance Officer is authorized to receive gifts, legacies, and donations for the trust fund and to receipt therefor, and the said ~~Director~~ Finance Officer shall deposit any moneys so received in one or more of the banking houses having a place of business within the City. The ~~Director of finance~~ Finance Officer shall receive no gifts earmarked for the maintenance, care, or protection of any specific grave, monument, or part or section of the cemetery, but all gifts and donations shall be deemed to be for the operation, maintenance, care, preservation, and protection of the entire cemetery and all the grounds and graves therein.

(Prior Code, § 14.070; Ord. No. 4693)

Sec. 14.080. Use of gifts.

Unless the donor otherwise designates at the time the gift is made to the trust fund, the gift may be either invested and the income therefrom used for the purposes of the trust, or some income may also be reinvested, or the principal of the gift may be used for the purposes of the trust. In case the donor so directs, the principal of the gift shall be placed in a trust fund and only the income therefrom shall be used for the purpose of the trust.

(Prior Code, § 14.080; Ord. No. 4693)

Sec. 14.090. Investment of funds.

It shall be the duty of the ~~Director of finance~~ Finance Officer to invest in such securities or property as are authorized ~~investments for banking corporations~~ under the laws of the State moneys given to the trust fund. ~~with direction that the~~ The principal thereof shall be retained, and only the income therefrom shall be expended. ~~When authorized by an order signed by the County Judge and the Mayor of the City, it shall be the duty of the Director of finance~~ Finance Officer ~~to invest in such securities and other funds of the trust as may be available for investment.~~

(Prior Code, § 14.090; Ord. No. 4693)

Sec. 14.100. Warrants.

Warrants may be drawn on the ~~Director of finance~~ Finance Officer or payment from the trust fund for any of the purposes of the trust and the said ~~Director~~ Finance Officer shall pay any such warrant~~s~~ if ~~they bear~~ it bears the signature~~s~~ of the ~~County Judge and the Mayor of the City~~ City Manager, or the City Manager's designee, but no warrant shall be paid from any part of the trust fund permanently invested at the direction of the donors of the fund.

(Prior Code, § 14.100; Ord. No. 4693)

Sec. 14.110. Annual financial statement.

Annually, and not later than the day of July 15, the ~~Director of finance~~ Finance Officer shall prepare a financial statement covering the fiscal year expiring with the preceding June 30, which statement shall show a complete accounting of the trust fund, including all receipts and donations thereto and expenditures therefrom, balances on hand and the amounts of which may be invested as provided in SRC 14.010 to 14.110 ~~provided~~. Such statement shall be delivered to the ~~county court and the Council of the City~~ Council.

(Prior Code, § 14.110; Ord. No. 4693)

CHAPTER 15. PUBLIC ART COMMISSION

Sec. 15.001. Purpose.

The ~~City~~ Council recognizes that visual arts contribute to and provide experiences that enrich and better the social and physical environment of the community, and desires to foster an advancement of the visual arts within the City ~~of Salem~~. It is the purpose of this chapter, and the policy of the City to dedicate one-half of one percent of the total eligible costs of all improvement projects to the selection, acquisition, fabrication, installation, maintenance, management, deaccessioning, community education, documentation and registration of public art.

(Prior Code, § 15.001; Ord. No. 6-10)

Sec. 15.010. Definitions.

~~Unless the context otherwise specifically requires, for purposes of this Chapter, the following words and phrases mean:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Alteration* means any change to a public mural, including, but not limited to, any change to the image(s), materials, colors or size of the public mural. The term "alteration" does not include naturally occurring changes to the public mural caused by exposure to the elements or the passage of time, or maintenance or repair of the public mural that includes slight and unintended deviations from the original image, colors or materials that occur when the public mural is repaired due to the passage of time, or after damage resulting from vandalism.

~~(b)~~ *Artist* means a practitioner in the visual arts, generally recognized by critics and peers as a professional of serious intent, who produces works of art, and who is not a member of the improvement project's architectural firm or the Salem Public Art Commission. The term "artist" shall include an artist's agent and a representative of the estate of an artist.

~~(c)~~*City building* means any building owned or leased by the City, or area therein, which is open to the public; provided, however, The term "city building" does not include motor pools, surface parking lots, roads, bridges, utility lines, service facilities, maintenance sheds, pump stations, treatment plants and utility facilities, or buildings that have the primary purpose of displaying historical artifacts, cultural items, or works of art.

~~(d)~~ *City Manager* means the City Manager of the City of Salem, or the City Manager's designee.

~~(e)~~*Deaccessioning* means relinquishing title to a work of public art.

~~(f)~~*Eligible costs* means the costs for completion of an improvement project, including costs for capitalized tenant improvements, that are paid from eligible funds. The term "eligible costs" does not include costs for land acquisition, design and engineering, administration, fees and permits, building demolition, relocation of tenants, environmental testing, environmental remediation, non-construction contingency or indirect costs, such as interest during construction, advertising and legal fees.

~~(g)~~ *Eligible funds* means any funds expended by the City, from whatever source, for an improvement project and for which public art is not precluded as an object of expenditure in connection with the improvement project.

~~(h)~~ *Improvement project* means any project paid for wholly or in part by the City where the amount of eligible funds equals $100,000.00 or more for the construction, rehabilitation, remodeling, improvement or purchase of a City building. An improvement project does not include maintenance and repair projects or remodeling or renovation projects in which more than 75 percent of the project cost represents improvements to mechanical systems.

~~(i)~~*Oregon artist* means an artist that makes Oregon his or her primary residence or principal place of business.

~~(j)~~*Public art* means original works of art owned or acquired by the City and accepted into the City's public art collection by the Salem Public Art Commission.

~~(k)~~ *Public mural* means an original, two-dimensional work of visual art, comprised of paint, ceramic

or glass tiles, or tesserae, executed by hand directly upon, or affixed directly to, an exterior wall of a building, which has been approved by the Salem Public Art Commission and accepted by the City into its public art collection pursuant to this chapter. A public mural is not an original work of visual art if it is mechanically reproduced or computer generated and printed on a base that will be attached to the wall, such as, by way of illustration but not limitation, limited images digitally printed on vinyl.

~~(l)~~ *Works of art* means all forms of original creations of visual art, including and not limited to, painting, sculpture, prints, ceramics, drawings, stained glass, mosaics, photography, fiber and textiles, calligraphy, mixed media, and any combination of media, including collage.

(Prior Code, § 15.010; Ord. No. 6-10; Ord. No. 10-10; Ord. No. 13-11; Ord. No. 9-16, 6-27-2016)

Sec. 15.020. Salem Public Art Commission.

(a) There is hereby created a seven-member Salem Public Art Commission, who shall be appointed by the ~~City~~ Council, after receiving recommendations on the applicants from the Mayor. The City Manager shall serve as an ex officio non-voting secretary to the Commission. The appointed members of the Salem Public Art Commission shall consist of two members who have experience, training or expertise in the visual arts, art history, art criticism, or art education; two members who have experience, training or expertise in museum curation, art restoration, or art appraisal; ~~and~~ two members who have experience, training, or expertise in architecture or landscape architecture, commercial real estate or development, or experience with foundations and cultural development; and one at-large member.

(b) Members of the Salem Public Art Commission shall serve three-year terms, but the terms shall be staggered so that not more than three members' terms of office shall expire in any one year. Members may be reappointed, except that a member who has served two full three-year terms may not be reappointed until one full year after the date of expiration of his or her immediate previous term of office. In case of a vacancy, a successor to serve the remainder of the term shall be appointed by the ~~City~~ Council, after receiving recommendations on the applicants from the Mayor. The members of the Commission shall not receive any compensation for their services.

(c) Except for the first year, the Salem Public Art Commission shall elect a chair and a vice-chair from among its members who shall hold office at the pleasure of the Commission. The first chair and vice-chair will be appointed by the Mayor. The Salem Public Art Commission shall adopt rules of procedure and organization of the Commission, and rules for the conduct of meetings that are consistent with generally recognized principles for the orderly conduct of business by a deliberative body. All meetings of the Commission shall be open to the public.

(d) The Salem Public Art Commission shall have the authority to select, acquire, receive, borrow, commission the design or fabrication of, and maintain, deaccession, document and register all works of art within the City's public art collection with funds from the Public Art Trust Fund. The Commission shall have the authority to advise the City Manager on the management, execution, installation, or placement of works of art, and administration of public art education activities.

(e) The Salem Public Art Commission shall recommend guidelines for adoption by the ~~City~~ Council for the selection, acquisition, commissioning and deaccessioning of public art that give preference to Oregon artists and that shall include consideration of the following:

(1) Whether the work of art is compatible with the design of the City building;

(2) Whether the work of art is of exceptional quality and enduring value;

(3) Whether the work of art promotes a broad range of artistic styles and media in order to maintain an overall balance within the City;

(4) Whether the work of art presents a safety hazard to the public; and

(5) Whether the work of art requires extraordinary maintenance, including, but not limited to, periodic adjustment, repainting, repair or replacement of moving parts.

(f) The Salem Public Art Commission shall establish procedures for the maintenance, management, documentation and registration of all works of art within the City's public art collection and such other procedures and guidelines consistent with this chapter to facilitate the implementation of the Commission's responsibilities under this chapter.

(g) Each year at a time specified by the City Manager, the Salem Public Art Commission shall prepare and submit to the City Manager a recommended budget for the Public Art Trust Fund for the ensuing fiscal year, which the City Manager shall forward to the Salem Budget Committee. The budget shall estimate income and expenditures for the Public Art Trust Fund for that year, conform to the requirements of SRC 15.030, and be in a form prescribed by the City Manager.

(h) Except as limited by other sections of this chapter, the Salem Public Art Commission's decisions as to the acquisition, fabrication, deaccessioning, and registration of public art, including public murals, shall be final.

(Prior Code, § 15.020; Ord. No. 6-10; Ord. No. 13-11)

Sec. 15.030. Public Art Trust Fund.

(a) There is established a special fund designated as the Public Art Trust Fund from which expenditures may be made for the acquisition, fabrication, installation, maintenance, conservation, management, deaccessioning, community education, documentation and registration of public art. The Public Art Trust Fund shall consist of funds appropriated by SRC 15.040, other funds as the ~~City~~ Council may appropriate, and funds given to the City from public or private sources.

(b) Monetary contributions shall be deposited in separate accounts within the Public Art Trust Fund if separate accounting is deemed appropriate by the City Manager, is required by law, or is a condition of any gift or donation. Prior to disbursing funds from a segregated account in the Public Art Trust Fund, the Salem Public Art Commission shall adopt written findings demonstrating that the proposed disbursement complies with any applicable conditions for the expenditure of those funds.

(c) Excluding funds from conditional gifts or donations, funds deposited into the Public Art Trust Fund shall be allocated as follows:

(1) ~~Seventy~~ 70 percent shall be used for costs associated with acquiring public art, including, but not limited to, the acquisition, fabrication, and installation of public art.

(2) ~~Twenty~~ 20 percent shall be used for costs associated with managing public art, including, but not limited to, costs of selection, program management, community education and registration of public art.

(3) Ten percent shall be used for the maintenance, conservation and deaccessioning of public art.

(d) Disbursements shall be made according to the terms of this chapter and any procedures adopted by the Salem Public Art Commission. The Salem Public Art Commission will report annually to the ~~City~~ Council on the disbursement of funds from the Public Art Trust Fund.

(Prior Code, § 15.030; Ord. No. 6-10; Ord. No. 13-11)

Sec. 15.040. Dedication to Public Art Trust Fund.

Any city official or employee who authorizes or appropriates expenditures for an improvement project shall include in the total construction budget, and cause to be deposited in the Public Art Trust Fund, a monetary contribution for public art equal to one-half of one percent of the total eligible costs. Where an improvement project will be constructed in phases, the one-half of one percent dedication shall be applied to the estimated total cost of each phase of the project at the time that funds for the phase are encumbered. Nothing in this section prevents the ~~City~~ Council from deciding to set aside all or part of the entire dedication from the funds of a particular phase.

(Prior Code, § 15.040; Ord. No. 6-10)

Sec. 15.050. Title to art work.

(a) Title to works of art acquired under this chapter shall be acquired in the name of the City and vest in the City. Acquisition of a work of art shall be accompanied by an assignment of copyright to the work of art; provided, however, the artist may retain a non-exclusive right to make reproductions of the work of art for professional advertisement and promotional purposes.

(b) Except as otherwise agreed by the Public Art Commission, no artist, by virtue of the sale of a work of art to the City, shall be deemed to have acquired any right in the continued ownership of the work of art, or to the continued placement of the work of art in any location or venue, notwithstanding the fact that the work of art may

have been created as a site-specific work of art.

(Prior Code, § 15.050; Ord. No. 6-10; Ord. No. 13-11)

Sec. 15.060. Siting.

Subject to any applicable ordinances, public art obtained pursuant to this chapter may be sited in, on or about any improvement project, public right-of-way, easement, or other property owned, leased, or otherwise under the control of or made available to the City.

(Prior Code, § 15.060; Ord. No. 6-10)

Sec. 15.070. Public mural program intent and purpose.

The intent and purpose of SRC 15.070 through 15.100 is to encourage the production of public murals for acquisition by the City. Public murals are a medium of expression which serves the public interest in unique ways, including, but not limited to, enhancing the aesthetics of the City; providing avenues for original artistic expression in the City; providing public edification through access to original works of public art; encouraging community participation in the creation of original works of art; and reducing the incidence of graffiti and other crime. Public murals can increase community identity and foster a sense of place if they are located at heights and scales visible to pedestrians, are retained for longer periods of time and include a neighborhood involvement process.

(Prior Code, § 15.070; Ord. No. 10-10)

Sec. 15.080. Public murals; creation; approval by Salem Public Art Commission.

No person shall commence creation of any public mural without first obtaining approval from the Salem Public Art Commission, and agreeing to donate the public mural to the City's public art collection, as provided in SRC 15.090. Murals that are created without approval from the Salem Public Art Commission or are inconsistent with the conditions of approval from the Salem Public Art Commission are not public murals and are subject to SRC chapter 900. Approval of a public mural does not require historic design review.

(Prior Code, § 15.080; Ord. No. 10-10; Ord. No. 13-11; Ord. No. 4-12)

Sec. 15.090. Procedures, mandatory criteria for public murals.

The Salem Public Art Commission shall adopt procedures and standards setting forth the requirements for creation, approval, donation, and acceptance of public murals into the City's public art collection. At a minimum, the standards shall include the following:

(a) Public murals shall remain in place, without alterations, for a period of not less than seven years, except as may be specified by the Salem Public Art Commission in the conditions of approval.

(b) In historic districts, public murals may only be allowed on buildings that are non-historic non-contributing buildings or structures. Murals in historic districts shall not be allowed on a building facade. For purposes of this ~~paragraph~~ subsection, the building facade is defined as the wall that contains the main entrance onto the premises.

(c) No public murals shall be allowed on single-family dwellings, duplexes, or multifamily dwellings. As used in this subsection, single-family dwellings, duplexes, or multifamily dwellings do not include mixed-use buildings which contain a single-family dwelling, duplex, or multifamily dwellings.

(d) No public mural may contain electrical components, three dimensional structural elements, employ electrical lights as part of the image, moving structural elements, flashing or sequential lighting, interior lighting elements, any automated method that causes movement, or any method that causes periodic changes in the appearance of the public mural or changes the mural image or message.

(e) Public murals shall be located in a manner that is accessible to the public.

(f) The approval and acceptance of each public mural shall be contingent upon the conveyance of a public mural easement to the City from the owner of the building upon which the mural will be located, in a form approved by the City Attorney. The terms of the easement shall grant the right to create the public mural on the wall of the building and provide that the person granting the easement will maintain and restore the public mural in its original condition for the period of the easement, and state that upon

termination of the easement, the mural shall be removed and the building restored to its prior condition.

(Prior Code, § 15.090; Ord. No. 10-10; Ord. No. 13-11)

Sec. 15.100. Public mural neighborhood involvement.

Prior to approving a public mural for the City's public art collection, the Salem Public Art Commission shall hold a public hearing at which interested members of the public may review and comment upon the proposed public mural. Written notice of the hearing shall be provided to the neighborhood association in which the public mural is proposed to be located, and public notice shall be given no later than 30 days before the hearing.

(Prior Code, § 15.100; Ord. No. 10-10; Ord. No. 13-11)

CHAPTER 16. SALEM CULTURAL AND TOURISM PROMOTION ADVISORY BOARD

Sec. 16.010. Board created.

For the purpose of encouraging the development of a unified approach to the promotion of Salem, especially among those organizations receiving funding support from the transient occupancy tax; recommending an annual budget to implement such activities; and reviewing and making recommendations on the performance of contractors funded by the transient occupancy tax; there is hereby created a Salem Cultural and Tourism Promotion Advisory Board.

(Prior Code, § 16.010; Ord. No. 86-83; Ord. No. 33-87; Ord. No. 10-93)

Sec. 16.020. ~~Board~~ Composition.

The Board shall consist of nine appointed members and the City Manager or the City Manager's designate, who shall be a non-voting member. The members shall be residents of or have their places of business in the City. One member shall be a representative of the for-profit tourism industry. Appointments shall be made by the Council upon recommendation of the Mayor. Subsequent members shall be recommended by the Mayor after consultation with the Board chair.

(Prior Code, § 16.020; Ord. No. 86-83; Ord. No. 33-87; Ord. No. 15-90; Ord. No. 10-93; Ord. No. 33-94; Ord. No. 74-94; Ord. No. 74-95; Ord. No. 51-96)

Sec. 16.030. Term of office of Board.

(a) Except as provided in subsection (b) of this section, members of the Board shall each be appointed for terms ~~running for~~ of three years, with the further exception that persons appointed to the Board to fill vacancies left by members whose terms on the Board have not expired shall have as their terms of office the unexpired terms of their immediate predecessors on the Board.

(b) Any vacancy in said Board shall be filled by appointment recommended by the Mayor and approved by the Council for the unexpired portion of the term. Members may be reappointed, except that a member who has served two full three-year terms may not be reappointed until after the expiration of one full year from the date of expiration of his or her immediate previous term of office.

(c) Members of the Board shall receive no compensation for their services, but may be reimbursed for expenses incurred in the performance of their duties.

(Prior Code, § 16.030; Ord. No. 86-83; Ord. No. 33-87; Ord. No. 15-90; Ord. No. 10-93; Ord. No. 51-96; Ord. No. 39-98)

Sec. 16.040. Organization of Board.

(a) Except for the first year, the Salem Cultural and Tourism Promotion Advisory Board shall elect a chair and a vice-chair from among its members who shall hold office at the pleasure of the Board. The first chair and vice-chair will be appointed by the Mayor.

(b) The Board shall meet at least quarterly at a time and place that it specifies at least five days in advance. The Board may meet at other times in accordance with its rules. All meetings of the Board shall be open to the public, provided executive sessions may be held pursuant to the provisions of state law.

(c) The Board may establish and alter rules and regulations for its own internal government and procedure consistent with the laws of the State ~~of Oregon~~ and with the Charter and ordinances of the City ~~of Salem~~.

(d) The Board's plan of internal organization and rules of procedure shall be governed by Robert's Rules of Order as ~~adopted by~~ set forth in SRC ~~2.1640~~ 2.655. A record of its proceedings shall be filed with the City Recorder.

(Prior Code, § 16.040; Ord. No. 86-83; Ord. No. 33-87; Ord. No. 10-93; Ord. No. 58-2002)

Sec. 16.050. Fiscal duties of Board.

Each year at a time specified by the Director, the Board shall prepare and submit to the ~~department of finance~~

Finance Division a preliminary budget for discharging the Board's duties and responsibilities for the immediately ensuing fiscal year. The budget shall estimate income and expenditures for the program for that year and be in a form prescribed by the ~~department of finance~~ Finance Division.

(Prior Code, § 16.050; Ord. No. 86-83; Ord. No. 10-93)

Sec. 16.060. Duties and responsibilities.

It shall be the function of the Board to act as an advisory body to the Council. To that end, the Board shall advise the Council on programs and issues affecting the promotion of Salem, particularly in the area of cultural amenities and tourism. The Board's functions shall include advice and/or recommendations on:

(a) Allocation of transient occupancy tax revenues to programs and/or projects designed to promote Salem or enhance the quality of life in Salem. The Board shall hold a public meeting to review all requests submitted for funding and formulate recommendations for inclusion in the City's budget process.

(b) Review and recommend requests for proposals (RFPs) for services necessary for the development and promotion of conventions and tourism.

(c) The coordination of activities with other public and private organizations, including all recipients of transient occupancy tax, businesses and business related organizations, arts organizations, historic organizations, and any other organizations or agencies involved in the promotion of Salem and/or the enhancement of the quality of life in Salem.

(d) Quality of performance provided by organizations contracting for services funded by transient occupancy tax revenues. The Board shall review and comment on all quarterly/mid-year/annual reports filed with the City by recipients of those revenues.

(e) The conduct of such other related functions as may be deemed necessary or beneficial to promote convention and tourism business in the City ~~of Salem~~.

(Prior Code, § 16.060; Ord. No. 86-83; Ord. No. 33-87; Ord. No. 10-93; Ord. No. 40-2004)

Sec. 16.070. Reserved.

Sec. 16.080. Administrative duties of Board.

Administration of the program mentioned in SRC 16.~~010~~060 shall be the responsibility of the Salem Cultural and Tourism Promotion Advisory Board and be carried out within the constraints indicated elsewhere in this Code. The City ~~of Salem~~ shall be the fiscal and internal administrative agent for the Salem Cultural and Tourism Promotion Advisory Board, and the Board shall operate in conformance with City administrative procedures, including those pertaining to the following:

(a) Personnel, including recruitment, selection, classification, and pay for any commission personnel;

(b) Receipt, disbursement, and accounting for moneys;

(c) Maintenance of general books, cost accounting records, and other financial documents;

(d) Purchasing; and

(e) Budget administration.

(Prior Code, § 16.080; Ord. No. 86-83; Ord. No. 33-87; Ord. No. 10-93)

CHAPTER 17. SALEM YOUTH ADVISORY COMMISSION

Sec. 17.010. Salem Youth Advisory Commission created; composition.

The Salem Youth Advisory Commission is hereby created. The Commission shall consist of not fewer than eight and not more than 15 voting members, at least 70 percent of which are members under the age of 22 at the time of their appointment. Except for the appointment of representatives from the Salem-Keizer School District 24-J and the Salem Police Department, preference in appointments shall be given to persons not older than 21 years of age. The Mayor and staff representatives from the Salem Police Department and the Community Development Department shall be non-voting members of the Commission. In appointing the voting members not older than 21 years of age, the Mayor shall seek to have a representative on the Commission from each of the local high schools and colleges. Representatives from educational alternatives and from youth organizations shall also be sought. In appointing the voting members over 21 years old, the Mayor shall appoint one management representative of the Salem-Keizer School District 24-J and ensure that any other voting member over 21 years of age represents an organization or system that addresses local youth issues. After July 1, 1999, appointments of voting members over 21 years of age shall be for a term of one year or until a successor is appointed and qualified, and appointments of voting members not older than 21 years of age shall be for a term of two years or until a successor is appointed and qualified. The Mayor shall make the appointments to the Commission and shall fill any vacancy on the Commission caused by resignation, death or removal for the unexpired term of a member.

(Prior Code, § 17.010; Ord. No. 78-71; Ord. No. 201-72; Ord. No. 23-74; Ord. No. 93-79; Ord. No. 10-93; Ord. No. 42-99; Ord. No. 10-2004; Ord. No. 42-09)

Secs. 17.020, 17.030. Reserved.

Sec. 17.040. Organization of the Commission.

(a) The Commission shall elect a president and a vice-president who shall hold office at the pleasure of the Commission.

(b) The City ~~of Salem~~ shall provide a secretary to the Commission and other necessary staff.

(c) The Finance Officer ~~Director of finance of the City of Salem~~ shall act as the fiscal agent for said Commission.

(d) The Commission shall make, establish and alter bylaws for its government and procedure consistent with the laws of the State ~~of Oregon~~ and with the Charter and ordinances of the City ~~of Salem~~.

(Prior Code, § 17.040; Ord. No. 78-71)

Sec. 17.050. Powers and duties.

The Commission shall have no executive or administrative powers or authority except as herein provided, and this ~~ordinance~~ chapter shall not be construed as depriving City elected or appointed officials of any power they may have under the laws of the State or the Charter of the City. The Commission shall be advisory and is created for the purpose of providing a youthful viewpoint on community affairs. The powers, duties and functions of the Commission shall be as follows:

(a) Make recommendations and advise the ~~City~~ Council concerning solutions to specific problems involving the youth activities of the community.

(b) Encourage the initiation of programs of general interest to youth.

(c) Enlist the cooperation of all segments of the community in being more responsive to the youth community.

(d) Make and issue reports respecting its studies, research, examinations and other activities and make annual reports to the ~~City~~ Council at such times as may be required by the Council.

(Prior Code, § 17.050; Ord. No. 78-71; Ord. No. 149-73)

CHAPTER 18. SALEM PUBLIC LIBRARY*

***State law reference—**Public libraries, ORS 357.400 et seq.

Sec. 18.010. Salem Public Library established.

(a) A public library is hereby established for the City ~~of Salem~~ under the provisions of ORS 357.400 to 357.640.

(b) The public library shall be financed through the use of general fund moneys, revenues obtained from operation of the library, grants, gifts, donations, and bequests received and designated to be used for library purposes, and any tax levies that may be authorized by the electors.

(Prior Code, § 18.010; Ord. No. 9-76)

Sec. 18.020. Library Board.

(a) The Salem Public Library Advisory Board is hereby created. The Board shall consist of nine members to be appointed by the Council.

(b) The term of office of the Board members shall be four years, or until their successors are appointed and qualified, and their term shall commence July 1 and be staggered so that the term of office of not more than three will expire in the same year. No person shall hold appointment as a member for more than two full consecutive terms, but any person may be appointed again to the Board after an interval of one year. The terms of members in office at the effective date of ~~this~~ the ordinance from which this chapter is derived shall not terminate, but they shall serve out their respective terms. Members of the Board shall receive no compensation for their services, but may be reimbursed for expenses incurred in the performance of their duties.

(Prior Code, § 18.020; Ord. No. 9-76; Ord. No. 80-83; Ord. No. 10-93; Ord. No. 51-96)

~~boa~~

Sec. 18.030. Organization of Board.

(a) The Library Board shall elect a chair~~man~~ from among its members who shall hold office at the pleasure of the Board.

(b) The ~~library director~~ Library Services Manager shall serve as secretary to the Board and keep the record of its actions.

(c) The Board shall meet at least six times each year and at such other times as it may provide by its rules.

(d) The Board may establish and alter rules and regulations for its government and procedure consistent with the laws of the State ~~of Oregon~~ and with the Charter and ordinances of the City ~~of Salem~~.

(Prior Code, § 18.030; Ord. No. 9-76)

Sec. 18.040. Annual report to State library.

The Library Board shall make an annual report to the State library and to the Council on a form supplied by the State library.

(Prior Code, § 18.040; Ord. No. 9-76; Ord. No. 51-96)

Sec. 18.050. Powers and duties.

The Library Board shall have no executive or administrative powers or authority except as herein provided, and this chapter shall not be construed as depriving elected or appointed officials of the City of any power they may have under the laws of the State or the Charter of the City. The Board shall be advisory and shall have powers, duties, and functions as follows:

(a) Recommending to the Council rules and policies for the governance of the library;

(b) Preparing and submitting through the ~~library director~~ Library Services Manager to the City Manager

annual budget requests;

(c) Designating the use or expenditure of any real or personal property or funds donated to the library under SRC 18.060;

(d) Recommending to the Council sites for public library buildings or for location of library facilities.

(Prior Code, § 18.050; Ord. No. 9-76; Ord. No. 51-96)

Sec. 18.060. Acceptance of gifts for library purposes.

The Library Board may, in the name of the City ~~of Salem~~, accept sites, buildings, equipment or other donations, bequests, or gifts for public library purposes.

(Prior Code, § 18.060; Ord. No. 9-76)

Sec. 18.070. Supervision of ~~director~~ Library Services Manager and staff.

The City Manager shall have the responsibility for hiring, terminating, disciplining, setting the salary of, and any other personnel actions affecting the ~~library director~~ Library Services Manager and the library staff.

(Prior Code, § 18.070; Ord. No. 9-76; Ord. No. 51-96)

Sec. 18.080. Internal administrative policies and procedures.

The City ~~of Salem~~ shall be the fiscal and internal administrative agent for the Salem Public Library and the library shall operate in conformance with City administrative procedures, including those pertaining to the following:

(a) Personnel, including recruitment, selection, classification, and pay for library personnel;

(b) Receipt, disbursement, and accounting for moneys;

(c) Maintenance of general books, cost accounting records, and other financial documents;

(d) Purchasing;

(e) Budget administration; and

(f) Operation and maintenance of equipment and buildings.

(Prior Code, § 18.080; Ord. No. 9-76)

Sec. 18.090. Detention of library property.

(a) ORS 357.975 is adopted by reference and made part of this section as it applies to materials belonging to the ~~City of~~ Salem Public Library.

(b) The ~~library director~~ Library Services Manager, or authorized representative, shall give written notice to any person who keeps any City ~~of Salem~~ library book, or other material, for more than 45 days after the expiration of the due date. The notice shall state that the overdue material must be returned within 30 days or the person will be subject to prosecution under this section.

(c) All acts which are made unlawful under this section shall be considered an offense against the City notwithstanding the residency of the person keeping the item or the location of the item on the date it is due to be returned.

(d) The penalties for violation of this section shall be as provided in ORS 357.990.

(Prior Code, § 18.090; Ord. No. 115-94)

State law reference—Keeping library property, ORS 357.975.

CHAPTERS 19, 20. RESERVED

CHAPTER 20A. SALEM SISTER CITY ADVISORY COMMISSION

Sec. 20A.010. Salem Sister City Advisory Commission.

The Salem Sister City Advisory Commission is hereby created. The purpose of the Commission is to act as an advisory body to the Council; to enhance communications and activities between the City ~~of Salem~~ and its sister cities; to implement the goals and objectives of the sister city program; to monitor the programs and activities undertaken by sister city organizations in Salem; and to advise the Council on the establishment of new sister city relationships. The Commission shall have the powers and duties hereinafter set forth. The members of the Commission shall receive no compensation for their services.

(Prior Code, § 20A.010; Ord. No. 129-66; Ord. No. 51-86; Ord. No. 10-93; Ord. No. 51-96)

Sec. 20A.020. Organization of Commission.

(a) The Commission shall consist of the Mayor as honorary chairperson; two representatives from each active sister city organization; and two at-large members.

(b) The term of office shall be three years with no member serving more than two consecutive full terms. Any vacancy in said Commission shall be filled by appointment made by the Mayor for the unexpired portion of the term.

(c) The Commission shall elect a chairperson and vice-chairperson who shall hold office at the pleasure of the Commission.

(d) The Commission may make, establish, and alter bylaws for its government and procedure consistent with the laws of the State ~~of Oregon~~ and with the Charter and ordinances of the City ~~of Salem~~.

(Prior Code, § 20A.020; Ord. No. 129-66; Ord. No. 51-86)

Sec. 20A.030. General powers and duties of the Commission.

The Commission shall be advisory to the Council and shall have powers and duties as follows:

(a) Review the activities and programs of all sister city organizations recognized by the Council in order to ensure that such are in keeping with the purposes and goals of the sister city international program and that the organization maintains substantial long-term, broad-based community interest in maintaining the relationship.

(b) Review and advise the Council on all requests from organizations desiring to establish a sister city relationship.

(Prior Code, § 20A.030; Ord. No. 129-66; Ord. No. 51-86)

Sec. 20A.040. Initiation of the establishment of sister city relationship.

(a) The establishment of a sister city relationship shall be initiated by petition of any citizens' group advocating such affiliation and demonstrating that there is a broad based interest in establishing such a relationship. In conjunction therewith, the citizens' group shall:

(1) Form a nonprofit organization under Oregon law and show that they are prepared to undertake the financial and general support requirements necessary to properly administer such a relationship.

(2) Present a plan of action for the first year of such relationship that demonstrates the ability to respond in a timely and correct manner to overtures from the sister city and to work with the Mayor's Office, Commission, and other community organizations in furthering such relationship.

(3) Have a broad base of community membership with membership open to any interested individual.

(b) The petition shall be filed with the Commission and shall contain documentation satisfying the criteria set forth in SRC 20A.050 and any additional information supporting the proposal.

(c) The Commission shall review the petition and the citizens' group which has filed said petition. The

Commission shall, in due course, advise the Council if the specified criteria have been met and whether or not the Commission recommends the establishment of the new sister city relationship.

(Prior Code, § 20A.040; Ord. No. 51-86; Ord. No. 51-96)

Sec. 20A.050. Criteria for establishing a sister city relationship.

In reviewing requests from recognized sister city organizations to establish a sister city relationship the Commission shall be guided by the following criteria:

(a) The sister city relationship will serve one or more of the following objectives:

(1) Education of our citizens;

(2) Enhancement of our citizens' cultural awareness and sensitivities; and

(3) Development of international trade and tourism.

(b) The city chosen to affiliate with the City ~~of Salem~~ must be located in a country that has established diplomatic relations with the United States.

(c) There shall be only one sister city per country.

(d) The City ~~of Salem~~ and the proposed sister city should be of similar size and role, either absolutely or in relation to their regions.

(e) The City ~~of Salem~~ should have cultural, educational, economic, governmental, and social interests in common with the proposed sister city.

(Prior Code, § 20A.050; Ord. No. 51-86)

Sec. 20A.060. Action by Council.

(a) The Council shall consider the proposal and recommendations from the Commission for the establishment of a sister city relationship and shall by resolution approve or deny the proposal.

(b) If the proposed sister city relationship is approved, the Council shall recognize the citizens' group presenting the petition as the official sister city organization for the city so named.

(c) The Mayor shall appoint the first Board of Directors for the sister city organization. Subsequent appointments to the Board shall be by the organization in accordance with their rules or bylaws. A current list of Board members shall be placed on file at all times with the Mayor's Office.

(Prior Code, § 20A.060; Ord. No. 51-86; Ord. No. 51-96)

Sec. 20A.070. Sister city organization's annual plan.

(a) To facilitate the Commission's review of the activities and programs of officially recognized sister city organizations, there shall be filed by said organizations with the Commission an annual plan. The plan shall describe the proposed services and activities generally of the organization and shall explain in detail those services or activities for which City assistance is requested. The organization may change its plan from time to time and may conduct additional activities that are not in the plan.

(b) An annual plan may include any of the following types of services or activities:

(1) Representing the City ~~of Salem~~ as a community at public events and celebrations in the affiliated city, such as parades, festivals, trade shows or exhibitions, and in official ceremonies;

(2) Presenting exchanges with residents or officials of the affiliated city in order to further public understanding or mutual goodwill, including civil, art, cultural, educational, or athletic exchanges; reciprocal trade missions; or commemorative projects in parks and public places; and mutual visitations and tourist promotions;

(3) Building knowledge and better understanding of the affiliated city among Salem residents through exhibitions from the affiliated city (e.g., displaying books, photographs, or art objects; or showing films), shows or lectures, or in direct communications;

(4) Encouraging people-to-people contacts with the affiliated city by fostering "pen pal" relationships in schools; student and teacher exchange programs; correspondence between residents of the respective cities and amateur ("ham") radio communications; arranging home hospitality for visitors from the affiliated city and exchanges between Chambers of Commerce and community organizations with their counterparts in the two cities;

(5) Sharing knowledge; coordinating the exchange and dissemination of business information; establishing educational linkages; maintaining and strengthening cultural and ethnic ties; and cooperating on issues of mutual or global concern; and

(6) Promotion programs aimed at improving international relationships with emphasis on the affiliated city.

(Prior Code, § 20A.070; Ord. No. 51-86)

CHAPTER 20B. RESERVED

CHAPTER 20C. SALEM HISTORIC LANDMARKS COMMISSION

~~**State law reference**—Historic Preservation, ORS 358.015 et seq.~~

Sec. 20C.010. Policy.

It is hereby declared to be the policy of the ~~City~~ Council in carrying out the historic sites and structures goal and policy of the Salem Area Comprehensive Plan to identify historic resources and to encourage and promote restoration and preservation of such resources.

(Prior Code, § 20C.010; Ord. No. 50-85; Ord. No. 51-96; Ord. No. 15-06; Ord. No. 19-08)

Sec. 20C.020. Salem Historic Landmarks Commission created; composition.

(a) There is hereby created a commission to be known as the Salem Historic Landmarks Commission. The Commission shall consist of nine members to be appointed by the Mayor. All members shall have a positive interest in historic preservation and be residents of or have their places of business in the City ~~of Salem~~.

(b) At least five of the Commissioners shall meet the United States Secretary of the Interior's Historic Preservation Qualification Standards, to the extent that professionals meeting those standards are available in the community. In making such appointments, the Mayor should consider the applicants' qualifications in the fields of archaeology, architectural history, conservation, cultural anthropology, curation, engineering, folklore, historic architecture, historic landscape architecture, historic preservation, historic preservation planning, and history. The remaining Commissioners may be appointed at large.

(c) When making appointments to the Commission, the Mayor may also consider applicants' qualifications in the fields of construction, restoration, real estate, local history, and architecture, as these fields are directly related to the routine functions of the Commission.

(Prior Code, § 20C.020; Ord. No. 50-85; Ord. No. 10-93; Ord. No. 50-99; Ord. No. 52-2001; Ord. No. 15-06; Ord. No. 19-08)

Sec. 20C.030. Appointments and terms of members.

(a) Any vacancies on said Commission shall be filled by appointment by the Mayor, after consulting with the chair of the Commission. Members may be reappointed except that a member who has served two full three-year terms may not be reappointed until after the expiration of one full year from the date of expiration of his or her immediate previous term of office.

(b) Members of the Commission shall receive no compensation for their services, but may be reimbursed for expenses incurred in the performance of their duties.

(Prior Code, § 20C.030; Ord. No. 50-85; Ord. No. 10-93; Ord. No. 50-99)

Sec. 20C.040. Organization of Commission.

(a) The Commission shall elect a chair and vice-chair who shall hold office at the pleasure of the Commission.

(b) The Commission shall meet at least once each quarter at a time and place that it specifies at least five days in advance. The Commission may meet at other times in accordance with its rules. All meetings of the Commission shall be open to the public, provided executive sessions may be held pursuant to the provisions of state law.

(c) The Commission may establish and alter rules and regulations for its own internal government and procedure consistent with the laws of the State ~~of Oregon~~ and with the Charter and ordinances of the City ~~of Salem~~.

(d) The Commission's plan of internal organization and rules of procedure shall be governed by Robert's Rules of Order as adopted by SRC ~~2.1640~~ 2.655. A record of its proceedings shall be filed with the City Recorder.

(e) The Department of Community Development shall provide the staff support to the Commission. One such staff person shall be designated as its secretary, who shall keep an accurate record of all proceedings of the

Commission.

(Prior Code, § 20C.040; Ord. No. 50-85; Ord. No. 50-99; Ord. No. 58-2002)

Sec. 20C.050. Functions and duties of the Commission.

The Commission shall have no executive or administrative powers or authority except as herein provided, and this ~~ordinance~~ chapter shall not be construed as depriving elected or appointed officials of the City of any power they may have under the laws of the State or the Charter of the City. The Commission shall, except as provided in subsection (p) of this section, be advisory only and shall have powers, common duties, and functions as follows:

(a) Encourage and support the efforts of private individuals and groups.

(b) Create a local register of historic buildings, areas, and sites through an inventory of the greater Salem area.

(c) Make recommendations to the Council on all matters dealing with historic landmarks.

(d) Establish standards for the designation of landmarks of local, state, and national significance.

(e) Review applications for state or federal funds for preservation to add local support for such applications, and evaluate impacts upon the City.

(f) Create public pride and an awareness of the importance of historic landmarks to the community.

(g) Coordinate with the Planning Commission on matters affecting land use, planning, and zoning.

(h) Make funding recommendations to the Council.

(i) Create education programs to make landmark owners aware of the importance of their property to the community.

(j) Be responsible for facilitating the implementation of SRC chapter 230 ~~120A, "Historic Preservation,"~~ and shall make recommendations for such implementation to the Council.

(k) Recommend appropriate City ordinance changes of law which appear appropriate or needed for furthering historic preservation activities within the City ~~of Salem~~.

(l) Work to seek the donation of funds, easements, buildings, areas, etc., for community enjoyment and review the impact upon the City of donations.

(m) Work with and coordinate with the State in the identification and maintenance of state-owned facilities deemed to have historical significance.

(n) Establish subcommittees and appoint ex officio members as needed.

(o) Serve as the processing body for nominations to the National Register of Historic Places in accordance with certification to the City delegated by the State ~~of Oregon~~ and U.S. National Park Service.

(p) Perform historic design review as authorized under SRC chapter 230 ~~120A~~.

(Prior Code, § 20C.050; Ord. No. 123-86; Ord. No. 51-96; Ord. No. 52-2001; Ord. No. 62-05)

CHAPTER 20D. RESERVED

CHAPTER 20E. CENTER 50+ ADVISORY COMMISSION

Sec. 20E.010. Policy.

It is hereby declared to be the policy of the Council of the City ~~of Salem~~ that all matters relating to Center 50+ shall be submitted to the Center 50+ Advisory Commission created pursuant to SRC 20E.030.

(Prior Code, § 20E.010; Ord. No. 23-94; Ord. No. 51-96; Ord. No. 11-16, § 1, 8-8-2016)

Sec. 20E.020. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~As used in this chapter, the words~~

Center 50+ ~~shall~~ means the Center 50+.

~~"~~*Commission*~~" shall~~ means the Center 50+ Advisory Commission.

Senior ~~shall~~ means a person aged 50 years or older.

(Prior Code, § 20E.020; Ord. No. 23-94; Ord. No. 43-2000; Ord. No. 11-16, § 1, 8-8-2016)

Sec. 20E.030. Center 50+ Advisory Commission created.

There is hereby created a commission to be known as the Center 50+ Advisory Commission for the purpose of acting as an advisory body to Council and staff on issues pertaining to the Center 50+ and serving as a point of reference for concerns of the senior population.

(Prior Code, § 20E.030; Ord. No. 23-94; Ord. No. 43-2000; Ord. No. 11-16, § 1, 8-8-2016)

Sec. 20E.040. Composition, appointment and terms of office.

(a) The Commission shall consist of 15 members. Seven Commission members shall be persons drawn from the community at large ("community members"). Six of the seven community members shall be 50 years of age or older at the time of their appointment. The eight other Commission members shall be representatives of Center 50+ partners ("partner members"). A Center 50+ partner is a community agency that has a shared mission and vision with Center 50+, and has both an in-kind and financial investment in the success of shared programming that exists at Center 50+ or throughout the community. A partner represents facets of the aging sector and provides expertise and industry knowledge to the Commission as it creates initiatives and programming to better serve the growing population. Partners include Chemeketa Community College, Northwest Senior & Disability Services, Friends of the Salem Senior Center, Marion-Polk Food Share, Alzheimer's Association Oregon Chapter, Salem Electric, a representative from the healthcare industry, and a representative from either the faith community or business community.

(b) Community members shall be appointed by the Mayor for a term of three years, and the terms of not more than three members thereof shall expire in any one year. Partner members shall be appointed, and may be removed, by the Mayor. No community member shall serve more than two full consecutive terms, and partner members may serve any number of consecutive terms.

(c) In the case of vacancy, the Mayor shall appoint a successor to fill out the unexpired term. The Director shall be an ex officio participating non-voting member of the advisory commission. Members of the Commission shall receive no compensation for their services, but may be reimbursed for expenses incurred in the performance of their duties.

(Prior Code, § 20E.040; Ord. No. 23-94; Ord. No. 15-96; Ord. No. 43-2000; Ord. No. 11-16, § 1, 8-8-2016)

Sec. 20E.050. Organization of Commission.

(a) The Commission shall annually elect from among its members a chairperson and vice-chairperson. Eight members of the Commission shall constitute a quorum.

(b) The Commission shall meet at least quarterly at a time and place that it specifies at least five days in advance. The Commission may meet at other times in accordance with its bylaws. The City Manager shall make available to the Commission a convenient meeting place. All meetings of the Commission shall be open to the public.

(c) A record of the Commission's proceedings shall be filed with the City Recorder.

(Prior Code, § 20E.050; Ord. No. 23-94; Ord. No. 43-2000; Ord. No. 11-16, § 1, 8-8-2016)

Sec. 20E.060. Functions and duties.

(a) It shall be the function of the Commission to serve in an advisory capacity to Center 50+ staff and Council, and to give support, assistance, and advice on 50+ issues and issues related to the senior population.

(b) Day-to-day decision making, program operation, and Center 50+ facility use in accordance with adopted policy and budget is the responsibility of the Director. The Commission shall act as liaison between Center 50+ staff and seniors participating within Center 50+. The Commission's duties shall include the following:

(1) Serve in an advisory capacity to Council and Center 50+ staff to carry out the goals and objectives of Center 50+.

(2) Operate within the stated purposes of this chapter and the Commission bylaws.

(3) Focus attention on and identify the needs of Center 50+ patrons and community.

(4) Represent the needs of all Center 50+ patrons, in order to ensure a well-rounded, diverse activity base.

(5) Educate Center 50+ patrons of the Commission's roles and responsibilities, Center 50+ policies and procedures, and patron responsibilities.

(6) Become a channel of information and serve as a mechanism to assist Center 50+ patrons.

(7) Work with staff in developing and implementing Center 50+ programs with particular emphasis on the desires and needs of the patrons and community.

(8) Evaluate input from program chairpersons, committees, volunteers, and patrons when considering establishing or changing Center 50+ policies or programs.

(9) Recommend program goals and objectives for Center 50+ staff and Council consideration when preparing the annual budget.

(10) Recommend and review acquisition and disposition of gifts and donations.

(11) Recommend Center 50+ policies that define the entire scope of services offered to Center 50+ patrons.

(12) Assist and support Center 50+ by developing and implementing fundraising activities to secure adequate financial resources for the operation of Center 50+ to offset finances derived from the general fund of the city budget.

(13) Ensure Center 50+ is effectively integrated into the community and with related organizations by assisting in public relation functions.

(14) Support Center 50+ activities in the community.

(15) Periodically review and evaluate programs and services to ensure consistency with the mission statement of Center 50+.

(16) Submit an annual report and work plan in writing to Council using the mission statement and goals and objectives established at the beginning of each fiscal year in accordance to the Center's adopted strategic operation plan.

(17) Advise and assist staff in the development of both short-range and long-range plans for Center 50+ programs and the facility.

(Prior Code, § 20E.060; Ord. No. 23-94; Ord. No. 43-2000; Ord. No. 11-16, § 1, 8-8-2016)

CHAPTER 20F. RESERVED

CHAPTER 20G. SALEM ~~HOUSING AND~~ URBAN DEVELOPMENT, COMMUNITY SERVICES AND HOUSING ~~ADVISORY COMMITTEE~~ COMMISSION

Sec. 20G.010. Salem Urban Development, Community Services, and Housing Commission created; composition.

The Salem Urban Development, Community Services and Housing Commission is hereby created.

(a) The Commission shall consist of nine members as follows:

(1) Three at-large members from the general public.

(2) One representative from the Salem Housing Advisory Committee.

(3) Two representatives from nonprofit social service organizations.

(4) One representative from the United Way of the Mid-Willamette Valley.

(5) One at-large member from the City of Keizer.

(6) One representative of for-profit business within the City ~~of Salem~~.

(b) All members of the Commission must be residents or have their principal place of business in Salem, except for the representative from the City of Keizer who must be a resident or have their principal place of business in Keizer.

(Prior Code, § 20G.010; Ord. No. 63-99; Ord. No. 63-05; Ord. No. 42-09; Ord. No. 18-15)

Sec. 20G.020. Appointment and terms of members.

(a) The ~~City~~ Council shall appoint members of the Salem Urban Development, Community Services and Housing Commission.

(b) The term of office of the members shall be for staggered terms of three years, or until their successors are appointed and qualified. No appointive member shall serve more than two consecutive terms. A member shall not be eligible to serve longer than that member's term of appointment on the ~~board, or~~ Commission ~~represented by that member~~. Persons appointed to fill vacancies left by members whose terms on the Commission have not expired shall have as their term of office the unexpired terms of their immediate predecessors on the Commission, and are eligible for reappointment for an additional consecutive term.

(c) Members of the Commission shall receive no compensation for their services.

(Prior Code, § 20G.020; Ord. No. 63-99; Ord. No. 42-09; Ord. No. 18-15)

Sec. 20G.030. Procedure.

(a) The Salem Urban Development, Community Services and Housing Commission may adopt bylaws for its procedures consistent with the laws of the State ~~of Oregon~~ and with the Charter and ordinances of the City ~~of Salem~~. Where not inconsistent with such bylaws or where such bylaws are not adopted, Robert's Rules of Order as adopted by SRC ~~2.1640~~ 2.655 shall apply.

(b) The Commission shall elect a chair and a vice-chair who shall hold office at the pleasure of the Commission.

(c) The Commission shall meet quarterly and as necessary at the call of the chair or City Manager. All meetings of the Commission shall be open to the public. Minutes of the Commission's proceedings shall be filed with the City Recorder. The Commission shall receive staff support from the Urban Development.

(d) A majority of the actual members of the Commission, excluding vacancies from the basic number established for the Commission, shall constitute a quorum. The Commission may conduct business only when a quorum is present. When there is a quorum, the Commission may act by a majority of members present. A Commission member is considered present for purposes of determining the quorum needed on a matter whether or not the member has abstained from participation on that matter.

(Prior Code, § 20G.030; Ord. No. 63-99; Ord. No. 58-2002; Ord. No. 79-2002; Ord. No. 63-05; Ord. No. 42-09; Ord. No. 18-15)

Sec. 20G.040. Functions and duties.

The Salem Urban Development, Community Services and Housing Commission shall have no powers or authority except as conferred by this section. This section shall not be construed as depriving elected or appointed officials of the City of any power they may have under the laws of the State or Charter of the City. The Commission shall be advisory to the ~~City~~ Council and the City Manager and shall have powers, duties, and functions as follows:

(a) Serve in an advisory capacity to the ~~City~~ Council in matters relating to allocation of Title I, Housing and Community Development Act of 1974, as amended (CDBG) and Title II, Cranston-Gonzalez National Affordable Housing Act of 1992, as amended (HOME) grant funds from the Department of Housing and Urban Development (HUD) and on such other matters related to HUD grant programs as the ~~City~~ Council may request;

(b) Make policy recommendations to the ~~City~~ Council in five-year strategic plans, in annual plans for specific project budgets, and as needed for project modifications to the plans;

(c) Identify the social service needs of the community and develop recommendations and solutions to meet the identified social service needs;

(d) Analyze fiscal and social implications of proposed and existing social service programs funded by, or under the jurisdiction of, the City ~~of Salem~~;

(e) Monitor and evaluate social service programs funded by or receiving support from the City ~~of Salem~~;

(f) Initiate efforts toward exchanging information for the purpose of coordinating social service delivery systems, public and private, and their governing and administrative bodies that affect the Salem area population;

(g) Refer those matters or issues arising that do not fall within the power and duties of the Commission to the ~~City~~ Council; and

(h) Make such reports and recommendations on topics to the ~~City~~ Council as the Council may request.

(Prior Code, § 20G.040; Ord. No. 63-99; Ord. No. 42-09; Ord. No. 18-15)

CHAPTER 20H. RESERVED

CHAPTER 20I. COMMUNITY POLICE REVIEW BOARD

Sec. 20I.010. Community Police Review Board created; composition.

(a) The Community Police Review Board ("Board") is hereby created. The purpose of the Board is to review unresolved complaints against sworn members of the Police Department. For purposes of this chapter, a complaint is unresolved if it is not resolved to the satisfaction of the complainant within 45 days of filing the complaint with the City Police Department plus an additional 30 days if necessary for the Police Department to complete its investigation.

(b) The Board shall consist of seven members and two alternate members.

(Prior Code, § 20I.010; Ord. No. 41-2002; Ord. No. 36-10)

Sec. 20I.020. Appointment and terms of members.

(a) Members of the Board shall be appointed by the ~~City~~ Council.

(b) Terms of the members other than those originally appointed shall be for staggered terms of two years or until successors are appointed. Terms of the originally appointed members shall run as follows: three members until January 1, 2004, two members until January 1, 2005, and two members until January 1, 2006. Persons appointed to fill vacancies left by members whose terms on the ~~committee~~ Board have not expired shall have as their term of office the unexpired terms of their immediate predecessors on the ~~committee~~ Board. Members, other than members who have resigned, may be appointed for additional terms. Members may serve only two consecutive terms.

(c) Members of the Board shall receive no compensation for their services.

(d) When appointing members of the Board, ~~City~~ Council shall consider:

(1) Civic participation within the community;

(2) Residency within the City of Salem;

(3) Criminal history;

(4) Commitment to the goals of the Board;

(5) Demonstrated life experiences or training in cultural or ethnic diversity; and

(6) Any experience the individual has had with police officers in general, and the ~~City of~~ Salem Police Department in particular.

(Prior Code, § 20I.020; Ord. No. 41-2002; Ord. No. 36-10)

Sec. 20I.030. Procedures.

(a) The City Manager, with consent of the ~~City~~ Council, may adopt bylaws for the Board's ~~its~~ procedures consistent with the laws of the United States, the State ~~of Oregon~~ and with the Charter and ordinances of the City ~~of Salem~~.

(b) Meetings of the Board shall be open to the public, except for meetings conducted in executive session as provided by law or otherwise allowed in this section.

(c) Confidential records shall be reviewed and discussed only in executive session, and because deliberations involve the discussion of confidential records, all deliberations shall be conducted in executive session.

(d) Minutes shall be taken at Board proceedings. Minutes of the open portion of the meetings shall be a matter of public record. Minutes of executive sessions shall not be available to the public. All minutes of the Board's proceedings shall be filed with the City Recorder.

(Prior Code, § 20I.030; Ord. No. 41-2002; Ord. No. 82-2002; Ord. No. 36-10)

Sec. 20I.040. Confidential records.

(a) The Board is designated as a citizen review body authorized to receive confidential records and information contained therein. Such records shall be kept confidential by members of the Board and shall be reviewed only during the executive session portions of meetings. Members shall not reveal the contents of any written or oral internal investigation report, or other confidential records, to any person not a member of the Board or to any Board member who did not participate in the specific matter before the Board. No reports of the Board shall contain any confidential records or information contained therein.

(b) Notwithstanding the provisions of this section, the following confidential information shall not be subject to disclosure to the Board without the written consent of the officer against whom a complaint has been lodged:

(1) The officer's medical or psychological information;

(2) The officer's home address or phone number;

(3) The officer's Social Security number;

(4) Any information relating to the officer's beneficiaries under any insurance or retirement program; and

(5) Any information identifying the officer's spouse or other relatives.

(c) Board members shall take an oath of confidentiality. Breach of confidentiality may be cause for immediate removal from the Board.

(d) Any person bringing an unresolved complaint to the Board releases and waives any rights the person may have regarding the disclosure of information to the Board.

(e) Any officer claiming to be aggrieved by an unlawful disclosure of confidential information under the provisions of this section shall have a cause of action in any court of competent jurisdiction for damages and such other remedies as may be appropriate.

(Prior Code, § 20I.040; Ord. No. 41-2002; Ord. No. 82-2002; Ord. No. 36-10)

Sec. 20I.050. Functions and duties.

The Board shall be advisory to the City Manager ~~of the City of Salem~~, and shall report its findings to the City Manager. Upon receipt of the findings of the Board, the City Manager shall report the findings to the ~~City~~ Council at the next regularly scheduled ~~City~~ Council meeting. Individual complaints shall not be reviewed by ~~City~~ Council. In addition to hearing unresolved complaints, the Board may also:

(a) Review and advise on Salem Police Department policy and procedure;

(b) Review and analyze complaint summaries and trends of the department; and

(c) Refer issues to the City Manager.

(Prior Code, § 20I.050; Ord. No. 41-2002; Ord. No. 36-10)

Sec. 20I.060. Conflicts of interest.

It shall be a conflict of interest for a Board member to represent any person as an advocate in a proceeding against or involving an officer where the Board member could be construed as having obtained information regarding that officer which would be useful in that proceeding as a result of his or her ~~their~~ membership on the Board.

(Prior Code, § 20I.060; Ord. No. 82-2002)

CHAPTER 20J. ADMINISTRATIVE RULEMAKING AND CONTESTED CASE PROCEDURES

Sec. 20J.010. Scope.

The provisions of ~~SRC Chapter 20J~~ this chapter are intended to establish uniform procedures for the promulgation of administrative rules; the issuance of all enforcement orders; the issuance, denial, revocation or suspension of licenses and permits; and the conduct of contested cases, and shall be used as the procedures for such actions, unless other procedures are specifically required by the Salem Revised Code, or state or federal law.

(Prior Code, § 20J.010; Ord. No. 112-07)

Sec. 20J.020. Definitions.

~~Unless the context otherwise specifically requires, as used in this Chapter, the following mean:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Administrative rule* means any regulation that implements, defines or clarifies a general regulatory standard established in a provision of the Code, where the authority to adopt the regulation as an administrative rule is specifically delegated by ordinance to the City Manager or a department director. As used in this chapter, the term "administrative rule" does not include other types of administrative regulations of the City, including, by way of illustration, but not of limitation, formal interpretations issued pursuant to SRC 110.050; rules promulgated or policies adopted by the ~~City~~ Council; rules of court adopted by the municipal judge; internal management directives, standards or regulations; department director letters; personnel policies; internal operating procedures; and construction standards for public improvements, including public facilities constructed pursuant to conditions of land use approval and improvements within the public right-of-way.

~~(b)~~ *City Manager* means the City Manager of the City of Salem, or the City Manager's designee.

~~(c)Code means the Salem Revised Code.~~

~~(d)~~ *Contested case* means a proceeding before a Hearings Officer arising out of the imposition of a civil penalty; the abatement of a nuisance; the refusal to issue or renew, or the suspension or revocation, of any license or permit; or any other matter whereby compliance with the Code or a determination of a person's rights and remedies under the Code has been conferred on the Hearings Officer. As used in this chapter, the term "contested case" does not include the appeal of a land use decision, as defined by ORS 197.015(10), or limited land use decision, as defined by ORS 197.015(12), or any other decision where another appellate body is specifically designated by the Code, or by state or federal law.

~~(e)~~*Enforcement officer* means the department director or other employee of the City designated as having authority to issue enforcement orders, impose civil penalties, or grant, deny, suspend or revoke a license or permit, or that person's designee.

~~(f)~~*Enforcement order* means a notice of noncompliance or violation; a notice to cease and desist; a notice to abate; a notice denying, suspending or revoking a license or permit; or any other similar notice denying, suspending or revoking any other right or privilege.

~~(g)~~ *Hearings Officer* means the Hearings Officer appointed pursuant to SRC 2.035, or any other person designated and appointed by the ~~City~~ Council as a Hearings Officer for a particular proceeding or group of proceedings.

~~(h)~~ *License* or *permit* means the whole or any part of any written form of permission that is required in order to pursue an activity, trade, occupation or profession. As used in this chapter, the term "license" or "permit" does not include building permits, urban growth development permits, or any land use decision, as defined by ORS 197.015(10), or limited land use decision, as defined by ORS 197.015(12).

~~(i)~~*Person* means a natural person, partnership, corporation, limited liability partnership, limited liability company, co-operative, governmental entity, association, or other entity in law or fact.

(Prior Code, § 20J.020; Ord. No. 112-07; Ord. No. 42-09)

ADMINISTRATIVE RULEMAKING

Sec. 20J.030. Administrative rulemaking authority.

~~The City Manager or a department director shall exercise rulemaking authority conferred by the Code consistent with the procedures set forth in this Chapter.~~ The Director shall have authority to issues administrative rules to implement the provisions of the Code, and shall exercise rulemaking authority consistent with the procedures set forth in this chapter.

(Prior Code, § 20J.030; Ord. No. 112-07)

Sec. 20J.040. Notice of rulemaking.

(a) Prior to the adoption, amendment, or repeal of any administrative rule, the City Manager shall give notice of proposed rulemaking by:

(1) Making copies of the notice of proposed rulemaking available to any person who has requested such notice by submitting a written request to receive such notice to the City Recorder;

(2) ~~By~~ Posting notice of proposed rulemaking on the City's website, not less than 15 calendar days prior to the adoption of the rule;

(3) Providing a copy of the notice of proposed rulemaking to the ~~City~~ Council;

(4) Posting notice at two locations at City Hall; and

(5) The City Manager may direct that notice of the rule be published in a newspaper of general circulation within the City, not less than 15 calendar days prior to the adoption of the rule.

(b) The notice of proposed rulemaking shall:

(1) State the subject matter and purpose of the proposed rule in sufficient detail to inform a person that the person's interests may be affected by the rule;

(2) State the time, place, and manner for interested persons to submit data or written comments on the proposed rule;

(3) Include a citation of the authority to promulgate the rule;

(4) Include a statement of the need for the rule and a statement of how the rule is intended to meet that need;

(5) List the principal documents, reports, or studies, if any, prepared by or relied upon by the City in considering the need for and in preparing the rule, and identify the location where those documents are available for public inspection; and

(6) State the date upon which the rule will be adopted and effective.

(c) Any person may request mailed copies of notices of proposed rulemaking pursuant to subsection (a) of this section. The request shall be in writing, and shall be submitted to the City Recorder. Upon receipt, the City Recorder shall acknowledge the request, establish a mailing list, and maintain a record of all mailings made to all persons submitting such requests.

(Prior Code, § 20J.040; Ord. No. 112-07)

Sec. 20J.050. Opportunity for comment.

Interested persons shall be given not less than 15 calendar days to submit data or written comments on the proposed administrative rule. Data or comments received from interested persons shall be considered in adopting the administrative rule.

(Prior Code, § 20J.050; Ord. No. 112-07)

Sec. 20J.060. Temporary and emergency rules.

(a) *Temporary rules.* Notwithstanding SRC 20J.030 and ~~SRC~~ 20J.040, temporary rules may be adopted without notice or opportunity to comment, if needed to implement the provisions of any new or amended ordinance

upon the ordinance's effective date.

(b) *Emergency rules.* Notwithstanding SRC 20J.030 and ~~SRC~~ 20J.040, a rule may be adopted, amended or suspended without prior notice or opportunity to comment, or upon abbreviated notice and opportunity to comment, if the City Manager adopts written findings that an emergency exists, and the failure to act promptly will result in prejudice to the public interest.

(c) *Effective period.* Any rule adopted, amended, or suspended under subsections (a) and (b) of this section shall not be effective or suspended for a period of more than 180 calendar days. The adoption of a rule under this section does not preclude the subsequent adoption of an identical permanent rule.

(Prior Code, § 20J.060; Ord. No. 112-07)

Sec. 20J.070. Basis and validity for rule; publication of rules.

(a) Unless otherwise required by law, the adoption, amendment, or repeal of a rule need not be based upon or supported by an evidentiary record.

(b) Unless the City Manager specifies another date, all rules adopted in substantial compliance with the provisions of this chapter ~~and~~ shall be valid and in effect from and after the date the rule is adopted as set forth in the Notice of Proposed Rulemaking.

(c) The City Recorder shall compile all adopted rules, which shall be supplemented and revised as necessary. A copy of the compilation shall be made available to the public and may be made available in electronic form.

(Prior Code, § 20J.070; Ord. No. 112-07)

Sec. 20J.080. Council review of administrative rules.

The ~~City~~ Council, upon its own motion, may review a proposed administrative rule. When reviewing a rule, the ~~City~~ Council shall determine whether the rule is within the scope of the provision of the Code authorizing the rule's adoption, and whether the rule is duplicative of, or conflicts with, another rule or other federal, state or local law or regulation, or is outside of the range of rulemaking authority. If the ~~City~~ Council finds a proposed rule is not within the scope of the provision, or is duplicative of or in conflict with another law or regulation, the rule shall be amended or revised, or new rulemaking proceedings may be initiated. If the ~~City~~ Council find a proposed rule is outside of the range of rulemaking authority, the ~~City~~ Council shall clarify the range of rulemaking authority, and shall direct the rule be revised to reflect such authority, or that the rulemaking proceeding be abandoned.

(Prior Code, § 20J.080)

ENFORCEMENT PROCEEDINGS AND CIVIL PENALTIES*

***State law reference**—Civil procedures and remedies, ORS 12.010 et seq.; nuisance abatement and actions, ORS 105.505 et seq.

Sec. 20J.090. Initiation of enforcement proceedings.

(a) Proceeding for enforcement of the Code, including abatement of nuisances and enforcement of land use regulations, shall be initiated by the issuance of an enforcement order.

(b) Prior to issuing an enforcement order, the enforcement officer shall pursue such attempts as are reasonable in light of the circumstances to secure voluntary correction of the violation. If the attempts to secure voluntary correction are unsuccessful, the enforcement officer may issue an enforcement order, which shall give not less than ten business days to correct the violation.

(c) Notwithstanding subsection (b) of this section, the enforcement officer may issue an enforcement order without having made attempts to secure voluntary correction where the violation poses an imminent threat to public health, safety, or welfare; was knowing and intentional; or was a repeat of a similar violation. If an order is issued pursuant to this subsection, the order shall set forth a time certain within which correction of the violation must be completed, which may be as soon as is practicable under the circumstances.

(d) An enforcement order shall contain:

(1) Reference to the particular Code provision that is alleged to have been violated;

(2) A short and plain statement of the matters asserted or charged;

(3) A statement of the action required to remedy the violation;

(4) The date on which the enforcement order was issued and the date and time by which the violation must be corrected;

(5) If a civil penalty is authorized, a statement that a civil penalty may be, or has been, assessed, and the maximum amount of the penalty per day;

(6) A statement of the right to appeal the enforcement order to the Hearings Officer;

(7) A short and plain statement of the appeal procedure; and

(8) A statement that if a notice of appeal is not filed within the time allowed, the person will have waived the right to review of the enforcement order.

(e) Any enforcement order issued in substantial compliance with subsection (d) of this section shall be valid from and after the date the order is issued.

(Prior Code, § 20J.090; Ord. No. 112-07)

Sec. 20J.100. Delivery of enforcement order.

The enforcement order shall be delivered to the person, or sent to the person by first class mail and, in the case of nuisance abatement, by any one of the following: certified or registered mail, return receipt requested, or express mail, addressed to the person's last known residence or business address. Any enforcement order served by mail shall be deemed received three business days after the date mailed, if to an address within the State ~~of Oregon~~, and seven business days after the date mailed, if sent to an address outside the State ~~of Oregon~~. Refusal to accept the registered or certified mail shall not be deemed to, and shall not, render the notice invalid.

(Prior Code, § 20J.100; Ord. No. 112-07; Ord. No. 23-12)

Sec. 20J.110. Appeal from enforcement order.

(a) A person who has been issued an enforcement order may appeal the order by filing a notice of appeal with the City Recorder. The notice of appeal must be filed within 15 business days after the date notice is delivered to the person or ~~the person~~ is deemed to have been received by the person under SRC 20J.100.

(b) The notice of appeal shall contain:

(1) The name, address and telephone number of the appellant;

(2) A copy of the enforcement order;

(3) The basis for the appeal, stating with specificity why the enforcement order was issued in error, based on one or more of the following:

(A) The enforcement order was issued in violation of, or is inconsistent with, the Code;

(B) The enforcement order was issued in violation of, or is inconsistent with, a rule; ~~or~~

(C) The enforcement order is not supported by a factual basis; or

(D) The enforcement order is in violation of other applicable federal, state or local law.

(c) The notice of appeal shall be accompanied by an appeal fee, as established by resolution of the ~~City~~ Council. The appeal fee is not refundable unless the Hearings Officer finds the enforcement order was not well founded in law or fact, in which case the appeal fee shall be refunded in full.

(d) The Hearings Officer's hearing upon the appeal shall be limited to the reasons the enforcement order is incorrect, as set forth in the notice of appeal. A notice of appeal that is untimely filed shall be dismissed by the Hearings Officer. Failure to file a notice of appeal shall be a waiver of all right to review of the enforcement order.

(Prior Code, § 20J.110; Ord. No. 112-07)

Sec. 20J.120. Effective date; finality.

An enforcement order shall be effective upon issuance, and shall become final upon expiration of the time for

filing a notice of appeal. If an appeal of the enforcement order is timely filed, the enforcement order shall become final upon issuance of the Hearings Officer's decision affirming the enforcement order.

(Prior Code, § 20J.120; Ord. No. 112-07)

Sec. 20J.130. Alternative dispute resolution.

(a) Unless otherwise precluded by law, a person who has filed a valid, timely notice of appeal and the enforcement officer may agree to use alternative methods of dispute resolution to resolve the issues arising out of an enforcement order. Alternative dispute resolution may include any collaborative method designed to encourage the parties to work together to develop a mutually agreeable solution, such as negotiation, mediation, use of a facilitator or a neutral fact-finder, or settlement conferences, but does not include binding arbitration.

(b) Final disposition of any issue arising out of an enforcement order may, unless precluded by law, be made by stipulation, agreed settlement, or consent order, entered by the Hearings Officer. A stipulation, agreed settlement or consent order must be in writing and signed by the appellant and the enforcement officer. By signing such an agreement, the parties waive the right to a contested case hearing and to judicial review.

(Prior Code, § 20J.130; Ord. No. 112-07)

CIVIL PENALTIES

Sec. 20J.140. Imposition of civil penalty.

(a) When a person has violated a provision of the Code that provides for the imposition of a civil penalty, the enforcement officer may impose a civil penalty as provided in this section.

(b) After the date and time set forth in the enforcement order to correct a violation that provides for a civil penalty has elapsed, the enforcement officer shall determine whether correction is complete. If correction is not complete, the enforcement officer may assess civil penalty and issue a notice of civil penalty.

(c) Notwithstanding subsection (b) of this section, the enforcement officer may assess a civil penalty as part of an enforcement order if the enforcement officer finds the violation was knowing or intentional, is a repeat of a similar violation, or that it is objectively impossible to correct the violation, and include a notice of such assessment in the enforcement order.

(d) The civil penalty imposed pursuant to this section shall be in addition to:

(1) Assessments or fees for any costs incurred by the City in remediation, cleanup or abatement of a nuisance; and

(2) Any fines, assessments, or other costs imposed in any other actions authorized by federal, state or local law.

(Prior Code, § 20J.140; Ord. No. 112-07)

Sec. 20J.150. Criteria for imposition of civil penalty.

The notice of civil penalty shall set forth the amount of the penalty, which, unless otherwise specifically provided in the Code, shall not exceed $2,000.00 per day. The amount of the civil penalty shall be based on consideration of the following criteria:

(a) The gravity and magnitude of the violation;

(b) Whether the violation was the result of events or circumstances not reasonably within the person's control, or whether the violation was the result of the person's negligent, knowing or intentional acts;

(c) The person's cooperativeness in correcting the violation;

(d) Whether the person has taken all feasible steps, or adopted necessary or appropriate procedures, to prevent future violations; and

(e) Any prior violations of the same or related provisions of the Code.

(Prior Code, § 20J.150; Ord. No. 112-07)

Sec. 20J.160. Notice.

(a) Notice of civil penalty shall be personally delivered to the person, or sent to the person by first class mail. Any notice served by mail shall be deemed received three business days after the date mailed if to an address within the State ~~of Oregon~~, and seven business days after the date mailed if to an address outside the State ~~of Oregon~~.

(b) A notice of civil penalty shall include:

(1) A statement of the amount of the penalty, and the reasons therefor, based upon the criteria set forth in SRC 20J.150;

(2) The date on which the enforcement order was issued and the date by which correction was to be made, or, if the penalty is imposed pursuant to SRC 20J.140(d), a short and plain statement of the basis for concluding that the violation was knowing, intentional, repeated, or objectively impossible to remedy;

(3) A statement of the party's right to appeal the civil penalty to the Hearings Officer;

(4) A short and plain statement of the appeal procedure; and

(5) A statement that if a notice of appeal is not filed within the time allowed, the person will have waived the right to review of the imposition or amount of the civil penalty.

(Prior Code, § 20J.160; Ord. No. 112-07; Ord. No. 23-12)

Sec. 20J.170. Effective date; finality.

A notice of civil penalty shall be effective upon issuance, and shall become final upon expiration of the time for filing an appeal. If a notice of appeal is timely filed, the penalty shall become final upon issuance of the Hearings Officer's decision affirming the civil penalty.

(Prior Code, § 20J.170; Ord. No. 112-07)

Sec. 20J.180. Unpaid civil penalties to become liens.

If a civil penalty remains unpaid 30 calendar days after such penalty becomes final, the civil penalty shall be entered in the City lien docket. The lien shall bear interest at the legal rate, which shall commence from the date of entry in the lien docket, and may be foreclosed as provided by law.

(Prior Code, § 20J.180; Ord. No. 112-07)

Sec. 20J.190. Appeal from imposition of civil penalty.

(a) Any person who has been issued a notice of civil penalty may appeal the imposition or amount of the civil penalty to the Hearings Officer, by filing a notice of appeal with the City Recorder. The notice of appeal must be filed within 15 business days after the date notice is delivered to the person or ~~the person~~ is deemed to have been received by the person under SRC 20J.160.

(b) The notice of appeal shall contain:

(1) The name and address of the appellant;

(2) A copy of the notice of civil penalty being appealed; and

(3) The basis for the appeal, stating with specificity:

(A) Why the imposition of the civil penalty is in error, based on one of the following:

(i) If the civil penalty is issued pursuant to SRC 20J.140(b), the person had completed correction of the violation within the time stated in the enforcement order;

(ii) If the civil penalty was issued pursuant to SRC 20J.140(c), that the violation was not knowing or intentional, or a repeat of a similar violation, or the person demonstrated that the violation was not objectively impossible to correct by correcting the violation.

(B) Why the amount of the civil penalty is not supported by a factual basis, based on the criteria set forth in SRC 20J.150.

(c) The notice of appeal shall be accompanied by an appeal fee, as established by resolution of the ~~City~~

Council. The appeal fee is nonrefundable, unless the Hearings Officer finds that the issuance of the civil penalty was not well founded in law or fact, in which case the appeal fee shall be refunded in full.

(d) The Hearings Officer's hearing upon the appeal shall be limited to the reasons the imposition or amount of the civil penalty is incorrect, as set forth in the notice of appeal. A notice of appeal filed after the period provided for filing an appeal shall be dismissed by the Hearings Officer as untimely. Failure to appeal as provided in this section shall be a waiver of all right to review the imposition or amount of the civil penalty.

(Prior Code, § 20J.190; Ord. No. 112-07)

LICENSES AND PERMITS*

***State law reference**—Authority to license and regulate, restrain and prohibit places where spirituous, vinous or malt liquors are sold, ORS 221.916(1)(g); authority to license, regulate and control any lawful business, trade, occupation, profession or calling, ORS 221.916(1)(j).

Sec. 20J.200. New and renewal license and permit applications.

(a) The applicant for a new license or permit, or for the renewal of an existing license or permit, shall ~~establish~~ meet and comply with the requirements for the license or permit, including, but not limited to, eligibility, qualifications and fitness.

(b) Applicants for a new license or permit, or for the renewal of an existing license or permit, shall provide accurate information on the application. Fraud, intentional misrepresentation or negligent misrepresentation ~~is~~ are grounds for denial of a new license or permit, or the renewal of an existing license or permit.

(c) If any license or permit must be periodically renewed, and the licensee or permittee has made timely application therefor, such license or permit shall not be deemed to expire, notwithstanding any stated expiration date contained therein, until notice has been issued granting or denying the renewal.

(Prior Code, § 20J.200; Ord. No. 112-07)

Sec. 20J.210. Notice.

(a) A notice of denial of a new license or permit, renewal of a license or permit, or the suspension or revocation of a license or permit shall be personally delivered to the person, or mailed to the person by first class mail addressed to the person's last known residence or business address. Any notice served by mail shall be deemed received three business days after the date mailed if to an address within the State ~~of Oregon~~, and seven business days after the date mailed if to an address outside the State ~~of Oregon~~.

(b) A notice of denial of a new license or permit, renewal of a license or permit, or the suspension or revocation of a license or permit shall include a short and plain statement of the reason for the denial, suspension or revocation; a statement of the party's right to appeal the denial to the Hearings Officer; and a short and plain statement of the appeal procedure.

(Prior Code, § 20J.210; Ord. No. 112-07; Ord. No. 23-12)

Sec. 20J.220. Appeals of denials of new or renewed licenses or permits.

(a) Any person who has been denied a new license or permit, renewal of an existing license or permit, or who has had a license or permit suspended or revoked may appeal the denial, suspension or revocation to the Hearings Officer, by filing a notice of appeal with the City Recorder. The notice of appeal must be filed within 15 business days after the date notice is delivered to the person or is deemed to have been received by the person under SRC 20J.210.

(b) The notice of appeal shall contain:

(1) The name and address of the appellant;

(2) A copy of the notice of denial being appealed; and

(3) The basis for the appeal, stating with specificity the reason why the decision to deny, suspend or revoke the license or permit is incorrect.

(c) The notice of appeal shall be accompanied by an appeal fee, as established by resolution of the ~~City~~

Council. The appeal fee is nonrefundable, unless the Hearings Officer finds in the decision that the denial, suspension or revocation had no basis in law or fact, and directs that the appeal fee be refunded in full.

(d) The Hearings Officer's review shall be limited to the reasons set forth in the appellant's notice of appeal as to why the denial of the issuance or renewal was incorrect. A notice of appeal filed after the period provided for filing an appeal shall be dismissed by the Hearings Officer as untimely. Failure to appeal as provided in this section shall be a waiver of all right to review the denial.

(Prior Code, § 20J.220; Ord. No. 112-07; Ord. No. 23-12)

Sec. 20J.230. Emergency license or permit suspension or revocation.

(a) Summary action. If a serious danger to the public health, welfare or safety exists, the enforcement officer may issue an emergency order, suspending or revoking a license or permit. The emergency order shall take effect immediately upon issuance, or at such later time as may be specified in the emergency order. An emergency order may be issued without prior notice or prior hearing, provided that notice and hearing occur as soon as practicable after issuance of the order.

(b) Notice. A copy of the emergency order shall be personally served on the licensee or permittee, or mailed to the person by first class mail addressed to the last known residence or business address of the party or parties. Any notice served by mail shall be deemed received three business days after the date mailed if to an address within the State ~~of Oregon~~, and seven business days after the date mailed if to an address outside the State ~~of Oregon~~.

(c) Contents of order. The emergency order shall include the following:

(1) The effective date of the emergency order;

(2) The specific facts that are the basis for the emergency suspension or revocation;

(3) The reasons the specified acts or omissions seriously endanger the public's health, welfare or safety, including a citation to any applicable sections of the Code;

(4) A statement that the licensee or permittee has the right to demand a hearing to contest the emergency order, which will be held as soon as practicable; and

(5) A statement that if the demand for hearing is not received by the City within 15 business days of the date the emergency order is issued, the licensee or permittee shall have waived right to a hearing, and to otherwise contest the emergency suspension or revocation.

(d) If the licensee or permittee timely requests a hearing, the matter shall be referred to the Hearings Officer for a contested case hearing. The Hearings Officer shall, upon written request by the enforcement officer, combine the hearing on the emergency order with any underlying enforcement proceeding affecting the license or permit.

(e) At the contested case hearing, the Hearings Officer shall consider the facts and circumstances surrounding the emergency order, including, but not limited to:

(1) Whether the acts or omissions of the licensee or permittee pose a serious danger to the public's health, welfare or safety; and

(2) Whether circumstances at the time of the hearing justify affirming, amending or revoking the emergency order.

(f) Following the hearing, the Hearings Officer shall issue a final order, affirming, amending, or revoking the emergency order.

(Prior Code, § 20J.230; Ord. No. 112-07; Ord. No. 23-12)

CONTESTED CASE PROCEDURES

Sec. 20J.240. Adoption of rules for contested case proceedings.

The Hearings Officer may adopt rules, procedures, and forms not inconsistent with this chapter to govern the procedure and the conduct of contested case hearings. All rules shall be effective upon adoption by the Hearings Officer. All rules shall be filed with the City Recorder, and shall be made available to the public upon request.

(Prior Code, § 20J.240; Ord. No. 112-07)

Sec. 20J.250. Setting hearings.

Upon the filing of a notice of appeal, the Hearings Officer shall set a time, date, and place for the hearing. The date shall be not less than 20 business days nor more than 60 business days after the date the notice of appeal is filed. The Hearings Officer may postpone, continue, or reschedule any hearing with the consent of all parties or on the motion of any party for good cause shown.

(Prior Code, § 20J.250; Ord. No. 112-07)

Sec. 20J.260. Notice of hearing.

(a) The Hearings Officer shall send a notice of the hearing, together with a true copy of the notice of appeal, to all parties not less than 20 business days prior to the date set for hearing. The Hearings Officer may authorize a shorter period when it appears that the alleged violation poses an imminent hazard to public health, safety, or welfare. The notice of hearing shall specify the time, date, and place of the hearing.

(b) Notice may be given by any method or combination of methods which, under the circumstances, is reasonably likely to apprise the parties of the hearing, including, but not limited to:

(1) Personal service;

(2) By mailing a copy of the notice to the appellant and the enforcement officer by first class mail addressed to the residence or business address of the appellant as set forth in the notice of appeal, and to the enforcement officer at the enforcement officer's business address. The notice shall be deemed received three business days after the date mailed if to an address within the State ~~of Oregon~~, and seven business days after the date mailed if to an address outside the State ~~of Oregon~~; and

(3) Any method authorized by the Oregon Rules of Civil Procedure for the service of summons.

(c) Notice of the hearing shall also be provided to:

(1) The tenants, residents, and lessees of any building or structure if the Hearings Officer's decision or order could result in the vacation, closure, or demolition of a building or structure;

(2) Any other person who has an interest in property, as reflected in the County Deed Records, that would be adversely affected by the Hearings Officer's decision or order;

(3) Any person who has requested such notification of the hearing, in writing. The Hearings Officer may provide by rule for the manner and means of giving notice to such persons in a manner reasonably calculated to provide such persons with actual notice of the hearing.

(d) The failure of any person to receive actual notice of the hearing shall not invalidate any decision or order of the Hearings Officer.

(Prior Code, § 20J.260; Ord. No. 112-07)

Sec. 20J.270. Stay of enforcement order.

(a) Unless otherwise provided by law, any person who timely files a notice of appeal may file a request to stay the enforcement order with the Hearings Officer.

(b) The request to stay shall contain:

(1) The name, address and telephone number of the person filing the request;

(2) A copy of the enforcement order;

(3) The name, address and telephone number of any other parties to the enforcement action;

(4) If the person is represented by an attorney, the name, address and telephone number of the attorney; and

(5) A statement of facts making a showing that:

(A) The person will suffer irreparable injury if the stay is not granted;

(B) There is a reasonable basis to claim that the enforcement order was issued in error; and

(C) Granting the stay will not result in substantial public harm.

(c) The request must be delivered to the enforcement officer and any other party identified in the request, at the same time the request is filed with the Hearings Officer.

(d) The Hearings Officer may conduct further proceedings pertaining to the request for stay, including taking further evidence. The enforcement officer may present additional evidence in response to the request for a stay.

(e) The Hearings Officer shall issue an order granting or denying the request for stay within 15 calendar days after receipt of the request for stay. The Hearings Officer shall:

(1) Grant the stay upon finding of irreparable injury to the appellant and the existence of reasonable basis for claim that the enforcement order was issued in error. The Hearings Officer may impose reasonable conditions upon the stay, including, but not limited to, posting of a bond, irrevocable letter of credit or other undertaking;

(2) Deny the stay upon a finding that the appellant failed to show irreparable injury or failed to show the existence of a reasonable basis for the claim ~~of~~ that the enforcement order was issued in error; or

(3) Deny the stay upon a finding that substantial public harm would result from granting the stay, notwithstanding the appellant's showing of irreparable injury and showing of the existence of reasonable basis for the claim ~~of~~ that the enforcement order was issued in error.

(Prior Code, § 20J.270; Ord. No. 112-07)

Sec. 20J.280. Informal resolution.

(a) Unless precluded by law, informal disposition of any contested case may be made, with or without a hearing, by stipulation, consent order, or agreed settlement; provided, however, after issuance of a notice of hearing, no building occupied as a residential structure may be vacated based on an informal disposition, unless approved by the Hearings Officer.

(b) Any informal disposition of a contested case must be in writing and signed by the party or parties. The Hearings Officer shall incorporate that disposition into a final order. The Hearings Officer shall deliver or mail a copy of the order to each party, or, if applicable, to the party's attorney of record. An order that incorporates an informal disposition is a final order in a contested case, but is not subject to judicial review.

(Prior Code, § 20J.280; Ord. No. 112-07)

Sec. 20J.290. Subpoenas.

(a) The Hearings Officer may issue subpoenas to any party upon a showing of general relevance and reasonable scope of the evidence sought. Witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the City, shall receive fees and mileage as provided for witnesses in actions in Municipal Court.

(b) If any person fails to comply with any subpoena or any party or witness refuses to testify on any matters on which the party or witness may be lawfully interrogated, the judge of the Salem Municipal Court or the circuit court of any county of the State ~~of Oregon~~, on the application of the Hearings Officer, may compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

(Prior Code, § 20J.290; Ord. No. 112-07)

Sec. 20J.300. Discovery.

(a) *Production of documents and things.* Upon written request by the appellant or the enforcement officer, and a showing of the general relevance, the Hearings Officer shall enter an order directing the other party to provide a list of witnesses, grant permission to enter upon land to inspect the land or other property, and any books, papers, documents, photographs or tangible objects which the party intends to offer into evidence at hearing. Before requesting a discovery order, the party must seek discovery through an informal exchange of information.

(1) All discovery requests shall be made not less than 15 business days prior to the hearing. All discovery shall be provided not less than eight business days prior to hearing.

(2) Failure to provide requested discovery shall prevent the introduction of such evidence, unless the party can demonstrate good cause why the discovery was not provided.

(3) The Hearings Officer's order may require the party requesting discovery to pay the reasonable costs associated with producing the discovery.

(4) Nothing in this subsection (a) shall require the production of any documents subject to any privilege recognized under the Oregon Evidence Code, including, but not limited to, documents subject to attorney-client privilege, or require the production of a document that is exempt from disclosure under Oregon Public Records Law.

(b) *Depositions.* On petition of any party, the Hearings Officer may order the testimony of any material witness and may be taken by deposition in the manner prescribed by law for depositions in civil actions or by the use of audio or audio-visual recordings. The petition shall set forth the name and address of the witness whose testimony is desired, a showing of the materiality of the testimony of the witness, an explanation of why a deposition rather than informal or other means of discovery is necessary, and a request for an order that the testimony of such witness be taken before an officer named in the petition for that purpose. If the witness resides within the State ~~of Oregon~~ and is unwilling to appear, the Hearings Officer may issue a subpoena to require the person's appearance at the deposition. Unless expressly provided by law or expressly agreed upon by the enforcement officer, a Hearings Officer may not authorize a party to take depositions that are to be paid for by the City. The cost of a deposition shall be borne by the party seeking to take the deposition.

(Prior Code, § 20J.300; Ord. No. 112-07)

Sec. 20J.310. Late filing of documents.

Unless otherwise provided by law, when a party or enforcement authority fails to file any document in a contested case proceeding, other than a request for hearing, within the time specified, the late filing may be accepted if the Hearings Officer, upon written explanation of the reason for the late filing, determines that there was good cause for failure to file the document within the required time.

(Prior Code, § 20J.310; Ord. No. 112-07)

Sec. 20J.320. Prehearing notice.

(a) Prior to the commencement of a contested hearing, the Hearings Officer shall inform each party, either orally or in writing, of the following:

(1) A general description of the hearing procedure;

(2) That a record will be made of the proceedings, the manner of making the record, and its availability to the parties;

(3) The function of the record with respect to any appeal;

(4) That the City may be represented by an attorney;

(5) That the Hearings Officer will preside over the hearing, and will make a final decision, and that the Hearings Officer has the authority to make a final independent determination on the merits;

(6) That a party may, during the course of the proceedings, request a recess if the party determines representation by an attorney is necessary for the protection of the party's rights; and

(7) A description of the process for judicial review of the Hearings Officer's decision.

(b) The failure to give notice of any item specified in subsection (a) of this section, shall not invalidate any order of the Hearings Officer, unless, upon judicial review, a court finds that the failure prejudiced the substantial rights of the party. In the event of such a finding, the Court shall remand the matter to the Hearings Officer, who shall reopen the hearing and take whatever steps are necessary to remedy any prejudice to the rights of the party.

(Prior Code, § 20J.320; Ord. No. 112-07)

Sec. 20J.330. Hearings procedure.

(a) The hearing shall be conducted, subject to the discretion of the Hearings Officer, as follows:

(1) Opening statements of the parties or the parties' legal counsel;

(2) The evidence of the party with the initial burden of proof in support of its action, as set forth in SRC 20J.340(e);

(3) The evidence of the other parties;

(4) Any rebuttal evidence; and

(5) Any closing arguments.

(b) The Hearings Officer, the enforcement officer, the appellant, and legal counsel for the parties may question witnesses.

(c) Parties may be represented by counsel, who may respond to and present evidence and argument on all issues involved in the hearing.

(d) Exhibits shall be marked, numbered, and maintained by the Hearings Officer as part of the record of the proceedings.

(e) The Hearings Officer may request that any closing arguments be submitted in writing or be made orally.

(Prior Code, § 20J.330; Ord. No. 112-07)

Sec. 20J.340. Rules of evidence.

The following rules of evidence shall apply in contested case proceedings:

(a) *Oregon Evidence Code inapplicable.* Except as otherwise specifically provided herein, the technical rules relating to evidence and witnesses set forth in the Oregon Evidence Code shall not apply in contested case proceedings.

(b) *Witnesses and evidence.* Each party shall have the right to:

(1) Call and examine witnesses on any matter relevant to the issues of the hearing;

(2) Introduce documentary and physical evidence;

(3) Cross-examine opposing witnesses on any matter relevant to the issues of the hearing;

(4) Present rebuttal evidence; and

(5) Be represented by anyone who is lawfully permitted to do so.

(c) *Admissibility of evidence.* Any relevant evidence may be received which is of the type that a reasonably prudent person would rely on in the conduct of their serious affairs. Relevant evidence means evidence having any tendency to make the existence or non-existence of any fact that is of consequence to the appeal more probable or less probable than it would be without the evidence.

(d) *Testimony on oath or affirmation.* Testimony shall be taken upon oath or affirmation, which may be administered by the Hearings Officer.

(e) *Burden of proof.* The burden of proof shall be by a preponderance of the evidence, and the initial burden of proof shall be as follows:

(1) In an appeal from the issuance of an enforcement order, the City shall have the burden of proving the reasons why the enforcement order was properly issued.

(2) In an appeal from the imposition or the amount of a civil penalty, the City shall have the burden of proving the imposition, or the amount, of the civil penalty was correct.

(3) In an appeal from the denial of a issuance or renewal of a license or permit, the applicant for the license or permit shall have the burden of proving entitlement to the license or permit, or renewal thereof.

(4) In an appeal from the revocation or suspension of a license or permit, the City shall have the burden of proving that the revocation or suspension was proper.

(f) *Burden of production.* The burden of presenting evidence to support a fact or proposition rest with the

proponent of the fact or proposition.

(g) *Exclusion of evidence.* Irrelevant or unduly repetitious evidence may be excluded.

(h) *Privileges.* Privileges afforded by Oregon law shall be recognized by the Hearings Officer.

(i) *Objections.* Evidence objected to may be received by the Hearings Officer. If the Hearings Officer does not rule on its admissibility at the hearing, the Hearings Officer shall do so either on the record before a final order is issued or in the final order. The Hearings Officer shall accept an offer of proof made for excluded evidence, which shall contain sufficient detail to allow the reviewing court to determine whether the evidence was properly excluded. The Hearings Officer may direct that the offer be oral or written and at what stage in the proceeding it can be made, and may place reasonable limits on the offer of proof, including time devoted to an oral offer or number of pages in a written offer.

(j) *Ex parte communications.*

(1) An ex parte communication is an oral or written communication outside of the contested case proceeding, and without the knowledge or consent of other parties or the parties' legal counsel, made directly or indirectly to the Hearings Officer that relates to a legal or factual issue in the pending contested case proceeding. Ex parte communications to the Hearings Officer are prohibited.

(2) If an ex parte oral or written communication occurs with the Hearings Officer, the Hearings Officer shall disclose the existence and substance of the ex parte contact on the record, and shall not consider the substance of the ex parte contact as part of the Hearings Officer's decision-making process.

(k) *Official notice.*

(1) Official notice may be taken, either before or after the submission of a case for decision, of official records, statutes, administrative rules and regulations and ordinances.

(2) Official notice may be taken of general, technical or scientific facts within the knowledge of the Hearings Officer, provided the parties are informed of the Hearings Officer's intent to take official notice, and the parties are given the opportunity to present rebuttal evidence. If rebuttal evidence is presented, the Hearings Officer shall rule in the final order on whether the facts are to be considered evidence in the proceeding.

(l) *Inspection of premises.* The Hearings Officer may inspect any building or premises involved in the proceeding, provided that notice of the inspection is given to the parties prior to the time the inspection is made, all parties have an opportunity to be present at the inspection, and material facts observed and conclusions drawn from such observation are stated for the record at the time of the completion of the inspection.

(Prior Code, § 20J.340; Ord. No. 112-07)

Sec. 20J.350. Transmittal of questions to the enforcement officer.

The Hearings Officer may submit questions regarding the enforcement officer's interpretation of the applicable provisions of the Code transmitted, in writing, to the enforcement officer. The submission shall include a summary of the matter in which the question arises and shall be served on the enforcement officer and the appellant in any manner allowed by SRC 20J.260(b).

(Prior Code, § 20J.350; Ord. No. 112-07)

Sec. 20J.360. Exclusion of witnesses; removal of disruptive individuals.

The Hearings Officer may exclude witnesses from the hearing, except for a party, a party's authorized representative, and the enforcement officer. A Hearings Officer may expel any person from the contested case hearing if that person engages in conduct that disrupts the hearing.

(Prior Code, § 20J.360; Ord. No. 112-07)

Sec. 20J.370. Record.

(a) The record in a contested case shall include:

(1) All pleadings and intermediate rulings;

(2) Evidence and testimony received;

(3) Stipulations of the parties;

(4) A statement of matters officially noticed;

(5) Questions and offers of proof, objections and rulings thereon;

(6) Proposed findings and exceptions; and

(7) Any proposed order, and the final order prepared by the Hearings Officer.

(b) A tape recording or other electronic recording shall be made of all testimony. The recording need not be transcribed unless requested for purposes of rehearing or judicial review. The party requesting transcription shall be charged the cost of transcription.

(Prior Code, § 20J.370; Ord. No. 112-07)

Sec. 20J.380. Final order.

(a) The Hearings Officer shall issue a final order within 45 business days of the close of the hearing. Every final order shall be in writing.

(b) Unless otherwise stipulated by the parties, a final order shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the underlying facts supporting the findings as to each contested issue and as to each ultimate fact required to support the final order. The findings of fact and conclusions of law may be orally stated on the record by the Hearings Officer and those findings and conclusions incorporated in the written order by reference.

(c) The Hearings Officer shall notify the parties to a proceeding of a final order by delivering or mailing a copy of the final order and any accompanying findings and conclusions by first class mail to each party, or, if applicable, to the party's attorney of record.

(d) Every final order shall include a citation to the statute or statues under which the order may be subject to judicial review.

(Prior Code, § 20J.380; Ord. No. 112-07)

Sec. 20J.390. Default; requests to set aside default.

(a) The Hearings Officer shall issue a final order by default when a party fails to appear at the time and place set for the hearing. The Hearings Officer may issue a final order by default only upon a prima facie case made by the enforcement officer on the record. The Hearings Officer shall notify the party in default of the entry of a final order by default by delivering or mailing a copy of the order by first class mail to the party and, if applicable, to the party's attorney of record.

(b) The Hearings Officer may grant a request to set aside an order of default, if such request is filed with the Hearings Officer no later than 60 days after the entry of the final order of default, and the party demonstrates by clear and convincing evidence that the cause for failure to appear at the hearing was beyond the party's reasonable control. In determining whether to grant a request to set aside a default under this subsection, the Hearings Officer may make such further inquiry into the reasons for the party's failure to appear as the Hearings Officer deems appropriate.

(c) If the request to set aside the default is granted, the Hearings Officer shall enter an order granting the request and set the matter for hearing. If the request is denied, the Hearings Officer shall enter an order setting forth reasons for the denial.

(Prior Code, § 20J.390; Ord. No. 112-07)

Sec. 20J.400. Reconsideration or rehearing.

(a) A party may file a petition for reconsideration or rehearing within 30 calendar days after the final order

was mailed. A copy of the petition shall also be personally delivered or mailed by first class mail to all parties to the proceeding. The petition may be granted or denied by summary order and, if no action is taken, shall be deemed denied.

(b) The petition shall set forth the specific grounds for reconsideration, and may be supported by a written argument. If the petitioner establishes good and sufficient reason for reconsideration, the Hearings Officer shall issue an order for rehearing.

(c) If the Hearings Officer determines there are good and sufficient reasons for rehearing, the Hearings Officer shall decide the scope of the rehearing. The Hearings Officer may limit the scope of the rehearing to specific issues and may issue a new or amended final order, or reaffirm the original final order.

(d) The Hearings Officer at any time and upon a showing of due diligence, may set aside, modify, vacate, or stay any final order, or re-open any proceeding for additional hearing, when necessary to prevent a clear and manifest injustice to a party or other person adversely affected by such order.

(Prior Code, § 20J.400; Ord. No. 112-07)

Sec. 20J.410. Remedies.

(a) On review, the Hearings Officer may affirm, modify, reverse or vacate the decision or determination appealed from or remand the decision or determination to the enforcement officer for such reconsideration, additional consideration, or further action as the Hearings Officer may direct. The Hearings Officer may issue an order requiring an appellant found in violation of any applicable provision of the Code to comply with the applicable provision, within such time as the Hearings Officer may by order allow. By way of illustration, but not limitation, the order may require such party to do any or all of the following:

(1) Make all necessary repairs, modifications, and/or improvements to any structure, real property, or equipment involved;

(2) Abate or remove any nuisance;

(3) Change the use of the building, structure, or real property involved;

(4) Install any equipment necessary to achieve compliance;

(5) Order a building or structure vacated or demolished, when it reasonably appears that such measures are required to protect public health, safety, or welfare and direct that the property owner undertake any and all interim measures, as may be necessary to protect public health, safety and welfare. If a residential structure is ordered vacated pursuant to SRC chapter 50 or ~~SRC Chapter~~ 56, and the City relocates the tenants of such property, then the cost incurred by the City for relocating the tenants as provided by ORS 90.450 shall be an assessment lien upon the property from which the tenants are relocated;

(6) Pay a civil penalty of up to $2,000.00 per day that the violation continues;

(7) Undertake any other action reasonably necessary to correct the violation or mitigate the effects thereof.

(b) Assessments.

(1) A notice and statement of costs incurred by the City and civil penalties assessed under this section to the person shall be personally delivered to the person by the enforcement officer, or mailed by the enforcement officer to the person by first class mail and by any one of the following: certified or registered mail, return receipt requested, or express mail, addressed to the person's last known residence or business address. Any notice and statement served by mail shall be deemed received three calendar days after the date mailed if to an address within the State ~~of Oregon~~, and seven calendar days after the date mailed if to an address outside the State ~~of Oregon~~. Refusal to accept the registered or certified mail shall not be deemed to, and shall not, render the notice invalid.

(2) The notice and statement of costs shall contain:

(A) An itemized statement of costs incurred by the City;

(B) If a civil penalty was assessed, a statement of the amount of the penalty per day;

(C) A statement of the right to file objections to the amount of costs with the Hearings Officer; and

(D) A statement that if no objections are filed to the notice and statement of costs within the time allowed, the person will have waived the right to review of the notice and statement of costs.

(3) The enforcement officer shall file a copy of the notice and statement of costs with the Hearings Officer along with a copy of proof of service upon the person. If no objection to such statement is filed by the person with the Hearings Officer within 15 calendar days from the date of service or mailing, the Hearings Officer shall certify such statement and forward the same to the City's Finance ~~Director~~ Officer who shall forthwith enter the same as an abatement lien in the City lien docket.

(A) If an objection to the statement is received within the 15-day period, the Hearings Officer shall schedule and hold a hearing on the objection. The hearing shall be limited to whether the costs incurred by the City were correct, proper and reasonable, or whether the civil penalty was correctly calculated.

(B) After the hearing, the Hearings Officer shall certify the costs, or such part of the costs as the Hearings Officer determines were correct, proper and reasonable, and forward it to the Finance ~~Director~~ Officer, who shall enter it into the City lien docket. The Hearings Officer shall certify to the Finance ~~Director~~ Officer the correct amount of any civil penalty imposed, and the Finance ~~Director~~ Officer shall enter the civil penalty into the City lien docket.

(C) Liens imposed pursuant to this section may be collected or foreclosed as provided by law.

(D) In addition to the lien imposed under this section, any person found to be in violation of the Code shall be personally liable for costs incurred by the City pursuant to subsection (a) of this section, and for any civil penalty imposed by the Hearings Officer. In cases of a person found to be in violation of the Code as owners of property, the persons shall be personally liable hereunder only if they have control of the property, the legal authority to correct the violation, and knowingly or recklessly committed the violation.

(Prior Code, § 20J.410; Ord. No. 112-07)

Sec. 20J.420. Appeal of Hearings Officer's decision or order.

Appeal of a final decision or order of the Hearings Officer shall be by writ of review to the circuit court of Marion County, Oregon, as provided in ORS 34.010—34.100, and not otherwise.

(Prior Code, § 20J.420; Ord. No. 112-07)

State law reference—Writ of review, ORS 34.010 et seq.

Sec. 20J.430. Enforcement.

The City may institute appropriate suit or legal action in any court of competent jurisdiction to enforce the provisions of any decision or order of the Hearings Officer.

(Prior Code, § 20J.430; Ord. No. 112-07)

Title II

ASSESSMENT, LIENS AND CONNECTION FEES

CHAPTER 21. GENERAL ASSESSMENT PROCEDURES

~~**State law reference** – Local improvements and assessments, ORS § 223.001 et seq.~~

Sec. 21.010. Definitions.

~~For the purposes of this Chapter, the following words and phrases shall have the meanings hereinafter designated:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Acreage* means all real property not laid out into blocks.

~~(b)~~ *Block* means a parcel of land bounded by three or more streets as laid out in a platted addition, or a parcel of unplatted land bounded by four streets of the average size of platted blocks in the City.

~~(c)~~*Lateral sewer* means any public sewer to which a building connects or may connect.

~~(d)~~ *Local Improvement* means any capital construction project, or part thereof, undertaken by the City pursuant to state law, or pursuant to ordinance or resolution prescribing the procedure to be followed in making local assessments for benefits from a local improvement upon the lots that have been benefitted by all or a part of the improvement:

(a) That provides a special benefit only to specific properties or rectifies a problem caused by specific properties;

(b) The costs of which are assessed against those properties in a single assessment upon the completion of the project; and

(c) For which the property owner may elect to make payment of the assessment, plus appropriate interest, over a period of at least ten years.

For purposes of this ~~subsection~~ definition, the status of a capital construction project as a local improvement is not affected by the accrual of a general benefit to property other than the property receiving the special benefit.

~~(e)~~*Trunk main* means a water line larger than eight inches in internal diameter.

~~(f)~~*Water main* means water pipe one inch or larger in internal diameter and excluding a trunk main.

(Prior Code, § 21.010; Ord. No. 51-96; Ord. No. 47-2000)

Sec. 21.015. Notice to property owners of proposed improvements and assessments.

(a) The Council, upon its own motion or upon petition of 51 percent of owners of property which would be specially benefitted by local improvements, may initiate consideration of the improvements.

(b) When the Council determines to initiate a project and assess all or part of the cost of constructing a local improvement, including those elements of costs as defined in ORS 310.140(1)(a) ~~(10)~~, it shall cause the preparation of plans, profiles, specifications and estimates of the proposed improvement, and maps of profiles showing the area of benefit proposed to be assessed, and before proceeding with the improvement shall hold a public hearing, and notice of said hearing shall be given by the Recorder by publishing in a ~~daily~~ newspaper of general circulation ~~circulated~~ in the City, not less than ten days prior to the date of the hearing. At the hearing the Council shall consider the objections, if any, to the proposed improvement and thereafter the Council may revise such plans, specifications, and estimates and may exclude any property shown as benefitted on such maps or profiles.

(c) After completing the construction and certifying the costs, but before levying any assessment for any local improvement, the City Recorder shall cause to be mailed to each property owner affected by such assessment a notice which shall designate the location, the kind of improvement for which assessments are to be made, a description of each lot, part of lot, or parcel of land proposed to be assessed, the name of the owner thereof, if

known, and the amount of the assessment. The notice shall specify a date by which timely objections shall be filed with the Recorder. Any such objections shall state the grounds thereof. The Council shall consider such objections prior to passage of the ordinance levying the assessment.

(Prior Code, § 21.015; Ord. No. 150-67; Ord. No. 171-78; Ord. No. 51-96; Ord. No. 30-97; Ord. No. 91-99; Ord. No. 47-2000)

State law reference—Definition of actual costs, ORS 310.140(1)(a).

Sec. 21.020. Posting of notice.

A notice containing the substance provided in SRC 21.015(c) ~~(b)~~ shall be posted by the City Recorder on the bulletin board at the City Hall at least seven days prior to the time when the ordinance levying such assessments shall be considered by the Council.

(Prior Code, § 21.020; Ord. No. 150-67; Ord. No. 171-78; Ord. No. 51-96)

Sec. 21.030. Time for mailing.

The notice provided for in SRC 20.015 shall be mailed to the property owners affected by the proposed assessment at least seven days prior to the time when the ordinance levying such assessments shall be considered by Council. Any mistake, error, omission, or failure with respect to such mailing shall not be jurisdictional or invalidate the assessment proceedings.

(Prior Code, § 21.030; Ord. No. 150-67; Ord. No. 171-78; Ord. No. 47-2000)

Sec. 21.040. City Recorder to keep record of notices.

The City Recorder shall keep a record of the mailing of notices provided for in SRC 21.015, which record shall contain the name of the owner, the date of mailing of the notice, the address to which such notice was mailed, and the nature of the notice; and the City Recorder shall also keep a record of the date of posting of the notices provided for in SRC 21.020.

(Prior Code, § 21.040; Ord. No. 150-67; Ord. No. 47-2000)

Sec. 21.050. ~~Same;~~ Objections to proposed assessments.

At the time set, the Council shall hear and consider any objections to the proposed assessments and may adopt, correct, modify, or revise the proposed assessments and shall determine the amount of assessment to be charged against each lot, part of lot, or parcel of land, according to the special and peculiar benefits accruing thereto from the improvement, ~~and~~ the Council shall by ordinance spread the assessments.

(Prior Code, § 21.050; Ord. No. 150-67)

Sec. 21.060. Docket of city liens.

(a) There shall be kept and maintained in the ~~City's~~ Finance Division ~~department of finance~~ a docket of city liens.

(b) The docket shall show for each lien:

(1) The description of the lot, part of lot, or parcel of land affected;

(2) The name of the owner thereof; and

(3) The sum assessed upon each lot, part of lot, or parcel of land, and the date of entry.

(c) Liens in the docket shall have priority over all other liens or encumbrances thereon whatsoever.

(Prior Code, § 21.060; Ord. No. 150-67; Ord. No. 51-96; Ord. No. 47-2000)

State law reference—Lien docket, ORS 223.230.

Sec. 21.070. Notice of assessments.

Upon the passage of the ordinance spreading the assessments, the ~~Director of finance~~ Finance Officer shall, by mail or personal delivery, serve upon the owner or the owner's agent notice of the assessment. The notice shall describe the lot, part of lot or parcel of land assessed, the name of the owner thereof, and the sum of money assessed upon the lot, part of lot, or parcel of land. A written application to finance the assessment under the provisions of

the "Bancroft Bonding Act," ORS 223.205 and 223.210 to 223.295, may be included with the notice. If the address of the owner or of the owner's agent is unknown, the notice shall be served by publication thereof once a week for two successive weeks in a ~~daily~~ newspaper of general circulation ~~published~~ in the City ~~of Salem~~. More than one assessment for any improvement may be included in one published notice.

(Prior Code, § 21.070; Ord. No. 150-67; Ord. No. 47-2000)

State law reference—Ordinance classifying assessments, ORS 310.591; Bancroft Bonding Act, ORS 223.205 et seq.

Sec. 21.080. Proof of publication.

Proof of publication of the notice referred to in SRC 21.070 shall be made by the ~~director of~~ Finance Officer in the manner provided by law for the proof of service of summons by publication.

(Prior Code, § 21.080; Ord. No. 150-67)

Sec. 21.090. Effective date of assessment; interest thereon; SDC installment agreements.

(a) All assessments levied shall be entitled to full force and effect from the date of entry in the City's lien docket and shall draw interest at the rate of 9.5 percent per annum from a date 30 days after the entry of such assessments in the lien docket unless deferred pursuant to SRC 21.210 or ~~SRC~~ 21.310.

(b) Commencing ~~upon~~ July 1, 2010, ~~and continuing until June 30, 2010,~~ a lien placed upon property to secure payment of a system development charge ~~an SDC~~ pursuant to SRC 41.140(d) shall be in full force and effect from the date of entry into the City's lien docket, and shall draw interest at the rate of 9.5 percent per annum beginning ~~from a date 360 days after the entry into the lien docket. Commencing upon July 1, 2010, a lien placed upon property to secure payment of an SDC pursuant to SRC 41.140(d) shall be in full force and effect from the date of entry into the City's lien docket, and shall draw interest at the rate of 9.5 percent per annum from~~ 150 days after the date of entry into the lien docket.

(Prior Code, § 21.090; Ord. No. 150-67; Ord. No. 9-73; Ord. No. 8-82; Ord. No. 91-86; Ord. No. 51-96; Ord. No. 47-2000; Ord. No. 40-09)

Sec. 21.100. Acceptance of Bancroft Bonding Act financing applications.

Any owner of property assessed for a local improvement shall have the right and privilege within ten days from the date ~~of~~ notice of the assessment is given pursuant to SRC 21.070 to finance said assessment under the provisions of ORS 223.210. After the ten-day period, the ~~Director of~~ Finance Officer may accept written applications for such financing at the ~~director's~~ Finance Officer's option; provided, however, all accrued interest on any assessment shall first be paid before any financing application shall be accepted.

(Prior Code, § 21.100; Ord. No. 150-67; Ord. No. 47-2000)

State law reference—Right to installment payment of assessment, ORS 223.210.

Secs. 21.110, 21.120. Reserved.

Sec. 21.130. Entry of assessment in lien docket.

Any assessment levied as provided in the preceding section shall~~, by the director of finance,~~ be entered in the ~~"~~docket of city liens~~"~~ in the same manner as other liens are entered in such docket and if the assessment or lien for a trunk sewer is contained in an ordinance levying an assessment or lien for a lateral sewer, then the amount assessed for trunk line sewer shall be stated separately.

(Prior Code, § 21.130; Ord. No. 150-67; Ord. No. 47-2000)

State law reference—Lien docket, ORS 223.230.

SEWER ASSESSMENTS AND CONNECTION FEES*

***State law reference**—City sewers and sanitation, ORS 224.010 et seq.

Sec. 21.140. Payment and collection generally.

Any lien levied pursuant to this chapter ~~SRC 21.100~~ shall be payable and collectible by the City in the manner provided by the state laws and this Code pertaining to liens and assessments for improvements.

(Prior Code, § 21.140; Ord. No. 150-67; Ord. No. 47-2000)

Secs. 21.150—21.170. Reserved.

Sec. 21.180. Assessment for lateral sewers.

Cost of construction of lateral sewers shall be assessed to property benefitted as provided by this chapter and shall include those elements of cost defined in ORS 310.140(1)(a) ~~(10)~~. Apportionment of the project costs shall be made on the basis of front footage served by the sewer, assigning to each lot or parcel of land served the per front-foot cost determined by dividing the assessable cost of the project by the total front footage of all lots or parcels benefitted. Property will be considered as benefitted to a depth of 100 feet from the point or property line at which the sewer is made available. If the property is irregular in shape or less than 100 feet in depth, the front footage shall be considered as the area of the lot or parcel within 100 feet of the sewer divided by 100.

(Prior Code, § 21.180; Ord. No. 16-77; Ord. No. 78-77; Ord. No. 51-96; Ord. No. 47-2000)

Secs. 21.190, 21.200. Reserved.

Sec. 21.210. Deferment of assessments.

(a) Collection of an assessment to benefitted property for sanitary sewers may be deferred until a future date, as provided in this section, if any of the following conditions are met:

(1) The property concerned is outside the City at the time of initial assessment;

(2) The property is legally separated from the sewer by another property, such as in the case of a reserve strip. Service may be provided and the deferment terminated if the City provides to the owner of such property an easement across the intervening property;

(3) The sewer is laid in an easement across unplatted acreage with the intent of serving some other property. This provision does not apply to acreage fronting on a sewer laid in a public street; or

(4) The property owner has not requested the assessment district. Said assessments shall be deferred until a building permit or sewer service is requested, or the lapse of three years from the date of the deferred assessment ordinance, whichever comes first.

(b) In the event that property used as a residence or zoned single family residential lies within the assessment district designated to serve industrial lands, the Council may elect to defer collection of the assessment proposed against the residential property until any interest in the residential property is transferred, a zone change from residential use is granted, a change of use from residential occurs, or a building permit or sewer service is requested; and provided further that the property owner has not requested the assessment district.

(c) A transfer of interest occurs under this subsection upon the actual or attempted transfer of any interest in any manner, voluntary or involuntary, including by operation of law or upon the death of the owner. Where ownership is joint transfer occurs upon the death of the survivor having an interest on the date of the deferred assessment ordinance. A transfer of interest does not occur upon the transfer of property from one spouse to the other pursuant to the dissolution of marriage or upon creation of a trust vesting legal title to property in a trustee for family estate planning purposes.

(d) Sanitary sewer service will not be provided to any property against which collection of an assessment has been deferred until an application to connect the property has been made and the Director ~~of Public Works~~ determines that a particular parcel meets the following requirements:

(1) The sewer whose cost is subject of the assessment is capable of serving the assessed property; and

(2) The assessed property is within the corporate limits of the City ~~of Salem~~.

(e) In the event the ~~Director of Public Works~~ Director makes the determination provided for in subsection (d) of this section and sanitary sewer is provided to the property, the ~~Director of Finance~~ Finance Officer shall initiate collection procedures as though collection of the assessment had not been deferred and the assessment just levied.

(Prior Code, § 21.210; Ord. No. 16-77; Ord. No. 18-84; Ord. No. 36-91; Ord. No. 4-93; Ord. No. 47-2000)

Sec. 21.220. Basis of deferred assessments.

At the time of calculation of assessments for any sanitary sewer project, calculation shall also be made, and the record placed in the appropriate file, for any benefitted property where an assessment has been deferred as provided in SRC 21.210. This cost shall become the basis for any later assessment or connection fee.

(Prior Code, § 21.220; Ord. No. 16-77; Ord. No. 157-81; Ord. No. 18-84; Ord. No. 96-86; Ord. No. 31-92; Ord. No. 47-2000)

Sec. 21.230. Connection fees.

(a) Except as provided in subsections (d) and (e) of this section, there shall be deposited with every application to connect property to the City sewer, which property has either not been assessed or is subject of a collection deferral under SRC 21.210, a connection fee computed from the rate established for the original assessment district where collection was deferred under SRC 21.210, or a rate established by the City's average cost of constructing an eight-inch sewer for the previous year, for property which has not been assessed.

(b) Notwithstanding subsection (a) of this section, when the ~~Director of Public Works~~ Director determines that a property requires a public sewer larger than eight-inch in diameter due to the use made of a property, the connection fee shall be computed from a rate established by the City's average cost of constructing sewers of the required size for the previous year.

(c) The benefitted area over which the connection fee rate is applied shall be in accordance with SRC 21.180.

(d) Properties reconnecting to sewers or new connection of properties where a sewer service was available prior to 1940, but no record of assessment exists, shall be exempt from this section.

(e) In lieu of paying a connection fee, the owner may make application to pay the fee in installments as provided in the Bancroft Bonding Act in the same manner as assessment liens in the City. In such case, the owner shall execute an agreement which constitutes a voluntary lien against the property which is not subject to article XI, section 11b of the Oregon Constitution. Upon filing of such an agreement, approved as to form by the City Attorney, the Council shall declare by ordinance the amount of the connection fee and direct the ~~director of~~ Finance Officer to enter such connection fee in the docket of city liens.

(Prior Code, § 21.230; Ord. No. 16-77; Ord. No. 183-78; Ord. No. 5-81; Ord. No. 36-91; Ord. No. 31-92; Ord. No. 47-2000)

State law reference—Bancroft bonding act, ORS 223.205 et seq.

Secs. 21.240—21.260. Reserved.

WATER ASSESSMENTS AND CONNECTION FEES

Sec. 21.270. Properties with certain type service assessed.

Property served by a water transmission main shall be assessed for the cost of a water main of a size necessary to serve said property. Properties which previously have been served by temporary connections may be assessed for the cost of construction of replacement mains.

(Prior Code, § 21.270; Ord. No. 54-77; Ord. No. 3-78; Ord. No. 171-78; Ord. No. 155-81)

Sec. 21.280. Property not assessed more than once.

Properties having once been assessed for construction of a main that benefit same, or having ~~have~~ paid connection fees as provided by SRC 21.340, shall not be again assessed for replacement or enlargement of such mains unless such replacement or enlargement is specifically required due to the use made of the property. Assessment ordinances shall specifically describe the area benefitted by such main construction and no further assessments shall be made to the same benefitted area.

(Prior Code, § 21.280; Ord. No. 54-77; Ord. No. 155-81)

Sec. 21.290. Assessment for water mains.

(a) The cost of construction of water distribution mains shall be assessed to property benefitted as provided by this chapter and shall include those elements of cost defined in ORS 310.140(1)(a) ~~(10)~~. Except as provided in subsection (b) of this section, an apportionment of the project cost shall be made on the basis of front footage served

by the water main, assigning to each lot or parcel of land served the per front-foot cost determined by dividing the assessable cost of the project by the total front footage of all lots or parcels benefitted. Property will be considered as benefitted to a depth of 100 feet from the property line being served or from the main itself if the main is not in a public right-of-way. If the property is irregular in shape, less than 100 feet in depth or abuts the end of a main, the front-footage shall be considered as the area of the lot or parcel within 100 feet of the property line divided by 100.

(b) Where a water distribution main is constructed to serve industrial lands as ascertained by the Council, application of the assessment shall be over the full area of the tract of land involved except for that area that cannot be served by the main.

(Prior Code, § 21.290; Ord. No. 54-77; Ord. No. 18-84; Ord. No. 51-96; Ord. No. 47-2000)

Sec. 21.300. Reserved.

Sec. 21.310. Deferment of assessments.

(a) Collection of an assessment to benefitted property of the cost of constructing water mains may be deferred until a later date as provided below if any of the following conditions are met:

(1) The property concerned is outside the City at the time of construction or initial assessment;

(2) The property is legally separated from the water main by another property, as in the case of a reserve strip. Service may be made available, and the deferment terminated, if the City provides to the owner of such property an easement across the intervening property;

(3) The water distribution main is laid in an easement across unplatted acreage with the intent of serving some other property and no benefit can be shown to the unplatted acreage until such time as it may be subdivided or its development pattern is known. This provision does not apply to acreage fronting on a distribution main in a public street; or

(4) The water main is a water transmission main constructed to serve industrial lands as determined by the Council; and provided further that the property owner has not requested the assessment district. Collection of said assessments shall be deferred until a building permit or water service is requested, or the lapse of three years from the date of the deferred assessment ordinance, whichever comes first.

(b) ~~(5)~~In the event that property used as a residence or zoned single family residential lies within the assessment district designated to serve industrial lands, the Council may elect to defer collection of the assessment proposed against the residential property until any interest in the residential property is transferred, a zone change from residential use is granted, a change of use from residential occurs, or a building permit or water service is requested; and provided further that the property owner has not requested the assessment district.

(c)~~(6)~~ A transfer of interest occurs under this ~~sub~~section upon the actual or attempted transfer of any interest in any manner, voluntary or involuntary, including by operation of law or upon the death of the owner. Where ownership is joint transfer occurs upon the death of the survivor having an interest on the date of the deferred assessment ordinance. A transfer of interest does not occur upon the transfer of property from one spouse to the other pursuant to the dissolution of marriage or upon creation of a trust vesting legal title to property in a trustee for family estate planning purposes.

(d) ~~(b)~~Water service will not be provided to any property against which collection of an assessment has been deferred until an application for water service has been made and the ~~Director of Public Works~~ Director determines that a particular parcel meets the following requirements:

(1) The water line whose cost is subject of the assessment is capable of serving the assessed property; and

(2) The assessed property is within the corporate limits of the City ~~of Salem~~.

(e) ~~(c)~~In the event the ~~Director of Public Works~~ Director makes the determination provided for in subsection ~~(c)~~ (b) (d) of this section and water service is provided to the property, the ~~Director of Finance~~ Finance Officer shall initiate collection procedures as though collection of the assessment had not been deferred and the assessment has just been levied.

(Prior Code, § 21.310; Ord. No. 54-77; Ord. No. 18-84; Ord. No. 36-91; Ord. No. 4-93; Ord. No. 47-2000)

Sec. 21.320. Basis of deferred assessment.

At the time of calculation of assessments for any water main construction project, calculation shall also be made, and the record placed in the appropriate file, for any benefitted property which may for any reason be deferred. This cost shall become the basis for any later assessment or connection fee.

(Prior Code, § 21.320; Ord. No. 54-77; Ord. No. 157-81; Ord. No. 96-86; Ord. No. 31-92; Ord. No. 47-2000)

Sec. 21.330. Use of City water not mandatory.

Although each property benefitted by construction of a water main will be assessed for its share of cost of construction, connection to the main and use of City water will be optional with the owner.

(Prior Code, § 21.330; Ord. No. 54-77)

Sec. 21.340. Connection fees.

(a) Except as provided by SRC 72.067 to 72.086, and subsections (b) and (c) of this section, there shall be deposited with every application to connect property to the City water system, which property has either not been assessed or is subject of a collection deferral under SRC 21.310, a connection fee computed from the rate established for the original assessment district for assessments deferred under SRC 21.310, or a rate established by the average cost of constructing an eight-inch water main for the previous year, for properties which have not been assessed. The benefitted area over which the rate is applied shall be in accordance with SRC 21.290. As used in this subsection, the term "connect property" ~~shall~~ means the connection of property for either domestic service or fire service.

(b) Properties reconnecting to a main or making a new connection to a main where water service was available prior to 1940, but no record of assessment exists, shall be exempt from this section.

(c) In lieu of paying a connection fee, the owner may make application to pay the fee in installments as provided in the Bancroft Bonding Act in the same manner as assessment liens in the City. In such case, the owner shall execute an agreement which constitutes a voluntary lien against the property which is not subject to article XI, section 11b of the Oregon Constitution. Upon filing of such an agreement, approved as to form by the City Attorney, the Council shall declare by ordinance the amount of the assessment and direct the ~~director of~~ Finance Officer to enter such assessment in the docket of city liens.

(Prior Code, § 21.340; Ord. No. 184-78; Ord. No. 78-79; Ord. No. 5-81; Ord. No. 65-88; Ord. No. 36-91; Ord. No. 31-92; Ord. No. 30-97; Ord. No. 47-2000)

State law reference—Bancroft bonding act, ORS 223.205 et seq.

STREET, ALLEY AND STREET LIGHT ASSESSMENTS*

***State law reference**—Special assessment for street lighting, maintenance, ORS 223.851.

Sec. 21.350. Method of assessment for street, sidewalk and alley improvements.

(a) Special benefit is deemed to all adjacent and abutting property for street improvements which shall be proportionately liable to assessment for one-half of the full cost of the improvement of the street or streets adjacent thereto or upon which the same abuts and shall be assessed on the following basis:

(1) For streets in blocks, property shall be assessed back to the alley or, in lieu of any alley, to the center of the block. For alleys, in blocks only, the abutting property shall be assessed based upon the area of the property. Acreage shall be assessed half way to the next parallel street, but in no case more than 200 feet distant perpendicular from the street under improvement.

(2) In case of triangular and small irregular blocks and parcels of land, the assessment for the cost of street improvement shall not exceed the average superficial area rate of assessment upon the regular blocks within such improvement district. The excess shall be assumed by the City ~~of Salem~~.

(b) The cost of curbs shall be assessed by zones, in all cases, against the abutting and adjacent property on the same side of the street as the curb is installed; and the cost of sidewalks shall be assessed against the abutting and adjacent property on the same side of the street as the sidewalk or on both sides of the street or against the abutting and adjacent property on both sides of the street where the walk is constructed in such proportion as the

Council may deem equitable or, if the Council deems ~~to~~ the walks beneficial to all property liable for the cost of the street improvement, against all such property regardless of whether the sidewalks are laid on one or both sides of the street or any combination of these methods.

(c) Property liable to assessment for street improvements shall be divided into three zones of equal width lying parallel to the improvement. These three zones shall be assessed in proportion to their superficial area together upon the following basis:

(1) The zone next to the street under improvement shall be assessed on a basis of 50 percent of the cost of said improvement; the second zone shall be assessed on a basis of 30 percent of such cost; and the third zone shall be assessed on a basis of 20 percent of such cost. The cost of improving alleys shall be assessed in the same manner as the cost of improving streets.

(2) The cost of improving all street and alley intersections shall be assumed by the City ~~of Salem~~.

(d) Notwithstanding subsection (a) of this section, where a street is to be improved to one-half or less of its width, the Council may assess the full cost thereof against the property on one side of the street and benefitted by the improvement.

(Prior Code, § 21.350; Ord. No. 51-96; Ord. No. 72-2002)

Sec. 21.360. Street lighting local improvement district; initiation.

The Council, upon its own motion or upon petition of owners of property which would be specially benefitted by the installation of street lights, may initiate consideration of the improvement.

(Prior Code, § 21.360; Ord. No. 30-97)

Sec. 21.370. Method of assessment for street light districts.

Assessments for street lighting improvement projects shall be apportioned upon the basis of the number of lots in the subdivision by dividing the actual cost of the project by the total number of lots.

(Prior Code, § 21.370; Ord. No. 30-97)

Sec. 21.380. Advertisement procedure for local street light assessment procedures.

~~The Council shall invite~~ Notice of an invitation for bids for local street light improvements shall be provided at least once ~~by giving notice by publication one date~~ in a ~~daily~~ newspaper of general circulation in the City of Salem ~~area~~, and by sending a copy of the notice to those potential bidders on the bidders list.

(Prior Code, § 21.380; Ord. No. 30-97)

Sec. 21.390. Method of assessment for neighborhood traffic management improvements.

The methodology for determining the identified project area for a Neighborhood Traffic Management Process LID is identified in the neighborhood traffic component of the Salem Transportation System Plan adopted under SRC chapter 64 ~~.230~~.

(Prior Code, § 21.390; Ord. No. 91-99)

CHAPTER 22. SEPARATION AND CORRECTION OF ASSESSMENTS

Sec. 22.010. Separation of assessments.

(a) Whenever property shall have been assessed in an entire tract, parcel, or acreage and subsequently divided into smaller lots or parcels or divided among different owners, any person desiring to have the total assessment apportioned ~~between~~ among said smaller lots or parcels may make an application to the ~~director of~~ Finance Officer for a separation of the assessment and a determination of the amount due on the portion owned by the applicant ~~him~~. The application shall be accompanied by ~~with~~ a fee as may be established by resolution of the Council.

(b) The ~~director of~~ Finance Officer shall thereupon cause a separation of the total assessment to be calculated by the appropriate department of the City and shall cause the same to be transmitted to the City Attorney for the preparation of an ordinance separating said assessment.

(c) No ordinance separating an assessment shall become effective until the applicant has executed an agreement acknowledging the validity of the assessments as separated and waiving any and all errors and irregularities in the proceedings.

(Prior Code, § 22.010; Ord. No. 150-67; Ord. No. 51-91; Ord. No. 51-96)

Sec. 22.020. Notice of separation.

Upon passage of the ordinance separating an assessment pursuant to this chapter ~~the preceding section~~, the ~~Director of Finance~~ Finance Officer shall serve notice upon the owners of the real property affected thereby in the ~~a~~ manner provided by SRC 21.070 ~~10~~.

(Prior Code, § 22.020; Ord. No. 150-67)

Sec. 22.030. Correction of assessments.

Any error or mistake in an assessment ordinance in the amount assessed or in the description of real property shall be corrected by an appropriate correcting ordinance.

(Prior Code, § 22.030; Ord. No. 150-67)

CHAPTER 23. COLLECTION OF ASSESSMENTS

Sec. 23.010. Notice of installments due.

The ~~director of~~ Finance Officer shall, when installments and interest on any assessment entered in the City's ~~bond~~ lien docket are due, notify the property owner or owners that the installments are due and payable. ~~The director of finance shall issue a receipt to the person paying the installments and interest and shall file the duplicate of the receipts in his office.~~ The ~~Director of finance~~ Finance Officer, after each such payment, shall make the proper entries ~~on the bond lien docket~~ showing the amount of each payment and the date thereof.

(Prior Code, § 23.010; Ord. No. 150-67)

State law reference—Right to installment payment of assessment, ORS 223.210.

Sec. 23.020. Right of owner to prepay balance and discharge lien.

At any time after the bonding of an assessment, an~~y~~ owner ~~at the time being~~ of any property against which the assessment is made and entered into the City's lien docket~~ed~~ may pay to the Finance Officer ~~City director of finance~~ the whole amount of the assessment for which such lien is entered into the City's lien docket~~ed~~, together with the full amount of interest and costs accrued thereon to such date of payment. The ~~Director of~~ Finance Officer shall thereupon enter in the City's lien docket ~~opposite the entry of the lien~~ the fact and date of such payment and that the lien is discharged.

(Prior Code, § 23.020; Ord. No. 150-67)

Sec. 23.030. ~~Special~~ Assessment ~~debt~~ fund (Bancroft Bonding Act).

Any moneys received by the Finance Officer ~~City director of finance~~, accruing by virtue of the Bancroft Bonding Act, shall be ~~kept and the~~ account~~ed~~ for ~~thereof~~ separate~~ly~~ and apart from other City moneys. The amount of such moneys paid on account of installments and ~~paid~~ on account of interest on unpaid installments shall be separately accounted for and shall be placed in an assessment fund. ~~to the credit of a fund to be known and designated as "Special Assessment Debt Fund (Bancroft)." The amount placed in the credit of said fund shall from time to time, under the direction of the common Council be deposited in such bank as will pay the highest rate of interest, or be invested in or used for the redemption of improvement bonds of the City at par. Interest due on improvement bonds shall be paid out of the interest account of the Special Assessment Debt Fund (Bancroft).~~

(Prior Code, § 23.030; Ord. No. 150-67)

State law reference—Bancroft bonding act, ORS 223.205 et seq.

Sec. 23.040. Payments entered on lien docket: lien discharged.

Entries of payments of installments, interest, and costs, made under the Bancroft Bonding Act, shall be made in the City's lien docket as they are received ~~with the date thereof~~ and ~~such payments so made and entered~~ shall discharge the lien to the amount of such payment and from the date thereof.

(Prior Code, § 23.040; Ord. No. 150-67)

CHAPTER 24. LIEN FORECLOSURE*

***State law reference**—Collecting assessments and enforcing liens, ORS 223.505 et seq.

Sec. 24.010. Authority to sell property for delinquent assessments.

In addition to other methods provided by state law, this Code or the 1996 Salem Charter for the foreclosure or collection of liens, real property may be sold as hereinafter provided for any assessment, lien, or installment thereof at any time after one year from the date such lien, assessment, or installment becomes due and payable if bonded; otherwise, at any time after 60 days from the time it is entered in the City's lien docket.

(Prior Code, § 24.010; Ord. No. 150-67)

Sec. 24.020. ~~Director of finance may provide~~ List of delinquent liens.

If any installment on any lien that may have been bonded, as provided by law or the ordinances or the Charter of the City, is delinquent for a period of one year from the time the same became due and payable or at any time after 60 days from the time the same became due and payable in the event any such lien or assessment has not been bonded, the ~~Director of~~ Finance Officer may thereafter prepare a list ~~in tabular form~~, made up from the Docket of ~~the~~ City Liens, or other lien docket, describing each lien, assessment, or installment due on any bonded lien which is so delinquent; the name of the person to whom assessed; ~~and~~ a detailed ~~particular~~ description of the property; the amount of the lien or assessment or the amount of the installment due on any bonded lien;~~,~~ and any other facts necessary to be given under the laws of the State ~~of Oregon~~. ~~As used in this Chapter, Director means the City Manager, or the department head charged by the City Manager with the implementation and enforcement of this Chapter, or that department head's designee.~~

(Prior Code, § 24.020; Ord. No. 150-67)

Sec. 24.030. ~~Director of~~ Finance Officer to collect unpaid liens; procedure for selling property to satisfy delinquent liens.

(a) Upon completing the list referred to in SRC 24.020 ~~the preceding section~~, the ~~Director of~~ Finance Officer shall proceed to collect the unpaid liens or assessments named in such list by advertising and selling the lots or tracts in the manner now provided by the laws of the State ~~of Oregon~~ for the sale of real property on execution, except as herein otherwise provided, and except that sale may be made at such place within the corporate limits of the City as may be designated in the notice of such sale.

(b) Each piece or tract of land shall be sold separately and for a sum equal to but not exceeding the unpaid lien or assessment or assessments thereon and the interest, penalty, and cost of advertising and sale. ~~and where~~ When there is ~~shall be~~ more than one bid, the real property ~~land~~ shall be sold to the bidder first offering to take the same for the amount accrued thereon.

(c) A sale of real property under the provisions of this section conveys to the purchaser, subject to redemption as herein provided, all estates, interests, liens or claims therein or thereto of any person whomsoever, together with the rights and appurtenances thereunto belonging, excepting only the lien of the City on such assessments or other liens as are not included in the foreclosure proceedings.

(d) No levy upon such lots or parcels of land shall be required except that a notice shall be posted for four consecutive weeks before the sale upon every lot or parcel assessed to an unknown owner.

(e) In such sale, the City may include any number of lots or parcels of land upon which it has delinquent assessments or liens, though the same may have been levied upon the same or different ordinance or ordinances. Any number of different assessments or liens may be foreclosed upon the same lot, block, or parcel of land in one proceeding.

(f) In the event there shall be more than one delinquent assessment or lien upon any lot or parcel of land, the various amounts thereof, including accrued interest, penalties, and costs, shall be added together and the total amount thereof shall be deemed to be the amount of the assessments or liens for which such property is to be sold.

(Prior Code, § 24.030; Ord. No. 150-67)

Sec. 24.040. ~~Director of finance's~~ Record of property sold.

The ~~Director of~~ Finance Officer shall enter in the list prepared pursuant to SRC 24.020, ~~by the Director, him~~ in the columns provided for that purpose, the date of the sale, the name of the purchaser and the amount paid for each parcel of property sold.

(Prior Code, § 24.040; Ord. No. 150-67)

Sec. 24.050. ~~Director of finance's~~ Receipt for a payment of liens prior to sale of property.

The ~~Director of~~ Finance Officer shall give a receipt to each person paying any lien or assessment on the delinquent list prepared pursuant to ~~provided by~~ SRC 24.020 prior to the sale of the property. ~~and~~ Such receipt must state separately the lien or assessment, interest, and costs collected, and a duplicate of the receipt shall be filed ~~in~~ with the Finance Division ~~his office~~.

(Prior Code, § 24.050; Ord. No. 150-67)

Sec. 24.060. Property sold to satisfy a delinquent assessment must be paid for in lawful money; exception.

Real property when sold for or to satisfy a delinquent assessment or a lien must be sold for lawful money of the United States; provided, however, that in the event no bid is received for the sale of the property, then the City shall be authorized to purchase the property by bidding therefor the amount of the lien or liens and the cost of advertising the sale; and the same may be struck off and sold to the City without the actual payment of any money therefor. Anyone applying or seeking to redeem property so sold must pay or offer to pay the sum necessary in such lawful money of the United States, and not otherwise.

(Prior Code, § 24.060; Ord. No. 150-67)

Sec. 24.070. Purchaser's certificate of sale of property sold to satisfy delinquent assessment, etc.

The ~~Director, of~~ Finance Officer, after having sold real property upon the list prepared pursuant SRC ~~referred to in section~~ 24.020 ~~of this Code~~, shall make and deliver to the purchaser a certificate of sale of the property so sold, setting forth therein the object for which the sale was made, a description of the property sold, a statement of the amount it sold for, the lien or assessment for which the property was sold, the name of the purchaser, and the fact that the said sale was made subject to redemption within one year from the date of the certificate of sale.

(Prior Code, § 24.070; Ord. No. 150-67)

Sec. 24.080. ~~Director of finance to make~~ Entries in docket of city liens; reoffering the property for sale.

The ~~Director of~~ Finance Officer shall, within three days after the sale of any property pursuant to the provisions of SRC 24.030, ~~shall thereupon~~ make proper entries thereof in the docket of city liens or other lien docket. Thereafter, no transfer or assignment of any certificate of purchase of real property sold under the provisions of this chapter shall be deemed valid unless an entry of such transfer or assignment has been noted by the ~~Director of~~ Finance Officer, offered for sale in like manner, but not sooner than three months after the expiration of any sale, except that in the matter of an assessment for the opening, widening, laying out or establishing of a street, proceedings for such sale may be taken immediately.

(Prior Code, § 24.080; Ord. No. 150-67)

Sec. 24.090. Redemption of property sold for delinquent assessment or lien.

The owner, ~~or~~ the owner's ~~or his~~ legal representative, ~~or~~ ~~his~~ the owner's successor in interest, ~~or~~ any person having a lien by judgment decree or mortgage, or the owner of a tax lien on any property sold to satisfy a delinquent assessment or lien, may redeem the same upon the conditions provided as follows:

(a) Redemption of any real property sold for a delinquent assessment or lien under the provisions of this chapter may be made by paying to the City, at any time within one year from the date of the certificate of sale provided for in SRC 24.070, ~~at~~ the purchase price and ten percent thereof as penalty, and interest on the purchase price at the rate of ten percent per annum, from the date of such certificate. When redemption shall be made by the holder of a tax lien, the holder of the tax lien ~~he~~ shall have the right to have such redemption noted upon the record of his or her liens in like manner and with like effect as

hereinafter prescribed, provided that, if redemption is made within three months from the date of sale, the penalty to be paid shall be five percent.

(b) Such redemption shall discharge the property so sold from the effect of such sale, and if made by a lien creditor, the amount paid for the redemption shall thereafter be deemed a part of the lien creditor's ~~his~~ judgment, decree, mortgage, or tax lien, as the case may be, and shall bear like interest, and may be enforced and collected as a part thereof.

(Prior Code, § 24.090; Ord. No. 150-67)

Sec. 24.100. Execution of deed to property sold for delinquent assessment and not redeemed.

After the expiration of one year from the date of the certificate of sale as provided for in SRC 24.070, if no redemption shall have been made, the ~~Director of~~ Finance Officer shall execute to the purchaser, and the purchaser's heirs or assigns, a deed of conveyance, containing a description of the property sold, the date of sale, a statement of the amount bid, the lien or assessment for which the property was sold, the fact that the assessment or lien was unpaid at the time of the sale and that no redemption has been made and need contain no further recital of the proceedings prior to the sale. The effect of such deed shall be to convey to the grantee therein named the legal and equitable title in fee~~s~~ simple to the real property in such deed described, excepting only the lien of the City on such assessments or liens as are not included in the foreclosure proceedings. ~~and~~ Such deed shall be prima facie evidence of title in such grantee, except as above stated, and that all proceedings and acts necessary to make such deed in all respects good and valid have been had and done, and such prima facie evidence shall not be disputed, overcome or rebutted, or the effect thereof avoided, except by satisfactory proof of ~~either~~:

(a) Fraud in making the assessment or in the assessment, or in the procuring of the lien;

(b) Payment of the assessment or lien before sale or redemption after sale;

(c) That payment or redemption was prevented by fraud of the purchaser; or

(d) That the property was sold for a lien or assessment for which neither the property nor the owner thereof, at the time of sale, was liable, and that no part of the assessment or lien was assessed or levied upon the property sold.

The grantee named in such deed shall, upon delivery of the deed ~~thereof~~, be entitled to immediate possession of the real property therein described.

(Prior Code, § 24.100; Ord. No. 150-67)

Sec. 24.110. Statute of limitations on action to recover land sold for delinquent assessment; payment into Court upon filing first pleading.

Every action, suit, or proceeding which may be commenced for the recovery of any real property ~~land~~ which shall have been sold by the Finance Officer ~~City Director of finance~~ for any assessment or lien or to quiet the title of the former owner, or the owner's ~~his~~ successors in interest, against such sale or to set aside such sale, or to remove the cloud thereof, except in cases where the assessment or lien for which the land has been sold was paid before the sale or the land redeemed as provided by law, shall be commenced within one year from the time of recording the deed so executed and not thereafter. ~~And~~ In any such action, suit, or proceeding, whether before or after the issuance of the deed, the party claiming to be the owner as against the party claiming ownership under such sale must tender with his or her first pleading in such case and pay into the Court at that time of filing such pleading the amount of the purchase price for which the real property ~~lands~~ was ~~were~~ sold, together with the penalties prescribed by law at the time of such sale, and ~~of~~ all taxes, assessments, or liens levied or made upon or against the real property ~~land~~, or any part thereof, which shall have been paid after such sale by the purchaser at such sale, or the purchaser's ~~his~~ heirs or assigns, together with interest thereon at the rate of ten percent per annum from the respective times of the payment of such purchase price, taxes, assessments, or liens by such purchaser, or the purchaser's ~~his~~ heirs or assigns, as the case may be, up to the time of the filing of such pleading, to be paid to such purchaser, or the purchaser's ~~his~~ heirs~~,~~ or assigns in case the right or title of such purchaser at such sale shall fail in such action, suit, or proceeding~~s~~.

(Prior Code, § 24.110; Ord. No. 150-67)

CHAPTERS 25--29. RESERVED

Title III

BUSINESSES AND VOCATIONS*

***State law reference**—Occupations and professions, ORS title 52; authority to regulate local licensing and taxation, ORS 221.410 et seq.; authority to license for a sum not less than provided by law, tax, regulate, restrain and prohibit places where alcoholic beverages are sold, ORS 221.916(1)(g); authority to license, regulate and control any lawful business, trade, occupation, profession or calling, ORS 221.916(1)(j); auctioneers, ORS 698.635 et seq.

CHAPTER 30. LICENSES

GENERALLY

Sec. 30.001. Purpose.

Protective business and vocational licenses and the regulations created by this chapter are intended to establish a means to protect public health, safety, and welfare. Nothing contained in this chapter is intended or shall be construed to create any liability on the part of the City or its employees for any injury or damage related to any provisions of this chapter, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this chapter on the part of the City or its employees.

(Prior Code, § 30.001; Ord. No. 27-13; Ord. No. 3-17, § 2, 5-8-2017)

Sec. 30.005. Definitions.

~~Except as the context otherwise specifically requires, as used in this Chapter, the following mean:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Annual* or *annually*: Beginning on January 1 and ending on December 31 of any calendar year.

~~(b)~~ *Automobile racetrack* means any premises operated as a business where there are regularly or seasonally conducted contests among motor vehicles involving vehicle locomotion and the vehicles or their drivers are rated in relation to each other or to some standard. As used in this definition, the term "motor vehicle" includes, but is not limited to, cars, trucks, motorcycles, and go-carts.

~~(c)~~ *Booking service* means any reservation and/or payment service provided by a person that facilitates transient lodging rental transactions between owners or operators and prospective transient users, and for which the person collects or receives, directly or indirectly, a fee in connection with the reservation or payment services provided for the transient lodging rental transaction. Examples of a booking service include, but are not limited to, online travel companies and home-sharing hosting platforms.

~~(c)~~*Camp site* means any tourist unit where persons may camp or occupy any dwelling place other than a permanent building constructed entirely of wood or more lasting materials.

~~(d)~~ *Camp structure* means any temporary structure designed to be used as shelter for human habitation.

~~(e)~~*Chief* means the Chief of the Salem Police Department or the Chief's designee.

~~(f) *City* means the City of Salem, Oregon.~~

~~(f)~~*Consideration*, as the context requires, means:

(a) An admission fee, cover charge, coupon, or similar token;

(b) The purchase of a prescribed minimum quantity of goods, consumables, or services; or

(c) Any form of user charge or token for the privilege of dancing, including the deposit by any patron of a coin or token in a "juke box" or other device in order to obtain music for dancing.

~~(g)~~ *Dealer in used merchandise* means a junk dealer, pawn broker, or secondhand dealer.

~~(h)~~ *Digital dispatch system* means an internet-based software application, website, platform, or

interface that allows for the solicitation, arrangement, or provision of vehicle for hire services and the display of rates, calculation of fares, or acceptance of payment for vehicle for hire services. ~~Director means the City Manager, or the department head charged by the City Manager with enforcement of this Chapter, or that department head's designee.~~

~~(i) *Director* means the City Manager or the department head charged by the City Manager with the enforcement of this Chapter, or that department head's designee.~~

Driver means any individual natural person who operates a vehicle for hire within the City.

~~(j)~~ *Fire Code Official* means the Fire Chief of the Salem Fire Department or the Fire Chief's designee.

~~(k)~~ *Junk* means articles of personal property that have outlived their usefulness in their original form, or articles of personal property that have been discarded and are no longer used for their manufactured purpose, regardless of value. As used in this chapter, the term "junk" includes, but is not limited to:

(a) Any derelict motor vehicle, i.e., any used motor vehicle without a vehicle license or with an expired license;

(b) Any neglected motor vehicle, i.e., a motor vehicle that is missing critical parts required for the normal and legal operation of the vehicle, but has all of its body parts intact, including fenders, hood, trunk, glass, and tires; ~~or~~

(c) Any wrecked motor vehicle, or part thereof, i.e., a motor vehicle that is dismantled or partially dismantled, or having a broken or missing window or windshield, or lacking a wheel or tire;

(d) Machinery or parts thereof that are inoperative, worn out, or in a state of disrepair;

(e) Any appliances or parts thereof that are inoperative, worn out, or in a state of disrepair;

(f) Any worn out or dilapidated indoor fixtures or furnishings, or parts thereof;

(g) Any bulk solid waste; and

(h) Solid waste items that are of a type or quantity inconsistent with normal and usual use, such as wood, metal, scrap and other similar items.

~~(l)~~ *Junk dealer* means any person who as an owner engages in the business of buying and selling of any junk.

~~(m)~~ *License* means the written form of permission required in order to operate a business or pursue a vocation as required by this chapter.

~~(n)~~ *Limousine* means a luxury motor vehicle whose chassis and wheelbase have been lengthened beyond the original manufacturer's specifications, whether at the time of manufacture or after, and which is used to provide prearranged transportation services under a contract or agreement for such services.

~~(o)~~ *Mobile food unit* means any motor vehicle, trailer, or wagon which is used for the purpose of preparing, processing, or converting food for immediate consumption as a drive-in, drive-through, curb or walk-up service. A mobile food unit does not include a street vendor's cart or a motor vehicle, trailer or wagon used exclusively for selling prepackaged food items (i.e., an ice cream truck).

~~(p)~~ *Night club*.

(a) The term "night club" means any premises where:

(1) The general public is permitted to attend and dance upon the payment of an admission fee or some other form of consideration; ~~and~~

(2) There is a dance floor or other space where dancing to live or recorded music is regularly permitted; and

(3) The premises or other space where dancing is regularly permitted is not the subject of a license issued by the Oregon Liquor Control Commission to sell or dispense alcoholic beverages.

(b) As used in this chapter, the term "night club" does not include any dance that occurs as part of a special event that has been licensed pursuant to this chapter or that occurs as part of a community event that has a permit issued pursuant to SRC chapter 104, or any dance conducted by a nonprofit organization that is an incidental

function of its organization and whose building has been constructed to meet structural and fire life safety requirements for dances.

~~(q)~~ *Operator* means a person engaged in the business of furnishing or operating a business defined by this chapter, whether upon contract or by offering such service to the public generally.

~~(r)~~ *Pawnbroker* means any person engaged in the business of loaning money to another person where personal security, pawns, or pledges are the condition of the loan; or the business of purchasing articles of personal property with the agreement to resell the articles to the vendors thereof, at prices agreed upon at or before the time of such purchase.

~~(s) *Person* means any natural person, partnership, corporation, limited liability company, government entity, association or other entity in law or fact.~~

~~(t)~~ *Recreational vehicle* means any camper, motor home, or travel trailer. As used in this definition, the terms "camper," "motor home," and "travel trailer" shall have the meanings set forth in ORS ch. 801.

~~(u)~~ *Regularly permitted dancing* means:

(a) Dancing that is advertised or acknowledged by the operator as being available to patrons at least three days in any month; or

(b) Patrons are allowed to dance on the premises on at least three days in any month with the knowledge of and without effective prohibition by the operator.

~~(v)~~ *Secondhand dealer* means any person engaged in the business of buying, selling, or otherwise dealing in secondhand goods either as a separate business or as a substantial part of another business.

~~(w)~~ *Secondhand goods* means any article of personal property which enters the stream of commerce after it has been purchased by a private party from a vendor; provided, however, secondhand goods shall not include any article of personal property conveyed to a secondhand dealer solely by donation. As used in this chapter, the term "secondhand goods" includes, but is not limited to:

(a) Precious metals and precious and semi-precious gems and gemstones, including, but not limited to, gold, silver, platinum, copper, diamonds, rubies, emeralds, sapphires, and turquoise.

(b) Jewelry containing any precious metals, precious gems, or semi-precious gems.

(c) Collectibles, including, but not limited to, trading cards, stamps, coins, decorative arts, ceramics, flatware, paintings, sculptures, and other fine and decorative arts.

(d) Antique and used furniture.

(e) Computers, computer components, computer peripherals, and computer games.

~~(x)~~ *Severe mobility limitation* means a physical impairment that precludes a person's ability to walk without the physical assistance of another person and/or the assistance of a wheelchair, stretcher, or similar device. Persons who can walk with a walker or cane but do not need the assistance of another person shall not be considered as having a severe mobility limitation.

~~(y)~~ *Special event* means any dance, movie, play, concert, circus, carnival, exhibition, sports event, haunted house, or other similar live, filmed, or televised performance, activity, or program held or presented at any privately-owned premises, where an admission fee or other form of consideration is charged or required, but not including any such event occurring at a premises operated as a business for such activities where the activity is occurring in the course of its regular schedule of events or where the occupancy or use of the premises for such events has been previously approved by the City ~~of Salem~~.

~~(z)~~ *Street vendor* means any person who travels from street to street upon public sidewalks in a commercial zone carrying, conveying, or transporting goods and offering and exposing the same for sale. ~~from a mobile type device such as a pushcart or similar conveyance.~~

~~(aa)~~ *Taxicab* means a vehicle for hire ~~motor vehicle~~, other than an ambulance, wheelchair coach, limousine, or transportation network vehicle.

~~(cc)~~ *Taxi company* means any person operating one or more vehicles for hire, other than as a driver,

regardless of the legal form of the entity and regardless of whether the taxis so operated are owned by the company, or leased, or owned by individual members of an entity. Taxi companies do not include transportation network companies.

~~(bb)~~ *Tourist park* means any lot, tract, or parcel of land operated by a business for the purposes of furnishing tourist units for a fee or in connection with securing the trade or patronage of the users thereof. Such definition does not include any park which is owned and operated by any state, county, or City government or any agency thereof.

~~(cc)~~ *Tourist unit* mans any place in a tourist park which is designed to be used for temporary habitation by a single family in a camp site or recreational vehicle.

~~(dd)~~ *Transportation network* means one or more vehicle for hire drivers working as independent contractors, utilizing a digital dispatch system, and using personal motor vehicles in the provision of transportation services.

~~(ee)~~ *Transportation network company* or *TNC* means a person that operates or facilitates a transportation network.

~~(ff)~~ *Transportation network vehicle* means a personal motor vehicle which is used as a vehicle for hire and is part of a transportation network.

~~(gg)~~ *Transportation services* means providing motor vehicle transportation of persons or goods for compensation of any kind. However, it does not include transportation provided by a public or governmental entity, transportation that is regulated entirely by the State ~~of Oregon~~ or the federal government, or transportation of goods provided by a person that engages solely in the transportation of goods.

~~(hh)~~ *Tree trimmer* means a person engaged in the business of trimming, pruning, altering, removing, or providing tree surgery for trees growing, standing, or located upon any public street, sidewalk, park, or other public right-of-way, except a person owning a plant nursery and treating, trimming, pruning, altering, or removing shade trees in stock at such nursery or at the time of planting the same after sale.

~~(ii)~~ *Vehicle for hire* means a motor vehicle used to provide transportation services for compensation where such services are not operated exclusively over a fixed or defined route, including taxicabs, wheelchair coaches, and transportation network vehicles.

~~(jj)~~ *Vehicle for hire agency* means a person engaged in the business of furnishing or providing one or more vehicles for hire through a digital dispatch system or by any other means, regardless of whether such business has employees or delivers its services through independent contractors, including a transportation network company.

~~(kk)~~ *Vehicle for hire driver* means a person who carries on the vocation of driving a vehicle for hire.

~~(ll)~~ *Wheelchair coach* means a privately-owned motor vehicle for hire, other than an ambulance, that is constructed or equipped and regularly provided, or offered to be provided, primarily for the nonemergency transportation of persons with severe mobility limitations.

(Prior Code, § 30.005; Ord. No. 27-13; Ord. No. 11-14; Ord. No. 16-15; Ord. No. 3-17, § 3, 5-8-2017; Ord. No. 5-17, § 9(30.005), 6-12-2017)

Sec. 30.010. License required.

A license issued pursuant to this chapter shall be required for any person engaging in the operation of any of the following businesses or activities, or engaging in any of the following vocations:

(a) Accessory short-term rental;

(b) Automobile racetrack;

(c) Dealer in used merchandise;

(d) Mobile food unit;

(e) Night club;

(f) Short-term rental;

(g) Special events;

(h) Street vendor;

(i) Tree trimmer;

~~(h) Tourist Park;~~

(j) Vehicle for hire agency~~; or~~.

~~(ji) Vehicle for hire driver.~~

(Prior Code, § 30.010; Ord. No. 27-13; Ord. No. 16-15; Ord. No. 5-17, § 10(30.010), 6-12-2017)

Sec. 30.015. Administration; rulemaking.

(a) The Director shall administer and enforce the provisions of this chapter, and shall have the authority to render written and oral interpretations, and to adopt administrative rules and procedures necessary for its proper administration and enforcement.

(b) The Director may investigate any applicant for a license to ensure compliance with the requirements of this chapter. The Director may require, as part of any application for a license, that any premises, vehicle and/or device sought to be licensed be inspected to ensure compliance with the requirements of this chapter. The Director may require the fingerprinting of any natural person whose name is required to be furnished in connection with any application, may require the submission of a criminal history, including, but not limited to, an FBI Identification Record, and may require an applicant to provide such additional information that the Director determines is necessary to evaluate the application.

(c) The Director may investigate licensed persons and may inspect licensed premises, vehicles, and devices. The licensee shall make licensed premises, vehicles, and devices available for inspection by the Director at reasonable times and places. In the event that a licensee refuses to allow any such inspection, the Director may obtain an administrative search warrant as provided by SRC chapter 4 to enter upon the premises to make the inspection.

(Prior Code, § 30.015; Ord. No. 27-13)

Sec. 30.020. General rule.

Any person desiring to engage in a business or vocation for which a license is required by this chapter shall obtain the license before engaging in that business or vocation.

(Prior Code, § 30.020; Ord. No. 27-13)

Sec. 30.025. License fees; proration.

(a) Fees for licenses required by this chapter shall be set by resolution of the ~~City~~ Council ~~and are on file in the city recorder's office~~.

(b) In the case of licenses issued annually, three-fourths of the fee shall be required if the application for the license is filed on or after July 1 and on or before September 30 of any calendar year; one-half of the license fee shall be required if the application for the license is filed on or after October 1 of any calendar year.

(Prior Code, § 30.025; Ord. No. 27-13)

Sec. 30.030. License term and renewal.

(a) A license shall be valid from the date of issuance for the term specified on the license.

(b) A license may be renewed for additional terms as provided by this chapter.

(Prior Code, § 30.030; Ord. No. 27-13)

Sec. 30.035. Transferability.

Licenses issued under this chapter shall not be transferred to any other person.

(Prior Code, § 30.035; Ord. No. 27-13)

Sec. 30.040. Display of license.

(a) A license issued for a fixed place of business shall be displayed at all times on the premises in a prominent location where it can be easily read by members of the public.

(b) A license issued for a business or a vocation which is not at a fixed place of business shall be carried by the licensee at all times while the licensee is engaged in the business or vocation. Upon request, the licensee shall show the license to any person with whom the licensee is dealing as part of the licensed activity or to any police officer or Code Compliance Officer employed by the City.

(c) A license for a vehicle for hire driver shall be displayed in the vehicle for hire in a prominent place, readily visible to passengers in the vehicle.

(d) Notwithstanding subsection (a) of this section, a license issued for a short-term rental or accessory short-term rental is not required to be displayed.

(Prior Code, § 30.040; Ord. No. 27-13; Ord. No. 16-15; Ord. No. 5-17, § 11(30.040), 6-12-2017)

Sec. 30.045. License requirements.

In addition to any other requirement set forth in this chapter, each licensee shall:

(a) Conform to all federal, state, and local laws and regulations, the provisions of this chapter, and any administrative rules adopted pursuant to this chapter.

(b) Notify the Director in writing within ten business days of any change in the material information related to the license, including, but not limited to, change of name, address, telephone number, employer, criminal history, location of business office, registered agent, or addition of vehicles. No new principal may become involved in a licensed business until an application is submitted to and approved by the Director for that new principal. If a new principal does become involved in a licensed business prior to approval, the Director may revoke the license pursuant to the procedures set forth in ~~section~~ SRC 30.060.

(c) Advertise for business only in the name in which a license is issued.

(Prior Code, § 30.045; Ord. No. 27-13)

Sec. 30.050. New licenses.

(a) *Application.*

(1) *General.* An application for a new license shall include the following information, in addition to any other information specifically required elsewhere in this chapter:

(A) The applicant's name;

(B) The names and addresses of all persons who are principals, partners, or corporate officers, and all stockholders holding more than ten percent of the voting stock for any applicant who is not a natural person;

(C) The address to which mail concerning the license may be sent;

(D) All business addresses maintained or to be maintained by the applicant in the State ~~of Oregon~~;

(E) The residence address of the person signing the application;

(F) A brief description of the business or vocation for which the license is being sought;

(G) A list of all felonies and misdemeanors of which the applicant has ever been convicted, together with the dates and places of such convictions, if the applicant is a natural person;

(H) A list of any probation violations committed by the applicant within the preceding ten years; if the applicant is a natural person;

(I) If the applicant will be an employee when licensed, the name and address of the applicant’s employer;

(J) The signature of the applicant, if a natural person, or otherwise the signature of an authorized agent of the applicant, if the applicant is other than a natural person;

(K) Proof that the applicant has, or will be able to obtain, any insurance or bond required by this chapter.

(2) *Accessory short-term rentals.* In addition to the information required by ~~paragraph~~subsection (a)(1) of this ~~sub~~section, an application for an accessory short-term rental license shall include the following:

(A) The address of the dwelling unit to be used as an accessory short-term rental;

(B) The owner's name, address, and telephone number;

(C) When license approval is being requested by a tenant of a dwelling unit, written authorization from the owner of the dwelling unit to operate the dwelling unit as an accessory short-term rental;

(D) Proof of residency of the dwelling unit to be used as an accessory short-term rental;

(E) Indication of whether individual guest rooms, the entire dwelling unit, or both will be rented;

(F) The name and contact information of a local representative, meeting the requirements of SRC 30.1005(c);

(G) A completed transient occupancy tax registration form, as required under SRC 37.070 and provided by City's Finance Division;

(H) The number of guest rooms;

(I) A floor plan of the proposed dwelling unit to be used as an accessory short-term rental identifying the guest rooms that will be rented; and

(J) Written certification, on a form provided by the Director, attesting to conformance with the safety requriments established under SRC 30.1005(h).

(3) *Automobile racetracks.* In addition to the information required by ~~paragraph~~ subsection (a)(1) of this ~~sub~~section, an application for an automobile racetrack license shall include the following:

(A) The names and residences addresses of all persons who will act as track officials, including, but not limited to, starters, timers, and judges.

(B) A schedule of the days and hours during which contests will be conducted, including those days and hours when unmuffled gasoline engines will be used.

(C) A schedule of the days and hours during which practice will be allowed, including those days and hours when unmuffled gasoline engines will be used.

(D) A description of how the applicant will comply with SRC 30.100.

(4) *Dealers in used merchandise.* In addition to the information required by ~~paragraph~~ subsection (a)(1) of this ~~sub~~section, an application for a dealer in used merchandise license shall include the following:

(A) The applicant's date and place of birth;

(B) The applicant's physical description, including height, weight, color of hair and eyes, and identifying scars and marks;

(C) Every alias, assumed name, and any previous legal name ever used by the applicant or by which the applicant has been known.

(5) *Mobile food units.* In addition to the information required by ~~paragraph~~ subsection (a)(1) of this ~~sub~~section, an application for a mobile food unit license shall contain documentation that the applicant has obtained all required health and sanitary licenses from the State ~~of Oregon~~ and the applicable county.

(6) *Night clubs.* In addition to the information required by ~~paragraph~~ subsection (a)(1) of this ~~sub~~section, an application for a night club license shall contain:

(A) The applicant's date and place of birth;

(B) The applicant's physical description, including height, weight, color of hair and eyes, and identifying scars and marks;

(C) Every alias, assumed name, and any previous legal name ever used by the applicant or by which the applicant has been known;

(D) The location of the proposed night club and the days and hours of its operation;

(E) A description of all plans for ensuring the safety of patrons in the event of fire, explosion, or other emergency, including compliance with all applicable fire prevention provisions contained in state law and City ordinance;

(F) A description of all plans for controlling traffic and parking on and adjacent to the night club premises so as to ensure the safe, speedy, and orderly movement of traffic on the public streets in the vicinity.

(7) *Short-term rentals.* In addition to the information required by ~~paragraph~~subsection (a)(1) of this ~~sub~~section, an application for a short-term rental license shall include the following:

(A) The address of the dwelling unit to be used as a short-term rental;

(B) The owner’s name, permanent residence address, and telephone number;

(C) Indication of whether individual guest rooms, the entire dwelling unit, or both will be rented;

(D) The name and contact information of a local representative, meeting the requirements of SRC 30.1105(b);

(E) A completed transient occupancy tax registration form, as required under SRC 37.070;

(F) A site plan showing:

(i) The subject property and the location of the proposed dwelling unit to be used as an accessory short-term rental.

(ii) The location of parking spaces required to meet SRC chapter 806.

(G) The number of guest rooms;

(H) A floor plan of the proposed dwelling unit to be used as a short-term rental identifying the guest rooms that will be rented;

(I) Written certification, on a form provided by the Director, attesting to conformance with parking requirements and the safety requriments established under SRC 30.1105(g).

(8) *Special events.* In addition to the information required by ~~paragraph~~ subsection (a)(1) of this ~~sub~~section, an application for a special event license shall contain:

(A) The location of the special event and the hours of operation thereof;

(B) The names of all persons, other than officers of the Salem Police Department whose services are obtained through such department, who will act as chaperones, ~~“~~bouncers,~~”~~ security officers, or supervisors of the special event;

(C) The maximum number of persons who will be permitted to attend the special event at any one time;

(D) A description of all plans for ensuring the safety of patrons in the event of fire, explosion, or other emergency, including compliance with all applicable fire prevention provisions contained in state law and City ordinances;

(E) A description of all plans for controlling traffic and parking at the site of the special event so as to ensure the safe, speedy, and orderly movement of traffic on public streets in the vicinity.

(9) *Street vendors.* In addition to the information required by ~~paragraph~~ subsection (a)(1) of this ~~sub~~section, an application for a street vendor license shall contain documentation that the applicant has obtained all required health and sanitary licenses from the State ~~of Oregon~~ and the applicable county.

(10) *Tree trimmers.* In addition to the information required by ~~paragraph~~ subsection (a)(1) of this ~~sub~~section,

an application for a tree trimmer license shall contain documentation that the applicant has successfully passed a written and practical examination formulated by the Director.

(11) *Vehicle for hire agency.* In addition to that information required by ~~paragraph~~ subsection (a)(1) of this ~~sub~~section, an application for a vehicle for hire agency license shall include:

(A) The applicant's date and place of birth, if the applicant is a natural person;

(B) The Oregon motor vehicle registration number (vehicle license plate number) and manufacturer's serial number, or other vehicle identification number, of each vehicle for hire to be used by the applicant in connection with the applicant's business;

(C) A description, including dates and locations, of the applicant's previous experience as a vehicle for hire agency;

(D) For those applicants other than transportation network companies, a safety inspection report completed by a mechanic certified by the National Institute for Automotive Service Excellence (ASE) for all vehicles for hire to be used by the applicant in the course of the applicant's business indicating that each vehicle for hire is safe for use on public streets.

(12) *Vehicle for hire driver.* In addition to the information required by ~~paragraph~~ subsection (a)(1) of this ~~sub~~section, an application for a vehicle for hire driver license shall contain:

(A) The applicant's date and place of birth;

(B) The applicant's physical description, including height, weight, color of hair and eyes, and identifying scars and marks;

(C) Every alias, assumed name, and any previous legal name ever used by the applicant or by which the applicant has been known;

(D) A copy of the applicant's current driver's license;

(E) Two identical passport-sized photographs of the applicant taken not more than 60 days prior to the date the application is filed;

(F) Every place of residence of the applicant for the ten years immediately preceding the date the application is filed;

(G) Every state or jurisdiction that has ever issued a motor vehicle operator's or chauffeur's license to the applicant; ~~and~~

(H) A statement as to whether any such operator's or chauffeur's license has ever been revoked or suspended for any reason; and

(I) For those applicants who will be a vehicle for hire driver within a transportation network:

(i) The Oregon motor vehicle registration number (license plate number) and manufacturer's serial number or other vehicle identification number of the vehicle for hire to be used by the applicant; and

(ii) A safety inspection report completed by a mechanic certified by the National Institute for Automotive Service Excellence (ASE) for the vehicle for hire to be used by the applicant indicating the vehicle is safe for use on public streets.

(b) *Review of application.*

(1) No application shall be deemed complete until all of the information required by subsection (a) of this section has been provided and the applicant has paid all fees associated with the license, including a nonrefundable application fee.

(2) Upon receipt of a complete application, the Director shall conduct such investigation as the Director deems necessary to determine whether the applicant meets the qualifications for the license and whether statements made in the application are true. The Director shall conduct a criminal background check on all applicants for licenses for the following businesses or vocations:

(A) Dealer in used merchandise;

(B) Night club;

(C) Special event;

(D) Vehicle for hire agency; and

(E) Vehicle for hire driver.

(c) *Issuance of new license.* A new license shall be granted to the applicant unless:

(1) The applicant made an untrue or incomplete statement on, or in connection with, the application for the license; provided that, if such untrue or incomplete statement was the result of excusable neglect, the applicant may resubmit an application in which such defect is corrected.

(2) The applicant fails to meet all requirements of federal, state and local laws and regulations, including, but not limited to, other permitting or licensing requirements and land use regulations.

(3) The applicant has been convicted of any crime, and the nature of the crime presents a reasonable possibility that the applicant may endanger property or the public health, safety, or welfare. Such crimes include, but are not limited to, a felony or a misdemeanor involving violence, fraud, dishonesty, coercion, sexual conduct, or the unlawful manufacture or delivery of a controlled substance.

(4) The applicant has, within the ten years immediately preceding the date of the application, violated his or her probation for any crime and such probation violation presents a reasonable possibility that the applicant may endanger property or the public health, safety, or welfare.

(5) The applicant has a history of conduct in connection with any business or vocation engaged in by the applicant that, if continued by the applicant in connection with the business or vocation for which the license is sought, would constitute grounds for suspension or revocation of the license.

(6) The applicant lacks any special knowledge or skill required to perform the licensed activity.

(7) The applicant has an outstanding warrant for his or her arrest.

(8) The applicant has not provided adequate proof of any insurance required by this chapter.

(9) Any plans required by this chapter for the protection of patrons from fire, explosion, or other emergency do not comply with all applicable federal, state, and local laws and regulations.

(d) *Notification to applicant.*

(1) If an application for a new license is approved, the Director shall notify the applicant in writing that the application has been approved. The notice shall contain any conditions placed on the approval and any further requirements the applicant must meet before a license will be issued.

(2) If an application for a new license is denied, the Director shall notify the applicant in writing that the application has been denied. The notice shall contain a short and plain statement of the reason for the denial and a statement that the applicant may appeal the denial as set forth in SRC chapter 20J.

(e) *Issuance; effective date.*

(1) After notice to the applicant, and upon payment of all fees associated with the license and the filing of any proof of required insurance by the applicant, the Director shall issue the license.

(2) A license is effective as of the date of issuance.

(Prior Code, § 30.050; Ord. No. 27-13; Ord. No. 16-15; Ord. No. 5-17, § 12(30.050), 6-12-2017)

Sec. 30.055. Renewal of license.

(a) *Renewals permitted.* A license may be renewed. An application to renew an existing license shall be submitted not less than 30 days prior to the expiration date of the existing license and shall be accompanied by any nonrefundable renewal fees. If an application to renew an existing license is not submitted within such 30-day period, a new license is required.

(b) *Application.*

(1) An application to renew an existing license shall include the following information, in addition to any other information specifically required elsewhere in this chapter:

(A) The applicant's name;

(B) A copy of the license for which renewal is sought;

(C) A list of any and all crimes for which the applicant has been convicted within the 12 months preceding the date of the renewal application, together with the dates and places of such convictions;

(D) Proof that the applicant has any insurance or bond required by this chapter;

(E) The signature of the applicant, if a natural person, or otherwise the signature of an authorized agent of the applicant, if the applicant is other than a natural person;

(2) Accessory short-term rental. In addition to the information required by ~~paragraph~~subsection (b)(1) of this ~~sub~~section, an application for renewal of an accessory short-term rental license shall include the following:

(A) Identification of any changes to the required information from the license for the preceding year.

(B) A copy of the guest registry, required under SRC 30.1005(d), for the preceding year.

(C) Written certification, on a form provided by the Director, attesting to conformance with the safety requirements established under SRC 30.1005(h).

(3) Short-term rental. In addition to the information required by ~~paragraph~~subsection (b)(1) of this ~~sub~~section, an application for renewal of a short-term rental license shall include the following:

(A) Identification of any changes to the required information from the license for the preceding year.

(B) A copy of the guest registry, required under SRC 30.1105(c), for the preceding year.

(C) Written certification, on a form provided by the Director, attesting to conformance with parking requirements and the safety requirements established under SRC 30.1105(g).

(4) In addition to the information required by ~~paragraph~~subsection (b)(1) of this ~~sub~~section, an application for renewal of a vehicle for hire driver license for those drivers operating within a transportation network, or an application for a vehicle for hire agency license, shall include a current safety inspection report completed by a mechanic certified by the National Institute for Automotive Service Excellence (ASE) for the vehicle(s) for hire to be used by the applicant indicating the vehicle is safe for use on public streets.

(c) *Review of application.*

(1) No application to renew an existing license shall be deemed complete until all of the information required by subsection (b) of this section has been provided, and the applicant has paid all fees associated with the application.

(2) Upon receipt of an application to renew an existing license, the Director may make such investigation as the Director deems necessary to determine whether the applicant has conducted the licensed business or vocation in compliance with all federal, state, and local laws and regulations.

(d) *Criteria for renewal of license.* An application to renew an existing license shall be granted unless:

(1) The applicant made an untrue or incomplete statement on, or in connection with, the application to renew; provided that, if such untrue or incomplete statement is the result of excusable neglect, the applicant may resubmit an application to renew an existing license within the times provided in this section.

(2) The applicant no longer meets all requirements of federal, state, and local laws and regulations, including, but not limited to, other professional licensing regulations and land use regulations.

(3) The applicant has been convicted of any crime and the nature of the crime presents a reasonable possibility that the applicant may endanger property or the public health, safety, or welfare.

(4) The applicant has an outstanding warrant for his or her arrest.

(5) The applicant no longer has the insurance required by this chapter.

(6) The applicant has knowingly maintained or conducted the licensed business or vocation in a manner contrary to the terms of the existing license or contrary to any provision of this chapter.

(7) Any other license or permit required to engage in the business or vocation has been denied, suspended, revoked, or canceled.

(8) The applicant has engaged in any behavior or activity that would endanger public health, safety and welfare.

(e) *Notification to applicant.*

(1) If an application to renew an existing license is approved, the Director shall notify the applicant in writing that the renewal has been approved. The written notice shall contain any conditions placed on the renewal and any further requirements the applicant must meet as a condition of renewal.

(2) If an application to renew an existing license is denied, the Director shall notify the applicant in writing that the renewal has been denied. The written notice shall contain a statement of the reasons for the denial and statement that the applicant may appeal the denial as set forth in SRC chapter 20J.

(f) *Issuance; effective date.*

(1) After notice to the applicant, and upon payment of all renewal fees and upon filing proof of any required insurance and/or bond by the applicant, the Director shall issue the renewal license.

(2) A renewed license is effective as of the expiration date of the prior license.

(Prior Code, § 30.055; Ord. No. 27-13; Ord. No. 16-15; Ord. No. 5-17, § 13(30.055), 6-12-2017)

Sec. 30.060. License revocation.

(a) A license issued pursuant to this chapter may be revoked by the Director if:

(1) The licensee fails to comply with any of the applicable requirements of this chapter.

(2) The licensee is doing business in violation of any applicable federal, state, or local law or regulation.

(3) The licensee provides or has provided false or misleading material information or has failed to disclose a material fact on the application for the license or in connection with the licensed activity.

(4) The licensee is convicted of any crime, if such conviction has a bearing on the licensee's fitness to engage in the licensed activity.

(5) The licensed activity is being conducted in a manner that endangers property or public health, safety, or welfare.

(6) The licensee has been assessed a civil penalty in connection with the licensed activity and fails to pay the penalty within the time required.

(b) The Director shall provide written notice of revocation to the licensee. The written notice shall state the basis for revocation of the license and shall inform the licensee of the right to appeal the revocation as set forth in SRC chapter 20J.

(c) The notice shall be given at least 15 business days before the revocation becomes effective. If the licensee corrects the basis for the revocation within the 15 business day period, the Director may discontinue the revocation proceedings.

(d) A licensee who has had his or her license revoked may, after 90 calendar days from the date of revocation, apply for a new license in the manner provided by this chapter. A licensee who has had his or her license revoked two times within any consecutive 12-month period shall be ineligible to apply for a license for two years from the date of the last revocation.

(Prior Code, § 30.060; Ord. No. 27-13)

Sec. 30.065. License suspension.

(a) A license issued pursuant to this chapter may be suspended by the Director if:

(1) The licensed activity is being conducted in a manner that presents an immediate danger to property or public health, safety or welfare.

(2) The licensee is doing business in violation of any applicable federal, state, or local law or regulation.

(3) The licensee is convicted of any crime, if the conviction has a bearing on the applicant's fitness to engage in the licensed activity.

(4) In addition to the grounds set forth in ~~paragraphs~~ subsections (a)(1) through (3) of this ~~sub~~section, a license for a night club or a special event may be suspended where:

(A) The patrons have become so disorderly or riotous that the public peace or the safety of any persons or property is threatened.

(B) The operator refuses to remove or cause to be removed any person violating SRC 95.120 after the operator has been requested to do so by a public safety officer.

(C) Suspension under this ~~paragraph~~ subsection (4) is summary, and:

(i) May be made by a public safety officer or the Fire Code Official;

(ii) Shall be for a period not to exceed four hours; and

(iii) May be made orally; provided, however, that a written post-suspension notice that complies with subsection (b) of this section ~~be~~ is provided to the licensee within 24 hours of the summary suspension.

(b) The Director shall provide written notice of suspension to the licensee. The written notice shall state the basis for the suspension and shall inform the licensee of the right to appeal the suspension as set forth in SRC chapter 20J.

(c) Suspension of a license shall take effect immediately upon written notice of the suspension being personally delivered to the licensee, or upon being delivered to the licensee's business address as stated on the licensee's application for the license, and shall remain in effect until the reason for the suspension has been cured, the license has been revoked, or the license is re-stated after a hearing as provided in SRC chapter 20J.

(d) Suspension of vehicle for hire driver license. The license for a vehicle for hire driver shall be automatically suspended during any time that the licensee's Oregon motor vehicle driver's license has been suspended or revoked by the Oregon Driver and Motor Vehicles Division. Suspension pursuant to this subsection shall be without notice and without the rights to appeal as otherwise provided by this section.

(e) Suspension due to cancellation or termination of insurance or bond. Maintenance of any insurance or bond required by this chapter shall be a condition of the license. If such insurance or bond terminates, is cancelled, or is found to be inadequate, for any reason, the license shall be automatically suspended. Suspension pursuant to this subsection shall be without notice and without the rights to appeal as otherwise provided by this section.

(Prior Code, § 30.065; Ord. No. 27-13)

Sec. 30.070. Civil enforcement.

(a) *Civil penalty.* Any person who fails to comply with the requirements of this chapter or the terms of a license issued hereunder, who undertakes an activity regulated by this chapter without first obtaining a license, or who fails to comply with a cease and desist order issued pursuant to this chapter shall be subject to a civil penalty as provided in SRC chapter 20J, not to exceed $2,000.00 per violation. Each day that a violation continues shall constitute a separate violation.

(b) *Civil penalties against agents.* Any person who acts as the agent of, or otherwise assists, a person who engages in an activity which would be subject to a civil penalty, may likewise be subject to a civil penalty.

(c) *Abatement.* Any building or structure established, operated, or maintained contrary to this chapter is a public nuisance and may be abated as provided in SRC chapter 50.

(d) *Appeals.* Any person aggrieved by any enforcement action made by the Director pursuant to this section,

may appeal the decision to the Hearings Officer by following the process set forth in SRC chapter 20J. The hearing on the appeal shall follow the contested case procedures set forth in SRC 20J.240 through 20J.430.

(e) *Proceedings by City Attorney.* The City Attorney, upon request of the Director, may institute any legal proceedings in circuit court necessary to enforce the provisions of this chapter. Proceedings may include, but are not limited to, injunctions to prohibit the continuance of the licensed activity, and any use or occupation of any building or structure used in violation of this chapter.

(f) *Remedies not exclusive.* The remedies provided in this chapter are cumulative and not mutually exclusive and are in addition to any other rights, remedies, and penalties available under any other provision of law.

(Prior Code, § 30.070; Ord. No. 27-13)

Sec. 30.075. Unlawful failure to obtain license.

(a) It shall be unlawful for a person to engage in any business or vocation for which a license is required by this chapter without first obtaining and maintaining a license therefor.

(b) A violation of this section is an infraction.

(Prior Code, § 30.075; Ord. No. 27-13)

Sec. 30.080. Unlawful activity by licensee.

(a) It shall be unlawful for a licensee to engage in a licensed activity, or to allow or permit the licensee's employees or agents to engage in the licensed activity, in violation of any applicable standard in the chapter, or of any license issued pursuant to this chapter.

(b) A violation of this section is an infraction.

(Prior Code, § 30.080; Ord. No. 27-13)

Sec. 30.085. Unlawful engaging in licensed activity while license is suspended or revoked.

(a) It shall be unlawful for a licensee to knowingly engage in a licensed activity, or to allow the licensee's employees or agents to engage in a licensed activity, when the license has been suspended or revoked pursuant to this chapter.

(b) A violation of this section is a misdemeanor.

(Prior Code, § 30.085; Ord. No. 27-13)

Sec. 30.090. Reserved.

AUTOMOBILE RACETRACKS*

***State law reference**—Racing activity vehicle registration, ORS 805.035, 805.037.

Sec. 30.100. Safety plan.

Every automobile racetrack shall have a safety plan that makes adequate provision for:

(a) The safe and expeditious movement of traffic going to and from the racetrack, including provision for parking, traffic control officers, lighting, and signs to eliminate unreasonable confusion, congestion, and hazards to traffic on public streets;

(b) The orderly movement and accommodation of spectators, control of disorderly persons or groups, and restriction of the competition area to officials, participants, and their crews; and

(c) The protection of spectators and other persons and property in the vicinity of the racetrack from unnecessary risk of injury or damage from fire, collision or other hazards inherent in motor vehicle racing, including, but not limited to, designing and equipping the premises with adequate fences, walls, screens, shields, abutments and other facilities.

(Prior Code, § 30.100; Ord. No. 27-13)

Sec. 30.105. Times of operation.

Contests and practice sessions shall be permitted at an automobile racetrack at the following times:

(a) Contests may be conducted on Fridays and Saturdays between the hours of 5:00 p.m. and 10:00 p.m.; on Sundays between the hours of 11:00 a.m. and 6:00 p.m.; on the eve of any national or state holiday between the hours of 5:00 p.m. and 10:00 p.m.; and on a national or state holiday between the hours of 11:00 a.m. and 6:00 p.m., unless such holiday falls on a Friday, or unless the day following such holiday is also a national or state holiday, in which cases contests may be conducted between the hours of 11:00 a.m. and 10:00 p.m. As used in this subsection, the term "national or state holiday" means any holiday designated by statute or executive action, and on which federal or state offices are not open for business.

(b) Practice sessions may be conducted on Saturdays between the hours of 11:00 a.m. and 10:00 p.m., and on Sundays between the hours of 11:00 a.m. and 6:00 p.m.

(c) An operator of an automobile racetrack shall not permit the operation of any motor vehicle in a competition, practice, pit, shop, or garage area between the hours of 10:00 p.m. of any day and 9:00 a.m. of the following day.

(Prior Code, § 30.105; Ord. No. 27-13; Ord. No. 1-14)

Sec. 30.110. Standards of operation.

Every automobile racetrack shall:

(a) Be operated in compliance with all federal, state and local laws and regulations, including, but not limited to, laws and regulations relating to air and noise pollution.

(b) Conduct ~~of~~ the business, contests, promotion, advertising, and all matters related thereto in such a manner not to unreasonably tend to deceive or mislead the public or participants in contests, or in a manner which is contrary, inimical, or detrimental to the public health, safety, or welfare.

(c) Maintain facilities adequate for the regulation and control of traffic coming to or going from the racetrack to eliminate unreasonable confusion and congestion, and to ensure the safe and expeditious movement of traffic on the streets. As used in this subsection, facilities include, but are not limited to, parking areas, driveways, lighting, signs, and traffic control devices.

(d) Maintain facilities adequate for the protection and safety of persons and property in and about the vicinity of the racetrack to afford reasonable protection from fire, flying glass, metal, and debris, motor vehicles leaving the competition area, and from other hazards inherent in motor vehicle racing. As used in this subsection, facilities include, but are not limited to, fences, walls, abutments, and screens.

(Prior Code, § 30.110; Ord. No. 27-13)

Sec. 30.115. License of automobile racetracks in residential districts prohibited.

No license shall be issued to operate an automobile racetrack in any residential zone.

(Prior Code, § 30.115; Ord. No. 27-13)

Sec. 30.120. Automobile racetracks in residential districts prohibited.

(a) It shall be unlawful for any person to knowingly operate or permit to be operated an automobile racetrack in any residential zone in the City.

(b) A violation of this section is a misdemeanor.

(Prior Code, § 30.120; Ord. No. 27-13)

Secs. 30.130—30.190. Reserved.

DEALERS IN USED MERCHANDISE*

***State law reference—**Purchase of used goods, ORS 646A.060 et seq.; going out of business sales, ORS 646A-100 et seq.; sale of secondhand watches, ORS 695.210 et seq.; authority to regulate purchase of firearms by pawnshops and secondhand stores, ORS 166.175; records required for purchase of used or secondhand vehicles, etc., ORS 822.045.

Sec. 30.200. Records and reports.

(a) Except as provided in subsection (b) of this section, every dealer in used merchandise shall make and keep a full, true, and complete record of all articles received, pledged, or purchased. Such record shall contain the following information:

(1) The date when the article was received, pledged, or purchased;

(2) The number of the pawn ticket, if any;

(3) The amount of the purchase or pledge;

(4) A description of each article or group of articles received, pledged, or purchased;

(5) If any article received, pledged, or purchased has marked thereon any numbers, words, or initials, or contains any settings of any kind, such number, word, or initial, and the kind of settings and the number thereof, except that the receipt, pledge or purchase of more than 20 articles from a single seller in a single transaction, may be described by a general description sufficient to enable the Chief to compare the record to reports of lost or stolen property;

(6) The name, address, and description of the borrower or seller, together with the type and number of any proof of identification presented by the borrower or seller;

(7) A declaration of ownership for each transaction where the article is purchased;

(8) If the dealer in used merchandise engages in 50 or more transactions in any calendar year, the right thumb print from the pledgor or seller shall be made using a finger print scanning device acceptable to the Chief of Police. If the dealer in used merchandise engages in less than 50 transactions in a calendar year, the right thumb print from the pledgor or seller may be submitted in ink;

(9) A copy of photographic identification provided by the pledgor or seller at the time of the transaction;

(10) The signature of the borrower or seller.

(b) Every dealer in used merchandise~~,~~ shall photograph, maintain, and provide to the Chief ~~of Police~~ upon request~~: (1) All~~ all jewelry~~,~~ and all scrap precious metals (platinum, gold and silver)~~;~~.

~~(2) Any item that is difficult to describe in writing.~~

(c) No dealer in used merchandise shall be required to record any of the following:

(1) Any purchase of property from manufacturers or wholesale dealers having an established place of business.

(2) Any purchase in the open market from any person doing business and having an established place of business in the City, but such goods must be accompanied by a bill of sale or other evidence of purchase.

(3) The receipt, pledge, or purchase of books.

(4) The purchase of videotapes, audio tapes, compact discs, record albums, digital video discs, or any combination thereof from a single seller in a single transaction valued at less than $75.00.

(5) Articles received solely in trade.

(6) The renewal of any loan that was previously reported.

(d) If the dealer in used merchandise engages in 50 or more transactions in a calendar year, the records required by this section shall be maintained in electronic form. If the dealer in used merchandise engages in less than 50 transactions in a calendar year, the records required by this section may be maintained in written or electronic form.

(1) The Chief shall select a computer media system suitable to report transactions electronically to the City. The computer media system shall ensure uniformity in reporting among all dealers in used merchandise.

(2) By the end of business each day, every dealer in used merchandise engaging in 50 or more transactions a year shall submit a record of daily transactions required to be reported electronically into the computer media system selected by the Chief.

(3) If the dealer in used merchandise has less than 50 transactions per year, the dealer in used merchandise

shall submit the record of daily transactions to the Chief within three days of the date of the transaction. If the records are sent by mail, the records shall be mailed within two days of the date of the transaction.

(e) Records kept pursuant to this section may be examined by the Chief during the regular business hours of the dealer in used merchandise.

(f) The ~~City~~ Council, upon recommendation of the Chief, may, in its discretion, exempt by written order certain categories of dealers in used merchandise from the recordkeeping requirements hereunder when the category of dealers in used merchandise so exempted is such that law enforcement efforts would not be significantly aided by continued maintenance of such records.

(g) The information required to be furnished pursuant to this section is to assist in the investigation of criminal activity. The information is of a confidential nature, may be related to the personal privacy of persons doing business with a dealer in used merchandise, and trade secrets and practices of dealers in used merchandise. The Chief shall treat the information as confidential and exempt from disclosure under public records laws to the extent possible under any applicable laws.

(Prior Code, § 30.200; Ord. No. 27-13)

State law reference—Record of purchase of used goods, ORS 646A.060; record requirements for precious metal secondhand dealer, ORS 646A.065.

Sec. 30.205. Condition of property not to be changed.

(a) Except as provided in subsection (d) of this section, all property purchased or received by any dealer in used merchandise incident to such business shall be held without alteration, change or subsequent sale for a period of 14 days after the receipt of the property is reported to the Chief.

(b) During the 14 day holding period required by this section, the dealer in used merchandise shall not commingle the property in a manner that precludes identification.

(c) During the 14 day holding period required by this section, the dealer in used merchandise shall produce any article required to be reported under SRC 30.200 for inspection by any peace officer of this state.

(d) Subsections (a) and (b) of this section shall not apply to any of the following:

(1) Transactions described in SRC 30.200(c).

(2) The redemption of pledged or pawned personal property by the original pledgor or borrower.

(Prior Code, § 30.205; Ord. No. 27-13)

Sec. 30.210. Goods not to be sold or redeemed in violation of order of the Chief of Police.

(a) If, in the course of a specific criminal investigation, the Chief ~~of police~~ has probable cause to believe that property received by a dealer in used merchandise was not lawfully obtained by the seller or borrower or is evidence of a criminal offense, the Chief may issue a written or oral order requiring the dealer in used merchandise to hold the property without alteration or change, and not allow it to be sold or redeemed for a specific period, not to exceed 180 days from the date of the order. If such order is given orally, the Chief shall confirm it in writing within 48 hours.

(b) During any holding period ordered under this section, every dealer in used merchandise shall, upon request by any peace officer of this state, deliver the article to the peace officer.

(c) Notwithstanding any holding period ordered under this section, the Chief may authorize the sale or transfer of an item before the expiration of the ordered holding period in cases in which the dealer in used merchandise shows that an extreme hardship will result from holding the property for the ordered holding period.

(d) If a pledgor seeks to redeem property that is subject to an order under this section, a dealer in used merchandise shall advise the pledgor of the order and the name of the peace officer who placed the hold on the property. If the property is not required to be held pursuant to a criminal prosecution, the order shall be rescinded.

(e) Whenever the Chief has reason to believe that property in the possession of a dealer in used merchandise has been reported lost or stolen, the Chief may notify the person who reported the property as lost or stolen and the police agency taking such report of all of the following:

(1) The name, address and telephone number of the dealer in used merchandise who reported the acquisition of the property.

(2) That the law neither requires nor prohibits payment of a fee or any other condition in return for the surrender of the property by the dealer in used merchandise.

(3) The length of any holding period ordered pursuant to this section.

(f) Nothing in this section shall be construed to alter the authority of a peace officer to seize property pursuant to any other provision of law.

(Prior Code, § 30.210; Ord. No. 27-13)

Sec. 30.215. Release of property.

(a) Except as otherwise provided by this section, the Chief may not release property subject to SRC 30.200 through 30.250 which has been seized to anyone other than the person from whom the property was seized or their authorized agent.

(b) The Chief may release seized property to another law enforcement agency, if the other law enforcement agency provides documentation to the satisfaction of the Chief ~~of Police~~ of the stolen status of the property.

(c) The Chief may release seized property to a person who has reported the property stolen only as provided in this subsection. The property may be released to such a person provided:

(1) The person has filed with the Chief a stolen property list in a form approved by the Chief and certified under penalty of law to be true and correct.

(2) The Chief has caused a written notice to be delivered to the dealer in used merchandise from whom the property was seized, and to any person who pledged or pawned the property.

(A) The notice required by this ~~paragraph~~ subsection (2) shall state that the property will be released to the person who filed a stolen property list with the Chief unless the dealer in used merchandise or the person who pledged or pawned the property files a motion for release of property as provided in SRC 30.220.

(B) The notice required by this ~~paragraph~~ subsection (2) shall be sent by certified mail, return receipt requested, or delivered in person, to the dealer in used merchandise at the address shown on the last received license application or license renewal application for the business, and to any person who pledged or pawned the property at the address on the record required by SRC 30.200.

(3) The failure of any person to receive the notice required pursuant to this section shall not invalidate or otherwise affect proceedings under SRC 30.200 through 30.250.

(Prior Code, § 30.215; Ord. No. 27-13)

Sec. 30.220. Motion for release of property.

(a) Within ten days of receiving an order to hold under SRC 30.210 or within ten days of the date of a notice under SRC 30.205, any person with an interest in the property subject to the order to hold or notice may file with the Municipal Court a motion to release the property to the movant. A copy of the motion must be served on the Chief ~~of Police~~ within the same ten-day time period.

(b) A motion for release of property shall be based upon the ground that the movant has a valid claim to rightful possession of the property because of any of the following:

(1) The property had been stolen or otherwise converted, and the movant is the owner or rightful possessor;

(2) The property was not in fact subject to an order to hold under SRC 30.210 or a notice under SRC 30.205;

(3) The movant is lawfully entitled to possess the property; or

(4) Although the property was subject to an order to hold under SRC 30.210 or a notice under SRC 30.205, the movant is or will be entitled to the return or restoration of the property upon the Court's determination that the property is no longer needed for evidentiary purposes.

(c) The Municipal Court shall consider such a motion if there is another court with ultimate trial jurisdiction over a crime charged in connection with the seizure of the property.

(d) If, upon consideration of a motion for release of property, it appears to the Municipal Court that the property should be released, but there is a substantial question whether the property should be released and remain in the possession of the dealer in used merchandise or be released to some other person, or there is a substantial question among claimants as to rightful possession, the Court shall set a hearing, assuring that all persons with a possible possessory interest in the property in question receive due notice and an opportunity to be heard, and, after such hearing, either deny the motion or enter an order for the release of the property.

(e) If there is no substantial question whether the property should be released to the person who filed a motion for release of property, the Municipal Court shall order the property released to that person.

(f) Instead of conducting the hearing provided for in subsection (d) of this section, the Municipal Court, in its discretion, may order any hold issued under SRC 30.210 removed, allowing any claimants the ability to pursue appropriate civil process for the determination of their claims.

(g) A copy of any stolen property list which has been certified as a true copy by the custodian of police records may become part of the record in any hearing under this section and is not to be excluded by ORS 40.455, regardless of whether or not the declarant is available as a witness. No extrinsic evidence of authenticity is required.

(h) The Chief's order or notice shall remain in effect during the pendency of any motion to release property.

(Prior Code, § 30.220; Ord. No. 27-13)

Sec. 30.225. Enclosure of junk required.

(a) All dealers in used merchandise shall confine their storage, display, wrecking, dismantling, disassembling, packaging, or similar operations involving junk wholly within a building the interior of which is not visible from the outside thereof except through doors used for ingress and egress, or within a fence, wall, or landscaped berm constructed in compliance with all applicable laws.

(b) Every building or enclosure used as required in subsection (a) of this section shall be constructed so that the vertical walls thereof can withstand a pressure from each side and every angle of at least 15 pounds per square foot.

(c) The exterior walls of every such building or enclosure shall be painted with at least two coats of paint of one solid color, which paint shall be compatible with the material on which it is placed. Such walls shall be maintained so as to present a neat and orderly appearance.

(d) No junk kept within any such building or enclosure shall be placed so as to be visible from the exterior thereof.

(Prior Code, § 30.225; Ord. No. 27-13)

Sec. 30.230. Purchases from minors.

(a) It shall be unlawful for any dealer in used merchandise, or any employee or agent of the dealer in used merchandise, to purchase or acquire incident to the dealer in used merchandise's business any goods, wares, articles, or other personal property of any description from any person under the age of 18 years.

(b) A violation of this section is an infraction.

(Prior Code, § 30.230; Ord. No. 27-13)

Sec. 30.240. Unlawful transactions with person prohibited from selling property.

(a) It shall be unlawful for any dealer in used merchandise, or for any employee or agent of any dealer in used merchandise, to knowingly acquire or purchase any goods, wares, articles, or other personal property of any description from a person known to the dealer in used merchandise, or to the employee or agent of the dealer in used merchandise, who is prohibited from selling such property by a Court order.

(b) A violation of this section is a misdemeanor.

(Prior Code, § 30.240; Ord. No. 27-13)

Sec. 30.245. Unlawful transactions in certain types of property.

(a) It shall be unlawful for any dealer in used merchandise to knowingly purchase, acquire by pledge, or loan money against any of the following types of property:

(1) Prescription medications;

(2) Gift cards, in store credit cards, or activated phone cards; or

(3) Property with serial numbers, personalized inscriptions or initials or other identifying marks that appear to have been intentionally altered or rendered illegible.

(b) A violation of this section is a misdemeanor.

(Prior Code, § 30.245; Ord. No. 27-13)

Sec. 30.250. Failure to keep records.

(a) It shall be unlawful for any dealer in used merchandise or for any employee or agent of a dealer in used merchandise, to fail to make or keep any record as required by SRC 30.200.

(b) A violation of this section is an infraction.

(Prior Code, § 30.250; Ord. No. 27-13)

Sec. 30.255. Unlawful alteration of, commingling with, and failure to produce articles.

(a) It shall be unlawful for any dealer in used merchandise to knowingly violate SRC 30.205(a) or ~~SRC 30.205~~(b), or to fail to produce any article required to be produced pursuant to SRC 30.205(c).

(b) A violation of this section is a misdemeanor.

(Prior Code, § 30.255; Ord. No. 27-13)

Sec. 30.260. Failure to obey order of chief; failure to deliver article to chief.

(a) It shall be unlawful for any dealer in used merchandise to knowingly violate an order issued pursuant to SRC 30.210(a), or to fail to deliver any article requested under SRC 30.210(b).

(b) A violation of this section is a misdemeanor.

(Prior Code, § 30.260; Ord. No. 27-13)

Sec. 30.265. Failure to obtain proof of identity.

(a) It shall be unlawful for any dealer in used merchandise, or any employee or agent of a dealer in used merchandise, to purchase or acquire by pledge or loan any goods, wares, articles, or other personal property of any description without first obtaining adequate proof of identity.

(b) A violation of this section is an infraction.

(Prior Code, § 30.265; Ord. No. 27-13)

Secs. 30.270—30.290. Reserved.

NIGHT CLUBS

Sec. 30.300. Standards of operation.

Every night club operator shall provide adequate supervision to ensure that:

(a) No person who is visibly intoxicated or apparently under the influence of narcotic or dangerous drugs is permitted to enter or remain on the premises of the night club;

(b) No person who is violating SRC 95.120 is allowed to remain on the premises of the night club;

(c) The night club is operated at all times in compliance with all applicable state and local fire codes and other administrative rules, including, but not limited to, the designation of "no smoking" areas, limiting the number of persons occupying the night club, and ensuring the number and accessibility of emergency exits.

~~(d) The night club is operated in compliance with SRC 30.400-30.420.~~

(Prior Code, § 30.300; Ord. No. 27-13)

Sec. 30.305. Inspection.

All night clubs shall be open for inspection by any police officer or Fire Code Official of the City at all times.

(Prior Code, § 30.305; Ord. No. 27-13)

Sec. 30.310. Rights of operator.

The privileges of a patron to enter and to remain on the premises of a night club shall be revocable by the operator at any time and for any or no cause, notwithstanding any consideration paid or tendered by the patron, unless such revocation would amount to unlawful discrimination against such person in violation of any federal, state or local law or regulation.

(Prior Code, § 30.310; Ord. No. 27-13)

Secs. 30.320—30.390. Reserved.

MOBILE FOOD UNITS

Sec. 30.400. License required.

(a) A mobile food unit license shall be valid for a period of one year from the effective date of the license, and may be renewed pursuant to SRC 30.055.

(b) A separate mobile food unit license and fee shall be required and secured by the vendor under the provisions of SRC chapter 30 for each mobile food unit used by the vendor to carry on the vendor's business.

(Prior Code, § 30.400; Ord. No. 11-14)

Sec. 30.405. Location.

(a) Mobile food units may only operate in zones where allowed as a permitted use.

(b) Mobile food units shall not operate or be located in a public right-of-way. Mobile food units may operate on city-owned property provided the licensee is granted a site specific permit which shall be displayed conspicuously on-site.

(c) A mobile food unit may only operate in an approved parking lot, or other hard surface area, where the off-street parking requirements for all uses or activities served by the off-street parking area are met.

(d) The location standards of this section do not apply to mobile food units which operate as a vendor within an approved community event or where a street closure permit is granted.

(Prior Code, § 30.405; Ord. No. 27-13; Ord. No. 11-14; Ord. No. 29-14)

Sec. 30.410. Standards.

(a) Operation of a mobile food unit shall conform with all applicable laws and regulations, including zoning and land use requirements.

(b) A mobile food unit, including all items associated with the operation, shall not obstruct pedestrian pathways, driveways or drive aisles of any off-street parking area and shall be located so as to no create a traffic or safety hazard.

(c) All mobile food units which are parked in a stationary location for a period of 24 hours or longer shall provide screening for all conduit, tanks, and storage areas from all public areas and streets by sight-obscuring fencing and/or temporary landscaping and skirting shall be provided along the perimeter of the mobile food unit.

(d) Mobile food units are not permanent structures and must remain capable of being moved.

(e) Mobile food unit operators shall pick up any paper, cardboard, wood, or plastic containers, wrappers, or any litter which is deposited by any person within 20 feet of the mobile food unit when conducting business.

(Prior Code, § 30.410; Ord. No. 11-14)

Secs. 30.420—30.490. Reserved.

SPECIAL EVENTS

Sec. 30.500. Conduct of special events.

Every person who conducts a special event, and all agents or employees of such person, shall provide adequate supervision to ensure:

(a) No person who is intoxicated or under the influence of narcotic or dangerous drugs is permitted to enter or remain on the premises where the special event is conducted;

(b) No person violating SRC 95.120 is allowed to remain upon the premises where the special event is conducted;

(c) All applicable state and local fire codes and regulations are complied with, including "no smoking" areas, the number of persons occupying a structure, and the number and accessibility of emergency exits.

(d) All applicable rules and regulations imposed by the Oregon Liquor Control Commission are complied with.

(Prior Code, § 30.500; Ord. No. 27-13)

Sec. 30.505. Safety plan.

Every special event shall have a safety plan that makes adequate provision for:

(a) The safe and expeditious movement of traffic going to and from the special event, including provision for parking, traffic control officers, lighting, and signs to eliminate unreasonable confusion, congestion, and hazard to traffic on the public streets;

(b) The orderly movement and accommodation of spectators, control of disorderly persons or groups, and restriction of the competition area to officials, participants, and their crews; and

(c) The protection of spectators and other persons and property in the special event from unnecessary risk of injury or damage from fire, collision or other hazards inherent in the special event, including, but not limited to, designing and equipping the premises with adequate fences, walls, screens, shields, abutments and other facilities.

(Prior Code, § 30.505; Ord. No. 27-13)

Sec. 30.510. Inspection.

Special event premises shall be open for inspection by any police officer or Fire Code Official of the City at all times.

(Prior Code, § 30.510; Ord. No. 27-13)

Sec. 30.515. Insurance.

Before a license for a special event that involves use of public right-of-way is issued, the applicant shall obtain public liability, food products liability, and property damage insurance protecting the applicant and the City from all claims for damage to property or bodily injury, including death, which may arise from the activities under the license or in connection therewith. Such insurance shall provide coverage of not less than the minimum amounts set forth in the Oregon Tort Claims Act, ORS 30.260 through 30.300. Such insurance shall be without prejudice to coverage otherwise existing therein, and shall name the City, its officers, agents and employees as additional insureds, and shall provide that the policy shall not terminate or be canceled without 30 days prior written notice to the City.

(Prior Code, § 30.515; Ord. No. 27-13)

Secs. 30.520—30.690. Reserved.

VEHICLES FOR HIRE*

***State law reference**—Authority to regulate vehicles for hire, ORS 221.485.

Sec. 30.700. License, application and fees.

(a) The purpose of SRC 30.700 to 30.765 is to provide for and promote the safety and welfare of the general public by regulating vehicles for hire within the City ~~of Salem~~, as authorized by ORS 221.485 and ~~ORS~~ 221.495.

(b) The City may issue a license to a taxi company or TNC if the company certifies on a form acceptable to the City that it is in compliance with all requirements of ~~this Chapter~~ SRC 30.700 through 30.765, including, but not limited to, driver and insurance requirements, operating standards, and any other requirements of the Code or the City, and actually meets all applicable standards and requirements.

(c) The City may include conditions, restrictions, or special provisions in the license related to routes, times of operation, or lighting if necessitated by the vehicles or operations of the taxi company or TNC. The City may waive or lessen the requirements of ~~this Chapter~~ SRC 30.700 through 30.765 if the type of vehicles or operations of a taxi company or TNC render the requirements unreasonable or unnecessary, in the sole discretion of the City.

(d) The license issued under ~~this Chapter~~ SRC 30.700 through 30.765 is valid for one year. Any renewal must be approved by the City prior to the expiration date in order for the taxi company or TNC to continue providing vehicle for hire services within the City.

(e) The application fee shall be based on the number of drivers operating for the taxi company or TNC at the time of the application, and shall be intended to account for the City's costs in administering the requirements of ~~this Chapter~~ SRC 30.700 through 30.765. The fee amounts shall be set by ~~City~~ Council resolution.

(f) The application fee shall be paid to the City at the time of submitting both initial and renewal license applications.

(g) All taxi companies and TNCs must comply with applicable federal, state and local law.

(Ord. No. 3-17, § 5, 5-8-2017)

Sec. 30.705. Driver requirements.

(a) All drivers shall be at least 21 years of age and shall possess a valid driver's license, proof of motor vehicle registration, and proof of current automobile liability insurance that meets the requirements of ~~this Chapter~~ SRC 30.700 through 30.765 and state law.

(b) Every taxi company or TNC shall maintain accurate, current records for all drivers employed by, contracting with, or affiliated with the company, including all drivers accessing a company's digital network to operate in the City. The records shall include the driver's name, date of birth, address, Social Security number, criminal background check results, driver's license information, motor vehicle registration, and automobile insurance. These records will be made available to the City as provided by SRC 30.720.

(c) Prior to permitting a person to operate as a driver, and annually thereafter, the taxi company or TNC shall conduct, or have a qualified third party conduct, a criminal background check. The criminal background check shall include a search of no less than seven years of history, unless prohibited by law, in which case the duration of the search shall be the maximum number of years permitted by law. The criminal background check shall include local, state, and national criminal history databases and all accessible sex offender registries. Any person who is on a sex offender registry, or any person that has a record of a felony conviction within the previous seven years may not act as a driver. A record of a conviction of any of the following within the previous seven years will also disqualify a person from acting as a driver: crimes involving driving under the influence of alcohol or controlled substances, sexual offenses, or crimes involving physical harm or attempted physical harm to a person. The company or its agent shall maintain records of a criminal background checks for a period of at least two years. For purposes of this section, the term "conviction" includes convictions, bail forfeitures, and other final adverse findings.

(d) A taxi company or TNC must revoke a driver's authority to operate as a driver for their company and inform the City if it finds at any time that the standards set forth in this section are no longer being met by the driver. The company shall only reinstate a driver upon a finding by the company that all standards are again being met by the driver.

(Ord. No. 3-17, § 5, 5-8-2017)

Sec. 30.710. Insurance requirements.

(a) For all required insurance, taxi companies and TNCs shall provide certificates of insurance naming the City, its officers, agents, and employees as additional insured parties and give at least 30 calendar days' notice to the City before a policy is canceled, expires, or has any reduction in coverage.

(b) Insurance requirements of this section shall be satisfied by insurance issued by a licensed insurer or an eligible surplus lines insurer in the State ~~of Oregon~~.

(c) The insurance limits for both TNCs and taxi companies are subject to statutory changes as to maximum limits of liability imposed on municipalities of the State ~~of Oregon~~ during the permit's term, or other statutory changes.

(d) The adequacy of insurance coverage is subject to the review and approval of the City.

(e) Every taxi company and TNC shall maintain continuous, uninterrupted coverage for the duration of the license and any operations in the City. Any lapse in insurance coverage, even if it is later backdated by the insurance company, is a violation of ~~this Chapter~~ SRC 30.700 through 30.765.

(f) Both taxi companies and TNCs shall secure and maintain commercial general liability insurance with limits of not less than $1,000,000.00 per occurrence and $2,000,000.00 aggregate for claims arising out of, but not limited to, bodily injury and property damage incurred in the course of operating in the City.

(g) Taxi companies operating any motor vehicles shall secure and maintain commercial automobile liability insurance covering those vehicles, with a combined single limit of not less than $1,000,000.00 per occurrence for claims arising out of, but not limited to, bodily injury and property damage incurred in the course of operating in the City.

(h) TNC service periods defined:

(1) *Period 1.* The TNC Driver has logged into the App or is otherwise connected to the TNC's digital network, but has not yet accepted a request for a ride from a passenger (for example, the App is open and the driver is waiting for a match).

(2) *Period 2.* A passenger match has been accepted, but the passenger is not yet picked up (for example, the driver is on the way to pick up the passenger).

(3) *Period 3.* The passenger is in the vehicle.

(i) Upon City request or as part of an application, TNCs shall provide proof of current valid insurance for City approval covering all affiliated TNC drivers and vehicles for hire operating for such company and satisfying the minimum requirements of Periods 1, 2, and 3.

(j) All TNCs shall maintain and provide the City with proof of the following automobile liability coverages:

(1) Primary insurance coverage during Period 1 with minimum liability limits of $50,000.00 per person for death and injury, $100,000.00 per incident for death and injury, and $25,000.00 for property damage, plus any other state compulsory coverage.

(2) Primary insurance coverage during Periods 2 and 3 with minimum liability limits of $1,000,000.00 in combined single limit coverage for death, personal injury and property damage per incident; and $1,000,000.00 in combined single limit under/uninsured motorist coverage for death, personal injury and property damage per incident.

(3) The required automobile liability insurance shall specifically recognize the driver's provision of TNC and vehicle for hire services and shall comply with the laws of the State ~~of Oregon~~ and/or other applicable governing bodies.

(k) TNC drivers shall be responsible for maintaining all personal automobile liability insurance required by state law.

(Ord. No. 3-17, § 5, 5-8-2017)

Sec. 30.715. Operational requirements.

(a) TNCs shall maintain records of all trips made by all drivers for at least one year from the date of the trip. The data may be aggregated and/or anonymized, and shall include, at minimum, the locations by ZIP code of trip origination and destination, vehicle miles traveled, trip origination and completion times, trip duration, and passenger wait times from a driver's acceptance of a request to passenger pick-up. The City may require a TNC to enter a data sharing agreement in order to receive a license.

(b) All vehicles operating for a TNC or taxi company shall be clearly marked with the company name or logo. Vehicles operating for a taxi company shall include the company name or logo, phone number, and a vehicle identification number in plain sight. Vehicles operated solely for TNC services shall be clearly marked as operating for the TNC, although any vehicle marking requirements imposed by a TNC may apply. The TNC's software application or website shall display for the passenger the make, model, and license plate number of the TNC vehicle.

(c) TNC drivers may not accept street hails, and may only accept rides arranged through a TNC's digital network.

(d) Taxi companies and TNCs shall implement and maintain at all times a zero tolerance policy on the use of drugs or alcohol applicable to all drivers employed by or affiliated with the company while providing vehicle for hire services. Companies shall provide notice of the zero tolerance policy on their website and/or have it clearly displayed in each vehicle. The notice must include contact information to report a complaint about a driver for possible violation of policy. A company shall immediately suspend a driver upon receipt of a passenger complaint alleging a violation of the zero tolerance policy, for at least the duration of the investigation of the complaint.

(e) Taxi companies and TNCs must provide reasonable accommodations to passengers with disabilities, including passengers accompanied by a service animal, passengers with hearing and visual impairments, and passengers with mobility devices, and must comply with all applicable requirements of the Americans with Disabilities Act.

(Ord. No. 3-17, § 5, 5-8-2017)

Sec. 30.720. Audit.

The City may audit taxi company and TNC driver records up to twice per calendar year to review compliance with this Chapter. Upon request by the City, a taxi company or TNC shall provide the City a sample of records for up to 30 drivers chosen at random from an anonymized list of drivers affiliated with the taxi company or TNC that have operated in the City in the 30 days preceding an audit. An audit shall occur at a time and location designated by the City. In addition to an audit, the City may require a company to produce records related to investigation of a specific allegation of a violation of this Code or other applicable law, or to evaluate a complaint. Production of records for an investigation or to evaluate a complaint does not count toward the twice-per-year auditing limit. A taxi company or TNC may designate any records required to be provided under this section as confidential. Records designated as confidential may not be disclosed to a third party without prior written consent of the taxi company or TNC, unless required by Court order or under Oregon Public Records Law.

(Ord. No. 3-17, § 5, 5-8-2017)

Sec. 30.725. Revocation, suspension and penalties.

(a) In addition to any other enforcement options provided by the Code, the City may suspend, revoke, or refuse to issue a license if the taxi company or TNC has violated any of the provisions of this Code. A violation includes any failure to meet or maintain any of the requirements or qualifications set forth in this Code, including the procedures and requirements for obtaining and maintaining a license, as well as the making of any materially false statement or representation. The decision to suspend, revoke or refuse to issue a license may be appealed to the ~~Salem~~ Hearings Officer, which will conduct a hearing where the company and the City may present evidence and argument. The company shall have the burden of proving it has complied with all requirements of this Code necessary to obtain or maintain the license. The decision of the ~~City~~ Council on the appeal shall be the final decision of the City.

(b) A violation of ~~this Chapter~~ SRC 30.700 through 30.765 is an infraction.

(Ord. No. 3-17, § 5, 5-8-2017)

Sec. 30.730. Enforcement.

The City has the administrative authority to implement and enforce ~~this Chapter~~ SRC 30.700 through 30.765, including adoption of rules, regulations, or policies. This provision shall not be construed to abrogate or limit the jurisdiction or authority of the police department or any law enforcement agency.

(Ord. No. 3-17, § 5, 5-8-2017)

Sec. 30.735. Taximeter inspection.

Every taximeter shall be inspected and tested for accuracy by the vehicle for hire agency at least once every six months.

(Prior Code, § 30.730; Ord. No. 27-13; Ord. No. 16-15; Ord. No. 3-17, § 6, 5-8-2017)

Sec. 30.7~~4~~40. Use for certain purposes prohibited.

(a) It shall be unlawful for any vehicle for hire to be used for any purpose which would amount to a violation of ORS ~~Chapter~~ ch. 167 or ~~of~~ SRC chapter 96.

(b) A violation of this section is an infraction.

(Prior Code, § 30.735; Ord. No. 27-13; Ord. No. 16-15; Ord. No. 3-17, § 7, 5-8-2017)

Sec. 30.745. Medical emergency transportation.

No vehicle for hire shall be used to transport:

(a) Any person in acute medical distress, in need of immediate medical attention, or in need of care while en route to the hospital;

(b) Any person who is in a reclining wheelchair with the back lowered more than 33 degrees or the feet raised more than 90 degrees, except that a wheelchair coach may transport a person on a stretcher if the person is not in acute medical distress.

(Prior Code, § 30.750; Ord. No. 27-13; Ord. No. 3-17, § 8, 5-8-2017)

Sec. 30.750. Charges for vehicle for hire services.

(a) *Calculation and display of charges.* All charges for vehicle for hire services, except services by wheelchair coach, shall be calculated and displayed by a taximeter or digital dispatch system. When charges are to be displayed by a taximeter, the taximeter shall be placed in the vehicle for hire so that the reading dial showing the amount to be charged is illuminated and readily discernible to passengers.

(b) *Charges to be registered only when vehicle for hire is engaged.* No taximeter or digital dispatch system shall be operated in any manner so as to cause any charge to be registered thereon except during the time while the vehicle for hire is engaged by a passenger.

(c) *Taximeter or digital dispatch system to be in continuous operation.* No passenger shall be carried in any vehicle for hire unless the taximeter or digital dispatch system is in operation, whether or not the trip is entirely within or partially within and partially without the boundaries of the City. The taximeter or digital dispatch system shall be in continuous operation during the entire time that a passenger is being transported for compensation.

(d) *Specialized charges.* A vehicle for hire agency may impose a specialized charge to carry extra passengers or to deliver goods or other items so long as such specialized charge is clearly calculated and displayed before any service is provided.

(Prior Code, § 30.815; Ord. No. 27-13; Ord. No. 16-15; Ord. No. 3-17, § 9, 5-8-2017)

Sec. 30.755. Use of direct route required.

A vehicle for hire driver employed to carry a passenger to a definite point shall take the most direct route possible that will carry the passenger safely and expeditiously to his or her destination.

(Prior Code, § 30.825; Ord. No. 27-13; Ord. No. 3-17, § 10, 5-8-2017)

Sec. 30.760. Smoking prohibited.

(a) It shall be unlawful for any vehicle for hire driver to smoke in the presence of any passenger without the consent of such passenger.

(b) Notwithstanding subsection (a) of this section, it shall be unlawful for any person to smoke in a vehicle for hire if oxygen tanks or other devices containing inflammable materials are present in the vehicle.

(c) A violation of this section is an infraction.

(Prior Code, § 30.835; Ord. No. 27-13; Ord. No. 3-17, § 11, 5-8-2017)

Sec. 30.765. Wheelchair coaches; fees for service, display fees.

(a) The operator of a wheelchair coach shall inform every passenger, or person responsible for payment, of the fees charged for the service.

(b) The operator of a wheelchair coach shall post rates on five-inch by eight-inch signage which is visible to all passengers and also by posting the rates in the passenger compartment of each vehicle. Nothing stated herein shall preclude wheelchair coach operators from imposing specialized charges for extra services such as escorting passengers or assisting passengers to and from the vehicle; other specialized charges include, but are not limited to, extra passengers, delivering packages, transporting people in wheelchairs or stretchers, as long as all charges are posted/readily available to all passengers.

(c) Wheelchair coach operators which are paid exclusively by third party providers and whose services include transportation to and from medical facilities only need not have a taximeter and post rates.

(Prior Code, § 30.845; Ord. No. 27-13; Ord. No. 16-15; Ord. No. 3-17, § 12, 5-8-2017)

Secs. 30.770—30.900. Reserved.

STREET VENDORS ~~PUSHCARTS~~*

***State law reference**—State license required for peddlers of produce the peddler has not grown, ORS 585.020.

~~**Sec. 30.900. Separate license for each cart.**~~

~~A separate license shall be required for each pushcart or other conveyance used by a street vendor to carry on the street vendor's business.~~

~~(Prior Code, § 30.900; Ord. No. 27-13)~~

Sec. 30.905. Pushcarts.~~inspection.~~

~~(a)~~Prior to issuance of a street vendor's license, the Director shall inspect the A street vendor's pushcart or other conveyance shall be ~~to be used. The Director shall verify that the pushcart or other conveyance is~~ structurally and mechanically sound and ~~that~~ its design shall not ~~will not~~ create a hazard to the public. No pushcart or similar conveyance shall be no larger than three feet six inches in width and six feet in length.

~~(b) Each pushcart or other conveyance to be used shall be re-inspected annually for compliance with this section.~~

(Prior Code, § 30.905~~; Ord. No. 27-13~~)

Sec. 30.910. Insurance.

Before a license is issued to a street vendor, the applicant therefor shall first obtain and file with the Director a certificate of insurance evidencing public liability, food products liability, and property damage insurance protecting the licensee and City from all claims for damage to property or bodily injury, including death, which may arise from the activities under the license or in connection therewith. Such insurance shall provide coverage of not less than the minimum amounts set forth in the Oregon Tort Claims Act, ORS 30.260 through 30.300. Such insurance shall be without prejudice to coverage otherwise existing therein, and shall name the City, its officers, agents and employees as additional insureds, and shall further provide that the policy shall not terminate or be canceled without 30 days prior written notice to the City.

(Prior Code, § 30.910; Ord. No. 27-13)

Sec. 30.915. Use of sidewalks.

(a) Except as required pursuant to SRC 30.925, no street vendor licensed under this chapter shall:

(1) Have an exclusive right to any specific location on any public sidewalk;

(2) Be permitted a stationary location;

(3) Be allowed to occupy any area within ten feet from the inside crosswalk mark at the corner of each block, ten feet from the entrance to an alleyway, eight feet from the entrance to any building doorway, or in front of any restaurant that fronts on the street or alleyway.

(b) Pushcarts or other conveyances used shall be located upon the public sidewalk and shall maintain a minimum sidewalk clearance of five feet at all times.

(c) Street vendors conducting business on any sidewalk shall pick up any paper, cardboard, wood, or plastic containers, wrappers, or any litter which is deposited by any person on the sidewalk or street within 20 feet of the street vendor's pushcart or other conveyance at any time it is in a stationary position and the street vendor is conducting business.

(d) No street vendor shall make any loud or unreasonable noise of any kind by vocalizing or otherwise for the purpose of advertising or attracting attention to the street vendor's business.

(e) No pushcart or other conveyance used by a street vendor shall be left unattended on a sidewalk, between 12:00 midnight and 6:00 a.m.

(Prior Code, § 30.915; Ord. No. 27-13)

Sec. 30.920. Sanitary standards.

All utensils and equipment used by a street vendor shall be maintained in a clean and sanitary condition and shall conform to all standards prescribed by state and local laws and regulations.

(Prior Code, § 30.920; Ord. No. 27-13)

Sec. 30.930. Unlawful operation without health and sanitary licenses.

(a) It shall be unlawful for a person to operate as a street vendor without all required health and sanitary licenses issued by the State ~~of Oregon~~ and applicable county.

(b) A violation of this section is an infraction.

(Prior Code, § 30.930; Ord. No. 27-13)

Sec. 30.935. Prohibited solicitation.

(a) It shall be unlawful for any person to solicit or demand any pecuniary benefit from any street vendor in return for the street vendor locating a pushcart or other conveyance on the sidewalk in front of any particular business.

(b) As used in this section, the term "pecuniary benefit" means money, property, or commercial interest.

(c) A violation of this section is an infraction.

(Prior Code, § 30.935; Ord. No. 27-13)

Sec. 30.1000. License required.

(a) An accessory short-term rental license shall be effective when issued, and shall expire on December 31 of the year it is issued, unless sooner suspended or revoked. The license may be renewed pursuant to SRC 30.055.

(b) An accessory short-term rental license shall designate the operator and the property approved under the license. Licenses shall not be transferable to other people or properties.

(c) In addition to notification to the applicant as required under SRC 30.050(d) and 30.055(e), upon issuance of an accessory short-term rental license and any renewal thereof, the Director shall provide notice that the license has been issued to the neighborhood association whose boundaries include the property. The notice shall include the contact information for the local representative, and a link to the City's website where the contact information is available.

(Ord. No. 5-17, § 2(30.1000), 6-12-2017)

Sec. 30.1005. Standards.

(a) *Compliance with applicable law.* An accessory short-term rental must conform to the applicable requirements of Title X of the Salem Revised Code (SRC), and to all other applicable SRC requirements.

(b) *Owner authorization.* A resident family who rents or leases a dwelling unit may not operate an accessory short-term rental without the written authorization of the property owner.

(c) *Local representative.* Operators shall provide a local representative to respond to issues that may arise during the term of an accessory short term rental. The local representative shall be:

(1) The operator who resides on the property during the term of the accessory short term rental, or

(2) A licensed real property management company that has a physical office open to the public within the Salem/Keizer Urban Growth Boundary, and;

(3) Available to timely respond to the property to address complaints regarding renters of an accessory short term rental.

(d) *Guest registry.* The operator of an accessory short-term rental shall maintain a guest registry. The guest registry shall be available for inspection by the Director upon request. The guest registry shall include the following information:

(1) For each booking:

(A) The dates, and total number of days, rented;

(B) Whether the rental was hosted or non-hosted;

(C) If the rental was hosted, the number of individual guest rooms rented;

(D) The number of guests;

(E) For bookings reserved through a booking service, the name of the booking service where the booking was reserved; and

(2) For the entire year:

(A) The total number of days rented as a hosted rental; and

(B) The total number of days rented as a non-hosted rental.

(e) *Transient occupancy tax.* The operator of an accessory short-term rental shall comply with all of the applicable requirements of SRC chapter 37.

(f) *Insurance.* The operator of an accessory short-term rental shall maintain liability insurance which covers the use of the property as an accessory short-term rental. The insurance shall be in effect during the entire term the accessory short-term rental license is valid.

(g) *Advertising.* No person shall advertise or list an accessory short-term rental for rent without a valid accessory short-term rental license. The City issued license number shall be included on any advertisement or listing.

(h) *Safety requirements.* Accessory short-term rentals shall conform to the City's Housing Code under SRC chapter 59.

(Ord. No. 5-17, § 3(30.1005), 6-12-2017)

Sec. 30.1010. Inspection.

Accessory short-term rentals shall be inspected by the Director at least once every five calendar years. Inspections shall verify:

(a) The number of guest rooms; and

(b) Conformance with the City's Housing Code, SRC chapter 59.

(Ord. No. 5-17, § 4(30.1010), 6-12-2017)

Sec. 30.1100. License required.

(a) A short-term rental license shall be effective when issued, and shall expire on December 31 of the year it is issued, unless sooner suspended or revoked. The license may be renewed pursuant to SRC 30.055.

(b) A short-term rental license shall designate the operator and the property approved under the license. Licenses shall not be transferable to other people or properties.

(c) In addition to notification to the applicant as required under SRC 30.050(d) and 30.055(e), upon issuance of a short-term rental license and any renewal thereof, the Director shall provide notice that the license has been issued to the neighborhood association whose boundaries include the property. The notice shall include the contact information for the local representative, and a link to the City's website where the contact information is available.

(Ord. No. 5-17, § 5(30.1100), 6-12-2017)

Sec. 30.1105. Standards.

(a) A short-term rental must conform to the applicable requirements of Title X of the Salem Revised Code, and to all other applicable SRC requirements.

(b) Local representative. Operators shall provide a local representative to respond to issues that may arise during the term of a short term rental. The local representative shall be:

(1) The operator; or

(2) A licensed real property management company that has a physical office open to the public within the Salem/Keizer Urban Growth Boundary, and;

(3) Available to timely respond to the property to address complaints regarding renters of a short term rental.

(c) Guest registry. The operator of a short-term rental shall maintain a guest registry. The guest registry shall be available for inspection by the Director upon request. The guest registry shall include the following information:

(1) For each booking:

(A) The dates, and total number of days, rented;

(B) Whether the rental was for the entire dwelling unit or guest rooms within the dwelling unit;

(C) For bookings when individual guest rooms within the dwelling unit were rented rather than the entire dwelling unit, the number of individual guest rooms rented;

(D) The number of guests;

(E) For bookings reserved through a booking service, the name of the booking service where the booking was reserved; and

(2) For the entire year:

(A) The total number of days individual guest rooms within the dwelling unit were rented; and

(B) The total number of days the entire dwelling unit was rented.

(d) Transient occupancy tax. The operator of a short-term rental shall comply with the applicable requirements of SRC Chapter 37.

(e) Insurance. The operator of a short-term term rental shall maintain liability insurance which covers the use of the property as a short-term rental. The insurance shall be in effect during the entire term the short-term rental license is valid.

(f) Advertising. No person shall advertise or list a short-term rental for rent without a valid short-term rental license. The City issued license number shall be included on any advertisement or listing for the short-term rental.

(g) Safety requirements. Short-term rentals shall conform to the City's Housing Code under SRC chapter 59.

(Ord. No. 5-17, § 6(30.1105), 6-12-2017)

Sec. 30.1110. Inspection.

Short-term rentals shall be inspected by the Director to verify:

(a) The number of guest rooms;

(b) The number, location, and availability of required parking spaces; and

(c) Conformance with the City's Housing Code, SRC chapter 59.

(Ord. No. 5-17, § 7(30.1110), 6-12-2017)

CHAPTER 31. MARIJUANA

Sec. 31.001. Purpose.

The purpose of this chapter is to create a registration program for marijuana businesses.

(Prior Code, § 31.001; Ord. No. 17-14; Ord. No. 12-16, § 2, 8-7-2016)

Sec. 31.005. Definitions.

~~Except as the context otherwise specifically requires, as used in this Chapter, the following mean:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Career school* has the meaning as defined ~~on~~ in Oregon Administrative Rule 333-008-1010(5).

~~(b)~~ *Chief* means the Chief of the Salem Police Department or the Chief's designee.

~~(c)*Marijuana* has the meaning given that term in ORS 475.302.~~

~~(g)~~ *Marijuana* has the meaning given that term in ORS 475B.015.

~~(d)~~ *Marijuana business* means a person or entity that operates a business that transfers of sells marijuana, grows commercial marijuana, or manufactures marijuana items. Marijuana business does not include individual persons who grow marijuana for their own personal use in compliance with state law.

~~(e)~~*Person* means any natural person, partnership, corporation, limited liability company, government entity, association or other entity in law or fact.

~~(f)~~*Principal* means members, partners, or corporate officers, and all stockholders holding more than ten percent of the voting stock for any applicant who is not a natural person.

(Prior Code, § 31.005; Ord. No. 17-14; Ord. No. 12-16, § 2, 8-7-2016)

Sec. 31.010. Administration; rulemaking.

The Chief shall administer and enforce the provisions of this chapter, and shall have the authority to inspect businesses required to be registered under this chapter, render written and oral interpretations, and to adopt administrative rules and procedures necessary for its proper administration and enforcement.

(Prior Code, § 31.010; Ord. No. 17-14; Ord. No. 12-16, § 2, 8-7-2016)

Sec. 31.015. Registration required.

All marijuana businesses must register with the Chief.

(a) Registration requirements. All marijuana businesses required to register under this section must provide:

(1) The name and address of the business and the names and residence addresses of all principals of the business;

(2) The name and address of the location of the business;

(3) The signature of the business, if a natural person, or otherwise the signature of an authorized agent of the business, if the applicant is other than a natural person;

(4) If the business is leasing the property where the business will be located, the name and address of the owner, landlord, and property manager of the location of the business;

(5) Certification that the business has obtained, and is in full compliance with, all required permissions of the State ~~of Oregon~~;

(6) Certification that the business, at the location indicated in the application, is allowed in the applicable zoning district, and will comply with all applicable land use regulations; and

(7) Other information deemed reasonably necessary by the Chief to complete review of the application.

(b) The Chief shall register a marijuana business upon a finding by the Chief that the applicant has provided all the information and certifications required by this section.

(c) Registrations shall be renewed annually.

(d) A marijuana business shall present its registration upon request of the Chief.

(e) A marijuana business shall update its registration with the City upon the occurrence of any of the following:

(1) Change in ownership of the business;

(2) Change in location of the business;

(3) Change in type of business; or

(4) Revocation or suspension (temporary or otherwise) of any state-issued license, permit or registration required by law for the business to operate.

(f) A registration may be revoked or suspended upon a finding by the Chief that the business is in violation of this chapter or any applicable state law. The Chief shall provide written notice of revocation or suspension to the business. The written notice shall state the basis for revocation or suspension of the registration and shall inform the business of the right to appeal as set forth in SRC chapter 20J.

(g) The denial of a registration, or the revocation or suspension of a registration may be appealed pursuant to the procedures for contested cases set forth in SRC chapter 20J.

(Prior Code, § 31.015; Ord. No. 17-14; Ord. No. 12-16, § 2, 8-7-2016)

Sec. 31.020. Registration fee.

The initial registration fee and any renewal fee shall be $100.00 per location.

(Prior Code, § 31.020; Ord. No. 17-14; Ord. No. 12-16, § 2, 8-7-2016)

Sec. 31.025. Inspection.

(a) The Chief may inspect the location of a marijuana business to determine compliance with this chapter and other applicable law.

(b) A marijuana business shall be open for inspection by any law enforcement officer during all operating hours.

(Prior Code, § 31.025; Ord. No. 17-14; Ord. No. 12-16, § 2, 8-7-2016)

Sec. 31.030. Unlawful activity by a marijuana business.

(a) It shall be unlawful for a person to operate in the City, or to allow or permit the employees or agents of a marijuana business to operate on behalf of the business unless the business has obtained and maintains a valid registration with the City.

(b) It shall be unlawful for a person to refuse to permit an inspection of a marijuana business by any law enforcement officer during operating hours.

(c) A violation of this section is a misdemeanor.

(d) Upon conviction for the above offense, the Court may, in addition to any other sanction or condition of probation authorized by law, prohibit the defendant from operating, being employed, volunteering or having a financial interest in the marijuana business within the City.

(Prior Code, § 31.030; Ord. No. 17-14; Ord. No. 12-16, § 2, 8-7-2016)

CHAPTER 32. MARIJUANA SALES TAX*

***State law reference**—Control and Regulation of Marijuana Act, ORS 47B.010 et seq.; medical marijuana act, ORS 475B.400 et seq.; authority to adopt tax or fee, ORS 475B.345.

Sec. 32.001. Purpose.

For the purposes of this chapter, every person who sells marijuana items in the City of Salem is exercising a taxable privilege. The purpose of this chapter is to impose a tax upon the retail sale of marijuana items consistent with section 34a of House Bill 3400 (2015).

(Prior Code, § 32.001; Ord. No. 5-16, 6-27-2016, ref. 11-8-2016)

Sec. 32.005. Definitions.

~~Except as the context otherwise specifically requires, as used in this Chapter, the following mean:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Director* ~~means the City Manager, or the City Manager's designee.~~

~~(b)~~ *Gross taxable sales* means the total amount received in money, credits, property, or other consideration from sale of marijuana items that is subject to the tax imposed by this chapter.

~~(c)~~*Marijuana item* has the meaning given that term in Oregon Laws 2015, chapter 6014, section 1.

~~(e)~~*Marijuana retailer* means a person who sells marijuana items to a consumer in this State.

~~(d)~~ *Medical marijuana* means marijuana that is sold or transferred pursuant to the Oregon Medical Marijuana Act.

~~(f)~~*Oregon Medical Marijuana Act* means the legislation codified at ORS 475.300 through 475.346, as it may be amended from time to time, and any administrative rules promulgated thereto.

~~(g)~~ *Person* means any natural person, partnership, corporation, limited liability company, government entity, association, or other entity in law or fact.

~~(h)~~ *Purchase* or *sale* means the acquisition or furnishing for consideration by any person of marijuana items within the City.

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

~~(j)~~*Retail sale* means the transfer of goods or services in exchange for any valuable consideration, and does not include the transfer or exchange of goods or services between a grower or processor and a seller of marijuana items.

~~(k)~~ *Retail sale price* means the price paid for a marijuana item, excluding tax, to a marijuana retailer by or on behalf of a consumer of the marijuana item.

~~(l)~~*Seller* means any person who is required to be licensed or has been licensed by the State ~~of Oregon~~ to provide marijuana items to purchasers for money, credit, property, or other consideration.

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

~~(n)~~ *Taxpayer* means any person obligated to account to the Director for taxes collected or to be collected, or from whom a tax is due, under the terms of this chapter.

(Prior Code, § 32.005; Ord. No. 5-16, 6-27-2016, ref. 11-8-2016)

Sec. 32.010. Levy of tax.

(a) As described in section 34a of House Bill 3400 (2015), the City ~~of Salem~~ hereby imposes a tax of three percent on the retail sale price of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the City.

(b) The sale of medical marijuana shall be exempt from the tax imposed by this chapter.

(c) The tax shall be collected at the point of sale of a marijuana item by a marijuana retailer at the time at which the retail sale occurs and remitted by each marijuana retailer that engages in the retail sale of marijuana items as set forth in this chapter.

(Prior Code, § 32.010; Ord. No. 5-16, 6-27-2016, ref. 11-8-2016)

Sec. 32.015. Deductions.

The following deductions shall be allowed against sales received by the seller providing marijuana items:

(a) Refunds of taxable sales actually returned to any purchaser;

(b) Any adjustments in sales which amount to a refund to a purchaser, providing such adjustment pertains to the actual sale of marijuana items and does not include any adjustments for other services furnished by a seller.

(Prior Code, § 32.015; Ord. No. 5-16, 6-27-2016, ref. 11-8-2016)

Sec. 32.020. Seller responsible for payment of tax.

(a) Every seller shall, on or before the last day of the month following the end of each calendar quarter (April 30, July 31, October 31, and January 31), make a return to the Director, on forms provided by the City, specifying the total sales subject to this chapter and the amount of tax due under this chapter. When the due date falls on a Saturday, a Sunday, or any legal holiday, the report may be filed on the next business day without penalty. A return shall not be considered filed until it is actually received by the Director.

(b) At the time the return is filed, the full amount of the tax due shall be remitted to the Director. Payments received by the Director for application against existing liabilities will be credited toward the period designated by the taxpayer under conditions that are not prejudicial to the interest of the City. A condition considered prejudicial is the imminent expiration of the statute of limitations for a period or periods.

(c) Non-designated payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax. If the Director, in the Director's sole discretion, determines that an alternative order of payment application would be in the best interest of the City in a particular tax or factual situation, the Director may order such a change.

(d) Returns and payments are due 30 days after a business is sold, ownership is transferred, or upon cessation of business for any reason.

(e) All taxes collected by sellers pursuant to this chapter shall be held in trust for the account of the City until payment is made to the Director. A separate trust bank account is not required in order to comply with this provision.

(f) Every seller must keep and preserve, in a generally-accepted accounting format used for reporting revenue and taxes due on business activity, detailed records of all sales made. Every seller must keep and preserve for a period of six years all such books, invoices, and other records. The Director shall have the right to inspect all such records at all reasonable times.

(Prior Code, § 32.020; Ord. No. 5-16, 6-27-2016, ref. 11-8-2016)

Sec. 32.025. Penalties and interest.

(a) Interest shall be added to the overall tax amount due at the same rate established under ORS 305.220 for each month, or fraction of a month, from the time the return was originally required to be filed by the marijuana retailer to the time of payment.

(b) If a marijuana retailer fails to file a return or pay the tax as required, a penalty shall be imposed upon the

marijuana retailer in the same manner and amount as provided under ORS 314.400.

(c) Every penalty imposed, and any interest that accrues, becomes a part of the financial obligation required to be paid and remitted by the marijuana retailer.

(d) In addition to the Director, if at any time a marijuana retailer fails to remit any amount owed in taxes, interest or penalties, the Oregon Department of Revenue is authorized to enforce collection on behalf of the City of the amount owed in accordance with ORS 475B.700 to 475B.755, any applicable administrative rules adopted by the Oregon Department of Revenue, pursuant to any agreement between the Oregon Department of Revenue and the City of Salem under ORS 305.620.

(Prior Code, § 32.025; Ord. No. 5-16, 6-27-2016, ref. 11-8-2016; Ord. No. 2-17, 2-13-2017)

Sec. 32.030. Failure to report and remit tax, determination of tax by Director.

If any seller should fail to make, within the time provided in this chapter, any report of the tax required by this chapter, the Director shall proceed in such manner as deemed best to obtain facts and information on which to base the estimate of tax due. As soon as the Director procures such facts and information as is able to be obtained, the Director shall determine and assess against such seller the tax, interest, and penalties provided for by this chapter. The Director shall give a notice of the amount so assessed by having it served personally or by depositing it in the United States certified mail, postage prepaid, addressed to the seller at the last known place of address. The seller may appeal the Director's determination as provided in SRC 32.035. If no appeal is filed, the Director's determination is final and the amount thereby is immediately due and payable.

(Prior Code, § 32.030; Ord. No. 5-16, 6-27-2016, ref. 11-8-2016)

Sec. 32.035. Appeal.

A seller aggrieved by a decision of the Director with respect to the amount of any tax or penalty may file a written appeal pursuant to the process set forth in SRC 20J.240 through ~~SRC~~ 20J.410, except that the appeal shall be filed within 30 days of the serving or mailing of the Director's decision. The Hearings Officer shall hear and consider any records and evidence presented bearing upon the Director's determination, and make findings affirming, reversing, or modifying the determination. The findings of the Hearings Officer shall be final and conclusive, and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice.

(Prior Code, § 32.035; Ord. No. 5-16, 6-27-2016, ref. 11-8-2016)

Sec. 32.040. Refunds.

(a) Whenever the amount of any tax, interest, or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the City under this chapter, it may be refunded as provided in subsection (b) of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the Director within one year of the date of payment. The claim shall be on forms furnished by the Director.

(b) The Director shall have 30 days from the date of receipt of a claim to make a written determination as to its validity. The Director shall notify the claimant in writing of the Director's determination. Such notice shall be mailed to the address provided by the claimant on the claim form. If the Director determines a claim is valid, a credit will be granted against the seller's tax liability for the next reporting period. If the claimant is no longer in business, a refund check will be mailed to the claimant at the address provided in the claim form.

(c) No tax credit or refund shall be paid under the provisions of this section unless the claimant established the right by written records showing entitlement to such refund and the Director acknowledged the validity of the claim.

(Prior Code, § 32.040; Ord. No. 5-16, 6-27-2016, ref. 11-8-2016)

Sec. 32.045. Actions to collect.

Any tax required to be paid by any seller under the provisions of this chapter shall be deemed a debt owed by the seller to the City. Any such tax collected by a seller which has not been paid to the City shall be deemed a debt owed by the seller to the City. When taxes due are more than 30 days delinquent, the City shall submit any

outstanding tax to a collection agency. If the City complies with the provisions set forth in ORS 697.105, it may add to the amount owing an amount equal to the collection agency fees.

(Prior Code, § 32.045; Ord. No. 5-16, 6-27-2016, ref. 11-8-2016)

Sec. 32.050. Violation.

(a) It is a violation of this chapter for any seller or other person to:

(1) Fail or refuse to comply as required herein;

(2) Fail or refuse to furnish any return required to be made;

(3) Fail or refuse to permit inspection of records;

(4) Fail or refuse to furnish a supplemental return or other data required by the Director;

(5) Fail, refuse, or neglect to remit the tax to the City by the due date; or

(6) Render a false or fraudulent return or claim.

(b) Violation of subsection (a)(1), (2), (3), (4), or (5) of this section shall be considered an infraction. Violation of subsection (a)(6) of this section shall be considered a misdemeanor.

(c) The remedies provided by this section are not exclusive and shall not prevent the City from exercising any other remedy available under the law, nor shall the provisions of this ~~ordinance~~ chapter prohibit or restrict the City or other appropriate authority from pursuing criminal charges under state law or City ordinance.

(Prior Code, § 32.050; Ord. No. 5-16, 6-27-2016, ref. 11-8-2016)

Sec. 32.055. Confidentiality.

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

(a) The disclosure of the names and addresses of any person who is operating a licensed establishment from which marijuana items are sold or provided;

(b) The disclosure of general statistics in a form which would not reveal an individual seller's financial information;

(c) The presentation of evidence to a court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim, by the Director or an appeal from the Director for the amount due the City under this chapter;

(d) The disclosure of information when such disclosure is ordered by a court of competent jurisdiction;

(e) The disclosure of information to law enforcement authorities when investigating a crime;

(f) The disclosure of records related to a seller's failure to report and remit the tax when the report or tax is in arrears for over six months or the tax exceeds $5,000.00. The ~~City~~ Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

(Prior Code, § 32.055; Ord. No. 5-16, 6-27-2016, ref. 11-8-2016)

Sec. 32.060. Audit of books, records, or persons.

The City, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by the City for that purpose, any books, papers, records, or memoranda, including copies of the seller's state and federal income tax returns, bearing upon the matter of the seller's tax return. All books, invoices, accounts, and other records shall be made available within the city limits and be open at any time during regular business hours for examination by the Director or an authorized agent of the Director. If any seller refuses to voluntarily furnish any of the foregoing information when requested, the Director may immediately seek a subpoena from the Salem Municipal Court to require that the seller or a representative of the seller attend a hearing or produce any such books, accounts, and

records for examination.

(Prior Code, § 32.060; Ord. No. 5-16, 6-27-2016, ref. 11-8-2016)

Sec. 32.065. Forms and regulations.

The Director is hereby authorized to enter into agreements relating to the administration of this chapter, including intergovernmental agreements with the State ~~of Oregon~~ as provided in ORS 305.620; to prescribe forms and promulgate rules, policies, and regulations to aid in the making of returns, the ascertainment, assessment, and collection of the tax, interest, and penalties due and payable under this chapter; and to provide for:

(a) A form of report on sales and purchases to be supplied to all sellers; and

(b) The types of records which sellers providing marijuana items are to keep concerning the tax imposed by this chapter.

(Prior Code, § 32.065; Ord. No. 5-16, 6-27-2016, ref. 11-8-2016; Ord. No. 2-17, 2-13-2017)

Sec. 32.070. Disposition of marijuana tax revenue.

All funds derived from the collection of the tax on the sale of marijuana items shall be credited to the general fund. Marijuana tax revenue shall first be expended in paying for the costs to administer and enforce this chapter. All remaining proceeds from the marijuana tax after all administrative and enforcement costs have been paid shall be allocated to the Police Department.

(Ord. No. 5-16, 2-13-2017, ref. 11-8-2016)

CHAPTERS 33, 34. RESERVED

CHAPTER 35. PUBLIC UTILITIES

GENERALLY

Sec. 35.010. Definitions.

~~As used in this Chapter, the following mean:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Alley* means any public thoroughfare 20 feet or less in width.

~~(b)~~ *Occupy* means the installation, ownership, leasing, operation or maintenance of any equipment or facilities for the provision of public utility service in, upon, over or under public rights-of-way or other public property.

~~(c)~~*Public utility* means any individual, partnership, corporation, limited liability company, governmental entity other than the City ~~of Salem~~, cooperative, or other entity in law or fact, installing, renting, leasing, owning, operating and/or maintaining service transmission systems, distribution systems or communication systems by means of poles, conduit, wire, cable, fiber, ducts, pipes, mains, pedestals, antennas, power boxes, cabinets or other equipment and facilities in, upon, over or under public rights-of-way or other public property. As used in this chapter, public utilities include, but are not limited to, electric service, gas service, telecommunications service, and telegraph service.

~~(d)~~ *Right(s)-of-way or other public property* means the streets, alleys, sidewalks, public squares or other public places owned or otherwise held by the City ~~of Salem~~.

~~(e)~~*Street* means any public thoroughfare more than 20 feet in width.

~~(f)~~*Telecommunications service* means any service provided for the purpose of voice, video or data transmission, including, but not limited to, local exchange service, access service, extended area service, call origination, interconnection, switching, transport, call termination and/or any other telecommunications service identified and authorized by the Federal Communications Commission (FCC) or the Public Utility Commission of Oregon. As used in this chapter, the term "telecommunications service" does not include:

(a) Cable service as defined by 47 USC 522;

(b) Open video system service as defined in 47 CFR 76;

(c) Private communications system services provided without using the public rights-of-way;

(d) Over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the FCC or any successor thereto; and

(e) Direct-to-home satellite service within the meaning of section 602 of the Telecommunications Act.

(Prior Code, § 35.010; Ord. No. 3642; Ord. No. 15-2003; Ord. No. 24-10)

Sec. 35.020. Franchise or agreement required.

(a) No public utility shall occupy rights-of-way or other public property without first entering into a franchise or other agreement with the City, stating the terms and conditions for such occupation, including the payment of compensation, charges or fees.

(b) Any public utility occupying rights-of-way or other public property may be excluded or ejected from such right-of-way or property if the public utility fails, after notice from the City, to enter into a franchise or other agreement setting forth terms and conditions for its occupation, and providing for the payment of compensation, charges or fees.

(Prior Code, § 35.020; Ord. No. 3642; Ord. No. 15-2003)

Sec. 35.030. Insurance or cash bond requirement.

Each public utility covered by this chapter, and not operating under a valid franchise, shall forthwith deposit with the City Recorder a policy or a certificate thereof of public liability insurance covering bodily injury and damage to property in the sum of not less than the amounts specified in ORS 30.272 ~~$10,000 for one person or $40,000 for a group of persons; or, at its option and in lieu of the deposit of such policy of insurance, shall deposit with a bank or trust company in the City, designated by the council, the sum of $20,000 as a cash bond~~, which policy of insurance ~~or cash bond~~ shall be conditioned, in form satisfactory to the City Attorney, to protect the public and citizens of the City from loss or damage due to personal injury or property damage by fire or otherwise, which may be proximately caused by the negligence of the public utility. Such policy or cash bond shall remain in effect so long as such public utility is operating in the City.

(Prior Code, § 35.030; Ord. No. 3642)

Sec. 35.040. Construction of power and communication systems generally.

The type, form, and character of construction of the electric power and communication systems mentioned in SRC 35.010 shall conform to the requirements of the ~~state~~ Oregon Public Utility Commissione~~r~~, the National Electrical Safety Code (2012 Edition ANSI C2) ~~same being the "Safety Rules for the Installation and Maintenance of Electric Supply and Communications Lines issued by the U.S. Department of Commerce - National Bureau of Standards" as set forth in their publication entitled "Hand Book H-32,"~~ and successive issues thereof, the State of Oregon Electrical Code and other state and federal statutes, rules, and regulations pertaining to such construction. Such requirements, rules, regulations, and statutes are herewith included and made a part of this chapter, as the requirements of the City, by reference thereto.

(Prior Code, § 35.040; Ord. No. 3642)

Sec. 35.050. Wires and cables crossing streets.

No wires or cables belonging to any public utility shall be installed across any street from buildings on one side of the street to buildings on the other side without the support of poles or without being conducted across the street in conduits under the surface of the street.

(Prior Code, § 35.050; Ord. No. 3642)

Sec. 35.060. Excavations on public property.

When any excavation is made in any street, avenue, alley, or other City property for the purpose of installing poles and conduits covered by this chapter, the public utility making such excavation shall restore that portion of the street, avenue, alley, or other City property to the same condition to which it was prior to the opening thereof, and all such work shall be done in strict compliance with the provisions of this Code and other rules, regulations, ordinances, or orders of the Council.

(Prior Code, § 35.060; Ord. No. 3642)

Sec. 35.070. Map of location of poles and conduits.

Each public utility, prior to installing any poles or conduits, shall file with the ~~director of public works Public Work~~ Director a map, in size and form as prescribed by him or her, showing the proposed location of such poles or conduits.

(Prior Code, § 35.070; Ord. No. 3642)

Sec. 35.080. Changes in construction upon order of the ~~Public Works~~ Director ~~director of public works~~.

If at any time the ~~director of public works Public Work~~ Director shall determine that any public utility has not complied with the provisions of this chapter in performing any construction work, it shall be his or her duty, and he or she shall have the authority, to order such public utility, in writing, to make such changes in such construction as may be needed to cause such construction to comply with the provisions of this chapter; provided, however, that such public utility shall have the right of appeal to the Council from the Director ~~of Public Works~~ judgment and order, by filing notice of such appeal with the City Recorder within 30 days from the date of the said Director's order appealed from.

(Prior Code, § 35.080; Ord. No. 3642)

Sec. 35.090. Unauthorized interference with equipment, etc.

It shall be unlawful for any unauthorized person to meddle or interfere with, molest, or destroy any structure, equipment, or appliance of any public utility installed in compliance with this chapter.

(Prior Code, § 35.090; Ord. No. 3642)

Sec. 35.100. Interference with City improvements.

(a) Poles, conduits, and the like coming under this chapter shall be so installed as not to prevent the City from installing sewers or drains, grading, paving, planking, repairing, ordering, or doing any work that may be desirable on any of the streets, avenues, alleys, or other property of the City, but all such work shall be done, if possible, in such a manner as not to obstruct, injure, or prevent the free use and operation of the electric power or communication system of the public utilities.

(b) Any facilities including, but not limited to, cabinets, vaults, poles, cables or conduits of a public utility which may at any time interfere with the work of the City, as set forth in this section, shall, within a reasonable time, but not to exceed 30 days after the receipt of written notice from the Director ~~of Public Works~~ of such interference, be moved by the owner at his or her expense to a new location which will not thus interfere with such work to be done by the City.

(Prior Code, § 35.100; Ord. No. 3642)

GAS UTILITIES

Sec. 35.110. Definition.

The term "public utility," as used in SRC 35.110 to 35.1450, shall be construed to mean any individual, partnership, corporation, cooperative, or other association and all other legal entities installing, owning, operating, or maintaining any mains, equipment, and appliances in, upon, under, over, or along the streets, alleys, and other public ways within the City for the purpose of selling or delivering gas, either natural or artificial, or furnishing natural or artificial gas to any of the residents of the City, which gas is paid for wholly or in part by the users thereof.

(Prior Code, § 35.110; Ord. No. 4012)

State law reference—Definition of public utility, ORS 757.005.

Sec. 35.120. Fee required.

(a) Each public utility shall pay to the City a right-of-way use or franchise fee as follows: three percent annually and two percent quarterly of the gross revenue of such public utility received for gas, either natural or artificial, furnished within the City to the users thereof. The term "gross revenue, as the term is herein used, shall have the meaning as set forth in OAR 860-022-0040 ~~the Public Utility Commissioner's Order No. 43946~~. This fee is in exchange for the privilege of using the City's rights-of-way.

(b) Each public utility shall file with the Finance Officer ~~director of finance City~~ on or before ~~the first day of~~ March 1 of each year, the annual fee and a statement showing the amount of the gross revenue of the public utility for the year immediately preceding the year in which such statement is required to be filed. Payment must be made in immediately available federal funds.

(c) Each public utility shall file with the Finance Officer ~~director of finance City~~ on or before the 45th day following each calendar quarter (January 1 through March 31, April 1 through June 30, July 1 through September 30 and October 1 through December 31) the quarterly fee and a statement showing the amount of the gross revenue of the public utility for the quarter immediately preceding the date on which such statement is required to be filed.

(Prior Code, § 35.120; Ord. No. 3768; Ord. No. 55-99)

Sec. 35.130. Reserved.

Sec. 35.140. Section does not constitute grant or franchise.

SRC 35.120 shall not be construed as being a grant or franchise authorizing a public utility to occupy any street, alley, or public place within the City.

(Prior Code, § 35.140; Ord. No. 4012)

ELECTRIC UTILITIES

Sec. 35.150. Definitions.

(a) The term "public utility," as used in SRC 35.150 to 35.16~~780~~, shall be construed to mean any individual, partnership, corporation, cooperative, or other association and all other legal entities installing, owning, operating, or maintaining electric power service transmission or distribution systems by means of poles, conduits, wires, cables, or other equipment and appliances in, upon, over, under, or along the streets, alleys, or other public places of the City or furnishing electricity to any of the residents of the City, which electricity or electrical service is paid for wholly or in part by the users thereof.

(b) As used in SRC 35.160, the term "gross revenue" shall be deemed to include any revenue earned within the City, after adjustment for the net write-off of uncollectible accounts, from the sale of electrical energy, gas, steam, or water, from the transportation of persons or from transmission of communications; excluding, however, income from carriage of passengers or transmission of communications to a point within the City from a point beyond the city limits, or from a point within the City to a point beyond the city limits as a continuous operation of that particular utility, and excluding sales at wholesale by one public utility to another of electrical energy when the utility purchasing such electrical energy is not the ultimate consumer.

(Prior Code, § 35.150; Ord. No. 3954)

State law reference—Definition of public utility, ORS 757.005.

Sec. 35.160. Fee required.

(a) Each public utility shall pay to the City a right-of-way use or franchise fee as follows: 3.5 percent annually and 1.5 percent quarterly of the gross revenue of such public utility received for electrical power and energy furnished within the City to the users of such power and energy. The term "gross revenue," as the term is herein used, shall have the meaning as set forth in OAR 860-022-0040. ~~the Public Utility Commissioners' Order No. 43946.~~ This fee is in exchange for the privilege of using of the City's rights-of-way.

(b) Each public utility shall file with the Finance Officer ~~City director of finance~~ on or before ~~the first day of~~ March 1 of each year, the annual license fee and a statement showing the amount of gross revenue of the public utility filing such statement for the year immediately preceding the year in which such statement is required to be filed. Payment must be made in immediately available federal funds.

(c) Each public utility shall file with the Finance Officer ~~City director of finance~~ on or before the 45th day following each calendar quarter (January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31) the quarterly fee and a statement showing the amount of the gross revenues of the public utility for the quarter immediately preceding the date on which such statement is required to be filed.

(d) Nothing contained in this section shall be construed as being a grant or franchise authorizing a public utility to occupy any street, alley, or public place within the City.

(Prior Code, § 35.160; Ord. No. 37-68; Ord. No. 42-92; Ord. No. 55-99)

Sec. 35.170. ~~Section does not constitute grant or franchise~~ Reserved.

~~SRC 35.160 shall not be construed as being a grant or franchise authorizing a public utility to occupy any street, alley, or public place within the city.~~

~~(Prior Code, § 35.170; Ord. No. 3954)~~

TELEGRAPH ~~UTILITIES~~ COMMUNICATION SERVICE

~~**State law reference**—Authority to regulate public utilities, ORS § 221.420; public utilities privilege tax, ORS § 221.450; regulation of telecommunication carriers, ORS § 221.510; definition of telecommunications carrier, ORS § 133.721; definition of telecommunications utility, ORS § 799.005.~~

Sec. 35.180. Definition.

The term "public utility," as used in SRC 35.180 to 35.20~~1~~0, shall be construed to mean any individual, partnership, corporation, cooperative, or other association and all other legal entities installing, owning, operating, and maintaining transmission and communication systems by means of poles, conduits, wires, cables, and other

equipment and appliances in, upon, over, and under the streets, alleys, and other public ways within the City for the purpose of furnishing telegraph communication service to any of the residents of the City which service is paid for wholly or in part by the users thereof.

(Prior Code, § 35.180; Ord. No. 76-67)

State law reference—Definition of public utility, ORS 757.005.

Sec. 35.190. Annual fee required.

(a) Each public utility shall pay to the City an annual license or franchise fee of 2.5 percent of the gross revenue of such public utility received for telegraph communication service furnished within the City to the users thereof.

(b) Payment of said fee shall be made in one annual payment, on or before April 1 of each and every year for the 12 months of the preceding calendar year and shall be computed upon the amount of gross revenue within the City during the preceding year. The license fee and privilege tax to be paid under this section shall be accepted by the City as full payment and in lieu of all other municipal franchise or permit fees, licenses, and privilege or occupation tax that may be imposed on or against any public utility paying the same.

(c) SRC 35.190 shall not be construed as being a grant or franchise authorizing a public utility to occupy any street, alley, or public place within the City.

(Prior Code, §§ 35.190, 35.200; Ord. No. 76-67)

~~**Sec. 35.200. Section does not constitute grant or franchise.**~~

~~(Prior Code, § 35.200; Ord. No. 76-67)~~

~~TELEPHONE UTILITIES~~ ~~COMMUNICATION SYSTEMS~~ TELECOMMUNICATIONS UTILITIES

Sec. 35.210. Definition.

As used in SRC 35.210 through 35.230, the term "public utility" means any individual, partnership, corporation, limited liability company, governmental entity other than the City ~~of Salem~~, cooperative, or other association and all other legal entities installing, owning, renting, leasing, using, operating, and/or maintaining transmission and communication systems by means of poles, pipes, mains, conduits, ducts, fiber, wires, cables, vaults, pedestals, antennas, power boxes, cabinets and any other equipment, facilities and appliances in, upon, over, and/or under the rights-of-way or other public property within the City for the purpose of furnishing telecommunications service. As used in SRC 35.210 through 35.230, the term "public utility" does not include commercial mobile radio service as defined in 47 CFR 20.

(Prior Code, § 35.210; Ord. No. 76-67; Ord. No. 30-97; Ord. No. 24-10)

Sec. 35.220. Annual fee required.

(a) Each public utility shall pay to the City a privilege tax or franchise fee of seven percent of the gross revenues earned within the corporate limits of the City unless a different amount is specifically set forth in the franchise or other agreement with the City. In determining a fee, other than seven percent of the gross revenues earned within the City, the City may consider whether the telecommunications service provides a benefit to the public, and any other factors deemed relevant by the City. The term "gross revenues" means any and all revenue in whatever form, grant, subsidy, exchange, or otherwise, directly or indirectly received by the public utility for telecommunications service provided to subscribers within the City subject to all applicable limitations imposed by federal and/or state law.

(b) Any public utility deriving no local service revenues shall annually pay to the City $3.86 per linear foot of communication facilities located within the rights-of-way or other property owned by, and within the City unless a different amount is specifically set forth in the franchise or other agreement with the City. In determining a fee, other than the linear foot fee, the City may consider whether the public utility realizes any revenue from the telecommunications service, whether the telecommunications service provides a benefit to the public, and any other factors deemed relevant by the City. The per linear foot fee, adopted through Ordinance Bill No. 19-16, effective December 28, 2016, shall increase in an amount equal to any percentage increase in the Consumer Price Index for

Urban Wage Earners and Clerical Workers for the Portland-Salem, Oregon region effective on July 1 of each year, unadjusted for seasonal variations, as determined by the Bureau of Labor Statistics of the Department of Labor.

(c) Each public utility earning gross revenues within the corporate limits of the City shall file with the City Manager on or before ~~the first day of~~ March 1 of each year, a certified statement showing the amount of the gross revenues of the public utility filing such statement for the year immediately preceding the year in which such statement is required to be filed.

(d) Unless provided otherwise by law or in a franchise or other agreement, the franchise fee, privilege tax, or linear foot fee shall be made in one annual payment, on or before ~~the first day of~~ April 1.

(Prior Code, § 35.220; Ord. No. 76-67; Ord. No. 37-68; Ord. No. 34-82; Ord. No. 29-87; Ord. No. 30-97; Ord. No. 62-2001; Ord. No. 24-10; Ord. No. 19-16, § 1, 11-28-2016)

State law reference—Privilege tax authorized, ORS 221.450.

Sec. 35.230. Section does not constitute grant or franchise.

SRC 35.220 shall not be construed as being a grant or franchise authorizing a public utility to occupy any street, alley, or public place within the City.

(Prior Code, § 35.230; Ord. No. 76-67)

Secs. 35.240—35.290. Reserved.

POLES

Sec. 35.300. Location generally.

All poles installed in city streets, unless otherwise directed by the ~~Public Works~~ Director ~~director of public works~~, shall be installed consistent with the Public Works Designs Standards in effect at the time of the installation ~~between the private property line and the curb line of the street, and in such a position so that the outside surface of the pole nearest the center of the street will be 12 inches from the curb line of the street, or that curb line established by city ordinance, if no permanent curb is in place. All poles installed in alleys in the city shall be so installed that the outside surface of the pole nearest the private property line shall be four inches from the property line, unless otherwise directed by the director of public works.~~

(Prior Code, § 35.300; Ord. No. 3642)

Sec. 35.310. Prohibited in certain area; exception.

In the area bounded by the south line of Center Street on the north, the east line of Church Street on the east, the north line of Trade Street on the south and the east line of Front Street on the west, no poles shall be installed on the streets except those required to support street lamps and circuits, and primary electric power and communication circuits extending from outside such area to poles in alleys within such area, necessary to provide public utility services therein.

(Prior Code, § 35.310; Ord. No. 3642)

Sec. 35.320. Joint use.

All public utilities are hereby required to permit the joint and common use of their poles, with other public utilities, subject to the technical electrical limitations of having electric power lines and communication lines on the same poles.

(Prior Code, § 35.320; Ord. No. 3642)

Sec. 35.330. Compensation for use.

Any public utility using the poles of another public utility shall pay the public utility owner of the poles for their use on a basis fixed by an agreement between the parties concerned and, in case of a failure to agree upon such basis, Oregon Public Utility Commission ~~the state public utility commissioner~~ shall be requested to fix the basis for such compensation; provided that, prior to such use of any poles, the compensation thereof, as fixed by the agreement of the parties or as determined by the Oregon Public Utility Commission ~~the state public utility commissioner~~, shall be affirmed in writing by the public utility asking to use such poles.

(Prior Code, § 35.330; Ord. No. 3642)

Sec. 35.340. To be placed near intersection of division lines.

Poles shall be as near as practical to the intersection of private property division lines with the side lines of streets and alleys, so as not to unreasonably interfere with ingress or egress to or from abutting private property.

(Prior Code, § 35.340; Ord. No. 3642)

Sec. 35.350. Location near fire hydrants.

Unless otherwise directed by the ~~Public Works~~ Director ~~director of public works~~, no part of any pole shall be less than five feet from any City fire hydrant.

(Prior Code, § 35.350; Ord. No. 3642)

Sec. 35.360. Change of location.

Whenever it shall be deemed necessary for the public convenience that the location of any pole should be changed, the owner of the pole shall, upon written notice from the Director ~~of Public Works~~, move such pole at his or her expense and as promptly as practical.

(Prior Code, § 35.360; Ord. No. 3642)

Sec. 35.370. Steps.

No steps for the purpose of climbing poles coming under this chapter shall be placed on such poles within eight feet of the ground.

(Prior Code, § 35.370; Ord. No. 3642)

Sec. 35.380. Variances.

Where the provisions of SRC 35.300, 35.340, and 35.350, if complied with, will cause a hazardous condition to life or property, they shall be complied with as near as practical with due regard to safety of life and property.

(Prior Code, § 35.380; Ord. No. 3642)

Sec. 35.390. Installation.

Gas service piping from a main to the metering point shall be installed according to OAR 860-024-0020, which ~~issued by the public utilities commissioner of the state, and such order by this reference thereto~~ is hereby adopted and made a part of this chapter as if fully set forth herein.

(Prior Code, § 35.390; Ord. No. 5133; Ord. No. 14-86)

Sec. 35.400. Testing of new, reconditioned and reactivated services; report.

All new services, reconditioned services, and services reactivated after a period of one year, unless tested within the past two years, shall be tested for leakage before being activated. A written report for each service tested shall be furnished to the inspector.

(Prior Code, § 35.400; Ord. No. 5133)

Sec. 35.410. Methods of shutting off service.

(a) Whenever the supplying of gas to any building through a service pipe ~~be~~ is discontinued at the request of the user, other than for temporary accommodation for such user, the supplier of such gas shall, within 30 days after requested date of discontinuance of the gas supply, shut off the gas supply by means of the meter cock, a curb cock, a service cap, or by cutting the service.

(b) In all cases where the building is supplied through a high pressure service and in all cases where a low pressure service is equipped with a curb cock, the supplier shall shut off the supply by means of a curb cock.

(c) When the owner of a building to which the supply of gas has been discontinued at the request of the user shall request in writing the supplier of gas to shut off the supply at a point distant from the building, the supplier shall comply with such request within 30 days after receipt thereof by cutting the service and capping or plugging both ends of the service.

(Prior Code, § 35.410; Ord. No. 5133)

Sec. 35.420. Reserved.

UNDERGROUND UTILITIES

Sec. 35.430. Underground utility districts established.

The districts hereby created as underground utility districts shall include the streets within the following described perimeters:

(a) Underground Utility District "A":

Beginning at the southeast corner of Front and Union Streets; thence easterly along the south line of Union Street to 12th Street; thence southerly along the west line of 12th Street to Trade Street; thence westerly along the north line of Trade Street to Commercial Street; thence north along the east line of Commercial Street to Ferry Street; thence westerly along the north line of Ferry Street to Front Street; thence northerly along the east line of Front Street to the point of beginning.

(b) Underground Utility District "B":

Beginning at the southeast corner of Front and Union Streets; thence northerly along the east line of Front Street to where Front Street crosses the Mill Creek; thence easterly along the meander line of Mill Creek to the intersection of 5th and "D" Streets; thence easterly along the south line of "D" Street to 17th Street; thence southerly along the west line of 17th Street to Mission Street; thence westerly along the north line of Mission Street to Commercial Street; thence northerly along the east line of Commercial Street to Trade Street; thence easterly along the south line of Trade Street to 12th Street; thence northerly along the east line of 12th Street to Union Street; thence westerly along the south line of Union Street to the point of beginning.

(c) Underground Utility District “C”:

The entire public right-of-way of Wallace Road NW (State Highway Route 221), beginning at the north right-of-way line of Orchard Heights Road NW at the intersection with Wallace Road NW, and ending at the south right-of-way line of Michigan City Lane NW at the intersection with Wallace Road NW.

(d) Underground Utility District “D”:

Beginning at the southeast corner of Parcel 2 of Partition Plat 98-66, Record of Partition Plats for Marion County, Oregon; said point being in the southeast quarter of Section 14, Township 7 south, Range 3 west of the Willamette Meridian, in the City of Salem, Marion County, Oregon; said point being on the northerly right-of-way of Sunnyview Avenue NE; and running thence: north 88° 09' 00" west 136.64 feet along said northerly right-of-way of Sunnyview Avenue NE; thence north 59° 07' 40" west 512.67 feet continuing along said right-of-way to the most westerly corner of said Partition 98-66; said point being on the southerly right-of-way of Fairgrounds Road NE; thence north 43° 07' 25" west 100.00 feet to a point on the northerly right-of-way of said Fairgrounds Road NE; said point being on the southerly line of Lot 2, Dairy Cooperative Ass’n Addition to Salem, as recorded in Volume 13, Page 38, Book of Town Plats for Marion County; thence along said Fairgrounds Road NE right-of-way and said Dairy Cooperative Ass’n Addition south 46° 50' west 241.16 feet to the southernmost corner of Lot 14 of said Dairy Cooperative Ass’n Addition; thence along the westerly line of said Lot 14, 13, 12, and 11, north 42° 16' west 300 feet to the most westerly corner of Lot 11; said point being the most westerly corner of that parcel described in Reel 1116, Page 0323, Parcel XIII, Microfilm Records for Marion County; thence north 11° 38' east 120.37 feet along said Reel 1116, Page 0323, Parcel XIII, to a point on the south right-of-way of Academy Street NE thence northeasterly 78 feet, more or less, in a direct line to the most westerly corner of Lot 7 of said Dairy Cooperative Ass’n Addition; thence north 46° 50' east 141.78 feet along the northwest line of said Lot 7 to the most northerly corner thereof; thence south 42° 43' east 159.85 feet to the most southerly corner of Lot 3, Block 3, Columbia Addition to Salem, as recorded in

Volume 13, Page 10, Book of Town Plats for Marion County; thence north 47° 02' east 101.43 feet along the southerly line of said Lot 3, Block 3, to the most westerly corner of Lot 2, Block 3, of said Columbia Addition; thence south 42° 37' east 84.60 feet along said Lot 2, Block 2, and the extension thereof to the southerly line of a 20-foot alley; thence north 46° 57' east 541.4 feet along said southerly line of said alley to the westerly line of Block 1 of said Columbia Addition; thence north 43° 03' west 10.00 feet to the center line of a vacated 20-foot alley; thence north 46° 57' east 120.20 feet along said center line to the northerly line of said Columbia Addition; thence north 42° 49' west 46.52 feet along said northerly line to the southwesterly corner of that parcel described in Reel 989, Page 0202, Marion County Records; thence north 34° 24' east 163.50 feet along the westerly line of said Reel 989, Page 0202, and the westerly line of that parcel described in Reel 1518, Page 0461, Marion County Records to the northwesterly corner of said Reel 1518, Page 0461; thence north 02° 58' east 26.66 feet along the west line of that parcel described as Parcel I in Reel 1557, Page 364, to the south line of Fairlodge Addition as recorded in Volume 10, Page 153, Book of Town Plats for Marion County; thence south 89° 15' east 78.10 feet along said south line of Fairlodge Addition to the most westerly corner of Parcel II of said Reel 1557, Page 0364; thence north 31° 58' east 22.44 feet along the westerly line of Parcel II of said Reel 1557, Page 0364, to a point on the east line of Lot 5 of said Fairlodge Addition; thence north 00° 30' west 125.81 feet, more or less, along the east line of said Lot 5 to the south right-of-way of Highland Avenue NE; thence east along said south right-of-way of Highland Avenue NE to the intersection with the east line of Brooks Street NE extended; thence north 775.55 feet along the east line extended and the east line of Brooks Street NE to the south line of Pine Street NE; thence east 240.60 feet along the south line of Pine Street to the west line extended of that parcel described in Reel 1206, Page 0631; thence north 00° 49' 43" east 157 feet, more or less, along the west line extended and the west line of said Reel 1206, Page 0631, to the westerly northwest corner thereof; thence easterly 19.59 feet to a re-entrant corner therein; thence north 00° 01' 43" west 38.06 feet, more or less, to the southwest corner of Gregson's Addition as recorded in Volume 8, Page 106, Book of Town Plats for Marion County; thence north 242.47 feet along said west line of Gregson's Addition to the south right-of-way of Hickory Street NE (50-foot right-of-way); thence east 288 feet, more or less, to an angle in said south right-of-way; thence north 10 feet to the northwest corner of Lot 6 of said Gregson's Addition; thence east 380 feet, more or less, continuing along the south line of Hickory Street NE and the extension thereof to the old westerly right-of-way of Portland Road NE (Highway 99E 60-foot right-of-way); thence north 34° 30' east 800 feet, more or less, along said Portland Road NE right-of-way to the southernmost corner of that parcel described in Volume 224, Page 0121; thence north 22° 15' east 886 feet, more or less, along the westerly line of said Volume 224, Page 0121, and the Southern Pacific Railroad right-of-way to the northernmost corner of that parcel described in Reel 1368, Page 0628; thence north 59° 45' west 10 feet to the westernmost corner of that parcel described in Reel 190, Page 1396; thence continuing along said Southern Pacific Railroad property and right-of-way north 22° 15' east 994 feet to the most northerly corner of that parcel described in Reel 1280, Page 0495; thence south 59° 45' east 10 feet; thence north 22° 15' east 168.10 feet; thence north 59° 45' west 10 feet; thence north 22° 15' east 286.50 feet along the westerly line of that parcel described in Reel 1336, Page 0338; thence south 44° east 33 feet, more or less, to the southeast corner of that parcel described in Volume 588, Page 602; thence north 22° 15' east 156.71 feet; thence north 68° 00' west 30.00 feet to the eastern right-of-way of the Southern Pacific Railroad right-of-way; thence north 22° 15' east 97.66 feet; thence south 68° 00' east 20.00 feet; thence north 22° 15' east 97.66 feet; thence north 68° 00' west 20.00 feet; thence north 22° 15' east 1170.48 feet along the east line of the Southern Pacific Railroad right-of-way; thence north 39° 58 east 98.57 feet along the easterly line of that parcel described in Volume 675, Page 672; thence north 21° 37' east 32.10 feet along said westerly line of that parcel described in Reel 751, Page 0848; thence south 68° 00' east 429.72 feet; thence north 22° 00' east 76.17 feet to the southerly line of Wayside Terrace as Recorded in Volume 19, Page 40; thence south 68° 00 east 9.47 feet along said south line of Wayside Terrace to the southwest corner of Lot 7 thereof; thence north 22° 00' east 125.06 feet along the westerly line of said Lot 7 and the extension thereof to the northerly right-of-way of Wayside Terrace NE; thence north 68° 00' west 7.32 feet to the southwest corner of Lot 10 of said Wayside Terrace; thence north 22° 00' east 75.06 along the west line of said Lot

10 to the northwest corner thereof; thence north 68° 00' west along the northerly boundary of said Wayside Terrace 171.21 feet to the westerly line of that parcel described in Reel 1722, Page 384; thence north 18° 10' east 10.32 feet; thence south 72° 15' east 28.14 feet to the southwest corner of that parcel described in Reel 916, Page 0111; thence north 18° 10' east 304.92 feet along the west line of the aforesaid Reel 916, Page 0111, to the northwest corner thereof; thence north 74° 18' west 318.00 feet to the easterly right-of-way of Southern Pacific Railroad; thence north 16° 35' east 1,090.00 feet along said Southern Pacific Railroad right-of-way to the northwest corner of that parcel described in Volume 592, Page 0435; thence south 83° 27' 30" east 704 feet, more or less; thence northeasterly 59.80 feet; thence north 24° 54' 24" east 428.41 feet to the south right-of-way of Hyacinth Street NE; thence south 71° 06' east 142.97 feet continuing on said right-of-way; thence north 24° 50' east 5 feet; thence south 71° 06' east 59 feet continuing along said right-of-way to the southerly extension of the west line of Timothy Park as recorded in Volume 34, Page 005, Book of Town Plats for Marion County; thence north 31° 22' east 268 feet along the southerly extension of said west line and the west line of Timothy Park to the northwest corner thereof; thence north 35° 51' east 215.55 feet along the west line of that parcel described in Reel 1389, Page 0145; thence north 31° 22' east 206.21 feet along the west line of Reel 1363, Page 527; thence south 59° 55' 22" east 100.25 to the southwest corner of that parcel described in Reel 1402, Page 0488; thence north 31° 22' east 405 feet, more or less, along the west line of said Reel 1402, Page 0488, to the northernmost corner thereof; said point being on the south line of Claxter Road NE; thence along the right-of-way of Portland Road NE (Highway 99E) the following courses and distances: south 50° 15' 27" east 73.23 feet south 17° 37' 05" east 45.00 feet south 16° 30' 55" east 230.00 feet southerly 131.54 feet; thence southerly to the point of intersection of the westerly extension of the north line of Lot 13, Forkner’s Acres as described in Volume 16, Page 007, Book of Town Plats for Marion County; thence south 60° 24' east 270 feet, more or less, along the westerly extension of and the north line of said Lot 13 to the northeast corner thereof; thence south 33° 13' 30" west 215.47 feet, along the westerly line of Lots 12 and 11 in said Forkner’s Acres to the southwest corner of said Lot 11; thence south 83° 00' east 129.55 feet, more or less, along the south line of said Lot 11 to the southeast corner thereof; thence south 06° 56' west 320 feet along the east line of Lot 10, 9, 6 and the extension thereof to a point on the south right-of-way of Hyacinth Street NE; thence south 83° 00' east 16 feet, more or less, to the northeast corner of that parcel described in Reel 1359, Page 0771; thence south 06° 59' west 203.00 feet along the east line of said Reel 1359, Page 0771, to the southeast corner thereof; thence north 83° 00' west 230.00 feet along the south line of said Reel 1359, Page 0771, to the southwest corner thereof; thence south 08° 29' 36" west 334 feet along the northerly extension of the east line and the east line of that parcel described in Reel 1691, Page 0564, to the southeast corner thereof; thence south 32° 38' west 229.73 feet along the east line of that parcel described in Reel 847, Page 0430, and the east line of that parcel described in Reel 334, Page 0900, to the southeast corner of Reel 334, Page 0900; thence north 88° 19' east 134.09 feet along the north line of that parcel described in Reel 239, Page 0622, to a point on the west boundary of Deer-Haven Estates as recorded in Volume 34, Page 36, Book of Town Plats for Marion County; thence south 01° 02' 44" west 292.68 feet to the southwest corner of Lot 13, Block 4, of said Deer-Haven Estates; thence north 89° 06' 42" west 13.25 feet to the northwest corner of that parcel described in Reel 1311, Page 0302 (Parcel II); thence south 01° 09' 59" west 211.90 feet along the west line of said Reel 1311, Page 0302, and the west line of that parcel described in Reel 1085, Page 0117, to the southwest corner thereof; thence south 89° 06' 42" east 13.25 feet to the southwest corner of Lot 11, Block 4, of said Deer-Haven Estates; thence south 24.09 feet to a point on the north boundary of Northgate Annex No. 4, as recorded in Volume 22, Page 24, Book of Town Plats for Marion County; thence south 87° 35' west 422.75 feet along said north boundary to the northwest corner thereof; thence south 87° 35' west 122.50 feet along the north line of that parcel described in Reel 582, Page 0442; thence continuing along said north line of Reel 582, Page 0442 south 86°34' west 183.84 feet to the northwest corner thereof; thence south 86° 07' west 97.36 feet along the north line of that parcel described in Reel 1647, Page 0288, to the northwest corner thereof; thence south 25° 12' west 301.86 feet along the west line of said Reel 1647, Page 0288; thence south 34° 13' west 150.00 feet continuing along said west line of Reel 1647, Page 0288, to the southwest corner thereof; said point being on the north right-of-way of

Wayside Terrace NE; thence north 88° 51' east 111 feet, more or less, along said right-of-way to the intersection of the northerly extension of the west right-of-way of Greenbriar Street NE; thence south 750.23 feet along said west right-of-way of Greenbriar Street NE to the northeast corner of that parcel described in Reel 1668, Page 0343; thence south 89° 32' west 281.00 feet along the north line of said Reel 1668, Page 0343, to the northwest corner thereof; thence south 00° 06' east 128.00 feet along the west line of said Reel 1668, Page 0343, to the southwest corner thereof; said point being on the north line of Stortz' First Addition as recorded in Volume 14, Page 006, Book of Town Plats for Marion County; thence west 400.13 feet to the northwest corner of Lot 3 of said Stortz' First Addition; thence south 125.51 feet along the west line of said Lot 3 to the southwest corner thereof; thence west 70 feet to the southwest corner of Lot 2 of said Stortz' First Addition; thence south 185.48 feet to the southwest corner of Lot 23 of said Stortz' First Addition; thence north 75° west 64.43 feet to the northwest corner of Lot 3, Block 3, of Capitola, as recorded in Volume 13, Page 13, Book of Town Plats for Marion County; thence south 15° west 164.35 feet along the west line of said Lot 3 and the extension thereof to a point on the north boundary of Cherry Place as recorded in Volume 13, Page 20, Book of Town Plats for Marion County; thence south 73° 10' east 56 feet, more or less, along said north boundary to the east right-of-way of Donald Street NE; thence south 34° 18' west 428.00 feet along said west right-of-way of Donald Street NE and the east line of Lot 7, Block 1, of said Cherry Place to the southeast corner of said Lot 7; thence south 73° 15' east 297.60 feet along the south line of said Cherry Place to the southeast corner thereof; thence south 1,191.30 feet along the east line of those properties described in Reel 239, Pages 1236 through 1238, to the southeast corner thereof, said point being on the northerly line of Salem Highway Tracts as recorded in Volume 11, Page 23, Book of Town Plats for Marion County; thence north 55° 30' west 442.51 feet along said northerly line to the northernmost corner of Lot 10, Block 4, of said Salem Highway Tracts; thence south 34° 30' west 232.35 feet to the northerly right-of-way of Highway Avenue NE; thence north 55° 30' west 538.74 feet along said northerly right-of-way; thence south 34° 30' west 177 feet, more or less; thence south 55° 30' east 93.14 feet; thence south 34° 30' west 337.35 feet to the southeast corner of Lot 32, Block 3, of said Salem Highway Tracts; thence north 55° 30' west 93.14 feet; thence south 34° 30' west 752 feet, more or less, feet along the extension of the westerly line of Lot 7, Block 2, and the westerly line of Lot 7, Block 2, and the westerly line of Lot 29, Block 2, and the westerly line of Lot 3, Block 1, all of said Salem Highway Tracts to the southeast corner of said Lot 3, Block 1; thence north 55° 30' west 248.00 feet to the easterly right-of-way of Portland Road NE (70-foot width); thence south 34° 30' west 760 feet, more or less, along said easterly right-of-way to its intersection with the westerly right-of-way of the Southern Pacific Railroad; thence south 22° 15' west 1,740 feet to the south right-of-way of Smith Street NE; thence north 69° 15' west 140.00 feet along said south right-of-way of Smith Street NE to the northwest corner of Lot 2, Block 1, of Melwood Addition, as recorded in Volume 9, Page 135, Book of Town Plats for Marion County; thence south 22° 15' west 124.5 feet to the southwest corner of said Lot 2; thence south 69° 15' east 40.00 feet along the south line of said Lot 2 to the northeast corner of Lot 16, Block 1, of said Melwood Addition; thence south 22° 15' west 185.00 feet along the east line of said Lot 16, and the extension thereof to the south line of Hall Street NE and the northeast corner of Lot 2, Block 2, of said Melwood Addition; thence north 69° 15' west 160.00 feet along said south line of Hall Street NE to the northeast corner of Lot 6, Block 2, of said Melwood Addition; thence south 22° 15' west 145.00 feet to the southeast corner of said Lot 6, Block 2; thence north 69° 15' west 125.78 feet along the south line of said Melwood Addition, which is concurrent with the north line of Haight Addition, as recorded in Volume 15, Page 24, Book of Town Plats for Marion County, to the northeast corner of Lot 2, Block 1, of said Haight Addition; thence south 17° 14' west 274.90 feet to the southeast corner of Lot 4, Block 2, of said Haight Addition, said point being on the north line of the aforementioned Partition Plat 98-66; thence south 59° 45'00" east 13.77 feet along said north line of Partition Plat 98-66 and the south line of said Haight Addition to the northeast corner of Parcel 1 of said Partition Plat 98-66; thence south 30° 15' 00" west 7.50 feet along the east line of said Parcel; thence south 59° 45' 00" east 293.28 feet to the east line of said Partition Plat 98-66; thence south 22° 00' 00" west 216.23 feet along said east line to the point of beginning.

(e) Underground Utility District "E":

The entire public right-of-way of Commercial Street SE, beginning at the south right-of-way line of Kuebler Boulevard at the intersection with Commercial Street SE, and extending south to end at the south city limits.

(Prior Code, § 35.430; Ord. No. 274-68; Ord. No. 36-79; Ord. No. 76-98; Ord. No. 2-99; Ord. No. 91-99; Ord. No. 64-2001; Ord. No. 89-2002)

Sec. 35.440. New installation required underground.

(a) ~~Except as provided in SRC 35.445, it~~ It shall be unlawful for any person to install a new electric, telephone, or cable amplified television (CATV) service entrance or make a major alteration of an existing electric, telephone, or CATV service entrance within any underground utility district established by SRC 35.430 without provision for the receiving of electric, telephone, or CATV utility service through the service entrance from an underground facility to be maintained in the street area or alley way by the affected utility. The affected utility may elect to connect the underground service to feed from the existing overhead utility facilities until such time as the street, block, or part thereof, is converted to underground.

(b) The ~~Public Works~~ Director ~~director of public works~~ may permit overhead lines in a conduit, pipe, or similar type casing to be attached to the exterior surface of a building whenever it is impracticable under existing conditions to place the lines underground.

(Prior Code, § 35.440; Ord. No. 36-79; Ord. No. 91-99; Ord. No. 89-2002)

Sec. 35.441. Definition; overhead utility facilities.

For the purposes of SRC 35.430 to 35.496~~-0~~, the term "overhead utility facilities" means all utility poles, overhead wires, and associated overhead structures with the exception of:

(a) Antennae, associated equipment, and supporting structures, used by a utility for furnishing communication services.

(b) Equipment appurtenant to underground facilities, such as surface-mounted transformers, pedestal-mounted terminal boxes, and meter cabinets and concealed ducts. Also, fire alarms, street lights, traffic control signals, and poles used exclusively for such municipal services which are served from an underground source of supply.

(c) Temporary poles, overhead wires, and associated overhead structures used or to be used in conjunction with construction projects.

(d) High capacity electric and communication feeder lines, and utility transmission lines operating at 50,000 volts or above.

(Prior Code, § 35.441; Ord. No. 89-2002)

~~**Sec. 35.445. Exemption of certain CATV service.**~~

~~Notwithstanding the provisions of SRC 35.440, a cable amplified television (CATV) service may be supplied above ground to any premises in underground utility district "B" where either telephone or electric service or both is supplied by above ground wires. Such service may continue to be provided above ground until the date on which, by ordinance, all utility service in district "B" is to be converted to underground service only.~~

~~(Prior Code, § 35.445; Ord. No. 36-79)~~

Sec. 35.450. Underground utility conversion in Utility District "A" by December 31, 1978.

All overhead utility facilities used in supplying electric, communication, or similar associated service in Underground Utility District "A" shall be converted to underground facilities on or before December 31, 1978, and it shall be unlawful for any person or utility to erect, construct, use, or maintain any poles, overhead line, or associated overhead structure within such underground utility district after said date.

(Prior Code, § 35.450)

Sec. 35.460. Underground Utility District "A" conversion program.

On or before December 1 of each calendar year hereafter, each utility providing electric or telephone service

within said Utility District "A" shall file with the Council a listing of streets, blocks, or parts thereof, within said ~~Utility District "A" shall file with the council a listing of streets, blocks, or parts thereof, within said~~ district scheduled to be converted during the following calendar year to underground facilities. Such schedule shall be placed on the Council agenda and notice of a public hearing by the Council upon said schedule shall be given by mail to each utility, utility customer, and property owner. Such schedule shall be considered by the Council and approved or amended as the Council may find reasonable; provided, however, said utilities may at any time file with the Council amendments to said schedules, and, if the Council finds that a proposed amendment should be allowed and that the proposed amendment does not affect the public generally, the proposed amendment shall be allowed without notice or hearings, but, if the Council finds that the proposed amendment will affect the public generally, the same procedure shall be followed for notice and hearing as in the case of the original schedule filed with the Council.

(Prior Code, § 35.460; Ord. No. 51-96)

Sec. 35.470. Notification of conversion to utility customers.

After such a determination of a conversion program as set forth in SRC 35.460, customers receiving service from streets scheduled for conversion shall be notified by the affected utility of its plan to proceed with such program during the particular calendar year. It shall be unlawful for any person to fail or neglect within 60 days after notification by the affected utility of the completion of the conversion work on an approved street, block, or part thereof, to provide for receiving such service from the completed underground utility facility within the area approved for conversion, unless he or she discontinues such service. In providing for receiving such service, the property owner or occupant shall not install or maintain any overhead utility facilities except as may be permitted under SRC 35.440. The property owner or such occupants shall provide all necessary wiring changes to their premises so as to receive service from the underground facilities in accordance with applicable utility tariffs, or other applicable schedule of charges on file with the Oregon Public Utility Commissioner ~~of Oregon~~.

(Prior Code, § 35.470)

Sec. 35.480. Underground utility service required in conversion area.

After the applicable calendar year of a scheduled Council approved conversion, it shall be unlawful for any electric or telephone utility to provide any permanent service in the area determined except from an underground facility, or to continue service from an overhead installation, except with special council permission.

(Prior Code, § 35.480)

Sec. 35.490. Certain conversion charges to be borne by utility.

Except as expressly provided in OAR 860-022-0046, no utility shall, within any underground utility district established by SRC 35.430, impose any charge for conversion of its main facilities from overhead to underground, but no utilities shall, by this section, be required to provide any equipment or facilities or perform any installation or other work in connection therewith required of property owners and customers for receiving the utility service on their premises from an underground facility. Such affected utility may make such charges for equipment, facilities, or installation on private premises as are specifically authorized by its effective tariffs.

(Prior Code, § 35.490; Ord. No. 89-2002)

Sec. 35.495. Underground crossings required in Utility District “C.”

All overhead utility facilities, as defined in SRC 35.441, including guy wires or similar appurtenances, used in supplying electric, communication, or associated service that cross the roadway contained within Underground Utility District “C” shall be converted to underground facilities on or before December 31, 1999, and it shall be unlawful for any person or utility to erect, construct, use or maintain any overhead utility facilities that cross the roadway contained within such underground utility district after said date. Overhead utility facilities that run parallel to the roadway contained within such utility district shall be exempt from said requirements.

(Prior Code, § 35.495; Ord. No. 76-98; Ord. No. 89-2002)

Sec. 35.496. Underground crossings required in utility District “E.”

It shall be unlawful for any person or utility to erect or construct any overhead utility facilities, as defined in

SRC 35.441, including guy wires or similar appurtenances, used in supplying electric, communication, or associated service that cross the roadway contained within Underground Utility District "E" after the effective date of ~~this~~ the ordinance from which this chapter is derived. Overhead utility facilities that run parallel to the roadway contained within such utility district shall be exempt from this requirement.

(Prior Code, § 35.496; Ord. No. 89-2002)

Sec. 35.497. Penalty for violation.

Any violation of this chapter shall be subject to the penalties provided by SRC 1.070.

(Prior Code, § 35.420; Ord. No. 5133)

CHAPTER 36. RESERVED

CHAPTER 37. TRANSIENT OCCUPANCY TAX*

***State law reference**--Transient lodging tax, ORS 320.300 et seq.; local transient lodging tax, ORS 320.345 et seq.

Sec. 37.010. Title.

This chapter shall be known and may be cited as the "Transient Occupancy Tax Ordinance of the City of Salem."

(Prior Code, § 37.010; Ord. No. 172-74)

Sec. 37.020. Definitions.

~~As used in this Chapter, unless the context otherwise requires:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(g)~~(f) *Accrual accounting* means the operator enters the rent due from a transient on the operator's records when the rent is earned whether or not it is paid.

~~(b)~~ "*Booking agent*" means any person that provides a means through which a host or other operator may offer transient lodging for occupancy, usually, though not necessarily, via an online platform that allows a host or other operator to advertise transient lodging through a website and that provides a way for potential users to arrange transient lodging occupancy and payment, regardless of whether the transient pays rent directly to the host or to the booking agent. Booking agents include, but are not limited to:

(1) Online booking sites which are involved in listing and booking transient lodging and handle any aspect of the resulting financial transaction; ~~or~~

(2) Online booking sites for transient lodging where advertisements of transient lodging are displayed; ~~or~~

(3) A hosting or other online site that provides a means through which a host or other operator may offer transient lodging for occupancy; ~~or~~

(4) Any person who lists commercial transient lodging for occupancy; or

(5) Any person who directly or indirectly accepts, receives or facilitates payment, whether or not the person is the ultimate recipient of the payment, including through Application Programming Interfaces (APIs) or other computerized devices where third-party providers receive information about a transaction and collect funds for the transient lodging occupancy from a transient.

~~(f)~~(e) *Cash accounting* means the operator does not enter the rent due from a transient on the operator's records until rent is paid.

~~(a)*Director* means the City Manager, or the department director charged by the City Manager with the implementation and enforcement of this Chapter, or that department director's designee.~~

~~(d)~~ "*Host*" means the owner or person who resides at the short-term rental or has been designated by the owner or resident of the short-term rental and who rents out the short-term rental for transient lodging occupancy directly or through the use of a booking agent.

~~(c)~~ "*Hosting platform*" means a person that participates in the transient lodging business by collecting or receiving a fee for any booking services through which a host may offer transient lodging for occupancy, usually, though not necessarily, via a website that allows a host to advertise transient lodging through a website provided by the hosting platform and that provides a means for the hosting platform to conduct a transaction in which prospective occupants arrange transient lodging and payment, whether the occupant pays rent directly to the host or to the hosting platform.

~~(b)~~(a) *Hotel* ~~means any structure, or any portion of any structure which is occupied or intended or designed for transient occupancy for~~ less than 30 ~~27~~ ~~calendar~~ days or less, ~~for dwelling, lodging, or sleeping purposes, and includes any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodginghouse,~~

~~roominghouse, apartment house, public or private dormitory, fraternity, sorority, public or private club, space in mobile home or trailer parks, or similar structure or portions thereof so occupied, provided such occupancy is for less than 30~~ 27 ~~calendar~~ days or less.

~~(c)~~(b) *Occupancy* means the use or possession, or the right to the use or possession, for lodging or sleeping purposes of any room or rooms in transient lodging.

~~(d)~~(c) *Operator* means:

(1) Any person who is a proprietor of transient lodging in any capacity;

(2) Any person who provides transient lodging for occupancy to the public for compensation. The provision of transient lodging can be done through employees, contractors, agents, or any other person allowed to process reservations and accept payment for the transient lodging on behalf of the transient lodging provider; ~~or~~

(3) Any person who facilitates the reservation of transient lodging and collects payment for the transient lodging reservation; ~~or~~

(4) A host as defined in this chapter; ~~or~~

(5) A hosting platform as defined in this chapter; ~~or~~

(6) A booking agent as defined in this chapter; or

(7) A transient lodging intermediary as defined in ORS 320.300.

~~(e)~~(d) ~~*Person* means any individual, firm, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unit.~~

~~(h)~~(g) *Rent* means the full consideration paid or payable by a transient for the right to occupy transient lodging, valued in money, goods, labor, gift cards, credits, property, or other consideration of value, without any deduction.

~~(i)~~(h) *Rent package plan* means the consideration paid or payable for both food and rent where a single rate is made for the total of both. The amount applicable to rent for determination of transient lodging tax under this chapter ~~ordinance~~ shall be the same charge made for rent of identical transient lodging when it is not a part of a package plan.

~~(k)~~(j) *Tax* means either the tax payable by the transient, or the aggregate amount of taxes due from an operator during the period for which the operator is required to report the operator's ~~his~~ collections.

~~(j)~~(i) *Transient* means any individual who exercises occupancy or is entitled to occupancy in transient lodging for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of the transient lodging shall not be included in determining the period of occupancy if the transient is not charged rent for that day by the operator. Any such individual so occupying space in transient lodging shall be deemed to be a transient until a period of 30 days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy and the occupancy actually extends for more than 30 consecutive calendar days. A person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient.

~~(m)~~ "*Transient lodging*" or "*transient lodging facility*" means any structure or premises, or any portion of a structure or premises, which is used, occupied, intended, or designed for transient occupancy for ~~thirty (~~30~~)~~ days or less for dwelling, lodging, or sleeping purposes, and includes, but is not limited to, any hotel, motel, inn, studio hotel, boutique hotel, bed and breakfast, tourist home, vacation home, single family dwelling, duplex, condominium, cabin, accessory short-term rental, short-term rental, manufactured dwelling, lodging house, rooming house, apartment house, public or private dormitory, hostel, fraternity, sorority, public or private club, corporate housing, houseboat, space in a mobile home park, space in a trailer park, space in a campground, or similar premises or portions thereof so occupied, provided such occupancy is for a period of ~~thirty (~~30~~)~~ days or less.

(Prior Code, § 37.020; Ord. No. 172-74; Ord. No. 51-96; Ord. No. 5-17, § 14(37.020), 6-12-2017; Ord. No. 19-17, § 1(37.020), 8-14-2017)

State law reference—Definitions, ORS 320.300.

Sec. 37.025. Administration; rulemaking.

The City's Finance Officer shall administer and enforce the provisions of this chapter, have the authority to render written and oral interpretations, have the authority to conduct audits, and have the authority to adopt administrative rules that are consistent with, and otherwise implement, the terms of this chapter.

(Ord. No. 19-17, § 19(37.025), 8-14-2017)

Sec. 37.030. Tax imposed.

For the privilege of occupancy in any transient lodging, each transient shall pay a tax in the amount of nine percent of the rent charged by the operator. The transient shall pay the tax to the operator of the transient lodging at the time the rent is paid. The operator shall enter the tax on the operator's records when rent is collected if the operator keeps records on the cash accounting basis and when earned if the operator keeps records on the accrual accounting basis. If rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment. The tax constitutes a debt owed by the transient to the City and is extinguished only by payment of the tax to the City. In all cases, the rent paid or charged for occupancy may exclude the sale of any goods, services, or commodities, other than those charges associated with the furnishing of rooms, accommodations, and space in mobile home parks or trailer parks.

(Prior Code, § 37.030; Ord. No. 172-74; Ord. No. 90-84; Ord. No. 56-85; Ord. No. 36-99; Ord. No. 19-17, § 2(37.030), 8-14-2017)

Sec. 37.040. Collection of tax by operator~~; rules for collection~~.

(a) Every operator shall collect a tax from the transient, unless such tax is specifically exempted under the terms of this chapter.

(b) In cases of deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid, and the operator shall not be liable for the tax until the deferred payments are made.

(Prior Code, § 37.040; Ord. No. 172-74; Ord. No. 117-84; Ord. No. 56-85; Ord. No. 61-99; Ord. No. 19-17, § 3(37.040), 8-14-2017)

Sec. 37.050. Operator's duties.

Each operator shall collect the tax imposed by this chapter ~~ordinance~~ at the same time as the rent is collected from every transient. The amount of tax shall be separately stated upon the operator's records and ~~in~~ any receipt rendered by the operator. No operator shall advertise that the tax or any part of the tax will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, when added, any part of the tax will be refunded, except in the manner provided by this chapter ~~ordinance~~. The operator shall pay the tax to the ~~is~~ City as provided in SRC 37.080.

(Prior Code, § 37.050; Ord. No. 172-74; Ord. No. 56-85; Ord. No. 19-17, § 4(37.050), 8-14-2017)

Sec. 37.060. Exemptions.

No tax imposed under this chapter shall be imposed upon:

(a) Any occupant for 30 or more consecutive calendar days (a person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient);

(b) Any occupant whose rent is paid for a hospital room or to a health care facility, long-term care facility, or any other residential facility that is licensed, registered, or certified by the Oregon Department of Human Services or the Oregon Health Authority;

(c) An employee of the federal government or an instrumentality of the federal government traveling on official business provided documentation of official travel authorization is presented to the operator;

(d) A foreign diplomat upon presentation of a valid diplomatic tax exemption card; or

(e) Any person housed through an emergency shelter or disaster program where the rent is paid with government assistance funds.

(Prior Code, § 37.060; Ord. No. 172-74; Ord. No. 42-94; Ord. No. 8-15; Ord. No. 5-17, § 15(37.060), 6-12-2017; Ord. No. 19-17, § 5(37.060), 8-14-2017)

Sec. 37.070. Registration of operator; form and contents; execution; certification of authority.

~~(a)~~Every person engaging or about to engage in business as an operator ~~of a hotel~~ in this City shall register with the ~~Director director of finance~~ ~~Finance Officer~~City on a form provided by the ~~Director Finance Officer~~City. Operators starting business shall register within 15 calendar days after commencing business. The failure to register with the City shall not relieve any person from the obligation of payment ~~of~~or collection of tax. The registration form shall require the operator to provide the name of the business, any separate business address, and such other information to facilitate the collection of the tax as the ~~Director director of finance~~ ~~Finance Officer~~City may require. Operators who own transient lodging in the City shall provide the address of the transient lodging. The registration form shall be signed by the operator. The ~~Director director of finance~~ City's Finance Officer shall, within ten business days after registration, issue, without charge, a certificate of authority to each registrant to collect the tax imposed by this chapter. Certificates of authority shall be nonassignable and nontransferable and shall be surrendered immediately to the ~~Director director of finance~~ Finance Officer ~~upon the cessation of~~when the business is sold or transferred or when the transient lodging ceases to operate at the location specified on the registration form. Each certificate issued to an operator for a specific transient lodging facility shall be prominently displayed at the transient lodging facility and shall include:

(1) The name of the operator;

(2) The address of the ~~hotel~~applicable transient lodging facility;

(3) The date upon which the certificate was issued; and

(4) The following statement: "This Transient Occupancy Registration Certificate signifies that the person named has fulfilled the requirements of the Transient Occupancy Tax Ordinance of the City of Salem by registration with the ~~Director director of finance~~ ~~Finance Officer~~City for the purpose of collecting from transients the room tax imposed by the City of Salem. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate ~~a hotel~~transient lodging without strictly complying with all local applicable laws including but not limited to those requiring a permit from any board, commission, department, or office of the City of Salem. This certificate does not constitute a permit."

If the certificate of authority is issued to a booking agent, hosting platform, or other online operator, the certificate must be able to be viewed by clinking on a link to the certificate during any payment transaction.

(Prior Code, § 37.070; Ord. No. 172-74; Ord. No. 36-99; Ord. No. 19-17, § 6(37.070), 8-14-2017)

Sec. 37.080. Due date; returns and payments.

(a) The tax imposed by this chapter ~~ordinance~~ shall be paid by the transient to the operator at the time that rent is paid. All amounts of such taxes collected by any operator are due and payable to the ~~Director of Finance Officer~~City on a monthly basis on or before the last day of the month, immediately following the month during which the tax was paid by the transient. If the last day of the month falls on a Saturday, a Sunday, or a legal holiday as defined by ORS 187.010, amounts are delinquent on the first business day that follows.

(b) On or before the last day of the month following each month of collection, a return for the preceding month's tax collections shall be filed with the ~~Director of Finance~~ Finance Officer. The return shall be filed in such form as the ~~Director of Finance~~ Finance Officer may prescribe by every operator liable for payment of tax.

(c) Returns shall show the amount of tax collected or otherwise due for the related period. The ~~Director of Finance~~ Finance Officer may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of operator for such period, and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any.

(d) The person required to file the return shall deliver the return, together with the remittance of the amount of the tax due, to the ~~Director of Finance~~ ~~Finance Officer~~ ~~at the office of the Director Finance Officer~~City at the City's Budget and Finance Division office either by personal delivery or by first class mail. A return must be received in the City's Budget and Finance Division office by 5:00 on the due date, or it will be considered delinquent.

(e) For good cause, the ~~Director of Finance~~ Finance Officer may extend, for a period not to exceed one month, the time for making any return or payment of tax. No further extension shall be granted, except by the City Council. Any operator to whom an extension is granted shall pay interest at the rate of one percent per month on the amount of tax due without proration for a fraction of a month. If a return is not filed, and the tax and interest due is not paid by the end of the extension granted, then the interest shall become a part of the tax for computation of penalties described elsewhere in this chapter ~~ordinance~~.

(f) If the ~~Director of Finance~~ Finance Officer deems it necessary in order to ensure payment or facilitate collection by the City of the amount of taxes in any individual case, the ~~Director~~ Finance Officer may require returns and payment of the amount of taxes for other than monthly periods.

(Prior Code, § 37.080; Ord. No. 172-74; Ord. No. 56-85; Ord. No. 51-96; Ord. No. 36-99; Ord. No. 19-17, § 7(37.080), 8-14-2017)

Sec. 37.090. Penalties and interest.

(a) *Original delinquency.* Any operator who has not been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by this chapter ~~ordinance~~ prior to delinquency shall pay a delinquency penalty of ten percent of the amount of the tax due in addition to the amount of the tax.

(b) *Continued delinquency.* Any operator who has not been granted an extension of time for remittance of tax due, and who failed to pay any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of ~~15~~25 percent of the amount of the tax due plus the amount of the tax and the ten percent penalty first imposed.

(c) *Interest.* In addition to the penalties imposed, any operator who fails to remit any tax imposed by this chapter ~~ordinance~~ shall pay interest at the rate of one percent per month or fraction thereof without proration for portions of a month, on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid in full.

(d) *Penalties merged with tax.* Every penalty imposed and such interest as accrues under the provisions of this section shall be merged with and become a part of the tax herein required to be paid.

(e) *Petition for waiver.* Any operator who fails to remit the tax herein levied within the time ~~herein~~ stated shall pay the penalties herein stated; provided, however, the operator may petition the Finance Officer ~~Director of finance~~ for a waiver and refund of the penalty or any portion thereof.

(Prior Code, § 37.090; Ord. No. 172-74; Ord. No. 19-17, § 8(37.090), 8-14-2017; Ord. No. 19-17, § 8(37.090), 8-14-2017)

Sec. 37.100. Deficiency determinations; failure to collect, fraud, evasion.

(a) *Deficiency determination.* The Finance Officer may review tax returns and adjust the amount of tax due based on the information in the return, on information obtained during a review or audit of any records, or on the basis of other relevant evidence. In the event that a deficiency is determined, the Finance Officer shall provide notice of the deficiency to the operator. Notice of the deficiency may be made by personal delivery or certified United States mail with a return receipt requested. The operator shall remit the amount of the deficiency within ten ~~(10)~~ business days of receipt of the notice. Penalties on deficiencies shall be applied as set forth in SRC 37.090.

(1) In reviewing and adjusting any tax return, the ~~Director of Finance~~ Finance Officer may offset overpayments, if any, which may have been previously made for a period or periods, against any underpayment for a subsequent period or periods, or against penalties, and interest, on the underpayments.

(2) Except in the case of fraud, or the intent to evade the tax authorized under this chapter, every deficiency determination shall be made and notice thereof issued within three years of the period for which the deficiency determination is made.

(~~4~~3) Any determination shall become due and payable immediately upon receipt of notice and shall become final ten business days after the ~~Director of Finance~~ Finance Officer has given notice thereof; provided, however, the operator may petition for a redetermination if the petition is filed before the deficiency determination becomes final. The time to remit deficient payment amounts under this section shall be extended if the operator timely files a petition for redetermination.

(b) *Failure to collect, fraud, evasion.* If any operator fails to collect, report, or remit the tax as required; submits a fraudulent return; or otherwise violates or attempts to violate this chapter ~~ordinance~~, the Finance Officer ~~Director of finance~~ shall estimate the tax due and shall calculate the amount owing from the operator for the tax and for any interest and penalties, and shall provide written notice to the operator of the assessment. The determination and notice shall be made and mailed to the operator within three ~~(3)~~ years of the discovery by the Finance Officer of the violation. The determination is due and payable upon receipt of the notice and shall become final ten ~~(10)~~ business days after the notice is delivered if no petition for redetermination is filed.

(Prior Code, § 37.100; Ord. No. 172-74; Ord. No. 36-99; Ord. No. 19-17, § 9(37.100), 8-14-2017)

Sec. 37.110. Redeterminations.

(a) Any operator against whom a deficiency determination is made or any person directly affected by a deficiency determination, may file a petition for a redetermination with the Finance Officer within ten business days of receipt of the notice of the determination. If a petition for redetermination is not filed within ten business days of receipt of the notice, the determination shall become final.

(b) If a petition for redetermination is filed within the allowable period, the Finance Officer ~~Director of finance~~ shall reconsider the determination, and, if the petitioner has so requested in the petition, shall grant the petitioner an oral hearing. The Finance Officer shall set a time, date, and place for the hearing. The date shall be set not less than ten business days nor more than 30 business days after the date the petition is filed. The Finance Officer ~~Director of finance~~ may continue the hearing with the consent of all parties or for good cause shown.

(c) After considering the petition and all available information, the Finance Officer ~~Director of finance~~shall issue a written redetermination decision and mail a copy of the decision to the petitioner. During the redetermination process, the Finance Officer may agree to a compromise of the amount of tax determined to be due if there is a good faith dispute over the amount owing.

(d) The order or decision of the Finance Officer ~~Director of finance~~becomes final and payment is due ten business days after service of the order or decision upon the petitioner ~~of notice thereof~~, unless an appeal of such order or decision is filed with the City's Hearings Officer within the ten business days after service of such ~~notice~~order or decision.

(Prior Code, § 37.110; Ord. No. 172-74; Ord. No. 51-96; Ord. No. 19-17, § 10(37.110), 8-14-2017)

Sec. 37.120. Security for collection of tax.

(a) Whenever the Finance Officer ~~Director of finance~~ deems it necessary to insure compliance with this chapter ~~ordinance~~, the ~~Director~~ Finance Officer may require any ~~subject~~ operator ~~subject thereto~~ to deposit such security in the form of cash, bond, or other security as the Finance Officer ~~Director of finance~~ may determine. The amount of the security shall be fixed by the Finance Officer ~~Director of finance~~ but shall not be greater than twice the operator's estimated average monthly liability for the period for which the operator files returns, determined in such manner as the Finance Officer ~~Director of finance~~ deems proper, or $7,500.00, whichever amount is the lesser. The amount of the security may be increased or decreased by the Finance Officer ~~Director of finance~~ subject to the limitations set forth in this section ~~herein provided~~.

(b) At any time within three years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three years after any determination becomes final, the City Attorney may bring an action in the courts of this State, or any other state, or of the United States in the name of the City ~~of Salem~~ to collect the delinquent amount, together with any penalties and interest.

(Prior Code, § 37.120; Ord. No. 172-74; Ord. No. 36-99; Ord. No. 19-17, § 11(37.120), 8-14-2017)

Sec. 37.130. Reserved.

Sec. 37.140. Refunds.

(a) *Refunds by the City to the operator.* If the operator remits more tax, penalty, or interest than is due, the operator may file a claim in writing stating the facts relating to the claim, within three ~~(3)~~ years from the date of remittance. If the claim is approved by the Finance Officer ~~Director of finance~~, the excess amount collected or paid shall either be refunded or credited on any amounts then due and payable from the operator from

whom it was collected. All refunds shall be charged to the Cultural and Tourism Fund.

(b) *Refunds by the City to the Transient.* An operator or a transient may claim a refund of tax paid by filing a claim in writing within three ~~(3)~~ years of payment providing the facts relating to the claim for a refund. If the Finance Officer determines that the tax was collected and remitted to the City and the transient was not required to pay the tax or overpaid the tax, the City shall issue a refund to the transient or to the party who paid the tax if different from the transient. All refunds shall be charged to the Cultural and Tourism Fund.

(c) *Burden of proof.* The person claiming the refund shall have the burden of proving the facts that establish the basis for the refund.

(Prior Code, § 37.140; Ord. No. 172-74; Ord. No. 36-99; Ord. No. 19-17, § 12(37.140), 8-14-2017)

Sec. 37.150. ~~Collection~~Operator's administrative fee.

Every operator liable for the collection and remittance of the tax imposed by this chapter ~~ordinance~~ may withhold five percent of the net tax due to cover the operator's expense in the collection and remittance of said tax.

(Prior Code, § 37.150; Ord. No. 172-74; Ord. No. 19-17, § 13(37.150), 8-14-2017)

State law reference—Collection reimbursement charge, ORS 320.345.

Sec. 37.160. Administration.

(a) *Special revenue fund.* The Finance Officer ~~Director of finance~~ shall deposit all money collected pursuant to this chapter ~~ordinance~~ to the credit of the Cultural and Tourism Fund. The Finance Officer ~~Director of finance~~shall report the status of the Cultural and Tourism Fund as of June 30 of each year no later than December 31 of that same year.

(b) *Records required from operators.* Every operator shall keep ~~guest~~appropriate records, including but not limited to registration forms, accounting and bank records, supporting documentation for all claimed exemptions, and any other documentation necessary to support the tax returns filed or required to be filed pursuant to this chapter. All records shall be retained by the operator for a period of three years and six months after the filing of the associated tax return, amended return, or payment of the tax, whichever is later.

(c) *Examination of records; investigations.* The Finance Officer ~~Director of finance~~ or any person authorized in writing by the ~~Director~~ Finance Officer may examine, during normal business hours, the registration forms, accounting and bank records, supporting documentation for all claimed exemptions, and any other documentation relating to the tax returns filed or required to be filed pursuant to this chapter of any operator after notification to the operator liable for the tax. The Finance Officer or the Finance Officer's designee may investigate the business of the operator in order to verify the accuracy of any return made, or if no return is made by the operator, to ascertain and determine the amount of tax required to be paid. To assist in this process, the Finance Officer ~~Director of finance~~ or the Finance Officer's designee may request certified copies of annual federal and state income tax returns covering the operator.

(d) *Confidential financial information.* Except as otherwise required by law, it shall be unlawful for the Finance Officer ~~Director of finance~~ or any elected official, employee, or agent of the City to release, divulge, or make known in any manner any financial information submitted or disclosed to the City under the provisions of the chapter. Nothing in this subsection shall be construed to prohibit:

(1) The disclosure to, or the examination of records and equipment by another City ~~of Salem~~ official, employee, or agent for the sole purpose of administering or enforcing any of the provisions of this chapter ~~ordinance~~; or collecting taxes imposed hereunder;

(2) The disclosure after the filing of a written request to that effect, to the taxpayer or receivers, trustees, executors, administrators, assignees, or guarantors of the taxpayer, if directly interested, of information as to any paid tax, any unpaid tax or amount of tax required to be collected, or interest, and penalties; further provided, however, that the City Attorney shall approve each such disclosure and that the Finance Officer ~~Director of finance~~ may refuse to make any disclosure pursuant to this subsection ~~paragraph~~ when in the opinion of the ~~Director~~ Finance Officer the public interest would suffer thereby;

(3) The disclosure of the names and addresses of any persons to whom transient occupancy registration certificates have been issued;

(4) The disclosure of general statistics regarding taxes collected or business done in the City; or

(5) The disclosure required by ORS 192.410 to ~~ORS~~ 192.505 ~~2~~ of information on taxes delinquent over 60 days.

(Prior Code, § 37.160; Ord. No. 172-74; Ord. No. 36-99; Ord. No. 67-2000; Ord. No. 19-17, § 14(37.160), 8-14-2017)

Sec. 37.165. Distribution of moneys from Cultural and Tourism Fund.

(a) Consistent with section 56 of the 1996 Salem Charter, the ~~Director~~ Finance Officer shall distribute moneys from the Cultural and Tourism Fund for:

(1) Enhancement and beautification of vehicular and pedestrian entrance ways to the City;

(2) Urban beautification generally;

(3) Improvements to or operation of major tourist attraction or cultural facilities; and

(4) Activities performed directly by the City or through contracts which promote use of Salem for conventions, conferences, seminars, or for general tourism.

(b) Twenty-five percent of each fiscal year's transient lodging tax net receipts shall be allocated to the City's Destination Tourism Marketing Organization. In the event the City does not have a current contract with a Destination Tourism Marketing Organization at the time due for a disbursement under this section, the funds shall be allocated to uses consistent with subsection (a)(4) of this section.

(Prior Code, § 37.165; Ord. No. 36-99; Ord. No. 34-2001; Ord. No. 27-2004; Ord. No. 50-05; Ord. No. 31-06; Ord. No. 18-16, 11-28-2016; Ord. No. 19-17, § 15(37.165), 8-14-2017)

Sec. 37.170. Appeals.

Any person aggrieved by any order or decision of the Finance Officer ~~Director of finance~~ may appeal the order or decision to the City's hearings officer as set forth in SRC 20J.220. The hearing on the appeal shall follow the contested case procedures as set forth in SRC chapter 20J. Failure of any person to appeal the order or decision of the Finance Officer in the manner provided in SRC 20J.220 shall constitute a waiver of all right to administrative or judicial review of the order or decision.

(Prior Code, § 37.170; Ord. No. 172-74; Ord. No. 51-96; Ord. No. 19-17, § 16(37.170), 8-14-2017)

Sec. 37.180. ~~Severability~~ Reserved.

~~If any section, subsection, paragraph, sentence, clause, or phrase of this Chapter ordinance, or any part thereof, is for any reason held to be unconstitutional (or otherwise invalid), such decision shall not affect the validity of the remaining sections, subsections, paragraphs, sentences, clauses, or phrases portions of this Chapter ordinance or any part thereof. The legislative body hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional (or otherwise invalid).~~

~~(Prior Code, § 37.180; Ord. No. 172-74)~~

Sec. 37.185. Liens.

The City may record a lien in the City's lien docket against any real property owned by any operator who receives any portion of the rent for transient lodging located within the City as to any delinquent remittances by the operator.

(Ord. No. 19-17, § 20(37.185), 8-14-2017)

Sec. 37.190. Violations and penalties.

(a) Violations. It shall be unlawful for any operator or other person so required to fail or refuse to register as required herein, or to furnish any return required to be made, or to fail to pay the tax collected, or fail or refuse

to furnish a supplemental return or other data required by the ~~Director of Finance~~ Finance Officer or to render a false or fraudulent return. No person required to make, render, sign, or verify any report shall make any false or fraudulent report, with intent to defeat or evade the determination of any amount due as required by this chapter ~~ordinance~~. A violation of this subsection is an infraction.

(b) Notwithstanding subsection ~~paragraph~~ (a) of this section, the City Attorney, in addition to other remedies permitted by law, may commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the tax imposed by this chapter.

(c) Civil penalty. In addition to, but not in lieu of, any other remedy provided by law, a civil penalty as provided in SRC chapter 20J, not to exceed $2,000.00 per violation, may be imposed on any person who fails to comply with any of the requirements of this chapter. Each day that a violation continues shall constitute a separate violation.

(d) Civil penalty against agents. Any person who acts as the agent of, or otherwise assists, a person who engages in an activity which would be subject to a civil penalty, shall likewise be subject to a civil penalty.

(Prior Code, § 37.190; Ord. No. 172-74; Ord. No. 56-85; Ord. No. 19-17, § 17(37.190), 8-14-2017)

~~**Sec. 37.200. Penalties.**~~

~~Violation of Any person willfully violating any of the provisions of this chapter ordinance is an infraction and shall be punished therefore as provided in SRC 1.070.~~

~~(Prior Code, § 37.200; Ord. No. 172-74)~~

CHAPTERS 38—40. RESERVED

CHAPTER 41. DEVELOPMENT FEE

Secs. 41.010—41.090. Reserved.

Sec. 41.095. Title and purpose.

This chapter shall be known and may be cited as the "Systems Development Charge Ordinance of the City of Salem." The purpose of this charge or fee is to create a source of funds to assist in paying for capital improvements.

(Prior Code, § 41.095; Ord. No. 76-89; Ord. No. 35-91)

Sec. 41.097. Scope.

The systems development charge imposed by this chapter is separate from and in addition to any applicable tax, assessment, charge, fee in lieu of assessment, or fee otherwise provided by law or imposed as a condition of development. A systems development charge is to be considered in the nature of a charge for service rendered, a service hookup charge, or a charge for services to be rendered.

(Prior Code, § 41.097; Ord. No. 35-91)

Sec. 41.100. Definitions.

~~As used in this Chapter, the following words and phrases shall mean:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Capital improvement*.

(a) The term "capital improvement" means facilities or assets used for the following:

(1) Water supply, treatment and distribution;~~ or~~

(2) Wastewater collection, transmission, treatment and disposal;~~ or~~

(3) Parks or recreation;~~ or~~

(4) Transportation; or

(5) Drainage or flood control.

(b) The term "capital improvement" does not include costs of the operation or routine maintenance of capital improvements.

~~(b)~~ *Credits* means a waiver, reimbursement, or payment of an SDC improvement fee (SDCi) given for the construction of a qualified public improvement. Credits may either be "true credits," "pass-thru credits," or a combination thereof.

~~(c)~~*Development* means:

(a) The first establishment of a use involving the construction or the placing of an improvement upon a parcel of land that was prior to that event not occupied by any improvement; or

(b) Any construction, alteration or change to an improvement, or any new use or occupancy, which increases the usage of any capital improvement or which creates additional demand upon existing capital improvements.

~~(d)~~ *Improvement* means any building, structure, impervious area, including parking areas, plazas and walkways, and landscaping requiring new or increased usage of a capital improvement.

~~(e)~~*Improvement fee (SDCi)* means a fee for costs associated with capital improvements to be constructed after the date of the adoption of the methodology used to establish the fee.

~~(f)*Multi-Family* means any building or portion thereof with three or more dwelling units served by a single water meter.~~

~~(g)~~ *Pass-thru credits* means a payment of SDC improvement fees (SDCi) collected from payors within a development to the developer who constructed a qualified public improvement serving the development.

~~(h)~~ *Qualified public improvement* means a capital improvement that is required as a condition of development approval, identified in the plan and list adopted pursuant to ORS 223.309, and either:

(a) Not located on or contiguous to property that is subject to development approval; or

(b) Located in whole or in part on, or contiguous to, property that is subject to development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.

~~(i)~~ *Reimbursement fee (SDCr)* means a fee for costs associated with capital improvements already constructed or under construction on the date of the adoption of the methodology used to establish the fee.

~~(j)~~ *System development charge (SDC)* means a reimbursement fee (SDCr), improvement fee (SDCi), or combination thereof, assessed or collected at any of the times specified in SRC 41.110 and ~~SRC~~ 41.140. The term "system development charge" includes that portion of a wastewater ~~sewer~~, stormwater or water system connection charge that is greater than the amount necessary to reimburse the City for its cost of inspecting and installing connections with water, stormwater and wastewater ~~sewer~~ facilities. The term "system development charge" does not include any fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed upon a land use decision, limited land use decision, expedited land division ~~use decision~~ or building permit ~~pursuant to SRC 77.140~~.

~~(k)~~ *True credits* means a waiver or reimbursement of an SDC improvement fee (SDCi) which would otherwise be charged for the type of improvement being constructed.

(Prior Code, § 41.100; Ord. No. 76-89; Ord. No. 63-90; Ord. No. 35-91; Ord. No. 9-92; Ord. No. 53-92; Ord. No. 97-95; Ord. No. 97-98; Ord. No. 91-99; Ord. No. 57-2000; Ord. No. 48-2002; Ord. No. 45-09)

Sec. 41.110. Development charge imposed.

(a) Systems development charges are hereby imposed upon all development within the City ~~of Salem~~ and on development outside the City where there is a connection to or use of a City capital improvement for which a methodology has been or is hereinafter adopted, except where development is exempt under the provisions of SRC 41.150. The person engaging in the activity for which an SDC is imposed shall pay to the City each applicable systems development charge at the time established under SRC 41.140.

(b) Additional system development charges shall be payable if development occurs, as defined in SRC 41.100(c)(2), and at the time specified in SRC 41.140. The SDC collected shall include a credit for pre-existing uses on the property. In such case, each SDC collected shall be the difference between the current SDC rate set by Council resolution for the new demand and the current SDC rate for the previous demand.

(c) Systems development charges, and modifications thereof, shall be established by resolution of the Council.

(Prior Code, § 41.110; Ord. No. 76-89; Ord. No. 63-90; Ord. No. 35-91; Ord. No. 9-92; Ord. No. 97-95; Ord. No. 57-2000; Ord. No. 48-2002)

Sec. 41.120. Expenditure of funds from system development charge.

The revenues received from the systems development charges shall be budgeted and expended as provided by state law.

(a) Reimbursement fees shall be spent only for capital improvements associated with the system for which the fees are assessed, including expenditures relating to repayment of indebtedness.

(b) Improvement fees shall be spent only on capacity increasing capital improvements associated with the system for which the fee is assessed, including expenditures relating to repayment of future debt for the improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the capital improvements funded by improvement fees must be related to the need for increased capacity to provide

service for future users.

(c) Any capital improvement being funded wholly or in part with system development charge revenues must be included in the plan and list adopted by ~~City~~ Council pursuant to ORS 223.309.

(d) Notwithstanding subsections (a) and (b) of this section, system development charge revenues may be expended on the direct costs of complying with the provisions of this ~~ordinance~~ chapter, including the costs of developing system development charge methodologies and providing an annual accounting of system development expenditures.

(e) The systems development charges collected for extraterritorial service shall be expended according to the terms and conditions of intergovernmental agreements establishing such service.

(Prior Code, § 41.120; Ord. No. 76-89; Ord. No. 63-90; Ord. No. 35-91; Ord. No. 9-92; Ord. No. 97-98; Ord. No. 48-2002; Ord. No. 45-09)

Sec. 41.130. Creation of special fund.

All moneys collected under this chapter shall be placed in the "Extra Capacity Facilities Fund," which is hereby established and shall be used for the purposes and in the manner set forth in SRC 41.120. The Finance ~~Director~~ Officer or the Finance ~~Director's~~ Officer's designee ~~director of finance~~ shall establish and keep such accounts as may be necessary showing the total SDC revenues collected for water, wastewater~~sewer~~, transportation, parks and recreation, drainage and flood control and the projects that are funded by SDC revenues, and shall provide an annual accounting, to be completed by January 1 of each year, showing amounts collected, projects funded by, and the extent to which each project was funded with SDC revenues during the previous fiscal year.

(Prior Code, § 41.130; Ord. No. 76-89; Ord. No. 9-92; Ord. No. 97-95; Ord. No. 97-98; Ord. No. 48-2002)

Sec. 41.140. Time of payment; refunds.

(a) Except as may be provided by intergovernmental agreement, the SDC imposed under this chapter shall be due and payable to the ~~Finance Director~~ Finance Officer or his or her designee upon the earliest occurrence of the issuance of:

(1) A building permit;

(2) A development permit for development not requiring the issuance of a building permit;

(3) A permit or approval to connect to the water system;

(4) A permit or approval to connect to the stormwater or wastewater~~sewer~~ system;~~ or~~

(5) A right-of-way access permit;

(6) If no building permit, development permit, connection permit or approval, or right-of-way access permit is required, the SDC is payable at the time the usage of the capital improvement is increased based on changes in the use of the property unrelated to seasonal or ordinary fluctuations in usage; or

(7) If development is commenced or connection is made to the water, wastewater~~sewer~~ or stormwater systems without a required permit or approval, the SDC is immediately payable and deemed due upon the earliest date the permit or approval was required.

(b) No permit shall be issued or any connection to a capital improvement allowed until the SDC has been paid in full, or until provision for installment payments has been made pursuant to subsection (d) of this section, or unless the improvement is exempt from payment of SDCs under SRC 41.150.

(c) An SDC shall be refunded if the permit expires or is revoked before the improvement, or portion thereof, is constructed.

(d) In lieu of payment being made as required under subsection (a) of this section, the owner of the land on which the improvement will be located may enter into an installment agreement to pay the SDC in semiannual installments, as authorized by ORS 223.208. The obligation to pay the SDC pursuant to an installment agreement shall be secured by a lien against the property upon which the improvement will be located. The lien shall be entered into the City's lien docket as provided in SRC 21.090 through 21.130~~ 21.190~~, and may be collected in the same manner as allowed by law for collection of assessment liens.

(e) Transportation system development charge payments made by Salem-Keizer School District 24J for siting of a prefabricated structure defined in OAR 918-674-005 shall be refunded, without interest, upon completion of the requirements of a demolition or removal permit for such structure.

(Prior Code, § 41.140; Ord. No. 76-89; Ord. No. 35-91; Ord. No. 97-98; Ord. No. 58-99; Ord. No. 48-2002; Ord. No. 40-09)

Sec. 41.150. Exemptions.

(a) The charge imposed under this chapter shall not apply to the following:

(1) Development for which applications for building permits, or mobile home park use permits have been filed prior to the effective date of the resolution initially establishing the methodology for the SDC, providing the information accompanying the application was sufficiently complete to meet the requirements for issuance of a permit for the entire structure.

(2) Reconstruction or repair of a building or structure, or portion thereof, which was damaged or destroyed by earthquake, fire, flood, or other natural causes over which the owner had no control, but only if:

(A) Such reconstruction or repair is done pursuant to a building permit issued within one year after such damage or destruction; and

(B) There is no change in the size of the water meter, development or impervious area.

(3) Replacement structures for any forced acquisition wherein a building or structure is acquired for city purposes through eminent domain, provided that:

(A) The owner obtains a building permit for the replacement structure within two years of the acquisition; and

(B) There is no change in the size of the water meter, development, or impervious area.

(4) Any public use or development which is or by agreement will be undertaken by the City ~~of Salem~~, Oregon; the Housing Authority of the City ~~of Salem, Oregon~~; or the Urban Renewal Agency of the City ~~of Salem, Oregon~~.

(5) Any housing unit which is located in a housing project of one or more housing units, if the project receives federal housing funds administered by the City and is affordable to families at or below the City's 80 percent median income level as defined by the US ~~Dept~~ Department of Housing and Urban Development.

(6) In the event of a redevelopment, that portion of the development which was pre-existing, as determined from City records or other source acceptable to the ~~Public Works~~ Director.

(7) Development occurring within a development district established pursuant to SRC 200.200 through 200.275.

(8) Other development exempted from the charge according to a methodology adopted pursuant to SRC 41.170.

(b) The charge imposed under this chapter for water supply service connections that provide water supply and fire sprinkler systems through the same meter shall be the charge for the meter size required to provide water supply as if the fire sprinkler system was not included.

(c) Nothing in this chapter shall be construed as imposing a charge upon any person when imposition of such charge upon that person would be in violation of the Constitution of the United States or the Constitution of the State ~~of Oregon~~.

(Prior Code, § 41.150; Ord. No. 97-95; Ord. No. 97-98; Ord. No. 91-99; Ord. No. 48-2002; Ord. No. 10-05; Ord. No. 102-07; Ord. No. 31-13)

Sec. 41.160. System development charge credit.

(a) A credit against the improvement fee (SDCi) shall be allowed for the construction of a qualified public improvement and may be a ~~"~~true credit,~~"~~ a ~~"~~pass-thru credit,~~"~~ or a combination of the two. The credit shall be only for the SDCi for the type of improvement being constructed. The credit shall not exceed the developer's allowable

costs as determined by the ~~Public Works~~ Director under SRC 41.300 and 41.305. No credit shall be given for the cost of that portion of any water or wastewater~~sewer~~ line, eight inches or less in diameter, or any storm drainage line 12 inches or less in diameter, where lots representing 25 percent or more of the front footage take service from such lines; nor shall any credit be given for any facility built larger than the above minimums if such capacity is needed by the development itself.

(b) In addition to the requirements of subsection (a) of this section, a transportation credit shall be given only for the cost of any capital improvement to be partially funded by the Transportation SDC as identified in the adopted Transportation SDC Methodology.

(c) A credit against the Transportation SDC of up to 15 percent is allowed for an approved transportation demand management plan as defined in the City of Salem Public Works Street Design Standards adopted by the ~~Public Works~~ Director and on file in the Department of Public Works, prepared by the applicant, approved by the ~~Public Works~~ Director and designed to reduce generated trips as set forth in the adopted Transportation SDC Methodology.

(d) When the construction of a qualified public improvement gives rise to a credit amount greater than the SDC that would otherwise be levied against the project receiving development approval, the excess credit may be applied against improvement fees that accrue in subsequent phases of the original development project.

(e) Credits shall be used no later than ten years from the date the credit is given.

(Prior Code, § 41.160; Ord. No. 76-89; Ord. No. 9-92; Ord. No. 53-92; Ord. No. 97-95; Ord. No. 97-98; Ord. No. 91-99; Ord. No. 57-2000; Ord. No. 65-2001; Ord. No. 48-2002; Ord. No. 45-09; Ord. No. 31-13)

Sec. 41.170. Methodology.

(a) The methodology used to establish or modify a reimbursement fee (SDCr) shall consider the cost of construction for existing facilities, including, without limitation, design, financing and construction costs, prior contributions by then existing users, gifts or grants from federal or state governments or private persons, the value of unused capacity available to future system users, rate-making principles employed to finance publicly owned capital improvements, and other relevant identified factors. The methodology shall promote the objective that future systems users shall contribute an equitable share of the cost of existing facilities.

(b) The methodology used to establish or modify the improvement fee (SDCi) shall consider the estimated cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related, and shall be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future users.

(c) The methodology authorized by this section shall be established by resolution; and this methodology may be amended or new methodology adopted when making any revision to the system development charge.

(d) A change in the amount of an SDC is not a modification if the change is based on the periodic application of a specific cost index or on change to any of the factors related to rate that are incorporated in the adopted methodology.

(e) All SDCs shall be adjusted annually for inflation, using indices adopted by the ~~city~~ Council.

(Prior Code, § 41.170; Ord. No. 76-89; Ord. No. 9-92; Ord. No. 57-2000; Ord. No. 48-2002)

Sec. 41.180. Appeals.

(a) A person who wishes to challenge the imposition or calculation of an SDC must make a written challenge to the calculation of the SDC and file the challenge with the ~~Public Works~~ Director ~~director of public works~~ within ten days of receiving the calculation. The written challenge must describe with particularity the basis for the appeal.

(1) The written challenge shall state:

(A) The name and address of the challenger;

(B) The nature of the decision being appealed;

(C) The reason the imposition or calculation of the SDC is incorrect; and

(D) What the correct decision should be or how the correct calculation should be derived.

(2) As soon as is practicable, the Director ~~of Public Works~~ shall determine whether the imposition or calculation is in accordance with the resolution and methodology used to establish or modify the SDC, and shall provide written notice of the decision to the challenger at the address set forth in the written challenge, which shall contain an explanation of the process for appealing the decision to the Council.

(b) A decision made by the Director ~~of Public Works~~ under this chapter may be appealed to the Council by filing a written request with the City Recorder within 15 days of the date of the decision, describing with particularity the decision from which the person appeals and the reason the Director's decision is incorrect. The Council shall as soon as is practicable hear and consider the appeal. The Council may affirm, modify, extend, or reverse the decision in a manner that is consistent with the provisions of this chapter. The Council shall provide written notice of its decision, which shall contain a statement that the person has a right to seek review as provided in ORS 34.010 to 34.100.

(c) Any citizen or other interested person may challenge an expenditure of system development charge revenues by filing such challenge with the Council, in writing, within two years of the expenditure, describing how the charges were improperly spent. If the Council determines that there has been an improper expenditure of system development charge revenues, the Council shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent. The decision of the Council shall be reviewed only as provided in ORS 34.010 to 34.100, and not otherwise.

(d) A person who fails to file such a written challenge as provided in subsections (a) through (c) of this section, waives all objections and right to an administrative review of the imposition or calculation of the SDC.

(e) A legal action challenging the methodology adopted by the Council pursuant to SRC 41.170 shall not be filed later than 60 days after adoption. A person shall contest the methodology used for calculating a SDC only as provided in ORS 34.010 to ~~ORS~~ 34.100, and not otherwise.

(Prior Code, § 41.180; Ord. No. 76-89; Ord. No. 97-95; Ord. No. 51-96; Ord. No. 57-2000; Ord. No. 48-2002)

Sec. 41.190. Reimbursement in excess of credits for allowable costs.

Developers may be eligible for a reimbursement in excess of credits for construction of a qualified public improvement as provided in SRC 41.310.

(Prior Code, § 41.190; Ord. No. 97-98; Ord. No. 57-2000; Ord. No. 31-13)

Sec. 41.200. Notice.

(a) The Director ~~of Public Works~~ shall maintain a list of persons who have made written request for notification prior to adoption or modification of a methodology for any SDC. Written notice shall be mailed to persons on the list at least 90 days prior to the first hearing to establish or modify a SDC. The methodology supporting the SDC shall be available at least 60 days prior to the first hearing to adopt or amend an SDC. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the City.

(b) The Director ~~of Public Works~~ may periodically delete names from the list, but at least 30 days prior to removing a name from the list, the Director ~~of Public Works~~ shall notify the person whose name is to be deleted at that person's last known address that a new written request for notification is required if the person wishes to remain on the notification list.

(Prior Code, § 41.200; Ord. No. 48-2002)

Sec. 41.210. Improvement plan.

(a) Prior to the establishment of an SDC, the ~~City~~ Council shall adopt a capital improvement plan, public facilities plan, master plan or comparable plan that includes a list of:

(1) The capital improvements that ~~City~~ Council intends to fund, in whole or in part, with SDCi fee revenues; ~~and~~

(2) The estimated cost and time of construction of each improvement and percentage of costs eligible to be funded with SDCi fee revenues for each improvement; and

(3) A description of the process for modifying the plan.

(b) In adopting this plan, the ~~City~~ Council may incorporate by reference all or a portion of any public facilities plan, master plan, capital improvements plan or similar plan that contains the information required by this section. The ~~City~~ Council may modify such plan and list at any time.

(Prior Code, § 41.210; Ord. No. 48-2002; Ord. No. 45-09)

Sec. 41.220. Implementing regulations; amendments.

The ~~City~~ Council delegates authority to the Director ~~of Public Works~~ to adopt necessary procedures to implement the provisions of this ~~ordinance~~ chapter. All rules made pursuant to this delegated authority shall be filed with the office of Director ~~of Public Works~~ and be available for public inspection.

(Prior Code, § 41.220; Ord. No. 48-2002)

Secs. 41.230—41.290. Reserved.

Sec. 41.300. Certification of costs by developer.

(a) Where a qualified public improvement as defined by SRC 41.100~~(h)~~ is constructed by a developer as required by SRC chapter 200, for which reimbursement or SDC credits may be available, the developer shall, within 30 days of City acceptance of the facility, prepare a sworn statement of all allowable costs incurred in the construction, and submit the same, together with proof of payment thereof, to the ~~Public Works~~ Director. The ~~Public Works~~ Director may require the developer to provide additional documentation prior to certification by the City.

(b) Allowable costs include:

(1) The actual price paid to an independent contractor or contractors for the construction of the facility or any part thereof.

(2) The cost of labor and materials, plus 15 percent thereof, for the work performed by the developer directly.

(3) The actual cost charged by an independent engineer or engineers for the design of the facility or any part thereof, or for supervision or inspection of its construction.

(4) The amount of wages or salary paid, plus 15 percent thereof, based on actual hours worked by engineers and draftsmen and other technicians who are directly employed by the developer for the design of the facility or any party thereof or for supervision or inspection of its construction.

(5) The actual cost of independent tests performed in aid of design of the facility, or to determine whether the materials and workmanship employed in the construction are within the approved specifications.

(6) The actual price paid to an independent surveyor for establishing lines, locations and grades (construction staking) for construction of the facility or to establish property lines, rights-of-way and easements for acquisition of property interests necessary to the facility.

(7) The amount of wages or salary paid, plus the cost of materials, plus 15 percent thereof, based on the actual hours worked by surveyors and their assistants who are employed by the developer for establishing lines, locations and grades (construction staking) for construction of the facility or to establish property lines, rights-of-way and easements for acquisition of property interests necessary to the facility.

(8) The costs of acquiring real property interests for the facility, escrow fees and fees related to litigation charged by the City Attorney and other involved city departments pursuant to SRC 200.050.

(9) The fair market value of real property within the development that is reserved for dedication to the City for public park use.

(c) ~~"~~Allowable costs~~"~~ do not include developer's personal oversight or superintendence of the project unless the developer is also the contractor, or interest or finance charges on money borrowed to finance the project.

(Prior Code, § 41.300; Ord. No. 31-13)

Sec. 41.305. Certification of costs by City.

Upon completion and final acceptance of a qualified public improvement as defined by SRC 41.100~~(h)~~, including right-of-way or easement acquisition costs, where the cost thereof is not to be assessed against benefitted property through the normal assessment procedure, the ~~Public Works~~ Director shall certify the allowable costs

thereof to the Finance ~~Director~~ Officer. Allowable costs include all costs which are allowable under SRC 41.300.

(Prior Code, § 41.305; Ord. No. 31-13)

Sec. 41.310. Reimbursements.

(a) *SDC credits.* A developer who constructs a qualified public improvement as defined by SRC 41.100~~(h)~~ shall be eligible for credits under SRC 41.160, and reimbursements in excess of credits for their allowable costs as provided in this section.

(1) Where the preliminary declaration requires the construction of such facilities and they are specified as eligible facilities in the improvement agreement, the developer shall be eligible for reimbursement from the Extra Capacity Facilities Fund for the allowable cost of such construction, as provided in ~~subparagraph~~ subsection (a)(2) of this section; provided, however, no reimbursement shall be given for the cost of that portion of any water or wastewater~~sewer~~ lines, eight inches or less, or any storm drainage line 12 inches or less, where lots representing 25 percent or more of the front footage take service from said lines; nor shall any reimbursement be given for any facility built larger than the above minimums if such capacity is needed by the development itself.

(2) Repayment from SDCs paid within a development, in the form of pass-thru credits as defined in SRC 41.100, is payable to any developer who provides an eligible facility, whether within or without the USA.

(b) *Reimbursement in excess of credits.*

(1) Subject to budgetary appropriation, reimbursement in excess of the credits is payable to any developer of an eligible facility that is listed in the CIP or budget as a publicly-funded improvement. Reimbursement for certified allowable costs shall be annually adjusted (indexed) for inflation beginning on the date the eligible facility is accepted by the City based upon the Engineering News Record (ENR) index approved by ~~City~~ Council for the methodologies for the facilities. Full reimbursement for certified allowable costs under this ~~paragraph~~ subsection shall be made within the time frame specified in the CIP and as funds are budgeted, but in no event later than 15 years from the time that the facility is accepted by the City.

(2) In no event shall a developer be reimbursed in an amount that exceeds the developer's allowable costs, plus return on investment or indexing as specified in ~~subparagraph~~ subsection (b)(1) of this section.

(c) *Administrative fee.* There shall be assessed against the developer an administrative fee for determining certified allowable costs and processing reimbursements in an amount established by resolution of the ~~City~~ Council.

(Prior Code, § 41.310; Ord. No. 81-83; Ord. No. 54-84; Ord. No. 111-90; Ord. No. 54-92; Ord. No. 117-94; Ord. No. 96-98; Ord. No. 57-2000; Ord. No. 65-2001; Ord. No. 37-08; Ord. No. 45-09; Ord. No. 31-13)

CHAPTER 42. RESERVED

CHAPTER 43. CABLE COMMUNICATIONS FRANCHISE CODE ~~AND TELEVISION SYSTEMS~~

~~**State law reference**— Authority regarding regulation of telecommunications carriers, ORS § 221.510.~~

Sec. 43.005. Intent.

(a) The City ~~of Salem~~, pursuant to applicable federal and state law, is authorized to grant one or more non-exclusive franchises to construct, operate, maintain and reconstruct cable television systems within the city limits.

(b) The ~~Common~~ Council finds that the development of cable television and communications system has the potential of having real benefit and impact upon the residents of Salem. Because of the complex and rapidly changing technology associated with cable television, the City further finds that the public convenience, safety and general welfare can best be served by establishing regulatory powers which should be vested in the City or such persons as the City shall designate. It is the intent of this chapter and subsequent amendments to provide for and specify the means to attain the best possible public interest and public purpose in these matters and any franchise issued pursuant to this chapter shall be deemed to include this finding as an integral part thereof.

(Prior Code, § 43.005; Ord. No. 38-87; Ord. No. 63-94)

Sec. 43.010. Short title.

This chapter shall be known and may be cited as the "Salem Cable Communications Franchise Code."

(Prior Code, § 43.010; Ord. No. 38-87)

Sec. 43.015. Definitions.

~~(a)~~For the purpose of this chapter the following words, terms, phrases~~, words~~ and their derivations shall have the meaning given herein. ~~When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number.~~ Words not defined shall be given their common and ordinary meaning.

~~(1)~~ *Agency subscriber* means a government or public agency, school, or designated nonprofit organization which receives a service from a cable communications system.

~~(2)~~ *Basic cable service* means any service tier which includes the retransmission of local television broadcast signals.

~~(3)~~ *Basic radio service* means the provision of audio programs to subscribers at a monthly rate.

~~(4)~~ *Broadcast signal* means a television or radio signal that is transmitted over the air to a wide geographic audience and is received by a cable communications system and retransmitted to subscribers. The term broadcast signal does not refer to any signal received by a cable system by means of a microwave or satellite delivery system.

~~(5)~~ *Cablecast signal* means a nonbroadcast signal that originates within the facilities of the cable communications system.

~~(6)~~ *Cable communications system* or *system*, also referred to as "cable television system," "cable system," "CATV system" or "community antenna TV system," means a facility crossing or using the public rights-of-way, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service which includes video programming and which is provided to multiple subscribers within a community, but such term does not include:

(a) A facility that serves only to retransmit the television signals of one or more television broadcast stations;

(b) A facility that serves only subscribers in one or more multiple unit dwellings under common ownership, control, or management, unless such facility uses any public right-of-way;

(c) A facility of a common carrier, except that such facility shall be considered a cable system to the extent such facility is used in the transmission of video programming directly to subscribers; or

(d) Any facilities of any electric utility used solely for operating its electric utility system.

~~(7)~~ *Cable-mile* means a linear mile of strand-bearing cable as measured on the street or easement from pole to pole or pedestal to pedestal.

~~(8)~~ *Cable service* means the total of the following:

(a) The one-way transmission to subscribers of video programming, or other programming services; and

(b) Subscriber interaction, if any, which is required for the selection of such video programming or other programming service.

~~(9)~~ *Channel* or *cable channel* means a portion of the electromagnetic frequency spectrum which is used in a cable system and which is capable of delivering a television channel as a television channel is defined by the Federal Communications Commission by regulation.

~~(10)~~ *City Manager* means the City Manager of the City of Salem or any designee thereof.

~~(11)~~ *Commence construction* means that time and date when construction of the cable communications system is considered to have commenced, which shall be when the first connection is physically made to a utility pole, or undergrounding of cables is initiated, after preliminary engineering (strand mapping) and after all necessary permits and authorizations have been obtained.

~~(12)~~ *Commence operation* means that time and date when operation of the cable communications system is considered to have commenced, which shall be when sufficient distribution facilities have been installed so as to permit the offering of full service to a dwelling unit located within the franchise area and such services are actually subscribed to by a resident of the franchise area.

~~(13)~~ *Commercial use* means the channel capacity designated for commercial use as defined and required by federal law.

~~(14)~~ *Completion of construction* means that point in time when all distribution facilities have been installed by the grantee so as to permit the offering of cable service to all of the potential subscribers to whom the system has access in the franchise area, as well as the provision, in an operational state, of any facilities required by the franchise agreement and which meet reasonable density requirements as specified in the franchise agreement.

~~(15)~~ *Converter* means an electronic device which converts signal carriers from one form to another.

~~(16)~~ *Council* means the governing body of the City ~~of Salem~~.

~~(17)~~ *Educational access channel* means a channel on which the primary programmers are noncommercial educational institutions.

~~(18)~~ *FCC* means the Federal Communications Commission and any legally appointed or elected successor.

~~(19)~~ *Franchise* means an initial authorization, or renewal thereof, issued by the ~~Common~~ Council, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, which authorizes the construction or operation of a cable system.

~~(20)~~ *Franchise agreement* means a contractual agreement, provided for under this chapter, containing the specific provisions of the franchise granted, including referenced specifications, franchise applications, franchise requirements, and other related materials.

~~(21)~~ *Franchise fee* means any fee or assessment of any kind imposed by a franchising authority on a grantee as compensation for the grantee's use of the public rights-of-way. The term "franchise fee" does not include:

(a) Any tax, fee or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services, but not including a tax, fee or assessment which is unduly discriminatory against cable operators or cable subscribers);

(b) Capital costs which are required by the franchise to be incurred by grantee for public, educational, or governmental access facilities;

(c) Requirements or charges incidental to the awarding or enforcing of the franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or

(d) Any fee imposed under Title 17, United States Code.

~~(22)~~ *Government access channel* means a channel on which the grantor is the primary programmer.

~~(23)~~ *Grantee* means any "person" receiving a franchise pursuant to this chapter and under the granting franchise ordinance, and its lawful successor, transferee or assignee.

~~(24)~~ *Grantor* or *City* means the City ~~of Salem~~ as represented by the ~~Common~~ Council or any delegate acting within the scope of authority delegated by the ~~Common~~ Council.

~~(25)~~ *Gross annual receipts* means the annual gross revenues received by the grantee or any affiliate of the grantee in whatever form accrued from the provision of all services over the cable television system within the City ~~utilizing the public streets and rights-of-way for which a franchise is required in order to deliver such service~~, excluding refundable deposits, rebates or credits, except that any sales, excise or other taxes or charges collected for direct pass-through to local, state or federal government, other than the franchise fee, shall not be included in the calculations of gross receipts.

~~(26)~~ *Initial service area* means the area of the City which will receive service initially, as set forth in any franchise agreement.

~~(27)~~ *Installation* means the connection of the system to subscribers' terminals, and the provision of service.

~~(28)~~ *Local origination channel* means any channel where the grantee or its designated agent is the primary designated programmer, and provides video programs to subscribers.

~~(29)~~ *Nonbroadcast signal* means a signal that is provided by a cable communications system and that is not involved in an over-the-air broadcast transmission path or is received by a cable system by means of a microwave or satellite delivery system.

~~(30)~~ *Pay-cable* or *pay-television* means the delivery to subscribers, over the cable communications system, of television signals for a fee or charge to subscribers over and above the charge for basic cable service, on a per program, per channel, or other subscription basis.

~~(31)~~ *Person* means an individual, partnership, association, joint stock company, trust, corporation, limited liability company or governmental entity.

~~(32)~~ *Private channel* or *closed-circuit channel* means any channel which is available only to subscribers who are provided with special converter or terminal equipment to receive signals on that channel.

~~(33)~~ *Programmer* means a person or entity who or which produces or otherwise provides program material or information for transmission by video, audio, digital, or other signals, either live or from recorded tapes or other storage media, to subscribers, by means of the cable communications system.

~~(34)~~ *Public access channel* means a channel on which the primary programmers are noncommercial community organizations or individuals of the public. ~~operating under rules established by the Grantor.~~

~~(35)~~ *Public, educational or government access facilities* or *PEG access facilities* means the total of the following:

(a) Channel capacity designated for public, educational, or governmental use; and

(b) Facilities and equipment for the use of such channel capacity.

~~(36)~~ *Resident* means any person residing in the City as otherwise defined by applicable law.

~~(37)~~ *Residential subscriber* means a subscriber who receives, with grantee's authorization, a service in an individual dwelling unit, where the service is not to be utilized in connection with a business, trade, or profession.

~~(38)~~ *School* means any accredited, nonprofit, academic educational institution, including primary and secondary schools, colleges and universities, both public and private.

~~(39)~~ *Section* means any section, subsection, or provision of this chapter.

~~(40)~~ *Service area* or *franchise area* means the entire geographic area within the City as it is now constituted or may in the future be constituted, unless otherwise specified in the franchise.

~~(41)~~ *Service tier* means a category of cable service or other services provided by grantee and for which a separate rate is charged by the grantee.

~~(42) *State* means the State of Oregon.~~

~~(43)~~ *Street*~~,~~ ~~or~~ *public ways* or *public rights-of-way* means each of the following which have been dedicated to the public or are hereafter dedicated to the public and maintained under public authority or by others and located within the city limits: streets, roadways, highways, avenues, lanes, alleys, sidewalks, easements, rights-of-way and similar public property and areas that the grantor shall permit to be included within the definition of street from time to time.

~~(44)~~ *Subscriber* means any person who or which elects to subscribe to, for any purpose, a service provided and authorized by the grantee by means of or in connection with the cable system, and who pays the charges therefor.

(Prior Code, § 43.015; Ord. No. 38-87; Ord. No. 63-94)

GRANT OF FRANCHISE

Sec. 43.020. Grant.

(a) In the event that the grantor shall grant to a grantee a nonexclusive, revocable franchise to construct, operate, maintain, and reconstruct, a cable communications system within the franchise area, or a renewal of an existing franchise, said franchise or renewal shall constitute both a ~~right~~ privilege and an obligation to provide the services of a cable communications system as required by the provisions of this chapter and the franchise agreement. The franchise agreement shall include those provisions of the grantee's application for franchise or application for renewal that are finally negotiated and accepted by the grantor and grantee.

(b) Any franchise granted under the terms and conditions contained herein shall be consistent with federal and state laws and regulations. In the event of conflict between the terms and conditions of the franchise and the general law and/or statutory requirements, the latter shall, without exception, control.

(c) Any franchise granted is hereby made subject to the general provisions of this chapter now in effect or hereafter made effective, except to the extent that those provisions thereafter made effective increase the material burdens or diminish the rights of the grantee under the franchise. Nothing in the franchise shall be deemed to waive the requirements of the other codes and ordinances of the grantor regarding permits, fees to be paid or manner of construction.

(Prior Code, § 43.020; Ord. No. 38-87; Ord. No. 63-94)

Sec. 43.025. Franchise required.

No cable communications system shall be allowed to occupy or use the streets in the franchise area or be allowed to operate without a franchise in accordance with the provisions of this chapter.

(Prior Code, § 43.025; Ord. No. 38-87)

Sec. 43.030. Establishment of franchise requirements.

The grantor may establish appropriate requirements for franchises granted pursuant to this chapter and may modify these requirements from time to time. Such requirements shall not be retroactive to franchises then in effect, but shall become applicable when the franchise is renewed.

(Prior Code, § 43.030; Ord. No. 38-87)

Sec. 43.035. Franchise area.

The grantor may grant a franchise for all portions of the City. The service area shall be the entire territory defined in the franchise agreement. The initial service area shall be that portion of the franchise area scheduled to receive initial service, as stated in the franchise agreement.

(Prior Code, § 43.035; Ord. No. 38-87)

Sec. 43.040. Use of public streets and ways.

For the purpose of operating and maintaining a cable communications system to provide cable service in the franchise area, and subject to the provisions of SRC 43.225, the grantee may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the public streets and ways within the franchise area such wires, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments, and other property and equipment as are necessary and appurtenant to the operation of the cable communications system to provide cable service. Prior to construction, repair or alteration requiring permits or street cuts in the street surface, the grantee shall notify the City for purposes of determining ownership of cuts at a later date if failure occurs. However, the grantee shall, in each case, file plans with the appropriate grantor agencies and local utility companies, and receive written approval before proceeding. Grantee shall in any event comply with all applicable grantor construction codes and procedures.

(Prior Code, § 43.040; Ord. No. 38-87)

Sec. 43.045. Duration.

The term of any franchise and all rights, privileges, obligations and restrictions pertaining thereto shall be as specified in the franchise agreement unless terminated sooner as hereinafter provided. The effective date of the franchise shall be the date of execution of the franchise agreement by the grantor, subject to prior execution by the grantee.

(Prior Code, § 43.045; Ord. No. 38-87)

Sec. 43.050. Franchise nonexclusive; limiting number of franchises.

(a) Any franchise granted shall be nonexclusive. Grantor may grant any number of franchises subject to applicable state and federal law. ~~Grantor may limit the number of franchises granted, based upon, but not necessarily limited to, the requirements of applicable law and specific local considerations such as:~~

~~(1) The capacity of the public rights-of-way to accommodate multiple cables in addition to the cables, conduits and pipes of the utility systems, such as electrical power, telephone, gas and sewerage.~~

~~(2) The benefits that may accrue to cable subscribers as a result of cable system competition, such as lower rates and improved service.~~

~~(3) The disadvantages that may result from cable system competition, such as the requirement for multiple pedestals on residents' property, and the disruption arising from numerous excavations of the rights-of-way.~~

(b) Each grantee awarded a franchise to serve the entire City shall offer universal service to all residences in the City, in accordance with construction and service schedules provided in the franchise agreement between grantor and grantee, and consistent with applicable law.

(c) Developers of new residential housing with underground utilities shall provide conduit to accommodate cables for at least two cable systems.

(d) Grantor may require that any new grantee be responsible for its own underground trenching and the costs associated therewith, if, in grantor's opinion, the rights-of-way in any particular area cannot feasibly and reasonably accommodate additional cables.

(Prior Code, § 43.050; Ord. No. 38-87; Ord. No. 63-94)

Sec. 43.055. Franchise applications.

(a) Any person desiring an initial franchise for a cable communications ~~television~~ system shall file an application with the City. A reasonable nonrefundable application fee established by the City shall accompany the application to cover all costs associated with processing and reviewing the application.~~, including without limitation costs of administrative review, financial, legal and technical evaluation of the applicant, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication requirements with respect to the consideration of the application and document preparation expenses.~~ In the event such costs exceed the

application fee, the selected applicant(s) shall pay the difference to the City within 30 days following receipt of an itemized statement of such costs.

(b) An application for an initial franchise for a cable communications ~~television~~ system shall contain, where applicable:

(1) A statement as to the proposed franchise and service area;

(2) A resume of the prior history of the applicant, including the expertise of the applicant in the cable communications ~~television~~ field;

(3) A list of the partners, general and limited, of the applicant, if a partnership, or the percentage of stock owned or controlled by each stockholder, if a corporation;

(4) A list of officers, directors and managing employees of the applicant, together with a description of the background of each such person;

(5) The names and addresses of any parent or subsidiary of applicant or any other business entity owning or controlling the applicant in whole or in part, or owned or controlled in whole or in part by the applicant;

(6) A current financial statement of the applicant verified by a certified public accountant audit or otherwise certified to be true, complete and correct to the reasonable satisfaction of the City;

(7) A proposed construction and service schedule;

(8) Any reasonable additional information that the City deems applicable.

(Prior Code, § 43.055; Ord. No. 38-87; Ord. No. 63-94)

Sec. 43.060. Grant procedure.

(a) Upon receipt of any application for an initial franchise, the City Manager shall prepare a report and make recommendations respecting such application to the ~~Common~~ Council.

(b) A public hearing shall be set prior to any initial franchise grant, at a time and date approved by the Council. Within 30 days after the close of the hearing, the Council shall make a decision based upon the evidence received at the hearing as to whether or not the franchise(s) should be granted, and, if granted, subject to what conditions. The Council may grant one or more franchises, or may decline to grant any franchise.

(c) Any grant of a franchise shall become effective through the execution by the grantor and grantee of a franchise agreement subject to the terms and conditions of this chapter, except as otherwise expressly required by applicable law.

(Prior Code, § 43.060; Ord. No. 38-87; Ord. No. 63-94)

Sec. 43.065. Transfer of ownership or control.

(a) Grantee shall not sell, transfer, lease, assign, sublet or dispose of, in whole or in part, either by forced or involuntary sale, or by ordinary sale, contract, consolidation or otherwise, the franchise or any of the rights or privileges therein granted, without the prior consent of the Council and then only upon such terms and conditions as may be prescribed by the Council, which consent shall not be unreasonably denied or delayed. Any attempt to sell, transfer, lease, assign or otherwise dispose of the franchise without the consent of the Council shall be null and void. The granting of a security interest in any grantee assets, or any mortgage or other hypothecation, shall not be considered a transfer for the purposes of this section. A transfer of the franchise from one or more wholly-owned subsidiaries of grantee's parent company to another wholly-owned subsidiary of grantee's parent shall not require prior grantor consent.

(b) The requirements of subsection (a) of this section shall apply to any change in control of grantee. The ~~word~~ term "control," as used herein, is not limited to major stockholders or partnership interests, but includes actual working control in whatever manner exercised. In the event that grantee is a corporation, prior authorization of the Council shall be required where ownership or control of more than ten percent of the voting stock of grantee is acquired by a person or group of persons acting in concert, none of whom own or control the voting stock of the grantee as of the effective date of the franchise, singularly or collectively.

(c) Grantee shall notify grantor in writing of any foreclosure or any other judicial sale of all or a substantial

part of the franchise property of the grantee within grantor's jurisdiction or upon the termination of any lease or interest covering all or a substantial part of said franchise property. Such notification shall be considered by grantor as notice that a change in control of ownership of the franchise has taken place and the provisions under this section governing the consent of grantor to such change in control of ownership shall apply.

(d) For the purpose of determining whether it shall consent to such change, transfer, or acquisition of control, grantor may inquire into the qualifications of the prospective transferee or controlling party, and grantee shall assist grantor in such inquiry. In seeking grantor's consent to any change of ownership or control, grantee shall have the responsibility of ensuring that the transferee completes an application in form and substance reasonably satisfactory to grantor, which application shall include the information required under SRC 43.055. An application shall be submitted to grantor not less than 60 days prior to the date of transfer. The transferee shall be required to establish that it possesses the qualifications and financial and technical capability to operate and maintain the system and comply with all franchise requirements for the remainder of the term of the franchise. If the legal, financial, character, and technical qualifications of the applicant are satisfactory, the grantor shall consent to or deny the transfer of the franchise within 120 days after receipt of the transfer request. The consent of the grantor to such transfer shall not be unreasonably denied or delayed.

(e) Any financial institution having a pledge of the grantee or its assets for the advancement of money for the construction and/or operation of the franchise shall have the right to notify the grantor that it or its designee satisfactory to the grantor shall take control of and operate the cable ~~television~~ communications system, in the event of a grantee default of its financial obligations. Further, said financial institution shall also submit a plan for such operation within 30 days of assuming such control that will ensure continued service and compliance with all franchise requirements during the term the financial institution exercises control over the system. The financial institution shall not exercise control over the system for a period exceeding one year unless extended by the grantor in its discretion, and during said period of time it shall have the right to petition the grantor to transfer the franchise to another grantee.

(f) Upon transfer, grantee shall reimburse grantor for grantor's reasonable processing and review expenses in connection with a transfer of the franchise or of control of the franchise, including, without limitations, costs of administrative review, financial, legal and technical evaluation of the proposed transferee, consultants (including technical and legal experts and all costs incurred by such experts), notice and publication costs and document preparation expenses. Any such reimbursement shall not be charged against any franchise fee due to grantor during the term of the franchise.

(Prior Code, § 43.065; Ord. No. 38-87; Ord. No. 63-94)

Sec. 43.070. Franchise renewal.

Franchise renewal shall be as prescribed by applicable law. Grantor and grantee, by mutual consent, may enter into renewal negotiations at any time during the term of the franchise. Upon mutual execution of a franchise renewal agreement, grantee shall reimburse grantor for special nonrecurring out-of-pocket costs incidental to the franchise renewal award ~~including but not limited to attorney and consultant costs and publishing costs, not to exceed any maximum specified in the agreement~~. Any such reimbursement shall not be charged against any franchise fee due to the grantor during the term of the franchise, except as otherwise expressly required by applicable law.

(Prior Code, § 43.070; Ord. No. 38-87; Ord. No. 63-94)

Sec. 43.075. Police powers.

(a) In accepting a franchise, the grantee acknowledges that its rights hereunder are subject to the police power of the grantor to adopt and enforce general ordinances necessary to the safety and welfare of the public; and it agrees to comply with all applicable general laws and ordinances enacted by the grantor pursuant to such power.

(b) Any conflict between the provisions of this chapter and any other present or future lawful exercise of the grantor's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction or applies exclusively to any cable communications system franchise which contains provisions inconsistent with this chapter shall prevail only if upon such exercise the grantor finds any emergency exists constituting a danger to health, safety, property or general welfare or such exercise is mandated by law.

(Prior Code, § 43.075; Ord. No. 38-87)

Sec. 43.080. Franchise fee.

(a) *Annual franchise payment.* A grantee of a franchise hereunder shall pay to the grantor an annual fee in an amount as designated in the franchise agreement. Such payment shall be in addition to any other prescribed fees, including, but not limited to, business license and permit fees, and commence as of the effective date of the franchise. The grantor, upon request, shall be furnished a statement, either audited and certified by an independent certified public accountant or certified by a financial officer of the grantee, reflecting the total amounts of gross receipts and all payments, deductions and computations for the period covered by the payment. Grantor shall have the right to conduct an independent audit of grantee's records, and if such audit indicates a franchise fee underpayment of two percent or more, the grantee shall assume all reasonable costs of such an audit.

(b) *Acceptance by grantor.* No acceptance of any payment by the grantor shall be construed as a release or as an accord and satisfaction of any claim the grantor may have for further or additional sums payable as a franchise fee under this ~~ordinance~~ chapter or for performance of any other obligation of the grantee. All amounts paid shall be subject to audit and recomputation by the grantor for a maximum period of three years.

(c) *Failure to make required payment.* In the event that any franchise payment or recomputed amount is not made on or before the dates specified in the franchise agreement. Grantee shall pay as additional compensation:

(1) An interest charge, computed from such due date, at an annual rate equal to the statutory interest rate in effect upon the due date.

(2) A sum of money, as liquidated damage, equal to five percent of the amount due in order to defray those additional expenses and costs incurred by the grantor by reason of delinquent payment.

(d) *Payments.* Franchise fee payments shall be made in accordance with the schedule indicated in the franchise agreement.

(e) *Grantee franchise fee may be passed through.* Any grantee franchise fee costs may be passed through to subscribers and designated as a separate line item on subscribers' bills, in accordance with federal law.

(Prior Code, § 43.080; Ord. No. 38-87)

Sec. 43.085. Forfeiture, revocation or termination. ~~Revocation.~~

(a) *Grounds for revocation or termination.* The grantor reserves the right to terminate or revoke any franchise granted hereunder and rescind all rights and privileges associated with it in the following circumstances, each of which shall represent a default by grantee and a material breach under the franchise grant:

(1) If the grantee should default in the performance of any of its material obligations under this chapter or under the franchise agreement and such default continues for 30 days after receipt of due notice and reasonable opportunity to cure the default;

(2) If the grantee should fail to provide or maintain in full force and effect the insurance coverage and security fund as required in the franchise agreement;

(3) If the grantee shall willfully violate any order or ruling of any regulatory body having jurisdiction over the grantee relative to the grantee's franchise, unless such order or ruling is being contested by grantee by appropriate proceedings conducted in good faith;

(4) If the grantee practices any fraud or deceit upon the grantor;

(5) If the grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt.

(b) *Procedure prior to revocation or termination.*

(1) The grantor may make written demand that the grantee do so comply with any such material requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation. If the failure, refusal or neglect of the grantee continues for a period of 30 days following such written demand, the grantor may place the issue of revocation or termination of the franchise upon a regular Council meeting agenda. The grantor shall cause notice to be served upon such grantee specifying the grounds therefor, at least ten days prior to the date of such meeting, a written notice of this intent to request such revocation or termination, and the time and place of the meeting, notice of which shall be published at

least once, ten days before such meeting in a newspaper of general circulation within the franchise area.

(2) The grantor shall hear any person interested therein on the grounds set forth in the notice described in subsection (b)(1) of this section and the grantee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to question witnesses. Then, the grantor shall determine, based upon the preponderance of the evidence, whether the grantee has committed a material breach of this chapter or the franchise agreement, and, if so, whether such breach was willful.

(3) If the grantor determines that the grantee has willfully committed a material breach or otherwise fails to remedy a material breach, then the grantor may, by resolution, declare that the franchise of such grantee shall be revoked or terminated and security fund and bonds forfeited, or the grantor may, at its option and if the material breach is capable of being cured by the grantee, direct the grantee to take appropriate remedial action within such time and manner and upon such terms and conditions as the grantor shall determine are reasonable under the circumstances.

(4) Any decision to revoke or terminate shall be made by a vote of a majority of the full Council, shall be in writing and shall be based upon findings of fact. Grantee shall have the right to have such determination of revocation or termination reviewed in a court of appropriate jurisdiction.

(Prior Code, § 43.085; Ord. No. 38-87; Ord. No. 63-94)

Sec. 43.090. Procedures in the event of termination or expiration.

(a) *Disposition of facilities.* In the event a franchise expires, is revoked, or otherwise terminated, the grantor may require the grantee to remove, at its own expense, all above ground system facilities and other portions of the cable system as determined to be in the best interest of public safety within a reasonable time.

(b) *Restoration of property.* In removing its plant, structures and equipment, the grantee shall restore, at its own expense, any excavation or facility that has been affected during the removal process and shall leave all public ways facilities in as good condition as that prevailing prior to the grantee's removal of its equipment and appliances without affecting the electrical or telephone cable wires, or attachments. The liability, indemnity and insurance, and the security fund and bonds provided shall continue in full force and effect during the period of removal and until full compliance by the grantee with the terms and conditions of this section.

(c) *Restoration by grantor, reimbursement of costs.* In the event of a failure by the grantee to complete any work required by subsection (a) ~~above~~ and/or ~~Subsection~~ (b) ~~above~~ of this section, or any other work required by grantor by law or ordinance within the time as may be established and to the satisfaction of the grantor, the grantor may cause such work to be done and the grantee shall reimburse the grantor the cost thereof within 30 days after receipt of an itemized list of such costs or the grantor may recover such costs through the security fund or bonds provided by grantee. The grantor shall be permitted to seek legal and equitable relief to enforce the provisions of this section. Any property remaining in place one year after the termination of the franchise shall be considered abandoned in place. In such cases, the property in the public right-of-way shall become that of the City and grantee shall submit to the Director ~~of Public Works~~, an instrument in writing, transferring ownership of such property to the City.

(d) *Grantor's rights not affected.* The termination and forfeiture of any franchise shall in no way affect any of the rights of the grantor to pursue any remedy under the franchise or any provision of law.

(Prior Code, § 43.090; Ord. No. 38-87; Ord. No. 63-94)

Sec. 43.095. Receivership and foreclosure.

(a) Any franchise granted shall, at the option of the grantor, cease and terminate 120 days after the appointment of a receiver or receivers or trustee or trustees to take over and conduct the business of the grantee, whether in a receivership or trusteeship or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said 120 days, or unless:

(1) Such receivers or trustees shall have, within 120 days after their election or appointment, fully complied with all the terms and provisions of this chapter and the franchise granted pursuant hereto, and the receivers or trustees within said 120 days shall have remedied all defaults under the franchise; and

(2) Such receivers or trustees shall, within said 120 days, execute an agreement duly approved by the Court having jurisdiction on the premises, whereby such receivers or trustees assume and agree to be bound by each and every term, provision and limitation of the franchise agreement.

(b) In the case of a foreclosure or other involuntary sale of the plant, property and equipment of the grantee, or any part thereof, the grantor may serve notice of termination upon the grantee and to the purchaser at such sale, in which event the franchise and all rights and privileges of the grantee hereunder shall cease and terminate 30 days after service of such notice, unless:

(1) The grantor shall have approved the transfer of the franchise, as and in the manner in this chapter provided; and

(2) Such successful purchaser shall have covenanted and agreed with the grantor to assume and be bound by all the terms and conditions of the franchise agreement.

(Prior Code, § 43.095; Ord. No. 38-87)

Sec. 43.097. Abandonment or removal of franchise property.

(a) In the event that the use of any property of grantee within the public rights-of-way is discontinued for a continuous period of 12 months, grantee shall be deemed to have abandoned that franchise property. Any part of the cable system that is parallel or redundant to other parts of the system and is intended for use only when needed as a backup for the system or a part thereof, shall not be deemed to have been abandoned because of its lack of use.

(b) Grantor, upon such terms as grantor may impose, may give grantee permission to abandon, without removing, any system facility or equipment laid, directly constructed, operated or maintained under the franchise. Unless such permission is granted or unless otherwise provided in this chapter, the grantee shall remove all abandoned above-ground facilities and equipment upon receipt of written notice from grantor and shall restore any affected street to its former state at the time such facilities and equipment were installed, reasonable wear and tear excepted, so as not to impair its usefulness. In removing its plant, structures and equipment, grantee shall refill, at its own expense, any excavation that shall be made by it and shall leave all public ways and places in as good condition as that prevailing prior to such removal without materially interfering with any electrical or telephone cable or other utility wires, poles, or attachments. Grantor shall have the right to inspect and approve the condition of the public ways, public places, cables, wires, attachments and poles prior to and after removal. The liability, indemnity and insurance provisions of this chapter and the security fund as provided herein shall continue in full force and effect during the period of removal and until full compliance by grantee with the terms and conditions of this section.

(c) Upon abandonment of any franchise property in place, the grantee, if required by the grantor, shall submit to the grantor an instrument, satisfactory in form to the grantor, transferring to the grantor the ownership of the franchise property abandoned.

(d) At the expiration of the term for which the franchise is granted, or upon its termination or earlier expiration, as provided herein, in any such case without renewal, extension or transfer, the grantor shall have the right to require grantee to remove, at its own expense, all above-ground portions of the cable television system from all streets and public ways within the City within a reasonable period of time, which shall not be less than 180 days.

(e) Notwithstanding anything to the contrary set forth in this chapter, the grantee may abandon any underground franchise property in place so long as it does not materially interfere with the use of the street or public rights-of-way in which such property is located or with the use thereof by any public utility or other cable grantee.

(Prior Code, § 43.097; Ord. No. 63-94)

Sec. 43.100. Franchise processing costs.

(a) For either a new franchise award or a franchise renewal, costs to be borne by grantee shall include, but shall not be limited to, all costs of publications of notices prior to any public meeting provided for pursuant to a franchise, development and publication of relevant ordinances and franchise agreement, fees, and any reasonable cost not covered by the application fees, incurred by the grantor in its study, preparation of proposal solicitation documents and evaluation of applications. ~~, including, but not limited to, consultant and attorney fees and Grantor staff time.~~

(b) These franchise processing costs shall be independent of the construction inspection and permit fees specified in SRC 43.230(a)(1) and the franchise fee specified in SRC 43.080~~ herein~~.

(Prior Code, § 43.100; Ord. No. 38-87)

REGULATION OF FRANCHISE

Sec. 43.105. Regulatory authority.

The grantor shall exercise appropriate regulatory authority under the provisions of this chapter and applicable law. If the franchise area served by the cable communications system also serves other contiguous or neighboring communities, grantor may, at its sole option, participate in a joint regulatory agency, with delegated responsibility in the area of cable and related communications.

(Prior Code, § 43.105; Ord. No. 38-87)

Sec. 43.110. Regulatory responsibility.

~~(a)~~The grantor, acting alone or acting jointly with other grantors, may exercise or delegate regulatory responsibility, including, but not limited to, the following areas:

(a) Administering and enforcing the provisions of the cable communications system franchise(s).

(b) Coordination of the operation of public, educational and government access channels and facilities.

(c) Providing technical, programming and operational support to public agency users, such as government departments, schools and health care institutions.

(d) Establishing procedures and standards for use of channels dedicated to PEG access use, if provided for in any franchise agreement.

(e) Planning expansion and growth of public benefit cable services.

(f) Analyzing the possibility of integrating cable communications with other local, state or national telecommunications networks.

(g) Formulating and recommending long-range telecommunications policy.

(Prior Code, § 43.110; Ord. No. 38-87)

Sec. 43.115. Public usage of the system.

~~(a)~~If so specified in the franchise agreement, the grantor may utilize a portion of the cable communications system capacity, set aside by the grantee and associated facilities and resources, to develop and provide cable services that will be in the public interest. In furtherance of this purpose, the grantor may establish a commission, public corporation, or other entity to receive and allocate facilities, support funds and other considerations provided by the grantee, and/or others. Such an entity, if established, may be delegated the following responsibilities:

(a) Receive, utilize or reallocate for utilization, channel capacity, facilities, funding and other support provided specifically for public usage of the cable communications system.

(b) Review the status and progress of each service developed for public benefit.

(c) Reallocate resources on a periodic basis to conform with changing priorities and public needs.

(d) Report to the grantor annually on the utilization of resources, the new public services developed and the benefits achieved for the grantor and its residents.

(Prior Code, § 43.115; Ord. No. 38-87)

Sec. 43.120. Public, educational, and governmental (PEG) access facility management.

(a) *Intent.* It is the intent of the grantor to ensure that PEG access facilities provided for in any franchise agreement shall be managed in the best public interest so that programming using such facilities will be open to all residents, and available for all forms of public expression, community information and debate of public issues. Pursuant to these objectives, the grantor may delegate the responsibility for PEG access facility management to a nonprofit entity which may include, but not be limited to, any of the following:

(1) A nonprofit public corporation.

(2) A PEG access facility management commission or committee, appointed by grantor, and representing a broad spectrum of the community.

(3) An established nonprofit entity with special cablecasting capability, such as a local or regional community college.

(4) An intergovernmental entity created pursuant to ORS ch. 190.

(b) *Functions.* The entity designated to manage the PEG access facilities shall have the following functions:

(1) To assume responsibility for and management of the public access facilities as may in the franchise agreement be designated for community-based programming. Community channels may include public, educational and government access channels, as designated in the franchise agreement.

(2) To ensure that the PEG access facilities are made available to all residents of the franchise area on a nondiscriminatory, first-come, first-served basis.

(3) To ensure that no censorship or control over program content of the PEG access facilities exists except as necessary to comply with federal prohibition of material that is obscene.

(4) To devise, establish, and administer all rules, regulations, and procedures pertaining to the use and scheduling of the PEG access facilities.

(5) To prepare, in conjunction with the grantee, such regular or special reports as may be required or desirable.

(6) To hire and supervise staff.

(7) To make all purchases of materials and equipment that may be required.

(8) To develop sources of funding, such as foundation or federal or state grants, to further community programming.

(9) To perform such other functions relevant to the PEG access facilities as may be appropriate.

(10) To establish budgets on an annual basis, and utilize funds and resources received from the grantor or the public usage entity designated in SRC 43.115, for the purpose of PEG access programming.

(c) *Access rules.* The PEG access facility management entity shall complete a set of rules for the use of the PEG access facilities which shall be promptly forwarded to the grantor. The rules shall be prepared in cooperation with the grantee, and confirmed by agreement between the PEG access facility management entity and the grantee. The rules shall, at a minimum, provide for:

(1) Access on a first-come, first-served, nondiscriminatory basis for all residents of the franchise area.

(2) Prohibition of commercial or political use.

(3) Prohibition of any presentation of obscene or indecent material.

(4) Public inspection of the log of producers, which shall be retained by the PEG access facility management for a period of four years.

(5) Procedures by which individuals or groups who violate any rule may be prevented from further access to the facilities.

(6) Use of such reasonable amounts of channel time, cablecasting facilities, and technical support as are provided for in the agreement between the PEG access facility management entity and the grantee.

(d) *PEG access facility management entity reports to grantor.* The PEG access facility management entity shall provide a report to the grantor, at least annually, indicating achievements in community-based programming and services.

(Prior Code, § 43.120; Ord. No. 38-87)

Sec. 43.125. Reservation by grantor.

The grantor reserves the right, at its discretion, from time to time, to determine if the entities described in SRC 43.115 and 43.120 ~~above~~ are performing their purposes in a manner satisfactory to the grantor, and if they are not, the grantor may receive and reallocate all or a portion of the channel capacity operations appropriation, and capital appropriation, including any facilities and equipment purchased previously with such appropriation, to another entity. A new entity shall be required to comply in all respects with the legal responsibilities described in SRC 43.115 and 43.120.

(Prior Code, § 43.125; Ord. No. 38-87)

Sec. 43.130. Rates.

(a) *General.* The grantee shall establish rates for its service categories that shall be applied fairly and uniformly to all subscribers in the franchise areas, except as otherwise expressly required by applicable law.

(b) *Schedule of rates.* The grantee shall maintain and file with the grantor, a complete schedule of subscriber rates including all fees and charges for services. The grantee shall notify the grantor at least 30 days prior to any change in rates.

(c) *No consideration beyond schedule.* The grantee shall receive no consideration whatsoever for, or in connection with, its provision of service to its subscribers other than as filed with the grantor.

(Prior Code, § 43.130; Ord. No. 38-87)

Sec. 43.135. Rate change procedure.

The following procedure shall be utilized to the extent that grantor regulation of rates is not preempted, and grantor desires to exercise rate regulation:

(a) Within 30 days of the filing of a petition for rate change for any rates subject to grantor regulation, the grantor shall hold an appropriate public hearing to consider the proposed rate change, at which hearing all persons desiring to be heard, including grantee, shall be heard on any related matter, including, but not limited to, the performance of its franchise, the grantee's services, and the proposed new rates.

(b) Upon notice of any public hearing as provided above, the grantor shall notify subscribers of the time, place and subject matter of the public hearing by announcement for at least two consecutive days prior to the hearing.

(c) Within 30 days after said hearing, the grantor shall render a written decision on the grantee's petition, either accepting, rejecting, modifying or deferring the same and reciting the basis for its decision. The grantor shall consider the following factors in approving or disapproving the petition:

(1) Grantee's substantial fulfillment of all material requirements for the franchise.

(2) Quality of service, as indicated by the number and type of service complaints, grantee's response to complaints, and the result of periodic system performance tests and the annual reviews specified in SRC 43.140.

(3) Prevailing rates for comparable services in other cable systems of similar size and complexity.

(4) Rate of return on grantee's equity, as compared to businesses of equivalent risk.

(Prior Code, § 43.135; Ord. No. 38-87)

Sec. 43.140. Annual review of quality of service.

At grantor's sole option, within 90 days of the first anniversary of the effective date of each franchise, and each year thereafter from time to time throughout the term of the franchise, the grantor and grantee shall meet publicly to review the performance and quality of service of the cable communications system. The reports required in SRC 43.270 to 43.295 regarding subscriber complaints, the records of performance tests and the opinion survey report shall be utilized as the basis for review. In addition, any subscriber may submit comments during the review meetings, either orally or in writing, and these shall be considered.

(a) Within 30 days after the conclusion of the quality of service review meetings, grantor shall issue a report with respect to the adequacy of system performance and quality of service. If inadequacies are found,

grantor may direct grantee to correct the inadequacies within a reasonable period of time.

(b) Failure of grantee, after due notice, to correct the inadequacies may be considered a material breach of the franchise, and grantor may, at its sole discretion, exercise any remedy within the scope of this chapter considered appropriate.

(Prior Code, § 43.140; Ord. No. 38-87)

Sec. 43.145. System and services review.

To provide for technological, economic, and regulatory changes in the state of the art of cable communications, to facilitate renewal procedures, to promote the maximum degree of flexibility in the cable system, and to achieve a continuing, advanced modern system, the following system and services review procedures are hereby established:

(a) At grantor's sole option, the grantor and grantee may hold a system and services review session on or about the third anniversary date of the franchise agreement. Subsequent system review sessions may be scheduled by the grantor approximately each three years thereafter.

(b) Topics for discussion and review at the system and services review sessions shall include, but shall not be limited to, services provided, application of new technologies, system performance, programming, subscriber complaints, user complaints, rights of privacy, amendments to the franchise, undergrounding processes, developments in the law, and regulatory constraints, and technical and economic feasibility of system expansion or upgrading.

(c) Either the grantor or the grantee may select additional topics for discussion at any review session.

(d) When there have been repeated, reasonably documented complaints made or where there exists other evidence which, in the judgment of the grantor, casts reasonable doubt on the reliability or quality of cable service to the effect that the grantee is not in compliance with the requirements of this chapter or its franchise, the grantor shall have the right to require the grantee to test, analyze and report on the performance of the system in order to protect the public against substandard cable service. Grantor may not compel grantee to provide such tests or reports unless and until grantor has provided grantee with at least 30 days' notice of its intention to exercise its rights under this section and has provided grantee with an opportunity to be heard prior to its exercise of such rights. Such test or tests shall be made and the report shall be delivered to the grantor no later than 30 days after the grantor notifies the grantee that it is exercising such right, and shall be made at grantee's sole cost. Such report shall include the following information: the nature of the complaints which precipitated the special tests, what system component was tested, the equipment used and procedures employed in said testing, the results of such tests, and the method by which such complaints were resolved. Any other information pertinent to the special test shall be recorded.

(Prior Code, § 43.145; Ord. No. 38-87; Ord. No. 63-94)

GENERAL FINANCIAL AND INSURANCE PROVISIONS

Sec. 43.150. Construction bond.

(a) Within 30 days after the granting of a franchise and prior to the commencement of any construction work by the grantee, the grantee may file with the grantor a construction bond in the amount specified in the franchise agreement in favor of the grantor and any other person who may suffer damages as a result of the breach of any duty by the grantee insured by such bond.

(b) Such bond as contemplated herein shall be in the form approved by the grantor and shall, among other matters, cover the cost of removal of any properties installed by the grantee in the event said grantee shall default in the performance of its franchise obligation.

(c) In no event shall the amount of said bond be construed to limits the liability of the grantee for damages.

(d) Grantor, at its sole option, may waive this requirement, or permit consolidation of the construction bond with the performance bond and security fund specified, respectively, in SRC 43.155 and 43.160.

(Prior Code, § 43.150; Ord. No. 38-87)

Sec. 43.155. Performance bond.

(a) In addition to the construction bond set forth above, the grantee may be required to, at least 30 days prior to the commencement of operation, file with the grantor a performance bond in the amount specified in the franchise agreement in favor of the grantor and any other person who may suffer damages as a result of any occurrence in the operation or termination of the cable communications system operated under the franchise agreement, and including the payments required to be made to the grantor hereunder.

(b) Such bond as contemplated herein shall be in the form approved by the grantor.

(c) In no event shall the amount of said bond be construed to limit the liability of the grantee for damages.

(Prior Code, § 43.155; Ord. No. 38-87)

Sec. 43.160. Security fund.

(a) Within 30 days after the effective date of the franchise, the grantee may be required to deposit into a bank account, established by the grantor, and maintain on deposit through the term of this franchise, the sum specified in the franchise agreement, as security for the faithful performance by it of all the provisions of the franchise, and compliance with all orders, permits and directions of any agency of the grantor having jurisdiction over its acts or defaults under this chapter, and the payment by the grantee of any claims, liens and taxes due the grantor which arise by reason of the construction, operation or maintenance of the system. After completion of any system construction, rebuild or upgrade, the required amount of the security fund shall be reduced to a sum specified in the franchise agreement, all of which may be in the form of an irrevocable letter of credit.

(b) The security fund may be assessed by the grantor for purposes including, but not limited to, the following:

(1) Failure of grantee to pay grantor undisputed sums due under the terms of the franchise.

(2) Reimbursement of undisputed costs borne by the grantor to correct franchise violations not corrected by grantee, after due notice.

(3) Monetary remedies or damages assessed against grantee due to undisputed defaults or violations of franchise requirements.

(c) At grantor's sole option, some portion of the security fund may be provided in the acceptable form of an irrevocable letter of credit, in lieu of a cash deposit.

(d) Within 30 days after notice to it that any amount has been withdrawn by the grantor from the security fund pursuant to subsection (a) of this section, the grantee shall deposit a sum of money sufficient to restore such security fund to the original amount.

(e) If the grantee fails, after 30 days' written notice, to pay to the grantor any franchise fee or taxes due and unpaid; or fails to pay to the grantor within such 30 days, any damages, costs or expenses which the grantor shall be compelled to pay by reason of any act or default of the grantee in connection with the franchise; or fails, after 30 days' written notice of such failure by the grantor, to comply with any material provision of the franchise which the grantor reasonably determines can be remedied by an expenditure of the security fund, the grantor may thereafter withdraw the amount thereof, with interest and any penalties, from the security fund. Upon such withdrawal, the grantor shall notify the grantee of the amount and date thereof.

(f) The security fund deposited pursuant to this section shall become the property of the grantor in the event that the franchise is revoked for cause by reason of the default of the grantee in accordance with the procedures of SRC 43.085~~ above~~. The grantee, however, shall be entitled to the return of such security fund, or portion thereof, as remains on deposit no later than 90 days after the expiration of the term of the franchise, provided that there is then no outstanding default on the part of the grantee. The grantee shall be entitled to any interest accrued on the cash portion of the security fund.

(g) The rights reserved to the grantor with respect to the security fund are in addition to all other rights of the grantor whether reserved by this chapter or authorized by law, and no action, proceeding or exercise of a right with respect to such security fund shall constitute an election of remedies or a waiver of any other right the grantor may have.

(Prior Code, § 43.160; Ord. No. 38-87)

Sec. 43.165. Indemnification.

(a) The grantee shall by acceptance of any franchise granted indemnify, defend and hold harmless the grantor, its officers, boards, commissions, agents, and employees from any and all claims, suits, judgments for damages or other relief, costs and attorneys' fees in any way arising out of or through or alleged to arise out of or through:

(1) The act of the grantor in granting the franchise; ~~and~~

(2) The acts or omissions of grantee, its servants, employees, or agents, including, but not limited to, any failure or refusal by grantee, its servants, employees or agents to comply with any obligation or duty imposed on grantee by this chapter or the franchise agreement; and

(3) The exercise of any right or privilege granted or permitted by this chapter or the franchise agreement.

Such indemnification shall include, but not be limited to, all claims arising in tort, contracts, infringement of copyright, violations of statutes, ordinances or regulations or otherwise.

(b) In the event any such claims shall arise, the grantor or any other indemnified party shall tender the defense thereof to the grantee; provided, however, that the grantor in its sole discretion may participate in the defense of such claims at its expense, and in such event, grantee shall not agree to any settlement of claims without grantor approval.

(Prior Code, § 43.165; Ord. No. 38-87)

Sec. 43.170. Insurance.

(a) The grantee shall maintain throughout the term of the franchise, insurance in amounts at least as follows:

(1) *Worker's compensation insurance.* In such coverage as may be required by the workers compensation insurance and safety laws of the State ~~of Oregon~~ and amendments thereto.

(2) *General liability.* "Comprehensive" or "commercial" general liability insurance, including, but not limited to, coverage for bodily injury, personal injury and property damage shall be maintained at the sum(s) specified in the franchise agreement.

(3) *Comprehensive automobile liability.* Comprehensive automobile liability, including, but not limited to, non-ownership and hired car coverage as well as owned vehicles with coverage for bodily injury and property damage shall be maintained at the sum(s) specified in the franchise agreement.

(4) *Property loss.* Fire insurance with coverage for extended perils on the franchise property used by grantee in the conduct of franchise operations in an amount adequate to enable grantee to resume franchise operations following the occurrence of any risk covered by this insurance.

(b) The grantee shall furnish the grantor with copies of such insurance policies and certificates of insurance.

(c) Such general liability and automobile liability insurance policies provided for herein shall name the grantor, its officers, boards, commissions, agents, and employees as additional insured, and shall be primary to any insurance carried by grantor. The insurance policies naming grantor as additional insured shall be endorsed to require 30 days' written notice to the grantor of intent by the company to cancel or not renew the insurance policy. Likewise, the grantee shall give grantor not less than 30 days' written notice of its intent not to renew any policy unless proof of replacement coverage has already been provided.

(d) The minimum amounts set forth in the franchise agreement for such insurance shall not be construed to limit the liability of the grantee to the grantor under the franchise issued hereunder to the amounts of such insurance.

(e) All insurance carriers providing coverage under subsection (a) of this section shall be duly licensed to transact insurance in the State ~~of Oregon~~.

(f) All insurance required by this section shall be subject to review and approval by grantor's City Attorney for sufficiency as to form and coverage, and shall be evidenced by a certificate of insurance issued by the insurance carrier or an authorized agent of the carrier in form acceptable to grantor's City Attorney.

(g) Should the grantee, for any reason, fail to maintain all required coverage continuously in effect during the term of the franchise, the franchise and all privileges associated therewith shall automatically be suspended

without further notice and without recourse upon the first instance of such lapse of coverage, and shall remain suspended until all required coverage is in effect. Grantor may, in addition to relying on the automatic suspension provided herein, proceed with termination or revocation of the franchise as otherwise provided in this chapter.

(h) In order to account for increases in consumer prices, no more than once during any five-year period, grantor shall have the right to order grantee to increase the amounts of the insurance provided in the franchise. Such order may be made by grantor after conducting a duly noticed public hearing. Increases in insurance coverage shall be based upon current prudent business practices of like enterprises involving the same or similar risks.

(Prior Code, § 43.170; Ord. No. 38-87; Ord. No. 63-94)

DESIGN AND CONSTRUCTION PROVISIONS

Sec. 43.175. System design.

The cable communications system shall be constructed in accordance with the design, construction, or reconstruction requirements contained in the franchise agreement.

(Prior Code, § 43.175; Ord. No. 38-87)

Sec. 43.180. Geographical coverage.

The grantee shall design a new cable system in such a manner as to have the capability to pass by every single-family dwelling unit, multiple-family dwelling unit, school and public agency within the franchise area. Service shall be provided to subscribers in accordance with the schedules and line extension policies specified in the franchise agreement. Cable system construction and provision of service shall be non-discriminatory, and grantee shall not delay or defer service to any section of the franchise area on the grounds of economic preference.

(Prior Code, § 43.180; Ord. No. 38-87)

Sec. 43.185. Cablecasting facilities.

The grantee shall provide cablecasting facilities in accordance with the requirements of the franchise agreement.

(Prior Code, § 43.185; Ord. No. 38-87)

Sec. 43.190. System construction schedule.

(a) The grantee shall comply with the requirements of the system construction schedule contained in the franchise agreement.

(b) The grantee shall provide a detailed construction plan indicating progress schedule, area construction maps, test plan, and projected dates for offering service. In addition, upon request, the grantee shall update this information showing specifically whether schedules are being met and the reasons for any delay of more than 30 days.

(Prior Code, § 43.190; Ord. No. 38-87)

Sec. 43.195. Delay in construction.

Grantee shall obtain all necessary permits and clearances. Within two months after the effective date of a franchise, grantee shall report to grantor its estimate of the initial construction or reconstruction date. The initial date estimated after two months may be used by grantor as the presumptive construction or reconstruction starting date, with all construction requirements based on that date; provided, however, that grantee may adjust its estimated initial date upon a showing of delays which are beyond its reasonable control or which are not reasonably foreseeable.

(Prior Code, § 43.195; Ord. No. 38-87)

Sec. 43.200. Remedies for delay in construction.

The grantor may, at its sole option, apply any or all of the remedies in connection with delays in system construction as specified in SRC 43.350 to 43.365~~ herein~~.

(Prior Code, § 43.200; Ord. No. 38-87)

Sec. 43.205. Provision of service.

After service has been established by activating trunk cables for any area meeting the density requirements in the franchise agreement, the grantee shall provide service to any requesting subscriber within the area within 30 days from the date of request, provided such subscriber provides appropriate identification and pays any outstanding balance due on previous accounts and any advance charges required for new service.

(Prior Code, § 43.205; Ord. No. 38-87)

Sec. 43.210. Undergrounding of cable.

The undergrounding of cable is encouraged. In any event, cables shall be installed underground at grantee's cost where both telephone and electric utilities are already underground. Previously installed aerial cable shall be undergrounded and relocated in concert, and on a cost-sharing basis, with other utilities, when such other utilities may convert from aerial to underground construction.

(Prior Code, § 43.210; Ord. No. 38-87)

Sec. 43.215. Extensions; undergrounding.

(a) In cases of new development or property development where utilities are to be placed underground, the developer or property owner shall give grantee reasonable notice of the particular date on which open trenching will be available for grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at grantee's expense. Grantee shall also provide specifications as needed for trenching.

(b) Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if grantee fails to install its conduit, pedestals and/or vaults, and laterals within five working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five-day period, the cost of new trenching shall be borne by grantee.

(1) New development undergrounding.

(A) In cases of new construction or property development where utilities are to be placed underground, the developer or property owner shall ~~given~~ give grantee seven days advanced notice of the particular date on which open trenching will be available for grantee's installation of conduit, pedestals and/or vaults, and laterals to be provided at grantee's expense. Grantee shall also provide specifications as needed for trenching.

(B) Costs of trenching and easements required to bring service to the development shall be borne by the developer or property owner; except that if grantee fails to install its conduit, pedestals and/or vaults, and laterals within five working days of the date the trenches are available, as designated in the notice given by the developer or property owner, then should the trenches be closed after the five-day period, the cost of new trenching is to be borne by grantee.

(2) The builder or developer shall provide the grantee with sufficient conduit space, vaults and pedestals to enable the grantee to furnish cable service in conformity with the requirements of this chapter and with such additional requirements relative to the operation of the grantee's cable communications system as are reasonably foreseeable.

(3) Grantee shall not construct any cable system facilities until grantee has secured the necessary permits from grantor, or other cognizant public agencies.

(4) In those areas of the City where transmission lines or distribution facilities of the public utilities providing telephone and electric power service are underground, the grantee likewise shall construct, operate and maintain its transmission and distribution facilities therein underground.

(5) In those areas of the City where the grantee's cables are located on the above-ground transmission or distribution facilities of the public utility providing telephone or electric power service, and in the event that the facilities of both such public utilities subsequently are placed underground, then the grantee likewise shall reconstruct, operate and maintain its transmission and distribution facilities underground, at grantee's cost. Certain of grantee's equipment, such as pedestals, amplifiers and power supplies, which

normally are placed above ground, may continue to remain in above-ground enclosures, unless otherwise provided in the franchise agreement.

(Prior Code, § 43.215; Ord. No. 38-87; Ord. No. 63-94)

Sec. 43.220. Underground at multiple-dwelling units.

In cases of multiple-dwelling units serviced by aerial utilities, grantee shall make every effort to minimize the number of individual aerial drop cables giving preference to undergrounding of multiple drop cables between the pole and the dwelling unit. At the grantor's request, the burden of proof shall be upon the grantee to demonstrate why undergrounding of drop cable is technically or economically unfeasible.

(Prior Code, § 43.220; Ord. No. 38-87)

Sec. 43.225. Street occupancy.

(a) Grantee shall utilize existing telephone and power poles, conduits and other facilities with written permission by these franchisees, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property until written approval of the grantor is obtained. Publicly owned poles such as traffic signals or street light poles, may not be used. However, no location of any pole or wire holding structure of the grantee shall be a vested interest and such poles or structure shall be removed or modified by the grantee at its own expense whenever the grantor determines that the public convenience would be enhanced thereby.

(b) Grantee shall notify the grantor at least ten days prior to the intention of the grantee to commence any construction in any streets. The grantor shall cooperate with the grantee in granting any permits required, providing such grant and subsequent construction by the grantee shall not unduly interfere with the use of such streets and that proposed construction shall be done in accordance with the pertinent provisions of the ordinances of the grantor.

(c) All transmission lines, equipment and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and, at all times, shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The grantee shall, at all times, employ ordinary care and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any public way by the grantee shall be placed in such a manner as not to interfere with the usual travel on such public way.

(d) Grantee shall, at its own expense, and in a manner approved by the grantor, restore to pre-existing conditions any damage or disturbance caused to the public way as a result of its operations or construction on its behalf.

(e) Whenever, in case of fire or other disaster, it becomes necessary in the judgment of the grantor to remove any of the grantee's facilities, no charge shall be made by the grantee against the grantor for restoration and repair.

(f) Grantee shall have the authority to trim trees on public property at its own expense as may be necessary to protect its wires and facilities, including its microwave path, subject to approval of the grantor. Trimming of trees on private property shall require written consent of the property owner in non-emergencies.

(g) The grantee, at its expenses, shall protect, support, temporarily disconnect, relocate, or remove any property of grantee when, in the opinion of the grantor, the same is required by reason of traffic conditions, public safety, street vacation, freeway or street grade, separation or realignment, installation of sewers, drains, water pipes, power line, signal line, transportation facilities, tracks or any other types of structure or improvements by governmental agencies whether acting in a governmental capacity, or any other structure or public improvement, including, but not limited to, movement of buildings, redevelopment, or any general program under which the grantor shall undertake to cause any such properties to be located beneath the surface of the ground. Nothing hereunder shall be deemed a taking of the property of grantee and grantee shall be entitled to no surcharge by reason of anything hereunder.

(h) Upon failure of grantee to commence, pursue or complete any work required by law or by the provisions of this chapter to be done in any street, within the time prescribed and to the satisfaction of the grantor, the grantor may, at its option, cause such work to be done and the grantee shall pay to the grantor the cost thereof in the itemized

amounts reported by the grantor to grantee within 30 days after receipt of such itemized report.

(i) The grantee shall make no paving cuts or curb cuts unless absolutely necessary, and only after written permission has been given by the grantor and all necessary permits have been obtained.

(j) The grantor reserves the right to require conduit under special conditions as required by the Director ~~of Public Works~~.

(Prior Code, § 43.225; Ord. No. 38-87)

Sec. 43.230. Construction and technical standards.

(a) *Construction standards.*

(1) *Grantor codes and permits.* Grantee shall comply with all applicable grantor construction codes, standards, and permit procedures. Grantor shall be entitled to charge reasonable permit and inspection fees to recover the special nonrecurring inspection costs imposed by the construction or reconstruction of the cable communications system.

(2) *Compliance with safety codes.* All construction practices shall be in accordance with all applicable sections of Federal and State Occupational Safety and Health Acts and any amendments thereto as well as all state and local codes, where applicable.

(3) *Compliance with pole attachment standards.* All aerial construction shall comply with the practices included in ~~the Bell System Code of Pole Line Construction,~~ the National Electrical Safety Code, as well as OAR 806-24-0000 through 860-24-0050.

(4) *Compliance with electrical codes.* All installation of electronic equipment shall be of a permanent nature, durable and installed in accordance with the provisions of the National Electrical Code (National Fire Protection Association ~~Bureau of Fire Underwriters~~) and the National Electrical Safety Code (Institute of Electrical and Electronics Engineers ~~National Bureau of Standards~~), as amended, and all applicable state and local codes.

(5) *Antennas and towers.* Antenna supporting structure (towers) shall be designed for the proper loading as specified in the current Telecommunications Industry Association (TIA) Standard 222-G. ~~Electronics Industry Association's R.S.222 F A specifications.~~

(6) *Compliance with aviation requirements.* Antennas support structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable state or local codes and regulations.

(7) *Construction standards and requirements.* All of the grantee's plant and equipment, including, but not limited to, the antenna site, headend and distribution system towers, house connections, structures, poles, wire, cable, coaxial cable, fixtures and appurtenances, shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices, performed by experienced maintenance and construction personnel so as not to endanger or interfere with improvements the grantor may deem proper to make, or to interfere in any manner with the rights of any property owner, or to hinder or obstruct pedestrian or vehicular traffic.

(8) *Safety, nuisance requirements.* The grantee shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage, injury or nuisance to the public.

(b) *Technical standards.* The grantee shall construct, install, operate and maintain its system in a manner consistent with all applicable laws, ordinances, construction standards, governmental requirements, FCC technical standards, and any detailed standards set forth in its franchise agreement. In addition, the grantee shall provide to the grantor, upon request, a written report of the results of the grantee's periodic proof of performance tests conducted pursuant to FCC and franchise standards and guidelines.

(c) *Compliance procedure.* Upon grantor request, the grantee shall submit, within 60 days after the effective date of the franchise agreement, a detailed test plan describing the methods and schedules for testing the cable communications system on an ongoing basis to determine compliance with the provisions of the franchise

agreement. The tests shall be in general conformance with the provisions of the Recommended Practices for Measurements on Cable Television Systems ~~Standards of Good Engineering Practices for Measurements on Cable Television Systems~~, issued by the Society of Cable Television Engineers ~~National Cable Television Association~~, and performed at intervals no greater than 12 months. The tests may be witnessed by representatives of the grantor, and written test reports shall be submitted to the grantor if requested. If more than ten percent of the locations tested fail to meet the performance standards, the grantee shall be required to indicate what corrective measures have been taken, and the entire test shall be repeated. A second failure of more than ten percent may result, at the grantor's option, in appropriate remedies. Repeated and verified failure to maintain specified technical standards or a failure to provide a written report of system results shall constitute a material breach of the franchise.

(d) *Special tests.* At any time after commencement of service to subscribers, the grantor may require additional tests, full or partial repeat tests, different test procedures, or tests involving a specific subscriber's terminal. Requests for such additional tests will be made on the basis of complaints received or other evidence indicating an unresolved controversy or significant noncompliance, and such tests shall be limited to the particular matter in controversy. The grantor shall endeavor to so arrange its requests for such special tests so as to minimize hardship or inconvenience to grantee or to the subscriber.

(Prior Code, § 43.230; Ord. No. 38-87; Ord. No. 63-94)

SERVICE PROVISIONS

Sec. 43.235. Services to be provided.

The grantee shall provide the initial services listed in the franchise agreement.

(Prior Code, § 43.235; Ord. No. 38-87)

Sec. 43.240. Basic cable service.

The "basic cable service" shall include any service tier which includes the retransmission of local television signals. This service shall be provided to all subscribers at the established monthly subscription rates, except as otherwise expressly required by applicable law.

(Prior Code, § 43.240; Ord. No. 38-87)

Sec. 43.245. Basic radio service.

The "basic radio service" shall include the availability of all audio services designated in the franchise agreement, including retransmission of local broadcast FM radio signals, and cablecast FM signals. This service shall be available to all subscribers at established monthly subscription rates.

(Prior Code, § 43.245; Ord. No. 38-87)

Sec. 43.250. Institutional service.

If specified in the franchise agreement, the "institutional service" shall include the provision of transmission and/or reception services to institutional users, on a commercial use basis. Services may include the distribution of video or non-video signals.

(Prior Code, § 43.250; Ord. No. 38-87)

Sec. 43.255. Additional subscriber services.

"Additional subscriber services," not included in the services specified above, may be provided, either within the basic cable service rates, or on a premium basis, subject to applicable law.

(Prior Code, § 43.255; Ord. No. 38-87)

Sec. 43.260. Public, educational and government (PEG) access facilities.

The grantee may be required to provide the PEG access facilities including channel capacity, necessary interface equipment and cabling to permit operation as specified in the franchise agreement.

(Prior Code, § 43.260; Ord. No. 38-87)

Sec. 43.265. Cable channels for commercial use.

The grantee shall designate channel capacity for commercial use as required by applicable law.

(Prior Code, § 43.265; Ord. No. 38-87)

OPERATION AND MAINTENANCE

Sec. 43.270. Open books and records.

(a) The grantor shall have the right to inspect at any time during normal business hours and with reasonable notice, all books, records, maps, plans, service complaint logs, performance test results and other like materials of the grantee which relate to the operation of the franchise and are maintained at the office with the franchise area, provided that ~~the Grantor shall maintain the confidentiality of any trade secrets or other proprietary information in the possession of the Grantee and provided further that records shall be exempt from inspection pursuant to this Section, to the extent required by applicable laws regarding subscriber privacy and to the extent such records are protected by law against discovery in civil litigation~~ said documents shall be retained in confidence by grantor and its authorized agents and shall not be made available for public inspection to the extent it may be held exempt from public disclosure under the Oregon Public Records Law and other applicable laws.

(b) If any such books or records are not kept in the local office, or upon reasonable request made available to the grantor, and if the grantor shall determine that an examination of such records is necessary or appropriate to the performance of any of grantor's duties, then all travel and maintenance expense necessarily incurred in making such examination shall be paid by grantee.

(Prior Code, § 43.270; Ord. No. 38-87)

Sec. 43.275. Records required.

(a) In any event, the grantee shall at all times maintain:

(1) The complaint file required by SRC 43.390.

(2) A full and complete set of plans, records and "as-built" maps showing the exact location of all cable communications system equipment installed or in use in the franchise territory, exclusive of subscriber service drops.

(3) A record of all service calls and interruptions or degradation of service experienced for the preceding two years, provided that such complaints result in or require a service call, subject to the subscriber's right of privacy.

(4) A summary of service calls, identifying the number, general nature and disposition of such calls, on a monthly basis, in a form reasonably acceptable to the grantor.

(b) The grantor may impose reasonable requests for additional information, records and documents from time to time, provided they reasonably relate to the scope of the City's rights under this chapter or the grantee's franchise.

(Prior Code, § 43.275; Ord. No. 38-87; Ord. No. 63-94)

Sec. 43.280. Rights of individuals.

(a) Grantee shall not deny service, deny access, or otherwise discriminate against subscribers, channel users, or general citizens on the basis of income level, race, color, religion, national origin, age or sex. Grantee shall comply at all times with all other applicable federal, state and local laws and regulations, and all executive and administrative orders relating to non-discrimination. Grantee may, from time to time, for research purposes, provide unique experimental program packaging or interactive services to customers served by specific system nodes. The nodes will be selected on a non-discriminatory basis representing broad community demographics.

(b) Grantee shall strictly adhere to the equal employment opportunity requirements of federal, state and local law and regulations in effect on the dates of the franchise grant, and as amended from time to time.

(c) The grantee's policy with regard to personally identifiable information shall be consistent with federal law. Neither grantee, nor any person, agency, or entity, shall, without the subscriber's consent, tap, or arrange for the tapping, of any cable, line, signal input device, or subscriber outlet or receiver for any purpose except routine

maintenance of the system, detection of unauthorized service, polling with audience participating, or audience viewing surveys to support advertising research regarding viewers where individual viewing behavior cannot be identified. In the conduct of providing its services or in pursuit of any collateral commercial enterprise resulting therefrom, grantee shall take reasonable steps to prevent the invasion of a subscriber's or general citizen's right of privacy or other personal rights through the use of the system as such rights are delineated or defined by applicable law. Grantee shall not without lawful Court order or other applicable valid legal authority utilize the system's interactive two-way equipment or capability for unauthorized personal surveillance of any subscriber or general citizen.

(d) Fairness of accessibility. The entire system of the grantee shall be operated in a manner consistent with the principle of fairness and equal accessibility of its facilities, equipment, channels, studios and other services to all local citizens, businesses, public agencies and other entities having a legitimate use for the system, and no one shall be arbitrarily excluded from its use. Allocation of use of said facilities shall be made according to the rules or decisions of the grantee, the grantor in its lawful exercise of regulatory authority, and any state or federal regulatory agencies affecting the same.

(e) No cable line, wire amplifier, converter, or other piece of equipment owned by grantee shall be installed by grantee in the subscriber's premises, other than in appropriate easements, without first securing any required consent. If a subscriber requests service, permission to install upon subscriber's property shall be presumed.

(f) The grantee, or any of its agents or employees, shall not sell, or otherwise make available to any party without consent of the subscriber or pursuant to state and federal privacy laws:

(1) Any list of the names and addresses of subscribers containing the names and addresses of subscribers who request in writing to be removed from such list; and

(2) Any list which identifies the viewing habits of individual subscribers, without the prior written consent of such subscribers. This does not prohibit the grantee from providing composite ratings of subscriber viewing to any party.

(Prior Code, § 43.280; Ord. No. 38-87; Ord. No. 63-94)

Sec. 43.283. Privacy compliance reports.

Upon grantor's request, but no more than annually, grantee shall submit to grantor a report indicating the degree of compliance with the applicable privacy provisions contained in federal and state law and this chapter, and all steps taken to ensure that the privacy rights of individuals have been protected.

(Prior Code, § 43.283; Ord. No. 63-94)

Sec. 43.285. Continuity of service mandatory.

(a) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the grantee are honored. In the event that the grantee elects to over build, rebuild, modify, or sell the system, or the grantor gives notice of intent to terminate or fails to renew this franchise, the grantee shall act so as to ensure that all subscribers in good financial standings, receive continuous, uninterrupted service regardless of the circumstances.

(b) In the event of a change of franchisee, or in the event a new operator acquires the system, the grantee shall cooperate with the grantor, new franchisee or operator in maintaining continuity of service to all subscribers. During such period, grantee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable costs for its services when it no longer operates the system.

(c) In the event grantee fails to operate the system for seven consecutive days without prior approval of the grantor or without just cause, including war, riot, strike, acts of God and civil emergencies, the grantor may, at its option, operate the system or designate an operator until such time as grantee restores service under conditions acceptable to the grantor or a permanent operator is selected. If the grantor is required to fulfill this obligation for the grantee, then during such period as the grantor fulfills such obligation, the grantor shall be entitled to collect all revenues from operation of the system during said period, and the grantee shall reimburse the grantor for all reasonable costs or damages in excess of the revenues collected by the grantor that are the result of the grantee's failure to perform.

(Prior Code, § 43.285; Ord. No. 38-87)

Sec. 43.290. Grantee rules and regulations.

The grantee shall have the authority to promulgate such rules, regulations, terms and conditions governing the conduct of its business as shall be reasonably necessary to enable the grantee to exercise its ~~rights~~ privileges and perform its obligations under the franchise, and to ensure an uninterrupted service to each and all of its customers; provided, however, that such rules, regulations, terms and conditions shall not be in conflict with the provisions hereof or applicable state and federal laws, rules and regulations. Such rules, regulations, terms and conditions may be filed with the grantor.

(Prior Code, § 43.290; Ord. No. 38-87)

Sec. 43.295. Uniform and vehicle identification.

Every field employee of the grantee shall be clearly identified with the name of grantee visible to the public as a representative of the grantee. Every field vehicle, except for field sales representatives' vehicles of the grantee, shall be clearly marked. Grantee field employees and agents shall also wear an identification badge with the agent's name and photograph.

(Prior Code, § 43.295; Ord. No. 38-87)

CONSUMER PROTECTION

Sec. 43.300. Requests for cable service and repairs.

(a) The grantee shall maintain an office in the local area which shall be open during all usual business hours, have a publicly listed toll-free telephone, and be so operated to receive requests for repairs on a 24 hour a day basis.

(b) The grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Such interruptions, insofar as possible, shall be preceded by notice and shall occur during period of minimum use of the system. A written log, or an equivalent stored in computer memory and capable of access and reproduction, shall be maintained for all service interruptions and requests for cable repair service as required by SRC 43.390(b).

(c) The grantee shall maintain a repair force of technicians normally capable of responding to subscriber requests for repair service within 24 hours or subject to subscriber availability for access to premises as follows:

(1) *System outage.* Within two hours of receiving subscriber calls which by number identify a system outage of sound or picture of one or more channels, affecting all the subscribers of the system or a considerable number thereof.

(2) *Isolated outage.* Within 24 hours of receiving a request for service identifying an isolated outage of sound or picture for one or more channels.

(3) *Inferior reception quality.* Within 48 hours of receiving a request for service identifying a problem concerning picture or sound quality.

(d) Grantee shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives at the service location, and in the case of subsection (c)(l) through (3) of this section, leaves written notification of such arrival.

(e) No charge shall be made to the subscriber for this service unless the service request can be demonstrated to be of non-cable system origin.

(Prior Code, § 43.300; Ord. No. 38-87)

Sec. 43.303. Minimum consumer protection and service standards.

(a) Except as otherwise provided in the franchise agreement, grantee shall maintain a local office or offices and provide the necessary facilities, equipment and personnel to comply with the following consumer protection and service standards under normal conditions of operations:

(1) Sufficient toll-free telephone line capacity during normal business hours to ensure that a minimum of 95 percent of all calls will be answered before the fourth ring and 90 percent of all callers for service will

not be required to wait more than 30 seconds before being connected to a service representative.

(2) Emergency telephone line capacity on a 24-hour basis, including weekends and holidays.

(3) A local business and service office open during normal business hours at least eight hours daily and at least four hours weekly on evenings or weekends, and adequately staffed to accept subscriber payments and respond to service requests and complaints.

(4) An emergency system maintenance and repair staff, capable of responding to and repairing major system malfunction on a 24-hour per day basis.

(5) An installation staff, capable of installing service to any subscriber within seven days after receipt of a request, in all areas where trunk and feeder cable have been activated.

(6) At the subscriber's request, grantee shall schedule, within a specified four-hour time period, all appointments with subscribers for installation of service.

(b) Grantee shall render efficient service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Scheduled interruptions, insofar as possible and safe, shall be preceded by notice and shall occur during a period of minimum use of the cable system, preferably between 12:00 midnight and 6:00 a.m.

(c) The grantee shall maintain a repair force of technicians normally capable of responding to subscriber requests for service within the following timeframes:

(1) *For a system outage.* Within two hours, including weekends, of receiving subscriber calls or requests for service which by number identify a system outage of sound or picture of one or more channels, affecting at least ten percent of the subscribers of the system.

(2) *For an isolated outage.* Within 24 hours, including weekends, of receiving requests for service identifying an isolated outage of sound or picture for one or more channels that affects three or more subscribers. On weekends, an outage affecting fewer than three subscribers shall result in a service call no later than the following Monday morning.

(3) *For inferior signal quality.* Within 48 hours, including weekends, of receiving a request for service identifying a problem concerning picture or sound quality.

Grantee shall be deemed to have responded to a request for service under the provisions of this section when a technician arrives at the service location and begins work on the problem. In the case of a subscriber not being home when the technician arrives, the technician shall leave written notification of arrival. Three successive subscriber failures to be present at an appointed time shall excuse grantee of duty to respond. Grantee shall not charge for the repair or replacement of defective equipment provided by grantee to subscribers. In the event grantee determines that the customer has damaged the equipment, grantee shall be entitled to charge the hourly service rate permitted by the FCC.

(d) Unless excused, grantee shall determine the nature of the problem within 48 hours of beginning work and resolve all cable system related problems within five business days unless technically infeasible.

(e) Upon request from affected subscribers, grantee shall provide appropriate rebates to subscribers whose service has been interrupted for four or more hours.

(f) Upon five days' notice, grantee shall establish its compliance with any or all of the standards required above. Grantee shall provide sufficient documentation to permit grantor to verify the compliance.

(g) A repeated and verifiable pattern of noncompliance with the consumer protection standards of subsections (a) through (e) ~~above~~ of this section, after grantee's receipt of due notice and an opportunity to cure, is a material breach of the franchise.

(h) Grantee shall establish written procedures, reviewed by the grantor, for receiving, acting upon and resolving subscriber complaints without intervention by the grantor. The written procedures shall prescribe the manner in which a subscriber may submit a complaint either orally or in writing specifying the subscriber's grounds for dissatisfaction. Grantee shall file a copy of these procedures with grantor.

(i) Grantor shall have the right to review grantee's response to subscriber complaints in order to determine grantee's compliance with the franchise requirements, subject to the subscriber's right to privacy.

(j) It shall be the right of all subscribers to continue receiving service insofar as their financial and other obligations to the grantee are honored. In the event that the grantee elects to rebuild, modify, or sell the system, or the grantor gives notice of intent to terminate or not to renew the franchise, the grantee shall act so as to ensure that all subscribers receive service so long as the franchise remains in force.

(k) In the event of a change of control of grantee, or in the event a new operator acquires the system, the original grantee shall cooperate with the grantor, new grantee or operator in maintaining continuity of service to all subscribers. During such period, grantee shall be entitled to the revenues for any period during which it operates the system.

(l) Additional service standards and standards governing consumer protection and response by grantee to subscriber complaints not otherwise provided for in this chapter may be established in the franchise agreement, and grantee shall comply with such standards in the operations of the cable television system. A verified and continuing pattern of noncompliance is a material breach of the franchise, provided that grantee shall receive ~~due process, including~~ written notification and an opportunity to cure prior to any sanction being imposed.

(Prior Code, § 43.303; Ord. No. 63-94)

Sec. 43.305. Complaint procedure.

(a) *Complaints to grantee.* Grantee shall establish written procedures for receiving, acting upon and resolving subscriber complaints without intervention by the grantor. The grantee shall also notify the subscriber of the subscriber's right to file a complaint with the grantor in the event the subscriber is dissatisfied with the grantee's decision. Grantee's procedures shall be filed with the grantor.

(b) *Complaints to grantor.* A subscriber who is dissatisfied with the grantee's proposed decision or who was not sent a written decision within the 30-day period shall be entitled to have the complaint reviewed by grantor. The subscriber shall initiate the review by filing a written complaint, together with the grantee's written decision, if any, with the grantor and by notifying the grantee of the filing. The subscriber shall make such filing and notification within ten days of receipt of grantee's decision or within ten days of the expiration of the 30-day period, whichever is earlier.

(Prior Code, § 43.305; Ord. No. 38-87)

Sec. 43.310. Review by grantor.

The grantor shall determine, solely upon a review of a subscriber complaint and the grantee's decision, if any, whether further action is warranted. In the event the grantor does not initiate further proceedings within 15 days of the filing of the complaint, the grantee's proposed action or resolution shall be final. If the grantor decides to initiate further investigation, grantor shall require the grantee and the subscriber to submit, within ten days of notice thereof, a written statement of the facts and arguments in support of their respective positions. The grantee or the subscriber may request in such statement that a hearing be conducted by the grantor. A hearing, if requested, shall be conducted by the grantor following notice in writing specifying the time and place for such hearing. The hearing shall be conducted informally, and the parties may offer any evidence pertinent to the dispute. The parties shall produce any additional evidence, including testing reports from the grantee, which the grantor may deem necessary to an understanding and determination of the dispute. The grantor shall issue a written decision within 15 days of receipt of the written statements or, if a hearing is requested, within 15 days of the conclusion of the hearing, setting forth the basis of his or her decision. The grantor's decision shall be final unless appealed by the grantee to arbitration.

(Prior Code, § 43.310; Ord. No. 38-87)

Sec. 43.315. Complaint notification.

Grantee shall provide written notice to each subscriber describing the procedure established by grantee for resolving subscriber complaints and of the subscriber's right to have grantee's response to a subscriber complaint reviewed by the grantor in accordance with the provisions of this chapter. The notice shall include the name, business address, and business telephone numbers of grantee's office and of the grantor office designated to receive complaints. The form of the notice shall be subject to the approval of the grantor.

(Prior Code, § 43.315; Ord. No. 38-87)

Sec. 43.320. Complaint log.

Grantee shall maintain a file of all subscriber complaints requiring a service call as required by ~~Section~~ SRC 43.390(a) ~~herein~~.

(Prior Code, § 43.320; Ord. No. 38-87)

Sec. 43.325. Remedies for violations.

The grantor may, as a part of a subscriber complaint decision issued under the provisions of this chapter, impose damages on the grantee as specified in the franchise agreement. Damages may be imposed only if the grantor finds that the grantee has arbitrarily refused or failed without justification to comply with the provisions of this chapter.

(Prior Code, § 43.325; Ord. No. 38-87)

RIGHTS RESERVED TO THE GRANTOR

Sec. 43.330. Right to purchase the system.

The grantor may in any lawful manner and upon the payment of a fair valuation lawfully ascertain, purchase, condemn, acquire, take over and hold the property and plant of the grantee in whole or in part. If such purchase or taking over ~~be~~ is upon revocation of the franchise or at the expiration of the term of the franchise and determination of the City not to renew, such valuation shall be at the fair market value of the system as defined by applicable law.

(Prior Code, § 43.330; Ord. No. 38-87)

Sec. 43.335. Right of inspection of construction.

The grantor shall have the right to inspect all construction or installation work performed subject to the provisions of the franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this franchise and other pertinent provisions of law.

(Prior Code, § 43.335; Ord. No. 38-87)

Sec. 43.340. Right of intervention.

The grantor shall have the right of intervention in any suit or proceeding to which the grantee is party, and the grantee shall not oppose such intervention by the grantor.

(Prior Code, § 43.340; Ord. No. 38-87)

Sec. 43.345. Right to regulate where previously prohibited.

In the event federal laws or regulations cease to prohibit local regulation of matters not the subject of franchise agreements, grantor reserves the right to regulate such matters to the extent and at the time so permitted.

(Prior Code, § 43.345; Ord. No. 38-87)

Sec. 43.347. General reservation of rights.

In addition to any rights specifically reserved to the grantor by this chapter, the grantor reserves to itself every right and power which is required to be reserved by a provision of any ordinance or under the franchise.

(Prior Code, § 43.347; Ord. No. 63-94)

FRANCHISE VIOLATIONS

Sec. 43.350. Remedies for franchise violations.

(a) If the grantee fails to perform any obligation under either this chapter or the franchise, or fails to do so in a timely manner, the grantor may, at its option, and in its sole discretion:

(1)~~(a)~~ Cure the violation and recover the actual cost thereof from the security fund established herein if such violation is not cured within 30 days after written notice to the grantee of grantor's intention to cure and draw upon the security fund; and assess against the grantee monetary damages up to the limits

established in the franchise agreement for material franchise violations, said assessment to be levied against the security fund, hereinabove provided, and collected by grantor immediately upon said assessment. The amount of such assessment shall be deemed, without proof, to represent liquidation of damages actually sustained by grantor by reason of grantee's failure to perform. Such assessment shall not constitute a waiver by the grantor of any other right or remedy it may have under the franchise or under applicable law, including, without limitation, its right to recover from grantee such additional damages, losses, costs and expenses, including actual attorney fees, as may have been suffered or incurred by grantor by reason of or arising out of such breach of the franchise. This provision for assessment of damages is intended by the parties to be separate and apart from grantor's right to enforce the provisions of the construction and performance bonds provided for in SRC 43.150 to 43.170, and is intended to provide compensation to grantor for actual damages.

(2)~~(b)~~ Terminate the franchise, for any of the causes stated in SRC 43.020 to 43.100~~, above~~.

(b)~~(c)~~ No remedy shall be imposed by grantor against grantee for any violation of the franchise without grantee being afforded the process ~~due process of law, as~~ provided for in SRC 43.360 if the remedy sought is other than revocation or termination of the franchise, or the process provided for in SRC 43.085 if the remedy sought is revocation or termination the franchise. ~~43.380.~~

(c) ~~Grantor may, in its sole judgment and discretion, impose any or all of the~~ The above enumerated measures against grantee~~, which~~ shall be in addition to any and all other legal or equitable remedies ~~it~~ grantor has under the franchise or under any applicable law.

(Prior Code, § 43.350; Ord. No. 38-87; Ord. No. 63-94)

Sec. 43.355. Remedies for delay in construction.

(a) The grantor may impose the following remedies with regard to delays within grantee's control in initial construction of a new system:~~; provided Grantee has not informed Grantor of its intent to seek arbitration according to the provisions of SRC 43.315.~~

(1) Reduction in the duration of the franchise on a month-for-month basis for each month of delay exceeding six months.

(2) Forfeiture of construction bonds and/or assessment of monetary damages up to the maximum per day and per incident limits specified in the franchise agreement, levied against the security fund, for delays exceeding one year.

(3) Termination of the franchise within one year after award of the franchise if the grantee has failed to initiate scheduled system construction or reconstruction.

(4) Termination of the franchise for delays exceeding 18 months.

(b) Any remedies applied, other than termination of the franchise shall be in accordance with the procedures contained in SRC 43.360. ~~herein.~~ The remedy of termination of the franchise shall be in accordance with the procedures contained in SRC 43.085.

(Prior Code, § 43.355; Ord. No. 38-87)

Sec. 43.360. Procedure for remedying franchise violations.

Prior to imposing any remedy or other sanction against grantee specified in this chapter, grantor shall give grantee notice and opportunity to be heard on the matter, in accordance with the procedures provided for in SRC 43.085 if the remedy or sanction sought is revocation or termination of the franchise, or in accordance with the following procedures if the remedy or sanction sought is other than revocation or termination of the franchise:

(a) Grantor shall first notify grantee of the violation in writing by personal delivery or registered or certified mail, and demand correction within a reasonable time, which shall not be less than five days in the case of the failure of the grantee to pay any sum or other amount due the grantor under this chapter or the grantee's franchise and 30 days in all other cases. If grantee fails to correct the violation within the time prescribed or if grantee fails to commence correction of the violation within the time prescribed and diligently remedy such violation thereafter, the grantor shall then give written notice of not less than 20

days of an administrative hearing to be held before the ~~City Manager or a designated~~ City's ~~Hearings~~ Officer. Said notice shall specify the violations alleged to have occurred.

(b) At the hearing, the Hearings Officer shall hear and consider all relevant evidence, and thereafter render findings and a decision.

(c) In the event the Hearings Officer finds that the grantee has corrected the violation or has diligently commenced correction of such violation after notice thereof from grantor and is diligently proceeding to fully remedy such violation, or that no material violation has occurred, the proceedings shall terminate and no penalty or other sanction shall be imposed.

(d) In the event the Hearings Officer finds that material violations exist and that grantee has not corrected the same in a satisfactory manner or has not diligently commenced correction of such violation after notice thereof from grantor and is not diligently proceeding to fully remedy such violation, the ~~City Manager~~ Hearings Officer may impose one or more of the remedies or sanctions provided in this chapter and the franchise agreement, other than revocation or termination of the franchise, as is deemed appropriate under the circumstances.

(Prior Code, § 43.360; Ord. No. 38-87; Ord. No. 63-94)

Sec. 43.365. Force majeure; grantee's inability to perform.

In the event grantee's performance of any of the terms, conditions, obligations, or requirements of this chapter or the franchise is prevented or impaired by a cause or event beyond grantee's reasonable control, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof; provided, however, that such inability to perform shall not relieve a grantee from the obligations imposed by ~~Section~~ SRC 43.303(6)(e)~~10(e).~~ pertaining to refunds and credits for interruptions in service. For the purpose of this section, causes or events not within the control of grantee shall include, without limitation, acts of God, strikes, sabotage, riots or civil disturbances, restraints imposed by order of a governmental agency or court, explosions, acts of public enemies, and natural disasters such as floods, earthquakes, landslides, and fires, but shall not include financial inability of the grantee to perform or failure of the grantee to obtain any necessary permits or licenses from other governmental agencies or the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of grantee, or the failure of the grantee to secure supplies, services or equipment necessary for the installation, operation, maintenance or repair of the cable communications system where the grantee has failed to exercise reasonable diligence to secure such supplies, services or equipment.

(Prior Code, § 43.365)

REPORTS

Sec. 43.370. Annual reports.

At grantor's sole option and request, within 90 days after the close of grantee's fiscal year, the grantee shall submit a written annual report, to the City Manager in a form approved by the grantor. Such report shall include, without limitation, the following information:

(a) A summary of the previous year's (or, in the case of the initial report year, the initial year's) activities in development of the cable system, including, but not limited to, services begun or discontinued during the reporting year, and the number of subscribers for each class of service;

(b) A list of grantee's officers, members of its Board of Directors, and other principals of grantee;

(c) A list of stockholders or other equity investors holding five percent or more of the voting interest in the grantee and its parent and subsidiaries, if any;

(d) An indication of any residences in grantee's service area where service is not available, and a schedule for providing service;

(e) Information as to the number of homes passed, number of subscribers to each category of service, additional television outlets, and the number of converters and remote controls provided;

(f) Any other information relevant to franchise regulation which the grantor shall reasonably request, and

which is relevant to its regulatory responsibilities.

(Prior Code, § 43.370; Ord. No. 38-87; Ord. No. 63-94)

Sec. 43.375. Plant survey report.

At grantor's sole option, and upon reasonable notice, grantee shall submit to the grantor or provide grantor access to "as-built" maps of the portions of the franchise area that have been cabled and have all services available or an appropriate engineering evaluation, including suitable electronic measurements conducted in conformity with FCC guidelines and franchise technical standards. Grantee shall provide sufficient detail to enable the grantor to ascertain that the service requirements and technical standards of the FCC and/or the franchise were achieved and maintained. If grantor has reason to believe that portions or all of the system do not meet either the FCC technical guidelines, or those incorporated into the franchise agreement, at grantor's request, but no more often than once per three years, the grantee and the grantor shall agree upon the appointment of a qualified independent engineer to evaluate and verify the technical performance of the cable system. The cost of such evaluation shall be borne equally by the grantee and the grantor.

(Prior Code, § 43.375; Ord. No. 38-87)

Sec. 43.380. Copies of federal and state reports.

(a) Upon request, grantee shall submit to grantor copies of all pleadings, applications, reports, communications and documents of any kind, submitted by the grantee to, as well as copies of all decisions, correspondence and actions by, any federal, state, and local courts, regulatory agencies and other government bodies which are non-routine in nature and which will materially affect its cable television operations within the franchise area. Information otherwise privileged or confidential by law and so designated by grantee, which is submitted to grantor, shall be retained in confidence by grantor and its authorized agents and shall not be made available for public inspection to the extent it may be held exempt from public disclosure under the Oregon Public Records Law.

(b) Notwithstanding the foregoing, grantee shall have no obligation to provide copies of documents to grantor which contain trade secrets of grantee or which are otherwise of a confidential or proprietary nature to grantee unless it receives satisfactory assurances from grantor that such information can and will be held in strictest confidence by the grantor. To the extent possible, grantee will provide grantor with summaries of any required documents or copies thereof with trade secrets and proprietary matters deleted therefrom. The burden of proof shall be on grantee to establish the confidential nature of any information submitted, to the reasonable satisfaction of the grantor.

(Prior Code, § 43.380; Ord. No. 38-87; Ord. No. 63-94)

Sec. 43.385. Public reports.

A copy of each of grantee's annual and other period public reports and those of its parent and local subsidiaries as the grantor requests, shall be submitted to the grantor within ten days of their issuance.

(Prior Code, § 43.385; Ord. No. 38-87)

Sec. 43.390. Complaint file and reports.

An accurate and comprehensive file shall be kept by the grantee of any and all complaints requiring a service call. Complete records of grantee's actions in response to all complaints shall be kept. These files and records shall include:

(a) Upon request, a summary of complaints requiring a service call, identifying the number and nature of complaints and their disposition in a form approved by the grantor. A copy of the summary shall be upon request and submitted to the grantor by the tenth day of the succeeding month.

(b) A written or computer-stored log and summary of all service interruptions.

(c) A written or computer-stored log and summary of all requests for cable service and their disposition.

(d) The grantee shall assist the grantor in an annual opinion survey report which identifies satisfaction or dissatisfaction among subscribers with cable communications services offered by the grantee. The survey required to make said report shall be the responsibility of the grantor and shall be in a form that can be

transmitted to the subscriber with the monthly bill for service. The utilization of the monthly bill for service for distribution of the survey will be provided once per calendar year at no cost to the grantor. The grantor shall pay for all direct costs associated with the development and return of the survey.

(Prior Code, § 43.390; Ord. No. 38-87)

Sec. 43.395. Inspection of facilities.

Upon reasonable notice, and during normal business hours, grantee shall permit examination by any duly authorized representative of the grantor, of all franchise property and facilities, together with any appurtenant property and facilities of grantee situated within or without the City, and all records relating to the franchise, provided they are necessary to enable the grantor to carry out its regulatory responsibilities under this chapter or the franchise agreement. Grantee shall have the right to be present at any such examination.

(Prior Code, § 43.395; Ord. No. 38-87; 63-94)

Sec. 43.400. Public inspection.

All reports subject to public disclosure shall be available for public inspection at a designated grantor office during normal business hours.

(Prior Code, § 43.400; Ord. No. 38-87)

Sec. 43.405. Failure to report.

The refusal, failure, or neglect of the grantee to file any of the reports required as and when due under this chapter, or such other reports the grantor reasonably may request, if such reports are not provided to grantor within 30 days after written request therefor, may be deemed a breach of the franchise, and may subject the grantee to all remedies, legal or equitable, which are available to the grantor under the franchise or otherwise.

(Prior Code, § 43.405; Ord. No. 38-87; Ord. No. 63-94)

Sec. 43.410. False statements.

Any materially false or misleading statement or representation made knowingly by the grantee in any report required under this chapter or the franchise shall be deemed a breach of the franchise and may subject the grantee to all remedies, legal or equitable, which are available to the grantor under the franchise or otherwise.

(Prior Code, § 43.410; Ord. No. 38-87; Ord. No. 63-94)

Sec. 43.415. Cost of reports.

All reports and records required under ~~this~~ SRC 43.370 through 43.410 or any other section shall be furnished at the sole expense of the grantee, except as otherwise provided in this chapter or the franchise agreement.

(Prior Code, § 43.415; Ord. No. 38-87; Ord. No. 63-94)

MISCELLANEOUS PROVISIONS

Sec. 43.420. Compliance with state and federal laws.

Notwithstanding any other provisions of the franchise to the contrary, the grantee shall at all times comply with all laws, and regulations of the state and federal government; provided, however, if any such state or federal law, or regulation shall require the grantee to perform any service, or shall permit the grantee to perform any service, or shall prohibit the grantee from performing any service, in conflict with the terms of the franchise or any law, ordinance, or regulation of the grantor, then, as soon as possible following knowledge thereof, the grantee shall notify the grantor of the point of conflict believed to exist between such regulation, or law and the laws, ordinances, or regulations of the grantor or the franchise.

(Prior Code, § 43.420; Ord. No. 38-87)

Sec. 43.425. Separability non-material provisions.

If any provision of this chapter or any related agreements is held by any court or by any federal, state, or local agency of competent jurisdiction to be invalid as conflicting with federal, state, or local law, rule or regulation now or hereafter in effect, or is held by such court or agency to be modified in any way in order to conform to the

requirements of any such law, rule or regulation and if said provision is considered non-material by the grantor, said provision shall be considered a separate, distinct and independent part of this chapter, and such holding shall not affect the validity and enforceability of all other provisions hereof. In the event that such law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed, so that the provision hereof or thereof which has been held invalid or modified is no longer in conflict with the law, rules and regulations then in effect, said provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, provided that the grantor shall give the grantee 30 days' written notice of such change before requiring compliance with said provision.

(Prior Code, § 43.425; Ord. No. 38-87)

Sec. 43.430. Separability-material provisions.

If any material section of this chapter, as determined by the grantor, is held to be invalid or preempted by federal, state or county regulations or laws, the grantor shall negotiate with grantee appropriate modifications to the franchise to provide reasonable relief to the grantor from such invalidity of preemption, including the payment of damages. If the parties are unable to reach agreement on such modifications, then the dispute shall be submitted to a mutually agreeable arbitrator, in accordance with state law, who shall determine what modifications and/or liquidated damages are appropriate. The arbitrator's decision shall be binding on the parties, provided that no decision of the arbitrator shall require the grantor or grantee to be in violation of any federal or state law or regulation. Notwithstanding the provisions of SRC 43.425 and 43.430, if the grantee should cause the invalidation of any provision of this chapter or franchise agreement by action in any court of competent jurisdiction, the grantor may, at its own discretion, consider the entire franchise invalid and unenforceable.

(Prior Code, § 43.430; Ord. No. 38-87)

Sec. 43.435. Notices.

Grantee shall maintain within the franchise area throughout the term of the franchise, an address for service of notices by mail.

(Prior Code, § 43.435; Ord. No. 38-87)

Sec. 43.440. No recourse against the grantor.

The grantee shall have no recourse whatsoever against the grantor or its officials, boards, commissions, agents, or employees for any loss, costs, expense, or damage arising out of any provision or requirement of the franchise or because of the enforcement of the franchise, except as otherwise guaranteed by federal and state law.

(Prior Code, § 43.440; Ord. No. 38-87)

Sec. 43.445. Nonenforcement by the grantor.

The grantee shall not be relieved of its obligation to comply with any of the provisions of this chapter by reason of any failure of the grantor to enforce prompt compliance.

(Prior Code, § 43.445; Ord. No. 38-87)

Sec. 43.450. Waivers.

Any provision of this chapter may be waived by the grantor, at grantor's sole discretion, by ~~Common~~ Council resolution. Grantee may submit a written request for waiver at any time, and the request placed on the agenda for a public hearing and decision. Grantor shall reach its decision no later than 30 days following the receipt of any waiver request.

(Prior Code, § 43.450; Ord. No. 38-87)

CHAPTER 44. SALEM DOWNTOWN ECONOMIC IMPROVEMENT DISTRICT*

***State law reference**—Economic improvement districts, ORS 223.112 et seq.

Sec. 44.005. Creation of Salem Downtown Economic Improvement District.

(a) The ~~City~~ Council ~~of Salem~~ hereby approves and creates the "Salem Downtown Economic Improvement District." The Salem Downtown Economic Improvement District is authorized to make economic improvements, as defined by ORS 223.112(2), and, in particular, is authorized to provide the following:

(1) The planning or management of development or improvement activities;

(2) The conduct of activities in support of business recruitment and development;

(3) The marketing and promotion of businesses, public events and other activities occurring in the Salem Downtown Economic Improvement District;

(4) The provision of decorations, flowers, trash cans, planters, benches, banners, signage, or other assets that generally benefit the Salem Downtown Economic Improvement District;

(5) Cleaning and maintaining the public spaces within the Salem Downtown Economic Improvement District;

(6) Provision of safety and security in the public spaces within the Salem Downtown Economic Improvement District; and

(7) Any other economic improvement activity that specially benefits the Salem Downtown Economic Improvement District.

(b) The boundaries of the Salem Downtown Economic Improvement District are:

Beginning at the intersection of the north line of Marion Street NE and the west line of Front Street NE; thence easterly along the north line of Marion Street NE to the west line of Liberty Street NE; thence northerly along the west line of Liberty Street NE to the north line of Union Street NE; thence easterly along the north line of Union Street NE to the east line of Church Street NE; thence southerly along the east line of Church Street NE to the north line of Marion Street NE; thence easterly to the east line of Cottage Street NE; thence southerly along the east line of Cottage Street NE to north line of Chemeketa Street NE; thence westerly along the north line of Chemeketa Street NE to the west line of the alley between Chemeketa Street NE and Court Street NE; thence southerly along the west line of said alley to the north line of Court Street NE; thence westerly along the north line of Court Street NE to the east line of Church Street NE; thence southerly along the east line of Church Street NE to the south line of Trade Street SE; thence westerly along the south line of Trade Street SE to the west line of Front Street SE; thence northerly along the west line of Front Street SE to the point of intersection of the west line of Front Street SE and the north line of Ferry Street SE; thence westerly to a point on the top of the east bank of the Willamette Slough and River; thence northerly along the top of said bank to a point on the north line of Marion Street NE; thence easterly along the north line of Marion Street NE to the point of beginning.

(Prior Code, § 44.005; Ord. No. 1-08; Ord. No. 29-11)

Sec. 44.010. Administration; rulemaking.

The Finance Officer ~~Director of Finance~~ shall administer and enforce the provisions of this chapter, and shall have the authority to render written and oral interpretations and to adopt administrative rules and procedures necessary for its proper administration and enforcement.

(Prior Code, § 44.010; Ord. No. 1-08)

Sec. 44.015. Duration of Salem Downtown Economic Improvement District.

(a) The Salem Downtown Economic Improvement District shall be in existence for three consecutive years, commencing upon the effective date of Ordinance No. 1-08.

(b) The duration of the Salem Downtown Economic Improvement District is hereby extended for a period of time concluding June 30, 2017, as authorized by ORS 223.124. The property owners within the boundaries of the Salem Downtown Economic Improvement District shall have the rights to notice and remonstrance of the extension, as provided in SRC 44.040.

(Prior Code, § 44.015; Ord. No. 1-08; Ord. No. 33-10; Ord. No. 29-11; Ord. No. 3-14)

State law reference—Assessment period extension, ORS 223.124.

Sec. 44.020. Assessment.

(a) All commercial property located within the boundaries of the Salem Downtown Economic Improvement District shall be subject to the assessment as provided in this section ~~by SRC 44.020~~. No residential real property located within the boundaries of the Salem Downtown Economic Improvement District, or any portion of a structure used primarily for residential purposes within the boundaries of the Salem Downtown Economic Improvement District, shall be subject to the assessment as provided in this section ~~by SRC 44.020~~.

(b) All commercial property located within the boundaries of the Salem Downtown Economic Improvement District shall be assessed as follows: $0.07 per square foot per year of real property with structure improvements and $0.02 per square foot per year for unimproved property and parking lots.

(c) Notwithstanding subsection (b) of this section, in no event shall the assessment levied in any year exceed one percent of the real market value of all real property located within the Salem Downtown Economic Improvement District.

(d) The Finance Director ~~Director of Finance~~ shall prepare and file in the records of the Finance Division a proposed assessment for each lot within the Salem Downtown Economic Improvement District.

(Prior Code, § 44.020; Ord. No. 1-08)

Sec. 44.023. Levy to be by resolution; partial levies.

(a) The assessment may be for all or a portion of a full fiscal year; provided, however, that in the event of such partial assessment, the rate specified in SRC 44.020(b) shall be prorated for the period covered by the assessment.

(b) The levy of assessment shall be made by resolution of the ~~City~~ Council. Except as otherwise specified in the resolution making the levy, a levy shall be effective on July 1, and shall coincide with the commencement of each fiscal year.

(Prior Code, § 44.023; Ord. No. 29-11)

Sec. 44.025. Exemptions from assessment.

All commercial property within the Salem Downtown Economic Improvement District is conclusively presumed subject to assessment unless the owner has filed a claim ~~request~~ for exemption from property assessment as provided in ORS 307.162 and is declared exempt from assessment under Oregon law.

(Prior Code, § 44.025; Ord. No. 1-08)

Sec. 44.030. Reserved.

Sec. 44.035. Agreement to administer program and provide expenditure of funds.

(a) The City may enter into an agreement with a third party provider upon terms and conditions mutually acceptable to the parties, for the administration of the Salem Downtown Economic Improvement District funds, to provide for public meetings, and to prepare a budget for consideration and adoption at open publicly noticed meetings, which budget shall include limitations on expenditures and other appropriate matters. The agreement shall contain a provision that will allow either party to terminate the agreement upon good cause shown.

(b) No less than 50 percent of the voting members of the third party provider's board shall own real property within the Salem Downtown Economic Improvement District.

(Prior Code, § 44.035; Ord. No. 1-08; Ord. No. 33-10; Ord. No. 20-13)

Sec. 44.040. Notice of assessments and hearing to receive objections.

(a) The ~~Finance Director~~ Finance Officer shall promptly cause a notice to be mailed to property owners within the boundaries of the Salem Downtown Economic Improvement District, identifying the amount of the proposed assessment for each property, and informing the persons of the time and place of a public hearing before the ~~City~~ Council, at which time affected persons may appear and present evidence and testimony in support of or in objection to the proposed assessment. The hearing shall occur not sooner than 30 days after the mailing of the notice to property owners.

(b) After the hearing, the ~~City~~ Council shall consider objections, if any, and may adopt, correct, modify or revise the proposed assessment.

(c) The ~~City~~ Council shall not impose the proposed assessment if written objections are received at the public hearing from owners of property upon which more than 33 percent of the total amount of proposed assessment would be levied.

(d) After the public hearing, if the ~~City~~ Council decides to impose the proposed assessment, it shall determine whether the property benefited shall bear all or a portion of the costs of the activities to be funded, and shall adopt a resolution making the levy therefor.

(Prior Code, § 44.040; Ord. No. 1-08; Ord. No. 29-11)

Sec. 44.041. Correction of errors.

After the ~~City~~ Council has made the assessment, the ~~Finance Director~~ Finance Officer may correct a clerical error or omission in the assessment to conform to the facts. A clerical error is an error in the assessment which is a failure to correctly identify the property subject to assessment, and which, had the error been discovered by the ~~Finance Director~~ Finance Officer prior to the date of the assessment made pursuant to SRC 44.040(d), would have been corrected as a matter of course. Such errors include, but are not limited to, arithmetic and copying errors, and the omission or misstatement of the character of the land or an improvement. The ~~Finance Director~~ Finance Officer shall refund any overpayment made as the result of such clerical error. In the event additional moneys are due, the ~~Finance Director~~ Finance Officer shall correct the assessment for the next fiscal year.

(Prior Code, § 44.041; Ord. No. 44-08)

Sec. 44.045. Due date; penalties; assessment is debt to City.

The assessment shall be due and payable upon the 30th day after the date the bill for the assessment is mailed to the owner. Any assessment not paid within 30 days of the date of mailing of the bill shall be subject to a penalty equal to ten percent of the amount of the assessment due. Any unpaid assessment, and penalty thereof, shall bear interest at the rate of nine percent per annum. The assessment and any penalty thereof shall constitute a debt of the person from whom the assessment is due, and, if unpaid, may be collected in the manner of an unpaid debt to the City.

(Prior Code, § 44.045; Ord. No. 1-08)

Sec. 44.050. Expenditure of moneys.

Money derived from assessments levied and from interest earned on moneys collected shall be spent only for the economic improvements, as defined by ORS 223.112(2) and SRC 44.005, within the Salem Downtown Economic Improvement District, and for the cost of City administration of the Salem Downtown Economic Improvement District.

(Prior Code, § 44.050; Ord. No. 1-08; Ord. No. 29-11)

Sec. 44.055. Use of moneys upon termination of Salem Downtown Economic Improvement District.

Upon the termination of the Salem Downtown Economic Improvement District, all moneys collected as of the date of termination and all moneys which are received after termination, but which were levied prior to termination of the Salem Downtown Economic Improvement District, shall be used for the continuation of the economic improvements, as defined by ORS 223.112(2) and SRC 44.005, within the boundaries of the Salem Downtown Economic Improvement District described in SRC 44.005~~(a)~~, and for the cost of City administration of such economic improvements until the moneys are completely expended.

(Prior Code, § 44.055; Ord. No. 1-08; Ord. No. 29-11)

Title IV

HEALTH AND SANITATION

CHAPTERS 45. SMOKING*

***State law reference**—Smoking in public elevator prohibited, ORS 479.015; smoking in vehicle in presence of minor, ORS 811.193.

Sec. 45.010. Purpose.

(a) Secondhand smoke from tobacco, cannabis, and other plants, has been recognized as a health hazard and as a cause of annoyance, inconvenience and discomfort to other persons in proximity to the smoking activity. Secondhand smoke has been identified as being particularly harmful to persons with certain respiratory conditions, and has also been determined to cause cancer to nonsmokers exposed to secondhand smoke on a frequent basis.

(b) Many businesses, organizations, commercial property owners, and other owners and managers of property where the general public is invited or generally permitted, would like to eliminate smoking from occurring on their property. The City ~~of Salem~~ recognizes that its sidewalks and landscape strips are a potential impediment to these private property smoking bans. To aid in the effectuation of private property smoking bans, this chapter creates a method to prohibit smoking on public sidewalks and landscape strips adjacent to public service properties where smoking is otherwise banned.

(c) This chapter ~~of the Salem Revised Code~~ is intended to protect public health, safety and welfare, by reducing unwanted and unwelcome exposure to secondhand smoke. This chapter is also intended to strike a reasonable balance between the needs of persons who smoke and the needs of nonsmokers, including children and persons with existing respiratory conditions.

(Prior Code, § 45.010; Ord. No. 27-14)

Sec. 45.015. Definitions.

~~For the purposes of this Chapter the following words and phrases shall have the following meanings:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Director* ~~Director means the City Manager, or the department head charged by the City Manager with the implementation and enforcement of this chapter, or that department head's designee.~~

~~(b)~~ *Eligible premises* ~~as used in this Chapter, shall~~ means real property meeting the "public services" use classification as described in SRC 400.005, Table 400-1.

~~(c)~~*Landscape strip* means that part of any public street right-of-way lying between the sidewalk and the curb or pavement, also known as the parking strip, planting area, or planting strip.

~~(d)~~ *No Smoking Policy* means a formal written policy adopted by the person or persons having the authority to make decisions for the owner of an identified area of real property, which states the rules and regulations applicable to smoking on property owned or managed by the organization.

~~(e)~~*Sidewalk* means all paved surfaces, except walkways and driveways, lying between the curbline and the right-of-way line of a street or in a public easement.

~~(f)~~*Smoke-free area* means all or a portion of an eligible premises covered by a No Smoking Policy where smoking is prohibited, which shall include designated city-owned sidewalks and landscape strips adjacent to any privately-owned ~~a private~~ smoke-free area.

~~(g)~~ *Smoking* ~~as defined in this Chapter, shall~~ means the possession of any lighted pipe, lighted cigar, the use of an electronic cigarette or a similar device intended to emulate smoking, which permits a person to inhale vapors or mists that may or may not include nicotine, or lighted cigarette of any kind, or the lighting of a pipe, cigar, or cigarette of any kind, including, but not limited to, any tobacco or cannabis product, or any other weed or plant

capable of being smoked.

(Prior Code, § 45.015; Ord. No. 27-14)

Sec. 45.020. Administration.

The Director shall administer and enforce the provisions of this chapter, have the authority to render written and oral interpretations, and have authority to adopt administrative rules that are consistent with, and otherwise implement, the terms of this chapter.

(Prior Code, § 45.020; Ord. No. 27-14)

Sec. 45.025. Regulation of smoking on City property.

(a) The Director shall have the authority to issue rules and regulations concerning smoking at City buildings and offices. In the event the Director issues smoking regulations at city buildings and offices, the Director shall cause the appropriate signs to be installed notifying the public of the status of the building or office as being smoke-free or containing a smoke-free area or areas.

(b) Smoking prohibited on city-owned park property. Smoking shall be prohibited on all city-owned designated park property, including Geer Park, and excluding from the prohibition that portion of the Civic Center Complex beginning at the northern boundary of the paved public plaza north of the ~~City~~ Council Chambers, between Liberty Road SE and Commercial Street SE, south to Leslie Street SE.

(Prior Code, § 45.025; Ord. No. 27-14; Ord. No. 10-15)

Sec. 45.030. Establishment of smoke-free zones on public sidewalks and landscape strips adjacent to smoke-free premises.

Smoking may be prohibited on public sidewalks and landscape strips adjacent to an eligible property that has been declared to be smoke-free, if requested by the owner, operator, manager, or other person in control of the eligible property, and the eligible property has been registered with the City as set forth in this chapter. Notwithstanding any other provision of this chapter, the Director has discretion to determine whether to designate a public sidewalk and landscape strip to be a smoke-free zone, and what sections may be designated.

(Prior Code, § 45.030; Ord. No. 27-14)

Sec. 45.035. Procedures to register No Smoking Policy with the City.

Eligible premises that are adjacent to at least 100 feet of city-owned sidewalk may request that the City designate the city-owned sidewalk and landscape strip abutting the eligible premises as a non-smoking area. In order for the City to designate a city-owned sidewalk and landscape strip to be a smoke-free area, the owner, operator, manager, or other person in control of the eligible premises must:

(a) File the organization's No Smoking Policy with the Director. The No Smoking Policy must, at a minimum, reasonably describe the area covered by the Policy, and state that the organization will enforce the terms of the No Smoking Policy on its employees, including any employees smoking on city-owned sidewalks and landscape strips adjacent to the eligible premises that is designated as a smoke-free area;

(b) Identify the city-owned sidewalks and landscape strips, or portions thereof, where the organization's employees are prohibited from smoking by the organization's No Smoking Policy; and

(c) Request that the City install signs along the city-owned sidewalks and landscape strips identified in subsection (b) of this section notifying the public that the sidewalk is a smoke-free area. The Director shall have the sole discretion to determine the number and location of such signs, and to determine what text or graphics appear on the signs, but such signs shall, at a minimum, include <u>a</u> reference to this chapter.

(Prior Code, § 45.035; Ord. No. 27-14)

Sec. 45.040. Costs.

The costs associated with the preparation and installation of the signs required for public sidewalks and landscape strips shall be the responsibility of the requesting party. The Director may make rules governing the

recovery of costs for the preparation and installation of the required signs, which may include a requirement that the requesting party pay a deposit at the time of registration.

(Prior Code, § 45.040; Ord. No. 27-14)

Sec. 45.045. Responsibility for enforcement.

(a) The owner, operator, manager, or other person in control of an eligible premises declared to be smoke-free pursuant to this chapter shall maintain responsibility for enforcing the terms of its No Smoking Policy; including the enforcement of the terms of the Policy on the organization's employees who are smoking on city-owned sidewalks or landscape strips identified in the organizations No Smoking Policy.

(b) The City shall be responsible for enforcing the terms of this chapter on city-owned property, excluding city rights-of-way, but including designated city-owned sidewalks and landscape strips covered by a No Smoking Policy and that ~~at~~ is properly registered with the City and contains the signs required by this chapter. The City shall not be responsible for enforcing any provision of an organization's No Smoking Policy.

(Prior Code, § 45.045; Ord. No. 27-14; Ord. No. 10-15)

Secs. 45.050—45.980. Reserved.

Sec. 45.990. Violations and penalties.

(a) Any person who smokes on a city-owned sidewalk or landscape strip~~s~~ included within a smoke-free area properly registered with the City under this chapter, or on city-owned property where smoking has been prohibited under this chapter shall be guilty of an infraction, punishable pursuant to SRC 1.070.

(b) The penalty for the first infraction under this chapter shall be no more than $50.00. The penalty for the second infraction under this chapter shall be no more than $150.00. The penalty for the third or subsequent infractions under this chapter shall be no more than $250.00.

~~(c) Each violation of this Chapter shall constitute a separate offense.~~

(Prior Code, § 45.990; Ord. No. 27-14; Ord. No. 10-15)

CHAPTER 46. RESERVED

CHAPTER 47. SOLID WASTE MANAGEMENT*

***State law reference**—Solid waste management authority, ORS 459.005 et seq.; reuse and recycle provisions, ORS 459A.005; authority to franchise collection services, ORS 459.085.

Sec. 47.010. Short title.

This chapter shall be known and may be cited as the "Solid Waste Management Ordinance of the City of Salem."

(Prior Code, § 47.010; Ord. No. 54-65; Ord. No. 244-79; Ord. No. 51-96)

Sec. 47.015. Purpose.

To protect the public health, safety, and welfare, it is the policy of the City ~~of Salem~~ to regulate collection, disposal, recycling and resource recovery of solid waste, and to establish a process for the grant of solid waste management franchises in order to:

(a) Provide for safe and sanitary collection, transportation, and disposal of solid waste, and provide for recycling and resource recovery.

(b) Provide a coordinated citywide program for the control of solid wastes in cooperation with federal, state, and other local agencies.

(c) Provide for, and encourage research, studies, surveys, and demonstration projects to promote the development of more sanitary, efficient, and economical solid waste management, recycling and resource recovery.

(d) Ensure rates for solid waste management are just, fair, reasonable, and adequate to provide necessary solid waste management, recycling and resource recovery and prohibit rate preferences and other discriminatory practices.

(e) Provide technologically and economically feasible recycling and resource recovery.

(f) Fulfill the purposes set forth in ORS 459A.085(4).

(Prior Code, § 47.015; Ord. No. 244-79; Ord. No. 126-07)

Sec. 47.020. Definitions.

~~Except where the context otherwise clearly requires, as used in this Chapter:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*City Manager* ~~means the City Manager for the City of Salem or the City Manager's designee.~~

~~(b)~~ *Compact* and *compaction* means the process of, or to engage in, the shredding of material or the manual or mechanical compression of material.

~~(c)~~*Compensation* means consideration of any kind paid for solid waste management service, including, but not limited to, the direct or indirect payment of money, including the proceeds from resource recovery, or the provision of goods, services or other benefits to tenants, lessees, occupants or other persons as part of rent.

~~(d)~~ *Compost* or *composting* means the controlled biological decomposition of compostable material or the product resulting from such process.

~~(e)~~*Compostable material* means yard debris, food waste and food soiled paper when source separated for composting, but does not include food soiled paper containing plastic or any other material that inhibits controlled biological decomposition.

~~(f)~~*Dispose* or *disposal* means the accumulation, storage, discarding, collection, removal, transportation, recycling, or resource recovery of waste.

~~(g)~~ *Fire Code Official* means the Fire Chief for the City ~~of Salem~~ or the Fire Chief's designee.

~~(h)~~ *Food soiled paper* means paper products that have been in contact with food or food waste to the degree that they would not be able to be recycled into new paper products. The term "food soiled paper" includes, but is not limited to, used paper table covers, used napkins, pizza boxes, coffee filters and waxy corrugated cardboard. The term "food soiled paper" does not include unsoiled cardboard, paperboard, newspaper or office paper.

~~(i)~~ *Food waste* means all waste from meats, fish, shellfish, grains, fruits and vegetables, which attends or results from the storage, preparation, cooking, handling, selling or serving of food for human consumption. The term "food waste" includes, but is not limited to, excess, spoiled or unusable food or dairy products, meats, fish, shellfish, grains, fruits, vegetables, breads and dough, incidental amounts of edible oils, and organic waste from food processing. The term "food waste" does not include large amounts of oils and meats which are collected for rendering, fuel production or other reuse applications. The term "food waste" does not include dead animals not intended for human consumption or animal excrement.

~~(j)~~ *Franchise* means a franchise that authorizes a person to provide solid waste management service as provided in this chapter.

~~(k)~~ *Franchisee* means a person holding a franchise.

(l) *Generator* means the person who produces solid waste, compostable material or recyclable material to be placed, or that is placed, out for disposal. As used in this chapter, the term "generator" does not include any person who manages an intermediate function resulting in the alteration or compaction of the solid waste, compostable material or recyclable material after it has been produced by the generator and placed out for disposal.

~~(m)~~ *Hazardous waste* has the meaning given in ORS 466.005.

~~(n)~~ *Mixed compostables* means the process where two or more types of compostable materials are collected together (i.e., not separated) in a combination allowed by the Director.

~~(o)~~ *Mixed recycling* means the process where two or more types of recyclable materials are collected together (i.e., not separated) in a combination allowed by the Director.

~~(p)~~ *Owner* means the person holding legal or equitable title to a premises or who is purchasing a premises under a trust deed or land sales contract, or any agent or other person employed to manage or maintain such premises.

~~(q) *Person* means an individual, corporation, limited liability company, sole proprietorship, association, partnership, trust, cooperative, governmental unit, estate, or any other entity in law or fact.~~

~~(r)~~ *Premises* means a lot, parcel or tract of land, and includes any buildings or structures located thereon.

~~(s)~~ *Public way* means any public right-of-way or other area located within the corporate limits of the City ~~of Salem~~ designated by the federal government, the State ~~of Oregon~~, the City ~~of Salem~~, or another local government for the use or enjoyment by the general public, including, but not limited to, roads, streets, alleys, lanes, bridges, sidewalks, trails, beaches, navigable waterways, squares, plazas, parks and any recreational facilities.

~~(t)~~ *Public transportation facility* means any property, structure, or equipment used for, or in connection with, the transportation of persons for hire by rail, air or bus, including any railroad cars, buses or airplanes used to carry out such transportation.

~~(u)~~ *Receptacle* means a trash can, cart, bin, container, drop box or other vessel used for the disposal of solid waste that has been approved by the Director and into which solid waste, compostable material, mixed compostables, recyclable material or mixed recycling may be placed for such disposal.

~~(v)~~ *Recyclable material* means any material or group of materials that can be collected and sold for recycling at a net cost equal to or less than the cost of collection and disposal of the same material.

~~(w)~~ *Recycling* means any process by which solid waste is transformed into new or different products in such a manner that the original products may lose their original identity.

~~(x)~~ *Resource recovery* means any process of obtaining from solid waste, by pre-segregation or

otherwise, materials that have useful physical or chemical properties, that can be reused or recycled for some purpose, including, but not limited to, energy production or materials recovery.

~~(y)~~ *Reuse* means the return of waste into the economic stream, to the same or similar use or application, without change in the waste's identity.

~~(z)~~*Service* means the collection, storage, transportation, transfer or disposal of solid waste by a franchisee, including such activities that result in recycling or resource recovery.

~~(aa)~~ *Service area* means the geographic area in which solid waste management service is provided by a franchisee. As used in this chapter, the term "service area" does not include a disposal site.

~~(bb)~~ *Solid waste* means all waste, in solid, semisolid, or liquid form, including, but not limited to, garbage, rubbish, trash, ashes, street refuse, compostable material, demolition and construction debris, dead animals, and infectious waste as defined in ORS ~~459.386(2)~~ 459.386(4), but excluding sewage, sewage sludge, or sewage hauled as an incidental part of a septic tank or cesspool cleaning service or materials used by a generator for fertilizer, for compost or composting, or for other productive agricultural or horticultural purposes.

~~(cc)~~ *Solid waste management* means the business of collection, transportation, storage, treatment, utilization, processing, disposal, recycling, and resource recovery of solid waste.

~~(dd)~~ *Source separation* means the separation or setting aside of waste by the generator or producer of the waste for composting, recycling or reuse.

~~(ee)~~ *Total source separation* means the complete separation by the generator of waste by type or kind of waste from all other types or kinds of waste. Total source separation requires each type or kind of recyclable material to be distinctly separated into a separate package, receptacle, or stack in preparation for collection. By way of example, but not limitation, source separation means newspaper, cardboard, glass, ferrous cans and waste wood are each placed in a separate receptacle and not mixed in the same receptacle.

~~(ff)~~ *Waste* means any material, substance, or object that is no longer wanted by or usable by the generator and which is to be disposed of, or is to be subject to recycling or resource recovery by another person, and includes both source separated material and nonsource separated material.

~~(gg)~~ *Yard debris* means all vegetative waste generated from property maintenance and/or landscaping activities, including, but not limited to, grass clippings, leaves, hedge trimmings, and small tree branches, but excluding tree stumps and other similar bulky woody materials.

(Prior Code, § 47.020; Ord. No. 72-74; Ord. No. 244-79; Ord. No. 75-88; Ord. No. 91-88; Ord. No. 51-96; Ord. No. 30-97; Ord. No. 53-97; Ord. No. 8-2000; Ord. No. 45-2002; Ord. No. 31-06; Ord. No. 72-07; Ord. No. 126-07; Ord. No. 9-10)

State law reference—Definitions, ORS 459.005; definition of compost, ORS 459A.005.

Sec. 47.025. Construction consistent with rules adopted by Environmental Quality Commission.

The provisions of this chapter, any rules adopted pursuant to SRC 47.030, and any franchise granted hereunder, shall be construed so as to be consistent with any rules adopted by the Oregon Environmental Quality Commission under ORS 459.045 and ~~ORS~~ 459A.025, and with any solid waste management plan or program adopted by any metropolitan service district that has been approved by the Oregon Department of Environmental Quality and to which the City ~~of Salem~~ is a party, and, in the event of any conflict between the provisions of this chapter and any such rules, plan or program, the rules, plan or program shall control.

(Prior Code, § 47.025; Ord. No. 126-07)

Sec. 47.030. Administration; rulemaking.

The Director shall administer and enforce the provisions of this chapter, and shall have the authority to render written and oral interpretations, to adopt administrative rules and procedures necessary for its proper administration and enforcement, and to arbitrate or to provide for arbitration of any and all disputes arising between a franchisee and the citizens of the City.

(Prior Code, § 47.030; Ord. No. 54-65; Ord. No. 72-74; Ord. No. 244-79; Ord. No. 51-96; Ord. No. 8-2000; Ord. No. 126-07)

Sec. 47.035. Disposal of solid waste.

All solid waste generated in the City shall be disposed of in compliance with this chapter, and with all other applicable federal, state and local laws.

(Prior Code, § 47.035; Ord. No. 54-65; Ord. No. 72-74; Ord. No. 244-79; Ord. No. 53-97; Ord. No. 126-07)

Secs. 47.040—47.070. Reserved.

Sec. 47.080. Franchise required to provide solid waste management services.

Except as otherwise provided in this chapter, it shall be unlawful for any person to offer or to advertise to provide, or to provide, solid waste management service to another for compensation, unless the person has a valid, current franchise from the City; provided, however, solid waste management service for any City operation or facility may be provided by the City through the use of city personnel or resources, or pursuant to a public contract.

(Prior Code, § 47.080; Ord. No. 54-65; Ord. No. 39-78; Ord. No. 244-79; Ord. No. 64-84; Ord. No. 8-2000; Ord. No. 126-07)

Sec. 47.081. Exemptions from requirement of a solid waste franchise.

(a) The following persons and activities are exempt from the franchise requirement under SRC 47.080:

(1) The collection, transportation, and reuse or sale of repairable or cleanable discards by charitable organizations regularly engaged in such activity, including, but not limited to, the Salvation Army, St. Vincent de Paul, and Goodwill.

(2) The collection, transportation, and reuse or recycling of totally source separated solid waste materials, or the operation of a collection center for totally source separated solid waste materials, by a religious, benevolent, or fraternal organization, that was not organized, and is not operated, for any solid waste management purpose, including, but not limited to, scouting organizations and churches, and which is using the activity for fund raising.

(3) The collection, transportation, or redemption of returnable beverage containers under ORS ~~Chapter §§~~ 459A.700—459A.740~~,~~ and amendments, ~~adopted thereto by 2006 Or. Laws Chapter 303, commonly known as~~ "the Bottle Bill."

(4) A generator, producer, or source that transports and disposes of solid waste created as an incidental part of regularly carrying on the business of auto dismantling, to the extent licensed by the State ~~of Oregon~~.

(5) A person that transports and disposes of solid waste accumulated or created as an incidental part of regularly carrying on the business of janitorial services. As used in this subsection, "the business of janitorial services" does not include a business that primarily or solely transports and disposes of solid waste accumulated, created, generated, or produced by a property owner or occupant.

(6) A person that transports and disposes of solid waste created as an incidental part of regularly carrying on the business of gardening or landscaping services.

(7) The transportation by a homeowner of solid waste generated or produced at the homeowner's place of residence to a lawful disposal site, resource recovery facility, or market. As used in this subsection, the term "homeowner" means a person owning and occupying residential property, or renting or leasing and occupying residential real property. In the case of a residential property not occupied by the owner, the solid waste is generated or produced by the occupant and not by the owner.

(8) An owner of a mobile home park, a condominium development or a residential care facility may collect solid waste from the occupants and deposit the solid waste in an approved receptacle or receptacles provided by a franchisee and located upon the premises, provided such solid waste is prepared for collection as provided by SRC 47.145 and ~~SRC~~ 47.155, and the owner does not transport the solid waste upon the public streets.

(9) The purchase of totally source separated solid waste for fair market value.

(10) Subject to all applicable laws, rules, and regulations, solid waste may be disposed of within the building or structure where it accumulates, or within a closed building or structure accessory thereto, by complete incineration made in such a manner as to create no noxious odors, fire hazards, smoke, or other nuisance, provided that any incinerators used for such disposal have been first approved by the Fire Code Official,

and further provided that any residue from such burning is disposed of as provided in this chapter, or as otherwise required by law.

(11) Subject to all applicable laws, rules, and regulations, organic solid waste may be disposed of within the building or structure where it accumulates, or within a closed building or structure accessory thereto, by grinding or shredding the waste finely and disposing of the waste through pipes leading to a public sanitary sewer, provided that the grinder or shredder has first been approved by the Director ~~of Public Works~~, that the solid waste is ground or shredded to such a degree that all particles are carried freely under the flow conditions normally prevailing in the sanitary sewers into which the waste is deposited, and that particle is greater than one-half inch in any dimension.

(12) Any exemption granted from the requirement of a franchise pursuant to subsection (b) of this section.

(b) The ~~City~~ Council may grant exemptions from the requirement of a franchise to provide solid waste management service as provided in this subsection.

(1) Any exemption shall be based upon a consideration of the following factors:

(A) Whether an existing franchise holder has the ability to provide the required service.

(B) Whether there are any hardships or practical difficulties upon the applicant which can be only relieved by granting an exemption.

(C) Whether there are any exceptional circumstances or conditions that apply to the land, buildings, or use that is the basis for the application which do not apply generally to other land, buildings, or similar uses.

(D) Whether granting the exemption would have a deleterious impact upon consumer service and consumer rates.

(E) Whether the applicant has the ability to secure the necessary equipment and/or personnel to provide adequate service.

(2) Any person seeking an exemption from the requirement of a franchise shall file an application therefor on forms provided by the Director. The Director shall determine whether the applicant has submitted a complete application, and, if the application is complete, shall schedule a hearing upon the application.

(3) Upon not less than 20 days' written notice to the applicant and the affected franchisee(s), a public hearing shall be held before the ~~City~~ Council.

(4) The Director shall provide information and recommendations to the ~~City~~ Council to assist the ~~City~~ Council in reaching a determination.

(5) The ~~City~~ Council shall adopt an order setting forth its decision. The order shall be mailed by first class mail, postage prepaid, to the applicant, to any person testifying at the hearing, and to all affected franchisees. The ~~City~~ Council may attach such conditions to the exemption as it deems necessary to carry out the purposes of this chapter, including, but not limited to, compliance with any responsibility or requirement imposed on a franchisee under this chapter and a term or duration for the exemption.

(Prior Code, § 47.081; Ord. No. 126-07)

Sec. 47.083. Agreements for joint or regional franchising.

The City may enter into intergovernmental agreements with any city or county for joint or regional franchising of solid waste management service.

(Prior Code, § 47.083; Ord. No. 244-79; Ord. No. 51-96; Ord. No. 126-07)

Sec. 47.085. Applications; review; issuance of solid waste management franchises.

(a) Applications for franchises shall be made on forms provided by the Director. All applications shall be reviewed by the Director, who shall make such investigation of the applicant as the Director deems appropriate. The Director shall give written notice of an application to any franchisee that holds a franchise including part of a service area proposed for a franchise in the application.

(b) On the basis of the application, evidence submitted by the applicant and any affected franchisee, and results of the investigation, the Director shall make a determination as to whether the applicant meets the qualifications under SRC 47.087, whether the service area should include additional territory, and whether additional service or equipment should be provided. The Director shall forward a recommendation to the ~~City~~ Council as to whether the application should be granted or denied, or, if granted, whether the franchise should be granted subject to modifications to the applicant's proposal.

(c) The ~~City~~ Council shall adopt an order granting or denying the application, or granting the application subject to modifications. Upon receipt of an order granting a franchise, the applicant shall enter into a written franchise with the City. No solid waste management service may be provided by the applicant until such written franchise has been entered into.

(d) A franchisee shall provide solid waste management services within the service area defined by the franchise within one month from the date of the execution of the franchise, unless an extension is granted by the ~~City~~ Council. The ~~City~~ Council may require commencement of service before such one-month period, if needed for the protection of public health, safety and welfare.

(Prior Code, § 47.085; Ord. No. 244-79; Ord. No. 51-96; Ord. No. 8-2000; Ord. No. 126-07)

Sec. 47.087. Qualifications for grant or transfer of solid waste disposal franchises.

(a) *Grant of new franchise.* Any person applying for a franchise to provide solid waste management service shall be granted a franchise, if the person provides such letters of recommendation as may be required by rule adopted by the Director and demonstrates, to the satisfaction of the ~~City~~ Council that:

(1) At the time of application:

(A) A franchise for the proposed service area has not been granted to another person; ~~or~~

(B) The proposed service area is not being presently served by a franchisee pursuant to any schedule established as part of the franchise in accordance with this chapter; or

(C) The proposed service area is not being adequately served by an existing franchisee, as demonstrated by a substantial demand from customers within the proposed service area for a change of the franchisee.

(2) The person has available resources, including, but not limited to, collection vehicles, equipment, facilities, and personnel sufficient to meet the standards of equipment and service established pursuant to this chapter.

(3) The person has sufficient experience to ensure compliance with this chapter and any rules adopted by the Director. If the applicant does not have sufficient experience, the ~~City~~ Council may require a corporate surety bond, in an amount of not less than $25,000.00 nor more than $100,000.00, guaranteeing full and faithful performance of the duties and obligations imposed by this chapter and all applicable federal, state, and local laws and rules or regulations.

(4) The person has in force, or provides a letter of intent for, public liability insurance in the amount of not less than $300,000.00, and property damage insurance in the amount of not less than $50,000.00, which shall both be evidenced by a certificate of insurance or copy of the letter of intent. Upon award of a franchise, any applicant providing only a letter of intent shall provide a certificate of insurance prior to the effective date of the franchise.

(b) *Transfer of existing franchise.* Any person applying to receive the transfer of an existing franchise to provide solid waste management service shall be granted the transfer of an existing franchise, if the person provides a letter of consent from the current franchisee for the service area requesting the transfer, such letters of recommendation as may be required by rule adopted by the Director, and demonstrates, to the satisfaction of the ~~City~~ Council that:

(1) The person has available resources, including, but not limited to, collection vehicles, equipment, facilities, and personnel sufficient to meet the standards of equipment and service established pursuant to this chapter.

(2) The person has sufficient experience to ensure compliance with this chapter and any rules adopted by the Director. If the applicant does not have sufficient experience, the ~~City~~ Council may require a corporate surety bond, in an amount of not less than $25,000.00 nor more than $100,000.00, guaranteeing full and faithful performance of the duties and obligations imposed by this chapter and all applicable federal, state, and local laws and rules or regulations.

(3) The person has in force, or provides a letter of intent for, public liability insurance in the amount of not less than $300,000.00, and property damage insurance in the amount of not less than $50,000.00, which shall both be evidenced by a certificate of insurance or copy of the letter of intent. Upon award of a franchise, any applicant providing only a letter of intent shall provide a certificate of insurance prior to the effective date of the franchise.

(c) *Expansion of service area.* Any person applying to expand the service area of an existing franchise to provide solid waste management service shall be granted the expansion of the service area, if the person provides such letters of recommendation as may be required by rule adopted by the Director, and demonstrates, to the satisfaction of the ~~City~~ Council that:

(1) The person has available resources, including, but not limited to, collection vehicles, equipment, facilities, and personnel sufficient to meet the standards of equipment and service established pursuant to this chapter in the expanded service area.

(2) At the time of the application: ~~Service in Expansion Area.~~

(A) A franchise for the proposed expansion service area has not been granted to another person; ~~or~~

(B) The proposed expansion service area is not being presently served by a franchisee pursuant to any schedule established as part of the franchise in accordance with this chapter; ~~or~~

(C) The proposed expansion service area is not being adequately served by an existing franchisee, as demonstrated by a substantial demand from customers within the proposed expansion service area for a change of franchisee; or

(D) The franchisee provides a letter of consent from the existing franchisee in the area of expansion, consenting to the proposed expansion.

(3) The person has sufficient experience to ensure compliance with this chapter and any rules adopted by the Director. If the applicant does not have sufficient experience, the ~~City~~ Council may require a corporate surety bond, in an amount of not less than $25,000.00 nor more than $100,000.00, guaranteeing full and faithful performance of the duties and obligations imposed by this chapter and all applicable federal, state, and local laws and rules or regulations.

(4) The person has in force, or provides a letter of intent for, public liability insurance in the amount of not less than $300,000.00, and property damage insurance in the amount of not less than $50,000.00, which shall both be evidenced by a certificate of insurance or copy of the letter of intent. Upon award of a franchise, any applicant providing only a letter of intent shall provide a certificate of insurance prior to the effective date of the franchise.

(Prior Code, § 47.087; Ord. No. 244-79; Ord. No. 51-96; Ord. No. 8-2000; Ord. No. 126-07)

Sec. 47.089. Request for reconsideration.

(a) If the ~~City~~ Council denies an application for a new franchise, the transfer of an existing franchise, or a request to amend a franchise under SRC 47.091, the applicant may file a request for reconsideration. The request for reconsideration shall be filed with the Director not later than 30 days after the effective date of the order, shall be accompanied by a copy of the order, and shall set forth, with specificity, the basis for the person's request.

(b) The Director shall, upon receipt of a request for reconsideration, set the matter for public hearing before the ~~City~~ Council. The applicant shall be given not less than ten days' written notice of such public hearing. The applicant shall have the burden of proof to submit substantial evidence demonstrating that the applicant satisfies the applicable criteria. Other interested persons or affected public or private agencies may appear and offer oral or written testimony. The ~~City~~ Council may, following the public hearing, affirm, modify, or rescind its prior order. The order disposing of the applicant's request for reconsideration shall be final.

(c) If the ~~City~~ Council denies the applicant's request for reconsideration, the applicant may not submit another application for a franchise for the same service area, or any portion thereof, or for an identical amendment, for a period of six months following the date of the order, unless the ~~City~~ Council finds that the public interest requires consideration of a new application or amendment within a shorter period of time.

(Prior Code, § 47.089; Ord. No. 244-79; Ord. No. 51-96; Ord. No. 126-07)

Sec. 47.090. Term of solid waste management franchise.

(a) Unless a shorter term is agreed to by the City and the franchisee, the term of any new solid waste management franchise shall be seven years.

(b) At the time of the effective date of Ordinance Bill No. 126-07, any franchisee with a valid, current franchise term of less than seven years may request, pursuant to subsection (d) of this section, that the franchise be amended to extend the term of an existing franchise to seven years, and to allow for automatic extension pursuant to subsection (c) of this section.

(c) Unless modified, revoked, suspended, or amended pursuant to this chapter, or unless the Council determines not to extend a franchise pursuant to this section, at the end of each franchise year an additional year shall automatically be added to the term of the franchise to maintain a seven year franchise term.

(d) The ~~City~~ Council may choose to not extend a franchise under subsection (c) of this section for any reason. If the ~~City~~ Council chooses not to extend a franchise, at least 60 days before the date that the franchise would otherwise automatically be extended, the ~~City~~ Council shall provide the franchisee with written notice of the ~~City~~ Council's intent not to extend the franchise. The franchisee shall have 30 days from the date of the notice to request a public hearing. If, following the public hearing, the ~~City~~ Council reaffirms the decision not to extend the franchise term, the franchise shall expire at the end of its existing term, and shall not automatically be extended as provided in this section. Nothing in this subsection shall prevent a franchisee from applying for a new franchise.

(e) Prior to the issuance ~~or extension~~ of a franchise, the ~~City~~ Council shall provide notice and opportunity for public comment.

(Prior Code, § 47.090; Ord. No. 244-79; Ord. No. 126-07)

Sec. 47.091. Review and amendment of franchise.

Upon request of a franchisee, or in the discretion of the Director or ~~City~~ Council, and apart from any rights of the City under SRC 47.096, franchises may be reviewed by the City at any time, at which time the City and franchisee may renegotiate any of the terms of the franchise by considering the need for the change, the economic impact of the change, and the technological feasibility of the change. The ~~City~~ Council shall provide a notice and opportunity for public comment on any proposed review or amendment of a franchise. A franchisee may appeal the denial of a request to amend a franchise according to the procedure set forth in SRC 47.089.

(Prior Code, § 47.091; Ord. No. 126-07)

Sec. 47.095. Renewal of solid waste management franchise.

Unless revoked pursuant to SRC 47.096, any person holding a solid waste management franchise that is current and valid upon the effective date of Ordinance Bill No. 126-07 shall hold the franchise until the normal expiration date set forth in the franchise, unless such franchise is amended pursuant to SRC 47.090(b). Any franchisee that holds a new franchise with a term set pursuant to SRC 47.090(a) may, not less than six months prior to the expiration date of the new franchise, request an amendment to establish an expiration date pursuant to SRC 47.090(b).

(Prior Code, § 47.095; Ord. No. 244-79; Ord. No. 51-96; Ord. No. 8-2000; Ord. No. 126-07)

Sec. 47.096. Suspension and revocation of a franchise.

(a) If a franchisee fails to comply with any provision of this chapter, the franchise, or any other applicable federal, state or local law or regulation, the Director may issue a notice and order suspending the franchise.

(b) The notice and order shall include the following:

(1) The effective date;

(2) Reference to the particular provision, franchise term, or other applicable law or regulation that is alleged to have been violated and the specific facts that are the basis for the suspension;

(3) A time certain within which the violation must be corrected, and a statement that failure to correct the violation within such time shall result in a revocation of the franchise. Except in cases where the violation creates an imminent danger to public health, safety or welfare, the date to correct the violation shall be not less than 30 days from the effective date of the notice and order; in cases where the violation creates an imminent threat to public health, safety and welfare, the correction of the violation shall be required to occur as soon as is practicable;

(4) A statement that the franchisee has the right to a hearing to contest the notice and order, by filing a notice of appeal with the Director not later than 15 business days after the effective date of the notice and order, which notice of appeal shall set forth with specificity the grounds why the notice and order was issued in error, and that if a notice of appeal is not filed, the franchise will terminate; and

(5) A statement that if notice of appeal is not received within 15 business days of the effective date of the notice and order, the franchisee shall have waived the right to a hearing, and to otherwise contest the suspension or revocation of the franchise.

(c) A copy of the notice and order shall be personally served on the franchisee, or delivered to the franchisee by first class mail and by either registered or certified mail, return receipt requested. Any notice and order served by mail shall be deemed received three business days after the date mailed if to an address within the State ~~of Oregon~~, and seven business days after the date mailed if to an address outside the State ~~of Oregon~~. Refusal to accept the registered or certified mail shall not be deemed to, and shall not render the notice invalid or ineffective.

(d) If the franchisee timely files a notice of appeal, the matter shall be referred to the ~~City~~ Council for a hearing. At the public hearing, the franchisee and other interested persons shall have an opportunity to present oral testimony and written evidence. The Director shall have the burden of proving that the suspension was proper. The burden of proof shall be by a preponderance of the evidence.

(e) The ~~City~~ Council may, following the public hearing, affirm, modify, or rescind the notice and order. The ~~City~~ Council's order disposing of the franchisee's appeal shall be final.

(f) If the franchisee fails to timely file a notice of appeal, the franchise shall be deemed revoked upon the date set forth in the notice and order to correct the violation. If the ~~City~~ Council affirms or modifies the order, the franchisee shall correct the violation upon such date as set forth in the ~~City~~ Council's final order, and, if the franchisee fails to correct the violation on or before such date, the franchise shall be deemed revoked upon such date.

(g) The period within which the franchisee must correct a violation, as set forth in the Director's notice and order or the ~~City~~ Council's final order, may be extended by the Director for good cause shown, upon request by the franchisee submitted in writing no later than ten business days prior the date set forth in the order to correct the violation, setting forth the basis for the request, but in no instance shall such extension be greater than 180 days.

(Prior Code, § 47.096; Ord. No. 244-79; Ord. No. 126-07)

Sec. 47.097. Franchise fees, financial and accounting obligations of the franchisee.

(a) Each franchisee shall pay to the City a franchise fee equal to seven percent of the gross receipts collected each year by the franchisee from its operations in the provision of solid waste management services. Payment of the franchise fee shall be made quarterly, within 60 days following the end of each quarter of each calendar year, and shall be computed upon a verified statement of gross receipts.

(b) The franchisee shall provide the Director with a verified and sworn statement of annual gross receipts for the calendar year period from January 1 to December 31 of each year that the franchise is in effect. The Director shall specify the form and detail of the statement. A copy of such statement shall be provided to the Director within six months following the close of each calendar year.

(c) The Director may inspect the financial records of a franchisee or the franchisee's agents or assigns at all reasonable times for any purpose relevant to the performance or enforcement of the franchise. The Director may require an audit of a franchisee's financial records to determine compliance with the payment of the franchise fee

pursuant to this section, or if there is a public need therefor.

(Prior Code, § 47.097; Ord. No. 54-65; Ord. No. 72-74; Ord. No. 244-79; Ord. No. 126-07; Ord. No. 24-14)

Sec. 47.099. Rates; billing.

(a) For any services required to be performed under this chapter, the franchisee shall not charge any amount in excess of the rates fixed pursuant to this section.

(b) The franchisee shall supply all customers with not less than 30 days' notice of any rate increase, the amount of any such increase, and the effective date thereof, unless a shorter time is authorized by the Director.

(c) The franchisee shall bill all customers at least tri-monthly on forms approved by the Director.

(d) The ~~City~~ Council shall establish and adjust rates by service or by zone. Before any rate is established or adjusted, the Director shall conduct an investigation of the rates and shall submit a recommendation to the ~~City~~ Council. Upon receipt of the Director's recommendation, the ~~City~~ Council shall hold a public hearing, and, after receipt of evidence and testimony, may adopt an order establishing or adjusting the rates for solid waste management provided by the franchisee.

(e) A franchisee may submit, as part of the franchisee's operating statement, or at such other time deemed appropriate by the franchisee, a request for a rate adjustment on forms provided by the Director. Any such request shall be based on information submitted by the franchisee with the franchisee's annual operating statement.

(f) In establishing or adjusting rates, the following factors shall be considered:

(1) Current and projected revenues;

(2) Current and projected operating expenses;

(3) Acquisition and replacement of equipment;

(4) Professional and consultant services;

(5) Reasonable operating margin;

(6) Construction and maintenance costs;

(7) Research, training, and development;

(8) Special services;

(9) Composting, recycling, reuse, and resource recovery services, if such services are required by the City or any other governmental agency with jurisdiction over the activity or service; and

(10) Any other factor deemed relevant by the ~~City~~ Council.

(g) Where no rate has been established for a particular kind of service, the Director may establish an interim rate, pursuant to the factors listed in subsection (f) of this section, until a final rate has been set by the ~~City~~ Council.

(Prior Code, § 47.099; Ord. No. 54-65; Ord. No. 244-79; Ord. No. 51-96; Ord. No. 126-07; Ord. No. 9-10)

Sec. 47.100. Reserved.

Sec. 47.101. Interruptions in and termination of service; subcontracting service.

(a) Except as otherwise provided in this section, no franchisee shall intentionally discontinue service to any portion of the franchisee's service area or to any customer without 90 days' notice of intent to discontinue service to the customers within such portion of the service area or such customer and to the Director.

(b) Any such discontinuance shall receive prior approval by the ~~City~~ Council. Nothing in this subsection shall be deemed to prohibit discontinuance of service to a nonpaying customer, provided seven days' notice, in writing, is given to such customer. Before service is reinstated, the franchisee may require an advance payment, not to exceed three months' collection fee. Nothing in this subsection shall apply to any order for a change, restriction, or termination of service issued to a franchisee by any public agency, public body, or court having jurisdiction over the franchisee's activity.

(c) It shall be a condition of every franchise that whenever the ~~City~~ Council determines that the failure of

service or threatened failure of solid waste management service would result in creation of an immediate and serious health hazard or serious public nuisance, the ~~City~~ Council may, after a minimum of 24 hours written notice to the franchisee, authorize city personnel or another person to temporarily provide such service or to use the facilities or equipment of the franchisee to provide such service. The Director shall return any such facilities or equipment used by the City to the franchisee upon abatement of the health hazard or public nuisance.

(d) A franchisee may contract with another person to provide service within a service area after giving prior written notice to and receiving approval from the Director; provided, however, nothing in this subsection shall relieve the franchisee of any duty or responsibility to comply with the terms of this chapter, the franchise, or all applicable federal, state or local laws, rules or regulations.

(e) Solid waste management service provided to a customer may be subject to periods of interruption when weather or other safety conditions prevent the safe provision of such service. If the weather or other safety conditions continue for a period exceeding seven days, approval of the Director must be obtained for further interruption of service. Access points necessary to eliminate unsafe conditions shall be negotiated between the franchisee and the customer.

(f) When the ~~City~~ Council determines an emergency exists, the ~~City~~ Council may authorize discontinuance of solid waste management service.

(Prior Code, § 47.101; Ord. No. 244-79; Ord. No. 51-96; Ord. No. 8-2000; Ord. No. 126-07)

Sec. 47.105. Prohibition on use of words implying City ownership, sponsorship or operation.

No franchisee shall use a firm name containing the words "City" or "Salem" or other words implying government ownership, sponsorship, or operation.

(Prior Code, § 47.105; Ord. No. 54-65; Ord. No. 244-79; Ord. No. 126-07)

Sec. 47.110. Vehicle regulations.

(a) All solid waste shall be collected in vehicles that have exteriors which are well-painted, are kept reasonably clean, are in good condition and repair, are so constructed, operated, and maintained so that to the greatest extent practicable the contents will not spill, seep, leak, or blow from the vehicle while in motion, and are conspicuously identified by the name of the individual or company owning or operating the vehicle in three-inch letters. Unnecessarily noisy trucks or equipment are prohibited.

(b) All vehicles used in collecting solid waste shall be of a type or general class approved by the Director. Vehicles other than packer-type vehicles may be used for special pick-ups, recycling and reuse, drop and roll-off box service, satellite vehicle service and other services, when previously approved in writing by the Director.

(c) Franchisees shall provide the Director with a list of the types or classes of equipment and vehicles used by franchisee for solid waste collection. At such time as franchisee acquires any additional or substitute types of equipment or vehicles not previously approved by the Director, the franchisee shall notify the Director, in writing, of such acquisition. In giving approval to such equipment or vehicles, the Director shall be guided by the policy and purposes expressed in SRC 47.015 and shall ensure compliance with the specific requirements set forth in this chapter. Unless the Director expressly withholds approval, in writing, not later than 20 days of the receipt of franchisee's notice, the equipment or vehicle shall be deemed approved.

(Prior Code, § 47.110; Ord. No. 54-65; Ord. No. 72-74; Ord. No. 244-79; Ord. No. 126-07)

Sec. 47.120. Collection of solid waste by a franchisee.

(a) A franchisee shall not litter premises in the process of making collections, nor allow any solid waste to blow or fall from vehicles. The franchisee shall repair or replace at the franchisee’s expense receptacles damaged as a result of the franchisee’s handling thereof, fair wear and tear excepted. The franchisee shall replace lids or covers on receptacles immediately after emptying same.

(b) Solid waste collection service shall be offered at least once every seven days to each place of business, motel or hotel and residential area. Except under emergency conditions, collection shall be made between the hours of 6:00 a.m. and 6:00 p.m., provided that in commercial zones designated by the Director, collection shall be between the hours of 5:00 a.m. and 12:00 noon. The Director may impose reasonable modifications to the collection

periods established under this subsection. The Director may order more frequent collection than required by this subsection if the accumulation of waste constitutes a threat to public health, safety, or welfare.

(c) Upon request by the Director, the franchisee shall provide schedules of collection and disposal routes, and shall furnish copies of complaint reports and reports as to their disposition.

(d) The franchisee shall collect promptly, and with dispatch, all reasonable quantities or types of solid waste placed for collection within the franchisee's service area, and to dispose of such waste in a lawful manner, upon the payment by the customer of reasonable prices and rates as provided in SRC 47.099.

(e) The franchisee shall maintain an office where solid waste bills may be paid, service applied for and complaints made, which shall be equipped with sufficient telephones and shall have a responsible person in charge between the hours of 9:00 a.m. and 5:00 p.m. daily, Saturdays, Sundays, and holidays excepted. A telephone answering service or device may be used for temporary absences.

(Prior Code, § 47.120; Ord. No. 54-65; Ord. No. 72-74; Ord. No. 244-79; Ord. No. 8-2000; Ord. No. 126-07)

Sec. 47.125. Pledging of a franchise as security.

Upon recommendation of the Director, the ~~City~~ Council may permit a franchisee to pledge a franchise as security for purchase of land, equipment, or facilities needed to provide solid waste management service or to finance purchase of a business providing solid waste management service under this chapter. The ~~City~~ Council may attach such conditions to such pledge as it deems necessary and appropriate to guarantee maintenance of service.

(Prior Code, § 47.125; Ord. No. 244-79; Ord. No. 51-96; Ord. No. 126-07)

Sec. 47.127. Procedure on new resource recovery services.

Where a new resource recovery service is proposed by the ~~City~~ Council, the Director, or a person wishing to provide such service:

(a) All franchisees shall be given written notice of the proposed service and justification therefor by the Director not less than 30 days prior to any action by the ~~City~~ Council.

(b) The ~~City~~ Council may, on its own motion, and shall, upon the request of a franchisee, hold a public hearing on the proposed service and justification therefor. The Director shall give not less than 30 days' written notice of the hearing to any franchisee that would be affected by the new resource recovery service, if approval is granted.

(c) In determining whether the proposed service is needed, the ~~City~~ Council shall consider the following factors:

(1) The purposes of this chapter;

(2) The public need and support for such service;

(3) The technological, economic, and legal feasibility;

(4) The Director's recommendation, if any;

(5) The effect on rates and services being provided or planned under the franchises or a local, regional, or state solid waste management plan; and

(6) Compliance with all applicable federal, state and local laws and regulations.

(d) If the ~~City~~ Council determines that the proposed service is needed, the ~~City~~ Council may require a current franchisee to provide the service within a specified period of time, may grant a limited franchise to the person wishing to provide such service, may grant an exemption to the franchise requirement to allow the provision of the service, or may solicit proposals and award to one or more persons a limited franchise to provide such service.

(Prior Code, § 47.127; Ord. No. 244-79; Ord. No. 121-80; Ord. No. 51-96; Ord. No. 126-07; Ord. No. 9-10)

Sec. 47.130. Reserved.

Sec. 47.135. Disposal of solid waste generally.

(a) Unless otherwise authorized by federal, state or local laws and regulations, solid waste shall be placed out for disposal, composting or recycling in receptacles designed and intended for the purpose of holding such solid waste and shall be disposed of at solid waste disposal sites approved by the Oregon Department of Environmental Quality or other governmental agency having jurisdiction under Oregon law to designate or operate solid waste disposal sites.

(b) Nonputrescible solid waste may be used for improving real property by grading or resurfacing in a manner approved by the Director and in compliance with all applicable federal, state and local laws and regulations.

(Prior Code, § 47.135; Ord. No. 126-07; Ord. No. 9-10)

Sec. 47.140. Reserved.

Sec. 47.145. Preparation of solid waste for disposal.

(a) Solid waste shall be drained of surplus liquid and placed in sealed receptacles approved by the Director.

(b) Pet feces, sharp objects such as broken glass and knives, and any other waste with the potential of causing injury or disease shall be securely wrapped in a manner to prevent exposure or injury to the public or employees of a franchisee.

(c) Ashes shall be allowed to cool and shall be securely wrapped or bagged before being deposited in any receptacle.

(d) All waste, with the exception of large bulky items, shall be deposited promptly into a receptacle, or be placed or located for disposal so as not to create a safety, nuisance, litter, or health hazard.

(e) Bulk~~y~~ solid waste may be placed in an appropriately sized receptacle in accordance with this chapter, so long as the accumulation does not create a nuisance or fire hazard.

(f) Newspapers, magazines, and similar recyclable material, when not placed in a receptacle, shall be bundled and securely tied with a strong cord or securely placed in a plastic or heavy paper shopping bag to prevent blowing and littering prior to collection.

(g) Source separated waste for composting, recycling or reuse shall be prepared and placed in conformance with any administrative rules adopted by the Director for the purpose of mitigating or addressing public health, public safety or pest concerns.

(h) No liquid waste or semi-solid waste, excluding food waste, shall be placed in a receptacle, unless it is in a sealed, leak-proof vessel.

(Prior Code, § 47.145; Ord. No. 8-2000; Ord. No. 33-05; Ord. No. 126-07; Ord. No. 9-10)

Sec. 47.150. Reserved.

Sec. 47.155. Solid waste receptacles.

(a) Receptacles for the collection of solid waste by a franchisee shall be provided to the generator by the franchisee, unless otherwise authorized by the franchisee. The loaded weight of a receptacle shall comply with the manufacturer’s specifications.

(b) Except for drop boxes and recycle baskets provided to the generator by a franchisee, receptacles shall be equipped with lids sufficient to keep out precipitation and to prevent disturbance by animals and entrance of pests; shall be kept closed, except when being filled, emptied, or cleaned; and shall be kept in a clean, sealed and sanitary condition by the generator of the solid waste. Receptacles used for the disposal of compostable material may contain vent holes for the purpose of aeration. The Director may adopt administrative rules designed to mitigate or remedy public health, public safety or pest concerns.

(c) Solid waste placed in receptacles that are not designed for emptying by mechanical means shall not exceed a weight of 60 pounds, including the weight of the receptacles and their contents.

(d) Receptacles designed for emptying by mechanical means shall not exceed a weight of 180 pounds for 90 gallon receptacles, 120 pounds for 64 gallon receptacles, 60 pounds for 32 gallon receptacles, and 40 pounds for 20 gallon receptacles, including the weight of the receptacles and their contents.

(Prior Code, § 47.155; Ord. No. 8-2000; Ord. No. 33-05; Ord. No. 126-07; Ord. No. 9-10)

Sec. 47.160. Reserved.

Sec. 47.165. Placement of receptacles for collection by franchisee.

(a) Receptacles containing solid waste shall be kept or placed so that there is convenient and safe access for collection service by a franchisee and, except as provided in this section, shall not be kept or placed upon the street, sidewalk, or other public place unless such location has been first approved by the Director.

(1) All carts designed for mechanical solid waste, composting or recycling collection shall be placed at the curb or roadside by the generator prior to collection time.

(2) The generator shall provide safe access to the collection point so as not to jeopardize the persons or equipment supplying service or the motoring public.

(3) Receptacles may be placed at or on the curb, whether on the sidewalk or in the street right-of-way, provided that receptacles placed in the street shall be placed so that no part of the receptacle may be more than three feet from the curb. Placement shall be made so that receptacles are within manageable reach if standing in the street at or next to the curbline.

(4) Placement of receptacles at curbside or roadside are limited to a time period of 24 hours prior to pick-up to 24 hours after pick-up.

(5) Receptacles shall be kept outside of any locked, latched, bolted or hooked enclosure when placed out for collection by a franchisee.

(6) No person shall block service access to a commercial container that is one cubic yard capacity or larger, a drop box or roll-off box or other similar receptacle for solid waste collection.

(b) The Director may approve general locations for storage and placement for collection of waste materials for composting, recycling or reuse and may impose necessary conditions therefor.

(Prior Code, § 47.165; Ord. No. 8-2000; Ord. No. 126-07; Ord. No. 9-10)

Sec. 47.170. Reserved.

Sec. 47.175. Receptacle screening required.

Multifamily, commercial, and industrial buildings for which building plans are submitted for permit after January 1, 1986, shall provide screening facilities for all receptacles, if the premises are adjacent to, or across the alley from, a single-family or multifamily residential district.

(Prior Code, § 47.175; Ord. No. 8-2000; Ord. No. 33-05; Ord. No. 126-07)

Sec. 47.180. Reserved.

Sec. 47.185. Sunken receptacles prohibited.

No person shall install and no owner shall allow a sunken solid waste receptacle to be installed.

(Prior Code, § 47.185; Ord. No. 8-2000; Ord. No. 126-07)

Sec. 47.190. Reserved.

Sec. 47.195. Hazardous waste.

(a) No person shall dispose of hazardous waste in any manner that is not authorized or permitted by federal, state, or local laws and regulations.

(b) No person shall place hazardous waste out for collection or into any receptacle supplied by a franchisee unless the franchisee and ultimate disposal site agree to accept such waste prior to placing the hazardous waste out for collection or into the receptacle.

(Prior Code, § 47.195; Ord. No. 8-2000; Ord. No. 126-07)

State law reference—Household hazardous waste, ORS 459.411 et seq.; unlawful disposal of hazardous waste, ORS 469.922.

Sec. 47.200. Accumulation of solid waste prohibited.

(a) All solid waste shall be prepared for collection in conformance with SRC 47.145 and ~~SRC~~ 47.155 and then removed from a premises weekly, or at other reasonable intervals, so as to prevent spillage from receptacles, escape of odors, or conditions that would attract pests.

(b) An owner who has received one or more written notices from the Health Officer for violations of subsection (a) of this section on premises that the owner has let for occupancy, shall be responsible for subsequent violations, and for providing, in a location accessible to all dwelling units, at least 132 gallon receptacle for each dwelling unit, or, if the premises is a multifamily dwelling unit, at least one receptacle with a cumulative capacity that allows for 32 gallons per apartment, into which garbage and rubbish from the dwelling units may be emptied for storage between days of collection. The owner shall subscribe to and pay for weekly solid waste management service of the receptacles with a City ~~of Salem~~ franchisee.

(c) Notwithstanding subsection (a) of this section, compost piles are permitted on residential property, provided each compost pile is enclosed on all sides by a wood container, concrete block container, container made of another opaque material, or wire mesh container, designed for composting and having dimensions that are not greater than four feet in height, by four feet in length, by four feet in width.

(Prior Code, § 47.200; Ord. No. 8-2000; Ord. No. 33-05; Ord. No. 126-07)

Sec. 47.205. Entry into or removal of solid waste receptacles prohibited.

(a) No person shall enter into a receptacle which is one cubic yard or larger for the purpose of compacting the contents of the receptacle.

(b) No person shall remove a receptacle from the location where the receptacle was placed for collection, unless the person is authorized to do so by the generator.

(Prior Code, § 47.205; Ord. No. 8-2000; Ord. No. 126-07)

Sec. 47.210. Disturbance of solid waste in receptacles prohibited.

No person shall remove the lid from any solid waste receptacle and remove, disturb, collect or scatter solid waste placed in such receptacle or deposit solid waste into such receptacle, unless the person is authorized to do so by the generator.

(Prior Code, § 47.210; Ord. No. 8-2000; Ord. No. 126-07)

Sec. 47.215. Solid waste not to be burned in open places.

No person shall burn or attempt to burn solid waste in any open place within the City.

(Prior Code, § 47.215; Ord. No. 54-65; Ord. No. 244-79; Ord. No. 126-07)

Sec. 47.220. Dumping of solid waste prohibited.

(a) No person shall discard, scatter, dump, deposit or cause or permit to be discarded, scattered, dumped or deposited, any amount of solid waste along the bank of, or in, any canal, ditch, stream, waterway, creek, river, or other body of water, or in or upon any public place or other publically-owned property, other than in receptacles provided for the purpose of holding such solid waste.

(b) No person shall discard, scatter, dump, deposit or cause or permit to be discarded, scattered, dumped or deposited, any amount of solid waste in or upon any private property unless such activity is undertaken with the consent of the property owner and is otherwise authorized by federal, state or local laws and regulations.

(c) Any person sentenced under this section to pay a fine shall be permitted, in lieu of the payment of the fine, to work at clearing solid waste from the lands and waters described by subsections (a) and (b) of this section. Credit in compensation for such work shall be allowed at ~~the rate of $25 for each day of work~~ a rate consistent with the minimum wage as set by the Oregon Bureau of Labor and Industries.

(Prior Code, § 47.220; Ord. No. 8-2000; Ord. No. 33-05; Ord. No. 126-07)

Sec. 47.225. Placing offensive substances in waters, on highways or other property.

(a) Except as provided in subsection (c) of this section, no person, including a person in the possession or

control of any land, shall discard any dead animal carcass or part thereof, any excrement, or any putrid, nauseous, noisome, decaying, deleterious or offensive substance, into, or in any other manner befoul, pollute or impair the quality of any spring, river, brook, creek, branch, well, irrigation drainage ditch, irrigation ditch, cistern or pond.

(b) Except as provided in subsection (c) of this section, no person shall place or cause to be placed any dead animal carcass or part thereof, any excrement, or any putrid, nauseous, noisome, decaying, deleterious or offensive substance on any public way, public property, or private property.

(c) Nothing in this section shall apply to the storage or spreading of manure or like substance for agricultural, silvicultural or horticultural purposes, except that no sewage sludge, septic tank or cesspool pumpings shall be used for such purposes, unless first treated and applied in a manner approved by the Oregon Department of Environmental Quality.

(Prior Code, § 47.225; Ord. No. 126-07)

Sec. 47.230. Offensive littering.

No person shall create an objectionable stench or degrade the beauty or appearance of property or detract from the natural cleanliness or safety of property by intentionally:

(a) Discarding or depositing any rubbish, trash, garbage, debris or other solid waste upon the land of another without permission of the owner, or upon any public way or in or upon any public transportation facility; ~~or~~

(b) Draining, or causing or permitting to be drained, sewage or the drainage from a cesspool, septic tank, recreational or camping vehicle waste holding tank or other contaminated source, upon the land of another without permission of the owner, or upon any public way; or

(c) Throwing or discarding, or permitting any rubbish, trash, garbage, debris or other solid waste to be thrown or discarded from a vehicle which the person is operating; provided, however, that nothing in this ~~paragraph~~ subsection shall impose liability upon a person who is operating a vehicle transporting passengers for hire subject to regulation by the Interstate Commerce Commission or the Oregon Department of Transportation or operating a school bus described under ORS 801.460, and who does not throw or discard the solid waste.

(Prior Code, § 47.230; Ord. No. 126-07)

Sec. 47.235. Franchisee's cause of action.

In order to protect the reasonable investment-based expectations of franchisees who have franchises granted pursuant to this chapter, a franchisee shall have a cause of action in any court of competent jurisdiction against any person who engages in solid waste management within the franchisee's service area and who does not have a limited franchise granted pursuant to SRC 47.127(d), or is subject to an exemption to the requirement of a franchise under SRC 47.081, to enjoin such solid waste management and to recover damages in an amount equal the franchisee's lost profits. The prevailing party in such an action shall be entitled to reasonable attorney's fees and costs at trial and upon appeal.

(Prior Code, § 47.235; Ord. No. 126-07)

Sec. 47.240. Civil penalties; enforcement.

(a) *Civil penalty.* A civil penalty not to exceed $2,000.00 per violation may be imposed on any person who fails to comply with SRC 47.035, 47.080, 47.135, 47.145, 47.155, 47.165, 47.175, 47.185, 47.195, 47.200, 47.205, 47.210, 47.215, 47.220, 47.225, and 47.230, and any franchisee who fails to comply with SRC 47.035, 47.085(d), 47.097(a), 47.099(a) through (c), 47.101(a), 47.105, 47.110(a) and (b), 47.120, 47.195, 47.215, 47.220, 47.225 and 47.230. Each day that a violation continues shall constitute a separate violation.

(b) *Civil penalties against agents.* Any person who acts as the agent of, or otherwise assists, a person who engages in an activity which would be subject to a civil penalty, may likewise be subject to a civil penalty.

(c) *Remedies not exclusive.* The remedies provided in this section are cumulative and not mutually exclusive and are in addition to any other rights, remedies and penalties available to the City under any other provision of law.

(Prior Code, § 47.240; Ord. No. 126-07)

Sec. 47.245. Violations.

(a) Violation of SRC 47.035, 47.080, 47.135, 47.145, 47.155, 47.165, 47.175, 47.185, 47.195(b), 47.200, 47.205, and 47.210 is an infraction and is punishable by a fine of not less of $100.00 and not more than $250.00. The second and subsequent violation in any one-year period is punishable by a fine of $250.00.

(b) Violation of SRC 47.195(a), 47.220, ~~SRC~~ 47.225 and ~~SRC~~ 47.230 is a misdemeanor.

(c) Each day that a violation continues shall constitute a separate violation.

(Prior Code, § 47.245; Ord. No. 193-79; Ord. No. 75-88; Ord. No. 47-97; Ord. No. 8-2000; Ord. No. 126-07)

CHAPTERS 48, 49. RESERVED

CHAPTER 50. PROPERTY MAINTENANCE

GENERAL PROVISIONS

Sec. 50.005. Short title.

This chapter shall be known and may be cited as the Property Maintenance Code.

(Prior Code, § 50.005; Ord. No. 8-2000)

Sec. 50.010. Purpose.

The Council finds and declares that conditions tending to reduce the value of private property, that promote blight and deterioration, that are attractive nuisances creating a hazard to the health and safety of minors, and that create a harborage for pests, may be injurious to the health, safety and general welfare of the public.

(Prior Code, § 50.010; Ord. No. 8-2000)

Sec. 50.015. Scope.

This chapter is to protect the public health, safety and general welfare by regulating existing structures, residential and nonresidential, and existing premises by establishing minimum requirements and standards for structures and premises for the protection from the elements and other hazards, the protection of life safety, ~~other hazards,~~ and for safe and sanitary maintenance; fixing the responsibility of owners and occupants; and for administration, enforcement and penalties.

(Prior Code, § 50.015; Ord. No. 8-2000)

Sec. 50.020. Intent.

This chapter shall be construed to secure and ensure public health, safety and welfare insofar as they are affected by the continued occupancy and maintenance of structures and premises. Existing structures and premises that do not comply with these provisions shall be altered or repaired to provide a minimum level of health, safety and maintenance as required herein.

(Prior Code, § 50.020; Ord. No. 8-2000)

Sec. 50.025. Definitions; rules of construction.

(a) ~~Unless the context otherwise specifically requires, for purposes of this Chapter, the following terms and phrases mean:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(1)~~ *Abandoned structure* means a vacant structure that is an attractive nuisance.

~~(2)~~ *Ashes* means the residue of the combustion of solid fuels.

~~(3)~~ *Attractive nuisance* means buildings, structures, or premises that are in an unsecured, derelict or dangerous condition so as potentially to constitute an attraction to minors, vagrants, criminals or other unauthorized persons, or so as to enable persons to resort thereto for the purpose of committing an unlawful act.

~~(4)~~ *Basement* means that portion of a building or structure which is partly or completely below grade.

~~(5)~~ *Boarded* means the securing of an unoccupied building or structure against entry by the placement of material such as plywood, boards, or other similar material over openings that are designed or intended for windows or doors, where the materials are visible off the premises and where the materials are not lawfully or customarily installed on a building or structure that would be occupied.

~~(6)~~ *Building* means any structure designed for habitation, shelter, storage, trade, manufacture, business, education, or other similar purposes.

~~(7)~~ *Building Code* means the specialty codes applicable in the City ~~of Salem~~, as provided in SRC chapter 56.

~~(8)~~ *Building Official* means the administrator of the Building and Safety Division of the Community Development Department, or the administrator's designee.

~~(9)~~ *Bulk solid waste* means discarded bedding, mattresses and furniture, junk, yard debris as defined in SRC 47.020~~(gg)~~, uprooted tree stumps, demolition or construction debris, or other nonputrefactive and nonhazardous materials not placed in a receptacle, or too large to be placed into a receptacle.

~~(10)~~ *Deterioration* means a lowering in the quality, condition or appearance of a building or structure, characterized by holes, breaks, rot, crumbling, cracking, peeling, rusting or any other evidence of physical decay, neglect, excessive use or lack of maintenance.

~~(11)~~ *Derelict structure* means a building or structure that is unfit for human habitation, or poses an incipient hazard, or is detrimental to public health, safety or welfare, as a result of one or more of the following conditions:

(1) Is unoccupied and unsecured;

(2) Is partially constructed;

(3) Is an abandoned structure or attractive nuisance;

(4) Is in condition of deterioration;

(5) Has an infestation of pests;

(6) Has doors or windows boarded over; or

(7) Other condition that in the opinion of the Health Officer is detrimental to public health, safety or welfare.

~~(12) *Director* means the City Manager, or the department head charged by the City Manager with the implementation and enforcement of this chapter, or that department head's designee.~~

~~(13)~~ *Dwelling unit* means a single unit within a building providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. As used in this chapter, the term "dwelling unit" includes, as the context requires, single-family dwellings, duplexes, triplexes, condominiums, residential trailers, mobile homes, manufactured homes, multifamily dwellings, and single units therein.

~~(14)~~ *Extermination* means the control, elimination and removal of pests by eliminating harborage places; by removing or making inaccessible materials that serve as food; by poison spraying, fumigating, trapping or by any other pest elimination method approved by the Health Officer.

~~(15)~~ *Garbage* means all classes of putrefactive and easily decomposable animal and vegetable matter, including, without limitation, wastes produced from the handling and preparation of food, and packaging originally used for foodstuffs.

~~(16)~~ *Hazardous solid waste* means any solid waste which, in the opinion of the Health Officer, would constitute a danger to collection personnel or to anyone who may come in contact with such solid waste, and includes, without limitation, any hazardous waste as defined in ORS 466.005(7), as may be amended.

~~(17)~~ *Hazardous thicket* means blackberry vines or other thickets that conceal trash, debris, or junk; or create a harborage for people involved in criminal activity or for products used for unlawful activity; or that encroach upon the public property, including right-of-way, or private property of another in a manner that may be hazardous.

~~(18)~~ *Health Officer* means the City Manager, or the department director charged by the City Manager with the implementation and enforcement of this chapter, or that department director's designee.

~~(19)~~ *Hearings Officer* means the person or persons appointed by the ~~City~~ Council to serve as the Hearings Officer pursuant to SRC 2.035.

~~(20)~~ *Imminent hazard* means any condition of deterioration that places public health, safety or welfare in high risk of peril, when the peril is immediate, impending, or on the point of happening.

~~(21)~~ *Incipient hazard* means any condition that can become an imminent hazard if further deterioration

is allowed to occur.

~~(22)~~ *Indoor fixture* means any item that is designed to be used indoors or otherwise protected from environmental elements, including, but not limited to, heating, plumbing and electrical fixtures.

~~(23)~~ *Indoor furnishing* means any item that is designed to be used indoors or otherwise protected from environmental elements, including, but not limited to, upholstered furniture, indoor appliances and indoor carpet.

~~(24)~~ *Infestation* means the presence of pests in large numbers that are harmful or bothersome within or adjacent to a building or structure or upon a premises.

~~(25)~~ *Junk* means articles of personal property that have outlived their usefulness in their original form, or articles of personal property that have been discarded and are no longer used for their manufactured purpose, regardless of value. As used in this chapter the term "junk" includes, but is not limited to:

(1) Any derelict motor vehicle, trailer, or boat, i.e., any used motor vehicle, trailer, or boat without a vehicle license or with an expired license;

(2) Neglected motor vehicle, trailer, or boat, i.e., a motor vehicle, trailer, or boat that is missing critical parts required for the normal and legal operation of the vehicle, but has all of its body parts intact, including fenders, hood, trunk, glass, and tires; ~~or~~

(3) Wrecked motor vehicle, trailer, or boat or part thereof, i.e., a motor vehicle, trailer, or boat that is dismantled or partially dismantled, or having a broken or missing window or windshield, or lacking a wheel or tire;

(4) Machinery or parts thereof that are inoperative, worn out, or in a state of disrepair;

(5) Any appliances or parts thereof that are inoperative, worn out, or in a state of disrepair;

(6) Any worn out or dilapidated indoor fixtures or furnishings, or parts thereof;

(7) Any bulk solid waste; and

(8) Solid waste items that are of a type or quantity inconsistent with normal and usual use such as wood, metal, scrap and other similar items.

~~(26)~~ *Legally occupied* means the use of a premises for a purpose authorized by law, including the Building Code and Zone Code. For the purposes of this chapter, a premises shall be considered legally occupied, even if presently vacant, as long as the premises is maintained in compliance with the provisions of this chapter, and in the case of a building or structure, conditions that would qualify the building or structure as derelict are not present.

~~(27)~~ *Let for occupancy* or *let* means to permit, to provide, or to offer possession or occupancy of a dwelling unit, building, structure or premises, pursuant to a lease, permit, agreement or license, or pursuant to a recorded or unrecorded agreement of contract for the sale of land.

~~(28)~~ *Noxious vegetation* means weeds more than ten inches in height; grass more than ten inches in height; rank or dead vegetation; poison oak, poison hemlock, poison ivy; hazardous thickets; or other rank, noxious, and dangerous vegetation that is a health hazard, a fire hazard, or a traffic hazard because it impairs the view of a public right-of-way or otherwise makes use of the public right-of-way hazardous. ~~This definition~~ The term "noxious vegetation" shall not include agriculture crops, endangered riparian grasses that have not come to seed, and wet land grasses that are neither a fire nor a traffic hazard.

~~(29)~~ *Occupancy* means the purpose for which a building, structure or premises is used or intended to be used.

~~(30)~~ *Occupant* means any person living or sleeping in a building or structure, or having possession of a space within a building or structure or possession of a premises.

~~(31)~~ *Owner* means the person recorded in the official records of the State, County or City as holding title to premises, and that person's agent; any person who has purchased or otherwise acquired a premises but whose ownership is not yet reflected in the official records of the State, County or City; a trustee, executor, administrator, guardian or mortgagee in possession and having control of the premises; a person who has care and control of a

premises in the case of the absence or disability of the person holding title thereto; and a lessee or tenant in possession.

~~(32)~~ *Partially constructed* means an occupied or vacant structure, or portion thereof, that has been left in a state of partial construction for more than six months, or that has not been completed prior to the expiration of any building permit.

~~(33)~~ *Person* means an individual, corporation, limited liability company, cooperative, association, partnership, or any other entity in law or fact.

~~(34)~~ *Pests* means animals detrimental to humans or human concerns, including, but not limited to, insects, rodents, rats or vermin.

~~(35)~~ *Premises* means a lot, or parcel of land, including any buildings or structures thereon.

~~(36)~~ *Rank vegetation* means any vegetation existing in a state of uncontrolled growth or without commonly recognized vegetation maintenance or management practices applied.

~~(37)~~ *Receptacle* means a trash can, cart, bin, container, drop box or other vessel used for the disposal of solid waste that has been approved by the City Manager and into which solid waste, compostable material, mixed compostables, recyclable material or mixed recycling may be placed for such disposal.

~~(38)~~ *Recycling* means the process of transforming waste into new or different products in such a manner that the original waste products may lose their identity. The term "recycling" includes collection, transportation and storage of waste that places the waste in the stream of commerce for recycling, resource recovery or utilization.

~~(39)~~ *Remediation* means the elimination or correction of a condition, including, but not limited to, repair, replacement, restoration or removal.

~~(40)~~ *Rubbish* means worthless, discarded material, including, but not limited to, cardboard, plastic, glass, paper, rags, sweepings, wood, rubber, leather, and similar waste materials that ordinarily may accumulate on a premises.

~~(41)~~ *Skilled manner* means executed in a proper manner, consistent with generally accepted standards of construction and maintenance, e.g., generally plumb, level, square, in line, undamaged, without marring adjacent work.

~~(42)~~ *Solid waste* means all waste, in solid, semisolid or liquid form, including, but not limited to, garbage, rubbish, trash, ashes, street refuse, waste paper, corrugated material and cardboard; commercial, industrial, demolition and construction wastes; food waste as defined in SRC 47.020(i); small dead animals; infectious waste as defined in ORS 459.386(4); and other wastes. As used in this chapter, solid waste does not include sewage, sewage sludge, or sewage hauled as an incidental part of a septic tank or cesspool cleaning service or materials that are used for fertilizer, for compost or composting or for other productive agricultural or horticultural purposes.

~~(43)~~ *Structure* means that which is built or constructed; an edifice or building of any kind, including mobile or manufactured homes and mobile outbuildings; or any work that is built up as an addition to or fixture on a premises.

~~(44)~~ *Temporary* means a period up to six months in any 12-month period.

~~(45)~~ *Unfit for human habitation* means a building or structure that, as found by the Health Officer, is unfit for human habitation due to unsanitary conditions; infestation; accumulation of filth or contamination; lack of required ventilation, illumination, or sanitary or heating facilities; or is not connected to approved water or electricity, such that habitation would be injurious to the health, safety, or welfare of the occupants.

~~(46)~~ *Unoccupied* means not legally occupied.

~~(47)~~ *Unsecured* means unlocked or otherwise open to entry.

~~(48)~~ *Ventilation* means the natural or mechanical process of supplying conditioned or unconditioned air to, or removing such air from, any space.

~~(49)~~ *Waste tire* means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect.

(b) ~~Words stated in the present tense in this Chapter include the future; the singular number includes the plural, and the plural includes the singular.~~ Where terms are not defined in this chapter and are defined in the state building, plumbing or mechanical codes, such terms shall have the meanings ascribed to them as in those codes. Terms not otherwise defined in this chapter or in the state building, plumbing or mechanical codes shall have ordinarily accepted meanings. Whenever the words "dwelling unit," "dwelling," "premises," "structure," or "building" are used in this chapter, they shall be construed as though they were followed by the words "or any part thereof."

(Prior Code, § 50.025; Ord. No. 8-2000; Ord. No. 33-05; Ord. No. 31-06; Ord. No. 72-07; Ord. No. 26-11; Ord. No. 12-14)

Sec. 50.030. ~~Severability~~ Reserved.

~~If any section, subsection, paragraph, sentence, clause or phrase of this chapter shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this chapter which shall continue in full force and effect, and to this end the provisions of this chapter are hereby declared to be severable.~~

~~(Prior Code, § 50.030; Ord. No. 8-2000)~~

Sec. 50.035. Application of other codes.

Nothing in this chapter shall be construed to relieve a person from complying with any federal, state or local law, including any other provisions of the Salem Revised Code, or the requirement to obtain all necessary permits and approvals.

(Prior Code, § 50.035; Ord. No. 8-2000)

Sec. 50.040. ~~Saving clause~~ Reserved.

~~This chapter shall not affect violations of any other ordinance, code or regulation existing prior to the effective date hereof, and any such violation shall be governed and shall continue to be punishable to the full extent of the law under the provisions of those ordinances, codes or regulations in effect at the time the violation was committed.~~

~~(Prior Code, § 50.040; Ord. No. 8-2000)~~

Sec. 50.045. Coordination of enforcement.

Whenever inspections are necessary by the Health Officer and any other department, the Health Officer shall make reasonable effort to arrange for the coordination of such inspections so as to minimize the number of visits by inspectors, and to confer with the other departments for the purpose of eliminating conflicting orders before any are issued.

(Prior Code, § 50.045; Ord. No. 8-2000)

Sec. 50.050. Responsibility.

(a) Unless otherwise provided for, the Health Officer shall be responsible for the enforcement ~~all~~ of the provisions of this chapter. The Health Officer may appoint such number of officers, technical assistants, inspectors and other employees as shall be necessary for the administration of this chapter. The Health Officer is authorized to designate an employee as deputy who shall exercise all the powers of the Health Officer during the temporary absence or disability of the Health Officer.

(b) Where conditions or prohibitions under this chapter are regulated by the Building Code, the Building Official shall be responsible for making such determination and taking appropriate action as provided therein.

(Prior Code, § 50.050; Ord. No. 8-2000)

Sec. 50.055. Modifications.

Where there are extreme hardships involved in carrying out provisions of this chapter, the Health Officer shall have the right to vary or modify such provisions upon application of an owner or occupant, provided that the spirit and intent of the law is observed and that the public health, safety and welfare is assured.

(Prior Code, § 50.055; Ord. No. 8-2000)

Sec. 50.060. Failure to obey order of Health Officer.

(a) It shall be unlawful for any person acting intentionally to refuse to obey an order by the Health Officer acting in the discharge or apparent discharge of official duty.

(b) It is no defense to a prosecution for a violation of this section that the Health Officer lacked legal authority to issue the order, provided the Health Officer was acting under color of official authority.

(Prior Code, § 50.060; Ord. No. 8-2000; Ord. No. 33-05)

Secs. 50.070—50.090. Reserved.

MAINTENANCE AND REPAIRS

Sec. 50.100. Required maintenance.

All systems, devices and safeguards required by this chapter or by a previous statute or code applicable to the building, structure or premises at the time the building, structure or premises were erected or altered shall be maintained in good working order, thus ensuring the health and safety of all inhabitants.

(Prior Code, § 50.100; Ord. No. 8-2000; Ord. No. 33-05)

Sec. 50.105. Skilled work required.

All repairs, maintenance work, alterations or installations which are caused directly or indirectly by the enforcement of this chapter shall be executed and installed in a skilled manner.

(Prior Code, § 50.105; Ord. No. 8-2000)

Secs. 50.110—50.250. Reserved.

JUNK

Sec. 50.255. Outside storage prohibited.

(a) Unless otherwise specifically allowed by law, it shall be unlawful to store items of personal property out-of-doors, or outside a building or structure that is not fully enclosed.

(b) Notwithstanding subsection (a) of this section, the following items of personal property may be stored outside of a building or structure:

(1) Firewood that is stacked and useable. “Useable” firewood has more wood than rot and is cut to lengths that will fit a lawful fireplace or wood stove on the premises;

(2) Construction material, if the construction material is temporarily stored and is stored in a manner to protect its utility and to prevent its deterioration and the construction material is to be used for construction on the premises;

(3) Open storage of materials directly associated with the primary activity of a business, provided the business is a permitted, special, or conditional use within any CR, CG, or industrial and employment zone, and the materials are enclosed by a sight obscuring fence erected in conformance with SRC 807.015(e), are safely stacked, bundled, or otherwise source-separated, and will remain in the stream of commerce with an articulable future use; and

(4) All other items of personal property which are of a type, condition or quantity consistent with normal and intended outside use. By way of illustration, but not limitation, as used in this section, items of personal property include barbeque grills, lawn furniture, and solid waste disposal receptacles.

(Prior Code, § 50.255; Ord. No. 8-2000; Ord. No. 33-05; Ord. No. 31-13; Ord. No. 12-14)

Sec. 50.260. Keeping junk prohibited.

(a) No person shall deposit or keep junk within a public right-of-way, or out-of-doors on any premises within the City, or in a building or structure that is not fully enclosed.

(b) Notwithstanding subsection (a) of this section, the following junk may be deposited or kept out-of-doors on premises within the City:

(1) Any wrecked, neglected or derelict motor vehicle, or parts thereof, kept in a motor vehicle wrecking business licensed by the City.

(2) Any derelict or neglected motor vehicle displayed by a business offering new and used motor vehicles for sale.

(3) Any wrecked motor vehicle stored outside an approved enclosure at a business offering motor vehicle services, as described under SRC 400.055(b), or heavy vehicle and trailer service and storage, as described under SRC 400.055(g), provided that no more than eight vehicles in an industrial zone or four vehicles in a commercial zone shall be kept outside of an approved enclosure at any one time. The enclosure shall conform with the sight obscuring requirements of SRC 807.015(e)(2).

(4) Any neglected or derelict vehicle stored at a business offering motor vehicle services, as described under SRC 400.055(b), or heavy vehicle and trailer service and storage, as described under SRC 400.055(g).

(5) Recyclable solid waste that has been source separated and collected in conformance with this chapter.

(6) Recyclable materials or source separated solid waste kept at a scrap and waste material establishment, operating in compliance with all applicable laws and where the materials or solid waste are enclosed by a sight obscuring fence in conformance with SRC 807.015(e)(2) or in a receptacle.

(7) Any waste tire kept for storage, collection, transportation, or disposal by a person licensed for that purpose by the State ~~of Oregon~~.

(Prior Code, § 50.260; Ord. No. 8-2000; Ord. No. 33-05; Ord. No. 31-13; Ord. No. 12-14)

Sec. 50.265. Abatement of junk motor vehicles.

The abatement of junk motor vehicles from private or public property is subject to the provisions of SRC 102.200 to 102.235.

(Prior Code, § 50.265; Ord. No. 8-2000; Ord. No. 26-11)

Secs. 50.270—50.490. Reserved.

GENERAL EXTERIOR BUILDING AND STRUCTURE MAINTENANCE

Sec. 50.500. General.

The exterior of a building or structure shall be maintained in good repair, so as not to be in a state of deterioration, and in a sanitary condition so as not to pose a threat to the public health, safety or welfare.

(Prior Code, § 50.500; Ord. No. 8-2000; Ord. No. 33-05)

Sec. 50.505. Exterior surfaces.

All wood and metal surfaces, including, but not limited to, window frames, doors, door frames, cornices, porches, siding and trim on buildings and structures shall be maintained in good condition, so as not to be in a state of deterioration.

(Prior Code, § 50.505; Ord. No. 8-2000; Ord. No. 33-05)

Sec. 50.510. Street numbers.

Each building or structure to which a street number has been assigned shall have such number displayed in a prominent position on the side of the building or structure closest to and easily observed and readable from the public right-of-way of the street which is the building or structure's address of record. All numbers for residential dwelling units shall be in Arabic numerals at least four inches high and one-half inch stroke. All numbers for all other buildings or structures, subject to this section, shall be in Arabic numerals at least three inches high and one-half inch stroke.

(Prior Code, § 50.510; Ord. No. 8-2000; Ord. No. 33-05; Ord. No. 12-14)

Sec. 50.515. Foundation walls.

All foundation walls shall be maintained free from large open cracks and breaks and shall be kept in such

condition so as to prevent the entry of pests.

(Prior Code, § 50.515; Ord. No. 8-2000)

Sec. 50.520. Exterior walls.

(a) All exterior walls of buildings or structures shall be free from holes, breaks, loose or rotting materials and shall be maintained in good condition so as not to be in a state of deterioration.

(b) The use of tarps or similar material for emergency repair, or in place of a customary building component such as siding or a door, shall not exceed 45 days in any 12-month period, except for use during construction in association with a building permit, or as a requirement included in a lawfully served Dangerous Building Notice as described in SRC 56.200 through 56.270.

(Prior Code, § 50.520; Ord. No. 8-2000; Ord. No. 33-05; Ord. No. 12-14)

Sec. 50.525. Roofs and drainage.

The roof and flashing shall be sound, tight and not have defects that admit rain into the building or structure. Roof drainage shall be adequate to prevent dampness or deterioration in the walls or interior portion of the building or structure. Roof drains, gutters and down spouts shall be free from obstructions and maintained in good repair, so as not to be in a state of deterioration. Any nonresidential building or structure having originally been designed for and fitted with gutters and downspouts, shall continuously be maintained with such devices, in proper working condition and maintained so as not to be in a state of deterioration. The use of tarps or similar material for emergency repair shall be temporary, and not exceed six months in any 12-month period, except for use during construction in association with a building permit, or as a requirement included in a lawfully served Dangerous Building Notice as described in SRC 56.200 through 56.270.

(Prior Code, § 50.525; Ord. No. 8-2000; Ord. No. 33-05; Ord. No. 12-14)

Sec. 50.530. Decorative features.

All cornices, belt courses, corbels, terra cotta trim, wall facings and similar decorative features on a building or structure shall be maintained in good repair with proper anchorage and in a safe condition, so as not to be in a state of deterioration. When any nonresidential building or structure is found to be missing a decorative feature, the Health Officer may require the missing decorative feature to be replaced with a similar material of similar size, shape, color and texture.

(Prior Code, § 50.530; Ord. No. 8-2000; Ord. No. 33-05)

Sec. 50.540. Windows and doors.

Every window, door and frame shall be kept in sound condition, good repair and weathertight. Where windows and doors have been sealed by plastic or other materials for weatherproofing, said materials shall be maintained in a skilled manner. Window and door screens, while not required by this chapter, shall be maintained in a skilled manner.

(Prior Code, § 50.540; Ord. No. 8-2000)

Sec. 50.545. Glazing.

(a) All glazing materials shall be maintained free from cracks and holes. Glazing with holes, cracks, or that is partially or wholly missing shall be replaced within 15 days from the date the Health Officer issues a written notice, in compliance with the Building Code.

(b) Notwithstanding subsection (a) of this section, glazing in buildings and structures other than single-family and two-family dwellings need not be replaced within the 15-day period, if the opening has been boarded, an application for a building permit is made within the 15-day period, a permit is subsequently issued, and replacement occurs prior to the expiration of the permit.

(Prior Code, § 50.545; Ord. No. 8-2000; Ord. No. 33-05; Ord. No. 12-14)

Sec. 50.550. Accessory structures.

All accessory structures, such as sheds, fences, walls and other similar structures, shall be erected in a skilled

manner and maintained in a structurally sound condition and in good repair, so as not to be in a state of deterioration. Accessory structures covered by the Building Code shall fall under the jurisdiction of the Building Official.

(Prior Code, § 50.550; Ord. No. 8-2000; Ord. No. 33-05; Ord. No. 12-14)

Secs. 50.560—50.590. Reserved.

DERELICT STRUCTURES

Sec. 50.600. Derelict structures prohibited.

Derelict structures on any premises are hereby declared to be a public nuisance.

(Prior Code, § 50.600; Ord. No. 8-2000; Ord. No. 33-05)

Sec. 50.605. Order to vacate buildings or structures.

(a) If the Health Officer finds a building or structure in violation of SRC 50.600, the Health Officer may order that a placard be posted on the building or structure, ordering the building or structure vacated, and to order the owner to register the building or structure as provided in SRC 50.625 through 50.634. The placard shall contain the information required in SRC 50.815.

(b) Persons performing active work to abate a violation are exempt from a vacation order while working at a premises subject to a vacation order.

(Prior Code, § 50.605; Ord. No. 8-2000; Ord. No. 33-05; Ord. No. 12-14)

Sec. 50.610. Prohibited habitation.

No person shall inhabit a derelict structure, and no owner shall allow any person to inhabit a derelict structure, or a building or structure ordered vacated by the Health Officer.

(Prior Code, § 50.610; Ord. No. 8-2000; Ord. No. 33-05)

Sec. 50.615. Removal of placard prohibited.

(a) The Health Officer shall remove a placard whenever the conditions that resulted in the order to vacate the building or structure have been eliminated.

(b) No person shall deface or remove a placard without the approval of the Health Officer.

(Prior Code, § 50.615; Ord. No. 8-2000; Ord. No. 33-05)

Sec. 50.620. Temporary safeguards.

Notwithstanding any other provisions of this chapter, whenever, as determined by the Health Officer, a building or structure poses an imminent hazard or incipient hazard, the Health Officer may order necessary work to be performed, including the boarding of openings or installation of security fencing, to render such building or structure temporarily safe and secure, whether or not proceedings to abate the hazard have been instituted; and shall cause such other action to be taken that the Health Officer deems necessary to meet such condition.

(Prior Code, § 50.620; Ord. No. 8-2000; Ord. No. 33-05; Ord. No. 12-14)

Sec. 50.625. Derelict structure registration.

If the Health Officer determines that a building or structure is a derelict structure, the owner shall be required to register the building or structure within ten days of the Health Officer's issuance of an order to register. Registration shall be made on forms provided by the Health Officer, and shall include information relating to the location and ownership of the building or structure, the expected period of its vacancy, a plan for regular maintenance during the period of vacancy, and a plan for its re-occupancy and use, or its remediation or demolition. Any change in the information required to be provided pursuant to this section shall be given to the Health Officer not more than 30 days of the date of such change. When all conditions making the building or structure a derelict structure have been corrected, the owner shall contact the Health Officer and request an inspection to determine compliance.

(Prior Code, § 50.625; Ord. No. 8-2000; Ord. No. 33-05)

Sec. 50.630. Derelict structure fees.

(a) Every owner who, after receipt of an order under SRC 50.625, fails to register the building or structure within the required time set forth in the order, or registers the building or structure but allows the building or structure to remain in a derelict condition, shall pay a monthly derelict structure fee. Payment of the fee is due on the 15th day of each month. Any payment of the fee that is more than 30 days past due may be considered delinquent and subject to a penalty of $100.00 for every delinquent monthly payment.

(b) In the event that the fees due under this section are delinquent for more than 90 days, or in the event the owner fails to register the building or structure as required by SRC 60.625, the City Attorney, on request of the Health Officer, may file an action in the circuit court of the appropriate county for the recovery of any and all delinquent fees and penalties due under this section, which shall be the total yearly fees plus all delinquent penalties.

(c) All fees imposed under this section are to be paid prior to the issuance of any permit required for the demolition, alteration or repair of the derelict building or structure.

(d) The ~~City~~ Council shall adopt a resolution establishing the amount of derelict structure fee.

(e) Unpaid derelict structure fees, and any unpaid late fees, may be entered into the City's lien docket after 90 days, and a lien for the entire amount placed against the real property.

(Prior Code, § 50.630; Ord. No. 8-2000; Ord. No. 33-05; Ord. No. 12-14)

Sec. 50.640. Abatement of derelict structure by remediation.

(a) In addition to, and not in lieu of, the abatement remedies provided for in SRC 50.800 through 50.880 and receivership authority in SRC 50.910, the Health Officer may file a notice with the City Recorder to set a public hearing before the Hearings Officer to seek an order for remediation of the conditions creating a derelict structure.

(b) Upon receipt of such notice, the City Recorder shall set the matter for prompt public hearing before the Hearings Officer and shall, not less than 15 days prior to the hearing, cause notice thereof to be served via certified mail to the owner at the owner's address as reflected on the most recent tax rolls of the County Assessor, and on the occupant. Notice shall also be posted on or near the derelict structure and copies delivered to the affected neighborhood association. Failure of the owner or occupant to receive such notice shall not render the notice void, and an unsuccessful attempt to deliver the notice shall be deemed sufficient service.

(c) At the hearing, the Health Officer shall present whatever information, evidence or testimony the Hearings Officer may deem relevant in support of the Health Officer's determination, and the owner and occupants shall be afforded a like opportunity to rebut the determination. Any information, opinion, testimony, or evidence may be received which the Hearings Officer deems material, relevant, and probative of the matters in issue. The owner and occupants may represent themselves or be represented by counsel provided that such counsel is admitted to the practice of law in the State ~~of Oregon~~.

(d) The Hearings Officer shall order the conditions creating the derelict structure be remediated if the Health Officer demonstrates, by a preponderance of the evidence, that the building structure is a derelict structure.

(e) In determining whether the conditions are such that remediation is required, the Hearings Officer shall determine whether the building is in a condition unfit for human habitation, or in a condition that is an incipient hazard, based on the number and extent of the following factors:

(1) Dilapidation;

(2) Disrepair;

(3) Structural defects noted by the Building Official;

(4) Defects increasing the hazards of fire, accident or other calamity, such as parts standing or attached in such manner as to be likely to fall and cause damage or injury;

(5) Uncleanliness or infestations of pests;

(6) Condition of sanitary facilities;

(7) The presence of a public nuisance; and

(8) The history of unlawful activity in or around the building or structure.

(Prior Code, § 50.640; Ord. No. 8-2000; Ord. No. 33-05)

Secs. 50.650—50.690. Reserved.

MISCELLANEOUS VIOLATIONS

Sec. 50.700. Pest infestation prohibited.

(a) All premises shall be kept free from pest infestation.

(b) Pest infestations shall be promptly exterminated in a manner that will not be injurious to human health.

(c) After extermination, proper precautions shall be taken to prevent re-infestation.

(Prior Code, § 50.700; Ord. No. 8-2000)

Sec. 50.705. Noxious vegetation prohibited.

(a) No owner shall cause or permit noxious or rank vegetation upon premises or in the right-of-way of a street abutting any premises.

(b) In addition to, or in lieu of, any other enforcement action authorized by law, the Health Officer may cause a violation of this section to be corrected in the same manner as a public nuisance pursuant to SRC 50.810 to 50.880.

(Prior Code, § 50.705; Ord. No. 8-2000; Ord. No. 39-2000; Ord. No. 33-05)

Sec. 50.710. Keeping of chickens.

(a) *Definitions.* ~~As used in this section, the following mean:~~ The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

~~(1)~~ *Chicken* means the common domestic fowl (Gallus gallus domesticus) or its young.

~~(2)~~ *Chicken facility* means a combination of a coop and a runway.

~~(3)~~ *Commercial poultry operation* means a farm that raises chickens for sale or the production of eggs for profit.

~~(4)~~ *Community garden* means a lot or parcel of land gardened collectively by a group of people or gardened individually in individual allotments.

~~(5)~~ *Coop* means a structure providing roofed shelter for the chickens.

~~(6)~~ *Hen* means an adult female chicken.

~~(7)~~ *Rooster* means a male chicken, and includes a capon.

~~(8)~~ *Runway* means a fully enclosed, fenced area connected to the coop.

~~(9)~~ *UDC* means the Unified Development Code set forth in ~~Salem Revised Code~~ SRC chapters 110 ~~100~~ through 900.

(b) *Location.* Chickens may be kept at any residence, community garden, on any lot owned by a school or a religious organization, or in any zone where the keeping of livestock and other animals as set forth in SRC 400.120(d) is allowed under the UDC.

(c) *Standards.* Except where the keeping of livestock and other animals is allowed under the UDC, chickens kept at any residence, community garden, or on any premises owned by a school or religious organization shall be subject to the following conditions:

(1) A maximum of six hens per premises is allowed;

(2) Roosters are prohibited;

(3) Chickens shall be confined at all times within a chicken facility, except when under the personal control

of an owner or custodian;

(4) No chicken facility or other structure that houses chickens, either temporarily or permanently, shall be located within three feet of any other building on the same premises, or within 25 feet of a residence on an adjacent unit of land;

(5) A chicken facility shall be located in the rear yard of a premises, and shall comply with the setback requirements of the zone in which it is located;

(6) A chicken facility, and the premises where the chicken facility is located, shall be maintained in a condition such that the facility or chickens do not produce noise or odor that creates a nuisance for adjacent properties;

(7) A coop shall not exceed 120 square feet; and

(8) There shall be a minimum of three square feet of coop space, and six square feet of run space, per chicken.

(d) *Chickens not in compliance deemed nuisance.* Chickens not kept in compliance with this section shall be deemed a public nuisance under SRC 50.800. If the owner or custodian has not rectified the conditions by the date provided in any notice provided under SRC 50.810, the City may abate the nuisance, as provided in SRC 50.800 through 50.880.

(e) *Violation.* Except as otherwise provided under the UDC, it shall be unlawful to keep chickens in a manner that does not comply with the provisions of this section. A violation of this section is an infraction and shall be punishable as follows:

(1) $250.00 for the first violation;

(2) $500.00 for the second violation; and

(3) $750.00 for the third and each subsequent violation, and the violator shall be prohibited from keeping chickens for ten years.

(Prior Code, § 50.710; Ord. No. 19-10; Ord. No. 8-12; Ord. No. 12-14)

Secs. 50.720—50.790. Reserved.

PUBLIC NUISANCES

Sec. 50.800. ~~Public nuisance~~ Prohibited.

No person shall cause, permit, or maintain a public nuisance on public or private property.

(Prior Code, § 50.800; Ord. No. 8-2000; Ord. No. 33-05; Ord. No. 12-14)

Sec. 50.805. Public nuisances.

The following are specifically declared to be public nuisances, but this list shall not be deemed to be exclusive:

(a) Any thing, condition, or act which is or may become a detriment or menace to the public health, welfare, and safety;

(b) The accumulation, exposure, or deposit of any garbage, rubbish, bulk solid waste, or solid waste on any public way; or any private street, alley, or lot; or into a stream, well, spring, brook, ditch, pond, river, or other inland waters within the City; or the placing of such substances in such position that high water or natural seepage will carry the same into such waters;

(c) Any physical condition of a premises considered an attractive nuisance, including, but not limited to, abandoned wells, shafts, basements, unguarded machinery;

(d) An abandoned, unattended, or discarded icebox, refrigerator, or other container accessible to children which has an airtight door, or lock which may not be released for opening from the inside;

(e) Dangerous pilings and unprotected excavations;

(f) Any premises that has unsanitary plumbing fixtures, or plumbing fixtures that permit the spillage of effluent outside of an approved sanitary sewer system, or the escape of sewer odors and gases;

(g) The maintenance of premises which are in such a state or condition as to cause an offensive odor;

(h) The accumulation of feces or manure in piles or heaps, unless enclosed in containers capable of excluding flies and maintained in such a manner or condition that offensive odor is not emitted therefrom;

(i) The burning of any rubbish, garbage, rubber, cloth, or any other thing, the burning of which, or the smoke emitted from such burning, creates an offensive odor;

(j) The accumulation of stagnant water in which mosquitoes may breed;

(k) Violation of SRC 50.260 by keeping more than five cubic yards of junk on any residentially zoned property;

(l) Violation of SRC 50.600, "Derelict Structures";

(m) Violation of SRC 50.700, "Pest Infestation";

(n) Any building or structure that is in a condition that poses an imminent hazard to public health, safety or welfare;

(o) The keeping of chickens in violation of SRC 50.710(c).

(Prior Code, § 50.805; Ord. No. 8-2000; Ord. No. 39-2000; Ord. No. 33-05; Ord. No. 12-14)

Sec. 50.810. Notice to person responsible.

Whenever the Health Officer has reasonable grounds to believe that a violation of SRC 50.800 has occurred, a notice and order shall be served on the owner(s) and occupant(s).

(Prior Code, § 50.810; Ord. No. 8-2000)

Sec. 50.815. Form of notice.

Such notice prescribed in SRC 50.810 shall:

(a) Be in writing;

(b) Include a description of the premises sufficient for identification;

(c) Include a statement of the reason or reasons why the notice is being issued;

(d) Include a correction order allowing a reasonable time for the repairs and improvements required to bring the premises into compliance with the provisions of this chapter;

(e) Include a notice that the City may abate the nuisance pursuant to this chapter and that the person responsible shall be responsible for the costs of such abatement;

(f) Include instructions for an appeal.

(Prior Code, § 50.815; Ord. No. 8-2000)

Sec. 50.820. Effective date of notice.

All notices served pursuant to this section shall be considered served on the date of personal service or as of the date of mailing if not personally served.

(Prior Code, § 50.820; Ord. No. 8-2000)

Sec. 50.825. Method of service.

(a) Notices under this chapter shall be deemed to be properly served if a copy thereof is:

(1) Personally delivered to the owner(s) and occupant(s); ~~or~~

(2) Sent by first class mail to the owner(s) and occupant(s) at their last known address; or

(3) Posted at the premises and also sent first class mail to the owner(s) and occupant(s) at their last known address if they cannot be located.

(b) Failure of the owner(s) or occupant(s) to receive such notice or an error in the name or address of an owner(s) or occupant(s) shall not render the notice void and in such case the notice shall be sufficient.

(Prior Code, § 50.825; Ord. No. 8-2000)

Sec. 50.830. Recording a violation.

The City may record a notice of violation with the County Clerk. Failure to record a notice of violation shall not affect the validity of the notice as to persons who receive the notice. When the property is brought into compliance, a satisfaction of notice of violation shall be recorded.

(Prior Code, § 50.830; Ord. No. 8-2000)

Sec. 50.835. Joint responsibility.

If more than one person is responsible for a public nuisance, they shall be jointly and severally liable for correcting the violation and for any costs incurred by the City in abating the nuisance.

(Prior Code, § 50.835; Ord. No. 8-2000)

Sec. 50.840. Abatement procedures--By the City.

(a) If, within time allowed, the violation has not been corrected, the Health Officer may cause the violation to be corrected.

(b) The Health Officer shall keep an accurate record of the expense incurred while physically correcting the violation and shall include therein a 20 percent charge for administrative overhead.

(c) The Health Officer or a person authorized by the Health Officer may enter upon the property to abate the nuisance only upon obtaining consent of the owner and occupant; upon obtaining an administrative warrant pursuant to SRC 4.190 through 4.225; or in an emergency pursuant to SRC 4.230.

(Prior Code, § 50.840; Ord. No. 8-2000; Ord. No. 26-11)

Sec. 50.845. Assessment of costs.

(a) After abatement by the City, the ~~Director of Finance~~ Finance Officer, by first class mail, shall forward to the owner(s) and occupant(s) a notice stating:

(1) The total cost of correction, including the administrative overhead; and

(2) That the costs and administrative overhead as indicated will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice.

(b) If the costs and administrative overhead are not paid within 30 days of the billing date, the Health Officer shall thereafter file with the Hearings Officer an itemized statement of costs and overhead, including an additional administrative fee in an amount of ten percent of the actual cost of correction to cover the additional expenses involved in collecting the unpaid balance.

(c) Upon filing of such statement of costs and overhead, the City Recorder shall set the matter for prompt public hearing before the Hearings Officer, and cause notice thereof to be served via certified mail to the owner(s) and occupant(s).

(d) After the hearing, the Hearings Officer shall declare the correctness of such statement and declare the same to be a lien upon the property.

(e) An error in the contents or service of any notice shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property.

(Prior Code, § 50.845; Ord. No. 8-2000; Ord. No. 33-05)

Sec. 50.850. Summary abatement.

The abatement procedure provided by this chapter is not exclusive but is in addition to procedures provided by other laws.

(Prior Code, § 50.850; Ord. No. 8-2000)

Secs. 50.860, 50.870. Reserved.

Sec. 50.880. Collections.

Collection of abatement costs, fees and penalties may be, in addition to any other remedy provided for by law, pursued through a contract collection agency or small claims court or entered into the City's lien docket in the manner provided by SRC 20J.410 and a lien for the entire amount placed against the real property pursuant to SRC 20J.180.

(Prior Code, § 50.880; Ord. No. 8-2000; Ord. No. 12-14)

Sec. 50.890. Reserved.

PENALTIES

Sec. 50.900. Violations.

(a) Violations of SRC 50.060, SRC 50.610, and SRC 50.800 are misdemeanors.~~; all other violations of this Chapter are infractions.~~

(b) Violation of SRC 50.710 is an infraction, and is punishable as set forth in SRC 50.710(e)(1).

(c) Violation of any other section of this chapter is an infraction and is punishable by a fine of not less than $100.00 and not more than $250.00. The second and subsequent violation of the same provision of this chapter in any one-year period is punishable by a fine of not less than $250.00.

(d) In addition to any other penalty provided by law, a person adjudged responsible for violation of any of the provisions of this chapter may be ordered by the Hearings Officer or Court to correct the violation.

(Prior Code, § 50.900; Ord. No. 8-2000; Ord. No. 33-05; Ord. No. 12-14)

Sec. 50.910. Receivership authority.

In addition to, and not in lieu of, any other provision in this chapter, when the Health Officer finds residential property in violation of this chapter, and believes that the violation is a threat to the public's health, welfare and safety, and the owner has not acted in a timely manner to correct the violations, the Health Officer may apply to a court of competent jurisdiction for the appointment of a receiver to perform an abatement pursuant to the Oregon Housing Receivership Act (ORS 105.420 to 105.455).

(Prior Code, § 50.910; Ord. No. 8-2000)

Sec. 50.915. Civil penalties.

(a) *Civil penalty.* Any person who fails to comply with the requirements of this chapter or who fails to comply with an enforcement order issued pursuant to this chapter shall be subject to a civil penalty as provided in SRC chapter 20J, not to exceed $2,000.00.00 per violation. Each day that a violation continues shall constitute a separate violation.

(b) *Civil penalty against agents.* Any person who acts as the agent of, or otherwise assists, a person who engages in an activity which would be subject to a civil penalty, shall likewise be subject to a civil penalty.

(Prior Code, § 50.915; Ord. No. 12-14)

Sec. 50.920. Appeals generally.

Any person who is issued an order from the Health Officer or any person who is subject to a civil penalty, pursuant to this chapter, may appeal the decision to the Hearings Officer by following the process set forth in SRC chapter 20J. The hearing on the appeal shall follow the contested case procedures set forth in SRC 20J.240 through 20J.430.

(Prior Code, § 50.920; Ord. No. 12-14)

CHAPTER 51. EVENT SOUND PERMITS

Sec. 51.001. Declaration of purpose.

It is the intent of the ~~City~~ Council to minimize the exposure of citizens to the potential negative physiological and psychological effects of excessive noise and to protect, promote and preserve the public health, safety and welfare. It is the intent of the ~~City~~ Council to control the level of noise in a manner that promotes the use, value and enjoyment of property, the conduct of business, and sleep and repose and that reduces unnecessary and excessive sound in the environment.

(Prior Code, § 51.001; Ord. No. 37-10)

Sec. 51.005. Definitions.

~~Except where the context specifically requires otherwise, as used in this Chapter, the following words and phrases mean:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*A-scale (dBA)* means the sound level in decibels measured using the A-weighted network as specified in American National Standards Institute's Specifications for Sound Level Meters (ANSI S1.4-1971 or ANSI S1.4-1983).

~~(b)~~ *Commercial* means the use of real property, whether publically- or privately-owned, as an office, service establishment, hotel, motel, retail store, park, amusement or recreation facility, or other similar use, and any use of real property within the Downtown Parking District.

~~(c)~~*Day* means the hours between 7:00 a.m. and 10:00 p.m. of the same day.

~~(d)~~ *Decibel* or *dB* means a unit for measuring the volume of sound, equal to 20 times the logarithm to the base ten of the ratio of the pressure of the sound measured to a reference pressure of 20 micropascals or 20 micronewtons per square meter.

~~(e)~~*Downtown Parking District* means the area within the Downtown Parking District as designated in SRC 7.010.

~~(f)~~*Health Officer* means the City Manager, or the department director charged by the City Manager with the implementation and enforcement of this chapter, or that department director's designee.

~~(g)~~ *Industrial* means the use of real property, whether publically- or privately-owned, as a warehouse, factory, mine, wholesale trade establishment, or other similar use.

~~(h)~~ *Night* means the hours between 10:00 p.m. and 7:00 a.m. of the following day.

~~(i)~~*Noise sensitive* means any use of real property, whether publicly- or privately-owned, as a church, temple, synagogue, day care center, hospital, rest home, retirement home, group care home, school, dwelling unit, or other similar use.

~~(j)~~*Person* means a natural person, a corporation, a limited liability company, a partnership, a co-operative, or any other entity in law or fact.

~~(k)~~ *Public property* means any real property or any facility, other than public right-of-way, that is owned, controlled, or maintained by the City, or any portion or space therein.

~~(l)~~*Sound level in dBA* means the weighted sound pressure level in dB, measured by the use of an A-weighted sound level meter set at a fast meter response.

~~(m)~~ *Sound level meter* means a sound level measuring device meeting the American National Standards Institute's Specifications for Sound Level Meters (ANSI S1.4-1971 or ANSI S1.4-1983).

~~(n)~~ *Sound pressure level in dB* means a sound level that is 20 times the logarithm to the base ten of the ratio of the root-mean square of the pressure of a given sound to a reference pressure of 20 micropascals or 20 micronewtons per square meter.

(Prior Code, § 51.005; Ord. No. 37-10)

Sec. 51.010. Administration; rulemaking.

The Health Officer shall administer and enforce the provisions of this chapter, have the authority to render written and oral interpretations, and have authority to adopt administrative rules that are consistent with, and otherwise implement, the terms of this chapter.

(Prior Code, § 51.010; Ord. No. 37-10)

Sec. 51.015. Maximum permissible sound levels.

(a) General rule. Except as provided in subsection (b) of this section, it shall be unlawful for any person who owns, controls or operates any sound source to cause or permit sound in excess of the maximum permissible sound levels set forth in Table 51-1 to be received on property other than property where the source is located without first obtaining an event sound permit issued pursuant to this chapter.

Table 51-1. Maximum Permissible Sound Levels in dBA

Type of Source by Use	Type of Receiver by Use					
	Noise Sensitive		Commercial		Industrial	
	Day	Night	Day	Night	Day	Night
Noise sensitive	Not applicable		60	55	65	60
Commercial	55	50	70	65	70	65
Industrial	55	50	70	65	No maximum	

(b) No sound received on a property other than the property where the source is located shall exceed the established maximum permissible sound levels in Table 51-1 by ten dBA for a cumulative total of greater than one minute in any ten-minute period.

(c) Measurement of sound levels shall be made at one of the following points, whichever is farther from the sound source:

(1) 25 feet from that point on any building on the receiver property nearest the sound source; or

(2) That point on the receiver property line nearest the sound source.

(Prior Code, § 51.015; Ord. No. 37-10)

Sec. 51.020. Event sound permits; types.

Any person who owns, operates or controls a sound source that will produce sound in excess of the maximum sound levels in dBA set forth in Table 51-1 shall first obtain the applicable event sound permit as follows:

(a) Class A permit: For a single event or activity that does not exceed 24 hours in duration and occurs outside of the Downtown Parking District.

(b) Class B permit: For a single event or activity or a series of related events or activities that exceeds 24 hours in duration and occurs outside of the Downtown Parking District.

(c) Class C permit: For a single event or activity that does not exceed 24 hours in duration and occurs within the Downtown Parking District.

(d) Class D permit: For a single event or activity or a series of related events or activities that exceeds 24 hours in duration and occurs within the Downtown Parking District.

(Prior Code, § 51.020; Ord. No. 37-10)

Sec. 51.030. Application for a permit.

An application for an event sound permit shall be filed with the Health Officer on forms provided by the City. An application for a Class A permit shall be submitted not less than ten calendar days prior to the event or activity for which the permit is sought. An application for a Class B, Class C or Class D permit shall be submitted not less than 45 calendar days prior to the event or activity for which the permit is sought. The application shall contain the following information and shall be accompanied by the application fee, as set by resolution of the ~~City~~ Council:

(a) The type of event or activity for which the permit is sought;

(b) The anticipated duration of the event or activity;

(c) The physical characteristics of the sound involved;

(d) The times when the sound will be emitted;

(e) The reason or reasons why the permit is necessary;

(f) Any other supporting information necessary to satisfy the criteria in SRC 51.050.

(Prior Code, § 51.030; Ord. No. 37-10)

Sec. 51.040. Notice.

(a) *Class A permits.* No notice is required for a Class A permit.

(b) *Class B, Class C and Class D permits.* An applicant for a Class B, Class C or Class D permit shall, not more than ten calendar days after submitting a permit application to the Health Officer, provide written notice that an application for a sound event permit has been submitted for consideration. Notice shall be provided to the following:

(1) Any officially recognized neighborhood association within whose geographical boundaries the planned sound source or sources will be located and any officially recognized neighborhood association within whose geographical boundaries the involved sound is likely to be heard.

(2) Any person residing or any owner of a business within 400 feet of the planned sound source or sources.

(c) *Information to be included.* Any written notice shall contain the following information:

(1) The nature of the event or activity for which the permit is sought and the date or dates thereof;

(2) The date by which the permit application must be acted upon by the Health Officer;

(3) That recipients of the notification may file written comments on the application with the Health Officer; and

(4) The address, including the e-mail address, where written comments may be submitted and the date by which any comments must be received in order to be considered.

(Prior Code, § 51.040; Ord. No. 37-10)

Sec. 51.050. Permit criteria and conditions.

(a) *Criteria.* The Health Officer shall grant an event sound permit if, after considering the application and any written comments received on the application, it appears that:

(1) The public health and safety provisions of other chapters of the Salem Revised Code, exclusive of this chapter ~~51~~ and SRC chapter 93, will not be violated if a permit is granted; and

(2) Granting the permit will not be unreasonably detrimental to the public welfare. In determining whether the permit would be "unreasonably detrimental to the public welfare," the Health Officer shall consider such factors as the potential impacts on businesses and noise sensitive properties within 150 feet of the

planned sound source, the time of day, the day of the week, the proposed type and amount of amplification to be used and any secondary noise consequences.

(b) *Conditions.* The Health Officer shall place conditions, including maximum decibel levels, on an event sound permit necessary to protect public health, safety and welfare. Permittees shall keep a copy of the permit at the event or activity for which the permit was sought.

(Prior Code, § 51.050; Ord. No. 37-10)

Sec. 51.060. Permit decision.

An application for a Class A permit shall be granted or denied within seven calendar days of receipt of a completed application. An application for a Class B, Class C or Class D permit shall be granted or denied within 30 calendar days of receipt of a completed permit application. If a permit is denied, the Health Officer shall state in writing the reasons why the permit was denied. If a permit is granted, a copy of the event sound permit shall be provided to the applicant and to any person who submitted written comments to the Health Officer.

(Prior Code, § 51.060; Ord. No. 37-10)

Sec. 51.070. Appeal.

Any person who has been denied an event sound permit may appeal the decision to the Hearings Officer by following the process set forth in SRC 20J.220. The hearing on the appeal shall follow the contested case procedures set forth in SRC 20J.240 through 20J.430.

(Prior Code, § 51.070; Ord. No. 37-10)

Secs. 51.080, 51.090. Reserved.

Sec. 51.100. Violations.

(a) It shall be unlawful for any person to exceed the maximum permissible sound levels established by SRC 51.015 without first having obtained a permit therefor.

(b) It shall be unlawful for a permittee to exceed any limitation or to fail to comply with any condition set forth in a sound event permit issued pursuant to this chapter.

(c) A violation of subsection (a) or (b) of this section is an infraction. Each day that a violation continues shall constitute a separate violation. In addition to any other penalty provided by law, a person adjudged responsible for a violation of any of the provisions of this chapter may be ordered by the Court to correct the violation.

(d) In addition to any other remedy provided by law, the Health Officer shall have the authority to suspend or revoke a permit issued pursuant to this chapter when the permittee has failed to comply with any term or condition set forth in the permit.

(e) The Health Officer shall have the authority to modify a permit issued pursuant to this chapter when the original terms or conditions of the permit cause an undue hardship on surrounding businesses or noise sensitive properties.

(f) In addition to, but not in lieu of, any other remedy provided by law, a civil penalty of $250.00 may be imposed on a permittee for an event sound permit when the permittee refuses to, or fails to, cause immediate corrective action for any violation of the permit. The civil penalty may be appealed by following the process set forth in SRC 20J.190. The hearing on the appeal shall follow the contested case procedures set forth in SRC 20J.240 through 20J.430.

(Prior Code, § 51.100; Ord. No. 37-10)

CHAPTERS 52, 53. RESERVED

Title V

COMMUNITY DEVELOPMENT STANDARDS

CHAPTERS 54, 55. RESERVED

CHAPTER 56. BUILDING CODE*

***State law reference—**Building code, ORS 455.010 et seq.; state building code preempts local building ordinances, ORS 455.040.

Sec. 56.001. Definitions.

~~Unless the context otherwise specifically requires, as used in this Chapter the following mean:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Building Code* means those provisions of the State Building Code, and any modifications thereof, adopted by the City pursuant to ORS 455.040(1), that are part of the building inspection program administered and enforced by the City.

~~(b)~~ *Building inspection program* means the administration and enforcement of the Building Code pursuant to ORS 455.150.

~~(c)~~*Building Official* means the head of the Building and Safety Division of the Department of Community Development for the City, or the Building Official's designee.

~~(d)~~ *Code Compliance Official* means the City Manager or the department director charged with enforcement of SRC 56.200 through 56.270, or that department director's designee.

~~(e)~~*Enhanced services* means the provision of interdepartmental regulatory coordination between the City and an applicant or permittee as set forth in an agreement for enhanced services entered into pursuant to SRC 56.012.

~~(f)~~*Expedited services* means the provision of plan review or construction inspection within such timeframes or according to schedules, as set forth in an agreement for expedited services entered into pursuant to SRC 56.012.

~~(g)~~ *Permittee* means the person holding any permit authorized by this chapter, or that person's authorized representative.

~~(h)~~ *Person* means a natural person, partnership, corporation, limited liability partnership, limited liability company, co-operative, governmental entity, association, or other entity in law or fact.

~~(i)~~*State Building Code* means the following specialty codes of the State ~~of Oregon~~ administered and enforced by the City: Oregon Structural Specialty Code, Oregon Residential Specialty Code, Oregon Mechanical Specialty Code, Oregon Plumbing Specialty Code, Oregon Electrical Specialty Code, Oregon Energy Efficiency Code and the Oregon Manufactured Home Specialty Code.

(Prior Code, § 56.001; Ord. No. 62-05; Ord. No. 16-08; Ord. No. 23-12)

Sec. 56.002. Assumption of building inspection program; scope.

(a) Pursuant to ORS 455.150, and through the provisions of SRC 56.001 through 56.199, the City ~~of Salem~~ hereby implements and assumes a building inspection program for the City ~~of Salem~~, which shall be comprised of the administration and enforcement of the Building Code.

(b) Except as otherwise provided in SRC 56.001 through 56.199, the building inspection program shall be administered and enforced according to the procedures set forth in the State Building Code.

(c) If there is a conflict between any provision of the State Building Code and any provision of this chapter adopted pursuant to ORS 455.040(1), the provision adopted pursuant to ORS 455.040(1) shall govern.

(Prior Code, § 56.002; Ord. No. 62-05)

Secs. 56.003--56.005. ~~Deletions from state building code~~ Reserved.

~~Pursuant to the authorization by the Director of the Department of Consumer and Business Services under ORS 455.040(1), the following provisions of the State Building Code are deleted:~~

~~(a) Sections 106.3 through 106.5 of the 2004 Oregon Mechanical Specialty Code.~~

~~(b) Sections 103.1 through 103.3, 104.1, 104.3, 104.6 and 105.3 through 105.6 of the 2004 Oregon Structural Specialty Code.~~

~~(Prior Code, § 56.003; Ord. No. 62-05)~~

~~Sec. 56.004. State building code fire sprinkling system requirements~~ Reserved~~.~~

~~Pursuant to the authorization by the Director of the Department of Consumer and Business Services under ORS 455.040(1), Section AN 109.4 through AN 109.4.2.1 of the State Building Code relating to fire sprinkler system requirements are hereby adopted.~~

~~(Prior Code, § 56.004; Ord. No. 102-07)~~

Sec. 56.006. Powers and duties of the Building Official.

The Building Official shall administer and enforce the building inspection program, and shall have the authority to render written and oral interpretations of the Building Code and to adopt administrative rules and procedures necessary and proper for the administration and enforcement of the Building Code.

(Prior Code, § 56.006; Ord. No. 62-05)

Sec. 56.007. Building permits.

(a) A person shall, prior to undertaking or causing to be undertaken any work for which a permit is required under any provision of the Building Code, obtain a building permit as provided in this section.

(b) The application for a permit and plans, specifications, computations and other data filed by an applicant for a building permit shall be reviewed by the Building Official, and may be reviewed by other departments of the City to verify compliance with the Building Code and any other applicable laws. If the Building Official finds that the work described in an application for a permit and the plans, specifications, computations and other data filed therewith conform to the requirements of the Building Code and any other applicable laws, and that all required fees have been paid, the Building Official shall issue a building permit to the applicant.

(c) An application for a building permit shall be deemed abandoned 180 days after the date of filing, unless the applicant continues to pursue the application in good faith. The Building Official may grant not more than one extension, for an additional period not to exceed 180 days. The applicant must request the extension, in writing, setting forth good and sufficient cause for the extension to the satisfaction of the Building Official prior to the date the application is deemed abandoned pursuant to this subsection.

(d) If plans and specifications are required for the issuance of a building permit, the Building Official shall, at the time the permit is issued, approve the plans and specifications by endorsement in writing or official stamp. All work shall be done in accordance with the approved plans and specifications, and shall not be changed, modified or altered without prior authorization from the Building Official.

(e) One set of approved plans and specifications shall be retained by the Building Official for the period specified under rules promulgated by the Oregon State Archivist, and one set of approved plans and specifications shall be returned to the applicant and kept on the work site at all times while the work authorized by the building permit is in progress.

(f) The Building Official may issue phased permits that allow for the construction of part of a building before the plans and specifications for the entire building have been submitted or approved, provided adequate information and detailed statements have been filed with the Building Official that comply with all applicable requirements of the Building Code. The holder of a phased permit shall not, by virtue of a permit issued for any single phase, have any guarantee that plans and specifications for subsequent phases will be approved, or that permits for subsequent phases will be issued.

(g) The approval of plans and specifications or the issuance of a building permit shall not be construed or deemed to be approval of, or a permit for, any construction, work or activity that violates any of the provision of the Building Code, any other provision of the Salem Revised Code or any other federal, state or local law, statute, rule, regulation or ordinance.

(h) The issuance of a building permit shall not prevent the Building Official from requiring correction of errors in plans and specifications, or from issuing a stop work order or undertaking enforcement action if any work

being carried on violates the Building Code or any other provision of the Salem Revised Code, or any other federal, state or local law, statute, rule, regulation or ordinance.

(Prior Code, § 56.007; Ord. No. 62-05)

Sec. 56.008. Use of alternative materials, designs, and methods; exceptions; modifications.

(a) The Building Official may authorize the use of alternative materials, designs or methods of construction, provided the material, design or method is, for the purpose intended, the equivalent in suitability, strength, effectiveness, fire resistance, durability, safety and sanitation to the materials, designs or methods prescribed by the Building Code and the use otherwise complies with the provisions of the Building Code. Any person seeking to use alternative materials, designs or methods shall first establish to the satisfaction of the Building Official that the alternative materials, designs or methods are equivalent to those prescribed by the Building Code. The Building Official shall document, in writing, the details of the approval of any such alternative materials, designs or methods prior to the issuance of a building permit.

(b) The Building Official may authorize exceptions to the Building Code, if the Building Official determines that there are substantial practical difficulties in carrying out the provisions of the Building Code, that the exception does not lessen any fire protection requirement or lessen the structural integrity of the building, and the proposed construction will satisfy the intent and purpose of the Building Code. The Building Official shall document in writing that the exception meets the criteria set forth in this subsection prior to the issuance of a building permit.

(c) If the Building Official determines that an applicant has provided insufficient evidence to authorize the use of any alternative material, method or design, or to support the exception, the Building Official shall deny the request for the use of the alternative material, method or design, or the exception, or may require tests prior to making the determination, to be made at the applicant's sole cost and expense. Any such test shall be performed by a testing agency approved by the Building Official. Reports of such tests shall be retained by the Building Official for the period required for the retention of such public records.

(Prior Code, § 56.008; Ord. No. 62-05)

Sec. 56.009. Inspections.

(a) When the Building Official deems it necessary to make an inspection to enforce the Building Code, or when the Building Official has reasonable cause to believe a condition exists in a building or on a premises that is in violation of the Building Code or that otherwise makes the building or premises unsafe, dangerous or hazardous, the Building Official may, in accordance with this section, enter the building or premises at reasonable times to make inspections or to perform other duties imposed under the Building Code.

(b) If the building or premises is occupied, the Building Official shall first present the Building Official's credentials to the occupant and request entry. If entry is refused, the Building Official may use any other lawful means to obtain entry.

(c) If the building or premises is unoccupied, the Building Official shall first make a reasonable effort to locate the owner or other person with control of the building or premises and request entry. If entry is refused, the Building Official may use any other lawful means to obtain entry. If the Building Official is unable, after making a reasonable effort, to locate the owner or other person with control of the building or premises, the Building Official may enter the building or premises, but shall, as soon as is practicable, document the efforts made to locate the owner or other person, and inform the owner or other person of the entry.

(Prior Code, § 56.009; Ord. No. 62-05)

Sec. 56.010. Orders to disconnect.

(a) The Building Official may order any fuel-gas or utility disconnected from a building or premises, and may cause such fuel-gas or utility to be disconnected, when the Building Official determines the continued connection poses a potential or imminent hazard to life, health, or property. The Building Official shall, if possible, provide 24-hour written notice of the order to disconnect to the utility, the owner and the occupants of the building or premises; if 24-hour notice is not possible or if providing notice would result in a delay that would unduly endanger life, health or property, the Building Official may cause disconnection to occur without notice, but shall

provide written notice to the utility, the owner and occupants of the building or premises as soon as practicable. No person may use a building or premises, or part thereof, after receiving an order pursuant to this subsection.

(b) When the Building Official determines any mechanical system or equipment regulated by the Building Code, or any part thereof, poses a potential or imminent hazard to life, health or property, the Building Official may order the system or equipment, or any part thereof, be removed from its location, be restored to a safe and sanitary condition or be disconnected, and may cause such system, equipment, or part thereof, to be disconnected. An order to remove and restore a system or equipment, or any part thereof, shall be in writing, shall contain the reasons for the order, and shall give the owner or person in charge of the building or premises a time certain within which compliance must occur. An order to disconnect a mechanical system or equipment, or part thereof, shall be in writing, shall contain the reasons for the order, and shall give the owner or person in charge of the premises and any utility necessary for the operation of the system or equipment 24 hours to disconnect the system or equipment, or part thereof, unless continued connection would unduly endanger life, health or property, in which case the Building Official may order, or cause, the immediate disconnection to occur. No person may use a mechanical system or equipment, or part thereof, after receiving an order pursuant to this subsection.

(c) Any disconnection that is ordered or caused to be made by the Building Official pursuant to this section shall be at the sole cost and expense of the owner of the building or structure.

(Prior Code, § 56.010; Ord. No. 103-67; Ord. No. 15-71; Ord. No. 190-73; Ord. No. 94-74; Ord. No. 80-78; Ord. No. 216-79; Ord. No. 92-80; Ord. No. 90-83; Ord. No. 39-85; Ord. No. 102-86; Ord. No. 35-90; Ord. No. 108-94; Ord. No. 62-05)

Sec. 56.012. Expedited and enhanced services.

(a) Development with a value of less than $10,000,000.00. An applicant or permittee for a development with a value of less than $10,000,000.00 may enter into an agreement with the City for the provision of expedited or enhanced services, which may be provided by the City through professional or personal services contracts, hiring additional staff or covering costs of overtime.

(b) Development with a value of $10,000,000.00 or more. An applicant or permittee for a development with a value of more than $10,000,000.00 shall enter into an agreement with the City for the provision of enhanced services, which may be provided by the City through professional or personal services contracts, hiring additional staff or covering costs of overtime. The Building Official may waive the requirement for enhanced services if the Building Official determines that interdepartmental regulatory coordination is not reasonably anticipated to be necessary, based on the following factors: the complexity of the proposed project; the development standards applicable to the proposed project do not require the extensive exercise of discretion or legal judgment; and that the value of public improvements required to be built as part of the proposed project disproportionately outweigh the value of any buildings or structures to be built as part by the applicant or permittee. The Building Official's determination of whether to grant or deny a waiver is a final decision. An applicant or permittee under this subsection may, but is not required to, enter into an agreement for provision of expedited services.

(c) An agreement for expedited services or enhanced services shall include, in addition to any other necessary information, the following:

(1) A list of services to be provided and the hourly rate or cost for providing the expedited or enhanced services to the applicant or permittee; and

(2) A statement that no principal-agent relationship or other special relationship is created between the applicant or permittee and the City or its employees by the City's provision of expedited or enhanced services and that the City or its employees are not liable for any damage caused by a delay in issuance of a permit or approval for the development.

(d) The Building Official shall not alter or establish processing priorities or schedules based upon an expectation of entering into an expedited or enhanced services agreement, and shall only provide expedited or enhanced services after an agreement to provide such services has been voluntarily entered into between the City and the applicant or permittee.

(e) For purposes of this section, the Building Official shall determine the value of the development by combining the value of all the private improvements to be built, based on the most current International Code

Council building valuation data table, plus the estimated construction cost of the public improvements required for the development, based on a cost estimate certified by a professional engineer to be provided by the applicant.

(f) Within 14 days of execution of an agreement to provide expedited or enhanced services, the applicant or permittee shall deposit in an account established with the Building and Safety Division an initial amount equal to one-half of one percent of the value of the development, or $20,000.00, whichever is less.

(g) The deposit shall be drawn down each month in the amount of fees accrued. The applicant or permittee shall replenish the account on a timely basis such that the account balance does not go below $1,000.00. In the event the account balance goes below $1,000.00, the Building Official shall, until such time as the account balance is $1,000.00 or greater, discontinue providing expedited or enhanced services.

(h) The Building and Safety Division shall provide itemized monthly statements to the applicant or permittee detailing the time spent by staff pursuant to the agreement for expedited or enhanced services.

(i) All hourly rates shall be as provided in the Building and Safety Division fee schedule, and charged in one-half hour increments.

(Prior Code, § 56.012; Ord. No. 62-05; Ord. No. 16-08)

Sec. 56.013. Expiration of building permits.

(a) A building permit shall expire if the work authorized is not commenced within 180 days from the date the permit was issued, or if the work authorized is suspended or abandoned for a period of 180 days at any time after the work is commenced. Work shall not be considered suspended or abandoned if the permittee continues to undertake activities that are deemed by the Building Official to indicate an intent to complete the work, including, but not limited to, site preparation or the purchase of materials or services related to the work. The Building Official may require the permittee to document activity undertaken by the permittee that indicates an intent to complete the work.

(b) A building permit shall expire 24 months after the date the permit was issued. If the work authorized by such permit has not received final inspection prior to the expiration date, all work shall cease, and a new permit shall be obtained for the value of the work remaining unfinished.

(c) The Building Official may issue a building permit with a period exceeding 24 months if the applicant demonstrates the complexity or size of the work makes completing the work within 24 months impracticable, or demonstrates other good cause why the work cannot be completed within 24 months. Any building permit issued for a period in excess of 24 months shall expire at the end of the period authorized by the permit. If the work authorized by such permit has not received final inspection prior to the expiration date, all work shall cease, and a new permit shall be obtained for the value of the work remaining unfinished.

(Prior Code, § 56.013; Ord. No. 62-05)

Sec. 56.014. Extensions; reinstatements.

(a) Any permittee holding an unexpired building permit may apply for an extension of time to complete the work, when the permittee is unable to complete work within the time set forth in SRC 56.013. The Building Official may grant extensions of time for periods not to exceed 180 days upon written request by the permittee, demonstrating circumstances beyond the control of the permittee that prevented work from being completed within the time allowed by the permit, or any immediately prior extension thereof. The permittee shall pay an investigation fee at the time the request for extension is submitted.

(b) The holder of an expired building permit may apply for a reinstatement of the permit. An expired permit may be reinstated if the permittee can establish the following criteria are met and pays a reinstatement fee, otherwise the permittee shall obtain a new permit, and pay the applicable permit fees. A permit may be reinstated if:

(1) The Building Code and other laws enforced by the City have not been amended in any manner that affects the work authorized by the expired permit;

(2) No changes have been made or will be made in the original plans and specifications for the work authorized by the expired permit; and

(3) The permit expired less than one year prior to the date of the application to reinstate the permit.

(Prior Code, § 56.014; Ord. No. 62-05)

Sec. 56.015. Work commenced without a building permit.

Whenever work for which a building permit is required has been commenced without a permit having first been obtained, a special investigation shall be made by the Building Official before a permit may be issued for the work. An investigation fee, in addition to the permit fee, shall be required whether or not a permit is subsequently issued. The payment of the investigation fee shall not exempt any person from compliance with all other provisions of the Building Code, any other provision of the Salem Revised Code, any other applicable law, or from any penalty prescribed by law.

(Prior Code, § 56.015; Ord. No. 190-73; Ord. No. 94-74; Ord. No. 80-78; Ord. No. 92-80; Ord. No. 90-83; Ord. No. 102-86; Ord. No. 35-90; Ord. No. 108-94; Ord. No. 62-05)

Sec. 56.016. Transfer of building permit.

A building permit shall only be transferable when authorized by the owner of the property, in writing.

(Prior Code, § 56.016; Ord. No. 62-05)

Sec. 56.019. ~~Inspection record card;~~ Inspections.

~~(a) Work requiring a building permit shall not be commenced until the permittee has posted or otherwise made available an inspection record card on site that allows the Building Official to conveniently make the required entries thereon regarding inspection of the work. The inspection record card shall be maintained on site by the permittee until final approval has been granted by the Building Official.~~

~~(a)~~(b) The permittee shall request all required inspections in a timely manner, shall provide access to the work site, and shall provide all equipment deemed necessary or appropriate by the Building Official to perform the inspection. The permittee shall not proceed with construction activity until authorized to do so by the Building Official. The permittee shall cause the work to remain accessible and exposed for inspection purposes. Any expense incurred by the permittee to remove or replace any material required for proper inspection shall be at the sole cost of the permittee.

(Prior Code, § 56.019; Ord. No. 62-05)

Sec. 56.020. Reserved.

Sec. 56.027. Fire ~~and life safety~~ plan review; fees.

The Building Official shall forward to the Fire Code Official all plans accompanying applications for building permits for work to be performed that requires a certificate of occupancy under the Oregon Structural Specialty Code. The Fire Code Official shall cause those plans to be inspected for compliance with the provisions of the Oregon Structural Specialty Code, and Oregon Fire Code ~~relating to fire and life safety~~ and with the provisions of SRC chapter 58. Fire ~~and life safety~~ plan review shall be in addition to any other plan review required by the Oregon Structural Specialty Code. The fee for plan review under this section shall be an additional fee equal to 40 percent of the building permit fee.

(Prior Code, § 56.027; Ord. No. 86-90; Ord. No. 62-05; Ord. No. 35-06)

Secs. 56.030—56.110. Reserved.

Sec. 56.115. Infrastructure requirements.

The ~~Public Works~~ Director may require, as a condition of issuance of any building permit, the construction of boundary streets, or water, sewer, stormwater or street improvements required to serve the development, and the conveyance or dedication of any necessary rights-of-way or easements, including, but not limited to, rights-of-way required by SRC 803.040. The ~~Public Works~~ Director may defer the construction of a boundary street required pursuant to this section, as provided in SRC 803.070.

(Prior Code, § 56.115; Ord. No. 64-93; Ord. No. 62-05; Ord. No. 31-13)

Sec. 56.120. UGA development permit required.

Prior to issuance of any building permit or occupancy certificate for or in a development as defined in SRC 200.020, including permits for dwellings in subdivisions for which an Urban Growth Area Preliminary Declaration is required under SRC 200.020, the Building Official shall ascertain that a UGA Preliminary Declaration has been issued and the provisions of SRC 200.050(a) have been complied with.

(Prior Code, § 56.120; Ord. No. 129-79; Ord. No. 91-99; Ord. No. 31-13)

Secs. 56.130—56.180. Reserved.

Sec. 56.190. Fees.

(a) Fees charged under the Building Code shall be in the amounts established by resolution of ~~City~~ Council.

(b) The Building Official is authorized to enter into agreements, including a schedule of payments, for applicants requesting expedited or enhanced services under SRC 56.012.

(Prior Code, § 56.190; Ord. No. 62-05)

Sec. 56.195. Prohibited acts.

(a) No person shall make a connection to or from an energy, fuel, or power supply, or any equipment regulated by the Building Code that has been disconnected or ordered disconnected by the Building Official, until the Building Official specifically authorizes the reconnection or use of such equipment.

(b) No owner shall allow any building, or any part thereof, to be in an unsafe or unsanitary condition, or to allow any devices or safeguards which are required by the Building Code to be maintained in a manner not in conformance with the Building Code in effect on the date when installed.

(c) No person shall perform or cause to be performed work for which a building permit is required under any provision of the Building Code without first obtaining a permit.

(d) No person applying for a building permit required by the Building Code shall knowingly make any false, incomplete, or misleading statements on the application.

(e) No person shall violate any provision of the Building Code.

(f) No person shall disobey any lawful notice or order of the Building Official.

(g) No person shall fail or refuse to obtain a building permit when a building permit was originally required by law, and the Building Official requires that a building permit be obtained in order to cure the original violation.

(h) A violation of this section is subject to a civil penalty.

(Prior Code, § 56.195; Ord. No. 62-05; Ord. No. 4-10; Ord. No. 23-12)

Sec. 56.198. Stop work orders; permit revocation; civil penalties; enforcement.

(a) *Stop work orders.* When any work is being done contrary to the provisions of the Building Code or other laws, ordinances or regulations adopted to enforce the Building Code, or to a permit or orders issued hereunder, the Building Official may issue a stop work order that the person cease and desist all such violations and commanding the person to immediately comply with all requirements of this chapter or the requirements of the permit or order; and take such appropriate remedial or preventive action as may be needed to properly address the violation, including halting operations and undertaking corrective action. The Building Official may order the work stopped by written notice served on any person or persons doing or causing such work to be done. Upon receipt of such notice, the person doing or causing such work to be done shall immediately cease such work, until such time as an authorization to proceed is issued by the Building Official.

(b) *Suspension or revocation of permit.*

(1) The Building Official may suspend work or revoke a permit issued under this chapter whenever it appears that:

(A) The permit was issued in error;

(B) The work is not authorized by a valid permit;

(C) Inaccurate, incomplete, or fraudulent information was used to obtain the permit;

(D) The permit was issued in violation of any law or regulation, or the activity authorized by the permit is in violation of any law or regulation;

(E) The applicant is not complying with the terms of the permit, or the work being performed is beyond the scope of work authorized by the permit, or is violating the provisions of this chapter or other applicable law; or

(F) The work is, or threatens to become, a hazard to property or public safety; is adversely affecting or about to adversely affect adjacent property or rights-of-way, a drainage way, waterway, wetlands, fish or wildlife habitat, or a stormwater facility; or is otherwise adversely affecting the public health, safety, or welfare.

(2) The Building Official shall issue a written notice specifying the nature of the violation or problem which must be remedied prior to resuming other work on the project.

(c) *Orders to vacate.* Whenever any building, premises, mechanical system or equipment regulated by the Building Code, or part thereof, is used contrary to the provisions of the Building Code, the Building Official may order such use discontinued and the building and premises, or part thereof, vacated.

(d) *Persons violating responsible for restoring.* Persons violating this chapter, or a permit issued hereunder, shall be responsible for restoring damaged areas in conformance with a plan approved by the Building Official which provides for repair of any environmental or property damage and restoration of the site. The plan shall result in conditions upon the site which, to the greatest extent practical, equal the conditions that would have existed had the violation not occurred, as verified by a certified professional.

(e) *Civil penalty.* Any person who fails to comply with the requirements of this chapter, or the terms of a permit issued hereunder, who undertakes an activity regulated by this chapter without first obtaining a permit, or who fails to comply with a stop work order issued pursuant to this chapter shall also be subject to a civil penalty, not to exceed $5,000.00 per violation. Each day that a permit violation continues shall constitute a separate violation.

(f) *Civil penalties against agents.* Any person who acts as the agent of, or otherwise assists, a person who engages in an activity which would be subject to a civil penalty, may likewise be subject to a civil penalty.

(g) *Reconsideration.* Any person aggrieved by any decision, action, or determination, including cease and desist orders, made by the Building Official, may seek reconsideration by filing a request for reconsideration with the Building Official within ten days after notice of such decision, action, or determination has been provided to the person. The notice shall set forth in detail the facts supporting the request for reconsideration. The Building Official's decision, action, or determination shall remain in effect during such period of reconsideration.

(h) *Appeal.*

(1) Appeals of orders, decisions or determinations of the Building Official involving the application and interpretation of the State Building Code shall be made as provided in ORS 455.475, and any rules promulgated thereunder.

(2) Appeals from all orders, decisions and determinations of the Building Official under this chapter, other than orders, decisions and determinations involving the application of the State Building Code, shall be to the Hearings Officer, and shall be initiated by filing a notice of intent to appeal with the City Recorder within 15 business days after notice of the Building Official’s final decision after reconsideration is deemed to have been received by the applicant under SRC 20J.110. The notice of appeal shall satisfy the requirements of SRC 20J.110, and the appeal proceed as a contested case under the procedures established in SRC 20J.240 and 20J.430. Notwithstanding SRC 20J.270, the Building Official's decision, action, or determination shall remain in effect during such period of the appeal. Appeals to the Hearings Officer under this section shall extend the plan review deadline by the number of days it takes for a final decision to be issued upon the appeal.

(i) *Prohibition of further approvals; injunctive relief.*

(1) The City shall not issue a Notice of Final Completion for property on which a violation of this chapter has occurred or is occurring, until the violation has been cured by restoration or other means acceptable to the Building Official and any penalty imposed for the violation is paid.

(2) The City may seek injunctive relief against any person who has willfully engaged in a violation of SRC 56.011 (a), ~~SRC~~ 56.015, or ~~SRC~~ 56.195, such relief to be in effect for a period not to exceed five years.

(j) *Remedies not exclusive.* The remedies provided by this chapter are cumulative and not mutually exclusive and are in addition to any other rights, remedies and penalties available to the City under any other provision of law, including, but not limited to, any action necessary to prevent, restrain, correct or abate any violation of the Building Code.

(Prior Code, § 56.198; Ord. No. 4-10)

State law reference—Appeal of building official decision, ORS 455.475.

DANGEROUS BUILDINGS

Sec. 56.200. Purpose.

The purpose of SRC 56.200 through 56.270 is to provide a just, equitable, and expeditious method, to be cumulative with, or in addition to, any other remedy provided by law, whereby buildings or structures, or portions thereof, which endanger public health, safety or welfare may be required to be repaired, demolished, or vacated.

(Prior Code, § 56.200; Ord. No. 23-12)

Sec. 56.210. Powers and duties of Code Compliance Official.

The Code Compliance Official shall administer and enforce SRC 56.200 through 56.270, and shall have the authority to make such inspections as may be required to enforce SRC 56.200 through 56.270, and, if voluntary entry is denied, to obtain administrative search warrants.

(Prior Code, § 56.210; Ord. No. 23-12)

Sec. 56.215. Dangerous buildings declared to be public nuisance.

(a) All buildings, structures, or portions thereof, which are dangerous buildings are public nuisances that shall be abated by repair, demolition, or by securing and vacating the property.

(b) A building or structure, or portion thereof, is a dangerous building when the building or structure, or portion thereof, has any of the following conditions and the condition endangers the health, safety or welfare of the public or the building's or structure's occupants:

(1) When complete or partial collapse is likely because of damage, dilapidation, deterioration, decay, inadequate construction, or faulty construction;

(2) When any portion of the ground necessary for support has been removed, has moved, or has become unstable;

(3) When the foundation is deteriorated, decayed or inadequate;

(4) When damage has occurred to such an extent that the structural strength or stability no longer meets the minimum requirements of the Building Code for similar new construction;

(5) When any part is likely to fail, detach, or collapse and injure persons or damage property;

(6) When any portion of the exterior does not have sufficient strength or stability to resist wind pressure equal to one-half of that specified in the Building Code for similar new construction;

(7) When there has been warping, buckling, or settling to such an extent that there is materially less resistance to wind or earthquakes than that required for similar new construction;

(8) When any door, aisle, passageway, stairway, or other means of exit does not provide a safe and adequate means of exit in case of emergency;

(9) When the building or structure, or any portion thereof, is manifestly unsafe for the purpose for which it is being used;

(10) When the exterior walls or other vertical structural members list, lean, or buckle to the extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base of the walls intended to be vertical;

(11) When damage from fire, wind, earthquake or flood, or dilapidation or deterioration has made the building or structure, or any portion thereof, an attractive nuisance;

(12) When construction or maintenance violates any requirement the Building Code, SRC chapter 59, or of any other federal, state, or local law relating to the construction, condition, or location of buildings or structures;

(13) When any building or structure is determined by the Fire Marshal to be a fire hazard;

(14) When any portion of a building or structure remains on a site after demolition or destruction;

(15) When any building or structure is abandoned for a period greater than 30 days, and the abandonment constitutes an attractive nuisance or other hazard to the public;

(16) When a building or structure that has been removed from its foundation has, for a period greater than 90 days, remained unattached to a permanent foundation meeting the requirements of the Building Code;

(17) When the Oregon Health Authority has notified the Director that a building has been declared unfit to occupy because the building was an illegally produced drug manufacturing site or storage area which has been contaminated with a toxic substance that presents an imminent threat to human health;

(18) When the Building Official has determined the building or structure, or any portion thereof, is structurally inadequate to perform the functions for which it was intended, based upon the Building Code or any other applicable standard relating to construction or building safety.

(c) Notwithstanding subsection (a) of this section, and except as provided in SRC 230.095, no dangerous building which is a historic resource as defined in SRC 230.005 shall be demolished unless the building has been approved for demolition pursuant to SRC 230.090.

(Prior Code, § 56.215; Ord. No. 23-12)

Sec. 56.220. Commencement of abatement proceedings.

If the Code Compliance Official or Building Official has inspected a building or structure, or portion thereof, and finds that such building or structure, or portion thereof, is a dangerous building, the Code Compliance Official shall, as soon as practicable, initiate abatement proceedings.

(Prior Code, § 56.220; Ord. No. 23-12)

Sec. 56.225. Enforcement order to abate.

An abatement proceeding is initiated by the issuance of an enforcement order to the record owner of the building or structure, or portion thereof, ordering the owner to abate the conditions making the building or structure, or portion thereof, a dangerous building. The enforcement order shall contain the information required by SRC 20J.090(d) and the following:

(a) The street address and a legal description sufficient for identification of the premises upon which the building or structure, or portion thereof, is located.

(b) A statement that the building or structure, or portion thereof, is a dangerous building, along with a concise description of the conditions or defects that support the determination.

(c) A statement of which of the following actions are required to be taken:

(1) If the Code Compliance Official has determined that the building or structure, or portion thereof, must be repaired, that all required permits shall be obtained and the work physically commenced within such time, not to exceed 60 days from the date of the enforcement order, and completed within such time as the Code Compliance Official determines is reasonable under the circumstances.

(2) If the Code Compliance Official has determined that the building or structure, or portion thereof, must be demolished, that the building or structure, or portion thereof, shall be vacated and secured within such period of time as the Code Compliance Official determines is reasonable, not to exceed 60 days from the date of the enforcement order, that all required permits be obtained within 60 days from the date of the enforcement order, and that the demolition be completed within such period of time as the Code Compliance Official determines is reasonable under the circumstances.

(3) If the Code Compliance Official has determined that the building or structure, or portion thereof, must be vacated and secured, that the building or structure, or portion thereof, shall be vacated and secured within such period of time the Code Compliance Official determines is reasonable under the circumstances.

(d) A statement that if the required work is not commenced within the period of time specified in the enforcement order, the Code Compliance Official:

(1) Will order the building vacated until the work is completed; and

(2) May cause the work to be done and the costs thereof shall constitute a lien against the property.

(e) The date the enforcement order was issued.

(Prior Code, § 56.225; Ord. No. 23-12)

Sec. 56.230. Order to vacate.

(a) If the Code Compliance Official determines that the building or structure, or portion thereof, constitutes an immediate threat to public health, safety, and welfare, the Code Compliance Official shall, in addition to issuing an enforcement order, post an order to vacate on the property, prior to, or contemporaneously with, the enforcement order.

(b) A copy of the order to vacate shall be posted at or near each entrance to the building or structure, or portion thereof, stating:

"DO NOT ENTER

UNSAFE TO OCCUPY

It is a misdemeanor to occupy this building,

or to remove or deface this notice.

Building Official

City of Salem"

(c) The Code Compliance Official shall include a statement that an order to vacate will be posted on the building or structure, or portion thereof, in the enforcement order, stating the conditions or defects that justify the order to vacate.

(Prior Code, § 56.230; Ord. No. 23-12)

Sec. 56.235. Posting; service.

(a) The enforcement order and order to vacate shall be posted on the building or structure, or portion thereof, and served on the record owner. A copy of the enforcement order and order to vacate shall also be served on the following:

(1) Any person having a security interest in the property, as recorded in the deed records of the applicable county, including, but not limited to, a mortgagee, beneficiary under a deed of trust, vendor under a land sale contract, or lien holder;

(2) Any lessee of record; and

(3) Any holder of an easement or other encumbrance of record.

(b) Notwithstanding SRC 20J.100, service of an enforcement order and service of an order to vacate shall be made by personal delivery or by mailing a copy of the notice and order by certified mail, return receipt requested,

to the person's last known address. If the address for any person cannot be readily determined by resort to public records, the Code Compliance Official shall mail a copy of the enforcement order and order to vacate addressed to the person, at the address of the building or structure. If service is provided by personal delivery, service shall be deemed given on the date of actual delivery to the person. If service is provided by certified mail, service shall be deemed given three business days after the date of mailing, if mailed to an address within the State ~~of Oregon~~, and seven business days after the date of mailing, if mailed to an address outside of the State ~~of Oregon~~. Refusal to accept the certified mailing shall not render the notice invalid.

(c) Proof of service shall be certified by the person effecting service, indicating the time, date, and manner service was made. Proof of service, together with the return receipt card for certified mail, if service was given by certified mail, shall be retained by the Code Compliance Official in the file for the proceeding.

(d) If service was given as provided in this section, the failure of any person entitled to service to receive a copy of the enforcement order or order to vacate shall not affect the validity of any proceedings initiated under this section, or relieve the person from any duty to abate the dangerous conditions.

(Prior Code, § 56.235; Ord. No. 23-12)

Sec. 56.240. Extension of time.

A person required to abate a dangerous building may file an application with the Code Compliance Official for additional time to repair or demolish the building or structure, or portion thereof. The application shall be filed on or before the date specified for compliance in the enforcement order. The Code Compliance Official may grant one or more extensions of time, not to exceed a total cumulative amount of 365 days, within which to abate the dangerous building or structure, or portion thereof, upon a demonstration by the person that circumstances beyond the reasonable control of the person prevent repair or demolition of the dangerous building or structure, or portion thereof; provided, however, that an extension of time shall not be granted if the enforcement order found that the dangerous building or structure creates an imminent threat to public health, safety, or welfare. Any extension of time granted pursuant to this section shall not extend the time within which to file a notice of appeal of the enforcement order.

(Prior Code, § 56.240; Ord. No. 23-12)

Sec. 56.245. Appeals.

(a) Appeals of enforcement orders and orders to vacate are contested case proceedings and shall be undertaken and conducted according to the procedures set forth in SRC chapter 20J.

(b) Any person entitled to service of an enforcement order and order to vacate under SRC 56.235 may appeal the enforcement order and order to vacate in the manner provided in SRC 20J.110.

(c) Failure of any person to appeal an enforcement order and an order to vacate in the manner provided in SRC 20J.110 shall constitute a waiver of the right to administrative or judicial review of the enforcement order and order to vacate.

(Prior Code, § 56.245; Ord. No. 23-12)

Sec. 56.250. Standards for vacation, repair, and demolition.

(a) *Vacation.* The owner shall, within five calendar days of being served with an order to vacate, secure the dangerous building or structure, or portion thereof, against unauthorized entry. If the owner fails to secure the building or structure, or portion thereof, within such five-day period, the Code Compliance Official may cause the building or structure, or portion thereof, to be secured by any means the Code Compliance Official deems appropriate, and the cost thereof shall be assessed as a lien against the property.

(b) *Repair.* Any owner, who makes repairs to a dangerous building or structure, or portion thereof, shall make all such repairs in compliance with the Building Code and SRC chapter 59.

(c) *Demolition.* Any owner, who demolishes a dangerous building or structure, or portion thereof, shall clear the site of all debris, and maintain the site free of pests, noxious vegetation, and other nuisances thereafter.

(Prior Code, § 56.250; Ord. No. 23-12)

Sec. 56.255. Posting and performance of work upon owner's failure.

(a) If the required repair or demolition is not commenced within 30 days after the enforcement order becomes final, the Code Enforcement Official shall post a notice at each entrance to the building or structure, or portion thereof, stating:

"DANGEROUS BUILDING

DO NOT OCCUPY

It is a misdemeanor to occupy this building,

or to remove or deface this notice.

Building Official

City of Salem"

(b) The Code Compliance Official may file a petition with the City Recorder to have the building repaired or demolished, and the costs assessed as a lien against the property.

(c) Upon filing of the petition, the City Recorder shall forward the petition to the Hearings Officer, who shall promptly set a public hearing on the petition in the manner provided by SRC 20J.250. Notice of the hearing shall be served in the manner provided in SRC 20J.260.

(d) At the hearing, any interested person shall be allowed an opportunity to show cause why the City should not cause the work, or the repair, or demolition of the building or structure, or portion thereof, to be performed and the costs thereof to be assessed as a lien against the property.

(e) If the Hearings Officer orders demolition or repair of a dangerous building or structure, or portion thereof, the Code Compliance Official shall proceed with the demolition or repair as soon as practicable.

(Prior Code, § 56.255; Ord. No. 23-12)

Sec. 56.260. Assessment of costs.

(a) Upon completion of the work to secure, to make required repairs to, or to demolish a dangerous building or structure, or portion thereof, the Code Compliance Official shall certify the costs to the Hearings Officer, who shall determine the amount to be assessed against the property. The Code Compliance Official shall serve notice of the proposed assessment in the manner provided for service of an enforcement order in SRC 56.235 on the record owner and on any person who holds a security interest in the property.

(b) Any person served shall have not more than 15 business days to file any objections thereto with the Hearings Officer.

(c) If objections are filed in a timely manner, the Hearings Officer shall conduct a hearing on the objection in the manner provided for contested case hearings under SRC 20J.240 through 20J.400; provided, however, the hearing shall be limited to the reasonableness of the proposed assessment and shall not be used to reconsider the enforcement order.

(d) If no objections are filed with the Hearings Officer within such 15-day period, or, if objections are received and the Hearings Officer determines the original assessment or a different assessment is proper, the Hearings Officer shall certify the assessment, and the assessment shall be entered in the City lien docket in the manner provided by SRC 20J.410. The lien so created shall have priority over all other liens and incumbrances. A copy of the Hearings Officer's order making the assessment shall be served in the manner provided for service of an enforcement order in SRC 56.235 on the owner and any person holding a security interest in the property.

(Prior Code, § 56.260; Ord. No. 23-12)

Sec. 56.265. Summary abatement.

(a) *General.* Notwithstanding any other provision of SRC 56.200 through 56.270, when a building or structure, or portion thereof, is an imminent danger to the public health, safety, or welfare, the Code Enforcement Official may institute summary abatement as provided in this section.

(b) *Notice.* The Code Compliance Official shall make a good faith effort to contact the record owner and any person occupying or in control of the building or structure, or portion thereof. The Code Compliance Official shall document all attempts to make such contact. If contact is made, the Code Compliance Official shall notify such person or persons of the conditions or defects creating the imminent danger and give such person such time as is reasonable under the circumstances to secure the property or otherwise abate the dangerous conditions or defects.

(c) *Summary abatement.* If the Code Compliance Official is unable to make contact with the record owner or person occupying or in control of the building or structure, or portion thereof, or if such person is unwilling or unable to secure the building or structure, or portion thereof, or otherwise correct the dangerous conditions or defects, then the Code Compliance Official may, with the written approval of the City Manager and after consultation with the City Attorney, take all steps necessary to abate the dangerous conditions; provided, however, that summary abatement shall be limited solely to those conditions or defects that create the imminent danger, and any other abatement, if necessary, shall be made in the manner provided for abatement of dangerous buildings provided in SRC 56.200 through 56.260.

(d) *Costs.* The costs of summary abatement shall be a lien on the property, and may be recovered to the same extent and in the same manner that abatement costs are recovered under SRC 20J.410.

(Prior Code, § 56.265; Ord. No. 23-12)

Sec. 56.270. Violations.

(a) No person shall obstruct, impede, or interfere with any officer, employee, or other authorized representative of the City, or any person performing repair or demolition work required by an enforcement order issued pursuant to SRC 56.225, performing repair or demolition work for the City undertaken pursuant to SRC 56.255, or performing summary abatement undertaken pursuant to SRC 56.265. A violation of this subsection is an infraction.

(b) No person shall erect, construct, enlarge, alter, repair, move, improve, remove, demolish, equip, use, occupy, or maintain any building or structure, or portion thereof, or cause or permit the same to be done, contrary to an enforcement order issued pursuant to SRC 56.225. A violation of this subsection is an infraction.

(c) No person shall knowingly occupy any building or structure, or portion thereof, which has been posted with an order to vacate under SRC 56.230 or a notice of dangerous building under SRC 56.255. A violation of this subsection is a misdemeanor.

(d) No person shall knowingly remove or deface any notice posted pursuant to SRC 56.230 or ~~SRC~~ 56.255. A violation of this subsection is a misdemeanor.

(Prior Code, § 56.270; Ord. No. 23-12)

CHAPTER 57. ALARM SYSTEMS*

***State law reference—**False alarms, ORS 162.375.

Sec. 57.001. Definitions.

~~As used in this Chapter, unless the context otherwise require~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Alarm system provider* means a person or business which sells, leases, maintains, installs, monitors, repairs, moves, or replaces a security alarm system in any building, structure, or facility.

~~(b)~~ *Annunciator* means that part of a security alarm system, other than an automatic dialer, which communicates the fact that the system has been triggered.

~~(c)~~*Audible annunciator* means an annunciator which gives an alarm by means of a bell, siren, buzzer, or similar sound-producing device and mounted at some location other than wholly within a building, or if located wholly within a building, intended to be clearly audible when activated at a distance of 50 feet or more outside of the building within which it is mounted.

~~(d)~~ *Automatic dialer* means a device which is programmed to select a telephone number and deliver a verbal warning message or signal over standard telephone lines.

~~(e)~~*Center* means the "911" emergency communications center serving the City ~~of Salem~~.

~~(f)~~*Duress alarm* means a manually-activated security alarm system.

~~(g)~~ *False alarm* means any activation of a security alarm system not resulting from criminal activity or unlawful entry upon protected premises, which results in a communication to the Center that an alarm has been triggered.

~~(h)~~ *Owner* means the owner of record as shown in the real property records of the County in which the protected premises is located.

~~(i)~~*Private security officer* means "private security professional" ~~"private security officer"~~ as defined in ORS ch. 181A. ~~181.~~

~~(j)~~*Protected premises* means all buildings, structures, facilities, real property, or portions thereof protected by a security alarm system.

~~(k)~~ *Remote annunciator* means an annunciator located at a terminal on the premises of the Salem Police Department, an alarm system provider or other location not a part of the protected premises.

~~(l)~~*Security alarm system* means a device or system of interconnected devices, including hardware and related appurtenances, designed to give warning of activities indicative of criminal conduct or unauthorized entry upon protected premises. A system which does not incorporate an audible annunciator, a remote annunciator, or an automatic dialer, and systems owned, maintained and monitored by any government law enforcement agency in furtherance of law enforcement duties, are not considered security alarm systems for the purposes of this chapter.

~~(m)~~ *Sensor* means that part of a security alarm system which is designed to detect the happening of some event, or existence of some condition, indicative of criminal activity or unauthorized entry upon protected premises.

~~(n)~~ *Silent alarm system* means a security alarm system having an automatic dialer, a remote annunciator, or both, but no audible annunciator.

~~(o)~~ *Subscriber* means any person contracting with an alarm system provider to monitor protected premises and the occupant of the protected premises. For protected premises having more than one occupant protected by a single security alarm system, the term "subscriber" means the owner.

(Prior Code, § 57.001; Ord. No. 34-2004; Ord. No. 27-12)

Sec. 57.005. No public duty created.

It is the express purpose of this chapter to provide for and promote the health, safety, and welfare of the citizens of the City ~~of Salem~~, but not to create or otherwise establish a duty or obligation, expressed or implied, of response by the City or its Police Department. Response may be influenced by many factors, including, but not limited to, the availability of police units, priority of calls for service, weather conditions, traffic conditions, emergency conditions, staffing levels, and prior response history.

(Prior Code, § 57.005; Ord. No. 34-2004; Ord. No. 27-12)

Sec. 57.010. Alarm systems; prohibited installation, maintenance, and use.

(a) No duress alarm may be installed which has a single action, non-recessed activation button.

(b) No security alarm system incorporating an audible annunciator may be installed or maintained unless the system is designed so that each audible annunciator will automatically be silenced within 15 minutes after being activated, and will not sound again unless a new act or circumstance triggers a sensor.

(c) No automatic dialer may be programmed to select any telephone line of a user that has not previously given consent to such programming.

(d) No person shall install, use, or maintain a security alarm system in violation of any of the requirements of this Code, or of any applicable statute, law, or administrative regulation of the United States of America, the State ~~of Oregon~~, or any administrative rule-making body thereof.

(e) A violation of this section is an infraction.

(Prior Code, § 57.010; Ord. No. 34-2004; Ord. No. 27-12)

Sec. 57.015. Unlawful activation of alarm system.

(a) It is unlawful for any person to intentionally activate a security alarm system for the purpose of summoning the police when no burglary, robbery, or other crime dangerous to life or property is being committed or attempted on the premises.

(b) A violation of this section is a misdemeanor.

(Prior Code, § 57.015; Ord. No. 34-2004; Ord. No. 27-12)

State law reference—False alarms, ORS 162.375.

Sec. 57.020. Unlawful provision of false information to police officer.

(a) It is unlawful for any subscriber or private security officer to provide any false information to the Center or a police officer with the intent to mislead and cause a police response.

(b) A violation of this section is a misdemeanor.

(Prior Code, § 57.020; Ord. No. 34-2004; Ord. No. 27-12)

State law reference—False report to police officer, ORS 162.375.

Sec. 57.025. Unlawful provision of false information to police dispatcher.

(a) No alarm system provider or alarm system provider's officer, agent or employee shall provide false information to a police dispatcher which causes a police response.

(b) A violation of this section is an infraction.

(Prior Code, § 57.025; Ord. No. 34-2004; Ord. No. 27-12)

State law reference—False report to police officer, ORS 162.375.

Sec. 57.030. Unlawful activation of false duress alarm.

(a) No owner of protected premises or other person having authorized access to protected premises shall activate a duress alarm that is a false alarm.

(b) A violation of this section is an infraction.

(Prior Code, § 57.030; Ord. No. 34-2004; Ord. No. 27-12)

Sec. 57.040. Reserved.

Sec. 57.050. Civil penalties.

(a) In lieu of or in addition to any penalty provided by law, a civil penalty may be imposed against an alarm system provider whenever the provider, or the provider's officer, agent or employee, violates SRC 57.010, ~~SRC~~ 57.015, ~~SRC~~ 57.020, ~~SRC~~ 57.025, or ~~SRC~~ 57.030. The civil penalty for the first violation in a calendar year is $300.00. The civil penalty for the second violation in a calendar year is $500.00. The civil penalty for the third violation and each subsequent violation thereafter in a calendar year is $1,000.00.

(b) The assessment of civil penalties, and appeals therefrom, shall follow the procedures set forth in SRC chapter ~~SRC~~ 20J.

(c) Notwithstanding SRC 20J.340(e)(2), in any appeal of the assessment of a civil penalty, there shall be a rebuttable presumption that an alarm was false if the enforcement officer makes a prima facie showing that law enforcement officials responded to the alarm and checked the premises according to standard operating procedure, and were unable to discover any evidence of unauthorized entry or criminal activity. If the enforcement officer makes a prima facie showing, then the burden of persuasion shall shift to the appellant to demonstrate no false alarm occurred.

(Prior Code, § 57.050; Ord. No. 34-2004; Ord. No. 27-12)

CHAPTER 58. FIRE PREVENTION CODE*

***State law reference—**Fire prevention rules of the state fire marshal, ORS 476.001 et seq.; fire protection water supply, ORS 479.200.

Sec. 58.001. Definitions~~; construction~~.

~~Unless the context otherwise specifically requires, as used in this Chapter:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Fire Chief* means the Chief of the Fire Department of the City ~~of Salem~~.

~~(b)~~ *Fire Code Official* means the Fire Chief or the Fire Chief's designee.

~~(c)~~*Fire Prevention Code* means those provisions of the Oregon Fire Code, and any modifications thereof, as adopted by this chapter, and all other provisions of this chapter.

~~(d)~~ *Fire prevention program* means the Fire Department program for regulation of building use and occupancy and the administration and enforcement of the Fire Prevention Code and other fire safety laws, ordinances and regulations.

~~(e)~~*International Fire Code* means the 2012 International Fire Code (International Fire Code Council, Inc., 2011).

~~(f)~~ *Jurisdiction* means the City of Salem, Oregon.

~~(i)~~ *Oregon Fire Code* means the International Fire Code, as adopted by the State ~~of Oregon~~ at OAR 837-040-0010, and filed with the Oregon Secretary of State on May 13, 2013, as the Oregon Fire Code 2014 Edition, subject to the exclusions therefrom and amendments thereto as set forth in OAR 837-040-0020. The Oregon Fire Code is also known as "Oregon Fire Code 2014 Edition," or by the initials "OFC."

~~(g)~~ *Permittee* means the person holding any permit authorized by this chapter, or that person's authorized representative.

~~(h)~~ *Person* means a natural person, partnership, corporation, limited liability partnership, limited liability company, co-operative, governmental entity, association, or other entity in law or fact.

~~(j)~~ *Red Flag Warning* means the term used by fire-weather forecasters to call attention to limited weather conditions of particular importance that may result in extreme burning conditions.

~~(k)~~ *State Fire Marshal* means the Fire Code Official.

(Prior Code, § 58.001; Ord. No. 191-73; Ord. No. 35-06; Ord. No. 102-07; Ord. No. 20-10; Ord. No. 1-15, § 1, 9-28-2015)

Sec. 58.002. Adoption of the Oregon Fire Code.

(a) Except as otherwise provided in this chapter, the Oregon Fire Code is hereby adopted, and is by this reference incorporated herein as if fully set forth as a part of this chapter.

(b) A copy of this chapter ~~58~~, including the Oregon Fire Code, shall be filed and maintained in the records of the City Recorder. The provisions of this chapter may be cited as the Fire Prevention Code, or by the initials "FPC."

(c) The fire prevention program shall be administered and enforced according to the procedures set forth in the Fire Prevention Code.

(Prior Code, § 58.002; Ord. No. 35-06)

Sec. 58.003. Deletions from Oregon Fire Code.

The following sections of the Oregon Fire Code are hereby deleted and shall not form a part of the Fire Prevention Code:

(a) Operational permits: 105.6A Fireworks agricultural; 105.6D Fireworks, wholesale; 105.6E Institutions; 105.6.4 Carnivals and fairs; 105.6.11 Cutting and welding; 105.6.15 Fire hydrants and valves; 105.6.30 Open burning; 105.6.31 Open flames and torches; 105.6.32 Open flames and candles; 105.6.35 Private fire hydrants.

(b) Section 106.1.1 Interference.

(c) Sections 108.1.1 Appeals; 108.2 Limitations on Authority; 108.3 Qualifications.

(Prior Code, § 58.003; Ord. No. 35-06; Ord. No. 102-07; Ord. No. 20-10; Ord. No. 1-15, § 2, 9-28-2015)

Sec. 58.004. Modifications to the Oregon Fire Code.

The following sections of the Oregon Fire Code, or parts thereof, are not adopted as written, but are hereby modified, and adopted as set forth in this section:

(a) 105.1.1 Permit Required. Permit fees in an amount set by resolution of the ~~City~~ Council shall be paid prior to the issuance of the permit.

(b) 112.1 Authority to Disconnect Service Utilities. Any disconnection that is ordered or caused to be made by the Fire Code Official pursuant to this section shall be at the sole cost and expense of the owner of the building or premises.

(c) 105.6.16 Flammable and Combustible Liquids. The first sentence in Paragraph 2, is amended to read: "To store, handle or use Class I liquids in excess of 25 gallons in a building or in excess of 60 gallons outside of a building, except that a permit is not required for the following:***"

(d) 105.6.47 Event Permit. An operational permit is required for an event or activity of a temporary nature and open to the public, which involves one or more uses for which an operational permit is otherwise required, including, but not limited to, the Oregon State Fair; a special event as defined in SRC 30.005; an event for which a parks use permit is issued under SRC 94.200; firework sales, firework displays, temporary kiosks, pyrotechnical special effect materials; tents and canopies; and temporary display of motor vehicles.

(e) Section 307.3.1 Establishing a Burning Ban. When weather conditions remain dry, hot, windy, or any combination of these, for an extended period of time, the Fire Code Official may impose either a limited or total ban on recreational fires. The following criteria may be used to determine whether a recreational fire ban is established:

(1) Temperatures reach or are forecast 95 degrees Fahrenheit or above.

(2) Relative humidity reaches or is forecast 30 percent or below.

(3) Wind speeds reach or are forecasted <u>to reach</u> 15 miles per hour or above.

(4) Red Flag Weather warnings are issued locally.

(5) Marion or Polk County Fire Defense Board establishes burn ban declarations.

(f) 503.1.2.1 Access to Educational (Group E) Occupancies. All buildings or structures with an occupant load greater than 100 persons and used for Group E occupancies (six or more persons at any one time for educational purposes through 12th grade and day care facilities for educational, supervision, or personal care services for six or more children older than 2.5 years of age) that ~~is~~ <u>are</u> constructed in, moved into, or moved within the City shall be provided with at least two separate fire apparatus access roads. Exception: Buildings where one entire side is within 50 feet of an opened public through street that is sufficient for fire apparatus access.

(g) Section 605.10.5 Safety Devices. All portable electrical heaters shall have a high temperature limiting device and a tip-over switch.

(h) Section B104.2 Area Separation is amended to read "Portions of buildings which are separated by fire walls without openings, constructed in accordance with the International Building Code, are allowed to be considered as separate fire-flow calculation areas."

(Prior Code, § 58.004; Ord. No. 35-06; Ord. No. 102-07; Ord. No. 49-08; Ord. No. 20-10; Ord. No. 1-15, § 3, 9-28-2015)

Sec. 58.006. Powers and duties of the Fire Code Official.

The Fire Code Official shall implement, administer, and enforce the fire prevention program, and shall have the authority to render written and oral interpretations of the Fire Prevention Code and to adopt administrative rules and procedures necessary and proper for the administration and enforcement of the Fire Prevention Code.

(Prior Code, § 58.006; Ord. No. 35-06)

Sec. 58.007. Construction; severability.

If there is a conflict between any provision of the OFC and any provision with this chapter, the provisions shall be construed as mutually complementary or supplementary, if possible; otherwise, the specific provision of this chapter outside the OFC shall govern. In the event that any provision or part of the OFC or this chapter is found invalid or unconstitutional, such finding shall not be construed as affecting the validity or constitutionality of any other provision hereof.

(Prior Code, § 58.007; Ord. No. 191-73; Ord. No. 35-06)

Sec. 58.010. Reserved.

Sec. 58.011. Stop work orders; order to vacate; enforcement action.

(a) Whenever any work or activity is being done contrary to the provision of the Fire Prevention Code or other laws, ordinances or administrative rules or procedures adopted to enforce the Fire Prevention Code, the Fire Code Official may order the work or activity stopped by written notice served on any person or person doing or causing such work to be done. Upon receipt of such notice, the person doing or causing such work or activity to be done shall immediately cease such work or activity, until such time as an authorization to proceed is issued by the Fire Code Official.

(b) Whenever any building, premises, or mechanical system or equipment regulated by the Fire Prevention Code, or any part thereof, is used contrary to the provision of the Fire Prevention Code, the Fire Code Official may order such use discontinued and the building and premises, or part thereof, vacated.

(c) In addition to, but not in lieu of, any penalty, the Fire Code Official may commence any action necessary to prevent, restrain, correct or abate any violation of the Fire Prevention Code.

(d) Any person whose work or activity has been suspended as provided in subsection (a) and/or (b) of this section may appeal such action to the Hearings Officer as provided in SRC 58.458 for contested case procedures.

(Prior Code, § 58.011; Ord. No. 35-06; Ord. No. 1-15, § 5, 9-28-2015)

Secs. 58.020—58.170. Reserved.

Sec. 58.175. Fees; expiration.

(a) Fees charged under the Fire Prevention Code shall be in the amount established by resolution of ~~City~~ Council.

(b) Unless otherwise specifically provided in this chapter, all permits required by this chapter shall expire one year from the date of issuance thereof. Permits required by OFC 6101.2 shall expire ten years from the date of issuance thereof.

(c) A permit fee charged under the Fire Prevention Code shall not be refunded in the event the permit is revoked.

(d) If, in an appeal brought under SRC 58.458, the Hearings Officer determines that there was no violation of the Fire Prevention Code, any reinspection fee that was charged after the date of the issuance of the original order shall be refunded.

(Prior Code, § 58.175; Ord. No. 191-73; Ord. No. 84-74; Ord. No. 13-81; Ord. No. 107-82; Ord. No. 94-90; Ord. No. 51-91; Ord. No. 69-98; Ord. No. 35-06; Ord. No. 1-15, § 6, 9-28-2015)

Sec. 58.180. Reserved.

Sec. 58.185. Bonds and insurance, generally.

Whenever any bond or insurance policy is required by any provision of the Fire Prevention Code or any administrative rule adopted pursuant thereto, the bond or insurance policy shall:

(a) Be in the sum of at least $682,800.00 for bodily injury or death to any one person, $1,365,500.00 for all bodily injury or death arising from any one occurrence, and $112,000.00 for damage to property, which minimum limits shall be provided notwithstanding any lesser sum set forth in the OFC;

(b) Insure to the benefit of any person sustaining bodily injury, death, or damage to property arising from or caused by the named insured or persons acting under named insured's direction and control;

(c) Be issued by an insurance underwriter or corporate surety company licensed to do business in the State ~~of Oregon~~.

(Prior Code, § 58.185; Ord. No. 191-73; Ord. No. 35-06; Ord. No. 1-15, § 7, 9-28-2015)

Sec. 58.190. Limits for above ground tank and bulk plants for flammable cryogenic fluids, flammable liquids, and combustible liquids.

(a) The geographic limitations for the storage of flammable cryogenic fluids, flammable liquids, or combustible liquids in outside above ground tanks, set forth in OFC 5806.2, 5704.2.9.6.1, and 5706.2.4.4, apply to every part of the City except those areas of the City zoned "EC - Employment Center," "IG - General Industrial" and "II - Intensive Industrial" outside that part of the City bounded on the north by Market Street, on the east by the right-of-way of the main line of the Union Pacific Railway Company, on the south by Mission Street, and on the west by the Willamette River.

(b) The location and types of facilities for storage and bulk plants for flammable cryogenic fluids, flammable liquids, or combustible liquids shall be subject to prior review and approval by the Fire Code Official.

(Prior Code, § 58.190; Ord. No. 16-68; Ord. No. 124-71; Ord. No. 191-73; Ord. No. 13-81; Ord. No. 186-82; Ord. No. 35-06; Ord. No. 102-07; Ord. No. 1-15, § 8, 9-28-2015)

Sec. 58.200. Limits for bulk storage of liquefied petroleum gas.

(a) The geographic limits referred to in OFC 6104.2 in which bulk storage of liquefied petroleum gas is restricted shall be the same limits set forth in SRC 58.190.

(b) The restrictions as to location set forth in this section shall not apply to bulk storage facilities continually in existence and regular use since January 9, 1956, provided that the bulk storage facilities meet all other requirements of this chapter.

(Prior Code, § 58.200; Ord. No. 16-68; Ord. No. 191-73; Ord. No. 13-81; Ord. No. 35-06; Ord. No. 1-15, § 9, 9-28-2015)

Secs. 58.210—58.300. Reserved.

Sec. 58.305. State Fireworks Law adopted.

The following sections of Oregon Revised Statutes are, by this reference, incorporated as a part of this chapter, with the exceptions noted herein:

(a) ORS ~~480.110.~~480.111.

(b) ORS 480.120(1), with the following amendments:

(1) "The City" in lieu of "Oregon."

(2) "Fire Code Official" in lieu of "State Fire Marshal."

(c) ORS 480.127, with the following amendments: "Fire Code Official" in lieu of "State Fire Marshal."

(d) ORS 480.130, with the following amendments:

(1) "Fire chief Code Official" in lieu of "State Fire Marshal."

(2) Delete the last sentence of subsection (2).

(e) ORS 480.140(1).

(f) ORS 480.150, with the following amendments: "Fire Code Official" in lieu of "State Fire Marshal."

(g) ORS 480.158.

(h) ORS 480.160.

(i) ORS 480.165.

(Prior Code, § 58.305; Ord. No. 80-91; Ord. No. 35-06; Ord. No. 1-15, § 10, 9-28-2015)

Sec. 58.310. Reserved.

Sec. 58.315. Permits for fireworks sales or displays; rules and regulations; bond.

(a) The Fire Code Official may adopt such of the rules and regulations promulgated by the State Fire Marshal pursuant to ORS 480.150 for the granting of fireworks display permits as the Fire Code Official deems necessary and appropriate for the protection of the public health, safety, and welfare.

(b) Before any permit required by ORS 480.130 as adopted by SRC 58.305(d) is issued, the applicant shall pay an application fee in addition to fees required by ORS 480.130 in the amount as prescribed by resolution of the ~~City~~ Council, and shall furnish a bond or policy of public liability insurance in the form and amounts set forth in SRC 58.185.

(c) The Fire Code Official may revoke permits for the sale or display of fireworks when, in the Fire Code Official's opinion, such sale or display is not in compliance with all applicable statutes, ordinances, regulations, and administrative rules and procedures governing such sales or displays; or when, in the Fire Code Official's opinion, such sale or display represents an undue hazard to life or property.

(d) Permit fees required by ORS 480.130 as adopted by SRC 58.305(d), and by subsection (b) of this section, shall not be refunded in the event such permits are revoked.

(Prior Code, § 58.315; Ord. No. 191-73; Ord. No. 101-86; Ord. No. 51-91; Ord. No. 51-96; Ord. No. 35-06; Ord. No. 1-15, § 11, 9-28-2015)

Sec. 58.320. Reserved.

Sec. 58.325. Certain airborne devices prohibited.

It shall be unlawful for any person to release or launch any unmanned kite, balloon, rocket, projectile, aircraft, or other airborne device or thing, other than fireworks otherwise permitted by this chapter, that contains, carries, or has attached thereto, any open flame, smoldering material, explosive detonating device, or other material capable of explosion or combustion without application of some external force other than collision; provided, however, that the Fire Code Official may issue permits for the launching of experimental rocket or similar devices upon such conditions as the Fire Code Official may prescribe to eliminate or reasonably minimize any hazard which may be created thereby.

(Prior Code, § 58.325; Ord. No. 191-73; Ord. No. 35-06)

Sec. 58.330. Reserved.

Sec. 58.334. Open burning of yard debris prohibited.

(a) No person shall, within the corporate city limits ~~of the City of Salem~~, open burn any vegetative debris from yard cleanup.

(b) As used in this section, the term "vegetative debris from yard cleanup" means wood, needle or leaf materials from trees, shrubs or plants.

(Prior Code, § 58.334; Ord. No. 46-93; Ord. No. 35-06; Ord. No. 1-15, § 12, 9-28-2015)

Secs. 58.340—58.420. Reserved.

Sec. 58.430. Reinspection of unsafe conditions.

(a) Whenever the Fire Code Official has issued a notice to correct a violation of any provisions of the Fire Prevention Code at a particular premises and the Fire Code Official finds, upon reinspection, that the violation has not been abated, the person in possession of the premises shall pay a reinspection fee in the amount prescribed by resolution of the ~~City~~ Council.

(b) The Fire Code Official may waive all or any part of a reinspection fee, if, in the Fire Code Official's sole discretion, it appears that reinspection was required by circumstances that the responsible person in good faith took efforts to avoid.

(Prior Code, § 58.430; Ord. No. 104-90; Ord. No. 13-99; Ord. No. 35-06)

Sec. 58.440. Reserved.

Sec. 58.445. Fee for suppressing unlawful fire.

If either firefighting apparatus or personnel of the City are required to respond to, or to be used actively or on a standby basis in connection with the extinguishment or control of, a fire that has been started or allowed to spread in violation of this chapter, or administrative rules or procedures adopted pursuant thereto, the person responsible therefor shall be liable to the City for the costs incurred by the City in such response or use, at the rate prescribed by resolution of ~~City~~ Council.

(Prior Code, § 58.445; Ord. No. 40-91; Ord. No. 35-06)

Sec. 58.450. Violations.

(a) It shall be unlawful for any person to make a connection to, or to use, an energy, fuel or power supply, or any equipment regulated by the Fire Prevention Code, that has been disconnected, or ordered disconnected, by the Fire Code Official, until the Fire Code Official specifically authorizes re-connection or use of such supply or equipment.

(b) It shall be unlawful for an owner to allow any building, or any part thereof, to be in an unsafe condition, or to allow any devices or safeguards which are required by the Fire Prevention Code to be maintained in a manner not in conformance with the Fire Prevention Code in effect on the date when the device or safeguard was installed.

(c) It shall be unlawful for any person to perform, or cause to be performed, any work, activity, storage, or process for which a permit is required under any provision of the Fire Prevention Code without first obtaining a permit.

(d) It shall be unlawful for any person applying for a permit required by the Fire Prevention Code to knowingly make any false, incomplete, or misleading statements on the application.

(e) It shall be unlawful for any person to violate any provision of the Fire Prevention Code.

(f) It shall be unlawful for any person to occupy or allow occupancy of a building or structure prior to the Fire Code Official issuing a permit that indicates that applicable provisions of the Fire Prevention Code have been met.

(g) It shall be unlawful for any person to disobey any lawful notice or order of the Fire Code Official of conduct required to achieve compliance with the Fire Prevention Code.

(Prior Code, § 58.450; Ord. No. 4865; Ord. No. 191-73; Ord. No. 193-79; Ord. No. 13-81; Ord. No. 35-06; Ord. No. 1-15, § 13, 9-28-2015)

State law reference—False report of fire, ORS 162.375.

Sec. 58.455. False fire alarms.

(a) *Definitions.* ~~As used in this section, the following mean:~~ The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

~~(1)~~ *False alarm* means the activation of a fire alarm system, where there is no evidence of a fire, through the mechanical failure, malfunction, improper installation, improper maintenance of the fire alarm system, or through the negligent or intentional acts of the owner or the owner's employees or agents.

~~(2)~~ *Owner* means person having legal control over a premises, including, but not limited to, an owner in fee and a lessee.

(b) *False alarm fee.* The owner of any premises that has generated a false alarm shall pay a false alarm fee. The false alarm fee shall be due and payable ten days after invoice by the Fire Chief. The false alarm fee shall be set by resolution of the ~~City~~ Council.

(c) *Waiver of false alarm fee.* The Fire Chief may waive a false alarm fee assessed under subsection (b) of this section upon finding that:

(1) The alarm system has been regularly inspected by experienced technicians familiar with its design and operation and the environment in which it is installed.

(2) All repairs, replacements, and preventive maintenance recommended by the service personnel who inspected the system have been performed.

(3) The cause of the false alarm was not the result of misuse or neglect in the use or maintenance of the system and the cause cannot be identified despite thorough inspection, testing and analysis by experienced technicians familiar with its design, operation, and the environment in which it is installed.

(4) Experienced technicians familiar with the alarm system's design, operation, and the environment in which it is installed have provided a written opinion that the system is unlikely to produce another false alarm from the same cause.

(5) The false alarm was not the result of owner error or neglect. As used in this ~~subparagraph~~ subsection, the term "owner" means the owner of the premises and the owner's employees and agents.

(6) The cause of the false alarm has been positively identified and corrected.

(7) The false alarm was caused by unauthorized tampering with a fire alarm system by someone other than the owner or the owner's employees or agent.

(d) *Limitation on waiver.* No more than two false alarms may be waived during any consecutive 365-day period, unless the owner provides satisfactory evidence that, in the case of system failure, each component of the fire alarm system whose malfunction or failure produced the false alarm have been replaced or repaired by competent technicians, or, in the case of negligent or intentional acts of the owner or the owner's employees or agents, that the owner has adequately trained all employees and agents in practices that will prevent the accidental triggering of the fire alarm system.

(e) *Appeal.* An owner who has been assessed a false alarm fee may appeal the fee in the manner provided for contested cases in SRC chapter 20J.

(Prior Code, § 58.455; Ord. No. 27-12)

State law reference—False fire alarms, ORS 162.375.

Sec. 58.457. Penalties; civil penalty.

(a) Violation of SRC 58.450(d), OFC section 104.11.2 (Obstructing Operations), OFC 107.5 (Overcrowding), OFC 401.5 (Making false report), or OFC 901.8 (Removal of or tampering with equipment) is a misdemeanor.

(b) In addition to any fines, penalties, remedies or other enforcement powers authorized by the Fire Prevention Code, and except as provided in subsection (a) of this section, violation of any other provision of the Fire Prevention Code or any rules adopted under SRC 58.002 is an infraction punishable by a maximum penalty of $250.00. Each day that a violation continues shall constitute a separate violation.

(c) Whenever in the Fire Prevention Code a general obligation not specifically addressed to a public official or public agency is expressed in the passive voice (e.g., “signs, tags . . . shall not be mutilated. . .”), it shall be

unlawful for any person to do or fail to do any act which would violate that obligation, and such violation is an infraction or a misdemeanor as provided in this section.

(d) Civil penalty. Any person who fails to comply with the requirements of this chapter, or the terms of a permit issued hereunder, who undertakes an activity regulated by this chapter without first obtaining a permit, or who fails to comply with a stop work order issued pursuant to this chapter, shall also be subject to a civil penalty, not to exceed $2,000.00 per violation. Each day that a violation continues shall constitute a separate violation.

(e) Civil penalties against agents. Any person who acts as the agent of, or otherwise assists, a person who engages in an activity which would be subject to a civil penalty, may likewise be subject to a civil penalty.

(Prior Code, § 58.457; Ord. No. 35-06; Ord. No. 20-10)

Sec. 58.458. Appeals.

(a) Appeals of orders, decisions or determinations of the Fire Code Official shall be to the Hearings Officer. The appeal shall be in writing; filed within 15 calendar days of the date of the order, decision, or determination by the Fire Code Official is issued. The notice of appeal shall state the basis of the appeal and why the decision was in error, and shall be accompanied by an appeal fee in an amount set by resolution of the ~~City~~ Council.

(b) The Hearings Officer may vacate, modify, or remand the order, decision or determination if the Hearings Officer finds that the intent of the Fire Prevention Code or the rules lawfully adopted by the Fire Code Official have been incorrectly interpreted, the provisions of the Fire Prevention Code do not fully apply to the appellant, or an equivalent method of protection or safety was proposed and has been rejected by the Fire Code Official. In deciding an appeal, the Hearings Officer shall have no authority to waive requirements of the Fire Prevention Code.

(c) Unless modified, revoked or vacated by the Fire Code Official, the order, decision or determination shall remain in force and be complied with by the appellant during the pendency of the appeal and, within the time set forth in the order, decision or determination.

(d) Proceedings upon appeal under this chapter are contested case proceedings, and shall be conducted pursuant to SRC chapter 20J.

(Prior Code, § 58.029; Ord. No. 35-06; Ord. No. 1-15, § 14, 9-28-2105)

PROTECTION OUTSIDE CITY

Sec. 58.460. Control of fires outside of city limits; fees.

(a) Whenever in the opinion of the Fire Chief an uncontrolled fire outside the corporate limits of the City is causing or may cause undue jeopardy to life or property, the Fire Chief may employ the same means and resources to extinguish the fire as would be used to extinguish a similar fire within the City.

(b) For the use of city personnel and equipment in suppression of a fire described in subsection (a) of this section, the owner or tenant shall be charged fees as prescribed by resolution of the ~~City~~ Council.

(Prior Code, § 58.460; Ord. No. 147-67; Ord. No. 138-71; Ord. No. 13-81; Ord. No. 51-91; 51-96; Ord. No. 35-06)

Sec. 58.470. Fees to become property of City.

Any fees paid pursuant to any agreement under ~~section~~ SRC 58.530 shall be retained by and become the money or property of the City, whether any fire alarms are answered or not, such fees being a charge as and for standby service for the fire protection made available to the property covered by this agreement.

(Prior Code, § 58.470; Ord. No. 147-67)

Sec. 58.480. Expiration and renewal of agreements.

Agreements made pursuant to the provisions of ~~section~~ SRC 58.530 shall expire and terminate at the end of one year, unless application is made for renewal and such renewal is allowed.

(Prior Code, § 58.480; Ord. No. 147-67)

Sec. 58.490. Effect on mutual aid agreements.

This chapter shall not be construed as terminating any mutual aid agreement between the City and organized rural fire protection districts which have firefighting equipment, or as preventing the making of such mutual aid agreements in the future. Neither shall the provisions of ~~sections~~ SRC 58.460 to 58.550 be construed as terminating any existing contract between any individual or fire protection district for fire protection, or as terminating the arrangements now or hereafter made with the State with reference to fire protection for state-owned buildings or property.

(Prior Code, § 58.490; Ord. No. 147-67)

State law reference—Intergovernmental agreements, ORS 190.003 et seq.

Sec. 58.500. Salem maximum fire service area created.

There is hereby created a maximum fire service area, the boundaries of such area being as shown on that certain map designated "Salem Maximum Fire Service Area Map," the original whereof is on file in the office of the City Recorder bearing the date of March 14, 1988, and each having endorsed thereon the signature of the City Recorder, as amended from time to time by resolution of the ~~City~~ Council.

(Prior Code, § 58.500; Ord. No. 147-67; Ord. No. 24-88; Ord. No. 35-06; Ord. No. 1-15, § 15, 9-28-2015)

Sec. 58.510. General policies.

Except as provided in SRC 58.460, it shall be the policy of the City ~~of Salem~~ not to furnish fire protection to any property outside the boundaries of the "Salem Maximum Fire Service Area." Any property, except property owned by a governmental agency, outside the corporate limits of the City but within the "Salem Maximum Fire Service Area" shall not be furnished fire protection unless said property is covered by the terms of a fire protection agreement executed pursuant to ~~section~~ SRC 58.530. All property shall be required to obtain City fire protection through a legally formed rural protection district which has a valid contract for such fire protection with the City.

(Prior Code, § 58.510; Ord. No. 147-67; Ord. No. 24-88)

Sec. 58.520. Application.

Where fire protection is sought by a rural fire protection district or by a commercial or industrial concern for property within the "Salem Maximum Fire Service Area," the request therefor shall be made to the City Manager who shall determine whether the applicant meets the requirements of this chapter.

(Prior Code, § 58.520; Ord. No. 147-67; Ord. No. 51-96)

Sec. 58.530. Agreement.

Before fire protection is extended to any applicant, a fire protection agreement shall be entered into between the applicant and the City. The City Manager, or the City Manager’s designee, has the authority to execute such fire protection agreement on behalf of the City. The fire protection agreement shall include, but not be limited to, the fees or compensation to be paid for such service.

(Prior Code, § 58.530; Ord. No. 147-67; Ord. No. 169-81; Ord. No. 35-06)

Sec. 58.540. Fees; rural fire protection district.

A rural fire protection district shall pay an annual fee as set forth in an intergovernmental agreement between the City and the district and approved by the Council.

(Prior Code, § 58.540; Ord. No. 147-67; Ord. No. 83-70; Ord. No. 185-78; Ord. No. 83-79; Ord. No. 31-81; Ord. No. 169-81; Ord. No. 57-91; Ord. No. 51-96)

CHAPTER 59. HOUSING CODE

Sec. 59.001. Title.

This chapter shall be known and may be cited as the Salem Housing Code.

(Prior Code, § 59.001; Ord. No. 30-13)

Sec. 59.002. Purpose.

The purpose of this chapter is to provide minimum habitability requirements for the protection of life, limb, health and property and for the safety and welfare of the general public and the owners, occupants, and users of residential structures. Nothing in this chapter shall be construed to authorize any work for which a permit is required under the Building Code other than in accordance with all applicable provisions of such Building Code.

(Prior Code, § 59.002; Ord. No. 30-13)

Sec. 59.003. Scope.

The provisions of this chapter shall apply to all residential structures located within the City ~~of Salem~~. A residential structure lawfully in existence on September 9, 1975, may be continued provided it is maintained in compliance with the provisions of this chapter or the provisions of a previously adopted building code under which it was constructed. Where any residential structure contains more than one dwelling classification, the provisions of this chapter shall be applied to each separate dwelling classification as if each dwelling classification were a separate structure.

(Prior Code, § 59.003; Ord. No. 30-13)

Sec. 59.004. Effect of compliance with new construction codes.

It is not the intent of this chapter to impose any requirement more stringent than those contained in the Building Code. Therefore, any design, material, or method of construction which would satisfy all applicable requirements of the Building Code for identical new construction shall be deemed approved for use under this chapter, notwithstanding any requirement herein which would appear to be more restrictive.

(Prior Code, § 59.004; Ord. No. 30-13)

Sec. 59.010. Definitions.

~~Except where the context otherwise specifically requires, as used in this Chapter, the following mean:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Accessory structure* means any structure not intended for human occupancy. Accessory structures may or may not be attached to a residential structure. Examples of accessory structures include, but are not limited to, garages, carports, sheds, playhouses, decks, awnings, heat pumps, fences, trellises, flag poles, tanks, towers, exterior stairs, driveways and walkways.

~~(b)~~ *Agent* means any person who has charge, care or control of a residential structure or part of a residential structure.

~~(c)~~*Annual* or *annually* means beginning on January 1 and ending on December 31 of any calendar year.

~~(d)~~ *Attic* means the unfinished, non-habitable part of the residential structure between the roof and the ceiling immediately below.

~~(e)~~*Basement* means the usable portion of a residential structure which is below the main entrance story and is partly or completely below grade.

~~(f)~~*Bathroom* means a room containing a toilet or toilet compartment, a lavatory, and a tub and/or shower.

~~(g)~~ *Building Code* means those provisions of the State Building Code, and any modifications thereof, adopted by the City pursuant to ORS 455.040(1), that are part of the building inspection program administered and enforced by the City.

~~(h)~~ *Carbon monoxide source* means:

(a) A heater, fireplace, furnace, appliance, or cooking source that uses coal, wood, petroleum products, or other fuels that emit carbon monoxide as a byproduct of combustion. Petroleum products include, but are not limited to, kerosene, natural gas, and propane.

(b) An attached garage with a door, ductwork, or ventilation shaft that opens directly into any living space.

~~(i)~~ *Court* means a space, open and unobstructed to the sky, located at or above grade level and bounded on three or more sides by the walls of a residential structure.

~~(j) *Director* means the City Manager, or the department head charged by the City Manager with the enforcement of this chapter, or that department head's designee.~~

~~(k)~~ *Dwelling classification* means the types of residential structures covered by this chapter, and includes the following:

Adult foster home means any family home or facility in which residential care is provided for five or fewer adults who are not related to the care provider by blood or marriage.

Apartment house means any residential structure or portion of a residential structure containing three or more dwelling units.

Homeless shelter means a facility operated by a nonprofit corporation where residence is provided to persons needing emergency shelter on a daily or weekly basis, and where individual bath and cooking facilities may be provided. As used in this chapter, homeless shelters do not include residential homes or adult foster homes.

Hotel or *motel* means any residential structure containing three or more guest rooms where the period of occupancy ~~does not exceed~~is less than 30 consecutive days.

Manufactured dwelling means the following types of dwellings units. The term "manufactured dwelling" does not include any dwelling unit identified as a recreational vehicle by the manufacturer.

Manufactured home means a structure constructed for movement on the public highways that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy, that is being used for, or is intended to be used for, residential purposes, and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations.

Mobile home means a structure constructed for movement on the public highways that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy, that is being used for, or is intended to be used for, residential purposes, and that was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon Mobile Home Law in effect at the time of construction.

Park model means a recreational home primarily designed as temporary living quarters for recreation, camping or seasonal use. A park model is built on a single chassis and mounted on wheels.

Residential trailer means a structure constructed for movement on the public highways that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy, that is being used for, or is intended to be used for, residential purposes, and that was constructed before January 1, 1962.

Residential care facility means any facility that provides, for six or more socially dependent individuals or individuals with physical disabilities, residential care in one or more residential structures on contiguous properties.

Residential home means a facility that provides, for five or fewer unrelated individuals with developmental or physical disabilities, residential care in one or more residential structures on contiguous properties.

Retirement apartment means any residential structure or portion of a residential structure containing three or more dwelling units, the majority of whom are occupied or held out to be occupied by persons 65 years of age or older.

Room and board facility means any facility which has three or more beds offered for rent or lease. As used in this chapter, room and board facilities do not include residential homes or adult foster homes.

Single-family dwelling means a residential structure containing one dwelling unit.

Two-family dwelling means a residential structure containing two dwellings units, also known as a "duplex."

~~(l)~~ *Dwelling unit* means a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, cooking, eating, and sanitation.

~~(m)~~ *Exit (means of egress)* means a continuous, unobstructed means of escape to a public way, including intervening doors, doorways, exit balconies, ramps, stairways, smoke-proof enclosures, horizontal exits, passageways, exterior courts and yards.

~~(n)~~ *Floor area* means the area of clear floor space in a room exclusive of fixed or built-in cabinets or appliances.

~~(o)~~ *Guard* or *guardrail* means a building component or a system of building components located at or near the open sides of elevated walking surfaces that minimizes the possibility of a fall from the walking surface to a lower level.

~~(p)~~ *Guest room* means a room or suite of rooms used for sleeping purposes and may also include provisions for living, eating, cooking, and sanitation. Such rooms or suites that are also part of a dwelling unit are not guest rooms.

~~(q)~~ *Habitable room* means a room for living, sleeping, eating or cooking, but does not include any bathroom, toilet compartment, closet, hallway, storage space, or utility space.

~~(r)~~ *Hearings Officer* means the Hearings Officer appointed pursuant to SRC 2.035, or any other person designated and appointed by the ~~City~~ Council as a Hearings Officer for a particular proceeding or group of proceedings.

~~(s)~~ *Inspector* means the authorized representative of the Director whose primary responsibilities are the inspection of multifamily dwellings and the enforcement of this chapter.

~~(t)~~ *Kitchen* means a room used or designed to be used for the preparation of food.

~~(u)~~ *Lavatory* means a fixed wash basin connected to hot and cold running water and a drainage system, used primarily for personal hygiene and separate from the kitchen.

~~(v)~~ *Licensee* means a person holding a license issued pursuant to this chapter.

~~(w)~~ *Multifamily dwelling* means any dwelling classification which has three or more dwelling units or guest rooms or any group of three or more dwelling units on one lot or contiguous lots wherein units or rooms, beds, or spaces are offered or maintained for rent or lease.

~~(x)~~ *Occupant* means any person (including an owner or agent) using a dwelling unit or a sleeping room for its lawful and intended purpose.

~~(y)~~ *Owner* means the person whose name and address is listed as the owner of a property by the county tax assessor on the county assessment and taxation records.

~~(z)~~ *Person* means an individual, corporation, limited liability company, partnership, or other entity in law or fact.

~~(aa)~~ *Plumbing* or *plumbing fixture* means any water heating facilities, water pipes, vent pipes, garbage or disposal units, waste lavatories, bathtubs, shower baths, installed clothes-washing machines or other similar equipment, catchbasins, drains, vents, or other similarly supplied fixtures, together with all connections to water, gas, sewer, or vent lines.

~~(bb)~~ *Residential structure* means a structure or building designed, built or intended to be used for human habitation.

~~(cc)~~ *Sink* means a fixed basin connected to hot and cold running water and a drainage system and used primarily for the preparation of food and the washing of cooking and eating utensils.

~~(dd)~~ *Sleeping room* means any room designed, built, or intended to be used as a bedroom as well as any other room used for sleeping purposes.

~~(ee)~~ *Toilet compartment* means a room containing only a toilet or only a toilet and lavatory.

(Prior Code, § 59.010; Ord. No. 30-13; Ord. No. 5-17, § 16(59.010), 6-12-2017)

Sec. 59.020. Administration; rulemaking.

The Director shall administer and enforce the provisions of this chapter, and shall have the authority to render written and oral interpretations, and to adopt administrative rules and procedures necessary for its proper administration and enforcement.

(Prior Code, § 59.020; Ord. No. 30-13)

Secs. 59.030—59.090. Reserved.

Sec. 59.100. General.

(a) An owner may not maintain or permit to be maintained, in violation of this chapter, any residential structure.

(b) All residential structures shall be maintained to the building, mechanical, plumbing and electrical code requirements in effect at the time of construction, alteration, or repair.

(c) Where construction, alteration or repair has been made to a residential property illegally without the benefit of a permit, all work shall be required to meet current requirements of the Building Code.

(Prior Code, § 59.100; Ord. No. 30-13)

Sec. 59.105. Accessory structures.

All accessory structures on residential property shall be maintained in a structurally safe and sound condition and in good repair. Exterior steps and walkways shall be maintained free of obstructions or hazardous conditions.

(Prior Code, § 59.105; Ord. No. 30-13)

Sec. 59.110. Display of address number.

All residential structures shall have address numbers posted in a conspicuous place so that the address numbers may be read from the listed street or public way. Address numbers posted shall be the same as the number listed on the county assessment and taxation records for the property. Dwelling units within apartment houses shall be clearly numbered, or lettered, in a logical and consistent manner.

(Prior Code, § 59.110; Ord. No. 30-13)

Sec. 59.115. Cleanliness and sanitation.

(a) All exterior property areas and interior common use areas shall be maintained in a clean and sanitary condition and kept free from any accumulation of solid waste.

(b) The owner of any multifamily dwelling shall provide, in a location accessible to all dwelling units, at least one 32 gallon receptacle for each dwelling unit or at least one receptacle with a cumulative capacity that allows for 32 gallons per dwelling unit, into which solid waste from the dwelling units may be emptied for storage between days of collection. The owner of the multifamily property shall subscribe to and pay for weekly solid waste management services by a person holding a valid franchise from the City ~~of Salem~~.

(Prior Code, § 59.115; Ord. No. 30-13)

Sec. 59.120. Roofs.

All roofs shall be structurally sound, tight, and have no defects which might admit rain. Roof drainage shall be adequate to prevent rainwater from causing dampness in the walls or interior portions of the residential structure and shall channel rainwater in an approved manner to an approved point of disposal.

(Prior Code, § 59.120; Ord. No. 30-13)

Sec. 59.125. Chimneys.

Every masonry, metal, or other chimney shall remain adequately supported and free from obstructions and shall be maintained in a condition which ensures there will be no leakage or backup of noxious gases. Every chimney shall be reasonably plumb. Loose bricks or blocks shall be rebonded. Loose or missing mortar shall be replaced. Vacated openings into the interior of the residential structure must be permanently sealed using approved materials and the chimney capped pursuant to the Building Code. Proof of regular chimney inspection, maintenance, and cleaning shall be provided to the Inspector upon request.

(Prior Code, § 59.125; Ord. No. 30-13)

Sec. 59.130. Foundations and structural members.

(a) Foundation elements shall adequately support the residential structure and shall be free of rot, crumbling elements, or similar deterioration.

(b) The supporting members of every residential structure shall be maintained in a structurally sound manner and have no deterioration or decay which would substantially impair their ability to carry the imposed loads.

(Prior Code, § 59.130; Ord. No. 30-13)

Sec. 59.135. Exterior walls and exposed surfaces.

(a) Every exterior wall and weather-exposed exterior surface or attachment shall be free of holes, breaks, loose or rotting boards or timbers and any other condition which might admit rain or dampness into the interior portions of the walls or the occupied spaces of the residential structure.

(b) All exterior wood surfaces shall be substantially impervious to the adverse effects of weather by periodic application of an approved protective coating of weather-resistant preservative, and be maintained in good condition. Wood used in the construction of permanent structures and located nearer than six inches to earth shall be treated wood or wood having a natural resistance to decay.

(c) Exterior metal surfaces shall be protected from rust and corrosion.

(d) Every section of exterior brick, stone, masonry, or other veneer shall be maintained in a structurally sound condition and shall be adequately supported and tied back to its supporting structure.

(Prior Code, § 59.135; Ord. No. 30-13)

Sec. 59.140. Stairways.

(a) Stairways on the interior, used as an exit, and connected to the structure shall be not less than 30 inches in width; except that stairways to basements or attics, neither of which contains a sleeping room, shall have not less than 24 inches unobstructed width. Handrails shall not reduce the width of any stairway by more than four inches.

(b) The rise of every step in a stairway shall not exceed nine inches, and the run shall be not less than eight inches. The run of treads and the height of risers within any flight of stairs shall have uniform dimensions within a one-half inch tolerance. Tread and riser dimensions of the bottom step of a stairway may vary from the dimensions of the next higher step by a tolerance of not more than two inches.

(c) There shall be no enclosed usable space under exit stairways unless the space is completely enclosed in one-hour fire-resistant rated construction. Open space under exterior stairways may not be used for any purpose.

(d) Stairways constructed exclusively for landscaping purposes are exempt from this section.

(Prior Code, § 59.140; Ord. No. 30-13)

Sec. 59.145. Stairs and porches.

(a) Every stair, porch, and attachment to any stair or porch shall be so constructed as to be safe to use and capable of supporting the loads to which it is subjected. Every stair, porch, and attachment to any stair or porch shall be kept in good repair, including replacement as necessary of flooring, treads, risers, and stringers that are broken, warped, or loose.

(b) All stair and porch surfaces used as a means of egress shall have slip-resistant surfaces.

(Prior Code, § 59.145; Ord. No. 30-13)

Sec. 59.150. Handrails and guardrails.

(a) All unenclosed floor and roof openings; open and glazed sides of landings; balconies, decks, and porches which are more than 30 inches above grade; and roofs used as patios, decks, or similar service, and not exclusively for service or maintenance of the residential structure, shall be protected by guardrails not less than 36 inches in height.

(b) Guardrails shall be so constructed that no object four inches or more in diameter can pass through, and shall be maintained in a safe and usable condition, capable of withstanding all forces and loads to which they may be subjected in normal and panic situations.

(c) Handrails and guardrails required by building codes in effect at the time of construction shall be maintained in compliance therewith or, if removed, shall be replaced with handrails and guardrails meeting the requirements of the Building Code in effect at the time of replacement.

(d) Where not otherwise required by the building codes at the time of construction, exterior stairways of more than three risers which are designed and intended to be used as part of the regular access to any dwelling unit or guest room shall have handrails. Interior stairways of more than three risers shall have handrails. When handrails are installed, they shall be constructed to meet the applicable Building Code requirements in effect at the time of installation.

(Prior Code, § 59.150; Ord. No. 30-13)

Sec. 59.155. Doors.

(a) Every dwelling unit shall have at least one door leading to an exterior yard or court, or in the case of a two-family dwelling or apartment house, to an exterior yard or court or to an approved exit. All such doors shall be openable from the inside without the use of a key or any special knowledge or effort. All screen doors and storm doors must be easily openable from the inside without the use of a key or special knowledge or effort.

(b) In hotels, motels and apartment houses, exit doors in common corridors or other common passageways shall be openable from the inside with one hand in a single motion, such as pressing a bar or turning a knob, without the use of a key or any special knowledge or effort.

(c) Every exterior door shall comply with the following:

(1) Every exterior door, door hinge, door knob, door lock, and strike plate shall be maintained in good condition.

(2) Every exterior door, when closed, shall fit reasonably well within its frame and be weathertight.

(3) Every doorframe shall be constructed and maintained in relation to the adjacent wall construction so as to exclude rain as completely as possible, and to substantially exclude wind from entering the dwelling.

(4) Door locks shall not be placed in excess of 48 inches above the floor or landing.

(5) Double cylinder dead bolts are not permitted on an exit door.

(d) Every interior door and doorframe shall be maintained in a sound condition for its intended purpose with the door fitting within the doorframe and having neither non-manufactured penetrations, nor any knob or lock requiring a key.

(e) Access doors to all attic and under floor areas shall be provided by means of openings not less than 14 inches by 24 inches in size.

(f) There shall be a floor or landing on each side of any door. The floor or landing shall be not more than one-half inch lower than the threshold of the doorway. Where a door opens over a landing, no dimension of the landing shall be less than the width of the door, or three feet, whichever is greater.

(g) Notwithstanding subsection (f) of this section, in single-family dwellings, a door may open on the top step of a flight of stairs or on an exterior landing provided the door does not swing over the top step or exterior landing, and the landing is not more than 7.5 inches below the level of the floor on the opposite side of the doorway.

(h) Doors which are part of a required exitway shall be so finished or marked that they are readily distinguishable from the adjacent construction.

(i) Fire doors in exitway corridors must close securely upon release and latch. Fire doors designed to remain closed must not be propped open at any time.

(Prior Code, § 59.155; Ord. No. 30-13)

Sec. 59.160. Ventilation requirements.

(a) Except where another approved ventilation device is provided, the total openable window area in every habitable room shall be equal to at least 2.5 percent of the area of the room. The glazed areas need not be openable where the opening is not required for emergency escape and an approved mechanical ventilation system is provided capable of producing 0.35 air changes per hour in the room.

(b) Every bathroom or toilet room or compartment shall comply with the light and ventilation requirements for habitable rooms as required by this chapter, except that no window shall be required in bathrooms or toilet compartments equipped with an approved ventilation system.

(c) All windows within ten feet of the exterior grade that open must be able to be securely latched from the inside as well as be openable from the inside without the use of a key or any special knowledge or effort. This same requirement shall apply to all openable windows that face other locations that are easily accessible from the outside, such as balconies or fire escapes, regardless of height from the exterior grade.

(d) Every window shall be substantially weather-tight, shall be kept in sound condition and repair for its intended use, and shall comply with the following:

(1) Every window sash shall be fully supplied with glass windowpanes or an approved substitute without open cracks and holes.

(2) Every window sash shall be in good condition and fit weathertight within its frames.

(3) Every window frame shall be constructed and maintained in relation to the adjacent wall construction so as to exclude rain as completely as possible and to substantially exclude wind from entering the dwelling unit.

(4) Every window shall be capable of being easily opened and held open by window hardware alone.

(e) Mechanical clothes drying shall be:

(1) Properly installed, connected, and maintained in safe condition and good working order;

(2) Exhaust hoses must be free from leaks and obstructions and kept functioning properly so as to be free from fire, health, and accident hazards.

(Prior Code, § 59.160; Ord. No. 30-13)

Sec. 59.165. Ceiling heights.

Habitable rooms in existing single-family dwellings and two-family dwellings shall have a clear average ceiling height of at least seven feet. Habitable rooms in all other residential structures shall have a clear ceiling height of at least seven feet and six inches.

(Prior Code, § 59.165; Ord. No. 30-13)

Sec. 59.170. Interior walls, floors, and ceilings.

(a) Every interior wall, floor, ceiling, and cabinet shall be capable of being maintained in a clean, sanitary, safe, and structurally sound condition, free of large holes and serious cracks, loose plaster or wallpaper, flaking or scaling paint.

(b) Every toilet compartment, bathroom, and kitchen floor surface shall be constructed and maintained to be substantially impervious to water and to permit the floor to be kept in a clean and sanitary condition.

(c) All installed carpeting shall be kept free from fraying or tears that can create a tripping hazard.

(Prior Code, § 59.170; Ord. No. 30-13)

Sec. 59.175. Bathroom facilities.

Except as otherwise noted in this chapter, every dwelling unit shall contain within its walls in safe and sanitary working condition:

(a) A toilet located in a room that is separate from the habitable rooms and that allows privacy;

(b) A toilet compartment separated from kitchen facilities, food preparation, and food storage areas by a tight-fitting door;

(c) A lavatory basin; and

(d) A bathtub or shower located in a room that allows privacy.

(Prior Code, § 59.175; Ord. No. 30-13)

Sec. 59.180. Kitchen facilities.

(a) Every dwelling unit shall contain a kitchen sink separate from the lavatory basin.

(b) Except as otherwise provided for in this chapter, every dwelling unit shall have approved service connections for refrigeration and cooking appliances.

(c) All appliances shall be:

(1) Properly installed, connected, and maintained in safe condition and good working order; and

(2) Capable of performing the function for which they are designed.

(d) Cooking appliances shall have minimum clearance to cabinets as specified in the Building Code and/or manufacturers specifications.

(e) Refrigeration appliances shall be placed only on non-combustible surfaces.

(Prior Code, § 59.180; Ord. No. 30-13)

Sec. 59.185. Sleeping room requirements.

Every sleeping room shall:

(a) ~~Shall~~ Be a habitable room as defined in this chapter;

(b) ~~Shall~~ Not be a kitchen;

(c) ~~Shall~~ Have natural light, ventilation, and windows or other means for escape purposes as required by this chapter; and

(d) ~~Shall~~ Not be less than 70 square feet in size.

(Prior Code, § 59.185; Ord. No. 30-13)

Sec. 59.190. Plumbing.

(a) Every plumbing fixture or device in a dwelling unit shall be properly connected to a public or an approved private water system and to a public or an approved private sewer system.

(b) All required sinks, lavatory basins, bathtubs and showers shall be supplied with both hot and cold running water and have a water pressure of at least 15 psi. Every dwelling unit shall be supplied with water heating facilities

which are installed in an approved manner, properly maintained, and properly connected with hot water lines to all required sinks, lavatory basins, bathtubs and showers. Water heating facilities shall be capable of heating water enough to permit an adequate amount of water to be drawn at every required facility at a temperature of at least 120 degrees Fahrenheit at any time needed.

(c) In every dwelling unit all plumbing or plumbing fixtures shall be:

(1) Properly installed, connected, and maintained in good working order;

(2) Kept free from obstructions, leaks, and defects;

(3) Capable of performing the function for which they are designed; and

(4) Installed and maintained so as to prevent structural deterioration or health hazards.

(d) All plumbing repairs and installations shall be made in accordance with the Building Code and any required permits.

(e) Plumbing fixtures shall be of approved nonabsorbent materials and all tile, tub, and shower penetrations (i.e., escutcheons, surrounds, pressure flanges, tub, and shower bases) sealed.

(f) All fixtures shall be supplied with water that discharges above the flood rim of the fixture. There shall be at least a one inch air gap between the flood rim and the point of water supply.

(g) All sanitary facilities, drain, waste, vent, and water piping shall be of approved materials, and shall be installed and maintained in a safe and sanitary condition, free from cross-connections and syphonage between fixtures, and free from any other condition which would allow impure water to enter the potable water supply system. Two examples of where this could occur are utility sinks with hose attachments or hose bibs without Automatic Vacuum Breaks (AVB).

(h) All dishwashers must have the discharge hose connected to the sink drain before the P-trap to avoid the entry of sewer gases. The hose must be installed with a high loop under the sink.

(i) All fixtures shall be equipped with drainage traps. P-traps are approved for standard installation. There shall be only one trap per trap arm. Fixtures may not be double or line trapped. Crown, Bell, and S-traps are not permitted. Drum traps may be permitted if conditions require such a device and if approved by the Director.

(j) Strainer plates shall be required for drain openings larger than one-inch in diameter. The strainer openings shall not be larger than one-half inch to prevent rodent entry.

(k) Clothes washers shall be attached to approved hook-ups, including laundry tubs or indirect stand pipes equipped with a P-trap. Unused washer drains shall be capped to prevent rodent and sewer gas infiltration.

(l) Water heaters shall be:

(1) Properly installed, connected, and maintained in safe condition and good working order;

(2) Free from leaks and kept functioning properly so as to be free from fire, health, and accident hazards;

(3) Capable of performing the function for which they are designed; and

(4) ~~Installations shall be made~~ Installed in accordance with the provisions of the Building Code and with any required permits.

Clearance between ignition sources and combustible materials shall be maintained in an approved manner.

(Prior Code, § 59.190; Ord. No. 30-13)

Sec. 59.195. Heating requirements.

(a) All equipment used to heat a dwelling unit shall be:

(1) Properly installed, properly connected, and maintained in a safe condition and good working order; ~~and~~

(2) Free from outflow and obstructions and kept functioning properly so as to be free from fire, health, and accident hazards; and

(3) Capable of performing the function(s) for which it was designed.

(b) Every dwelling unit shall have permanently installed heating equipment capable of maintaining a room temperature of 68 degrees Fahrenheit at a point three feet from the floor in all habitable rooms.

(1) Portable devices may not be used to meet the heating requirements of this chapter.

(2) No inverted or open flame fuel-burning heaters shall be permitted in any dwelling unit. All heating devices or appliances shall be of an approved type.

(c) Combustion air for fuel burning appliances shall be provided as required by the Building Code.

(d) Clearance between ignition sources and combustible materials shall be maintained in an approved manner.

(e) All mechanical repairs and installations shall be made in accordance with the provisions of the Building Code and with any required permits.

(Prior Code, § 59.195; Ord. No. 30-13)

Sec. 59.200. Electrical requirements.

All residential structures shall be connected to an approved source of electric power. Every electric outlet and fixture shall be maintained and safely connected to an approved electrical system. The electrical system shall not constitute a hazard to the occupants of the residential structure by reason of inadequate service, improper fusing, improper wiring or installation, deterioration or damage, lack of access to a dwelling unit's breaker or disconnect switch or similar reasons. In addition, the following is required:

(a) All electrical equipment, wiring, and appliances shall be installed and maintained in a safe manner and in accordance with the Building Code. All electrical equipment shall be of an approved type.

(b) All light fixtures and outlets shall be properly installed and wired. Each room shall meet the following minimum requirements:

(1) Every habitable room shall contain at least two supplied electric convenience outlets, or one supplied electric convenience outlet and one supplied electric light fixture.

(2) Every toilet compartment or bathroom shall contain at least one supplied and operable electric light fixture and one outlet. Every laundry, furnace room, and all similar non-habitable rooms located in a dwelling unit shall have one supplied electric light fixture available at all times.

(c) No occupant or owner shall install or use any equipment capable of overloading the provided circuits or outlets.

(d) All outlets within six ~~ten~~ feet of a water source must be GFCI (Ground Fault Circuit Interrupter) protected. This includes all outdoor outlets, even if under eaves, which also require weather-protecting covers.

(e) Outlets in sleeping rooms are to be protected by AFCI (Arc Fault Circuit Interrupter).

(f) All electrical repairs and installations shall be made in accordance with the provisions of the Building Code and with any required permits.

(Prior Code, § 59.200; Ord. No. 30-13)

Sec. 59.205. Private area lighting requirements.

(a) Each habitable room, bathroom, and toilet compartment shall be provided with natural light by means of windows or skylights with an area of not less than five square feet for each 100 square feet of superficial floor area or fraction thereof.

(b) In lieu of natural light as provided in subsection (a) of this section, interior rooms, bathrooms, and toilet compartments may be provided with artificial light equivalent to one 40 watt incandescent bulb for each 100 square feet of superficial floor area or fraction thereof, provided the light is so located as to illuminate all foot traffic areas of the room and the interior of any tub or shower stall.

(c) Each laundry room, utility room, storage room, closet, workshop, service room, and cellar having more than 20 square feet of superficial floor area shall be provided with natural or artificial light, or any combination thereof, equivalent to that specified in subsection (a) or (b) of this section.

(d) Every hallway, corridor, and stairway in apartment houses shall be adequately lighted at all times with an average intensity of illumination of at least one footcandle at principal points such as angles and intersections of corridors and passageways, stairways, landings of stairways, landings of stairs and exit doorways, and at least one-half footcandle at other points. Measurement of illumination shall be taken at points not more than four feet above the floor.

(Prior Code, § 59.205; Ord. No. 30-13)

Sec. 59.210. Exits and egress.

(a) Every sleeping room shall have at least one operable window or exterior door approved for emergency escape or rescue that is openable from the inside to a full clear opening without the use of special knowledge, effort, or separate tools. Windows used to meet this requirement shall have a minimum net clear opening of at least 20 inches wide and at least 24 ~~two~~ inches high, and a window sill height of not more than 44 inches. Every window required for ventilation or emergency escape shall be capable of being easily opened and held open by window hardware. Any installed storm windows on windows required for emergency escape must be easily openable from the inside without the use of a key or special knowledge or effort.

(b) All below grade windows used to meet this requirement shall have a window well the full width of the window, constructed of permanent materials with a minimum three feet by three feet clearance in front of the window measured perpendicular to the outside wall. If the bottom of the window well is more than 44 inches below the ground level, approved steps or an approved permanently attached ladder shall be used. The step must extend the full width of the window. The top surface of the step must be a minimum of six feet from the ceiling above the step.

(c) The required exit door and egress windows shall be free of encumbrances or obstructions that block access to the exit.

(d) Exit pathways that open into an enclosed yard or court shall have unimpeded access to the public way.

(e) Basements and sleeping rooms below the fourth story above grade plane shall have no less than one exterior emergency escape or rescue opening in accordance with this section.

(Prior Code, § 59.210; Ord. No. 30-13)

Sec. 59.215. Smoke alarms.

(a) Smoke alarms shall be installed and maintained in every residential dwelling at all of the following locations:

(1) On the ceiling or wall outside each separate sleeping area in the immediate vicinity of bedrooms.

(2) In each room used for sleeping purposes.

(3) In each story within a dwelling unit, including basements.

(4) In every shared laundry facility.

(5) In any common rooms where cooking or smoking is allowed.

(b) Where another approved configuration of smoke alarms was permitted, that configuration may be maintained. All hard-wired smoke alarms must remain hard-wired. They may not be replaced with a battery powered smoke alarm. All solely battery powered smoke alarms must contain a ten-year lithium battery. Smoke alarms shall be installed and maintained in accordance with the manufacturer’s specifications and shall be replaced at five or ten year intervals as instructed by the manufacturer.

(Prior Code, § 59.215; Ord. No. 30-13)

Sec. 59.220. Carbon monoxide alarms.

An alarm which produces an audible alert when carbon monoxide is detected is required in all residential structures containing a carbon monoxide source. Carbon monoxide alarms shall be installed according to the manufacturer's specifications and in the following locations:

(a) In each bedroom or within 15 feet outside of each bedroom door; and

(b) In any enclosed common area within a residential structure if such common area is connected by a door, ductwork, or ventilation shaft to a carbon monoxide source.

(Prior Code, § 59.220; Ord. No. 30-13)

Sec. 59.225. Tampering with required protection devices.

It shall be unlawful to tamper with any required protection device, including any smoke alarm or carbon monoxide alarm.

(Prior Code, § 59.225; Ord. No. 30-13)

Sec. 59.230. Fire-resistive separation.

(a) When a residential structure contains more than one dwelling classification, each part of the residential structure comprising a separate or distinct occupancy shall be separated from each other occupancy in the residential structure by not less than a one-hour fire-resistive occupancy separation meeting the requirements for such occupancy separations as specified in the Building Code.

(b) In all residential structures, each room containing a boiler or central heating plant shall be separated from the rest of the residential structure by not less than a one hour fire resistive occupancy separation.

(c) An approved fire sprinkler system may be used in lieu of fire-resistive separation as otherwise required by this section.

(Prior Code, § 59.230; Ord. No. 30-13)

Sec. 59.235. Insect and rodent harborage.

Every residential structure shall be kept free from insect and rodent infestation. When insects and rodents are found in any residential structure, they shall be promptly exterminated. After extermination, proper precautions shall be taken to prevent reinfestation. The Inspector may require that the residential structure be professionally treated if other forms of extermination are not sufficient to eradicate the infestation.

(Prior Code, § 59.235; Ord. No. 30-13)

Secs. 59.240—59.290. Reserved.

Sec. 59.300. Bathroom facilities.

In hotels, motels, homeless shelters, and room and board facilities where private toilets, lavatories, or baths are not provided, there shall be on each floor of the residential structure at least one toilet, one lavatory, and one bathtub or shower each provided at the rate of one for every 12 residents or fraction of 12 residents. Required toilets, bathtubs, and showers shall be in a room or rooms that allow for the privacy of the user.

(Prior Code, § 59.300; Ord. No. 30-13)

Sec. 59.305. Public area lighting requirements.

Every public hallway, public corridor, and public stairway in any multifamily dwelling shall be adequately lighted at all times with an average intensity of illumination of at least one footcandle at principal points such as angles and intersections of corridors and passageways, stairways, landings of stairways, and exit doorways, and at least one-half footcandle at other points. Measurement of illumination shall be taken at points not more than four feet above the floor.

(Prior Code, § 59.305; Ord. No. 30-13)

Sec. 59.310. Emergency exits.

(a) All required fire escapes shall be kept in good order and repair and shall be painted so as to prevent corrosion of any metal, in a manner approved by the Fire Marshal.

(b) Every fire escape or stairway, stair platform, corridor or passageway which may be one of the regular means of emergency exit from a residential structure shall be kept free of encumbrances or obstructions of any kind.

(c) Where doors to stair enclosures are required by the Building Code to be self-closing, the self-closing device shall be maintained in good working order and the doors shall not be wedged or propped open.

(d) Windows leading to fire escapes shall be secured against unwanted entry with approved devices.

(e) Directional signs indicating the way to exit doors and fire escapes shall be placed in all public hallways and public stairways of multifamily dwellings. Emergency exit doors and windows shall be clearly labeled as such.

(Prior Code, § 59.310; Ord. No. 30-13)

Sec. 59.315. Additional requirements for doors.

(a) All exit doors shall swing in the direction of exit travel when serving an occupant load of 50 or more in any multifamily dwelling.

(b) Double acting doors shall not be used in exits serving a tributary occupant load of more than 100, nor shall they be used as part of a fire assembly, nor equipped with panic hardware. Except within individual dwelling units in apartment houses and guest rooms in hotels, double acting doors shall be provided with a view panel of not less than 200 square inches.

(c) Exit doors shall be openable from the inside without the use of a key or any special knowledge or effort.

(d) Glass doors shall conform to the requirements specified in the Building Code.

(e) Every doorway in a required exit shall be of a size such as to permit the installation of a door not less than three feet in width and not less than six feet eight inches in height. Doors installed therein shall be capable of opening at least 90 degrees and shall be so mounted that the clear width of the exitway is not less than 32 inches. ~~twenty-eight inches.~~

(f) The ceiling height of every room, corridor, or other portion of a multifamily dwelling forming part of a required exit shall be not less than six feet ten inches, except as provided for stairways in this chapter.

(g) No leaf of an exit door shall exceed four feet in width.

(h) Revolving doors, sliding doors, or overhead doors shall not be used as exit doors. Approved power-operated doors may be used for exit purposes.

(Prior Code, § 59.315; Ord. No. 30-13)

Sec. 59.320. Existing fire alarm, smoke control and suppression systems.

All fire protection systems required at the time of construction of any multifamily dwelling are to be maintained in good working order and are not to be removed or disabled without the proper permits and authorization of the Fire Marshal. An inspection report and proof of repair shall be provided to the Inspector upon written request.

(Prior Code, § 59.320; Ord. No. 30-13)

Sec. 59.325. Fire extinguishers.

Portable fire extinguishers with a minimum rating of 2A10BC shall be provided at all multifamily dwellings. Portable fire extinguishers must be supplied as follows:

(a) Portable fire extinguishers shall be located in clearly-marked, conspicuous locations where they will be readily accessible and available for use.

(b) Portable fire extinguishers shall be installed on hangers or brackets and securely anchored to the mounting surface in accordance with the manufacturer’s installation instructions.

(c) Where portable fire extinguishers may be subject to malicious use or damage, they may be housed in cabinets designed for fire extinguishers with a glass front and breaker bar or a breakable plastic front as provided by the manufacturer.

(d) The top of the portable fire extinguisher or cabinet containing it shall be no higher than five feet above the floor.

(e) Portable fire extinguishers shall be located on each floor of a multifamily dwelling and have a maximum travel distance of no more than 75 feet from any dwelling unit.

(f) All portable fire extinguishers required at multifamily dwellings must be inspected yearly and tagged showing the date of inspection.

(Prior Code, § 59.325; Ord. No. 30-13)

Secs. 59.330—59.390. Reserved.

Sec. 59.400. License required.

Unless specifically exempt by SRC 59.405~~ SRC 59.401~~, a license shall be required for the operation of any multifamily dwelling. Any person desiring to engage in the operation of any multifamily dwelling shall obtain a license before engaging in the activity. A license to engage in the operation of any multifamily dwelling shall be issued annually and shall be effective until December 31 of any calendar year unless sooner suspended or revoked.

(Prior Code, § 59.400; Ord. No. 30-13)

Sec. 59.405. Exempt properties.

The following properties and dwelling classifications are exempt from the licensing requirements set forth in this chapter:

(a) Any bona fide hospital or clinic where sick or injured persons are kept for medical treatment.

(b) Any nursing home.

(c) Any place which would otherwise be deemed a multifamily dwelling which is owned or operated by a religious, fraternal, charitable, or other nonprofit organization and which is inspected pursuant to the requirements of the Federal Housing and Urban Development Department (HUD).

(1) In order for a religious, fraternal, charitable, or other nonprofit organization to qualify for an exemption under this subsection (c), the nonprofit organization shall file written confirmation that each unit of the multifamily dwelling has been so inspected by the Federal Housing and Urban Development Department (HUD) within the past five years. This written confirmation shall be filed with the Inspector on or before January 1 of each calendar year and shall be accompanied by a copy of the completed HUD inspection report.

(2) A listing of all multifamily dwellings, their respective addresses and any changes in their rental status shall be attached to the written confirmation.

(d) Any adult foster home.

(e) Any residential care facility.

(f) Any residential home.

(g) Any short-term rental, as defined under SRC 111.095(e).

(Prior Code, § 59.405; Ord. No. 30-13; Ord. No. 5-17, § 17(59.405), 6-12-2017)

Sec. 59.410. License fees; proration.

(a) Fees for licenses issued pursuant to this chapter shall be set by resolution of the ~~City~~ Council.

(b) As licenses are issued on an annual basis, three-fourths of the fee shall be required if an application is filed on or after July 1 and on or before September 30 of any calendar year; one-half of the license fee shall be required if the application is filed on or after October 1 of any calendar year.

(Prior Code, § 59.410; Ord. No. 30-13)

Sec. 59.415. New license application.

(a) A person desiring to obtain a new license to engage in the operation of any multifamily dwelling shall apply to the Director on such forms and in such manner as the Director may prescribe. Such application shall include the following information:

(1) The applicant's name;

(2) The names and residence addresses of all persons who are principals, partners, and corporate officers for any applicant that is not a natural person;

(3) The address to which all mail concerning the license may be sent;

(4) All business addresses maintained or to be maintained by the applicant in the State ~~of Oregon~~;

(5) Telephone and facsimile numbers of the applicant;

(6) E-mail address of applicant (if applicable);

(7) If the applicant has a registered agent, the registered agent's name, address, and all contact information;

(8) A description of the property to be licensed, including the following:

(A) Its physical address;

(B) Number of residential structures on site;

(C) Total number of dwelling units;

(D) Number of dwelling units per residential structure;

(E) The name of property;

(9) The signature of the applicant, if a natural person, or the signature of an authorized agent of the applicant, if the applicant is other than a natural person; and

(10) Such other information as the Director may require.

(b) The Director may impose conditions on the approval of a license.

(c) The application shall be accompanied by a nonrefundable application fee.

(Prior Code, § 59.415; Ord. No. 30-13)

Sec. 59.420. License term and renewal.

(a) A license issued pursuant to this chapter shall be valid from the date of issuance until December 31 of the year during which it was issued unless sooner suspended or revoked.

(b) A license issued pursuant to this chapter must be renewed annually. An application for license renewal shall be submitted by December 31 in order to renew by January 1 of the subsequent year. An application for license renewal shall be accompanied by a nonrefundable license renewal fee and shall include the following information:

(1) The applicant's name;

(2) The physical address of the property to be licensed;

(3) Any changes concerning the registered agent of the applicant or any property manager acting on the applicant's behalf;

(4) The signature of the applicant, if a natural person, or the signature of an authorized agent of the applicant, if the applicant is other than a natural person.

(c) An application for license renewal shall be approved and a renewal license issued effective January 1 following receipt of the application unless:

(1) Any licensing or re-scheduling fees for the subject property have not been paid in full;

(2) The applicant provided any untrue or incomplete information on the application for license renewal; or

(3) The subject property is in violation of any federal, state, or local law or regulation.

(Prior Code, § 59.420; Ord. No. 30-13)

Sec. 59.425. Transferability.

Licenses issued under this chapter may not be transferred to any other person.

(Prior Code, § 59.425; Ord. No. 30-13)

Sec. 59.430. Right of inspection.

(a) The Inspector is hereby authorized to make inspections and re-inspections of multifamily dwellings and, in furtherance thereof, to seek administrative warrants as provided in SRC chapter 4.

(b) Inspections of homeless shelters, hotels, motels, and room and board facilities shall be conducted not less than once per calendar year.

(c) Inspections of apartment houses and retirement apartments shall be conducted as proscribed by the Director.

(d) It is the owner's responsibility to notify tenants of a multifamily dwelling not less than 24 hours in advance of any inspection and to provide the inspector with adequate access to all areas of the multifamily dwelling necessary for inspection.

(Prior Code, § 59.430; Ord. No. 30-13)

Sec. 59.435. Re-scheduling fee.

The owner of a multifamily dwelling shall be assessed a re-scheduling fee if the owner or the authorized agent of the owner fails to meet the Inspector at a previously scheduled time for inspection for a second or subsequent time. The amount of the re-scheduling fee shall be set by resolution of the ~~City~~ Council.

(Prior Code, § 59.435; Ord. No. 30-13)

Sec. 59.440. Certificate of inspection.

A certificate of inspection for a multifamily dwelling shall be issued to the owner after inspection and after it has been determined by the Inspector that the multifamily dwelling satisfies all applicable requirements of this chapter.

(a) A certificate of inspection shall contain the following:

(1) The address of the multifamily dwelling;

(2) The name and address of the owner;

(3) A description of that portion of the multifamily dwelling for which the certificate is issued;

(4) A statement that the described portion of the multifamily dwelling complies with the requirements of this chapter;

(5) The original signature of the Inspector; and

(6) The date of inspection upon which the certificate of inspection is based.

(b) A certificate of inspection shall be retained by the owner for viewing upon request and until replaced by a new certificate of inspection.

(Prior Code, § 59.440; Ord. No. 30-13)

Secs. 59.450—59.490. Reserved.

Sec. 59.500. Responsibility.

(a) Notwithstanding any other responsibility imposed upon a tenant of a residential structure pursuant to this chapter, or pursuant to any contract or agreement between the owner and a tenant of a residential structure, every owner remains personally and severally liable for failing to maintain any residential structure in full compliance with the provisions of this chapter.

(b) Where an owner has appointed an agent or manager with substantial power to act on the owner's behalf in maintaining and supervising any residential structure, any such agent or manager shall be personally and severally liable to the same extent as the owner for failing to maintain any such residential structure in full compliance with the provisions of this chapter; provided, however, such agent or manager shall have no responsibility to make any alterations or repairs to a residential structure in direct disobedience of the written direction of the owner.

(c) Where the residential structure is owned by an estate, a trust, a person whose assets are in receivership, a ward whose assets are subject to a guardianship or conservatorship, or any other person or entity that is the subject of some similar legal disability whose assets are being administered by a fiduciary, the trustee, administrator, personal representative, receiver, guardian, conservator, or other fiduciary responsible for administering the assets shall be personally and severally liable to the same extent as the owner for failing to maintain any residential structure which is one of the assets in full compliance with the provisions of this chapter; provided, however, such person shall have no responsibility to make any alterations or repairs to a residential structure in disobedience of any written order of a court having jurisdiction over the assets.

(d) Every tenant of a residential structure who is not the owner or other responsible person as defined in subsection (b) or (c) of this section, shall be personally and severally responsible for maintaining those portions of the residential structure occupied by him or her in full compliance with the provisions of this chapter; provided, however, no such tenant shall be responsible for making any alterations or repairs for which a permit is required pursuant to the Building Code.

(Prior Code, § 59.500; Ord. No. 30-13)

Secs. 59.510—59.590. Reserved.

Sec. 59.600. Enforcement order.

Whenever the Inspector has determined, after inspection, that any provision of this chapter is not met by a particular residential structure, the Inspector may issue an enforcement order and cause it to be served as provided in SRC 20J.100. The enforcement order shall be dated and shall contain the elements set forth in SRC 20J.090(d), and the following:

(a) The street address of the premises upon which the residential structure is located;

(b) A designation sufficient to identify any separate dwelling unit in a multi-unit residential structure to which the enforcement order applies;

(c) A notice that, in lieu of taking the action or actions required to remedy the violation, the owner may cause the residential structure to be demolished and the premises made safe and sanitary as required by the Salem Revised Code, provided that permits are obtained and the work is completed within the established time limits.

(Prior Code, § 59.600; Ord. No. 30-13)

Sec. 59.605. Appeal of enforcement order.

Any person who has been issued an enforcement order may appeal such enforcement order as provided in SRC 20J.110.

(Prior Code, § 59.605; Ord. No. 30-13)

Secs. 59.610—59.690. Reserved.

Sec. 59.700. Suspension of license.

(a) A license issued pursuant to this chapter may be suspended if:

(1) The licensee has been assessed a civil penalty and fails to pay the penalty within the time required; ~~or~~

(2) The licensee is maintaining the licensed premises in violation of any provision of this chapter; or

(3) The licensee or the licensee's agent or manager refuses to permit any inspection of the licensed premises by the Inspector, or refuses to provide reasonable cooperation and assistance to the Inspector in

connection with the inspection of the licensed premises. As used in this ~~paragraph~~ subsection, the term "reasonable cooperation and assistance" includes, but is not limited to:

(A) Providing a means of ingress and egress to and from the licensed premises, and any part thereof, not then lawfully possessed by a tenant, at a reasonable time;

(B) Arranging introductions and appointments with tenants or other persons in charge of the licensed premises, or any part thereof; or

(C) Informing tenants or other persons in charge of the licensed premises, or any part thereof, that the Inspector acts with the consent of the licensee.

(b) Suspension shall take effect immediately upon notice of the suspension being received, and shall remain in effect until the reason for the suspension has been cured, the license has been revoked, or the license has been re-stated after a hearing as provided in SRC chapter 20J.

(c) Nothing in this chapter shall affect the Director's ability to suspend any license issued hereunder in an emergency as provided in SRC 20J.230.

(Prior Code, § 59.700; Ord. No. 30-13)

Sec. 59.705. Revocation of license.

(a) A license issued pursuant to this chapter may be revoked if:

(1) The licensee allows the licensed premises to be a public nuisance property as defined in SRC 98.140.

(2) The licensee is maintaining the licensed premises in a manner that endangers or threatens to endanger property or public health, safety, or welfare.

(3) The application for the license, or any renewal thereof, contains any misrepresentation or any false statement.

(4) The licensee commits any violation of a federal, state, or local law or regulation that may indicate that the licensee is unfit to conduct licensed activity.

(5) The licensee, or of any agent or employee of the licensee, refuses to permit any inspection of the licensed premises by the Inspector as authorized by this chapter.

(b) Revocation shall take effect immediately upon notice of the revocation being received.

(c) A licensee who has had his or her license revoked may, after 90 or more days from the date the notice of revocation is received, apply for a new license in the manner provided by this chapter.

(d) Nothing in this chapter shall affect the Director's ability to revoke any license issued hereunder in an emergency as provided in SRC 20J.230.

(Prior Code, § 59.705; Ord. No. 30-13)

Secs. 59.710—59.790. Reserved.

Sec. 59.800. Appeals.

(a) Any person who has been denied a new multifamily dwelling license, a renewal of an existing multifamily dwelling license, or who has had a multifamily dwelling license suspended or revoked may appeal the decision to the Hearings Officer as set forth in SRC 20J.220. The hearing on the appeal shall follow the contested case procedures set forth in SRC chapter 20J.

(b) Failure of any person to appeal the denial, suspension, or revocation of a multifamily dwelling license in the manner provided in SRC 20J.220 shall constitute a waiver of all right to administrative or judicial review of the denial, suspension, or revocation.

(Prior Code, § 59.800; Ord. No. 30-13)

Sec. 59.805. Proceedings by City Attorney.

The City Attorney may, upon request of the Director, institute any legal proceedings necessary to enforce the provisions of this chapter. Proceedings may include, but are not limited to, injunctions to prohibit the continuance of the licensed activity or to prohibit any use or occupation of a residential structure in violation of this chapter.

(Prior Code, § 59.805; Ord. No. 30-13)

Sec. 59.810. Remedies not exclusive.

The remedies provided in this chapter are cumulative and not mutually exclusive and are in addition to any other rights, remedies, and penalties available under any other provision of law.

(Prior Code, § 59.810; Ord. No. 30-13)

Secs. 59.820—59.890. Reserved.

Sec. 59.990. Violations and penalties.

(a) *Violations.*

(1) It shall be unlawful for a person to maintain any residential structure or dwelling unit in violation of any provision of this chapter. Except as provided in subsection (a)(4) ~~(d)~~ of this section, a violation of this subsection is an infraction. Each day that a violation continues shall constitute a separate violation. In addition to any other penalty provided by law, a person adjudged responsible for a violation of any of the provisions of this chapter may be ordered by the Court to correct the violation.

(2) It shall be unlawful for a person to operate a multifamily dwelling without first obtaining a license therefor. A violation of this section is an infraction. Each day that a violation continues shall constitute a separate violation.

(3) It shall be unlawful for any person to continue the operation of a multifamily dwelling after the person's license has expired, has been suspended, or has been revoked. A violation of this section is an infraction. Each day that a violation continues shall constitute a separate violation.

(4) A second or subsequent violation of SRC 59.225 within six months of having been convicted of a violation of SRC 59.225 is a misdemeanor.

(b) *Civil penalty.* Any person who fails to comply with the requirements of this chapter or the terms of a license issued hereunder, who undertakes an activity regulated by this chapter without first obtaining a license, or who fails to comply with an enforcement order issued pursuant to this chapter shall be subject to a civil penalty as provided in SRC chapter 20J, not to exceed $2,000.00 per violation. Each day that a violation continues shall constitute a separate violation.

(c) *Civil penalty against agents.* Any person who acts as the agent of, or otherwise assists, a person who engages in an activity which would be subject to a civil penalty, shall likewise be subject to a civil penalty.

(Prior Code, § 59.990; Ord. No. 30-13)

CHAPTERS 60—63. RESERVED

CHAPTER 64. COMPREHENSIVE PLANNING

COMPREHENSIVE PLAN, GENERALLY

Sec. 64.001. Purpose.

The purpose of this chapter is to adopt a comprehensive plan and urban growth boundary for the City, and to establish procedures for amendments thereto, in order to create a framework whereby land use regulation may be carried out, including, but not limited to, providing for public infrastructure, community growth, and the preservation of natural and historic resources.

(Prior Code, § 64.001; Ord. No. 6-13)

Sec. 64.005. Definitions.

~~Except where the context otherwise specifically requires, as used in this Chapter the following words and phrases mean:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Comprehensive park system master plan* means that certain document of that title adopted by Ordinance No. 6-13, enacted May 13, 2013.

~~(b)~~ *Comprehensive plan* means the generalized, coordinated land use policy document and map for the City that addresses functional and natural systems and activities relating to the use of land within the City.

~~(c)~~*Comprehensive plan map* means that certain map, entitled "Salem Area Plan Map, January 12, 1987," as amended by Ordinance No. 1-87, enacted January 12, 1987; and amended by Ordinance No. 1-91, enacted January 14, 1991; Ordinance No. 57-2000, enacted November 13, 2000; and as amended by all quasi-judicial amendments to the comprehensive plan map. The comprehensive plan map implements the goals and policies of the comprehensive policies plan.

~~(d)~~ *Comprehensive policies plan* means that certain document entitled "Salem Area Comprehensive Plan," adopted by Ordinance No. 68-92, enacted October 12, 1992; Ordinance No. 107-94, enacted November 28, 1994; Ordinance No. 81-96, enacted November 12, 1996; Ordinance No. 64-98, enacted August 24, 1998; Ordinance No. 75-99, enacted September 27, 1999; Ordinance No. 58-2000, enacted November 27, 2000; Ordinance No. 43-2002, enacted July 8, 2002; Ordinance No. 68-2002, enacted October 28, 2002; Ordinance No. 52-2003, enacted November 24, 2003; Ordinance No. 2-05, enacted January 24, 2005; Ordinance No. 35-09, enacted May 26, 2009; Ordinance No. 2-09, enacted February 9, 2009; and Ordinance No. 6-13, enacted June 10, 2013. The comprehensive policies plan establishes goals and policies guiding growth and development within the urban growth boundary and the Salem Urban Area, comprehensive plan map designations, and broad categories of land use.

~~(e)~~*Historic preservation plan* means that certain document entitled "Salem Historic Preservation Plan, Salem, Oregon 2010-2020," adopted by Ordinance No. 6-13, enacted June 10, 2013.

~~(f)~~*McNary Field Airport Master Plan* means that certain document entitled "McNary Field Airport Master Plan, Salem, Oregon, Hodges and Shutt, May 1979," and adopted by Ordinance No. 172-79, enacted September 24, 1979; amended by Ordinance No. 3-98, enacted January 12, 1998.

~~(g)~~ *Neighborhood plan* means the plan for the land use within a geographic area lying within a neighborhood association's boundaries. As used in this chapter, the only portions of a neighborhood plan that are included as a component of the comprehensive plan are the "Goals and Policies" provisions and the general land use maps, including any quasi-judicial amendments to the general land use maps. The adopted neighborhood plans are:

(a) The NESCA Neighborhood Plan, Northeast Salem Community Association, May, 1977, adopted by Ordinance No. 102-78, enacted May 22, 1978; and amended by Ordinance No. 105-79, enacted May 21, 1979; Ordinance No. 9-85, enacted January 14, 1985; Ordinance No. 33-85, enacted May 25, 1985; and Ordinance No. 51-85, enacted April 22, 1985.

(b) The CAN-DO Neighborhood Plan, Central Area Neighborhood Development Organization, adopted by Ordinance No. 105-79, enacted June 15, 1979; and amended by Ordinance No. 107-80, enacted September 8, 1980; Ordinance No. 40-84, enacted March 26, 1984; and Ordinance No. 94-84, enacted August 13, 1984.

(c) Grant Neighborhood Plan, adopted by Ordinance No. 33-83, enacted June 13, 1983.

(d) Sunnyslope Neighborhood Plan, adopted by Ordinance No. 55-83, enacted August 8, 1983.

(e) Liberty-Boone Neighborhood Plan, adopted by Ordinance No. 84-83, enacted December 12, 1983; and amended by Ordinance 9-85, enacted January 14, 1985; and Ordinance No. 5-86, enacted January 13, 1986.

(f) East Lancaster Neighborhood Association Neighborhood Plan (ELNA), adopted by Ordinance No. 19-84, enacted January 16, 1984.

(g) Highland Neighborhood Plan, adopted by Ordinance No. 67-84, enacted June 11, 1984.

(h) Morningside Neighborhood Plan, adopted by Ordinance No. 67-84, enacted June 11, 1984; and repealed and replaced by Ordinance No. 2-14, enacted April 28, 2014.

(i) West Salem Neighborhood Plan, adopted by Ordinance No. 11-2004, enacted March 8, 2004.

(j) Northeast Neighbors Neighborhood Association-Southeast Salem Neighborhood Association (NEN-SESNA) Neighborhood Plan, adopted by Ordinance No. 23-14, enacted ~~03/25/2015~~ March 25, 2015.

~~(h)~~ *Public facilities plan* means, collectively, those portions of the following plans describing the water, sewer, and stormwater facilities needed to support the land uses designated in the comprehensive plan map and lying within the urban growth boundary, listing the public facility project titles, and containing a map or written description of the public facility projects' locations or service areas, but not including descriptions or specifications of the public facility projects:

(a) Salem Area Wastewater Management Master Plan.

(b) Stormwater master plan.

(c) Water system master plan.

~~(i)~~ *Public Facilities Support Documents* means, collectively, the following plans, other than those portions that comprise the Public Facilities Plan:

(a) Salem Area Wastewater Management Master Plan.

(b) Stormwater master plan.

(c) Water system master plan.

~~(j)~~ *Salem Area Wastewater Management Master Plan* means that certain document entitled "Salem Area Wastewater Management Master Plan, 1996, CH2M-Hill" and adopted by Ordinance No. 93-96, enacted December 16, 1996; and amended by Ordinance No. 54-2002, enacted September 23, 2002; Ordinance No. 9-05, enacted February 7, 2005; and Ordinance No. 83-07, enacted April 9, 2007.

~~(k)~~ *Salem Transportation System Plan* means that certain document of that title adopted by Ordinance No. 64-98, enacted August 24, 1998; and amended by Ordinance 9-2000, enacted February 14, 2000; Ordinance No. 27-2001, enacted May 14, 2001; Ordinance No. 2-05, enacted January 25, 2005; Ordinance No. 11-05, enacted March 28, 2005; Ordinance No. 85-07, enacted July 9, 2007; Ordinance No. 119-07, enacted November 5, 2007; Ordinance No. 12-10, enacted April 26, 2010; Ordinance No. 20-12, enacted December 10, 2012; Ordinance No. 6-14, enacted May 27, 2014, and Ordinance No. 1-16, enacted February 8, 2016.

~~(m)~~ *Stormwater master plan* means that certain document of that title adopted by Ordinance No. 52-2000, enacted September 25, 2000.

~~(n)~~ *Support document* means a plan or other document that is prepared as a policy guide for a comprehensive plan function or area. Support documents are adopted by ordinance, but are not part of the comprehensive plan and are not land use regulations, as defined by ORS 197.015(11).

~~(o)~~ *Urban growth boundary* means that certain legal description and accompanying document entitled "Salem Urban Growth Boundary, Revised September 12, 1988," adopted by Ordinance No. 175-79, enacted September 24, 1979; and amended by Ordinance No. 52-82, enacted March 29, 1982; Ordinance No. 42-86, enacted April 28, 1986; Ordinance No. 77-88, enacted September 13, 1988; and Ordinance No. 9-14, enacted June 23, 2014.

~~(p)~~ *Urban service area map* means the map of that certain area originally referred to as the "Current Developed Area" originally delineated on the official zoning map by Ordinance No. 129-79, enacted July 23, 1979, and subsequently amended, and readopted by Ordinance No. 6-13, enacted June 10, 2013.

~~(q)~~ *Water system master plan* means that certain document entitled "Water System Master Plan, 1994, CH2M-Hill" and adopted by Ordinance No. 34-94, enacted April 25, 1994; and amended by Ordinance No. 70-96, enacted September 23, 1996; Ordinance No. 89-99, enacted November 22, 1999; Ordinance No. 8-05, enacted February 7, 2005; and Ordinance No. 96-07, enacted July 9, 2007.

~~(r)~~ *Willamette River Greenway Plan* means that certain document entitled "Willamette River Greenway Plan, July, 1979," and adopted by Ordinance No. 157-79, enacted September 24, 1979.

(Prior Code, § 64.005; Ord. No. 6-13; Ord. No. 2-14; Ord. No. 6-14; Ord. No. 9-14; Ord. No. 23-14; Ord. No. 20-15, 9-14-2015; Ord. No. 1-16, 1-11-2016)

Sec. 64.010. Rules of construction.

In the event of an ambiguity or conflict in the provisions or components of the comprehensive plan, the following rules of construction shall be used:

(a) The comprehensive policies plan takes precedence over any other component of the comprehensive plan.

(b) The components of the comprehensive plan shall be construed as complementary or supplementary wherever possible.

(c) In the event of irreconcilable conflict in or between a particular component of the comprehensive plan, the text shall control over maps, and the more specific text provisions shall control over the more general. In the event of a conflict, all other components of the comprehensive plan shall take precedence over a neighborhood plan.

(d) A legal description adopted by ordinance shall supersede any conflicting or uncertain delineation of such area on any map.

(e) No particular weight shall be accorded to any provision in the comprehensive plan by reason of the date of its enactment.

(f) Statewide land use planning goals are the final standard to be used in interpreting the comprehensive plan, and the comprehensive plan shall be interpreted in a manner that is consistent with the statewide land use planning goals.

(Prior Code, § 64.010; Ord. No. 6-13)

Sec. 64.015. Components of the comprehensive plan; support documents for the comprehensive plan.

(a) The components of the comprehensive plan are:

(1) The comprehensive policies plan.

(2) The urban growth boundary.

(3) The comprehensive plan map.

(4) <u>The</u> public facilities plan.

(5) <u>The</u> Salem Transportation System Plan, other than those components setting forth transportation financing programs, as described in OAR 660-012-0040.

(6) <u>The</u> comprehensive park system master plan.

(7) <u>The</u> Urban service area map.

(8) <u>The</u> Willamette River Greenway Plan.

(9) The "Goals and Policies" provisions and the general land use maps ~~in~~ adopted in neighborhood plans.

(b) The support documents for the comprehensive plan are:

(1) Public Facilities Support Documents.

(2) Those components of the Salem Transportation System Plan setting forth transportation financing programs, as described in OAR 660-012-0040.

(3) Historic preservation plan.

(4) McNary Field Airport Master Plan.

(5) Neighborhood plans, other than the "Goals and Policies" provisions and the general land use maps ~~in~~ adopted in neighborhood plans that are adopted as part of the comprehensive plan.

(6) Salem Economic Opportunities Analysis.

(c) Official comprehensive plan map. The boundaries of the comprehensive plan designations shall be depicted on an official map titled, “Salem Comprehensive Plan Map.” The map may be maintained in digital form.

(Prior Code, § 64.015; Ord. No. 6-13; Ord. No. 20-15, 9-14-2015)

Sec. 64.020. Comprehensive plan amendments.

(a) *Applicability.* Amendments to the comprehensive plan, other than an amendment to a plan map, as that term is defined in SRC 64.025, shall be adopted as provided in this section. The two types of comprehensive plan amendments are major and minor.

(b) *Major comprehensive plan amendment.* A major comprehensive plan amendment is any amendment to the comprehensive plan that involves the creation, revision, or implementation of broad public policy generally affecting more than one property owner or affecting a large number of individual properties.

~~(Prior Code, § 64.020; Ord. No. 6-13)~~

(c) *Minor comprehensive plan amendment.* A minor comprehensive plan amendment is:

(1) Any amendment other than a major comprehensive plan amendment; and

(2) Any amendment that is necessary to comply with an order, directive, or recommendation of a governmental body responsible for administering state land use law, or to comply with an order of a court having jurisdiction over litigation involving state land use law. As used in this section, the term "governmental body responsible for administering state land use law” includes, but is not limited to, the Land Use Board of Appeals, the Land Conservation and Development Commission, and the Department of Land Conservation and Development.

(d) *Procedure type.* Major and minor comprehensive plan amendments are legislative land use decisions, and are processed according to the Legislative Procedures under SRC chapter 300.

(e) *Standing to initiate comprehensive plan amendments.*

(1) Notwithstanding SRC 300.1110, a major comprehensive plan amendment may only be initiated by the ~~City~~ Council.

(2) Notwithstanding SRC 300.1110, a minor comprehensive plan amendment may only be initiated by the ~~City~~ Council, the Planning Commission, or staff.

(f) *Criteria.*

(1) A major comprehensive plan amendment may be made if:

(A) The amendment is in the best interest of the public health, safety, and welfare of the City.

(B) The amendment conforms to the applicable statewide planning goals and applicable administrative rules adopted by the Department of Land Conservation and Development.

(2) A minor comprehensive plan amendment may be made if:

(A) The amendment does not significantly change or amend key principles or policies in the comprehensive plan;

(B) The amendment does not require substantial changes to plan language to maintain internal plan consistency;

(C) The amendment does not require significant factual or policy analysis;

(D) The amendment is in the public interest of the public health, safety, and welfare of the City; and

(E) The amendment conforms to the applicable statewide planning goals and applicable administrative rules adopted by the Department of Land Conservation and Development.

(Prior Code, § 64.020; Ord. No. 6-13)

Sec. 64.025. Plan map amendments.

(a) *Applicability.* Amendments to a plan map shall be adopted as provided in this section. The two types of plan map amendments are major and minor. As used in this section, the term "plan map" means the urban growth boundary, the comprehensive plan map, or a general land use map in a neighborhood plan.

(1) A major plan map amendment is:

(A) Any amendment to the urban growth boundary; or

(B) An amendment to either the comprehensive plan map or a general land use map in a neighborhood plan, where the amendment involves the creation, revision, or implementation of broad public policy generally affecting more than one property owner or a large number of individual properties.

(2) A minor plan map amendment is an amendment to either the comprehensive plan map or a general land use map in a neighborhood plan, where the amendment affects only a small number of properties or a closely circumscribed set of factual circumstances.

(b) *Standing to initiate plan map amendments.*

(1) Notwithstanding SRC 300.1110, a major plan map amendment may only be initiated by the ~~City~~ Council.

(2) Notwithstanding SRC 300.1110, a minor plan map amendment may only be initiated by the ~~City~~ Council, the Planning Commission, or an owner of property that is the subject of the amendment, or that owner's agent.

(c) *Procedure type.*

(1) Major plan map amendments are legislative decisions, and are processed according to the Legislative Procedures under SRC chapter 300.

(2) Minor plan map amendments are quasi-judicial decisions, and are processed as a Type III procedure under SRC chapter 300.

(d) *Submittal requirements.*

(1) Initiation.

(A) A major or minor plan map amendment may be initiated by the ~~City~~ Council by the adoption of a resolution, identifying the property that is the subject of the amendment, and setting forth the public purpose for the amendment.

(B) A minor plan map amendment may be initiated by the ~~City~~ Council or the Planning Commission by the adoption of a resolution, identifying the property that is the subject of the amendment, and setting forth the public purpose for the amendment, or by an applicant by the submission of an application that complies with ~~paragraph~~ subsection (d)(2) of this ~~sub~~section.

(2) In addition to the submittal requirements for a Type III application under SRC chapter 300, an application for an applicant-initiated minor plan map amendment shall include the following:

(A) An existing conditions plan of a size and form and in the number of copies meeting the standards established by the Planning Administrator, containing the following information:

(i) The total site area, dimensions, and orientation relative to north;

(ii) The location of existing structures and other improvements on the site, including, but not limited to, buildings, accessory structures, fences, walls, parking areas, and driveways, noting their distance from property lines;

(iii) The location of drainage patterns and drainage courses, if applicable;

(B) A traffic impact analysis, if required by the Director ~~of Public Works~~.

(e) *Criteria.*

(1) *Major plan map amendment.* A major plan map amendment may be made if:

(A) The amendment is in the best interest of the public health, safety, and welfare of the City.

(B) The amendment conforms to the applicable statewide planning goals and applicable administrative rules adopted by the Department of Land Conservation and Development.

(2) *Minor plan map amendment.* The greater the impact of the proposed minor plan map amendment, the greater the burden on an applicant to demonstrate that the criteria are satisfied. A minor plan map amendment may be made if it complies with the following:

(A) The minor plan map amendment is justified based on the existence of one of the following:

(i) *Alteration in circumstances.* Social, economic, or demographic patterns of the nearby vicinity have so altered that the current designations are no longer appropriate.

(ii) *Equally or better suited designation.* A demonstration that the proposed designation is equally or better suited for the property than the existing designation.

(iii) *Conflict between comprehensive plan map designation and zone designation.* A minor plan map amendment may be granted where there is a conflict between the comprehensive plan map designation and the zoning of the property, and the zoning designation is a more appropriate designation for the property than the comprehensive plan map designation. In determining whether the zoning designation is the more appropriate designation, the following factors shall be considered:

(aa) Whether there was a mistake in the application of a land use designation to the property;

(bb) Whether the physical characteristics of the property are better suited to the uses in zone as opposed to the uses permitted by the comprehensive plan map designation;

(cc) Whether the property has been developed for uses that are incompatible with the comprehensive plan map designation; and

(dd) Whether the comprehensive plan map designation is compatible with the surrounding comprehensive plan map designations;

(B) The property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by the proposed plan map designation;

(C) The proposed plan map designation provides for the logical urbanization of land;

(D) The proposed land use designation is consistent with the Salem Area Comprehensive Plan and applicable statewide planning goals and administrative rules adopted by the Department of Land Conservation and Development; and

(E) The amendment is in the public interest and would be of general benefit.

(Prior Code, § 64.025; Ord. No. 6-13)

Sec. 64.030. Support document amendments.

(a) *Applicability.* Amendments to a support document shall be adopted as provided in this section.

(b) *Standing to initiate amendments to support document.*

(1) The ~~City~~ Council may initiate an amendment to a support document by the adoption of a resolution, which shall state whether the matter is to be referred to another Review Authority for public hearing and recommendation.

(2) Staff may initiate an amendment to a support document by preparing an ordinance bill and placing the ordinance on the ~~City~~ Council agenda for first reading. The ~~City~~ Council may schedule a public hearing on the ordinance bill, may refer the ordinance bill to Review Authority for its review and recommendation, may refer the ordinance to a subcommittee for further review, prior to holding a public hearing, or may decline to advance the ordinance to second reading.

(c) *Public hearings.* No public hearing is required for an amendment to a support document. The ~~City~~ Council may, in its discretion, hold a public hearing, in which case the procedures generally applicable for public hearings under the Council Rules for the City ~~of Salem~~ shall be followed.

(d) *Form of adoption.* Amendments to support documents shall be adopted by ordinance.

(e) *Appeals.* Appeals of final decisions amending a support document shall be by writ of review.

(Prior Code, § 64.030; Ord. No. 6-13)

Secs. 64.040—64.240. Reserved.

NEIGHBORHOOD ASSOCIATION PROGRAM

Sec. 64.250. Purpose ~~of neighborhood association program~~.

The purpose of the neighborhood association program is to involve citizens in local government planning and decision-making that affects their neighborhoods and the City as a whole; to provide an effective mechanism whereby the citizens of the City sharing common neighborhood identity, goals, and concerns, may form neighborhood associations and undertake an advisory role for the Council and all boards and commissions engaged in community planning and development; to provide a mechanism for citizens, through their neighborhood associations, to provide input to Council on livability and quality of life issues affecting their neighborhood and the City as a whole; and to provide a mechanism for local community involvement, neighborhood improvement, and volunteer opportunities.

(Prior Code, § 64.250; Ord. No. 118-77; Ord. No. 56- 2000; Ord. No. 2-10; Ord. No. 6-13)

Sec. 64.255. Definitions.

~~As used in SRC 64.250-64.335, the following mean:~~ The following words, terms and phrases, when used in SRC 64.250 through 64.335, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*City Manager* means the City Manager or the department director charged by the City Manager with the implementation and administration of SRC 64.250 through 64.335 or that department director's designee.

~~(b)~~ *Designated neighborhood* means the geographical area of the City encompassed by the neighborhood association.

(Prior Code, § 64.255; Ord. No. 2-10)

Sec. 64.260. Procedure for initial recognition of a neighborhood association.

(a) When interest has been expressed by a number of persons who are residents, businesses owners, or property owners to form a neighborhood association, a request may be made to the City Manager for staff assistance. City staff shall organize informal meetings with interested residents, businesses, and property owners, and shall assist in determining the geographical area of the proposed neighborhood association, and provide background and information on the neighborhood program. If the residents determine that forming a neighborhood association is desirable, one or more meetings for the area identified for the proposed neighborhood association shall be held to increase awareness of the neighborhood program and to allow a request for recognition as an official neighborhood association to be approved.

(b) A request for recognition as an official neighborhood association shall be considered by the ~~City~~ Council. If the group requesting recognition satisfies the requirements of SRC 64.280(a), the ~~City~~ Council shall adopt a resolution officially recognizing the neighborhood association. The resolution shall include a description of the designated neighborhood. Once the neighborhood association has been recognized, the neighborhood association will serve as the official citizen organization for the designated neighborhood.

(Prior Code, § 64.260; Ord. No. 118-77; Ord. No. 56-2000; Ord. No. 42-09; Ord. No. 2-10)

Sec. 64.265. Notice of initial recognition.

As soon as practical after recognition by the ~~City~~ Council, the Director shall make a reasonable effort to publicize and notify addresses within the designated neighborhood identified in the resolution recognizing the neighborhood association. The notification shall include:

(a) A statement encouraging all property owners, residents, and businesses within the newly recognized neighborhood association to participate in meetings, preparation of neighborhood plans, and other activities leading to proposals and recommendations to the City.

(b) A map of the neighborhood boundaries.

(c) The names and contact information of all officers of the neighborhood association.

(d) The names and contact information for the city staff who will be serving as the primary contacts with the neighborhood association.

(Prior Code, § 64.265; Ord. No. 118-77; Ord. No. 56-2000; Ord. No. 2-10; Ord. No. 6-13)

Sec. 64.270. Incorporation of newly annexed territory into neighborhood associations.

Whenever territory is annexed to the City, and the area is contiguous to a designated neighborhood, that neighborhood association may submit a request to the ~~City~~ Council for one of the following alternatives:

(a) That the territory be added to the geographical area of the neighborhood association;

(b) That the territory be considered for recognition as a new neighborhood association and its residents be encouraged immediately to seek recognition; or

(c) That the area be considered for recognition a new neighborhood association, but because it is yet undeveloped, or is too small, that the territory should be temporarily represented by another neighborhood association, in which case the neighborhood association making the request shall function as the neighborhood association for the territory; provided, however, that such neighborhood association shall not develop any neighborhood plan for the territory.

(Prior Code, § 64.270; Ord. No. 118-77; Ord. No. 56-2000; Ord. No. 2-10)

Sec. 64.275. Annual review of neighborhood association status.

(a) Within 60 days following the annual general meeting for electing board members, a neighborhood association shall provide the City Manager with evidence of compliance with the standards set forth in SRC 64.280(b).

(b) The report will be reviewed by the City Manager. The City Manager may request such additional information or documentation that the City Manager deems necessary to establish compliance with the standards set forth in SRC 64.280(b). If, after review, the City Manager finds that the neighborhood association has established compliance with the standards set forth in SRC 64.280(b), then the City Manager shall send a notice to the neighborhood association, indicating continued recognition of the neighborhood association. If, after review, the City Manager finds that the neighborhood association has failed to establish compliance with the standards set forth in SRC 64.280(b), the City Manager shall send a notice of noncompliance to the neighborhood association identifying the deficiencies, and the corrective action which would be necessary.

(c) Upon receipt of a notice of noncompliance, the neighborhood association shall, within 60 days of the notice, notify the City Manager of the date the corrective action will be completed, or provide the City Manager with an action plan to correct the deficiencies. If the corrective action will take more than three months to complete, then the neighborhood association shall provide an action plan, which shall include a timeline for completion. If

corrective action is not completed within the date specified by the neighborhood association, or no action plan is provided to the City Manager within 60 days following the notice of noncompliance, or timelines in the corrective action plan are not met, recognition of the neighborhood association shall be suspended.

(d) A neighborhood association which has had recognition suspended pursuant to subsection (c) of this section may request reinstatement by filing a request with the City Manager, in writing, not later than one year from the date the notice of noncompliance was provided to the neighborhood association. The request shall include documentation demonstrating that the neighborhood association satisfies all criteria set forth in SRC 64.280(a) and that it is capable of satisfying all the criteria set forth in SRC 64.280(b). If the City Manager finds that the neighborhood association's request satisfies all criteria set forth in SRC 64.280(a) and that it is capable of satisfying all the criteria set forth in SRC 64.280(b), the City Manager shall issue a notice of reinstatement. Recognition of a neighborhood association shall be terminated by resolution of the ~~City~~ Council if the neighborhood association fails to timely request reinstatement as provided in subsection (c) of this section, or fails to demonstrate satisfaction of all criteria set forth in SRC 64.280(a) and capability of satisfying all the criteria set forth in SRC 64.280(b) in its request for reinstatement.

(Prior Code, § 64.275; Ord. No. 118-77; Ord. No. 2-10)

Sec. 64.280. Standards for recognition.

(a) A neighborhood association, in order to obtain initial recognition, shall meet the following standards:

(1) That one or more well-publicized general neighborhood meetings have been held for the purpose of information and approval of boundaries, organizational objectives, and bylaws.

(2) That bylaws provide for the following:

(A) A decision-making process for the association.

(B) Minutes of all official board and general meetings to be taken and filed with the City Manager.

(C) Participation open to any resident, property owner, or business in the neighborhood.

(3) That the association's structure is capable of providing necessary communication between the neighborhood residents and elected and appointed city officials.

(4) That the neighborhood association has an awareness of its duties and responsibilities with respect to the neighborhood association program.

(5) That the contiguous geographical boundaries of the neighborhood association should be the centerlines, when an arterial street is used as a boundary, or at some other clearly defined and relatively permanent natural or manmade feature.

(6) That the territory of the neighborhood is logical, represents a community of interest and identity as a neighborhood, and supports the City's intent that all areas within the City be represented by a neighborhood association and that no area be represented by more than one neighborhood association.

(7) Notices of organizational meetings prior to official recognition of the neighborhood association have been publicized to known property owners, residents, and businesses in the proposed designated neighborhood via written or electronic notice, as resources allow.

(b) A neighborhood association shall, in order to maintain official recognition, meet the following standards:

(1) The neighborhood association has held an annual general neighborhood meeting for the election of board members. A reasonable effort shall be made to publicize the meeting to members by mail, newsletter, posted notices, telephone call, electronic mail, or other available means of communication.

(2) The neighborhood association has made reasonable efforts to notify all residents, property owners, and businesses in the geographical area encompassed by the neighborhood association of board and general meetings, studies, and other activities of the neighborhood association.

(3) The bylaws of the neighborhood association have not been amended to eliminate the requirements of subsection (a)(2) of this section.

(4) Minutes of all official board and general meetings of the neighborhood association have been taken and filed with the City Manager.

(5) The neighborhood association has established one or more civic involvement goals.

(6) If the neighborhood association is organized as a nonprofit corporation, that it has maintained its filings with the Oregon Secretary of State, and has maintained its status in good standing.

(Prior Code, § 64.280; Ord. No. 118-77; Ord. No. 21-95; Ord. No. 56-2000; Ord. No. 35-2001; Ord. No. 42-09; Ord. No. 2-10; Ord. No. 6-13)

Sec. 64.285. Effect of recognition.

Officially recognized neighborhood associations are not branches of City government but independent organizations, and shall not be deemed public bodies under Oregon law. Any assistance provided to a neighborhood association pursuant to SRC 64.295 shall be deemed a grant, and not payment for services.

(Prior Code, § 64.285; Ord. No. 2-10)

Sec. 64.290. Neighborhood association responsibilities.

An officially recognized neighborhood association should:

(a) Develop an organization which will maintain itself and further the intent and purpose set forth in SRC 64.250.

(b) Establish one or more annual civic involvement goals.

(c) Provide a neighborhood-based problem solving process, that will facilitate citizen-based problem solving on issues identified by citizens in the designated neighborhood and provide referrals for resources to assist in the problem solving process.

(d) Engage in community-building by developing neighborhood cohesion and by organizing neighborhood citizen involvement activities.

(e) Partner with the City to educate and involve citizens in local government decision making.

(f) Act as an advisor to the City in legislative land use matters and general quality of life issues affecting the neighborhood.

(g) Represent neighborhood opinion and concerns before public bodies and agencies.

(h) Identify neighborhood resources.

(i) Gather general data concerning the neighborhood as needed in order to fulfill the responsibilities of the neighborhood association.

(j) Identify neighborhood problems and needs.

(k) Hold neighborhood meetings to disseminate information and determine opinions of area residents, businesses, and property owners.

(l) Develop recommendations to appropriate governmental agencies.

(m) Prepare a neighborhood plan as city staff and funding are available.

(n) Assist in implementing the adopted neighborhood plan.

(o) Consider involvement in community service activities that could benefit the neighborhood or the City in general.

(p) Coordinate with watershed councils whose boundaries overlap the neighborhood association’s boundaries.

(Prior Code, § 64.290; Ord. No. 118-77; Ord. No. 56-2000; Ord. No. 2-10)

Sec. 64.292. Consolidation of neighborhood associations.

For two or more neighborhood associations to consolidate into a single entity, the following procedure should be followed:

(a) That each neighborhood involved in the consolidation hold one or more well publicized neighborhood meetings for the purpose of information and approval of the consolidation procedure.

(b) Once each neighborhood association involved has approval to consolidate from its board members after the required meetings, additional meetings as necessary shall be held to produce an acceptable new set of bylaws, calendar of meeting dates, select the new board members, assign new officers, committee chairs, and members, and select an effective date to establish the new neighborhood association.

(c) As closely as possible, the City Manager and ~~City~~ Council shall be advised as to the consolidation of the neighborhood associations on, or about, the effective date.

(Prior Code, § 64.292; Ord. No. 6-13)

Sec. 64.295. City support of neighborhood associations; advisory role to City.

A recognized neighborhood association will, subject to availability of resources, as determined by the City Manager, receive the following from the City:

(a) City staff, who will conduct research, provide information, and assist the neighborhood association in organizational development and maintenance and implementation of the neighborhood associations' projects.

(b) Distribution, printing, clerical, and graphic services to assist the neighborhood association.

(c) Grants of financial assistance for communication to members and outreach to the geographic area encompassed by the neighborhood association.

(d) Assistance in the preparation and update of neighborhood plans.

(e) Timely notice of any proposals affecting the geographic area encompassed by the neighborhood association that are to come before advisory boards and ~~City~~ Council.

(f) Solicitation of a neighborhood association's position and reasoning on any issue especially affecting the geographic area encompassed by the neighborhood association.

(Prior Code, § 64.295; Ord. No. 118-77; Ord. No. 56-2000; Ord. No. 2-10; Ord. No. 6-13)

NEIGHBORHOOD PLANS

Sec. 64.300. Neighborhood plans, generally.

(a) A neighborhood plan is a written plan embodying citizen desires on a broad range of concerns in a designated neighborhood. The purpose of a neighborhood plan is to provide detailed goals and policies for the designated neighborhood in a manner consistent with the Salem Area Comprehensive Plan.

(b) The neighborhood plan shall be the basis for any neighborhood association's recommendation to any City board, commission, or agency. The City board, commission or agency shall consider the neighborhood plan in making any decision or recommendation which would affect the designated neighborhood. The ~~City~~ Council may consider the neighborhood plan before making any final decision as to the acquisition, construction, or improvement of public facilities in the designated neighborhood.

(Prior Code, § 64.300; Ord. No. 118-77; Ord. No. 2-10)

Sec. 64.305. Development of a neighborhood plan.

The development of a neighborhood plan for a designated neighborhood may be initiated by a recognized neighborhood association, or by the Planning Administrator, after obtaining concurrence from the recognized neighborhood association. The Planning Administrator may initiate the development of a neighborhood plan for any area of the City for which there is no neighborhood association, if authorized by the ~~City~~ Council.

(Prior Code, § 64.305; Ord. No. 2-10)

Sec. 64.310. Scope of neighborhood plan.

(a) A neighborhood plan shall address each of the following elements:

(1) Land use;

(2) Transportation;

(3) Public facilities and services;

(4) Housing; and

(5) Parks, recreation, and open spaces.

(b) A neighborhood plan may address other subjects of particular concern to the neighborhood, such as:

(1) Economic development;

(2) Social services;

(3) Environmental quality; and

(4) Urban design.

(c) A neighborhood plan should include the following:

(1) Goals and policy statements;

(2) Generalized land use map;

(3) Maps and diagrams that assist in showing the application of goal and policy statements; and

(4) Recommendations as to any element addressed in the neighborhood plan.

(Prior Code, § 64.310; Ord. No. 118-77; Ord. No. 2-10)

Sec. 64.315. Timeframe and phasing.

(a) Neighborhood plans should focus on a time span of at least ten years.

(b) Within the time span of the neighborhood plan, the timing or phasing of specific applications of policies may depend upon the happening of future events, or may depend upon predicted growth over a particular time period. The neighborhood plan should specify the preconditions or timing of such policies and their application.

(c) Neighborhood plans should be reviewed periodically.

(Prior Code, § 64.315; Ord. No. 118-77; Ord. No. 2-10)

Sec. 64.320. Elements of neighborhood plan which may be adopted as part of the Salem Area Comprehensive Plan.

(a) Only the goals and policy statements in a neighborhood plan and generalized land use map shall be considered for adoption as part of the Salem Area Comprehensive Plan. The goals, policies and generalized land use map that are adopted shall be consistent with the Salem Area Comprehensive Plan and the statewide planning goals. Specific recommendations as to land use or public improvements shall not be adopted, but may be considered in making legislative land use decisions affecting the designated neighborhood.

(b) In the event of any conflict between an adopted neighborhood plan and the statewide planning goals, the Salem Area Comprehensive Plan, or the Salem Revised Code, the statewide planning goals, the Salem Area Comprehensive Plan, or the Salem Revised Code shall control.

(Prior Code, § 64.320; Ord. No. 118-77; Ord. No. 2-10)

Sec. 64.325. Process for development of neighborhood plans.

(a) Property owners, residents, and businesses within the designated neighborhood shall be afforded maximum opportunity for involvement in all phases of the preparation of a neighborhood plan. Notification of all general neighborhood and board meetings where the proposed neighborhood plan will be discussed, and notification of the process by which the neighborhood plan is being prepared shall be given by the neighborhood association.

(b) Proposed neighborhood plans must be presented at a minimum of two informational public meetings. In addition to these public meetings, the neighborhood association should use other means to obtain input and review of the neighborhood plan from property owners, residents, and businesses who would be directly affected by the proposed neighborhood plan.

(c) The final draft neighborhood plan shall be adopted by resolution of the neighborhood association's governing board and affirmed by vote of the membership at a general or annual meeting.

(d) The process for adoption of the neighborhood plan by the City is deemed initiated upon a filing of the resolution and a copy of the final draft neighborhood plan with the Planning Administrator.

(Prior Code, § 64.325; Ord. No. 118-77; Ord. No. 2-10)

Sec. 64.330. Planning Commission action on neighborhood plans.

(a) The Planning Commission and official representatives of the neighborhood association shall hold a joint work session to exchange comments about the neighborhood plan, to identify any areas of potential disagreement, and to give the neighborhood association an opportunity to refine its plan. Such work session should be held within four weeks of the date the final draft neighborhood plan is filed with the Planning Administrator. At such work session, the neighborhood association shall demonstrate compliance with SRC 64.325.

(b) Based upon the work session described in subsection (a) of this section, the neighborhood association shall, within 60 days after the work session, submit a Notice of Completion to the Planning Administrator, which shall include any additions, modifications, or deletions it wishes to make to the final draft neighborhood plan, or a statement that it wishes to make no changes.

(c) The Planning Commission shall hold a public hearing on the final draft neighborhood plan within 30 days following the submission of the notice of completion by the neighborhood association under subsection (b) of this section. Notice of the hearing shall be given as provided for major plan changes in SRC 64.080. The Planning Commission shall forward its recommendation concerning the neighborhood plan to the ~~City~~ Council, within 30 days of the conclusion of its deliberations, unless the neighborhood association requests a further work session as provided in subsection (d) of this section.

(d) If, after the public hearing before the Planning Commission, the neighborhood association so requests, the Planning Commission shall schedule a further joint work session to be held for the purposes and in the manner specified in subsection (a) of this section. The request shall be made within seven days of the close of the public hearing, and the work session should be held within 30 days of the request. The neighborhood association shall proceed as provided in subsection (b) of this section. Within 30 days of receipt of the notice of completion, the Planning Administrator shall forward the final draft neighborhood plan, as modified, along with the Planning Commission's recommendations to the ~~City~~ Council.

(Prior Code, § 64.330; Ord. No. 118-77; Ord. No. 53-82; Ord. No. 2-10)

Sec. 64.335. Council adoption of neighborhood plan.

The ~~City~~ Council shall hold a public hearing on the final draft neighborhood plan within 120 days following receipt of the Planning Commission's recommendation from the Planning Administrator. Notice of the hearing shall be given as provided for major plan changes in SRC 64.080. Following public hearing, ~~City~~ Council shall either recommend changes to the neighborhood plan or adopt such portions thereof it deems appropriate. If the ~~City~~ Council recommends changes, the neighborhood association may either revise the neighborhood plan and resubmit it for adoption by the ~~City~~ Council or it may notify the ~~City~~ Council that it declines to amend its plan further, in which case the ~~City~~ Council may adopt the plan as originally submitted or abandon the adoption process.

(Prior Code, § 64.335; Ord. No. 118-77; Ord. No. 53-82; Ord. No. 2-10)

CHAPTER 65. EXCAVATIONS AND FILLS

EXCAVATION AND FILLS

Sec. 65.010. Intent.

It is the intent of this chapter to ensure that any excavation or fill adjacent to public right-of-way or within a public easement, designated waterway, or floodplain overlay zone:

(a) Creates no imminent danger to public safety or public facilities; and

(b) Does not create a public nuisance known to common law or in equity jurisprudence.

(Prior Code, § 65.010; Ord. No. 69-79; Ord. No. 79-88)

Sec. 65.020. Definitions.

~~Except as the context otherwise specifically requires, as used in this Chapter:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Adjacent* or *adjoining* means within 25 feet horizontally from the edge of the easement or right-of-way described or a distance sufficient to protect the stability of a slope supporting a public facility, whichever is greater.

~~(b)~~ *Approved* means having the approval of the Director.

~~(c)~~*Approved discharge point* means a gutter, ditch, or receptacle approved by the Director ~~of public works~~ for the removal of stormwater.

~~(d)~~ *Backfill* means the replacement of removed earth to its original grade.

~~(e)*Director* means the Director of Public Works Director, or the Director's designee.~~

~~(f)~~*Drainage course* means any land surface, ditch, or other land feature which serves as a course for the transmission of surface water and stormwater.

~~(g)~~ *Excavation* means the mechanical disturbance or removal of earth material.

~~(h)~~ *Fill* means the deposit of earth placed by artificial means.

~~(i)~~ *Floodplain* has the meaning given in SRC chapter 601.

~~(j)~~ *Qualified engineer* means an engineer licensed in Oregon who, in the judgment of the Director, possesses the knowledge, experience, and ability to successfully design and oversee a project involving excavations or fills regulated by this chapter.

~~(k)~~ *Waterway* means any perennial river, stream, or creek within the City ~~of Salem~~ designated by the Director.

(Prior Code, § 65.020; Ord. No. 69-79; Ord. No. 95-79; Ord. No. 186-82; Ord. No. 79-88; Ord. No. 85-92; Ord. No. 31-13)

Sec. 65.030. Scope.

The scope of this chapter shall include the following items as they relate to excavations and fills regulated by this chapter:

(a) Under what circumstances permits are required and specific exclusions;

(b) Limitations imposed on excavations and fills;

(c) Surface and subsurface water drainage;

(d) Inspection of excavation and fill work before, during, and after completion; and

(e) Alternatives to the limitations set forth in this chapter.

(Prior Code, § 65.030; Ord. No. 69-79; Ord. No. 79-88)

Sec. 65.040. Excavations; permit required.

Permits shall be required and obtained from the Director for any excavation work adjoining or within a public right-of-way or adjoining or within an easement (or future right-of-way or easement) or within or adjoining a designated waterway or within a floodplain overlay zone.

(Prior Code, § 65.040; Ord. No. 69-79; Ord. No. 79-88)

Sec. 65.050. Prohibited excavations.

(a) Except as provided in this subsection and in SRC 65.080, no excavation shall leave a cut slope greater than two horizontal to one vertical.

EXCEPTION: Excavations may exceed this limitation when they are in conjunction with a building permit and the final grade after backfill will not exceed a 2:1 slope.

(b) Excavation within any recorded utility easement is prohibited without 48-hour notice to the utilities holding the easement and the Director ~~of public works of the City of Salem~~.

(c) Excavations, other than sand and gravel mining under a valid conditional use permit, are prohibited in floodplain overlay zones and waterways, except as provided in SRC 65.080 or when such excavations are done under a permit issued by the Oregon Division of State Lands.

(Prior Code, § 65.050; Ord. No. 69-79; Ord. No. 79-88)

Sec. 65.060. Fills; permit required.

A permit shall be required for the placement of any fill material adjoining or within a public right-of-way or easement (or future public right-of-way or easement) or within or adjacent to a designated waterway or within a floodplain overlay zone~~)~~.

(Prior Code, § 65.060; Ord. No. 69-79; Ord. No. 79-88)

Sec. 65.070. Prohibited fills; particular standards.

(a) No fill shall obstruct a natural drainage course unless provisions for an alternative drainage method are made and approved by the Oregon Division of State Lands and the Director.

(b) No fill shall be placed in a recorded or platted easement designated for public utilities without consent of the easement holder or, in the case of platted easements, the Director.

(c) Fills are prohibited in floodplain overlay zones and waterways, except as provided in SRC 65.080, SRC chapter 601, or when such fills are placed under a permit issued by the Oregon Division of State Lands.

(Prior Code, § 65.070; Ord. No. 69-79; Ord. No. 79-88; Ord. No. 31-13)

Sec. 65.080. Alternatives.

The limitations imposed in SRC 65.050 and 65.070 may be varied by the Director if a qualified engineer designs and oversees the prescribed work and provides the Director with all supportive data necessary to establish to his or her satisfaction that the alternative design provides equal or better safety, durability, and protection of adjacent property than compliance with the standards of SRC 65.050 and 65.070.

(Prior Code, § 65.080; Ord. No. 69-79; Ord. No. 79-88)

Sec. 65.090. Surface and subsurface drainage.

No excavation or fill shall create a slope causing surface drainage to flow over adjacent public or private property in a volume or location materially different from that which existed before the excavation or fill. Surface and subsurface drainage caused or affected by changing of grade or uncovering subsurface sources such as springs shall be collected by an approved means and carried to an approved discharge point.

(Prior Code, § 65.090; Ord. No. 69-79)

Sec. 65.100. Inspections.

The Director shall be notified at least 24 hours, but not more than 72 hours, prior to the commencement of any excavation or fill work requiring a permit under SRC 65.040 or 65.060. Inspection may occur at any time throughout the project. A work schedule may be required at the discretion of the Director when notice of such requirement is given at the time of the permit issuance. A final inspection is required of all fill work and an approved set of plans shall be provided to the inspector.

(Prior Code, § 65.100; Ord. No. 69-79; Ord. No. 79-88)

Sec. 65.110. Permit issuance.

An applicant will be required to complete an excavation and fill permit application provided by the Director. The form shall disclose or be accompanied by the following information:

(a) Identification of work as excavation or fill.

(b) Legal description of property involved.

(c) Identification of soil type if soil is to be removed from one location and placed in fills at another location.

(d) Each application for a permit under this section shall be accompanied by two sets of drawings. The minimum required shall be a plan view of the property drawn to suitable scale with the following:

(1) Lot lines shown and their dimensions given.

(2) North arrow.

(3) Street and curbline locations and elevations (if applicable).

(4) Both existing and final grades depicted by contour lines at two-foot intervals. Contours shall not be interpolated from U.S.G.S. contour maps.

(5) Intended method of proper stormwater drainage (if applicable).

(6) Recorded easement and right-of-way locations.

(e) The Director may require additional information on the plan view or require cross-section views. In addition, the Director may require additional data or studies necessary to evaluate the impact of the proposed work; and, in geologically hazardous areas, floodplain overlay zone or other unstable areas, may require a qualified engineer or engineering geologist's study and report, and may require the permittee to comply with any of the recommendations therein as a condition of the permit.

(f) The Director may require information such as the name and address of the permittee, property owner, owner's engineer, contractor, and other persons associated with the work.

(g) The application shall be accompanied by the written concurrence, in recordable form, of the holders of any private easements and rights-of-way affected by the proposed excavation or fill.

(h) The Director shall either issue or deny the permit, or notify the applicant that additional information is required pursuant to subsection (e) of this section. In the event that additional information is required, the Director shall either issue or deny the permit, or notify the applicant of what additional time will be necessary to review and evaluate the additional information submitted.

(i) In the event a permit is denied, the Director shall furnish the applicant with a written statement of the reasons therefor.

(Prior Code, § 65.110; Ord. No. 69-79; Ord. No. 79-88)

Sec. 65.120. Term and termination of permit.

Every permit issued by the Director under the provisions of this chapter shall expire by limitation and become null and void if the work authorized by such permit is not commenced within 180 days from the date of such permit, or if the work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced, a new permit shall be obtained and the fee therefor shall be one-half the amount required for a new permit for such work, provided no changes have been made or will

be made in the original plans for such work; and provided, further, that such suspension or abandonment has not exceeded one year.

(Prior Code, § 65.120; Ord. No. 69-79; Ord. No. 79-88)

Sec. 65.130. Suspension or revocation of permit; appeal.

The Director may, in writing, suspend or revoke a permit issued under the provisions of this chapter whenever it appears that:

(a) The permit was issued in error, and the applicant was not, in fact, on the basis of his or her application, entitled to the permit;

(b) The permit was issued on the basis of incorrect, incomplete, or misleading information supplied by the applicant;

(c) The work authorized by the permit is in violation of any applicable law or ordinance, including any provision requiring the applicant to obtain a license, registration, or additional permit; or

(d) The work being done under the permit is not in accordance with the approved plans, or is beyond the scope of work authorized by the permit as provided in SRC 65.140.

(Prior Code, § 65.130; Ord. No. 69-79; Ord. No. 79-88)

Sec. 65.140. Scope of work authorized by permit.

(a) The issuance of a permit under the provisions of this chapter shall be held to authorize work only in accordance with the provisions of this chapter, the approved plans, and work necessarily implied therefrom.

(b) The issuance of such a permit shall not be construed to be a permit for or approval of any violation of the provisions of this chapter, or any other applicable law or ordinance. The issuance of a permit based on submitted plans shall not thereafter prevent the Director from requiring the correction of errors or apparent violations contained therein, or from preventing operations being carried on thereunder when in violation of any applicable law or ordinance.

(Prior Code, § 65.140; Ord. No. 69-79; Ord. No. 79-88)

Sec. 65.150. Plan review and permit fees.

Every application for a plan review and for a permit required by this chapter shall be accompanied by a fee as prescribed by resolution of the ~~common~~ Council.

(Prior Code, § 65.150; Ord. No. 69-79; Ord. No. 51-91)

Sec. 65.160. Appeals.

Any person aggrieved by an action of the Director denying a permit, imposing conditions on a permit, revoking or suspending a permit, or disapproving an alternative offered pursuant to SRC 65.080, may appeal such action to the Hearings Officer, in the manner provided in SRC chapter 20J.

(Prior Code, § 65.160; Ord. No. 69-79; Ord. No. 79-88; Ord. No. 31-13)

Secs. 65.170—65.980. Reserved.

Sec. 65.990. Violations.

It shall be unlawful for any person to engage in, cause, suffer, or permit any work for which a permit is required under the provisions of this chapter without first obtaining such a permit, or while such permit is suspended or revoked. Violation of this ~~Chapter~~ section is an infraction.

(Prior Code, § 65.990; Ord. No. 69-79; Ord. No. 193-79)

CHAPTERS 66—69. RESERVED

Title VI

WASTEWATER, WATER AND STORMWATER

CHAPTER 70. UTILITIES*

***State law reference—**Municipal public utilities, ORS 225.010 et seq.; use of city right-of-way, ORS 221.415; regulation of public utilities, ORS 221.420; regulation of telecommunications carriers, ORS 221.505 et seq.; sale of city property, ORS 221.725, 221.727; regulation of utilities, ORS chs. 756—774.

GENERALLY

Sec. 70.001. Title.

Chapters 70 through 73 of the Salem Revised Code shall be known as the "Utility Code."

(Ord. No. 7-17, § 2(70.001), 6-12-2017)

Sec. 70.002. Intent and purpose.

The purpose of this this chapter is to authorize standards, charges, rates, and fees for the use of the City water, wastewater, and stormwater systems and streetlights, to regulate the use of the utilities, to provide a process for voluntary and involuntary discontinuance of service, to avoid those connections to the utilities that may be detrimental to the public and the utilities, and to provide for the collection of charges.

(Ord. No. 7-17, § 3(70.002), 6-12-2017)

Sec. 70.00~~1~~5. Definitions.

~~Unless the context otherwise specifically requires, as used in SRC chapters 70, 70A, 71, 72, 73, 74 and 75 the following mean:~~ The following words, terms and phrases, when used in SRC chapters 70 through 73, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*City* ~~means the City of Salem, Oregon.~~

~~(a)~~ *Best management practice (BMP)* means activities, prohibitions of practices, operational and maintenance procedures, structural facilities, or managerial practices or devices that, when used singly or in combination, prevent, reduce, or treat contamination in drainage water, prevent or reduce soil erosion, or prevent or reduce other adverse effects of drainage water on receiving waters. BMPs prescribed by the Director, whether or not adopted by ordinance, shall be the BMPs required for compliance with this Code.

Building drain means that part of the lowest horizontal piping of a building drainage system which receives the discharge from soil, waste, and other drainage pipes within or adjoining the building or structure and conveys the same to the building sanitary or storm sewer. The building drain is considered to end at a point five feet outside the established line of the building or structure.

Cooling water means water other than sewage or industrial waste which is used as a medium for carrying away excess heat from any apparatus, appliance, mechanism, device, or thing, and which, in the course of such cooling process, is not mixed or commingled with any other substance or used as a means of carrying off any other substance, in suspension or in solution, thereby exiting such cooling process in substantially the same condition, save for temperature as when it entered.

Defective sewer is any private or building wastewater collection system that:

(1) Fails a tightness test as described in SRC 73.080; or,

(2) Is built in such a way that existing pipe material, condition or installation is found unacceptable by the director; ~~or~~

(3) Fails to pass low air pressure test or hydrostatically. The test shall last 15 minutes; minimum test pressure shall be 3.5 pounds per square inch in either method. A new sewer shall have no loss when tested by either method. When tested, existing building sanitary sewers shall be tested for water tightness in the same manner as new building sanitary sewers except that a 50 percent loss of pressure will be allowed in the 15 minute test; ~~or,~~

(4) Exceeds a maximum allowable infiltration/inflow rate of more than 300 gallons per day per single detached living unit or 1,200 gallons per acre per day; or

(5) Is connected to any plumbing device which introduces stormwater into the sewer system.

Design storm event means the size of the storm event used to calculate runoff volumes and peak rates of discharge when designing stormwater facilities. The design storm event is the total inches of rainfall, distributed during a 24-hour period using a standard synthetic rainfall distribution identified as Type I-A by the Natural Resources Conservation Service.

~~(b) *Director* means the City Manager, or the department director charged by the City Manager with the implementation and enforcement of this chapter, or that department director's designee.~~

Drainage waste means stormwater, groundwater, surface drainage, subsurface drainage, spring water, well overflow, roof drainage, or other like drainage other than sewage or industrial waste.

Extraneous water means water entering a building wastewater system from any source except that domestic sewage is not considered extraneous water.

~~(j)~~*Fire protection service* means an unmetered connection to the public water mains intended only for the extinguishment of fires and the flushing necessary for its proper maintenance.

~~(k)~~ *Flow control facility* means a stormwater facility designed to control the flow rate, flow volume, or flow duration of drainage water.

~~(l)~~*Green stormwater infrastructure* means a stormwater facility that mimics natural surface hydrologic functions through infiltration or evapotranspiration, or that involves stormwater reuse.

~~(m)~~ *Ground disturbing activity* means any activity that exposes earth material through the use of mechanical equipment.

~~(n)~~ *Illicit connection* means any drain or conveyance system that results in a discharge to a stormwater system or receiving water that is not entirely drainage water.

~~(o)~~ *Impervious surface* means any surface exposed to rainwater from which most water runs off.

~~(p)~~ *Improved premises* means a unit or units of land containing improvements, such as a parking lot, building or structure, that is connected to a City utility, including stormwater, sewer, or water utilities. Improved premises does not include a unit of land that has no improvements and is connected only to the City water utility for irrigation purposes only.

~~(q)~~ *Large project* means a project including 10,000 square feet or more of new impervious surface or replaced impervious surface, individually or combined, or 10,000 square feet or more of ground disturbing activity.

~~(r)~~*Maximum extent feasible* means the extent to which a requirement or standard must be complied with as constrained by the physical limitations of the site, practical considerations of engineering design, and reasonable considerations of financial costs and environmental impacts.

~~(c)~~*Line* means a pipe connecting a meter to a building's plumbing system.

~~(t)~~*Pollutant* means any substance that affects, or has the potential to affect, water quality in a manner that is detrimental to human health or safety or to the environment.

~~(u)~~ *Pollution generating activity* means any activity conducted outside with the potential of releasing pollutants into the public stormwater system, a private stormwater system, or receiving waters, and for which source controls may be prescribed.

~~(v)~~ *Postdevelopment* means the conditions that reasonably may be expected or anticipated to exist after completion of development activity on a site.

~~(w)~~ ~~*Predevelopment*~~ means the conditions on a site in its natural, undeveloped state, generally characterized by a mixture of trees, brush, weeds, and grass, and which is used to determine the allowable post-development discharge peak rates and flow volumes.

~~(d) *Person* means an individual, corporation, limited liability company, sole proprietorship, association, partnership, trust, cooperative, governmental unit, estate, or any other entity in law or fact.~~

~~(e)~~*Private stormwater facility* means any facility that is not owned or operated by the City that has been installed or constructed for the purpose of removing pollutants from stormwater, or for controlling the discharge flow rate, flow duration, or flow quantity of stormwater.

~~(y)~~ *Private wastewater collection system* means a privately owned wastewater collection system installed on provate property that is not controlled by or under the jurisdiction of the City.

~~(z)~~ *Project* means ground disturbing activity, or the addition or replacement of impervious surface.

~~(aa)~~ *Receiving water* means the surface water, groundwater, or wetland receiving any discharge of drainage water or pollutants.

~~(bb)~~ *Replaced impervious surface* means the removal of impervious surface down to earth material and replacement with new impervious surface. Replacement does not include repair or maintenance activities on structures, paved surfaces, or facilities taken to prevent decline, lapse, or cessation in the use of the existing impervious surfaces as long as no additional hydrologic impact results from the repair or maintenance activity.

~~(cc)~~ *Service lateral* means a pipe connecting a water, wastewater, or stormwater main to a facility's water, wastewater, or stormwater system.

~~(dd)~~ *Sewage* means the wastewater derived from human habitation and use of buildings for domestic, commercial, institutional, or industrial purpose and free from drainage waste.

~~(ee)~~ *Single family residential project* means the construction of one single family dwelling or two attached single family dwellings on a single existing unit of land that is zoned Single Family Residential (RS) where the total new and replaced impervious surface is 1,300 square feet or more, but less than 10,000 square feet.

~~(ff)~~ *Site* means a unit of land, or portions of street, highway, or other right-of-way, or contiguous combination thereof, where a project is proposed or performed.

~~(gg)~~ *Source controls* means structures or operations that minimize or prevent pollutants from coming in contact with drainage water through physical separation or management of activities.

~~(hh)~~ *Stormwater* means that portion of precipitation and snowmelt that does not naturally percolate into the ground or evaporate, but flows into receiving water by overland flow, interflow, pipes, and other features of a stormwater system.

~~(ii)~~ *Stormwater facility* means a facility designed to control the flow rate, flow volume, or flow duration of drainage water, or a facility designed to remove pollutants from drainage water.

~~(jj)~~ *Streetlight system* means a system of streetlights, poles, fixtures, ancillary equipment, located within the City~~ of Salem~~, and the provision of electricity therefor, owned or operated by the City~~ of Salem~~, and the City's provision of electricity for streetlight systems owned for private utilities.

~~(kk)~~ *Stormwater system* means all stormwater facilities and improvements such as catch basins, curbs, gutters, ditches, manmade channels, and storm drains, that collect, convey, or control the flow of drainage water or remove pollutants from drainage water.

~~(ll)~~ *Treatment facility* means a stormwater facility designed to remove pollutants from drainage water.

~~(mm)~~ *User* means any person using the City public water, wastewater, streetlight, or stormwater system.

~~(f) *Service lateral* means a pipe connecting a water main to the water meter and water main; a pipe connecting a sewer main to the building's sanitary sewer or storm sewer.~~

~~(g)~~ *Utility Code* means SRC chapters 70~~,~~**~~70A,~~** ~~71, 72, 73, 74, and~~ through 75.

~~(h)~~ *Utility service* means water service, wastewater service, stormwater service, streetlight service or any combination of services, provided by the City to customers of the City's water, wastewater, streetlight and stormwater systems.

~~(oo)~~ *Utility system* means the City's public water, wastewater, stormwater, and streetlight systems.

~~(pp)~~ *Wastewater* means all sewage and industrial wastes, treated or untreated, discharged to a collection system.

~~(i)~~ *Water main* means a pipe two inches or larger inside the diameter, installed in a public right-of-way or an easement, to which a service lateral is connected.

~~(qq)~~ *Water, wastewater, and stormwater main* means a pipe installed in a public right-of-way or an easement, to which a service lateral is connected.

(Prior Code, § 70.001; Ord. No. 73-07; Ord. No. 31-09; Ord. No. 31-10; Ord. No. 35-12; Ord. No. 7-17, § 1(70.005), 6-12-2017)

Sec. 70.010. Authorization.

The ~~Department of~~ Public Works Department shall be responsible for extension, operation and maintenance of utility systems for the City ~~of Salem~~.

(Prior Code, § 70.010; Ord. No. 17-77; Ord. No. 30-97; Ord. No. 73-07; Ord. No. 7-17, § 4(70.010), 6-12-2017)

Sec. 70.015. Master plans.

The Director shall prepare and update master plans for the expansion, construction, or reconstruction of the water, wastewater and stormwater systems. All construction of the water, wastewater and stormwater systems shall be in general conformance to the master plans. Master plans shall cover the expected service areas for the water, wastewater and stormwater systems, and shall include those portions of the systems outside the corporate limits of the City. Master plans shall be updated from time to time as circumstances change.

(Prior Code, § 70.015; Ord. No. 17-77; Ord. No. 73-07)

Secs. 70.020, 70.030. Reserved.

Sec. 70.040. Service areas.

For the purposes of requiring conformance to a master plan, the service area shall be that area within the urban growth boundary so designated by the ~~City~~ Council. Any jurisdiction outside the City that is supplied with utility service by the City shall conform to the appropriate master plan in construction of its facilities.

(Prior Code, § 70.040; Ord. No. 17-77; Ord. No. 51-96; Ord. No. 73-07; Ord. No. 7-17, § 5(70.040), 6-12-2017)

Sec. 70.050. Authority to prescribe standards.

The Director shall have authority to prescribe standards of design, main sizing, materials, and workmanship consistent with established engineering and construction practice, which shall be applicable to all public and private water, wastewater and stormwater systems becoming a part of, or connected to, the water, wastewater and stormwater systems.

(Prior Code, § 70.050; Ord. No. 17-77; Ord. No. 73-07)

Sec. 70.060. Administration; rulemaking.

The Director shall administer and enforce the provisions of the Utility Code and shall have the authority to render written and oral interpretations, to adopt administrative rules and procedures governing use, operations and management of the water, wastewater and stormwater utilities.

(Prior Code, § 70.060; Ord. No. 17-77; Ord. No. 73-07; Ord. No. 31-09; Ord. No. 31-10; Ord. No. 7-17, § 6(70.060), 6-12-2017)

Sec. 70.065. Authority to develop and implement grant programs.

The Director shall have the authority to develop and administer grant programs that will protect and preserve natural areas as a benefit to the City's watershed and stormwater system, encourage water conservation, reduce

inflow and infiltration into the wastewater system, or other specific programs that, in the opinion of the Director, will enhance the health and safety of the community and the environment. The Director shall develop and publish administrative procedures for submitting and evaluating grant proposals. Individual or categorical grant awards shall be made by the Director.

(Ord. No. 7-17, § 7(70.065), 6-12-2017)

Sec. 70.070. Construction permits.

Any person constructing a water, wastewater, or stormwater facility located in a public street or easement, or which will attach to the water, wastewater or stormwater systems, shall obtain a permit pursuant to SRC 77.090--77.130.

(Prior Code, § 70.070; Ord. No. 17-77; Ord. No. 73-07)

Sec. 70.072. Approval of plans.

Plans for all public and private water, wastewater, and stormwater systems shall be reviewed and approved by the Director prior to construction. Such plans shall conform to the respective water, wastewater, or stormwater master plan and standards prescribed by the Director. Such approval shall be required in addition to any other approval required by state law.

(Ord. No. 7-17, § 8(70.072), 6-12-2017)

Sec. 70.074. Construction to conform to standards.

All public or private water distribution, wastewater collection, and stormwater systems to be connected to the municipal system, whether publicly or privately constructed, shall conform to standards of design, sizing, materials, and workmanship prescribed by the Director. Failure to meet standards shall be grounds for refusal of acceptance. Service connections will not be made until the system is approved and accepted.

(Ord. No. 7-17, § 9(70.074), 6-12-2017)

Sec. 70.076. Inspection and approval of construction.

Reasonable notice shall be given to the Director to inspect and test all work in connection with the construction or reconstruction of any water, wastewater, or stormwater system to be connected to the public system. All work must be completed according to the standards of design, materials, and workmanship prescribed by, and subject to the approval of the Director.

(Ord. No. 7-17, § 10(70.076), 6-12-2017)

Sec. 70.080. Ownership of privately constructed lines.

All public water mains, wastewater mains, and stormwater conveyance facilities, which are privately constructed within public rights-of-way or easements, connected to the water, wastewater, or stormwater systems, and accepted by the Director for city maintenance shall be deemed dedicated to public use and a part of the water, wastewater, and stormwater systems.

(Prior Code, § 70.080; Ord. No. 17-77; Ord. No. 30-97; Ord. No. 73-07; Ord. No. 7-17, § 11(70.080), 6-12-2017)

Sec. 70.090. Reserved.

Sec. 70.100. Private stormwater, wastewater and water systems.

A private stormwater, wastewater or water system may be approved by the Director when the following conditions are met:

(a) The system will only serve:

(1) Developments in commercially and industrially zoned partitions or subdivisions, or

(2) Multi-building developments located on a single lot or parcel; ~~and~~

(b) Each building under separate ownership in the commercially and industrially zoned partition or subdivision will have a separate water meter and monitoring manhole. The Director may grant exceptions to the requirement for monitoring manholes if the responsible party shows that the proposed uses will not have any likelihood of discharging hazardous or illegal materials; ~~and~~

(c) An agreement is executed by the property owner and recorded against each parcel or lot indicating that the systems serving the property are private; that the City has no responsibility to maintain the systems; that the systems will not be accepted by the City unless the systems are proven by the applicant to conform to the standards of the ~~Department of~~ Public Works Department; that grants the City a perpetual right of access to read and maintain the meters, inspect the lines from the meters or manholes back to the public mains and that the property owners have assumed responsibility for any repairs required for the City; ~~and~~

(d) The public wastewater and water lines and stormwater conveyance facilities necessary to serve adjacent properties and to provide other needed links in the overall collection or distribution systems are provided; ~~and~~

(e) If the system is a private water system, water from the system cannot be submetered or resold to other parties; and

(f) If the system is a private water system, the water lines will conform to the water distribution standards of the City.

(Prior Code, § 70.100; Ord. No. 123-87; Ord. No. 73-07; Ord. No. 31-10; Ord. No. 7-17, § 12(70.100), 6-12-2017)

Sec. 70.110. Reserved.

Sec. 70.117. Operation, maintenance, and inspection of private stormwater facilities.

Any person owning, operating, or occupying property on which a private stormwater facility was constructed after January 1, 2011, shall:

(a) Maintain the stormwater facility so that it is in proper operation for effective pollutant removal, infiltration, and/or flow control; ~~and~~

(b) Periodically inspect the stormwater facility to ensure the facility is in proper operation for effective pollutant removal, infiltration, and/or flow control; ~~and~~

(c) Maintain a record of the construction of, and all maintenance and repair activities to, the stormwater facility; ~~and~~

(d) Make plans, records, procedures, and schedules of maintenance available to the Director during inspection of the stormwater facility, and at other reasonable times upon request of the Director; ~~and~~

(e) If a change of ownership occurs, transfer all records of installation, repair, and maintenance of the stormwater facility to the new property owner; and

(f) Inform future purchasers and other successors and assignees of:

(1) The existence of the stormwater facility; and

(2) The requirements for continued inspection and maintenance of the stormwater facility.

(Prior Code, § 70.117; Ord. No. 35-12)

Sec. 70.120. Inspections.

(a) When the Director deems it necessary to make an inspection to enforce the Utility Code, or when the Director has reasonable cause to believe a condition exists on a property that is in violation of the Utility Code, the Director may, in accordance with this section, enter the property at reasonable times to make inspections or to perform other duties imposed under the Utility Code.

(b) If the property is occupied, the Director shall first present the Director's credentials to the occupant and request entry. If entry is refused, the Director may seek to obtain permission from any other person entitled to lawful possession of the property, or obtain an administrative search warrant from the municipal or circuit court.

(c) If the property is unoccupied, the Director shall first make a reasonable effort to locate the owner or other person with control of the property and request entry. If the Director is unable, after making a reasonable effort, to locate the owner or other person with control of the property, or if entry is refused by the owner or other person with control of the property, the Director shall obtain an administrative search warrant from the municipal or circuit court.

(Prior Code, § 70.120; Ord. No. 35-12; Ord. No. 7-17, § 13(70.120), 6-12-2017)

Secs. 70.130—70.190. Reserved.

Sec. 70.200. Utility service rates, fees and charges.

Rates, fees and other charges for utility service, including, but not limited to, delinquency fees, reinstatement fees, and any other account fees, shall be set by resolution of the ~~City~~ Council.

(Prior Code, § 70.200; Ord. No. 31-09)

Sec. 70.205. Utility billing program.

~~(a)~~ The Director shall adopt rules for the administration of the City's utility billing program. The rules shall include, but are not limited to, provisions for:

(1) Utility account set-up and conditions of service;

(2) Account responsibility;

(3) Billing procedures, due dates, delinquent accounts, and collections;

(4) Billing errors and adjustment of utility bills;

(5) Stormwater utility credits; and

(6) Hearings on disputed bills.

(Ord. No. 7-17, § 14(70.205), 6-12-2017)

Sec. 70.210. Application for utility service; condition of service.

(a) A person desiring utility service shall provide any information deemed necessary by the Director to establish an account or to ensure the identity of the account holder. Personal identifying information shall not be disclosed, except as is otherwise required by Oregon law.

(b) Every person, as a condition of receiving utility service, shall agree to comply with all ordinances, laws, rules, and regulations related to such service.

(Prior Code, § 70.210; Ord. No. 31-09; Ord. No. 31-10; Ord. No. 7-17, § 15(70.210), 6-12-2017)

Sec. 70.220. Applicant responsible for bills.

(a) Except as otherwise provided in this Utility Code, payment of utility bills shall be the responsibility of the account holder. The account holder may be the owner, tenant, agent, or other authorized representative responsible for occupancy of the premises who made application for utility service.

(b) In the event the account holder is not the owner of the property for which utility service is being provided, the property owner may be held responsible for the account balance, past due amounts, charges, and fees related to the account if, within 30 days from the date the payment is due on the account, the City provides written notice of the delinquent status to the tenant and sends a copy of the notice by first class mail to the property owner at the last known address of the owner or owner's agent that is on file with the Director.

(c) Unless another person has agreed in writing to pay all or a portion of the utility bill, and a copy of that writing is filed with the City, the account holder shall pay all utility charges, including any administrative fees. If there is no water service to the property or if water service is discontinued, the person(s) having the right to possess the property shall pay the stormwater utility charges and streetlight charges and any administrative fees.

(d) For properties with a history of delinquent utility accounts, meaning one or more accounts in delinquent status within the past five years, the Director may require the owner of the property to submit a written statement

indicating the owner agrees to be responsible for payment of future utility bills for the property as a condition of service.

(Prior Code, § 70.220; Ord. No. 31-09; Ord. No. 31-10; Ord. No. 5-15; Ord. No. 7-17, § 16(70.220), 6-12-2017)

State law reference—Utility service payments for rental properties, ORS 90.315.

Sec. 70.230. Billing.

(a) All billings for utility service shall be made monthly, based upon the rate resolution established by ~~City~~ Council.

(b) Administrative services charges, which include, but are not limited to, activation fees, reactivation fees, suspension fees, fees for tampering with or bypassing water meters, locking devices, or otherwise interfering with any City equipment, or any other fees and charges may be charged to the customer's account and included in the monthly billing.

(Prior Code, § 70.230; Ord. No. 31-09; Ord. No. 31-10)

Sec. 70.245. Application of payments~~, how applied~~.

Payments shall be first credited to the oldest balance on the account. Customers cannot specify which charges the payment covers.

(Prior Code, § 70.245; Ord. No. 31-10; Ord. No. 5-15; Ord. No. 7-17, § 18(70.245), 6-12-2017)

Sec. 70.250. Delinquent accounts.

(a) When a person's account is delinquent, the person will be provided a notice of delinquency by electronic communications or first class mail and given no fewer than seven calendar days in which to make payment or request a hearing as provided in SRC 70.260. If payment is not received or a hearing requested by the due date shown in the notice of delinquency, the user will be provided a notice of discontinuation of services by electronic communication or first class mail, stating that service to the premises will be discontinued if payment is not received within five days from the date set forth in the notice of discontinuation of service.

(b) Water service may be discontinued to users having delinquent wastewater, stormwater, streetlight, or administrative service charges, when in the judgment of the Director such action is necessary to enforce collection of such delinquent amounts.

(c) Unless other arrangements have been approved by the Director under subsection (d) of this section, service shall not be reinstated until the delinquent account, including all user fees and account fees, have been paid in full.

(d) If the Director finds that the public's interest can be protected and, at the same time, an undue financial burden on the user can be reduced, the Director may accept a payment arrangement for delinquent user charges, and may adjust account fees as appropriate under the circumstances.

(Prior Code, § 70.250; Ord. No. 31-09; Ord. No. 31-10; Ord. No. 5-15; Ord. No. 7-17, § 19(70.250), 6-12-2017)

Sec. 70.280. Denial of utility service.

(a) Utility service may be denied to any person for one or more of the following reasons:

(1) The person has an unpaid utility bill or account fees at the current or another address;

(2) The person tampered with or bypassed water meters, locking devices, or otherwise interfered with any City equipment; or

(3) The person fails to provide adequate personal identifying information, including a valid lease or rental contract, to establish a new account or to resume utility service where service has been disconnected.

(b) Utility service may be denied to any property owner and subsequent tenant of the property owner, if a former tenant at the property has:

(1) An unpaid water bill or account fee, tampered with or bypassed water meters, locking devices, or otherwise interfered with any City equipment; and

(2) If, within 30 days from the date the payment was due on the account, the City provided written notice of the delinquent status to the tenant and sent a copy of the notice by first class mail to the property owner at the last known address of the owner or owner's agent that is on file with the Director.

(c) Upon rectification of the cause of the denial of service by the person or property owner and paying any past due amounts, and account fees, service may be reinstated.

(Prior Code, § 70.280; Ord. No. 31-09; Ord. No. 7-17, § 22(70.280), 6-12-2017)

Sec. 70.290. Adjustment of bills.

(a) The Director may authorize the adjustment of a utility bill when a billing error has occurred. Adjustments shall not be made for a period greater than ten years from the date the Director received notice of the error. Notwithstanding any other provision in this subsection, eligibility to receive an adjustment on an account shall terminate six months after the date a final bill was issued for that account.

(b) A person who receives a back billing or a delayed billing will be offered the opportunity to pay the balance due over a period of time determined by the Director.

(Prior Code, § 70.290; Ord. No. 31-09; Ord. No. 31-10; Ord. No. 7-17, § 23(70.290), 6-12-2017)

Sec. 70.295. Disposition of utility funds.

All funds derived from the collection of utility service charges shall be credited to the Utilities Fund. All funds derived from the collection of the streetlight fee shall be to the Streetlight Fund.

(Prior Code, § 70.295; Ord. No. 31-09; Ord. No. 7-17, § 24(70.295), 6-12-2017)

Sec. 70.300. Water, wastewater, and stormwater utility franchise fee.

(a) For the right and privilege to place, lay, maintain and operate in, upon and under the streets, alleys, public highways, and other public places a water, wastewater and stormwater system, there shall be annually charged to and collected from the Utilities Fund established pursuant to SRC 70.295 an amount equal to five percent of the gross revenues derived from utility service charges collected inside the City, the cost of which may be passed along to the customer.

(b) The payment of the franchise fee set forth in subsection (a) of this section shall be made periodically, but not less than annually, by transferring the appropriate sum of moneys from the Utilities Fund established pursuant to SRC 70.295 to the general fund.

(c) City owned or operated streetlights are not subject to the fee established in this section.

(Prior Code, § 70.300; Ord. No. 64-90; Ord. No. 27-91; Ord. No. 76-94; Ord. No. 59-99; Ord. No. 73-07; Ord. No. 31-09; Ord. No. 5-15; Ord. No. 7-17, § 25(70.300), 6-12-2017)

Sec. 70.310. Stormwater credits.

The Director is authorized to implement and administer a program to allow customers to reduce their stormwater charges through the installation of approved stormwater management facilities.

(Prior Code, § 70.310; Ord. No. 31-10; Ord. No. 7-17, § 26(70.310), 6-12-2017)

Sec. 70.320. Falsifying information.

No person shall knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to the Utility Code, or falsify, tamper with, or knowingly render inaccurate any monitoring device or method required under the Utility Code.

(Ord. No. 7-17, § 27(70.320), 6-12-2017)

Sec. 70.330. Appeals.

Any person adversely affected by any decision, action, determination, or order, made by the Director interpreting or implementing the provisions of the Utility Code may appeal to the Hearings Officer as set forth in

SRC chapter 20J, and such appeal shall be initiated by filing a notice of intent to appeal, along with an appeal fee as may be established by City Council, with the City Recorder within ~~fifteen~~15 business days after notice of the Director's final decision has been sent. The notice of appeal shall satisfy the requirements of SRC chapter 20J, and the appeal shall proceed as a contested case under the procedures established in SRC chapter 20J. Unless otherwise stayed by order of the Hearings Officer, the Director's decision, action determination or order, shall remain in effect during the pendency of the appeal to the Hearings Officer.

(Ord. No. 7-17, § 28(70.330), 6-12-2017)

Sec. 70.340. Civil penalties.

Any person who is found to have violated an order of the Director, or who willfully or negligently failed to comply with any provision of the Utility Code, and the orders, rules, and regulations issued hereunder, shall forfeit and pay not more than $1,000.00 for each offense as determined by the Hearings Officer. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense.

(Ord. No. 7-17, § 29(70.340), 6-12-2017)

Sec. 70.350. Violations.

Violation of any provision of the Utility Code, in addition to any civil forfeitures, shall be an infraction.

(Ord. No. 7-17, § 30(70.350), 6-12-2017)

CHAPTER 70A. STREETLIGHTS

Sec. 70A.005. Streetlight fee established.

A streetlight fee is hereby created and imposed on the owner, tenant, agent, or other authorized representative responsible for occupancy of an improved premises, in an amount set by resolution of the ~~City~~ Council. The streetlight fee is based on the direct and indirect use of or benefit from the provision and use of the City's street lighting and is not a property tax, and is not subject to the limitations of article XI, section 11 of the Oregon Constitution. The obligation to pay a streetlight fee arises when a person receives the direct or indirect benefit of streetlights. It is presumed that the benefit of streetlights is received whenever there is an improved premises, regardless of whether streetlights are immediately adjacent to the premises.

(Prior Code, § 70A.005; Ord. No. 5-15)

Sec. 70A.010. Purpose.

The purpose of this chapter is to establish standards for the design and installation of streetlights, and to offset the cost of providing a streetlight system for the benefit of the public.

(Prior Code, § 70A.010; Ord. No. 5-15)

Sec. 70A.030. Approval of plans and conformance to standards.

(a) Plans for all streetlights shall be reviewed and approved by the Director prior to construction. Such plans shall conform to standards prescribed by the Director. Such approval shall be required in addition to any other approvals required by law.

(b) Streetlights shall conform to standards of design, material, and workmanship prescribed by the Director.

(Prior Code, § 70A.030; Ord. No. 5-15)

Sec. 70A.040. Streetlight rates, fees and charges.

Rates, fees and other charges for the provision of streetlights shall be set by resolution of the ~~City~~ Council.

(Prior Code, § 70A.040; Ord. No. 5-15)

Sec. 70A.050. Billing.

(a) A streetlight fee shall be billed to and collected from the owner, tenant, agent, or other authorized representative responsible for occupancy of an improved premises.

(b) A streetlight fee shall be included and separately identified in a utility billing statement for an improved premises, if one exists, and shall be due and payable on the same schedule as that set for the statement. Payments on the utility billing statement shall be applied in a priority consistent with SRC 70.245.

(Prior Code, § 70A.050; Ord. No. 5-15; Ord. No. 7-17, § 33(70A.050), 6-12-2017)

Sec. 70A.060. Disposition of streetlight funds.

All funds derived from the collection of the streetlight fee shall be credited to the Streetlight Fund. Funds may be expended for the administration, construction, operation, maintenance, replacement, payment of principal and interest of any bonds issued or other debt instrument, and other expenses related to the streetlight system.

(Prior Code, § 70A.060; Ord. No. 5-15)

CHAPTER 71. STORMWATER

Sec. 71.001. Objectives.

The objectives of this chapter are to:

(a) ~~To~~ Establish requirements for discharges into stormwater systems, receiving waters, and the environment;

(b) ~~To~~ Protect, to the greatest extent practicable, life, property, receiving waters, aquatic life, and the environment from loss, injury, degradation, or damage by pollution, erosion, low flows, excessive flows, flooding, landslides, and other potential hazards, whether from natural causes or from human activity;

(c) ~~To~~ Protect the public stormwater system from damage;

(d) ~~To~~ Meet the requirements of state and federal law and the City's National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater Permit;

(e) ~~To~~ Implement site-specific practices, including using green stormwater infrastructure, to mimic natural hydrologic functions as much as practicable.

(Prior Code, § 71.001; Ord. No. 28-13)

Sec. 71.015. More stringent or additional best management practices ~~required~~.

(a) The Director is authorized to issue an order requiring more stringent or additional best management practices if:

(1) A discharge to a public stormwater system, a private stormwater system, or a receiving water cannot be adequately addressed by the required best management practices, and the discharge:

(~~1~~A) Exceeded, exceeds, or will exceed water quality standards; or

(~~2~~B) Caused or contributed, is causing or contributing, or will cause or contribute to a prohibited discharge or a known or likely violation of water quality standards in the receiving water or a known or likely violation of the City's NPDES municipal stormwater permit.

(b) An order issued by the Director may be appealed to the Hearings Officer pursuant to SRC chapter 20J.

(Prior Code, § 71.015; Ord. No. 28-13; Ord. No. 7-17, § 36(71.015), 6-12-2017)

Sec. 71.025. Fee-in-lieu of construction.

(a) The Director may allow a developer to enter into a voluntary agreement with the City for the payment of a fee-in-lieu of constructing a stormwater facility as required by this chapter if the Director has determined that such an agreement is in the public interest. This determination shall consider the feasibility of constructing the stormwater facility on the site; the costs associated with construction, operations, and maintenance of the stormwater facility; and the benefits provided by the stormwater facility in terms of accomplishing the purposes of this chapter. In no event shall the Director allow a developer to enter into a fee-in-lieu agreement with the City if the resulting post-development conditions could result in a violation of the City's NPDES municipal stormwater permit.

(b) The payment can be used to fund all or a portion of the cost of planning, designing, acquiring land for, or constructing:

(1) An existing public stormwater facility that has been determined by the Director to have excess capacity available to meet the applicable performance standards for the drainage water from the site; or

(2) A new public stormwater facility that will be constructed in the future and which has been determined by the Director to have excess capacity available to meet the applicable performance standard for the drainage water from the site.

(c) The Director may require the developer to complete an engineering analysis to evaluate the available excess capacity in an existing public stormwater facility.

(d) No building permits for any structures within the site subject to the condition of development approval will be issued until the fee-in-lieu is paid.

(e) The ~~Director of~~ Finance ~~Director~~ Officer shall deposit the fee-in-lieu into a trust and agency account.

(f) An agreement to pay a fee-in-lieu of construction shall be in a form approved by the City Attorney and recorded in the deed records of the appropriate county. The agreement to pay a fee-in-lieu of construction shall not result in an assessment upon or lien against real property, and the fee-in-lieu collected by the City from an applicant are not taxes subject to the property tax limitations of article XI, section 11(b) of the Oregon Constitution.

(Prior Code, § 71.025; Ord. No. 28-13; Ord. No. 7-17, § 38(71.025), 6-12-2017)

Sec. 71.030. Fee-in-lieu amount.

The fee-in-lieu amount shall be in accordance with a fee schedule approved by ~~City~~ Council and will be based on 100 percent of the average cost of constructing an equivalent stormwater facility.

(Prior Code, § 71.030; Ord. No. 28-13)

Sec. 71.035. Compliance with other laws.

(a) The requirements of this chapter, and any rules adopted pursuant hereto, do not replace, repeal, abrogate, supersede, or affect other more stringent law, requirements, rules, regulations, covenants, standards, or restrictions. Where this chapter imposes requirements that are more protective of human health or the environment than those established elsewhere, the provisions of this chapter shall prevail. When this chapter imposes requirements that are less protective of human health or the environment than those established elsewhere, the provisions of the more protective requirements shall prevail.

(b) Approvals and permits granted under this chapter are not waivers of the requirements of any other laws, nor do they indicate compliance with any other laws. Compliance is still required with all applicable federal, state, and local laws and regulations, including rules promulgated under authority of this chapter.

(Prior Code, § 71.035; Ord. No. 28-13)

Sec. 71.040. City not liable.

(a) Nothing contained in this chapter is intended to be nor shall be construed to create or form the basis for any claim, action, or liability against officers, employees or agents of the City for any injury or damage resulting from the failure of responsible parties to comply with the provisions of this chapter, or by reason or in consequence of any inspection, notice, order, certificate, permission, or approval authorized or issued or done in connection with the implementation or enforcement of this chapter, or by reason of any action or inaction on the part of the City related in any manner to the enforcement of this chapter by its officers, employees, or agents.

(b) Nothing in this chapter shall impose any liability on the City or any of its officers or employees for cleanup or any harm relating to sites containing hazardous materials, wastes, or polluted soil.

(Prior Code, § 71.040; Ord. No. 28-13)

Sec. 71.045. Applicability.

This chapter applies to:

(a) All projects, whether or not a permit is required;

(b) All discharges directly or indirectly to the public stormwater system or to a private stormwater system;

(c) All discharges directly or indirectly into receiving waters within or contiguous to the City's corporate limits;

(d) All new and existing land uses;

(e) All real property; and

(f) All persons owning, engaging in any activity on, or occupying property even where no project is occurring.

(Prior Code, § 71.045; Ord. No. 28-13)

Sec. 71.050. Prohibited discharges.

(a) Except as provided in SRC 71.055, no person shall discharge, directly or indirectly, any pollutant into the public stormwater system, a private stormwater system, or receiving water located within or contiguous to the City's corporate limits.

(b) A violation of this section is an infraction.

(Prior Code, § 71.050; Ord. No. 28-13)

Sec. 71.055. Permissible discharges.

(a) Discharges from the following sources and activities are allowed unless the discharge, singly or in combination with other discharges, causes or contributes to a violation of the NPDES municipal stormwater permit; to a violation of a waste load allocation contained in a total maximum daily load approved by the EPA; or to a violation of a city, state, or federal regulation; or to endangerment of public health, safety or welfare, the environment, or public or private property:

(1) Water line flushing;

(2) Landscape irrigation;

(3) Diverted stream flows;

(4) Rising groundwater;

(5) Unpolluted groundwater infiltration;

(6) Unpolluted pumped groundwater;

(7) Potable water sources;

(8) Start-up flushing of groundwater wells;

(9) Potable groundwater monitoring wells;

(10) Draining and flushing of municipal potable water storage reservoirs;

(11) Foundation drains;

(12) Air conditioning condensate;

(13) Irrigation water;

(14) Springs;

(15) Water from crawl space pumps;

(16) Footing drains;

(17) Lawn watering;

(18) Individual residential car washing;

(19) Charity car washing;

(20) Flows from riparian habitats and wetlands;

(21) Dechlorinated swimming pool water;

(22) Street washwater;

(23) Dye testing of water, wastewater, or stormwater systems;

(24) Treated water from investigation, removal, and remedial actions selected or approved by the DEQ pursuant to ~~Oregon Revised Statutes (~~ORS~~)~~ ch. 465;

(25) Flows from emergency firefighting activities;

(26) Flows from a private stormwater system conveyed pursuant to, and in compliance with, a DEQ-approved NPDES permit;

(27) Flows conveyed pursuant to, and in compliance with, a DEQ-approved NPDES permit, and which are in compliance with all applicable City permits and approvals.

(b) Notwithstanding subsection (a) of this section, permissible discharges may be subject to additional controls, best management practices, or other conditions as established in administrative rules.

(Prior Code, § 71.055; Ord. No. 28-13)

Sec. 71.060. Report of discharges of pollutants.

(a) Any person owning, engaging in any activity on, or occupying real property shall report the discharge of any pollutant from that property to the Public Works Department if the discharge has introduced, or is likely to introduce, a pollutant into the public stormwater system, a private stormwater system, or receiving water. The report shall be made at the earliest possible time, but in no case later than 24 hours after discovery of the discharge. Reporting pursuant to this section is in addition to, and not in lieu of, any other reporting requirements imposed by federal, state, or local laws.

(b) A failure to report a discharge under subsection (a) of this section is an infraction.

(Prior Code, § 71.060; Ord. No. 28-13; Ord. No. 7-17, § 39(71.060), 6-12-2017)

Sec. 71.065. Requirements for all property.

Any person owning, engaging in any activity on, or occupying property shall implement and maintain best management practices to prevent pollutants from leaving the property and entering into a stormwater system or receiving water. Best management practices include, but are not limited to:

(a) Identifying and eliminating illicit connections to the public stormwater system or a private stormwater system;

(b) Disposing of fluids and wastes in a manner that minimizes the risk of contaminating stormwater;

(c) Storing solid wastes in a manner that minimizes the risk of contaminating stormwater; and

(d) Undertaking measures to prevent spills of pollutants and to properly cleanup spills that may occur.

(Prior Code, § 71.065; Ord. No. 28-13)

Sec. 71.070. Additional source controls ~~required~~.

Sites at which pollution generating activity is conducted shall comply with source control best management practices.

(Prior Code, § 71.070; Ord. No. 28-13; Ord. No. 7-17, § 40(71.070), 6-12-2017)

Sec. 71.075. Requirements for all projects.

~~(a)~~Any person conducting a project shall:

(a) Safely convey drainage water to the approved point of discharge;

(b) Prevent erosion and sediment transport from the site throughout all phases of construction and including landscaping;

(c) Maintain the project's stormwater facilities to keep the facilities in continuous working order;

(d) Preserve existing trees to the maximum extent feasible to minimize site-specific post-development stormwater runoff volumes and rates of discharge;

(e) Where vegetation exists in the predevelopment condition, preserve the vegetation to the maximum extent feasible;

(f) Provide landscaping and plant new trees to the maximum extent feasible to minimize site-specific post-development stormwater runoff volumes and rates of discharge;

(g) In areas to remain pervious following development, protect soil from compaction and ground disturbing activities to the maximum extent feasible;

(h) Identify and eliminate illicit connections to the stormwater system;

(i) Implement required source controls if the project will result in a pollution generating activity;

(j) If the site discharges to a known wetland as designated on the Local Wetland Inventory or otherwise as delineated by the City or developer:

(1) Protect the hydrologic conditions, vegetative community, and substrate characteristics of the wetlands to prevent adverse impacts to the affected wetlands; and

(2) Select, design, install, and maintain temporary and permanent stormwater facilities to prevent the introduction of pollutants into the wetland.

(Prior Code, § 71.075; Ord. No. 28-13)

Sec. 71.080. Requirements for land divisions.

(a) Except as provided in SRC 71.080(c), all land divisions shall be provided with stormwater facilities that are sized to serve the entire land division under fully developed conditions.

(b) Construction of stormwater facilities that serve only one lot or parcel may be delayed until the time of building construction on that lot or parcel.

(c) A lot or parcel created through an approved tentative plan submitted to the City prior to January 1, 2014 may comply with the requirements of this chapter or with the regulations in effect at the time of the tentative plan application.

(Prior Code, § 71.080; Ord. No. 28-13)

Sec. 71.085. Requirements for single-family residential projects.

(a) Except as provided in SRC 71.085(b), all single-family residential projects shall be designed and constructed with green stormwater infrastructure to the maximum extent feasible except where flow control facilities and treatment facilities have already been constructed per SRC 71.080 to serve the lot or parcel.

(b) Single-family residential projects on lots or parcels created through an approved land division tentative plan submitted to the City prior to January 1, 2014 may comply with the requirements of this chapter or with the regulations in effect at the time of the tentative plan application.

(Prior Code, § 71.085; Ord. No. 28-13)

Sec. 71.087. Requirements for City projects.

A City project that is not required to obtain land use approval or a building permit, and that meets all the conditions set forth below, is not required to comply with SRC 71.090 and ~~SRC~~ 71.095:

(a) The project begins ground disturbing activity within two years of January 1, 2014; ~~and~~

(b) The project conforms with the stormwater facility requirements in effect immediately prior to January 1, 2014; and

(c) The project meets one or more of the following criteria:

(1) Project funding was identified in "The Adopted Capital Improvement Plan for Fiscal Years 2013-2014 through 2017-2018";~~ or~~

(2) Project funding was appropriated in the fiscal year 2013-2014 Capital Construction Budget;~~ or~~

(3) Project received, or will receive, voter approval of financing before January 1, 2014;~~ or~~

(4) Project received, or will receive, funds based on a grant application submitted before January 1, 2014; or

(5) Project was approved for funding by ~~City~~ Council action prior to January 1, 2014.

(Prior Code, § 71.087; Ord. No. 28-13)

Sec. 71.090. Requirements for large projects.

All persons conducting large projects shall:

(a) Phase the project to the maximum extent feasible in order to minimize the amount of simultaneous ground disturbing activity;

(b) Provide additional stormwater facilities or improve the public stormwater system to adequately accommodate the stormwater flows from the site if insufficient capacity exists in the public stormwater system to carry existing and anticipated discharge flows, including any flows from dewatering activities. The Director may require the developer to conduct analyses to ensure sufficient capacity exists downstream from the location where the drainage water is discharged from the site;

(c) Provide flow control facilities as required by this chapter; and

(d) Provide treatment facilities as required by this chapter.

(Prior Code, § 71.090; Ord. No. 28-13)

Sec. 71.095. Flow control facilities.

(a) *Applicability.*

(1) Except as provided in subsection (a)(2) of this section, all large projects shall be provided with flow control facilities that comply with this section.

(2) The following projects are exempt from the requirements of this section:

(A) Maintenance, repair, or installation of underground or overhead utility facilities that includes replacing the ground surface with in-kind material or materials with similar runoff characteristics. By way of illustration, but not of limitation, this includes maintenance, repair, and installation of pipes, conduits, and vaults.

(B) The following road maintenance practices:

(i) Pothole and square cut patching;

(ii) Overlaying existing asphalt or concrete or brick pavement with asphalt or concrete without expanding the area of coverage;

(iii) Shoulder grading;

(iv) Reshaping or re-grading drainage ditches;

(v) Crack sealing;

(vi) Replacing existing impervious surface down to earth material; and

(vii) Vegetation maintenance.

(C) Projects in the right-of-way under the control of another governmental body, if:

(i) The governmental body uses best management practices consistent with that government body’s own stormwater management program and NPDES permit; and

(ii) The best management practices are at least as stringent as those required by this chapter and rules pursuant thereto.

(b) *Design.*

(1) Flow control facilities shall be designed and installed to receive all flows from that portion of the site being developed and for the flows discharging to the flow control facility from other areas, including existing impervious surfaces and off-site areas, when the other flows cannot be separated or bypassed. By way of illustration, but not of limitation, as used in this section, development includes all new impervious surfaces, all replaced impervious surfaces, all disturbed land areas, and any associated flows from dewatering.

(2) Green stormwater infrastructure as a flow control facility shall be used to the maximum extent feasible.

(3) The Director may reduce the total area of the site requiring flow control upon a consideration of the following:

(A) Areas retained in a natural, undisturbed state.

(B) Disturbed land areas within the site that have had soils amended.

(C) Disturbed land areas that have been replaced with permeable pavement or green roofs.

(D) The total number existing trees that are preserved or new trees that are planted.

(4) The Director may allow construction of a flow control facility at a location other than the site if:

(A) The Director has determined that it is in the public interest to construct a flow control facility at a location other than the site. This determination shall consider the feasibility of constructing the flow control facility on the site; the costs associated with construction, operations, and maintenance of the flow control facility; and the benefits provided by the flow control facility in terms of accomplishing the purposes of this chapter; and

(B) The flow control facility constructed at a location other than the site will mitigate similar impacts that have been identified as a consequence of the project.

(c) *Flow control facility performance standard.*

(1) The post-development peak runoff rates from design storm events equal to or less than one-half the two-year, 24-hour design storm event shall not exceed the predevelopment peak runoff rate for one-half the two-year, 24-hour design storm event; ~~and~~

(2) The post-development peak runoff rates from design storm events equal to or less than the ten-year, 24-hour design storm event shall not exceed the predevelopment peak runoff rate for the ten-year, 24-hour design storm event; and

(3) If a volume-based stormwater flow control facility is used, the detention volume shall be sufficient to detain a 100-year design storm event without overflow.

(Prior Code, § 71.095; Ord. No. 28-13)

Sec. 71.100. Treatment facilities.

(a) *Applicability.*

(1) Except as provided in subsection (a)(2) of this section, all large projects shall be provided with stormwater treatment facilities that comply with this section.

(2) The following projects are exempt from the requirements of this section:

(A) Maintenance, repair, or installation of underground or overhead utility facilities that includes replacing the ground surface with in-kind material or materials with similar runoff characteristics. By way of illustration, but not of limitation, this includes maintenance, repair, and installation of pipes, conduits, and vaults.

(B) The following road maintenance practices:

(i) Pothole and square cut patching;

(ii) Overlaying existing asphalt or concrete or brick pavement with asphalt or concrete without expanding the area of coverage;

(iii) Shoulder grading;

(iv) Reshaping or re-grading drainage ditches;

(v) Crack sealing;

(vi) Replacing existing impervious surface down to earth material; and

(vii) Vegetation maintenance.

(C) Projects in the right-of-way under the control of another governmental body, if:

(i) The governmental body uses best management practices consistent with that government body's own stormwater management program and NPDES municipal stormwater permit; and

(ii) The best management practices are at least as stringent as those required by this chapter and rules pursuant thereto.

(b) *Design.*

(1) Treatment facilities shall be designed and installed to receive all flows from that portion of the site being developed and for the flows discharging to the treatment facility from other areas, including existing impervious surfaces and off-site areas, when the other flows cannot be separated or bypassed. By way of illustration, but not of limitation, as used in this section, development includes all new impervious surfaces, all replaced impervious surfaces, all disturbed land areas, and any associated flows from dewatering.

(2) Green stormwater infrastructure as a treatment facility shall be used to the maximum extent feasible.

(3) The Director may reduce the total area of the site requiring treatment upon a consideration of the following:

(A) Areas retained in a natural, undisturbed state.

(B) Disturbed land areas within the site that have had soils amended.

(C) Disturbed land areas that have been replaced with permeable pavement or green roofs.

(D) The total number existing trees that are preserved or new trees that are planted.

(4) The Director may allow construction of a treatment facility at a location other than the site if:

(A) The Director has determined that it is in the best public interest to construct a treatment facility at a location other than the site. This determination shall consider the feasibility of constructing the treatment facility on the site; the costs associated with construction, operations, and maintenance of the treatment facility; and the benefits provided by the treatment facility in terms of accomplishing the purposes of this chapter; and

(B) The treatment facility constructed at a location other than the site will mitigate similar impacts that have been identified as a consequence of the project.

(c) *Treatment facility performance standard.* Treatment facilities shall be designed and installed to capture and treat at least 80 percent of the average runoff volume predicted by the design storm event for that portion of the site requiring treatment.

(Prior Code, § 71.100; Ord. No. 28-13)

Sec. 71.105. Harmful discharges.

(a) The Director may suspend the stormwater service when, in the opinion of the Director, such suspension is necessary in order to stop an actual or threatened discharge which presents or may present an imminent or substantial threat to the health or welfare of persons, or to the environment.

(b) Any person notified of a suspension of the service shall immediately stop or eliminate the discharge. In the event of a failure of the person to comply voluntarily with the suspension order, the Director shall take such steps as deemed necessary to prevent or minimize damage to the stormwater system or endangerment to any individual or the environment. The Director shall reinstate the service upon proof of the elimination of the noncomplying discharge.

(c) A detailed written statement submitted by the user describing the causes of the harmful discharge and the measures taken to prevent any future occurrence shall be submitted to the Director within five days of the date of occurrence.

(Prior Code, § 71.105; Ord. No. 28-13)

Sec. 71.110. Appeals.

Any person adversely affected by any decision, action, determination, or order, made by the Director interpreting or implementing the provisions of this chapter may appeal to the Hearings Officer as set forth in SRC chapter 20J, and such appeal shall be initiated by filing a notice of intent to appeal with the City Recorder within

15 business days after notice of the Director's final decision has been sent. The notice of appeal shall satisfy the requirements of SRC 20J.110, and the appeal shall proceed as a contested case under the procedures established in SRC 20J.240 through 20J.430. Unless otherwise stayed by order of the Hearings Officer, the Director's decision, action determination or order, shall remain in effect during the pendency of the appeal to the Hearings Officer.

(Prior Code, § 71.110; Ord. No. 28-13)

Sec. 71.120. Civil penalties.

Any person who is found to have violated an order of the Director, or who willfully or negligently failed to comply with any provision of this chapter, and the orders, rules, and regulations issued hereunder, shall forfeit and pay not more than $1,000.00 for each offense as determined by the Hearings Officer. Each day on which a violation shall occur or continue shall be deemed a separate and distinct offense.

(Prior Code, § 71.120; Ord. No. 28-13)

Sec. 71.125. Violations.

Violation of any provision of this chapter, in addition to any civil forfeitures, shall be an infraction.

(Prior Code, § 71.125; Ord. No. 28-13)

CHAPTER 72. WATER

Secs. 72.010, 72.020. Reserved.

Sec. 72.030. Connections to the Public Water System.

(a) All connections made to the public water system in the City shall be in accordance with Public Works Design Standards.

(b) Connections to active distribution mains for the purpose of extending such lines or providing water service shall be made only by the Department or private parties with the written consent of the Director.

(c) It shall be unlawful for any person to attach to or ~~to~~ detach from any water main or connection through which water is supplied by the City from the public water system, or to interfere in any manner or tamper with such pipes or connections, without having first obtained written permission from the Director.

(Prior Code, § 72.030; Ord. No. 3149; Ord. No. 55-77; Ord. No. 7-17, § 45(72.030), 6-12-2017)

Sec. 72.035. Payment of fees prior to connection.

(a) No connections shall be made to the public water system until all applicable connection fees, system development charges, assessments, meter installation fees, or other applicable fees, are paid in full.

(b) Those fees eligible for installment payments as provided in the Bancroft Bonding Act shall be considered paid in full when all requirements of SRC 21.340(c) are fulfilled.

(Ord. No. 7-17, § 46(72.035), 6-12-2017)

Sec. 72.040. Unlawful to operate fire hydrants, valves, and other appurtenances.

(a) It shall be unlawful for any person, other than the Department, or the Fire Department, to operate fire hydrants, valves, and other appurtenances connected to the public water system.

(b) Fire hydrants shall be used only for authorized municipal purposes, unless application for service has been made and a meter set to measure water used for private purposes.

(Prior Code, § 72.040; Ord. No. 3149; Ord. No. 55-77; Ord. No. 7-17, § 47(72.040), 6-12-2017)

Sec. 72.050. Reserved.

Sec. 72.060. Contamination.

(a) It shall be unlawful for any person to in any way contaminate or pollute the water in the reservoirs~~,~~ pipes, or treatment works of the public water system or in any fountain, hydrant, or place of storage of the water supply of the City.

(b) It shall be unlawful for any person to throw any rubbish, debris, or any other thing into any water reservoir belonging to the City.

(Prior Code, § 72.060; Ord. No. 3149; Ord. No. 3383; Ord. No. 55-77; Ord. No. 7-17, § 49(72.060), 6-12-2017)

Secs. 72.070--090. Reserved.

Sec. 72.091. Service connections.

(a) The City owns the water meter and its connection to the water main.

(b) Every connection to the water main shall be metered. Multiple buildings on the same parcel may be served through a master meter if under common ownership

(1) The service connection to a parcel of land shall not be used to supply an adjoining parcel of a different owner, or to supply a separate parcel of the same owner for which proper application for service has not been made. When property provided with a service is subdivided, the service connection shall be considered as supplying the parcel of land which it directly enters.

(2) The use of hoses and other non-permanent delivery systems to convey water for the purpose of providing water service to adjacent parcels is strictly prohibited.

(c) The Director shall ensure that the service lateral and water meter serving the premise is of adequate size to supply the estimated use by the premise.

(d) The size of the meter serving a premise may be changed at the request of the user if the Director concurs that the requested size is appropriate. The user shall pay the estimated cost of making the change and any additional system development charges. Meter size will not be changed for any premise more frequently than once per year.

(e) Meters and pipelines damaged or contaminated by the carelessness or negligence of the owner or occupant of the premises will be repaired at the expense of the person or persons responsible for the damage.

(f) Failure to comply with the provisions of this section may result in the immediate discontinuance of water service.

(Prior Code, § 72.091; Ord. No. 55-77; Ord. No. 7-17, § 61(72.091), 6-12-2017)

Sec. 72.100. Reserved.

Sec. 72.103. Private booster pumps prohibited.

No booster pumps shall be installed by the user for the purpose of increasing water pressure or delivery without the express written permission of the Director.

(Prior Code, § 72.103; Ord. No. 55-77; Ord. No. 7-17, § 67(72.103), 6-12-2017)

Sec. 72.105. Interruption of service.

Wherever practicable, users will be notified in advance of any planned interruption of service or shutdown of mains for repair or alterations. The City assumes no responsibility for providing uninterrupted water service and will not be liable for damages resulting from such interruptions.

(Prior Code, § 72.105; Ord. No. 55-77; Ord. No. 7-17, § 68(72.105), 6-12-2017)

Sec. 72.107. Plumbing to be kept in repair.

It shall be the responsibility of the user to keep piping and fixtures in good repair to prevent damage to premises and waste of water. The City shall not be responsible for damage to property resulting from turning on or continuing water service to premises having defective plumbing.

(Prior Code, § 72.107; Ord. No. 55-77; Ord. No. 7-17, § 69(72.107), 6-12-2017)

Sec. 72.109. Electrical grounding.

The City shall not be responsible for the use of its water distribution system for grounding of electrical circuits. Use of nonmetallic materials in mains and service lines precludes reliance on the water system for electrical grounding.

(Prior Code, § 72.109; Ord. No. 55-77; Ord. No. 7-17, § 70(72.109), 6-12-2017)

Sec. 72.110. Reserved.

Sec. 72.113. Abandonment of service laterals.

Unused service laterals may be removed or abandoned when ~~its~~their further need is not apparent and when removal is appropriate to reduce leakage or future maintenance responsibility. If a service line to a property has been abandoned, subsequent service to the property shall be treated as a new service.

(Prior Code, § 72.113; Ord. No. 55-77; Ord. No. 109-82; Ord. No. 7-17, § 72(72.113), 6-12-2017)

Secs. 72.120--72.140. Reserved.

CROSS CONNECTIONS AND BACKFLOW PREVENTION*

***State law reference—**Water quality, ORS 468B.005 et seq.

Sec. 72.~~170~~150. Backflow prevention requirements.

(a) Customer connections to the public water system may require backflow protection to protect the public water system from activities on the customer's premises. Except where this Chapter provides more stringent requirements, the definitions, standards, requirements, and regulations set forth in OAR 333 Division 61 in effect on June 12, 2017 and pertaining to backflow requirements for public water systems are hereby adopted and incorporated by reference.

(b) A backflow prevention assembly(s) must be installed on each service lateral of the customer's system or, with prior approval from the Director, immediately inside the building being served before the hazard, but in all cases, before the first crossing or branch line leading off the service line wherever the following conditions exist:

(1) Those circumstances identified in regulations adopted under subsection (a) of this section.

(2) Where there is buried piping for irrigation with a permanent connection to the potable water system.

(3) There is an auxiliary water supply which is or can be connected to the potable water piping.

(4) There are cross-connections or intricate plumbing arrangements which make it impracticable to ascertain whether or not cross-connections exist.

(5) When water for fire protection service is separate from the regular water service to a premise. In such instances the backflow prevention device must have a detector check assembly to register water use.

(c) The type of backflow device required pursuant to subsection (b) of this section must be commensurate with the degree of hazard that exists as detailed in OAR 333 Division 61.

(Prior Code, § 72.170; Ord. No. 55-77; Ord. No. 1-86; Ord. No. 30-97; Ord. No. 7-17, § 81(72.170), 6-12-2017)

Secs. 72.160--180. Reserved.

Sec. 72.190. Owner's duty for inspection.

It shall be the duty of the owner of any premises where a backflow prevention assembly(s) is installed to have the assembly tested and certified as working immediately upon installation and at least once a year, or more often in those instances where successive inspections indicate repeated failure. The frequency of these tests or the replacement of the assembly(s) because of repeated failure is at the discretion of the Director. Tests must be performed by a tester certified by the State of Oregon as required in OAR 333-061-0072. Records of such tests and repairs must be kept and a copy submitted to the Director within 30 days from the notice to test.

(Prior Code, § 72.190; Ord. No. 55-77; Ord. No. 1-86; Ord. No. 30-97; Ord. No. 7-17, § 83(72.190), 6-12-2017)

Sec. 72.200. Previously installed backflow assemblies excluded from requirements.

Backflow prevention assemblies installed before the effective date of SRC 72.150 which were approved at the time they were installed but are not on the current list of approved assemblies, shall be permitted to remain in service provided they are properly maintained, are commensurate with the degree of hazard, are tested at least annually, and perform satisfactorily. When assemblies of this type are moved, or require more than minimum maintenance, they shall be replaced with an approved assembly.

(Prior Code, § 72.200; Ord. No. 55-77; Ord. No. 1-86; Ord. No. 30-97; Ord. No. 7-17, § 84(72.200), 6-12-2017)

Sec. 72.205. Removal of backflow assemblies.

Removal of an installed backflow prevention assembly must have prior approval of the Director. For the removal of the assembly to be allowed, the Director must verify the conditions requiring backflow prevention have been eliminated.

(Ord. No. 7-17, § 85(72.205), 6-12-2017)

Sec. 72.210. Water service denied upon failure to meet requirements.

The Director shall cause the water service to the premises be discontinued or denied by a physical break in the service for:

(a) Failure to remove or eliminate an existing unprotected or potential cross connection;

(b) Failure to install a required approval backflow prevention assembly;

(c) Failure to maintain an approved backflow prevention assembly; or

(d) Failure to conduct the required testing of an approved backflow prevention assembly.

(Prior Code, § 72.210; Ord. No. 55-77; Ord. No. 1-86; Ord. No. 30-97; Ord. No. 7-17, § 86(72.210), 6-12-2017)

Sec. 72.220. Service beyond corporate limits.

(a) Except as otherwise provided in this section, any person owning property outside the limits of the City and adjacent to a City water main who desires a connection thereto may make application to the Council for permission to connect. Such application shall describe the property to be served, the quantity of water needed and the use to which it will be put, together with such other information as may be requested by the Director ~~of Public Works~~. The application shall be accompanied by a properly executed petition and consent for annexation to the City of the property described in the application.

(b) The Council shall consider the application and may either grant or reject the same, and if it ~~be~~ is granted, the same shall constitute an agreement by the applicant to abide by all the terms of this section and all the rules, rates, and regulations prescribed by the Council by resolution or otherwise.

(c) Prior to being issued a permit to connect to a City water main, the applicant shall pay to the City all applicable system development charges and connection fees.

(Prior Code, § 72.220; Ord. No. 186-78; Ord. No. 51-96; Ord. No. 30-97; Ord. No. 7-17, § 87(72.220), 6-12-2017)

Sec. 72.230. Reserved.

Sec. 72.240. Water waste prohibited.

(a) It is unlawful to allow waste of water provided through the public water system by knowingly or negligently causing, authorizing or permitting such water to escape from its intended beneficial use into any river, creek, natural watercourse, depression, lake, reservoir, storm sewer, street, highway, road, or ditch.

(b) ~~For the purpose of this section:~~ The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

~~(2) "~~*Beneficial use*~~"~~ means the reasonable efficient use of water.

~~(1) "~~*Waste*~~"~~ means the use of water in excess of the reasonable volume necessary to meet the beneficial use.

(Prior Code, § 72.240; Ord. No. 33-95; Ord. No. 7-17, § 89(72.240), 6-12-2017)

Sec. 72.250. Water curtailment authority.

~~(a)~~When the Director determines that a water supply shortage exists or is imminent or any other emergency exists or is imminent which threatens the ability of the City to deliver essential water to its customers, the Director may curtail the use of water. The Director may adopt, amend, or rescind rules and procedures to establish a curtailment plan to be implemented in times of actual imminent water shortage or emergency.

(Prior Code, § 72.250; Ord. No. 33-95; Ord. No. 17-96; Ord. No. 51-96; Ord. No. 7-17, § 90(72.250), 6-12-2017)

Sec. 72.260. Withholding of service.

In the event that a citation is issued during the period of activated emergency measures for a violation of SRC 72.240 or ~~SRC~~ 72.250, and the Director determines that a second violation has occurred after the date of the citation and during the same emergency curtailment period, the Director may:

(a) Install a flow restrictor on the street side of the water meter; or

(b) Terminate water service.

(Prior Code, § 72.260; Ord. No. 33-95; Ord. No. 7-17, § 91(72.260), 6-12-2017)

CHAPTER 73. ~~SEWERS~~ WASTEWATER*

***State law reference—**Sanitary sewer systems district regulations, ORS 451.410 et seq.; environmental quality, ORS 468.001 et seq.; water quality standards, ORS 468B.005 et seq.

Sec. 73.020. Connection to the public wastewater collection system.

(a) All connections made to any public wastewater collection system in the city shall be made in accordance with Public Works Design Standards.

(b) No person shall install, use, or cause to be installed or used a cesspool, septic tank, or other means of sewage disposal upon any property if such property by the terms of this ~~ordinance~~chapter would be required to connect to the City wastewater collection system.

(c) Every building containing plumbing, any portion of which is within 300 feet of an available public wastewater main, and not connected to a private collection system shall, be connected to a public wastewater main within 180 days after the owner receives written notice from the Director to do so.

(d) The written notice to connect shall not be issued until termination of a deferred assessment on the property under SRC 21.210, if such deferment exists. If no deferment exists, connections shall not be made until all applicable connection fees, as required in SRC 21.230, and system development charges, as required in SRC 41.110, are paid in full.

(e) Connections to wastewater collection mains for the purpose of extending such lines or for providing wastewater collection service shall be made only by employees of the Department in the normal performance of their duties or private parties with the written consent of the Director.

(Prior Code, § 73.020; Ord. No. 40-82; Ord. No. 123-87; Ord. No. 70-89; Ord. No. 4-93; Ord. No. 73-07; Ord. No. 7-17, § 97(73.020), 6-12-2017)

Sec. 73.022. Right to refuse connection.

The City may refuse connection, require pretreatment of wastewater, or discontinue service when such action is deemed necessary in order to prevent discharges into the wastewater system which would be harmful to the system.

(Ord. No. 7-17, § 98(73.022), 6-12-2017)

Sec. 73.025. Procedure upon failure to connect.

Upon failure of the owner, lessee, or occupant to connect to the public wastewater collection system, the Director, after giving the owner, lessee, or occupant an opportunity to be heard, may proceed to connect the premises to ~~a~~the public wastewater system and the cost shall be charged and become a lien upon the property.

(Prior Code, § 73.025; Ord. No. 40-82; Ord. No. 7-17, § 99(73.025), 6-12-2017)

Sec. 73.030. Service beyond corporate limits.

(a) Any person owning property outside the limits of the City and adjacent to a public sewer maintained by the City who desires connection to the sewer shall make application to the Director for permission to discharge sewage into the public sewer.

(b) The application shall describe with certainty the point of connection, the property to be served, the size of the building to be served and the use thereof, the name of the owner of the property or the person in possession thereof, the quantity of discharge, and such other information as may be required by the Council. Such application shall also be accompanied by a properly executed petition and consent for annexation, directed to the City, of the property described in the application.

(c) The Council shall consider the application and may either grant or reject the same, and if it be granted, the same shall constitute an agreement by the applicant to abide by all the terms of this section and all the rules, rates, and regulations prescribed by the Council by resolution or otherwise.

(d) Rates for county sewer service districts shall be established in accordance with any agreements that may be entered into for that service.

(Prior Code, § 73.030; Ord. No. 40-82; Ord. No. 70-89)

Sec. 73.032. Temporary service connections.

(a) In certain instances where, in the judgment of the Director, construction of a public sewer to serve a given piece of property is not advisable or feasible, sewer service may be provided by a temporary connection to some other sewer, pending construction of a permanent public sewer to serve the property.

(b) The applicant shall be required to pay a connection fee in lieu of assessment as provided by SRC 21.230 prior to permit issuance.

(Prior Code, § 73.032; Ord. No. 53-87)

Secs. 73.040--060. Reserved.

Sec. 73.065. Independent connection required.

The wastewater system of each new building shall be separate and independent from that of any other building. Every building shall have an independent connection with a public or private wastewater collection system.

(Prior Code, § 73.065; Ord. No. 40-82; Ord. No. 7-17, § 103(73.065), 6-12-2017)

Sec. 73.070. Existing private wastewater collection systems.

(a) When property being served by a private collection system is divided into two or more parcels with different ownership or the same ownership:

(1) The private wastewater collection system may be transferred to the public system with the consent of the Director when the private collection system meets the current City standards; or

(2) Individual connections to the public wastewater collection system will be provided by the private collection system owner.

(b) All private collection systems shall have a monitoring structure installed at its junction with the public right-of-way as required by the Director.

(Prior Code, § 73.070; Ord. No. 40-82; Ord. No. 70-89; Ord. No. 7-17, § 104(73.070), 6-12-2017)

Sec. 73.095. Responsibility for building wastewater collection system.

(a) It shall be the responsibility of the owner, lessee, or occupant of a building to maintain the building wastewater collection system in a free flowing and watertight condition, from the structure served to the point of connection on the public wastewater main.

(b) When the City undertakes the reconstruction, replacement or rehabilitation of the wastewater collection system, the City will replace any building wastewater service lateral from the building drain to the public wastewater collection system when:

(1) The City moves the location of the wastewater main servicing the property and the current connection is rendered inoperable; or,

(2) The building wastewater lateral is defective as that term is defined in SRC 70.005(e)~~; or,~~.

(c) If the building wastewater lateral is defective because it is connected to a plumbing device that introduces stormwater into the wastewater system the City will direct the stormwater, at the owner's direction, to either:

(1) The stormwater system; or

(2) The owner's property for dispersal or collection.

(d) The cost of eliminating the introduction of stormwater into the wastewater system under subsection (c) of this section shall be borne by the property owner. The Director may develop a program, subject to Council approval, by which the costs incurred under subsection (c) of this section may be assessed against the property as a lien, payable upon refinancing of encumbrances on the property or transfer of ownership of the property.

(e) In the event the building wastewater lateral is found to be defective and the property owner does not permit the City to redirect the stormwater as set forth in subsection (c) of this section, the City will require the property owner to replace the building wastewater service lateral at the owner's expense within 180 days.

(Prior Code, § 73.095; Ord. No. 40-82; Ord. No. 70-89; Ord. No. 44-97; Ord. No. 43-2001; Ord. No. 7-17, § 110(73.095), 6-12-2017)

Sec. 73.097. Responsibility for wastewater laterals.

(a) Except as provided in subsection (b) of this section the owner of real property on which a wastewater service lateral terminates shall be responsible for the costs, expenses, and charges incurred in the repair or replacement of the wastewater lateral.

(b) The City shall be responsible for the costs, expenses, and charges for the repair or replacement of a wastewater service lateral if the repair or replacement is made necessary because of work done by or on behalf of the City.

(Ord. No. 7-17, § 111(73.097), 6-12-2017)

Sec. 73.100. Infiltration and inflow limitations; private wastewater systems and building wastewater service laterals.

(a) Any private and building wastewater systems shall be monitored by the property owner for leaks or discharges of extraneous water. This monitoring may take, but is not limited to, the following forms:

(1) Direct visual observation;

(2) Indirect measurement;

(3) Television inspection; or

(4) Air or water pressure tests, smoke tests, or exfiltration tests.

(b) If, in the opinion of the Director, monitoring shows a private or building wastewater system to be defective as that term is defined in SRC 70.005(e), the Director may require the wastewater system be replaced to current Public Works Design Standards.

(c) If the responsible user disputes the Director’s requirement that the ~~sewer~~wastewater system be replaced, the user may test the service at the user’s own expense. The results of the test will be the basis of the Director’s final decision.

(d) All existing private wastewater collection systems shall be maintained in a safe and sanitary condition. Existing private wastewater collection systems exceeding ~~a~~the maximum allowable infiltration/inflow rate of more than 300 gallons per day per single detached living unit or 1,200 gallons per acre per day are deemed unsafe and unsanitary and shall be repaired.

(f) Those users of systems identified as defective in subsection (e) of this section who do not comply with the infiltration/inflow regulations shall have a period of time as determined by the Director, but not to exceed 180 days to reach compliance with the regulations.

(Prior Code, § 73.100; Ord. No. 40-82; Ord. No. 70-89; Ord. No. 73-07; Ord. No. 7-17, § 112(73.100), 6-12-2017)

Sec. 73.105. Capping abandoned service laterals.

(a) All building laterals to be abandoned shall be capped with a watertight permanent plug at the property line in accordance with the City's Standard Construction Specifications and inspected by City forces prior to closure of the excavation.

(b) It is the property owner's responsibility to ensure that no other structure is connected to the service lateral being abandoned. If the service lateral to be abandoned is serving more than one structure, a new connection to the wastewater collection system for the structure(s) still using the service must be provided for the structure(s).

(Prior Code, § 73.105; Ord. No. 40-82; Ord. No. 128-84; Ord. No. 7-17, § 113(73.105), 6-12-2017)

Secs. 73.110--160. Reserved.

Sec. 73.170. Connection of drainage waste and cooling water prohibited.

Notwithstanding any other provision of this Code, it shall be unlawful for any person to knowingly cause, suffer, or permit the continuance of any condition whereby any drainage waste or non-contaminated cooling water may at any time be discharged into or enter any public wastewater system from property of which he or she is either the owner or person in possession.

(Prior Code, § 73.170; Ord. No. 40-82; Ord. No. 7-17, § 119(73.170), 6-12-2017)

Sec. 73.175. Disposal of septic tank wastes.

All septic tank waste shall be discharged at the City's designated disposal site and shall be done under the control and supervision of the City.

(Prior Code, § 73.175; Ord. No. 40-82; Ord. No. 14-96)

Sec. 73.180. Connections prohibited.

Any direct or indirect connection or entry point for persistent, deleterious, or hazardous waste or material to the user's plumbing or drainage system shall be prohibited.

(Prior Code, § 73.180; Ord. No. 40-82; Ord. No. 7-17, § 120(73.180), 6-12-2017)

CHAPTER 74. PRETREATMENT PROVISIONS*

***State law reference—**Water pollution control requirements, ORS 468B.005 et seq.

GENERAL PROVISIONS

Sec. 74.010. Purpose and scope.

(a) The purpose of this chapter is to establish uniform requirements for direct and indirect discharges of pollutants from nondomestic sources into the City's wastewater collection and treatment system and to ensure the City complies with all applicable state and federal laws. The objectives of this chapter are to:

(1) ~~To~~ Prevent the introduction of pollutants into the municipal wastewater system which will interfere with the operation of the municipal wastewater system;

(2) ~~To~~ Prevent the introduction of pollutants into the municipal wastewater system which will pass inadequately treated through the municipal wastewater system into the waters of the State or the atmosphere, or which will otherwise be incompatible with the municipal wastewater system;

(3) ~~To~~ Ensure the quality of the treatment plant sludge allows its beneficial use;

(4) ~~To~~ Protect municipal personnel who may come into contact with sewage, sludge, and treated wastewater effluent in the course of their employment, and to protect the general public;

(5) ~~To~~ Preserve the hydraulic capacity of the municipal wastewater system;

(6) ~~To~~ Improve the opportunity to recycle and reclaim wastewater and sludge from the municipal wastewater system;

(7) ~~To~~ Ensure the City complies with its NPDES permit and any other federal or state laws to which the municipal wastewater system is subject;

(8) ~~To~~ Provide for the regulation of direct and indirect discharge into the municipal wastewater collection system, through the issuance of permits to certain nondomestic users and through enforcement of general requirements for other users;

(9) ~~To~~ Authorize monitoring and enforcement activities, establish administrative review procedures, require user reporting, and provide for the setting of fees for the equitable distribution of costs resulting from the regulatory program established herein.

(b) This chapter shall apply to all persons within the City and to persons outside the City who, by contract with the City or otherwise, are included as direct or indirect users of the municipal wastewater system.

(Prior Code, § 74.010; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.020. Administration.

Except as otherwise provided herein, the Director shall administer, implement, and enforce the provisions of this chapter. ~~Any powers granted to, or duties imposed upon, the Director may be delegated by the Director to other City personnel.~~ The Environmental Services Supervisor is the duly authorized employee to sign annual reports required by 40 CFR 403.12(i), as required in 40 CFR 403.12(m).

(Prior Code, § 74.020; Ord. No. 13-96; Ord. No. 25-06)

Sec. 74.030. Definitions.

Unless the context specifically indicates otherwise, as used in this chapter, and in regulations and permits adopted pursuant to this chapter, the following mean:

~~(a)~~*Act* or *the Act* means the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, 33 USC 1251 et seq.

~~(b)~~ *Authorized representative of the industrial user*.

(a) If the industrial user is a corporation, an authorized representative means an officer of the corporation, or any other person who has formal authority to perform similar policy or decision-making functions for the corporation.

(b) If the industrial user is a partnership, association, or sole proprietorship, an authorized representative means a general partner or the sole proprietor.

(c) If the industrial user is a federal, state, or local government, an authorized representative means a Director or highest official appointed or designated to oversee the operation and performance of the activities of the government facility.

(d) Any authorized representative of an industrial user may designate another person to serve as an authorized representative, if the authorization is submitted to the City in writing and the authorization specifies the person having responsibility for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the industrial user.

~~(c)~~*BOD* means biochemical oxygen demand; the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five days at 20 degrees centigrade expressed in terms of weight and concentration (milligrams per liter mg/L).

~~(d)~~ *Categorical pretreatment standard* means any regulation containing pollutant discharge limits promulgated by the EPA in accordance with 33 USC 1317(b), which applies to a specific category of industrial users and which appears in 40 CFR chapter I, subchapter N, parts 405—471, incorporated herein by reference.

~~(e)~~*CFR* means the Code of Federal Regulations.

~~(f) *City*. The City of Salem, Oregon.~~

~~(g)~~ *Clean Air Act* means 42 USC 7401 et seq.

~~(h)~~ *Color* means the optical density at the visual wavelength of maximum absorption, relative to distilled water (100 percent transmittance is equivalent to zero (0.0) optical density).

~~(i)~~ *Composite sample* means the sample resulting from the combination of individual wastewater samples taken at selected intervals, based on either an increment of flow or time.

~~(k)~~ *Control authority* means the Director, once the City has a pretreatment program approved by Oregon DEQ according to the provisions of 40 CFR 403.11.

~~(j)~~ *Cooling water* means the water discharged from any use to which the only pollutant added is heat, including uses such as air conditioning, cooling, or refrigeration.

~~(l)~~ *DEQ* means the Oregon Department of Environmental Quality or, where the context indicates, the Director or other duly authorized DEQ official.

~~(m) *Director*. The Director of Public Works~~ Director ~~or the Director's designee. *Director* means the City Manager, or the department head charged by the City Manager with the implementation and enforcement of this chapter, or that department head's designee.~~

~~(n)~~ *Discharge* means the introduction of pollutants into the municipal wastewater system from any nondomestic source regulated under 33 USC 1317(b), (c) or (d).

~~(o)~~ *EPA* means the U.S. Environmental Protection Agency or, where the context indicates, the Regional Water Management Division Director of the EPA, or other duly authorized EPA official.

~~(p)~~ *Existing source* means any source of discharge, the construction or operation of which commenced prior to the publication of proposed categorical pretreatment standards under 33 USC 1317(b) and (c), which standards will be applicable to the source if the standards are thereafter adopted in accordance with that section.

~~(q)~~ *Fundamentally different factors* means information not originally considered by EPA when pretreatment standards were developed affecting the discharge limits established for a certain industrial category or subcategory, which affects the discharge and makes it necessary to perform an individual analysis and adjustment of discharge limits on a case-by-case basis (40 CFR 403.13). The information can include the nature or quality of pollutants in the raw waste load of the users process wastewater, the volume of process wastewater, non-water

quality environmental impact of control and treatment technology, energy requirements of control and treatment technology, cost of compliance with control technology, age, size, land availability, processes employed, process changes, and engineering aspects of the application of control technology.

~~(r)~~*Grab sample* means a sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and without consideration of time.

~~(s)~~*Industrial user* means a user that is a source of nondomestic pollutants.

~~(t)~~*Industrial wastewater* means nondomestic wastewater originating from a nonresidential source.

~~(u)~~ *Interference* means a discharge which, alone or in conjunction with a discharge or discharges from other sources, both:

(a) Inhibits or disrupts the municipal wastewater system, its treatment processes or operations, or its sludge processes, use, or disposal; and

(b) Causes a violation of the NPDES permit, including an increase in the magnitude or duration of a violation, or prevents the use or disposal of sewage sludge in compliance with 33 USC 1345, the Solid Waste Disposal Act; the Resource Conservation and Recovery Act; any state regulations contained in any state sludge management plan prepared pursuant to Subtitle D of the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; ~~or~~ the Marine Protection Research and Sanctuaries Act; or any more stringent state or local regulations.

~~(v)~~ *Local limits* means specific prohibitions or limits on pollutants or pollutant parameters for wastewater discharged to the sanitary sewer, developed by the POTW as required by 40 CFR 403.5, to prevent pass through and/or interference in the POTW or which may result in the POTW violating its NPDES permit requirements.

~~(w)~~ *Marine Protection Research and Sanctuaries Act* means 16 USC 1431 et seq.

~~(x)~~ *Medical waste* means isolation wastes, infectious agents, human blood and blood byproducts, pathological wastes, sharps, body parts, fomites, etiologic agents, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, or dialysis wastes.

~~(y)~~ *Municipal wastewater system* means a publicly-owned municipal wastewater treatment works (POTW), as defined in 33 USC 1292(2), owned by the City, and including any appurtenances thereof, used in the collection, storage, treatment, recycling and reclamation of sewage or industrial wastes, the means of conveyance of wastewater to the treatment plant, and sewers that convey wastewater to the treatment works from persons outside the City who are direct or indirect users of the publicly-owned municipal wastewater system.

~~(z)~~*New source.*

(a) Any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of proposed pretreatment standards under 33 USC 1317(c), which standards will be applicable to the source if such pretreatment standards are thereafter adopted in accordance with that section, provided that:

(1) The building, structure, facility, or installation is constructed at a site at which no other source is located; ~~or~~

(2) The building, structure, facility, or installation completely replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(3) The production or wastewater generating processes at the building, structure, facility, or installation are substantially independent of an existing source at the same site. In determining whether these are substantially independent, factors such as the extent to which the new facility is integrated with the existing plant and the extent to which the new facility is engaged in the same general type of activity as the existing source will be considered.

(b) Construction on a site at which an existing source is located results in a modification, rather than a new source, if the construction does not create a new building, structure, facility, or installation meeting the

criteria of SRC 74.030(z ~~x~~)(1)(B) and (C), but otherwise alters, replaces, or adds to the existing process or production equipment at the site.

(c) Construction of a new source as defined under this ~~paragraph~~ definition has commenced if the owner or operator has:

(1) Begun, or caused to begin, as part of a continuous on-site construction program:

(A) Any placement, assembly, or installation of facilities or equipment; or

(B) Significant site preparation work, including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of facilities or equipment; or

(2) Entered into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this ~~paragraph~~ subsection.

~~(aa)~~ *Non-Discharging Categorical Industrial User (NDCIU)* means industrial user, who would otherwise be subject to categorical pretreatment standards and requirements, that does not discharge or have the potential to discharge regulated industrial wastewater to the POTW.

~~(bb)~~ *Nondomestic pollutants* means any pollutants other than human waste and household gray water.

~~(cc)~~ *NPDES permit* means the National Pollutant Discharge Elimination System Permit issued to the City.

~~(dd)~~ *Obstruct* means a discharge which blocks, closes or hinders passage, action or operation.

~~(ee)~~ *Pass through* means a discharge which exits the treatment plant into the waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of the NPDES permit, including an increase in the magnitude or duration of a violation.

~~(ff)~~ *Person* means any individual, partnership, copartnership, firm, company, corporation, limited liability company, association, joint stock company, trust, estate, any state, federal or local governmental entity or other entity in law or fact, and including the entity's, officers, officials, employees, agents, or assigns.

~~(gg)~~ *pH* means the logarithm (base 10) of the reciprocal of the hydrogen ion concentration, expressed in moles per liter of solution.

~~(hh)~~ *Pollutant* means any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, industrial wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, dirt, agricultural wastes, or other similar substances.

~~(ii)~~ *Pretreatment* means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater prior to or in lieu of introducing such pollutants into the municipal wastewater system. This reduction or alteration may be obtained by physical, chemical, or biological processes, by process changes, or by other means.

~~(jj)~~ *Pretreatment requirement* means any state or City substantive or procedural requirement related to pretreatment or discharge limitations, other than pretreatment standards, imposed on an industrial user.

~~(kk)~~ *Pretreatment standard* means any federal regulation containing pollutant discharge limits promulgated by EPA under 33 USC 1317(b) and (c) applicable to industrial users, including the general and specific prohibitions found in 40 CFR 403.5; any local limits developed by the City pursuant to 40 CFR 403.5(d).

~~(ll)~~ *Prohibited discharge standards* or *prohibited discharges* means absolute prohibitions against the discharge of certain types or characteristics of wastewater, as established by EPA, DEQ, or the Director.

~~(mm)~~ *Publicly owned treatment works (POTW)* means a treatment works as defined in 33 USC 1292(2), owned by the City, and including any appurtenances thereof, used in the collection, storage, treatment, recycling and reclamation of sewage or industrial wastes, the means of conveyance of wastewater to the treatment plant, and

sewers that convey wastewater to the treatment works from persons outside the City who are direct or indirect users of the publicly-owned municipal wastewater system.

~~(pp)~~ *Residential users* means persons contributing only domestic sewage to the municipal wastewater system.

~~(nn)~~ *Resource Conservation and Recovery Act* means 42 USC 6901 et seq.

~~(qq)~~ *Sewage* means the wastewater derived from human habitation and use of buildings for domestic, commercial, or industrial purpose, which is free from industrial waste and stormwater drainage.

~~(rr)~~ *Significant industrial user* means:

(a) A user subject to categorical pretreatment standards; or

(b) A user that:

(1) Discharges an average of 25,000 gallons per day or more of process wastewater into the municipal wastewater system, excluding sanitary, noncontact cooling, and boiler blow down wastewater;

(2) Contributes a process waste stream which makes up five percent or more of the average dry weather hydraulic or organic capacity of the treatment plant; or

(3) Is designated as such by the City on the basis that it has a reasonable potential for adversely affecting the municipal wastewater system's operation or for violating any pretreatment standard or pretreatment requirement.

~~(ss)~~ *Slug* means any pollutant, including BOD, released in a nonroutine, episodic nature, including, but not limited to, an accidental spill or noncustomary batch discharge at a flow rate or concentration which has the potential to cause interference or pass through or in any other way cause an adverse impact on the municipal wastewater system or in any other way violate the POTW's regulations, local limits, or permit conditions of discharge prohibitions in SRC 74.050 through ~~SRC~~ 74.100.

~~(tt)~~ *Solid Waste Disposal Act* means 42 USC 6901 et seq.

~~(uu) *State* means the State of Oregon.~~

~~(vv)~~ *Stormwater* means any flow occurring as a result of any form of natural precipitation, including snowmelt.

~~(xx)~~ *Toxicity* means the effect upon living organisms resulting from exposure to one or more of the pollutants listed in EPA regulations promulgated under 33 USC 1317.

~~(yy)~~ *Toxic Substances Control Act* means 15 USC 2601 et seq.

~~(zz)~~ *Treatment plant* means that portion of the municipal wastewater system designed to provide treatment of sewage and industrial wastewater.

~~(aaa)~~ *Treatment plant effluent* means any discharge of treated wastewater which is permitted by NPDES permit.

~~(ww)~~ *TSS* means total suspended solids; the total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and which is removable by laboratory filtering.

~~(bbb)~~ *User* means any person who contributes, or causes or allows the contribution of, sewage or industrial wastewater into the municipal wastewater system, including any person who contributes such wastes from mobile sources.

~~(ccc)~~ *Wastewater* means the liquid- and water-carried industrial wastes, or sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which is contributed to the municipal wastewater system.

~~(oo)~~ *Waters of the State* means the receiving streams or waters, which are contained within, flow through, or border upon the State ~~of Oregon~~, or any portion thereof, including, but not limited to, all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private.

(Prior Code, § 74.030; Ord. No. 13-96; Ord. No. 51-96; Ord. No. 65–2002; Ord. No. 25-06)

Sec. 74.040. Interpretation.

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

(a) “Shall” is mandatory; “may” is permissive or discretionary.

(b) The ~~phrases~~ terms "may not" and "shall not" are equivalent expressions of absolute prohibition.

(c) The use of the singular shall be construed to include the plural and the plural shall include the singular, unless otherwise indicated by the context of its use.

(Prior Code, § 74.040; Ord. No. 13-96; Ord. No. 65-2002)

GENERAL SEWER USE REQUIREMENTS

Sec. 74.050. Prohibited discharges.

(a) No user shall contribute or cause to be contributed, directly or indirectly, any pollutant or wastewater into the municipal wastewater system which will cause interference or pass through, whether or not the user is subject to categorical pretreatment standards or any other pretreatment standards or requirements. These general prohibitions apply to all users of the municipal wastewater system.

(b) No user shall contribute any of the following substances into the municipal wastewater system, unless specifically authorized by the Director and such discharge does not exceed specific prohibitions as found in 40 CFR 403.5(b) or other applicable pretreatment standards:

(1) Any liquids, solids, or gases which, by reason of their nature or quantity, are or may be sufficient, either alone or by interaction with other substances, to cause fire or explosion or to be injurious in any other way to the municipal wastewater system. Included in this prohibition are waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit (60 degrees centigrade) using the test methods referred to in 40 CFR 261.21.

(2) Solid or viscous substances in amounts which will obstruct the flow in a sewer resulting in interference, but in no case solids greater than one-half-inch (1.27 centimeters) in any dimension.

(3) Any fat, oils or grease, including, but not limited to, petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through.

(4) Any wastewater which may cause corrosive structural damage to the municipal wastewater system, endanger the health or safety of city personnel, cause damage to City equipment, or endanger biological activity of the municipal wastewater system.

(5) Any wastewater containing pollutants in sufficient quantity, measured in flow or concentration, which, either singly or by interaction with other pollutants, will interfere with the municipal wastewater system, or cause pass through, or which constitute a hazard to humans or animals.

(6) Any noxious or malodorous liquids, gases, or solids, or wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sewers for maintenance and repair.

(7) Any substance which may cause the treatment plant effluent or any other residues, sludges, or scums to be unsuitable for reclamation and reuse or which may interfere with the reclamation process. In no case shall a substance discharged to the municipal wastewater system cause the City to violate sludge use or disposal regulations or permits issued under 33 USC 1345, the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or state requirements applicable to the sludge use and disposal practices being used by the City.

(8) Any wastewater, including, but not limited to, dye wastes and vegetable tanning solutions, which imparts color which cannot be removed by the treatment process, and thereby causes a violation of the NPDES permit. Color, in combination with turbidity, shall not cause the treatment plant effluent to reduce the depth of the compensation point for photosynthetic activity by more than ten percent from the seasonably established norm for aquatic life.

(9) Any wastewater having a temperature greater than 150 degrees Fahrenheit (65 degrees centigrade), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the point of introduction into the treatment plant to exceed 104 degrees Fahrenheit (40 degrees centigrade).

(10) Any wastewater containing any radioactive waste or isotopes, except as specifically approved by the Director in compliance with applicable state or federal regulations.

(11) Any pollutants which result in the presence of toxic gases, vapor, or fumes within the municipal wastewater system in a quantity that may affect worker health and safety.

(12) Any trucked or hauled pollutants, except at discharge points designated by the City in accordance with SRC 74.180.

(13) Stormwater, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, condensate, deionized water, cooling water, and unpolluted industrial wastewater, unless specifically authorized by the Director.

(14) Any sludge, screenings, or other residues from the pretreatment of industrial wastes.

(15) Any medical wastes, except as specifically authorized by the Director.

(16) Any material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfere with the municipal wastewater system.

(17) Any material identified as hazardous waste under 40 CFR ~~Part~~ 261, except as specifically authorized by the Director.

(18) Any wastewater causing the treatment plant effluent to demonstrate toxicity to test species during a biomonitoring evaluation.

(19) Recognizable portions of the human or animal anatomy.

(20) Any wastes containing detergents, surface active agents, or other substances which may cause excessive foaming in the municipal wastewater system.

(c) No user shall store or process wastes identified in subsection (b) of this section in such a manner that the wastes could be discharged into the municipal wastewater system.

(Prior Code, § 74.050; Ord. No. 13-96; Ord. No. 14-98; Ord. No. 65-2002; Ord. No. 22-2003)

Sec. 74.055. Discharges to the environment.

(a) No person shall discharge any sewage, domestic or industrial waste, pollutant, or hazardous material, to the environment.

(b) Dischargers shall notify the Director immediately upon discharging material in violation of this or other applicable sections of this Code to enable countermeasures to be taken to minimize damage to the environment. Notification of the Director does not absolve the discharger of their responsibility to notify state and federal agencies under state and federal programs.

(c) Above ground chemical tanks shall be protected by approved methods to prevent accidental discharge to sewers or the environment. All below ground tanks shall be installed in accordance with ORS ch. 466 ~~539~~.

(d) When dikes or impounding basins are used to contain chemicals, impervious materials shall be used to provide a liquid tight enclosure.

(Prior Code, § 74.055; Ord. No. 65-2002)

Sec. 74.060. Cost reimbursement.

(a) The party responsible for the prohibited discharge of wastewater or pollutants to the municipal wastewater system or the environment shall be responsible for all clean-up, response or repair costs related to the discharge, including, but not limited to, costs incurred by the City for identification, hazard assessment, and containment.

(b) A party may be required to perform clean up as a result of:

(1) Illegal disposal of hazardous materials or pollutants.

(2) Improper handling of hazardous materials or pollutants at any site.

(3) Spills of hazardous materials or pollutants into the municipal wastewater system or the environment.

(4) Discharge of hazardous materials or pollutants during a fire or other accident.

(c) For the purposes of this section, reimbursement costs include those costs that are eligible, reasonable, necessary, and allocable to the incident, including, but not limited to, the following:

(1) Disposable materials and supplies provided, consumed, or expended specifically for the purpose of the response.

(2) Compensation for employee time and effort devoted specifically to the response.

(3) Rental or leasing costs of equipment used specifically for the response.

(4) Replacement costs for equipment owned by the City that is contaminated beyond reuse or repair.

(5) Decontamination of equipment was used during the response.

(6) Costs of special technical service specifically required for the response.

(7) Any other special services or equipment specifically required for the response.

(8) Laboratory costs for the purpose of analyzing samples taken during the response.

(Prior Code, § 74.060; Ord. No. 65-2002)

Sec. 74.065. Federal categorical pretreatment standards.

(a) Users subject to categorical pretreatment standards shall comply with applicable categorical pretreatment standards under 40 CFR chapter 1, subchapter N, parts 405—471, and incorporated herein by reference.

(b) When a categorical pretreatment standard is expressed in terms of either mass limits or concentration limits of a pollutant in wastewater, the Director may impose either concentration or mass limits in accordance with 40 CFR 403.6(c).

(c) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not subject to the same standard, the Director shall impose an alternative limit using the combined waste stream formula in 40 CFR 403.6(e). Any significant change in the mixture shall be immediately reported to the Director.

(Prior Code, § 74.065; Ord. No. 13-96; ~~Formerly 74.060,~~ Ord. No. 65-2002)

Sec. 74.070. State pretreatment standards.

Users shall comply with applicable state pretreatment standards under OAR ch. 340, which are incorporated herein by reference.

(Prior Code, § 74.070; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.080. Specific local pollutant limits.

(a) The Director shall publish and revise from time to time local limits for specific restricted substances and applicable pH range limitations. These local limits shall be developed in accordance with 40 CFR ~~Section~~ 403.5 shall implement this chapter, and shall be applicable to all users, other than residential users. Pretreatment standards published in accordance with this section shall be deemed Pretreatment Standards for the purposes of 33 USC 1317(d).

(b) The Director may impose mass limitations in addition to or in place of the concentration-based pretreatment standards.

(Prior Code, § 74.080; Ord. No. 13-96; Ord. No. 14-98; Ord. No. 65-2002)

Sec. 74.090. Special agreements; variance from categorical pretreatment standard.

(a) The Director may enter into special agreements with industrial users setting out specific terms under which the industrial user may discharge into the municipal wastewater system. In no case will a special agreement waive compliance with a pretreatment standard; provided, however, the industrial user may request a net or gross adjustment to a categorical pretreatment standard in accordance with 40 CFR 403.15.

(b) Industrial users may request a variance from a categorical pretreatment standard from the EPA. Such a request will be approved only if the user can prove that factors relating to its discharge are fundamentally different from the factors considered by the EPA when establishing that categorical pretreatment standard. An industrial user requesting a fundamentally different factor variance must comply with the procedural and substantive provisions under 40 CFR 403.13.

(Prior Code, § 74.090; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.100. Dilution.

No user shall increase the use of process water, or dilute, or in any way attempt to dilute a discharge as a partial or complete substitute for adequate pretreatment to achieve compliance with a discharge limitation, unless expressly authorized by an applicable categorical pretreatment standard or requirement pursuant to 40 CFR 403.6(d), or by another pollutant-specific limitation developed by the Director.

(Prior Code, § 74.100; Ord. No. 13-96; Ord. No. 65-2002; Ord. No. 22-2003)

PRETREATMENT OF WASTEWATER

Sec. 74.110. Pretreatment required; pretreatment facilities.

Industrial users shall, within time limits specified by the Director, provide necessary wastewater pretreatment, as required to comply with this chapter, and shall comply with all pretreatment standards and pretreatment requirements and the prohibitions under SRC 74.050 through ~~SRC~~ 74.100. Any facilities necessary to pretreat wastewater shall be provided, operated, and maintained at the industrial user's sole expense. Detailed plans of pretreatment facilities and copies of operating procedures shall be submitted to the City for review and acceptance prior to commencing construction of the facility. The review of such plans and operating procedures shall in no way relieve the user from the responsibility of modifying the facility as necessary to produce a discharge which complies with this chapter or a wastewater permit issued hereunder.

(Prior Code, § 74.110; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.120. Additional pretreatment measures.

(a) When deemed necessary by the Director, industrial users shall restrict discharge during peak flows or during emergencies, discharge certain wastewater only into specific sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams, and be subject to such other conditions necessary to protect the municipal wastewater system and to determine the industrial user's compliance with this chapter or a wastewater discharge permit issued hereunder.

(b) The Director may require any new source or any existing source undergoing major expansions which is discharging wastewater into the municipal wastewater system in volumes greater than 100,000 gallons per day or greater than five percent of the average daily flow in the affected drainage basin, whichever is lesser, to install and maintain suitable storage and flow control facilities, to ensure equalization of flow over a 24-hour period. Capacity of the facility shall be determined using sound engineering principles. A wastewater permit may be issued solely for flow equalization.

(c) Grease, oil, and sand interceptors shall be provided by users, other than residential users, when deemed necessary by the Director for the proper operation of the wastewater collection system. All interceptors shall be of a type and capacity approved by the Director and shall be so located to be easily accessible for cleaning and inspection. All interceptors shall be inspected, cleaned and repaired regularly, and the contents properly disposed of, as necessary at the owner's sole effort and expense.

(d) The Director may require industrial users with the potential to discharge flammable substances to install and maintain an approved combustible gas detection meter.

(e) Wastes containing soil, dirt, or sand shall be settled in a detention basin or in a mechanical device approved by the Director before being discharged into the municipal wastewater system.

(f) Industrial wastes shall be passed through approved 20-mesh screens (0.85mm sieve opening), unless otherwise allowed by the Director.

(g) When pH adjustment is required to meet established pH limits, a recording pH meter shall be installed and maintained by the user.

(Prior Code, § 74.120; Ord. No. 13-96; Ord. No. 65-2002; Ord. No. 22-2003)

Sec. 74.130. Waste monitoring facilities required.

(a) When deemed necessary by the Director, industrial users shall construct and maintain approved flow and pH measurement, sampling, and sample storage facilities for all waste entering the municipal wastewater system. These facilities may be used to obtain flow, BOD, pH, TSS, or other data required by the Director for use as a basis for industrial waste sewer service charges.

(b) When, in the opinion of the Director, an industrial user's wastewater characteristics are of uniform strength, the Director may allow for modified flow monitoring facilities which would provide for daily composite sampling a minimum of eight days out of two consecutive weeks every five months. The average of the samples may be used to calculate the industrial user's sewer charges for the following five-month period.

(c) All private water sources for industrial users must be metered. If the Director determines that the wastewater flow data is not reliable or unavailable for any period of time, the volume of water discharged for the period in question will be deemed to be the amount of inflow metered potable water including all private water sources.

(d) The Director shall determine if an industrial waste loading is not uniform strength by at least four consecutive daily composite waste samples twice a year based on BOD, TSS or other parameters as approved by the Director. If two consecutive measurements indicate strengths are not uniform, the industrial user shall construct and maintain measurement and sampling facilities as a basis for computing the user's sewer service charge.

(e) Laboratory analysis performed by the Director or contracted by the City will be the basis for determining compliance with this section.

(Prior Code, § 74.130; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.140. Installation and maintenance waste monitoring facilities.

(a) All devices, access facilities, and related equipment shall be installed by the person discharging the waste at the person's expense and shall be maintained by the person in a safe and proper operating condition at all times, readily accessible to the Director during all times the industry is operating.

(b) The flow measurement device shall be a Parshall flume, or other flow measurement device acceptable to the Director, providing accurate and continuous flow indication, but in no case shall pump timers or other indirect measurement devices be used for flow measurement.

(c) The flow meter shall indicate and total the flow in millions of gallons per day with an error not exceeding plus or minus two percent. The meter shall be equipped with a set of electrical contacts arranged to momentarily close a circuit to energize the sampling device which will take a minimum of 50 samples per operating day. Other control variations will be acceptable if it can be demonstrated that the sampling procedure will result in a waste sample which is proportional to the waste flow. In no case shall the daily collected sample be less than two liters in volume.

(d) The method of sampling used may be by continuous pumping past a solenoid-operated diversion valve, direct pumping into the sample container, continuous pumping past a sampler dipper calibrated to remove a constant sample, by a proportionate dipper sampler operating directly in the waste flow, or by any other approved means. The sample collection pipe or dipper cup shall be sized according to waste characteristics and approved by the Director and the sample pump shall have a minimum capacity of three gallons per minute. The sample line shall not be interconnected to any other piping system. All samples must be continuously refrigerated at a temperature between one degree centigrade and four degrees centigrade (34 degrees Fahrenheit and 39 degrees Fahrenheit).

(e) The area for installation of the measuring and sampling equipment, pH monitoring system, and sample storage shall be fully enclosed, locked and protected from tampering and keys provided to the City. All measuring and sampling equipment shall be serviced and calibrated at least twice annually by a qualified independent technician approved by the Director, with one service calibration to be done not more than two weeks prior to the peak season for seasonal processors. Maintenance, repair, replacement, or additional equipment needed to accurately monitor waste discharge shall be provided at the sole cost of the user. A clean sample container shall be supplied daily to the City sample collector to place in service.

(f) All pH monitoring probes shall be cleaned as required by the Director.

(g) All sampling hoses, devices including valves and sample splitters, holding vessels and refrigerators used for holding or storing samples shall be cleaned and maintained so as to ensure true and accurate composite samples.

(h) The flow measurement, pH monitoring, and sampling stations shall be located and constructed in a manner acceptable to the Director. Complete plans on all phases of the proposed installation, including all equipment proposed for use, shall be submitted to the Director for approval prior to construction. Construction shall be completed within 90 days following notification of approval by the City.

(i) There shall be sufficient room in or near the sampling station to allow accurate sampling and preparation of samples for analysis.

(j) The user discharging the waste shall keep flow records required by the Director and shall provide qualified personnel to properly maintain and operate the facilities.

(k) Calibration of flow meters, pH recorders, and samplers shall be performed at least twice annually by a qualified technician or at such intervals as may be required by the Director. Maintenance and calibration adjustments shall be recorded daily and records shall be readily available to City inspectors. City inspectors may check calibration of flow and pH instruments. An approved electrical outlet shall be provided near the user's sample equipment for City equipment.

(l) Maintenance schedules shall be made available to City inspectors, including, but not limited to, schedules for:

(1) Cleaning sample collection tubes and containers;

(2) Operating the sample refrigeration system;

(3) Cleaning screening equipment; and

(4) Calibrating pH probes and chemical feed equipment.

(m) pH monitoring and control equipment shall be of a type approved by the Director and shall be equipped with a circular or strip chart recorder. The recording for pH monitoring shall show a minimum of 24 hours of data with indication of the presence or absence of flows.

(Prior Code, § 74.140; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.150. Accidental spill prevention plans.

(a) At least once every two years, the Director shall evaluate whether each significant industrial user needs an accidental spill prevention or slug control plan to provide protection from accidental or slug discharge of materials which may interfere with the municipal wastewater system. Facilities necessary to implement these plans shall be provided and maintained at the industrial user's expense. Spill prevention or slug control plans, including the facilities and the operating procedures, shall be approved by the City prior to implementation.

(b) Industrial users that store hazardous substances shall not contribute to the municipal wastewater system unless a spill prevention or slug control plan has been approved by the City. Approval of a plan shall not relieve the industrial user from complying with all other laws and regulations governing the use, storage, and transportation of hazardous substances. Significant industrial users are required to notify the POTW immediately of any changes at its facility affecting potential for an accidental or slug discharge.

(c) At a minimum, an accidental spill prevention plan or slug control plan shall contain the following:

(1) Description of discharge practices, including nonroutine batch discharges;

(2) Description of stored chemicals;

(3) Procedures for immediately notifying the City of any accidental or slug discharge; and

(4) Procedures to prevent adverse impacts from any accidental or slug discharges, including, but not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, controlling of plant site runoff, training workers, building of containment structures or equipment, measures for containing toxic organic pollutants including solvents, and measures and equipment for emergency response.

(Prior Code, § 74.150; Ord. No. 13-96; Ord. No. 65-2002; Ord. No. 22-2003; Ord. No. 25-06)

Sec. 74.160. Tenant responsibility.

Any person who occupies premises as a tenant and is an industrial user shall comply with the provisions of this chapter.

(Prior Code, § 74.160; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.170. Separation of domestic and industrial waste streams.

All domestic wastewater from an industrial user's restrooms, showers, drinking fountains, and other similar uses, shall, unless specifically included as part of a pretreatment standard or requirement, be kept separate from all industrial wastewater until the industrial wastewater has passed through the pretreatment system and the industrial user's monitoring facility. When directed to do so by the Director, industrial users must separate existing domestic waste streams.

(Prior Code, § 74.170; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.180. Hauled wastewater.

(a) Domestic septic tank waste may be accepted into the municipal wastewater system at the City's designated disposal site within the collection system, at such times as may be established by the Director, provided such wastes are domestic waste, do not contain toxic or hazardous pollutants, and do not violate any other requirements established by the City. Permits for individual vehicles to use such facilities shall be issued by the Director.

(b) Septic haulers, regardless of the origin of the hauled wastes, shall be considered industrial users for the purposes of this chapter.

(c) The discharge of hauled industrial wastewater as industrial septage requires prior approval and a wastewater permit from the City. The Director shall have authority to prohibit the disposal of such wastes, if such disposal would interfere with the treatment plant operation.

(Prior Code, § 74.180; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.190. Incentive program.

Because the overall interests of the City are best served by encouraging the pretreatment of wastewater, the Director shall administer a pretreatment grant program in accordance with departmental policy, and subject to the availability of budgeted funds.

(Prior Code, § 74.190; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.200. Vandalism.

No person shall intentionally or negligently break, damage, destroy, uncover, deface, tamper with, or prevent access to any structure, equipment, or other part of or appurtenance to the municipal wastewater system.

(Prior Code, § 74.200; Ord. No. 13-96; Ord. No. 65-2002)

WASTEWATER PERMIT ELIGIBILITY

Sec. 74.210. Wastewater survey.

When requested, an industrial user must submit information on a survey form prepared by the Director, prior to commencing discharge into the municipal wastewater system, identifying the nature and characteristics of the user's wastewater. The Director may periodically require industrial users to update the survey. Failure to complete this survey within the time set by the Director shall be grounds for terminating service to the industrial user.

(Prior Code, § 74.210; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.220. Discharges prohibited without a permit.

(a) No significant industrial user shall discharge wastewater into the City's municipal wastewater system without first obtaining a wastewater permit.

(b) No permittee shall violate the terms and conditions of a wastewater permit issued pursuant to this chapter. Obtaining a wastewater permit shall not relieve a permittee from the obligation to obtain other permits required by federal, state, or local law.

(c) The Director may require other industrial users, including liquid waste haulers, to obtain wastewater permits.

(Prior Code, § 74.220; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.230. Permitting existing connections.

~~Permitting Existing Connections.~~ Any significant industrial user, not already possessing a permit, that discharges industrial waste into the municipal wastewater system prior to the effective date of the ordinance from which this chapter is derived and who wishes to continue such discharges in the future, shall, within 90 days after the effective date, apply to the City for a wastewater permit in accordance with SRC 74.260, and shall not cause or allow discharges to the system to continue after 180 days of the effective date except in accordance with a permit issued by the Director.

(Prior Code, § 74.230; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.240. Permitting new or renewed connections.

(a) Any significant industrial user proposing to begin or to recommence discharging industrial wastes directly or indirectly into the municipal wastewater system must obtain a wastewater permit prior to beginning or recommencing such discharge.

(b) An application for a permit renewal must be received at least 90 days before the current permit expires.

(Prior Code, § 74.240; Ord. No. 13-96; Ord. No. 65-2002; Ord. No. 6-12)

Sec. 74.250. ~~Extrajurisdictional~~ Extraterritorial industrial user treatment permits.

(a) Any new or existing significant industrial user located outside the city limits proposing to begin or to recommence discharging industrial wastes directly or indirectly into the municipal wastewater system must obtain a wastewater permit prior to beginning or recommencing such discharge. The Director may issue an extraterritorial industrial user treatment permit to the industrial user which shall include all permitting, compliance monitoring, reporting, and enforcement provisions contained in this chapter.

(b) An application for an ~~Extrajurisdictional~~ extraterritorial industrial user treatment permit renewal must be received at least 90 days before the current permit expires.

(c) In lieu of extraterritorial industrial user treatment permits, the Director may enter into an intergovernmental agreement with the jurisdiction in which the significant industrial user is located to provide for the implementation and enforcement of a pretreatment program for the user. Any agreement made under this subsection shall be subject to treatment plant capacity.

(Prior Code, § 74.250; Ord. No. 13-96; Ord. No. 65-2002; Ord. No. 6-12)

Sec. 74.260. Wastewater permit application contents.

(a) All industrial users required to have a permit must submit the following information on an application form approved by the Director:

(1) The user's name, mailing address, and, if different from the user's mailing address, the location of the facility;

(2) Environmental control permits held by or for the facility;

(3) Standard Industrial Classification Codes for the pretreatment industry as a whole and any processes for which categorical pretreatment standards have been promulgated;

(4) Description of activities, facilities, and plant processes at the facility, including a list of all raw materials and chemicals which are or could be accidentally or intentionally discharged to the municipal wastewater system;

(5) Number and type of employees, hours of operation of the facility, and proposed or actual hours of operation of the pretreatment system;

(6) Each product by type, amount, process or processes, and rate of production;

(7) Type and amount of raw materials processed, as averages and maximums per day;

(8) The site plans, floor plans, and mechanical and plumbing plans and details to show all sewers, floor drains, and appurtenances by size, location and elevation, and all points of discharge at the facility;

(9) Time and duration of discharges;

(10) Measured average daily and maximum daily flow, in gallons per day, into the municipal wastewater system from regulated process streams and other streams, as necessary for the use of the combined waste stream formula in 40 CFR 403.6(e);

(11) Daily maximum, daily average, and monthly average wastewater flow rates, including daily, monthly, and seasonable variations, if any;

(12) Wastewater constituents and characteristics, including any pollutants in the discharge which are limited by pretreatment standards or pretreatment requirements, the pretreatment standards or pretreatment requirements applicable to each regulated process, and the nature and concentration of regulated pollutants in each regulated process, or mass and daily maximum and average concentration or mass when required by a pretreatment standard. Sampling and analysis shall be undertaken in accordance with 40 CFR ~~Part~~ 136;

(13) A statement by the industrial user's authorized representative indicating the pretreatment standards and pretreatment requirements are being met for existing sources or will be met for new sources on a consistent basis and, if not, what additional pretreatment is necessary;

(14) If additional pretreatment and/or operations and maintenance will be required to meet the pretreatment standards or pretreatment requirements, then the industrial user shall indicate the shortest time schedule necessary to accomplish installation or adoption of such additional pretreatment and/or operations and maintenance. The completion date in this schedule shall not be longer than the compliance date established for the applicable pretreatment standard or pretreatment requirement. The following conditions shall apply to this schedule:

(A) No increment set forth in this schedule shall exceed nine months, nor shall the total compliance period exceed 36 months;

(B) Progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of additional pretreatment facilities required of the user to meet the applicable pretreatment standards and pretreatment requirements, including, but not limited to, hiring an engineer, completing preliminary plans, completing final plans, executing contracts for major components, commencing construction, completing construction, beginning operation, and conducting routine operation; and

(C) No later than 14 days following each date in the schedule and the final date for compliance, the industrial user shall submit a progress report to the Director, including, at a minimum, whether or not the user has complied with the progress increment, the reason for any delay, and, if appropriate, the steps being taken by the user to return to the established schedule. In no event shall more than nine months elapse between any progress report to the Director;

(15) Any other information deemed necessary to evaluate the permit application.

(b) Incomplete or inaccurate applications will not be deemed complete, and will be returned to the industrial user for correction or revision.

(Prior Code, § 74.260; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.270. Signatories and certification.

All permit applications and industrial user reports must contain a certification statement as required by 40 CFR 403.6(a)(2)(ii) and be signed by an authorized representative of the industrial user.

(Prior Code, § 74.270; Ord. No. 13-96; Ord. No. 65-2002; Ord. No. 22-2003)

Sec. 74.280. Issuance of wastewater permits.

(a) Within 60 days of the date the Director deems a permit application complete, the Director will evaluate the data furnished by the industrial user and determine whether a wastewater permit should be issued.

(b) If any wastewater proposed to be discharged to the municipal wastewater system contains substances identified or possesses the characteristics enumerated in SRC 74.050, which, in the judgment of the Director, may have a deleterious effect upon the municipal wastewater system, processes, equipment, or waters of the State, or otherwise create a hazard to life or constitute a public nuisance, the Director may:

(1) Refuse to permit the discharge;

(2) Require pretreatment to an acceptable condition for discharge into the municipal wastewater system; or

(3) Require control over the quantities and rates of discharge.

(Prior Code, § 74.280; Ord. No. 13-96; Ord. No. 65-2002)

WASTEWATER PERMIT ISSUANCE PROCESS

Sec. 74.290. Wastewater permit duration.

Permits shall be issued for a time period specified by the Director, not to exceed five years. Each permit shall indicate the specific date upon which it will expire.

(Prior Code, § 74.290; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.300. Wastewater permit contents.

A wastewater permit shall include such conditions deemed reasonably necessary by the Director to prevent pass through or interference and to implement the objectives of this chapter.

(a) Wastewater permits shall, at a minimum, contain:

(1) A statement of permit duration;

(2) A statement that the permit is nontransferable;

(3) Effluent limits applicable to the industrial user, including Best Management Practices, based on applicable pretreatment standards in 40 CFR ~~Part~~ 403, categorical pretreatment requirements, local limits, and state and local law;

(4) Monitoring, sampling, reporting, notification, and recordkeeping requirements, including an identification of pollutants to be monitored, sampling location, sampling frequency, and sample type based on federal, state, and local law;

(5) Statement of applicable penalties for violation of pretreatment standards, pretreatment requirements, and compliance schedules; and

(6) Requirements to control spills or slug discharges as determined necessary by the POTW, including conditions for emergency suspension of the permit, or conditions thereof.

(b) Permits may contain:

(1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;

(2) Limits on the instantaneous daily and monthly average, and/or maximum concentration, mass, or other measure of identified wastewater pollutants or properties;

(3) Requirements for the installation of pretreatment technology or construction of appropriate containment devices or other similar technologies or devices designed to reduce, eliminate, or prevent the introduction of pollutants into the treatment works;

(4) Development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges;

(5) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the municipal wastewater system;

(6) Requirements for installation and maintenance of inspection and sampling facilities and equipment;

(7) Specifications for monitoring programs, which may include designation of sampling locations and frequency of sampling; the number, types, and standards for tests; and reporting schedules;

(8) Requirements for immediate reporting of any instance of noncompliance and for automatic resampling and reporting within 30 days of such noncompliance where monitoring indicates a violation;

(9) Compliance schedules for meeting pretreatment standards and pretreatment requirements;

(10) Requirements for submission of periodic monitoring or special notification reports;

(11) Requirements for maintaining and retaining plant records relating to wastewater discharge pursuant to SRC 74.450 and 74.460, and affording the Director or his or her access thereto;

(12) Requirements for prior notification and approval by the Director of any introduction of new wastewater pollutants or any change in the volume or character of wastewater prior to introduction in the municipal wastewater system;

(13) Requirements for prior notification to and approval by the Director of any change in the manufacturing and/or pretreatment process;

(14) Requirements for immediate notification of excessive, accidental, or slug discharges, or other discharge which may cause any problems to the municipal wastewater system;

(15) A statement that compliance with the permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards and pretreatment requirements, including those which become effective during the term of the permit; and

(16) Other conditions deemed appropriate by the Director to ensure compliance with this chapter; state and federal laws, rules, and regulations; and the terms of the permit.

(Prior Code, § 74.300; Ord. No. 13-96; Ord. No. 65-2002; Ord. No. 25-06)

Sec. 74.310. Wastewater permit appeals.

Any person, including the permittee, may appeal the conditions imposed in a permit, or the issuance or denial of a permit within ten days of the issuance of the final permit by filing a notice of appeal, as provided for in SRC 74.625.

(a) Failure to submit a timely notice of appeal shall be a waiver of all rights to administrative review.

(b) In addition to the requirements in SRC 74.625, the appellant shall indicate the specific objection, the reasons for the objection, and alternative conditions, if any, the appellant seeks to have placed in the permit.

(c) The effectiveness of the permit shall not be stayed pending resolution of appeal.

(Prior Code, § 74.310; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.320. Wastewater permit modifications.

(a) The Director may modify a permit for good cause, including, but not limited to, the following:

(1) To incorporate any newly revised federal, state, or local pretreatment standards or pretreatment requirements;

(2) To address significant alterations or additions to the industrial user's operation, processes, or wastewater volume or character since the time of permit issuance;

(3) A change in the municipal wastewater system that requires either a temporary or permanent reduction or elimination of the permitted discharge;

(4) Information indicating that the permitted discharge poses a threat to the municipal wastewater system, city personnel, or waters of the State;

(5) Violation of any terms or conditions of the wastewater permit;

(6) Misrepresentation or failure to disclose fully all relevant facts in the permit application or in any required reporting;

(7) A revision or grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13; or

(8) To correct typographical or other errors in the permit.

(b) The filing of a request by the permittee for a permit modification does not stay any permit condition.

(Prior Code, § 74.320; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.330. Wastewater permit transfer.

Permits may not be reassigned or transferred from the permittee to a new industrial user.

(Prior Code, § 74.330; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.340. Wastewater permit reissuance.

A significant industrial user shall apply for permit reissuance by submitting a complete permit application in accordance with SRC 74.260 no later than 90 days prior to the expiration of the user's permit.

(Prior Code, § 74.340; Ord. No. 13-96; Ord. No. 65-2002)

REPORTING REQUIREMENTS

Sec. 74.350. Baseline monitoring reports.

(a) Within 180 days after the effective date of the adoption of a categorical pretreatment standard, or 180 days after the final administrative decision on a category determination under 40 CFR 403.6(a)(4), whichever is later, existing significant industrial users subject to such categorical pretreatment standards and discharging into or scheduled to discharge into the municipal wastewater system shall submit a report to the City.

(b) At least 90 days prior to commencement of any discharge, new sources, including industrial users which have changed their operation or processes, shall submit a report to the City. A new source shall also report the method it intends to use to meet applicable pretreatment standards and pretreatment requirements, and give estimates of its anticipated flow and quantity of pollutants to be discharged.

(c) Each report submitted under subsections (a) and (b) of this section shall include:

(1) *Identifying information.* The industrial user shall submit the name and address of the facility, including the name of the operator and owners.

(2) *Permits.* The industrial user shall submit a list of any environmental control permits held by or for the facility.

(3) *Description of operation.* The industrial user shall submit a brief description of the nature, average rate of production, and standard industrial classifications of the operation carried out by the user. This description shall include a schematic process diagram which indicates points of discharge into the municipal wastewater system from the regulated processes.

(4) *Flow measurement.* The user shall submit information showing the measured average daily and maximum daily flow in gallons per day into the municipal wastewater system from regulated process streams and other streams, as may be necessary to allow use of the combined waste stream formula set out in 40 CFR 403.6(e).

(5) *Measurement of pollutants.*

(A) The industrial user shall identify the categorical pretreatment standards applicable to each regulated process.

(B) The industrial user shall submit the results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the pretreatment standards or director of regulated pollutants in the discharge from each regulated process. Both daily maximum and long-term average concentrations, or mass where required, shall be reported. The sample shall be representative of daily operations and shall be performed in accordance with procedures set out in 40 CFR ~~Part~~ 136. Where the standard requires compliance with Best Management Practices or pollution prevention alternatives, the user shall submit documentation as required by the control authority or the applicable standard to determine compliance with the standard.

(C) A minimum of four grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide, and volatile organics. All other pollutants will be measured by composite samples obtained through flow proportional sampling technique. If flow proportional composite sampling is infeasible, samples may be obtained through time proportional sampling techniques or four grab samples if the user proves to the satisfaction of the Director that such a sample will be representative of the discharge.

(D) Samples should be taken immediately downstream from pretreatment facilities if such exist, or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment, the user should measure the flows and concentrations necessary to allow use of the combined wastestream formula of 40 CFR 403.6(e) in order to evaluate compliance with the pretreatment standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e), this adjusted limit along with supporting data shall be submitted to the control authority.

(E) Sampling and analysis shall be performed in accordance with the techniques prescribed in 40 CFR ~~Part~~ 136, and amendments thereto. Where 40 CFR ~~Part~~ 136 does not contain sampling or analytical techniques for the pollutant in question, or where the administrator determines that the 40 CFR ~~Part~~ 136 sampling or analytical techniques are inappropriate for the pollutant in question, sampling and analysis shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the POTW or other parties, approved by the administrator.

(F) The control authority may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures.

(G) The baseline report shall indicate the time, date, and place of sampling, and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant discharges to the POTW.

(6) *Special certification.* A statement, reviewed by an authorized representative of the industrial user and certified by a qualified professional, indicating whether pretreatment standards and pretreatment

requirements are being met on a consistent basis and, if not, whether additional operations and maintenance and/or additional pretreatment is required in order to meet the pretreatment standards and pretreatment requirements.

(7) *Compliance schedule.* If additional pretreatment and/or operations and maintenance will be required to meet the pretreatment standards and pretreatment requirements, the user must provide the shortest schedule by which the industrial user will meet such additional pretreatment and/or operations and maintenance. The completion date in this schedule shall not be later than the compliance date established for the applicable pretreatment standard or pretreatment requirement. A compliance schedule pursuant to this section must meet the requirements set out in SRC 74.260(a)(14).

(8) All baseline monitoring reports must comply with SRC 74.270.

(A) Where the industrial user's categorical pretreatment standard has been modified by a removal allowance (40 CFR 403.7), the combined wastestream formula (40 CFR 403.6(e)), and/or a Fundamentally Different Factors Variance (40 CFR 403.13) at the time the user submits the report required by this section, the information required by ~~paragraphs~~ subsections (c)(6) and (7) of this section shall pertain to the modified limits.

(B) If the categorical pretreatment standard is modified by a removal allowance (40 CFR 403.7), the combined wastestream formula (40 CFR 403.6(e)), and/or a Fundamentally Different Factors Variance after the user submits the report required by this section, any necessary amendments to the information requested by ~~paragraphs~~ subsections (c)(6) and (7) of this section shall be submitted by the user to the control authority within 60 days after the modified limit is approved.

(Prior Code, § 74.350; Ord. No. 13-96; Ord. No. 65-2002; Ord. No. 22-2003; Ord. No. 25-06)

Sec. 74.360. Compliance deadline reports.

Within 90 days following the date for final compliance with applicable categorical pretreatment standards, pretreatment standards or pretreatment requirements, or in the case of a new source following commencement of the introduction of wastewater into the municipal wastewater system, an industrial user subject to such pretreatment standards and pretreatment requirements shall submit a report to the City containing the information described in 40 CFR 403.12(b)(4-6), 403.12(d), and 403.12(l). For industrial users subject to equivalent mass or concentration limits established in accordance with 40 CFR 403.6(c), this report shall contain a reasonable measure of the user's long-term production rate. For all other industrial users subject to other measure of operation, this report shall include the user's actual production during the appropriate sampling period. All compliance reports must comply with SRC 74.270. All wastewater samples must be representative of the industrial user's discharge and meet sampling and analytical requirements of 40 CFR 136.

(Prior Code, § 74.360; Ord. No. 13-96; Ord. No. 65-2002; Ord. No. 22-2003)

Sec. 74.370. Periodic compliance reports.

(a) Any significant industrial user, including non-categorical users, subject to a pretreatment standard or pretreatment requirement shall, at a frequency determined by the Director, but in no case less than twice per year, submit a report indicating the nature and concentration of pollutants in the discharge which are limited by the pretreatment standards or pretreatment requirements and the measured or estimated average and maximum daily flows for the reporting period. All periodic compliance reports must comply with SRC 74.270.

(b) All wastewater samples must be representative of the industrial user's discharge and meet sampling and analytical requirements of 40 CFR 136 and reporting and sampling requirements of 40 CFR 403.12. The failure of an industrial user to keep its monitoring facility in good working order shall not be grounds for the industrial user to claim sample results are unrepresentative of its discharge.

(c) If an industrial user's monitoring results indicate a violation has occurred, the industrial user shall:

(1) Immediately notify the Director and resample its discharge within 24 hours of becoming aware of the violation; and

(2) Report the results of repeated sampling within 24 hours of receiving the results. In no case shall the results of resampling be reported later than 30 days from the discovery of the violation.

(Prior Code, § 74.370; Ord. No. 13-96; Ord. No. 65-2002; Ord. No. 22-2003; Ord. No. 25-06)

Sec. 74.380. Report of changed conditions.

(a) Each industrial user shall notify the Director of any planned significant changes to the industrial user's operations or pretreatment systems which might alter the nature, quality, or volume of its wastewater as required by CFR 403.12(j).

(b) The Director may require the industrial user to submit such information deemed necessary to evaluate the changed conditions, including the submission of a wastewater permit application under SRC 74.260.

(c) The Director may issue a wastewater permit for the planned changed condition under SRC 74.280 or modify an existing wastewater permit under SRC 74.320.

(d) No industrial user shall implement a planned changed condition until and unless the Director has responded to the industrial user's notice.

(e) For purposes of this section, flow increases or decreases of 20 percent or more or the discharge of any previously unreported pollutant shall be deemed significant.

(Prior Code, § 74.380; Ord. No. 13-96; Ord. No. 65-2002; Ord. No. 22-2003)

Sec. 74.390. Reports of potential problems.

(a) If an accidental, slug, or other discharge occurs which may cause problems for the municipal wastewater system, the user shall immediately notify the City by telephone of the incident. Notification shall include the location of discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

(b) Unless waived by the Director, within five days following an accidental discharge, the user shall submit a detailed written report describing the cause of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any fines, civil penalties, expense, loss, damage, or other liability which may be incurred or imposed as a result of damage to the municipal wastewater system, natural resources, or persons or property.

(c) Failure to notify the City of potential problem discharges shall be deemed a separate violation of this chapter.

(d) Industrial users shall prominently post a notice on a bulletin board or other similar place readily accessible to the user's employees, advising the employees of whom to call in the event of a potential problem discharge, and shall train all employees in the emergency notification procedure.

(e) Where the City has performed the sampling and analysis in lieu of the industrial user, the control authority must perform the repeat sampling and analysis unless it notifies the user of the violation and requires the user to perform the repeat analysis as required in SRC 74.370(b) and (c). Resampling may not be required if:

(1) The City performs sampling at the industrial user at a frequency of at least once per month; or

(2) The City performs sampling at the user between the time when the initial sampling was conducted and the time when the user or the control authority receives the results of this sampling.

Cost to the City for repeat analysis may be recouped per SRC 74.430.

(Prior Code, § 74.390; Ord. No. 13-96; Ord. No. 65-2002; Ord. No. 25-06)

Sec. 74.400. Reports from non-categorical users.

All industrial users who are not subject to categorical pretreatment standards or who are required to obtain a wastewater permit shall provide such reports as the Director may require.

(Prior Code, § 74.400; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.410. Sample collection.

Wastewater samples collected for purposes of determining industrial user compliance with pretreatment standards and pretreatment requirements must be obtained using flow proportional composite collection techniques. In the event flow proportional sampling is infeasible, the Director may authorize the use of time proportional

sampling. Samples for oil and grease, temperature, pH, cyanide, phenols, toxicity, sulfides, and volatile organic chemicals must be obtained using grab sample collection techniques described in SRC 74.350(c)(5)(C).

(Prior Code, § 74.410; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.420. Analytical requirements.

All pollutant analyses, including sampling techniques, to be submitted as part of a permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR ~~Part~~ 136. If 40 CFR ~~Part~~ 136 does not contain sampling or analytical techniques for the pollutant in question, ~~perform~~ analyses shall be performed in accordance with procedures approved by the EPA administrator.

(Prior Code, § 74.420; Ord. No. 13-96)

Sec. 74.430. Monitoring charges.

All costs incurred by the City in collecting and analyzing samples of the industrial user's discharge shall be added to and become a part of the industrial user's sewer charges.

(Prior Code, § 74.430; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.440. Timing.

Written reports will be deemed transmitted at the time of deposit, postage prepaid, into a United States Postal Service mail facility.

(Prior Code, § 74.440; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.450. Record keeping.

All users subject to pretreatment standards and pretreatment requirements, including industrial and categorical users, significant industrial users, permitted non-significant industrial users, and non-domestic business and commercial facilities, including users subject to Resource Conservation and Recovery Act reporting requirements, shall retain and make available for inspection and copying, all records and information, including documents associated with Best Management Practices, required to be retained under 40 CFR 403.12(e), (h), (o) and (p) and the Oregon Administrative Rules Record Retention Schedule for pretreatment program records, OAR 166-200-0370 ~~0120~~. Records shall remain available for a period of at least five years, for the duration of any litigation concerning compliance with this chapter or for any other retention period designated by DEQ or EPA, whichever is longest.

(Prior Code, § 74.450; Ord. No. 13-96; Ord. No. 65-2002; Ord. No. 25-06)

Sec. 74.455. RCRA notification.

In compliance with 40 CFR 403.12 (p), Industrial users shall notify the Director, EPA, and DEQ in writing of any discharge into the municipal wastewater system of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR 26.

(Prior Code, § 74.455; Ord. No. 22-2003)

Sec. 74.460. Reporting of additional monitoring.

If a categorical industrial user or non-categorical significant industrial user is subject to the periodic compliance reporting and pollution monitoring requirements of 40 CFR 403.12(e) and (h), requiring the submission of periodic compliance reports and monitors any pollutant more frequently than required by the City using the procedures prescribed in 40 CFR Part 136, the results shall be included in the periodic monitoring report provided to the City pursuant to 40 CFR 403.12(g)(5).

(Prior Code, § 74.460; Ord. No. 13-96; Ord. No. 65-2002; Ord. No. 22-2003)

Sec. 74.470. Reports of significant production change.

An industrial user operating under a waste discharge permit incorporating equivalent mass or concentration limits calculated from a production-based standard shall notify the City within two business days after the user has a reasonable basis to know that the production level will significantly change within the next calendar month. Any

user not notifying the City of such anticipated change will be required to meet the mass or concentration limits in its permit that were based on the original estimate of the long-term average production rate.

(Prior Code, § 74.470; Ord. No. 13-96; Ord. No. 65-2002)

COMPLIANCE

Sec. 74.480. Inspection and sampling.

(a) An industrial user shall allow the City to enter the facilities of the user without unreasonable delay, to ascertain whether the user is complying with pretreatment standards and pretreatment requirements. Industrial users shall allow the Director ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

(b) If an industrial user has security measures which require identification and clearance before entry, the industrial user shall make necessary arrangements with its security guards so that upon presentation of proper identification personnel from the City, state, and the EPA will be permitted entry without unreasonable delay to perform their specific responsibilities.

(c) The City, state, and the EPA shall have the right to set up or require installation of such devices as are necessary to conduct sampling and/or metering of the industrial user’s operations.

(d) The City may require the industrial user to install all necessary monitoring equipment. The facility’s sampling and monitoring equipment shall be maintained at all times in safe and proper operating condition by the industrial user at the industrial user’s expense. All devices used to measure wastewater flow and quality shall be calibrated at least twice yearly by a qualified technician to ensure accuracy.

(e) Any obstruction to safe and easy access to the industrial facility shall be promptly removed by the industrial user at the request of the Director and shall not be replaced. The costs of removal shall be borne by the industrial user.

(f) Unreasonable delays in allowing city personnel access to the industrial user's premises shall be a violation of this chapter.

(Prior Code, § 74.480; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.490. Search warrants.

If the Director is refused access to a building, structure, or property, or any part thereof, and has probable cause to believe there may be a violation to this chapter or needs to conduct an inspection as part of a routine program designed to protect the overall public health, safety, and welfare of the community, the Director may apply for a search warrant. The application shall identify the specific location to be searched, and shall specify what locations may be searched and what property may be seized. After issuance, the warrant shall be served at reasonable hours by the Director.

(Prior Code, § 74.490; Ord. No. 13-96; Ord. No. 65-2002)

CONFIDENTIAL INFORMATION

Sec. 74.500. Confidential information.

(a) Information and data on an industrial user obtained from reports, questionnaires, permit applications, permits, monitoring programs, and City inspection and sampling activities shall be available to the public without restriction unless the industrial user specifically requests and is able to demonstrate to the satisfaction of the City Attorney that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets, and are exempt from disclosure under applicable law.

(b) Wastewater constituents and characteristics and other effluent data as defined by 40 CFR 2.302 are not confidential and will be available to the public without restriction.

(c) Any information determined to be exempt from disclosure under subsection (a) of this section shall remain confidential, and portions of a report which might disclose trade secrets or secret processes shall not be available for public inspection, provided that such information shall be made available to governmental agencies

for uses related to this chapter or the NPDES program. Notwithstanding subsection (a) of this section, no information is confidential if the information is relevant to, and necessary for, enforcement proceedings involving the person furnishing the report.

(d) For the purposes of this section, a specific request is made when the words "confidential business information" are stamped on each page containing such information. If no such specific request is made at the time of furnishing the report, the City may make the information available to the public without further notice.

(e) All costs, expenses and attorney's fees associated with defending a request for confidential information shall be the responsibility of the industrial user requesting confidentiality.

(Prior Code, § 74.500; Ord. No. 13-96; Ord. No. 65-2002)

PUBLICATION OF USERS IN SIGNIFICANT NONCOMPLIANCE

Sec. 74.510. Publication of users in significant noncompliance.

(a) The City shall annually publish in a newspaper of general circulation that provides meaningful public notice within the jurisdiction(s) served by the POTW a list of all industrial users that were in significant noncompliance with applicable pretreatment standards and pretreatment requirements at any time during the previous 12 months.

(b) For the purposes of this section, significant noncompliance means one or more of the following:

(1) 66 percent or more of wastewater measurements taken during a six-month period exceeded the discharge limit for the same pollutant by any amount, including instantaneous limits, as defined in 40 CFR 403~~.3(i)~~.

(2) Technical review criteria violations are defined as 33 percent or more of wastewater measurements taken for the same pollutant parameter during a six-month period equaled or exceeded the product of the numeric pretreatment standard or requirement, including instantaneous limits as defined in 40 CFR 403~~.3(i)~~ multiplied by the following factors:

(A) 1.4 for BOD, TSS, fats, oils and grease; and

(B) 1.2 for all other pollutants except pH.

(3) Any other discharge that has caused, alone or in combination with other discharges, interference or pass through or endangered the health of city personnel or the general public.

(4) Any discharge of pollutants that caused imminent endangerment to the public or the environment or resulted in the city's exercise of emergency authority.

(5) Failure to meet, within 90 days of the scheduled date, a compliance schedule milestone contained in a permit or enforcement order for starting or completing construction, or attaining final compliance.

(6) Failure to provide, within 30 days after the due date, any required reports, such as baseline monitoring reports; 90-day compliance reports; periodic monitoring reports; and reports on compliance, with compliance schedules.

(7) Failure to accurately report noncompliance.

(8) Any other violation, or group of violations, designated as significant by the City which may include a violation of Best Management Practices, which the POTW determines will adversely affect the operation or implementation of the local pretreatment program.

(Prior Code, § 74.510; Ord. No. 13-96; Ord. No. 65-2002; Ord. No. 22-2003; Ord. No. 25-06)

ENFORCEMENT REMEDIES

Sec. 74.520. Notification of violation.

Whenever any industrial user has violated or is violating this chapter, a wastewater permit or order issued hereunder, or any pretreatment standard or pretreatment requirement, the Director may issue a written notice of violation. Within ten days of the receipt of this notice, the industrial user shall submit an explanation of the violation and a detailed plan for the satisfactory correction of the violation and the prevention of future violation. Submission

of this plan does not relieve the user of liability for any violations occurring before or after receipt of the notice of violation. Nothing in this section shall limit the City authority to take emergency action without first issuing a notice of violation.

(Prior Code, § 74.520; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.530. Consent orders.

The Director may enter into consent orders, assurances of voluntary compliance, or other similar documents establishing an agreement with an industrial user to resolve issues of noncompliance. Such orders shall include the specific action to be taken by the industrial user to correct noncompliance within a time period specified in the order. Consent orders shall be judicially enforceable, and any costs, including attorney's fees, incurred by the City in seeking such enforcement shall be assessed against the industrial user as part of any judgment entered therein.

(Prior Code, § 74.530; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.540. Compliance orders.

When the Director finds an industrial user has violated or continues to violate any provision of this chapter, or a permit or order issued hereunder, or any pretreatment standard or pretreatment requirement, the Director may issue an order discontinuing the industrial user's sewer service unless compliance is obtained within a time certain stated in the order. Compliance orders may contain other requirements necessary and appropriate to correct noncompliance, including additional monitoring and changes to management practices designed to minimize the amount of pollutants discharged to the municipal wastewater system. The Director may require additional monitoring for at least 90 days after consistent compliance has been achieved, after which monitoring conditions set forth in industrial user's discharge permit shall be followed.

(Prior Code, § 74.540; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.550. Cease and desist orders.

(a) When an industrial user has violated or continues to violate any provision of this chapter, permits or orders issued hereunder, or any pretreatment standard or pretreatment requirement, the Director may issue a notice and proposed order to the industrial user to cease and desist all such violations and commanding the user to:

(1) Immediately comply with all requirements.

(2) Take such appropriate remedial or preventive action as may be needed to properly address the continuing or threatened violation, including halting operations and/or terminating the discharge.

(b) The Director may order any industrial user that causes or contributes to a violation of this chapter, wastewater permits or orders issued hereunder, or any pretreatment standard or pretreatment requirement to appear and show cause why a cease and desist order should not be issued.

(c) Notice shall be served on the industrial user specifying the time and place for hearing, the nature of the proposed enforcement action, the reasons for such action, and a direction that the user appear and show cause why the proposed enforcement action should not be taken. The notice of the hearing shall be served upon the industrial user or the user's authorized representative, personally or by registered or certified mail, return receipt requested, at least ten days prior to the hearing. A cease and desist order may be issued immediately following the hearing.

(Prior Code, § 74.550; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.560. Emergency suspensions.

(a) The Director may immediately suspend any user's discharge that threatens to interfere with the operation of the municipal wastewater system, endangers the environment, or may cause violation of the NPDES permit.

(b) Any user notified of a suspension of its discharge shall immediately terminate all discharges into the municipal wastewater system. In the event a user fails to immediately and voluntarily comply with the suspension order, the Director may take such steps deemed necessary, including immediate severance of the user's connection to the municipal wastewater system. The Director may allow the user to recommence discharge when the user demonstrates, to the satisfaction of the Director, that endangerment has passed, unless termination proceedings under SRC 74.570 have been initiated.

(c) No hearing shall be required prior to any emergency suspension.

(Prior Code, § 74.560; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.570. Permit revocation.

(a) An industrial wastewater permit may be revoked if the user:

(1) Fails to report significant changes in operations or wastewater volume, constituents, and characteristics prior to discharge;

(2) Fails to accurately report wastewater constituents and characteristics of its discharge;

(3) Falsifies monitoring reports;

(4) Refuses reasonable access to the user's premises for the purpose of inspection, monitoring, or sampling;

(5) Tampers with monitoring equipment;

(6) Refuses to allow the City timely access to the facility premises and records;

(7) Fails to meet effluent limitations;

(8) Fails to pay fines;

(9) Fails to pay sewer charges;

(10) Fails to meet compliance schedules;

(11) Fails to complete a wastewater survey; or

(12) Violates any pretreatment standard or pretreatment requirement, the user's permit, any order issued pursuant to this chapter, or any provision of this chapter.

(b) Industrial users shall be notified of proposed termination and be offered an opportunity to appear and show cause why the permit should not be revoked. Termination of a permit shall not be a bar to, or a prerequisite for, taking any other enforcement action against the user.

(c) Notice shall be served on the industrial user specifying the time and place for the show cause hearing, the reasons for permit revocation, and a direction that the user appear and show cause why the permit should not be revoked. The notice of the hearing shall be served upon the industrial user or the user's authorized representative personally or by registered or certified mail, return receipt requested, at least ten days prior to the hearing. An order revoking the permit may be issued immediately after the hearing.

(Prior Code, § 74.570; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.580. Injunctive relief.

In addition to other relief, the City Attorney may petition for the issuance of temporary or permanent injunction to restrain a violation, or compel specific performance, of the terms and conditions of the wastewater permit, order, pretreatment standard or pretreatment requirement, or other provision of this chapter.

(Prior Code, § 74.580; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.590. Civil penalties.

(a) The Director may impose upon any industrial user that has violated or continues to violate this chapter, any order or permit hereunder, or any pretreatment standard or pretreatment requirement a minimum civil penalty of $1,000.00 per violation, per day. In the case of a monthly or other long-term average discharge limit, penalties may accrue for each day during the period of this violation.

(b) Where appropriate, the Director may accept mitigation projects in lieu of the payment of civil penalties where the project provides a valuable service to the City and the industrial user's expense in undertaking the project is at least 150 percent of the civil penalty.

(Prior Code, § 74.590; Ord. No. 13-96; Ord. No. 51-96; Ord. No. 65-2002)

Sec. 74.600. Violations.

(a) Violation of SRC 74.050(b)(1), (4), (10), (12) and (17); 74.200; 74.390(a) and (b); and 74.570(a)(3) and (5) are misdemeanors.

(b) Violation of any other provision of this chapter is an infraction and is punishable by a fine of not less than $100.00. The second and subsequent violation of the same provision of this chapter within any one-year period is punishable by a fine of not less than $250.00.

(Prior Code, § 74.600; Ord. No. 13-96; Ord. No. 65-2002; Ord. No. 22-2003)

Sec. 74.610. Remedies nonexclusive.

The remedies provided for in this chapter are not exclusive, and the Director may take any, all, or any combination of these actions against a noncompliant user, and may bring more than one enforcement action against any noncompliant user. Enforcement of pretreatment violations will generally be in accordance with the City's enforcement response plan; however, the Director may take other action against any user when the circumstances warrant.

(Prior Code, § 74.610; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.620. Water supply severance.

Whenever an industrial user has violated or continues to violate the provisions of this chapter or orders or permits issued hereunder, water service to the industrial user may be severed and service will only be resumed, at the user's expense, after it has satisfactorily demonstrated its ability to comply.

(Prior Code, § 74.620; Ord. No. 13-96; Ord. No. 65-2002)

Sec. 74.625. Administrative review.

(a) Any person aggrieved by any decision or action of the Director pursuant to SRC 74.320, 74.520, 74.530, 74.540, 74.550, 74.560, 74.570 or 74.590 may appeal such decision or action as provided in this section.

(b) The appeal must be filed with the Director within ten days after the date of the decision or action being appealed, must be in writing and must state:

(1) The name and address of the appellant;

(2) Nature of the decision or action being appealed;

(3) The reason the decision or action is incorrect; and

(4) What the correct decision or action should be.

(c) An appellant who fails to file such a statement within the time permitted waives all objections, and the appeal shall not be considered.

(d) Unless the appellant and City agree to a longer period, an appeal shall be heard by a Hearings Officer within 30 days of the receipt of the notice of appeal. At least ten days prior to the hearing, the City shall mail notice of the time and location of the hearing to the appellant.

(e) The Hearings Officer shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the Hearings Officer deems appropriate. At the hearing, the appellant may present testimony and oral arguments personally or by counsel.

(f) If the appeal is from the modification of a permit pursuant to SRC 74.320 or the imposition a civil penalty under SRC 74.310, the burden is on the Director to prove that the modification or civil penalty was proper. If the appeal is from the denial of a permit under SRC 74.310, the burden is on the appellant to prove that the denial was improper. In all other cases the burden of proof is on the proponent of a fact or position.

(g) The Hearings Officer shall issue a written decision within ten days of the hearing date. The decision of the Hearings Officer is final.

(h) An appeal fee shall accompany the statement of appeal.

(Prior Code, § 74.625; Ord. No. 65-2002)

Sec. 74.630. Charges and fees.

The Council shall adopt by resolution reasonable charges and other fees deemed necessary and appropriate to the administration and enforcement of this chapter.

(Prior Code, § 74.630; Ord. No. 13-96; Ord. No. 51-96; Ord. No. 65-2002)

Sec. 74.640. ~~Severability~~ Reserved.

~~If any of the provisions of this Chapter are invalidated by any court of competent jurisdiction, the remaining provisions shall not be affected and shall continue in full force and effect.~~

~~(Prior Code, § 74.640; Ord. No. 13-96)~~

CHAPTER 75. EROSION PREVENTION AND SEDIMENT CONTROL

Sec. 75.010. General policy and intent; scope.

(a) City policy requires that temporary and permanent measures be taken for all construction and land development projects and ground disturbing activities to prevent the adverse effects of site erosion and sediment runoff. The intent behind the required measures is to minimize the amount of sediment and other pollutants reaching waterways, wetlands, and the public storm drainage system, and thus protect the environment during the life of the ground disturbing activities and associated project. The provisions of this chapter shall apply to all parcels and all land within the City regardless of whether that property is involved in a construction or development activity.

(b) ~~Sections~~ SRC 75.030 through 75.140 specify the use of erosion prevention techniques and sediment control measures. In order to better meet the water quality requirements for Salem's urban watersheds and the Willamette River, erosion prevention is emphasized over sediment control. These techniques are especially important on larger construction sites immediately before and during the rainy portion of the year. Erosion prevention techniques are designed to prevent soil particles from being dislodged by the force of water and wind. These measures include such things as the timing of construction work, limiting the disturbance of ground cover, and protective matting. Sediment control measures are designed to capture soil particles after they have been dislodged and are used to retain the soil particles on a site. These measures include such things as silt fences and settling basins. Both erosion prevention and sediment control have appropriate uses and both will be used to achieve the goal of improving stream water quality in Salem.

(c) The requirements of this chapter are minimum requirements. Compliance with this chapter does not in any way imply, either directly or indirectly, compliance with any other requirement of the Salem Revised Code. Nothing in this chapter shall relieve any person from the obligation to comply with the regulations or permits of any other federal, state, or local authority. Where the provisions of this chapter are more restrictive than those set forth in other regulations under this Code or Ordinances, the provisions of this chapter shall control.

(Prior Code, § 75.010; Ord. No. 39-2001)

Sec. 75.020. Definitions.

(a) Words and phrases defined in SRC chapter 111 shall have the meanings set forth therein, unless another definition is set forth in this section.

(b) ~~Except where the context otherwise specifically requires, as used in this Chapter:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(1)~~ *Applicant* means the owner of real property or the owner's authorized agent, and any person who would be required to obtain an erosion control permit, but neglects or otherwise fails to do so.

~~(2)~~ *Approved* means having received official confirmation by the Director.

~~(3)~~ *Authorized agent* means the developer, contractor, engineer, builder, personal representative, or anyone designated by the owner to have control or supervision of a site involving a ground disturbing activity.

~~(4)~~ *Certified professional* means any person licensed as a civil engineer, architect, landscape architect, or landscape designer who is qualified, in the judgment of the Director, to design erosion prevention and sediment control plans or facilities; or any person certified by the State ~~of Oregon~~ or the International Erosion Control Association as a certified professional in erosion and sediment control; or any person certified by other appropriate National association and who in the judgment of the Director has the knowledge, skills, and abilities to design erosion prevention and sediment control facilities.

~~(5)~~ *Clearing* means any activity that removes vegetative cover of land.

~~(6) Director means the Director of Public Works of the City or the Director's designee.~~ ~~*Director* means the City Manager, or the Department head charged by the City Manager with the implementation and enforcement of this chapter, or that Department head's designee.~~

~~(7)~~ *Drainage course* means any land surface, ditch, waterway, or other feature which serves as a course for the transmission of surface water and stormwater.

~~(11)~~ *EPSC plan* or *erosion prevention and sediment control plan* means a set of plans indicating the specific measures and sequencing or phasing to be used to control erosion and sediment on a development or construction site during and after construction or other ground disturbing activities.

~~(8)~~ *Erosion* means the wearing away of the ground surface, or the movement, detachment or dislocation and transport of sediment including soil particles by the action of water or wind.

~~(10)~~ *Erosion control permit* means a permit issued by the City for the construction of facilities for the prevention or control of erosion, runoff, or sediment.

~~(9)~~ *Erosion prevention* means a measure that prevents or reduces the creation of sediment.

~~(12)~~ *Grading* means excavation or fill of material, including the resulting conditions, spoils, or byproducts.

~~(13)~~ *Ground disturbing activities* means any activity that exposes soil through the use of mechanical equipment, including, but not limited to, grading, excavating, filling, clearing, or working of land. Such disturbance may be permanent (i.e., gravel mining, farming, gardening, sports fields, etc.); or temporary or short-term duration such as construction, excavation, fill, grading, landscape installation, or other vegetative clearing activities.

~~(14)~~ *Perimeter control* means a barrier that prevents sediment from leaving a site by filtering runoff or diverting it to a sediment trap or basin.

~~(15)~~ *Sediment* means finely divided loose material that can be suspended and transported in water or air and may originate from disturbed soil, landscaping, and construction activities or materials.

~~(16)~~ *Sediment control* means a measure that prevents or reduces the amount of eroded material leaving the site.

~~(17)~~ *Site* means a parcel of land or contiguous lots or parcels of land where ground disturbing activities are performed as a single unified operation.

~~(18)~~ *Slope* means an inclined earth surface, the inclination of which is expressed as the ratio of horizontal distance to vertical distance. Slopes are expressed as a percentage and measured across a horizontal rise and run calculation within any horizontal 25 foot distance.

~~(19)~~ *Stabilization* means the use of practices that prevent, or reduce to the maximum extent practicable, exposed soil from eroding.

~~(20)~~ *Storm drainage system* means all conduits, ditches, gutters, catch basins, or any other facilities convenient or necessary to carry away and dispose of stormwater and subsurface drainage, surface water, or unpolluted surplus water.

~~(21) *Technical Guidance Handbook* means the "Erosion Prevention and Sediment Control (EPSC) Plans Technical Guidance Handbook." The Technical Guidance Handbook shall be the reference for erosion prevention and sediment control design standards.~~

~~(21)~~ *Visible and measurable erosion or sediment* means:

(1) Deposits or tracking of mud, dirt, sediment, or similar material which exceeds one-half cubic foot in volume, on public or private streets, adjacent property, or into the storm drainage system or a drainage course, either by direct deposit, dropping, discharge, or as a result of the action of erosion; ~~or~~

(2) Evidence of concentrated flows of water over bare soils; turbid or sediment laden flows; or evidence of on-site erosion such as rivulets on bare soil slopes, where the flow of water is not filtered or captured before leaving the site; or

(3) Earth slides, mud flows, earth sloughing, or other earth movement in excess of one-half cubic foot in volume, which leaves the site.

~~(22)~~ *Waterway* means any river, stream, or creek within the City, designated by the Director.

~~(23)~~ *Wetland* means any area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(Prior Code, § 75.020; Ord. No. 39-2001; Ord. No. 26-06; Ord. No. 31-13)

Sec. 75.030. Erosion prohibited.

No person shall cause or suffer visible and measurable erosion or sediment which enters or is likely to enter the public storm drainage system, drainage courses, or wetlands.

(Prior Code, § 75.030; Ord. No. 39-2001)

Sec. 75.040. Responsibility for violations.

(a) The applicant shall be responsible for compliance with all provisions of this chapter and any erosion control permit issued hereunder, whether the applicant ~~be~~ is the owner or the authorized agent of the owner.

(b) Any person who acts as the agent of, or otherwise assists, any person who engages in an activity which would be a violation of this chapter or any erosion control permit issued hereunder, shall likewise be deemed to have engaged in the violation.

(Prior Code, § 75.040; Ord. No. 39-2001; Ord. No. 26-06)

Sec. 75.050. Erosion control permits.

(a) Except as provided in subsection (b) of this section, no person shall conduct ground disturbing activities that cause or are likely to cause a temporary or permanent increase in the rate of soil erosion from a site without first obtaining an erosion control permit from the Director.

(b) Erosion control permits are not required for the following:

(1) Home gardening and landscaping activities, unless the ground disturbing activity meets either of the following criteria:

(A) The activity takes place within 50 feet of a waterway, and the work involves the disturbance of more than 1,000 square feet of land surface at one time; or

(B) The slope of the land exceeds 25 percent.

(2) Ground disturbing activities involving less than 25 cubic yards of material or 1,000 square feet of land surface at one time.

(3) Interior improvements to an existing structure.

(4) Activity for which there is no physical disturbance to the surface of the land.

(5) Ground disturbing activities conducted under a 1200-C ~~or 1200-CA~~ General Permit issued by the Oregon Department of Environmental Quality in accordance with the Phase I and Phase II Stormwater Regulations adopted by the Environmental Protection Agency.

(6) Activities within the City which constitute a “farm use” or “accepted farming practices” as those terms are defined or used in ORS ch. 215.

(7) Mining activities conducted under permits issued by the Oregon Department of Geology and Mineral Industries.

(8) Routine maintenance of gravel roads, road shoulders, paths, parking lots, and storage yards.

(9) Routine maintenance of sports fields or playgrounds surrounded by vegetative ground cover or permanently installed curbing.

(c) An exception from the erosion control permit requirement does not exempt the applicant from the performance responsibilities of SRC 75.030, ~~SRC~~ 75.090 and ~~SRC~~ 75.140, except to the extent allowed under local, state, or federal permits issued for a specific site or purpose.

(d) Applicants for construction activity within the City subject to the 1200-C or 1200-CA General Permit requirements must obtain the 1200-C or 1200-CA General Permit directly from the Oregon Department of Environmental Quality and provide evidence of such to the Director. ~~Such permit will satisfy the requirement for an erosion prevention and sediment control permit under this Chapter. However, the performance standards set forth by this Chapter must still be met, as well as any or more restrictive requirements specified in the1200-C or 1200-CA General Permit.~~

(Prior Code, § 75.050; Ord. No. 39-2001; Ord. No. 26-06; Ord. No. 34-13)

Sec. 75.060. Plan requirements.

(a) An application for an erosion control permit shall include all information necessary for the determination of whether the permit should be issued. Such information includes, but is not limited to, an EPSC plan that contains methods and interim facilities to be constructed, used, operated, and maintained during ground disturbing activities to prevent and to control erosion. If the Director finds there is insufficient information contained in the application to determine whether the erosion control permit should be issued, the Director may require the submission of such additional information deemed necessary by the Director to make such determination. An EPSC plan shall be prepared using the techniques and methods contained and prescribed in the Public Works Design Standards ~~Technical Guidance Handbook~~. Approved alternate erosion prevention and sediment control techniques may be used if designed by a certified professional and approved by the Director.

(b) A single EPSC plan may be submitted for multiple contiguous residential building lots or parcels or multiple building lots or parcels in the same subdivision or partition.

(c) EPSC plans for construction projects disturbing 10,000 square feet or more of land surface shall require the stamp or signature of a certified professional.

(Prior Code, § 75.060; Ord. No. 39-2001; Ord. No. 26-06; Ord. No. 34-13)

Sec. 75.070. Maintenance.

The applicant shall maintain the facilities and techniques that are contained in the city-approved EPSC plan to ensure continued effectiveness during any ground disturbing activity. If the facilities and techniques approved in an EPSC plan are not effective or sufficient, the applicant shall take immediate action to stop sediment from leaving the site. If the erosion control facilities are not functioning properly, as determined by a City site inspection, the applicant shall immediately implement additional facilities and techniques as necessary to alleviate the issues identified ~~approved by the City inspector~~. In cases where active erosion is occurring, the Director may require the applicant to install additional interim control measures prior to submittal, or approval, of a revised EPSC plan.

(Prior Code, § 75.070; Ord. No. 39-2001)

Sec. 75.080. Inspection.

The Director may require erosion prevention and sediment control measures to be inspected and approved prior to the start of any ground disturbing activities including preliminary grading work. The Director may require inspections at other times as deemed necessary or as specified in the erosion control permit. For individual single family residential and duplex construction, or manufactured home placement on individual lots or parcels or in manufactured home parks, erosion prevention and sediment control measures shall be properly installed either before or concurrent with the initial ground disturbing activity.

(Prior Code, § 75.080; Ord. No. 39-2001; Ord. No. 26-06)

Sec. 75.090. Deposits on public streets and into storm drainage system prohibited.

(a) Except as provided in subsection (b) of this section, no person shall cause or suffer visible and measurable erosion or sediment, or otherwise drag, drop, track, or otherwise place or deposit, or permit to be deposited construction waste, pavement saw cutting or boring waste, or other such debris, upon a public or private street or into any part of the public storm drainage and surface water system, or any part of a private storm drainage and surface water system which drains or connects to the public storm drainage and surface water system. Any visible and measurable erosion or sediment shall be immediately abated or removed by the person using hand labor or approved mechanical means. No person shall wash or flush any visible and measurable material into any part of the

storm drainage and surface water system without erosion control measures installed in advance to the satisfaction of the Director.

(b) While complying with the requirements of SRC 76.010, the applicant may temporarily stockpile construction materials, including clean gravel, sand, rock, and landscaping materials, within the public right-of-way for up to five working days or as otherwise approved by the Director as necessary for the orderly construction of site improvements. Such temporary stockpiles shall be adequately protected by the measures set forth in SRC 75.120(c) and (d) so as to meet the performance standards set forth in SRC 75.030 and subsection (a) of this section, and the street shall be broom cleaned within one day of the removal of the materials.

(Prior Code, § 75.090; Ord. No. 39-2001; Ord. No. 26-06)

Sec. 75.100. Fees.

To defray the costs of plan review, administration, field inspection, and enforcement to carry out the provisions of this chapter, the applicant for an erosion control permit shall pay such fees as may be adopted by resolution of the Council.

(Prior Code, § 75.100; Ord. No. 39-2001)

Sec. 75.110. Reserved.

Sec. 75.120. Construction site controls.

(a) The applicant shall provide a gravel construction entrance at a location approved by the Director when vehicles will access exposed soils in the construction site. If there is more than one vehicle access point, the applicant shall provide a gravel construction entrance at each access point. Under no circumstance shall vehicles or equipment enter a property adjacent to a waterway or wetland in a location where it would not be possible to avoid contamination or the deposit of mud, dirt, or debris therein.

(b) The applicant shall properly maintain erosion prevention and sediment control facilities and techniques until all disturbed soil areas are permanently stabilized by the establishment of landscaping, grass, mulching, or otherwise covered and protected from erosion.

(c) The applicant shall provide a filter system on adjacent and downstream catch basins.

(d) The applicant shall not use plastic sheeting as an erosion control measure, except as provided in the Public Works Design Standards ~~Technical Guidance Handbook~~. If used, the path of concentrated flow from the plastic must be protected so as to meet the performance standards of this chapter.

(e) On sites where vegetation and ground cover have been removed from one acre or more of land, the applicant shall re-establish the ground cover by seeding and mulching in accordance with the Public Works Design Standards ~~Technical Guidance Handbook~~. As an alternative to seeding and mulching, or if ground cover is not established by October 15 of each year, the applicant shall protect the open areas through the winter with straw mulch, erosion blankets, or other approved methods. These requirements may be imposed by the Director on a case-by-case basis on sites smaller than one acre where steep slopes or other prevailing site conditions warrant such measures.

(Prior Code, § 75.120; Ord. No. 39-2001; Ord. No. 26-06)

Sec. 75.130. Dust suppression required.

The applicant shall minimize dust to the extent practicable, using appropriate measures such as:

(a) Sprinkling haul and access roads and other exposed dust producing areas with water;

(b) Applying approved dust suppressants on haul and access roads;

(c) Establishing temporary vegetative cover;

(d) Placing wood chips or other Director-approved effective mulches on vehicle and pedestrian use areas;

(e) Maintaining the proper moisture condition on all fill surfaces; and

(f) Pre-wetting cut and borrow area surfaces.

(Prior Code, § 75.130; Ord. No. 39-2001)

Sec. 75.140. Water quality maintenance.

(a) The applicant shall conduct any approved ground disturbing activities within the banks of any waterway in accordance with the rules and permitting requirements of the U.S. Army Corps of Engineers, Oregon Division of State Lands, Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, National Marine Fisheries Service, U.S. Fish and Wildlife Service, and the City.

(b) No person shall discharge pollutants as defined in SRC chapter ~~73~~ 71 into the environment.

(c) The applicant shall route all sediment laden water from construction operations through settling basins, filtration facilities, or other treatment facilities in an approved manner to reduce the sediment load prior to being discharged.

(d) No person shall cause any visible increase in turbidity in any drainage course or waterway except as approved under permits issued under ~~Section~~ SRC 75.050 ~~of this Chapter~~.

(Prior Code, § 75.140; Ord. No. 39-2001)

Sec. 75.150. Fish and wildlife habitat protection.

The applicant shall conduct all ground disturbing activities in accordance with the requirements of state and federal regulations respecting fish and wildlife protection.

(Prior Code, § 75.150; Ord. No. 39-2001)

Sec. 75.160. Existing vegetation and slope stability.

The applicant shall conduct all ground disturbing activities in compliance with SRC chapters ~~68~~ 808 and ~~SRC chapter 69~~ 810.

(Prior Code, § 75.160; Ord. No. 39-2001; Ord. No. 31-13)

Sec. 75.170. Contaminated soils.

In the event ground disturbing activities reveal soils contaminated with suspected hazardous materials or chemicals, the contractor shall immediately stop work, ensure no contaminated material is hauled or tracked from the site, remove the work force from the immediate vicinity of the contaminated area, leaving all machinery and equipment, and secure the area from access by the public until such time as the contractor has been lawfully relieved of that responsibility. The contractor shall notify the City's Environmental Services office and the City's Public Works inspector of the situation upon its discovery.

(Prior Code, § 75.170; Ord. No. 39-2001)

Sec. 75.175. Stop work orders; permit revocation; civil penalties; enforcement.

(a) *Stop work orders and permit revocation.*

(1) The Director may suspend work or revoke an erosion control permit upon a finding that:

(A) The work is not authorized by a valid permit;

(B) Inaccurate information was used to obtain the permit;

(C) The applicant is not complying with the terms of the permit or the provisions of this chapter; or

(D) The work is, or threatens to become, a hazard to property or public safety; is adversely affecting or about to adversely affect adjacent property or rights-of-way, a drainage way, waterway, wetlands, fish or wildlife habitat, or a stormwater facility; or is otherwise adversely affecting the public health, safety, or welfare.

(2) The Director shall issue a written notice specifying the nature of the violation or problem which must be remedied prior to resuming other work on the project.

(3) Persons violating this chapter, or a permit issued hereunder, shall be responsible for restoring damaged areas in conformance with a plan approved by the Director which provides for repair of any

environmental or property damage and restoration of the site. The plan shall result in conditions upon the site which, to the greatest extent practical, equal the conditions that would have existed had the violation not occurred, as verified by a certified professional.

(b) *Civil penalty.* Any person who fails to comply with the requirements of this chapter, or the terms of a permit issued hereunder, who undertakes an activity regulated by this chapter without first obtaining a permit, or who fails to comply with a stop work order issued pursuant to this chapter shall also be subject to a civil penalty, not to exceed $2,000.00 per violation. Each day that a permit violation continues shall constitute a separate violation.

(c) *Civil penalties against agents.* Any person who acts as the agent of, or otherwise assists, a person who engages in an activity which would be subject to a civil penalty, may likewise be subject to a civil penalty.

(d) *Prohibition of further approvals; injunctive relief.*

(1) The City shall not issue a Notice of Final Completion for property on which a violation of this chapter has occurred or is occurring, until the violation has been cured by restoration or other means acceptable to the Director ~~planning administrator~~ and any penalty imposed for the violation is paid.

(2) The City may seek injunctive relief against any person who has willfully engaged in a violation of SRC 75.030, ~~SRC~~ 75.050, ~~SRC~~ 75.070, ~~SRC~~ 75.090, ~~SRC~~ 75.120, ~~SRC~~ 75.130, ~~SRC~~ 75.140, ~~SRC~~ 75.150, ~~SRC~~ 75.160, ~~SRC~~ 75.170, and ~~SRC~~ 75.200, such relief to be in effect for a period not to exceed five years.

(e) *Appeals.* Any person affected by any decision, action, or determination made by the Director, interpreting or implementing the provisions of this chapter, may file a written request for reconsideration with the Director within ten days of such decision, action, or determination, setting forth in detail the facts supporting the person's request for reconsideration. The Director's final order upon reconsideration may be appealed to the Hearings Officer by filing a written notice of appeal no later than ten days after notification of the Director's final order. The Director's final order shall remain in effect during such pendency of reconsideration and appeal.

(Prior Code, § 75.175; Ord. No. 26-06)

Secs. 75.180, 75.190. Reserved.

Sec. 75.200. Falsifying information.

It shall be a violation for any person to knowingly make any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained pursuant to this chapter.

(Prior Code, § 75.200; Ord. No. 39-2001)

Sec. 75.210. Violations.

(a) Violation of SRC 75.170, ~~SRC~~ 75.175(a), and ~~SRC~~ 75.200, is a misdemeanor.

(b) Violation of any other provision of this chapter is an infraction.

(Prior Code, § 75.210; Ord. No. 39-2001; Ord. No. 26-06)

Sec. 75.220. Remedies not exclusive.

The remedies provided in this chapter are not exclusive. The City may seek any remedy or combination of remedies provided by law for violation of any provision of this chapter or failure to comply with any order issued under this chapter.

(Prior Code, § 75.220; Ord. No. 39-2001)

Title VII

PERMITS, STREETS, AND PUBLIC WAYS

CHAPTER 76. STREETS, SIDEWALKS AND OTHER PUBLIC WAYS ~~GENERALLY~~*

***State law reference—**Special improvements regarding streets, sidewalks, ORS 223.805 et seq.; authority of cities regarding roads and highways, ORS 373.210; control of county roads given to Salem, ORS 373.320.

ARTICLE I. IN GENERAL

Sec. 76.005. Definitions.

~~Unless the context otherwise specifically requires, for purposes of this Chapter the following words shall mean:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Alley* means a public right-of-way not more than 20 feet in width, open, used, or intended to be used by vehicular traffic.

~~(b)~~ *Controlled intersection* means an intersection where any intersecting street is controlled by a stop sign or signal traffic control device.

~~(d) Director means the Director of Public Works of the City or the Director's designee. *Director* means the City Manager, or the Department head charged by the City Manager with the implementation and enforcement of this chapter, or that Department head's designee.~~

~~(c)~~*Driveway* means any private thoroughfare or private or commercial service driveway intersecting with a street, and constructed, installed, or maintained for the purpose of ingress and egress of vehicles from the street to the abutting property.

~~(d) *Downstream corner* means the corner located in the direction of traffic flow of the street.~~

~~(e)*Interested person* means the owner of the property whereon a vision clearance area is located, person officially representing the neighborhood association for the area within which the property is located, and any person affected by a decision regarding the vision clearance area.~~

~~(e)~~*Landscape strip* means that part of any public street right-of-way lying between the sidewalk and the curb or pavement, or lying between the edge of the pavement and the edge of the right-of-way if there is no sidewalk, also known as the parking strip, planting area, or planting strip.

~~(f) Owner means the owner of property upon which a vision clearance area is located.~~

~~(f)~~*Street*~~: any public right-of-way, highway, thoroughfare, parkway, throughway, road, avenue, or other place that is open, used, or intended to be used, by vehicular traffic, but excluding alleys and driveways.~~ means a public or private way that is created to provide ingress or egress to one or more lots, parcels, areas, or tracts of land, excluding a private way that is created to provide ingress or egress to land in conjunction with the use of the land for forestry, mining, or agricultural purposes. The term "street" includes "highway," "thoroughfare," "parkway," "throughway," "road," "avenue," "boulevard," "lane," "court," "place," "loop," "drive," "circle," and other such terms. The term "street" does not include alleys or flag lot accessways.

~~(g)~~ *Uncontrolled intersection* means an intersection where no intersecting street is controlled by a stop sign or traffic signal control device.

~~(j) *Vision clearance area* means the publicly and privately owned area adjacent to an intersection within the legs of the triangle as determined according to the regulations provided by this chapter which must be sufficiently free of obstructions to provide safe visibility for vehicular, bicycle, and pedestrian traffic The legs of the triangle shall be measured along the property line. Vision clearance area: the publicly and privately owned area adjacent to an intersection within the legs of the triangle as determined according to the regulations provided by this chapter~~

~~which must be sufficiently free of obstructions to provide safe visibility for vehicular, bicycle, and pedestrian traffic. The legs of the triangle shall be measured along the property line.~~

(Prior Code, § 76.005; Ord. No. 57-2000; Ord. No. 60-2002; Ord. No. 57-05; Ord. No. 44-09)

Sec. 76.010. Obstructions.

(a) Except as provided in subsection (c) of this section, it shall be unlawful for any person to place, park, leave, deposit, or maintain any structure, barricade or other obstruction such as building material or merchandise, other than lawfully parking vehicles, on any arterial or collector street, or in the travel lanes of local streets, or on sidewalks, without first notifying the Director and obtaining written permission.

(b) The Director may impose such reasonable conditions as hours of use, duration of use, barricading, provision of temporary sidewalks and bike lanes, lighting, or other marking which is deemed necessary to protect the safety of persons and property in the vicinity, and to provide for the expeditious movement of vehicular and pedestrian traffic around the obstruction.

(c) No permission shall be required to place building material in the parking lanes of local streets provided appropriate barricading and lighting are placed to protect the safety of persons and property in the vicinity. Materials shall be placed consistent with the provisions of SRC ~~Chapter~~ 75.090 and the street cleaned after removal. In no event shall the material extend more than eight feet from the curbline. The Director may grant extensions of time upon request.

(Prior Code, § 76.010; Ord. No. 3390; Ord. No. 67-79; Ord. No. 91-99; Ord. No. 72-2002)

Sec. 76.015. Removal of debris.

(a) It shall be unlawful for any person to deposit or cause to be deposited mud, dirt, sand, gravel, leaves, or other debris on any street, including bicycle lanes, and sidewalks, when such debris constitutes a traffic or pedestrian hazard as determined by any police officer, building inspector or the Director.

(b) In lieu of removal of the debris as required by subsection (a) of this section, when such deposit is unavoidable during active operations and as approved by the Director, the person in charge may allow such debris to remain and post lighted barricades or flagmen to warn motorists of the hazard.

(c) It shall be unlawful for any person in charge of any building construction, landfill, or excavation operation to permit mud, dirt, sand, gravel, leaves, or other debris deposited on any street as a consequence of such operation to remain on such street, including bicycle lanes and sidewalks, after the close of the construction day, when such debris constitutes a public nuisance in the opinion of the Director or the Building Official.

(Prior Code, § 76.015; Ord. No. 67-79; Ord. No. 72-2002)

Sec. 76.020. Certain activities on streets and sidewalks prohibited; exceptions.

(a) Except as provided in subsection (b) of this section, it shall be unlawful for any person to have or maintain on any public street or sidewalk a stand of any kind, a mobile device or other such vehicle used for the sale of merchandise of any character or for the conduct of any private business or calling of any character.

(b) Peddlers or street vendors may use mobile devices or pushcarts on the public streets and sidewalks if the person has obtained and maintains all required licenses and permits. ~~or including, but not limited to, a street encroachment permit.~~

(Prior Code, § 76.020; Ord. No. 3390; Ord. No. 2-78; Ord. No. 52-84; Ord. No. 40-2003; Ord. No. 4-12)

Sec. 76.030. Reserved.

Sec. 76.040. Barbed wire prohibited along streets and alleys.

Except as provided in SRC 800.050(d), it shall be unlawful for any person to erect or maintain within one foot of any street, sidewalk, or alley line or in or across any street, sidewalk, landscape strip, or alley any barbed wire or barbed wire fencing, either independent of or in connection with any fencing material.

(Prior Code, § 76.040; Ord. No. 3390; Ord. No. 124-86; Ord. No. 72-2002; Ord. No. 31-13)

Sec. 76.050. Removal of lights and barricades.

It shall be unlawful for any person to remove, break, take down, carry away, destroy or render ineffective in any manner whatsoever any light, fence, barricade, or other device intended as a warning against danger in any street, alley, or sidewalk during the time such street, sidewalk or alley shall be out of repair or dangerous to travel or in the process of improvement.

(Prior Code, § 76.050; Ord. No. 3390; Ord. No. 72-2002)

Sec. 76.060. Removal of boundary stakes.

It shall be unlawful for any person to remove, destroy, deface, mutilate, or change any survey grade, sidewalk or boundary stake or marker.

(Prior Code, § 76.060; Ord. No. 3390)

Sec. 76.070. Deposit of glass on streets, alleys, or sidewalks.

It shall be unlawful for any person to deposit or leave any broken glass on any street, alley or sidewalk of the City.

(Prior Code, § 76.070; Ord. No. 3597; Ord. No. 72-2002)

Sec. 76.080. Damaging or removing curbs and sidewalks.

It shall be unlawful for any person to remove or damage in any way any portion of any street curb or sidewalk without first obtaining written permission from the Director.

(Prior Code, § 76.080; Ord. No. 3401; Ord. No. 72-2002)

Sec. 76.090. Moving heavy equipment over curbs and sidewalks.

Any person wishing to move any heavy thing such as a building, excavating machine or well-drilling equipment over or upon a street curb or sidewalk shall first obtain a written permit from the Director and shall be held responsible for any and all damage to same.

(Prior Code, § 76.090; Ord. No. 3401; Ord. No. 72-2002)

Sec. 76.100. Reserved.

Sec. 76.110. Mains to be laid before street improved.

All mains used for conveying water or gas or for other purposes along streets which are permanently improved or are to be permanently improved shall, immediately before such improvement is made, be laid in such streets in a permanent manner.

(Prior Code, § 76.110; Ord. No. 3364)

Sec. 76.115. Temporary closure of streets and sidewalks.

(a) The Director may issue permits for the temporary closure of any street, sidewalk, or other public way to vehicular or pedestrian traffic to persons making street or sidewalk improvements or pursuing other construction in public right-of-way.

(b) In granting permits under subsection (a) of this section, the Director shall prescribe the time allowed for the closure and may require the placement and maintenance of signs and barricades and impose any other conditions deemed necessary for the safety and protection of the public. The permittee shall, at the person's sole cost and expense, cause to be placed and maintained during such temporary closure the barricades and signs required by the Director.

(c) A fee in an amount prescribed by resolution of the Council shall be charged for an application to temporarily close any street, sidewalk or other public way to vehicular or pedestrian traffic.

(Prior Code, § 76.115; Ord. No. 100-73; Ord. No. 107-84; Ord. No. 51-91; Ord. No. 51-96; Ord. No. 38-99; Ord. No. 72-2002; Ord. No. 57-05; Ord. No. 44-09)

Sec. 76.117. Appeal.

Any person aggrieved by the administrative action taken under ~~section~~ SRC 76.115 may appeal the action to the City Manager. The City Manager shall hear the appeal promptly and affirm, modify, or repeal the administrative action of the Director.

(Prior Code, § 76.117; Ord. No. 100-73)

Sec. 76.120. Method of laying mains.

All mains and service pipes for conveying water or gas for other purposes laid in the permanently improved streets or alleys of the City shall be laid in accordance with Public Works Design Standards, and in no case less than 18 inches below the established grade of the street or alley and shall be so laid as not to interfere with the grading or improvement of any such street or alley.

(Prior Code, § 76.120; Ord. No. 3364)

Secs. 76.130—76.150. Reserved.

Sec. 76.160. Encroachments into public right-of-way.

The Director is authorized to issue a permit to encroach into public right-of-way at the property owner's risk and subject to the following conditions:

(a) Proper plans and specifications for the proposed encroachment are submitted to the public works department.

(b) The encroachment complies with the applicable codes of the City with regard to structural safety, traffic, sanitation, and fire safety requirements.

(c) The request ~~be~~ is evaluated by the Director in regard to any adverse effect on adjoining property.

(d) There ~~be~~ is no interference with the use of the public street for roadway, sidewalk, existing or proposed utilities, and other authorized uses.

(e) The encroachment will be maintained in good order.

(f) The permit shall be revocable and when requested to do so by the Council or other public authority having jurisdiction, the owner will remove the encroachment at his or her expense.

(g) The owner will hold the City ~~of Salem~~ and all its officers harmless on account of the encroachment.

(h) The form of the permit shall be approved by the City Attorney.

(i) A fee for the permit shall be charged as prescribed by resolution of the Council.

(Prior Code, § 76.160; Ord. No. 22-74; Ord. No. 51-91; Ord. No. 51-96; Ord. No. 72-2002)

Secs. 76.170—76.980. Reserved.

Sec. 76.990. Violations.

Violation of any of the provisions of SRC 76.010 to 76.160 is an infraction.

(Prior Code, § 76.990; Ord. No. 193-79)

CHAPTER 77. PERMITS AND STREET IMPROVEMENTS*

***State law reference—**Local improvements, ORS 223.001 et seq.

Sec. 77.010. Reserved.

Sec. 77.020. By whom made.

All street improvements undertaken by the City in its corporate capacity shall be done by the ~~department of~~ Public Works Department.

(Prior Code, § 77.020; Ord. No. 4130; Ord. No. 51-96)

Sec. 77.030. Posting and assessing of street improvements.

(a) Whenever the Council deems it expedient to improve any street or streets, the cost of which is to be assessed against abutting and adjacent property, the Council shall, prior to making said improvement, and in addition to all other charter requirements, cause to be posted at or near each end of the proposed street improvement a copy of a notice of intention to improve street.

(b) All abutting and adjacent property shall be assessed only for the cost of a street 34 feet in width, together with the costs of curbs, sidewalks, and drainage.

(Prior Code, § 77.030; Ord. No. 75-66; Ord. No. 51-96)

Sec. 77.040. Duties of Director ~~of public works~~, generally.

The Director ~~Of Public Works~~ shall prepare or approve the plans and specifications for each street to be improved, shall establish the grade and subgrade lines, and, under the direction and control of the City Manager shall see that the work is done according to plans and specifications and shall regulate the quantity and quality of each of the several ingredients constituting the paving mixture and other components used on each street.

(Prior Code, § 77.040; Ord. No. 1487; Ord. No. 51-96; Ord. No. 30-97)

Sec. 77.050. Reserved.

Sec. 77.060. Control of equipment; hiring and firing personnel.

The Director ~~department of public works~~ shall have the direction and control of such machinery and equipment as may be necessary for the use of the Department and shall have power and authority to hire and discharge such superintendents, foremen, and laborers as may be necessary or expedient on any street work undertaken by the Department.

(Prior Code, § 77.060; Ord. No. 1487; Ord. No. 51-96)

Sec. 77.070. Direction and control of labor.

The direction and control of all labor necessary for the carrying out of the purposes of this chapter shall be under the jurisdiction of the Director ~~Department of public works or such other person as the department may designate~~.

(Prior Code, § 77.070; Ord. No. 1487; Ord. No. 51-96)

Sec. 77.080. Record of costs.

Adequate records shall be kept to show the total and complete cost of each improvement.

(Prior Code, § 77.080; Ord. No. 1487; Ord. No. 5338)

Sec. 77.090. Permits required.

No person shall construct, reconstruct, repair, alter, or grade any sidewalks, curb, curb cut, driveway, street, or ~~to~~ lay and install any sewer pipeline, water main, or stormwater facility, or attach to the City's water system without first obtaining each of the following applicable permits from the Director:

(a) *Streets.* A permit covering any work on public street, sidewalk, curb, curb cut, driveway within the public right-of-way, or an existing or proposed easement.

(b) *Stormwater facilities.* A permit covering all work to install any stormwater facilities within public right-of-way, or an existing or proposed easement.

(c) *Sewer.* A permit covering all work to lay and install any sanitary sewer pipeline within public right-of-way, or an existing or proposed easement.

(d) *Water.* A permit covering all work to lay and install any water main within public right-of-way, or an existing or proposed easement, or attach to the City's water system.

(e) *Street closure.* A street closure permit, if the person must obtain a permit for any of the activities identified in subsections (a) through (d) of this section, or is undertaking any activities related to the construction of a building, structure, or parking lot, and the activities require the temporary closure of a street, alley, lane of traffic, or sidewalk to vehicle or pedestrian flow.

(f) *Private streets.* A permit covering any work on a private street, sidewalk, curb, or curb cut.

(g) *Alleys.* A permit covering any work on or in a public or private alley.

(Prior Code, § 77.090; Ord. No. 132-79; Ord. No. 69-89; Ord. No. 14-92; Ord. No. 57-2000; Ord. No. 73-07; Ord. No. 34-13)

Sec. 77.091. Approval of plans required.

(a) Construction plans shall be submitted for permits required by SRC 77.090 and shall be approved by the Director, in writing, prior to issuance of the permit or permits. Subdivision improvement plans for sewer, water, streets, and stormwater conveyance and management facilities must be submitted simultaneously with such construction plans, to facilitate checking for conflicts.

(b) Construction ~~and subdivision improvement~~ plans shall be subject to the standards, specifications, policies and procedures, plan check, and permit fees of the Department in effect at the time of application or reapplication for plan check.

(c) Except as provided in subsection (d) of this section, plan approval shall become void upon expiration of six months from the date of written approval given under subsection (a) of this section.

(d) Upon a written finding that the facts upon which the approval was based have not changed to an extent sufficient to warrant refilling of construction plans, the Director may extend the approval period for additional extensions of six months. No more than four such six-month extensions shall be granted for any one subdivision, resulting in a maximum time extension of two years. Reapplication for plan check must be made with the Director upon expiration of each six-month period, if the permit is not issued in the initial approval period or any extension thereof.

(e) All plans, reports, or documents required by this Code shall conform to the standards set forth by the Director. ~~be prepared by and certified by a registered professional civil engineer licensed by the State of Oregon.~~

(Prior Code, § 77.091; Ord. No. 76-81; Ord. No. 176-82; Ord. No. 27-84; Ord. No. 73-07)

Sec. 77.092. Application for plan check.

An application or reapplication for plan check shall be filed by the applicant with the Director ~~responsible design engineer with the director of public works~~ for any permit or permits as required by SRC 77.090. Such application shall include:

(a) Name and address of the owner or owners of the property;

(b) Name and address of the developer of the property;

(c) Name, address, and phone number of the design engineer;

(d) Description of the work area location;

(e) Attached two sets of preliminary plans showing a vicinity map and details of the proposed project, including street widths and property lines, grades, existing and proposed ground profiles, contours, drainage plan with contours, hydraulic calculations, soil boring logs and appropriate soils report,

prepared by a registered civil engineer licensed by the State ~~of Oregon~~ and shall be signed by him or her and stamped with his or her seal to indicate his or her responsibility for them;

(f) Evidence that all federal and state laws and regulations have been complied with, including a copy of permits required by federal, state, or county agencies;

(g) Engineer's estimated construction cost of the proposed project;

(h) Such other information as the ~~director of Public Works~~ Director shall find reasonably necessary for the determination of whether plans should be approved for permit.

(Prior Code, § 77.092; Ord. No. 76-81; Ord. No. 57-2000)

Sec. 77.093. Plan review service fees.

(a) Accompanying the application or reapplication required by SRC 77.092 shall be a service fee as prescribed by resolution of the Council.

(b) Fees provided in subsection (a) of this section are intended ~~fixed and nonrefundable, and are required~~ to support permit plan review.

(Prior Code, § 77.093; Ord. No. 76-81; Ord. No. 107-84; Ord. No. 51-91; Ord. No. 51-96)

Sec. 77.100. Application.

Any applicant for a permit ~~or permits~~ as required by SRC 77.090 shall file an application with the Director ~~of public works~~. Such applications shall include:

(a) Name and address of the ~~owner or~~ owners of the property;

(b) Name and address of the developer of the property;

(c) Name and address of the engineer;

(d) Name and address of the party doing the work;

(e) Location of the work area;

(f) Six sets of approved plans, specifications, and easements required, accompanied by a drawing showing area covered by said legal description;

(g) Evidence that all federal and state laws and regulations have been complied with;

(h) Proposed work schedule, provided that any changes in this work schedule shall be filed with the City;

(i) Estimated itemized cost of the proposed project;

(j) Such other information as the Director ~~of public works~~ shall find reasonably necessary for the determination of whether a permit should be issued therefor.

(Prior Code, § 77.100; Ord. No. 132-79; Ord. No. 76-81; Ord. No. 57-2000)

Sec. 77.110. Permit fees.

(a) Accompanying the application required by SRC 77.100 for each category shall be a permit fee as prescribed by resolution of the Council.

(b) Fees listed in subsection~~s~~ (a) ~~and (b)~~ of this section are fixed and nonrefundable, and are required to support permit issuance, testing, and inspection.

(c) In computing the permit fees, the estimated value of proposed construction shall be comparable with current bid prices for City contract projects and approved prior to issuing the permit.

(d) Work being done under contract with the City ~~of Salem~~ shall be exempt from the provisions of SRC 77.090 to 77.120.

(e) Where work for which a permit is required by this Code is commenced or proceeded with prior to obtaining said permit, the fees specified in subsection (a) of this section shall be doubled, but the payment of such

double fee shall not relieve any person from fully complying with the requirements of this Code in the execution of the work nor from any other penalties prescribed herein.

(f) Permits required by SRC 77.090 shall be nontransferable. Any change in applicant, such as a subdivision sale, will require reapplication for permit. If six months has elapsed since plan approval required by SRC 77.091, reapplication for plan check shall be made.

(Prior Code, § 77.110; Ord. No. 173-78; Ord. No. 132-79; Ord. No. 76-81; Ord. No. 107-84; Ord. No. 69-89; Ord. No. 51-91; Ord. No. 51-96)

Sec. 77.120. Bonds or other written evidence to be filed; final acceptance.

(a) No permit shall be issued pursuant to SRC 77.100 unless there is filed with the application ~~the following:~~ a performance guarantee in the form specified in SRC 110.100, sufficient to satisfy the Director ~~of Public Works~~ that the work shall be done in accordance with City standards and specifications.

~~(1)~~

~~(2) A maintenance bond or other written evidence in a form approved by the City Attorney guaranteeing the work performed for a period of one year after completion of the project and written acceptance by the Director of Public Works. The maintenance bond may be incorporated in and made a part of the construction bond.~~

(b) The Director ~~of Public Works~~ shall require an applicant to file satisfactory evidence of insurance protecting and saving harmless the City, its officers, agents, and employees from all claims for damages or injury to other persons by reason of such alteration work prior to acceptance and for a period of one year thereafter. Such insurance shall be in not less than the amounts specified in ORS 30.272~~-0~~, and the evidence thereof shall be in a form approved by the City Attorney.

(c) Prior to final acceptance and start of one-year warranty period, the private engineer for the project must submit the following:

(1) ~~Five sets of blackline prints of~~ As-built drawings, consistent with Public Works Design Standards, prepared and certified by a registered professional engineer licensed by the State ~~of Oregon~~;

(2) All additional easements required due to construction changes, accompanied by a drawing showing area covered by said legal description;

(3) A maintenance bond or other written evidence in a form approved by the City Attorney guaranteeing the work performed for a period of one year after completion of the project and written acceptance by the Director. The maintenance bond may be incorporated in and made a part of the construction bond;

~~(3)~~(4) Such other information as the Director ~~of Public Works~~ shall deem necessary for final acceptance.

(d) Prior to final acceptance and start of the one-year warranty period for a sanitary sewer project, the project engineer shall notify the Director ~~of Public Works~~ that the system is complete and ready for final inspection. The Director shall cause inspection of the system by means of a closed circuit TV camera to ensure that there are no cracks in the pipe, that all joints are tight, that deflection is within acceptable tolerances, and that there are no conditions apparent which would permit the infiltration of groundwater into the system.

(e) Prior to final acceptance and start of the one-year warranty period for a project other than a sanitary sewer project, the Director ~~of Public Works~~ shall cause such inspection of the project as the Director may consider necessary.

(Prior Code, § 77.120; Ord. No. 103-76; Ord. No. 132-79; Ord. No. 74-81; Ord. No. 93-84; Ord. No. 79-85; Ord. No. 31-13)

Sec. 77.122. Governmental agency agreement in lieu of guarantees.

Subject to any conditions imposed by the Director, a governmental agency may, in lieu of those guarantees required by SRC 77.120(a), guarantee in writing that all work will be done in accordance with City standards and in accordance with the plans approved by the Director ~~Department of Public Works~~ and shall indemnify the City for all costs of completing or correcting the work should that become necessary.

(Prior Code, § 77.122; Ord. No. 85-86)

Sec. 77.130. Notice before commencement of work.

At least 48 hours' notice shall be given by the contractor of intention to begin work after issuance of a permit required by ~~section~~ SRC 77.090. In the event of temporary cessation of work activities, such notice shall be required before the resumption of any additional work.

(Prior Code, § 77.130; Ord. No. 131-69; Ord. No. 132-79)

Sec. 77.140. Suspension of permit; stop work order; appeal.

(a) At any time after the issuance of a permit required by SRC 77.090, the Director ~~of Public Works~~ may suspend the same upon a finding that any of the following grounds exist:

(1) False, misleading, or erroneous data or information submitted by the applicant in connection with securing the permit.

(2) Materials or workmanship which do not meet specification for the construction or installation of the permitted improvement; or construction or installation which varies from the approved plan or design of the improvements.

(3) Violation of any of the provisions of this Code governing the work being done under the permit.

(b) Upon suspension of a permit as provided in subsection (a) of this section, the Director shall cause to be issued a written stop work order, one copy of which shall be sent by regular mail to the permittee at the address shown on the permit application, one copy of which shall be sent by regular mail to the permittee's engineer overseeing the work, if known, and one copy of which shall be personally delivered to the person in charge of any work in progress.

(c) It shall be unlawful for any person to cause, suffer, or permit any work to be done for which a permit is required by SRC 77.090 when a stop work order has been issued as provided in subsection (b) of this section.

(d) Any person whose permit has been suspended as provided in subsection (a) of this section may appeal such action to the Hearings Officer ~~community development board of appeals~~ as provided in SRC chapter 20J ~~4.040 to 4.070~~. Notwithstanding the provisions of SRC chapter 20J ~~SRC 4.042~~, the filing of an appeal shall not stay the effect of a stop work order issued under subsection (b) of this section.

(Prior Code, § 77.140; Ord. No. 115-79)

Sec. 77.150. Reserved.

Sec. 77.160. Sidewalk improvement requirements.

(a) *Public Works Design Standards.* Construction of sidewalks conforming to the Public Works Design Standards shall be a condition of the issuance of any building permit for a development located on property lacking such sidewalks. As used in this section, the term "development" means the erection, construction, or enlargement of any building or structure requiring a building or occupancy permit under SRC chapter 56, but excluding building permits for improvements to existing single family or duplex dwelling unit structures under the following conditions:

(1) Existing single family or duplex dwelling unit structure is located on property abutting an unimproved street that lacks curbs; and

(2) The proposed development is less than a 50 percent enlargement of the existing floor area square footage of the structure, including an attached garage.

(b) *Deferral, City required.* Construction of required sidewalks may be deferred at no cost where street improvements are anticipated or where no sidewalks are presently located within 150 feet and on the same side of the adjacent property.

(c) ~~Variances and enforcement. Variance from and enforcement of the requirements of this section shall be as provided in SRC 77.150 (f) and (g).~~ *Alternative street standard and enforcement.* Alternatives from and enforcement of the requirements of this section shall be as provided in SRC 803.065 and 78.300.

(Prior Code, § 77.160; Ord. No. 91-99; Ord. No. 72-2002; Ord. No. 31-13)

CONSTRUCTION OF TRAFFIC SIGNALS BY PRIVATE DEVELOPERS*

***State law reference—**Official traffic control devices, ORS 810.200.

Sec. 77.170. Construction of traffic signals by private developers.

A developer may qualify for partial reimbursement for the construction of a new traffic signal by meeting all of the requirements under the provisions of SRC 77.180 to 77.230. Only signals that are recommended in a traffic impact analysis and required as an off-site transportation improvement will be eligible for reimbursement under the provisions of this chapter. Signals eligible for full reimbursement with transportation system development charges, constructed for the express purpose of improving access to private property, or in which one or more legs of the intersection is a private driveway, shall not be eligible for reimbursement.

(Prior Code, § 77.170; Ord. No. 8-2003)

Sec. 77.180. Filing for preliminary consent.

(a) The developer shall file with the Director ~~of public works~~ a complete traffic impact analysis. The traffic impact analysis shall include a request to construct the traffic signal, setting forth the proposed location of the traffic signal, the purpose for which it is to be constructed, and a request for reimbursement.

(b) The Director shall review the proposal and render a decision to allow for reimbursement within 30 days of the developer's application.

(c) No later than six months after receiving consent from the Director for the proposed traffic signal and a preliminary determination that reimbursement will be allowed under SRC 77.190, the developer may file an application with the Director as provided in SRC 77.190.

(Prior Code, § 77.180; Ord. No. 8-2003)

Sec. 77.190. Application by developer.

(a) A developer who has received the ~~public works~~ Director's consent to construct a traffic signal that is eligible for reimbursement and desires to proceed therewith, shall make application with the Director, and provide the following information:

(1) Detailed plans and specifications conforming to adopted standards of the City;

(2) Cost estimates for the project, certified to by a professional engineer;

(3) Legal description of all property that may need to be acquired to construct the signal and the property owners' names and addresses;

(4) Name of the contractor who will be installing the signal;

(5) A current turning movement count at all legs of the intersection;

(6) An estimate of the developer's additional new trips that will use the traffic signal;

(7) Listing of all property owners of all undeveloped and underdeveloped properties that could generate 50 or more analysis hour trips through the signal; and

(8) Such other information the Director deems necessary to evaluate the application.

(b) Upon submittal of an application, the Director shall determine if the application is complete and grant final approval. Approval shall be withheld for incomplete applications. The Director's decision regarding completeness of the application shall be final on the matter.

(Prior Code, § 77.190; Ord. No. 8-2003)

Sec. 77.200. Construction approval.

Upon approval of the application by the Director and execution of an improvement agreement and issuance of a construction permit, the developer may proceed with the construction of the traffic signal in accordance with the approved plans and specifications. The developer shall notify the Director when construction commences and the construction shall be completed within one year of the date of the approval. All required permits shall be obtained by the developer or developer's contractor prior to commencing construction.

(Prior Code, § 77.200; Ord. No. 8-2003)

Sec. 77.210. Filing statement of cost by developer.

(a) Upon completion of the traffic signal installation, the developer shall file with City Engineer an itemized cost statement thereof. In addition to actual construction costs, costs associated with design, production of construction documents, permitting, bonding, and any other costs associated with the design of the signal, as well as right-of-way acquisition, signal interconnect, street lighting directly associated with the signal, and other materials directly related to the installation of the signal shall be eligible for reimbursement.

(b) If the total cost shown on the itemized statement exceeds the estimate in the approved application, the Director may approve the overage for the purposes of calculating the pro-rata share reimbursements if the Director is satisfied the overage was due to conditions not readily foreseen at the time of the construction.

(Prior Code, § 77.210; Ord. No. 8-2003)

Sec. 77.220. Apportioning the cost of the traffic signal project.

(a) The developer shall be entitled to reimbursement of a pro-rata share of the project cost from each property benefitted from the installation of the traffic signal.

(b) For the purposes of this section, "property benefitted" is any development built within ten years of the start of the signal operation which is required to prepare a traffic impact analysis and which generates 50 or more analysis hour trips through the new signal.

(c) The pro-rata share for each development shall be calculated by dividing each development's trips into the sum of the trips pursuant to SRC 77.190(a)(5) and (6), and multiplied by the final construction costs approved pursuant to SRC 77.210.

(d) The pro-rata share of the cost determined under subsection (c) of this section shall be annually adjusted (indexed) for inflation using the Engineering News Record (ENR) index adopted by the ~~City~~ Council for the systems development charge methodology pursuant to SRC 41.170(e).

(Prior Code, § 77.220; Ord. No. 8-2003)

Sec. 77.230. Reimbursement of developer.

Reimbursement to any person constructing a qualified public improvement shall be as provided in SRC ~~Chapter~~ 41.300 and 41.305 ~~66.160 and 66.170~~.

(Prior Code, § 77.230; Ord. No. 8-2003)

Secs. 77.240—77.980. Reserved.

Sec. 77.990. Violations.

Violation of SRC 77.090 is an infraction.

(Prior Code, § 77.990; Ord. No. 193-79)

CHAPTER 78. SIDEWALKS

Sec. 78.010. Definitions.

~~Unless the context otherwise specifically requires, as used in this Chapter, the following mean:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Block* means that part of one side of a street lying between the two nearest cross streets.

~~(b) *Director* means the Director of Public Works, or the Director's designee.~~

~~(c)~~*Driveway* means all paved surfaces located between the curbline and the right-of-way line of a street that is used to facilitate vehicular access between the abutting property and the roadway.

~~(d)~~ *Landscape strip* means that part of any public street right-of-way lying between the sidewalk and the curb or pavement, or lying between the edge of the pavement and the edge of the right-of-way if there is no sidewalk, also known as the parking strip, planting area, or planting strip.

~~(d)~~(e) *Person* means an individual, corporation, limited liability company, sole proprietorship, partnership, association, trust, cooperative, or any other entity in law or fact.

~~(e)~~(f) *Public rights-of-way* or *rights-of-way* means the present and future streets, roadways, alleys, public highways, avenues, and pedestrian ways in the City, which may be held by the City in fee, by easement, or by dedication.

~~(f)~~(g) *Sidewalk* means all paved surfaces, except walkways and driveways, lying between the curbline, or the edge of pavement if there is no curb, and the right-of-way line of a street or in a public easement.

~~(g)~~(h) *Specifications* means the City of Salem Standard Construction Specifications, including design standards, standard plans and any supplement thereto, issued by the Director.

~~(h)~~(i) *Turnpike street* means any public street, road, or right-of-way which has been paved for vehicular movement and does not have curbs.

~~(i)~~(j) *Walkway* means all privately installed and maintained paved surfaces located between the curbline, or the edge of pavement if there is no curb, and the right-of-way line of a street, excluding the sidewalk, used primarily to provide pedestrian linkage between the abutting property and the curb.

(Prior Code, § 78.010; Ord. No. 4629; Ord. No. 17-92; Ord. No. 91-99; Ord. No. 72-2002; Ord. No. 99-07)

Sec. 78.020. Grade and alignment.

Sidewalks constructed in the City shall be laid to the grade and alignment of the existing curb or as approved by the Director. Sidewalks may be constructed on turnpike streets or where curbs do not meet specifications with approval by the Director.

(Prior Code, § 78.020; Ord. No. 4629; Ord. No. 17-92; Ord. No. 72-2002)

Sec. 78.030. Material.

Sidewalks shall be constructed of materials as prescribed in the specifications, except where other material, including pervious material, is specifically approved by the Director.

(Prior Code, § 78.030; Ord. No. 4629; Ord. No. 127-77; Ord. No. 17-92; Ord. No. 99-07; Ord. No. 34-13)

Sec. 78.040. Width, thickness, and slope.

Sidewalk width, thickness, and slope shall conform to the following standards:

(a) All sidewalks shall be a minimum of five feet in width.

(b) Sidewalks located within 400 feet of, and that provide direct access to, a school shall be a minimum of eight feet in width.

(c) For alternative street standards as described in SRC 803.065(a)(1) or ~~SRC~~ 803.065(a)(3), the Director may approve sidewalk width to be reduced to four feet and located on the property line.

(d) In commercial or industrial zones and at public buildings, churches, or similar places, the Director may allow sidewalks more than five feet in width.

(e) Sidewalks shall have an unobstructed clearance, four feet in width, around signs, mailboxes, and other similar facilities.

(Prior Code, § 78.040; Ord. No. 4629; Ord. No. 5437; Ord. No. 17-92; Ord. No. 72-2002; Ord. No. 99-07; Ord. No. 31-13)

Sec. 78.050. Sidewalk line; variances.

(a) The edge of the sidewalk shall be built consistent with the specifications issued by the Director. ~~one foot from the adjacent property line; provided, however, on streets having a right-of-way of fifty feet or less, the sidewalk shall be parallel to and abut upon the curb.~~

(b) If topography or other conditions make the construction of a sidewalk impossible or undesirable in front of any premises, the Director may, upon the Director's own initiative or at the request of one or more abutting property owners, designate a different location for the sidewalk. Any such variance shall be by written order of the Director. All orders of the Director establishing a variance with the provisions of this section shall be filed with the City Recorder, and shall become effective from the date of such filing.

(Prior Code, § 78.050; Ord. No. 182-66; Ord. No. 17-92; Ord. No. 99-07)

Sec. 78.060. Installation as part of street improvement project.

Sidewalks shall be installed along with and as a part of a street improvement project.

(Prior Code, § 78.060; Ord. No. 4629; Ord. No. 91-99)

Secs. 78.070—78.100. Reserved.

Sec. 78.110. Petition for prohibition of construction of sidewalks.

(a) Proceedings may be instituted by a petition of the majority of property owners along a block face to the Citizens Advisory Traffic Commission, for the purpose of prohibiting the construction of sidewalks within public right-of-way in any district or along a specified block or street.

(b) The Citizens Advisory Traffic Commission shall hold a hearing on the petition. Notice of the hearing shall be given in the standard manner of the Commission. At the hearing petitioners must show:

(1) Pedestrian safety can be maintained, including access to nearby schools and parks, without sidewalks; and

(2) One or more of the following:

(A) The construction of sidewalks is impracticable given physical and topographical constraints;

(B) Prohibiting the construction of sidewalks would result in the preservation of historic resources and heritage trees;

(C) Prohibiting construction would result in the preservation of unique historical or aesthetic characteristics of a neighborhood or properties; or

(D) Prohibiting construction of sidewalks is otherwise in the public interest.

(c) If the Citizens Advisory Traffic Commission finds in favor of the petitioners, the Director shall issue an order prohibiting the construction of any sidewalk in the district, block or street identified in the petition for a period of ten years. Upon expiration of the ten-year time period, a new petition, public hearing, and Commission approval is required to reinstate the prohibition.

(d) Any person who participated at the hearing may appeal the decision of the Citizens Advisory Traffic Commission to the Council by filing a notice of intent to appeal with the City Manager within 15 days of the date of the decision. The City Manager shall set the matter for hearing before the Council, which hearing shall be held

not more than 30 days of the filing of the notice of intent to appeal. The Council may affirm, reverse, modify, or remand the decision of the Citizens Advisory Traffic Commission.

(e) It shall be unlawful for any person to proceed with the construction of sidewalks in the district or along the specified block or street where such construction has been prohibited or while a petition to prohibit construction is pending.

(Prior Code, § 78.110; Ord. No. 4629; Ord. No. 17-92; Ord. No. 72-2002; Ord. No. 99-07)

Sec. 78.120. Permit to construct, reconstruct, or repair of sidewalk required.

No person shall construct, reconstruct, or repair any sidewalk without first obtaining a permit from the Director.

(Prior Code, § 78.120; Ord. No. 4629; Ord. No. 17-92; Ord. No. 99-07)

Sec. 78.130. Permit and service fees.

An application for the plan review and permits required by SRC 78.120 shall describe the location, width, length, and material proposed to be used, and shall include a plan view drawing with such other information as the Director may deem necessary to demonstrate compliance with this chapter. The application shall be accompanied with an inspection fee in the amount as prescribed by resolution of the ~~City~~ Council.

(Prior Code, § 78.130; Ord. No. 4629; Ord. No. 76-81; Ord. No. 107-84; Ord. No. 69-89; Ord. No. 51-91; Ord. No. 17-92; Ord. No. 51-96; Ord. No. 99-07)

Sec. 78.140. Reserved.

Sec. 78.150. Inspection of sidewalk construction.

(a) The owner, the owner's agent, or the owner's contractor shall notify the Director prior to placing concrete that the sidewalk forms are ready for inspection. After notification is given, the Director shall make such inspection of the sidewalk forms as, in the Director's judgment, is necessary to establish full compliance with this chapter, the specifications, and other applicable laws, ordinances and regulations.

(b) If the sidewalk forms are not placed in accordance with this chapter, the specifications, and other applicable laws, ordinances and regulations, the owner or his or her contractor shall make all required corrections before placing concrete. After sidewalk forms are approved by the Director, concrete shall be placed and finished in accordance with this chapter, the specifications and any other applicable laws, ordinances and regulations. If the finished sidewalk is not constructed in accordance with this chapter, the specifications and other applicable laws, ordinances and regulations, the Director shall order the owner to comply within a time certain, and if the owner fails to comply, the Director shall to proceed against the owner in accordance with SRC 78.300.

(Prior Code, § 78.150; Ord. No. 4629; Ord. No. 12-83; Ord. No. 17-92; Ord. No. 99-07)

Sec. 78.152. Sidewalk maintenance standards; rulemaking; inspections.

(a) The Director shall adopt administrative rules prescribing sidewalk maintenance standards to ensure sidewalks remain in good repair and acceptable condition for safe use by the public.

(b) Whenever the Director learns of any sidewalk that may not conform to the standards adopted pursuant to subsection (a) of this section, the Director shall cause the sidewalk to be inspected and, if found to not conform with such standards, shall assign responsibility for repairs as set forth in SRC 78.154.

(c) The Director may inspect any sidewalk to determine whether the sidewalk conforms to the standards adopted pursuant to subsection (a) of this section and assign responsibility for repairs as set forth in SRC 78.154.

(d) If the Director determines a defect in a sidewalk presents an imminent hazard to the public, the Director may cause barricades or warning devices to be immediately placed to give warning of the hazard. It shall be unlawful for any person to remove or replace such barricades or warning devices without the Director's prior written authorization.

(Prior Code, § 78.152; Ord. No. 12-83; Ord. No. 17-92; Ord. No. 72-2002; Ord. No. 99-07)

Sec. 78.154. Sidewalk repairs; duties of abutting owner and City.

(a) *Duties of property owner.* Except as provided in this section, it shall be the duty of every property owner to maintain, in compliance with the standards adopted by the Director pursuant to SRC 78.152(a), all sidewalks that abut the owner's property in good repair and acceptable condition. It shall be the duty of every property owner to maintain in good repair and acceptable condition all landscape strips, walkways, and driveways located between the curbline and the right-of-way line. It shall be the duty of every owner of property abutting a sidewalk, upon acquiring actual knowledge that a defective or dangerous condition in the sidewalk exists that may have been caused by trees located in public rights-of-way, to notify the Director of the existence, location and nature of the condition.

(b) *Responsibility for maintaining sidewalks constructed prior to September 1, 1992.*

(1) For sidewalks constructed prior to September 1, 1992, the property owner shall not have the duty to maintain sidewalks as set out in subsection (a) of this section until such time that the Director certifies that the condition of the sidewalks meets the standards adopted by the Director pursuant to SRC 78.152(a). For any sidewalks constructed prior to September 1, 1992, the City shall be responsible for repairing the sidewalks, subject to yearly appropriations and as prioritized by the Council, until such time that the Director certifies that such sidewalks meet the standards adopted by the Director pursuant to SRC 78.152(a).

(2) Notwithstanding the provisions of subsection (b)(1) of this section, where the sidewalks abut a city, county, state, or federal government property, the property owner shall have the duty to maintain the sidewalks as set out in subsection (a) of this section regardless of when the sidewalks were constructed.

(c) *Duty of the City.* The City shall be responsible for repairs to correct damage caused by trees located in public rights-of-way, and all repairs to curb ramps at street corners and intersections, subject to yearly appropriations and as prioritized by the Council.

(d) *City repair program.* The ~~Public Works~~ Director shall implement as part of the inspection program as provided in SRC 78.152(c) the identification and certification of sidewalks constructed prior to September 1, 1992, that do not abut a city, county, state, or federal government property, and which meet the standards adopted by the Director pursuant to SRC 78.152(a). The ~~Public Works~~ Director shall establish a sidewalk repair program that will identify and establish a schedule of repairs to sidewalks that are the City's responsibility. The ~~Public Works~~ Director shall bring a recommended schedule of repairs with an estimate of the costs for each repair to the ~~City~~ Council annually so that the Council may prioritize and identify funding for the repairs.

(e) *Initiative taken by property owner.* Nothing in this chapter shall preclude a property owner on his or her own initiative at the property owner's expense from undertaking the repair and maintenance of sidewalks to bring the sidewalks into compliance with the standards adopted by the Director pursuant to SRC 78.152(a).

(Prior Code, § 78.154; Ord. No. 12-83; Ord. No. 17-92; Ord. No. 72-2002; Ord. No. 99-07)

State law reference—Owner to repair sidewalk, etc., ORS 368.910.

Sec. 78.156. Notice and order to repair; action upon refusal; appeal.

(a) If, upon inspection as provided in SRC 78.152, the Director determines that a sidewalk does not meet the specifications or the standards established pursuant to SRC 78.152, and the Director finds the repair of the sidewalk is the responsibility of the abutting property owner as provided in SRC 78.154, the Director shall cause a written notice and order of the defect to be mailed to the owner of the property abutting the sidewalk. The notice and order shall:

(1) Describe the defect;

(2) Require compliance as provided in SRC 78.154 and this section;

(3) Give notice of the property owner's liability pursuant to SRC 78.158;

(4) Give notice of the person's right to seek reconsideration of the notice and order under subsection (c) of this section or appeal the notice and order under subsection (d) of this section;

(5) Require that a permit to undertake repair or reconstruction be obtained within 30 days, and that the work be completed within a reasonable period of time, considering limitations of weather and season, not to exceed 120 days; and

(6) Specify the nature and location of any barricades to be placed and maintained by the owner.

(b) The property owner shall undertake repair or reconstruction within 30 days of the date of the notice and order. Repair or reconstruction shall be completed within a reasonable period of time, considering limitations of weather, but not to exceed 120 days. Such period may be extended at the Director's discretion upon the applicant showing good cause.

(c) The property owner may file a petition for reconsideration with the Director within ten days of the date the notice and order was mailed or delivered, whichever is the earlier date. The petition shall set forth the specific grounds for reconsideration. The petition shall stay the notice and order until such time that the Director acts upon the petition for reconsideration. Following reconsideration, the Director shall enter a new notice and order, which may be summary, and may affirm, modify, or rescind the original notice and order. A request for reconsideration is not a prerequisite for filing an appeal under subsection (d) of this section.

(d) The property owner may appeal the notice and order to the Hearings Officer by giving written notice of appeal to the Director within 14 days of the date the notice and order was mailed or delivered, whichever is the earlier date. The notice of appeal shall state one or more of the following grounds:

(1) That the alleged defect is not in violation of the specifications or standards adopted pursuant to SRC 78.152(a);

(2) That the alleged defect is not hazardous in fact because of special conditions in the particular case;

(3) That compliance within the 120-day period is impracticable for reasons beyond the owner’s control;

(4) That an extension of the compliance period was unreasonably denied;

(5) That the placement of the warning devices or barricades specified in the notice are unreasonable;

(6) That the person to whom notice has been given is not the owner of the property adjacent to the allegedly defective sidewalk; or

(7) That the person to whom the notice has been given is not responsible for the repair.

(e) Upon receiving a notice of appeal, the Director shall set the matter for hearing before the Hearings Officer and give notice of the hearing to the appellant. The Hearings Officer may affirm, reverse, modify, or remand the Director's action.

(f) If no petition for reconsideration or appeal is filed within the time provided in this section and no permit has been obtained, or the repairs are not completed as required by the Director’s notice and order, or if the direction of the Hearings Officer following an appeal is not complied with within the time set out in the Hearings Officer’s order, the Director shall proceed as provided in SRC 78.300.

(Prior Code, § 78.156; Ord. No. 12-83; Ord. No. 95-84; Ord. No. 51-91; Ord. No. 17-92; Ord. No. 51-96; Ord. No. 72-2002; Ord. No. 99-07)

Sec. 78.158. Liability for damages.

(a) The owner of property adjacent to a defective sidewalk shall be liable to any person suffering bodily injuries, property damage, or both, as a result of any breach of the duty imposed upon the owner under SRC 78.154.

(b) In the event any action naming the City or any of its officers, employees, or agents is brought as a result of any alleged defective condition in a sidewalk, the owner of property abutting the defective sidewalk shall indemnify and defend the City, its officers, employees and agents, if the defective condition was the result of the duty imposed upon the owner under SRC 78.154.

(c) Neither the City nor its officers, employees, or agents acting in the course and scope of their duties shall be liable to any person who asserts a claim based upon bodily injuries or property damage as a result of any breach of the duty imposed upon the owner under SRC 78.154.

(Prior Code, § 78.158; Ord. No. 12-83; Ord. No. 17-92; Ord. No. 99-07)

Secs. 78.160, 78.170. Reserved.

Sec. 78.180. Requirements for new construction abutting improved streets.

(a) Except as otherwise provided by SRC 78.192, every property owner whose property abuts upon any street that has been improved with hard surface pavement and curbs, shall construct a sidewalk conforming to the provisions of this chapter within 100 days from the completion of construction of any building located upon the property. For the purposes of this section, sidewalks shall be required along the entire length of the property abutting any improved street. As used in this section, the term "building" shall not include accessory buildings, as defined in SRC 111.005, in a residential zone.

(b) Whenever any property owner refuses to perform any duty imposed under this section, the Director shall issue a notice and order the property owner to satisfy such duty, and if the property owner fails to perform such duty within such time as the Director may have specified in the notice and order, then the Director shall proceed as provided in SRC 78.300.

(Prior Code, § 78.180; Ord. No. 5816; Ord. No. 6965; Ord. No. 152-76; Ord. No. 84-79; Ord. No. 127-84; Ord. No. 17-92; Ord. No. 72-2002; Ord. No. 99-07; Ord. No. 31-13)

Sec. 78.182. Requirements for undeveloped lots abutting improved streets.

(a) Every property owner whose property abuts any street improved with hard surface pavement and curbs shall construct a sidewalk conforming to the provisions of this chapter, if:

(1) At least 70 percent of the property frontage is developed along that side of the block;

(2) At least 70 percent of the required sidewalks on that side of the block are already constructed; and

(3) It has been at least seven years since the abutting street was improved to hard surface pavement and curbs, beginning with streets constructed on or after January 1, 2003.

(b) For the purposes of subsection (a)(2) of this section, a property having a sidewalk construction deferral, granted pursuant to SRC 78.192, shall be counted as if a sidewalk were constructed, and shall be subject to having its deferral terminated and sidewalk construction required.

(c) The Director shall notify and order all property owners affected by the requirements of this section to be in compliance within 12 months of notification by the Director. Property owners failing to comply with the Director's order shall be subject to actions taken by the Director under SRC 78.300.

(Prior Code, § 78.182; Ord. No. 72-2002; Ord. No. 99-07)

Sec. 78.190. Construction plans to show sidewalks.

No building permit shall be granted for the construction of any building along any street that has been improved with hard surface pavement and curbs unless the construction plans provide for the construction of sidewalks as specified in this chapter.

(Prior Code, § 78.190; Ord. No. 5816; Ord. No. 152-76; Ord. No. 84-79; Ord. No. 17-92; Ord. No. 99-07)

Sec. 78.192. Deferral of sidewalk construction.

(a) A property owner may apply to the Director to enter into a deferral agreement with the City to defer the obligation to construct sidewalks as required by SRC 78.180 or required as a condition of land use approval under the following circumstances:

(1) In the case of all property other than industrial:

(A) The location of the sidewalk is not on a designated collector or arterial street in the Salem Transportation Systems Plan; and

(B) Less than one-half of the required sidewalks on that side of the block are already constructed.

(2) In the case of industrial property:

(A) The frontage considered for deferral is not on a major pedestrian route to a school, shopping center, park, church, or other pedestrian traffic generator;

(B) The deferral of the sidewalk construction does not pose a threat to the welfare and safety of the public based upon a review of the pedestrian/vehicular traffic, the width and condition of the street, and of the on-street parking; and

(C) There is an adequate combination of pedestrian, bike and transit facilities for employees to reach the property safely without using a vehicle, except that the Director may waive this condition if the property owner can show that imposing this condition would create a hardship.

(b) Whenever a sidewalk construction has been deferred, the property owner shall, unless otherwise specified in the deferral agreement:

(1) Grade and slope the area to the future sidewalk grade;

(2) Avoid planting trees in the sidewalk area, or building fences, retaining walls, steps, or other impediments to the future sidewalk;

(3) Note on the plans for the development that a deferment has been granted but that sidewalk construction may be ordered by the ~~City~~ Council at any time; and

(4) Record a copy of the deferral agreement in the deed records of the appropriate county.

(c) Sidewalk construction, which has been deferred pursuant to subsection (a) or (b) of this section, may be initiated at any time by the Director or by resolution of the ~~City~~ Council.

(Prior Code, § 78.192; Ord. No. 84-79; Ord. No. 127-84; Ord. No. 17-92; Ord. No. 51-96; Ord. No. 99-07)

Sec. 78.200. Reserved.

Sec. 78.210. Grade and plant materials within the right-of-way.

(a) It shall be the duty of all property owners to maintain living plant materials in accordance with the specifications for stormwater facilities that exist in the right-of-way in front of their property, except where prohibited by Salem Revised Code.

(b) Except as otherwise specified in subsection (a) of this section, it shall be the duty of all property owners to fill in the space between the curb and sidewalks in front of their property, and to the curblines of the street at the intersections, with soil, rock, mulch ~~earth~~ or other material approved by the Director to a level and grade with the curb and sidewalk. If such space is filled with soil ~~earth~~, the area must be well maintained and ~~at least 75 percent of the surface area shall be covered with perennial living plant material which conforms to all other requirements of this Chapter, and which is~~ kept free of noxious vegetation.

(Prior Code, § 78.210; Ord. No. 4629; Ord. No. 12-83; Ord. No. 17-92; Ord. No. 34-13)

Sec. 78.220. Duty of property owners to keep sidewalks safe, clean, etc.

(a) It shall be the duty of the owners, lessees, and occupants of all property abutting upon or adjacent to any sidewalk to keep such sidewalk clean and clear of ice, snow, dirt, vegetation, debris, or obstructions for the safe use of the public at all times.

(b) The owners, lessees, and occupants shall be liable to any person suffering bodily injuries or property damage as a result of any breach of a duty imposed under subsection (a) of this section.

(c) In the event any action naming the City or any of its officers, employees, or agents is brought as a result of any failure to comply with the duty imposed under subsection (a) of this section, the owner of the property abutting the defective sidewalk shall indemnify and defend the City, its officers, employees, and agents, in the event it is established in such action that the occurrence or condition giving rise to the action could have been prevented had such owner not breached a duty imposed under subsection (a) of this section.

(d) Neither the City nor its officers, employees, or agents acting in the scope of their duties shall be liable to any person having a remedy under subsection (b) of this section.

(e) Whenever any owner, lessee, or occupant of any property neglects to perform the duty imposed under subsection (a) of this section, the Director shall issue a notice and order the owner, lessee, or occupant to remedy such neglect, and in case the person then fails to make such sidewalk safe or to clean the same or to clear the same

of ice, snow, dirt, vegetation, debris, or obstructions within such time as the Director may have specified in the notice and order, then the Director shall proceed as provided in SRC 78.300.

(Prior Code, § 78.220; Ord. No. 4629; Ord. No. 12-83; Ord. No. 17-92; Ord. No. 72-2002; Ord. No. 99-07)

Sec. 78.230. Deposit of water, oil, etc., from filling stations.

(a) It shall be unlawful for any person operating, conducting, or maintaining any gasoline filling station, service station, public garage or automobile repair shop to discharge or permit to be discharged from any pump, pipe, hose, radiator, automobile, or other device any water, oil, gasoline, cleansing fluid, or other substance upon any sidewalk or to permit the same to be discharged in such manner that such water, oil, gasoline, cleansing fluid, or other substance will run or flow upon, over, or across any sidewalk or landscape ~~parking~~ strip in front of or adjacent to such gasoline filling station, service station, public garage, or automobile repair shop.

(b) This section shall not be construed as prohibiting the washing or cleaning of any sidewalk or landscape ~~parking~~ strip or any object permanently located therein.

(Prior Code, § 78.230; Ord. No. 3976)

Sec. 78.240. Cafes in the public right-of-way.

(a) Any person owning or operating an eating or drinking establishment that serves food, beverages or alcoholic liquor to patrons seated at tables located within the sidewalk area in front of the eating or drinking establishment shall maintain a pedestrian pathway of not less than five feet wide and a vehicle buffer zone of not less than three feet wide within the sidewalk area. The pedestrian pathway and the vehicle buffer zone shall be kept clear of fixtures, tables, or chairs at all time. The pedestrian pathway shall begin either where the public sidewalk and the property line meet or between the seating area and the street when the seating area is placed next to a building or property line and then extends into or is placed entirely on the adjacent public sidewalk.

(b) Any person owning or operating an eating or drinking establishment that serves food, beverages or alcoholic liquor to patrons seated at tables located within the alley area in front of the eating or drinking establishment shall maintain a clearance of at least 15 feet width within the alley along the entire length of the seating area to allow the passage of vehicles and pedestrians.

(c) A violation of this section is unlawful.

(Prior Code, § 78.240; Ord. No. 3390; Ord. No. 52-84; Ord. No. 72-2002; Ord. No. 27-13; Ord. No. 9-17, § 9(78.240), 6-12-2017)

Sec. 78.250. Use of space below sidewalk level.

(a) *Revocable permit required.* The space below the sidewalk level may be used by the abutting property owner upon securing a revocable permit from the Director pursuant to SRC 76.160. The occupation of this space may be revoked by the City at any time for good cause shown, and the owner of the building occupying such space shall, at the owner's sole cost, be required to cause such space to be restored to a condition acceptable to the Director. Any person occupying, in control of, or using the space below the sidewalk level shall maintain such space in good and sound structural condition.

(b) *Sidewalk openings.* Prior to constructing an opening in the sidewalk for fuel, stairs, elevators, or for other purposes, the property owner shall secure a revocable permit from the Director pursuant to SRC 76.160. All openings shall be located as close to the curbline as possible and in no case at a greater distance than two feet from the curbline. The inner edge of any sidewalk opening shall not be nearer to the property line than one-half of the established width of the sidewalk; provided, however, within the limits of Fire Zone No. 1, the space between any sidewalk opening and the property line shall not be less than seven feet, and in all other districts of the City this space shall not be less than six feet. Any person occupying, in control of, or using any sidewalk opening shall maintain such opening in good and sound structural condition.

(c) *Doors on sidewalk openings.* All openings constructed in sidewalks shall be covered with doors constructed of heavy sheets of iron or steel that have a roughened top, or sheets of iron or steel covered with a non-slip durable material. The doors shall be attached to a substantial metal frame built into the sidewalk. The dimension of doors in any direction shall not exceed the dimension of the opening by more than six inches. The doors and

frames shall be so constructed and maintained that there shall be no projection above the sidewalk exceeding one-fourth inch. The axis of the doors shall be perpendicular to the curbline. Sidewalk doors shall be kept closed when not in use and when open shall be provided with iron rods or chains that will hold the doors open and provide a guard to the sidewalk opening. Any person occupying, in control of, or using a door installed in a sidewalk shall maintain such door in good and sound structural condition.

(d) *Notice and order; action upon refusal.* Whenever any property owner refuses to perform any duty imposed under this section, the Director shall issue a notice and order the property owner to satisfy the duty, and in case the property owner then fails to perform such duty within such time as the Director may have specified in the notice and order, then the Director shall proceed as provided in SRC 78.300.

(Prior Code, § 78.250; Ord. No. 2823; Ord. No. 72-2002; Ord. No. 99-07)

Secs. 78.260, 78.270. Reserved.

Sec. 78.280. Open gratings, etc., prohibited.

No open gratings or openings of a similar kind shall be installed in a sidewalk for the purpose of obtaining either light, ventilation, or for any other purpose, except for use in street tree wells.

(Prior Code, § 78.280; Ord. No. 2823; Ord. No. 72-2002)

Sec. 78.285. Sidewalk benches prohibited; removal required.

(a) It shall be unlawful for any person, except upon written consent of the City, to place or maintain in any portion of any public street, sidewalk, or right-of-way any bench for public or private use.

(b) Upon request by the City, any bench placed or maintained in or on a public street, sidewalk, or right-of-way, shall be removed by the owner at owner's expense.

(c) Violation of this section is an infraction.

(Prior Code, § 78.285; Ord. No. 31-13)

Sec. 78.290. Compliance with chapter.

It shall be unlawful for the owner, lessee, or occupant of any property, or for any contractor, agent or employee of such persons, to construct, reconstruct, or repair any sidewalk or area between the sidewalk and curb in any manner contrary to the provisions of this chapter, the specifications, or any permit or order issued under this chapter. It shall be unlawful for the owner, lessee, or occupant of any property, or for any contractor, agent or employee of such persons to fail to maintain any sidewalk or area between the sidewalk and curb, or the edge of pavement if there is no curb, including any landscape strip, in accordance with provisions of this chapter, the specifications, any standard adopted pursuant to SRC 78.152, or any permit or order issued under this chapter.

(Prior Code, § 78.290; Ord. No. 4629; Ord. No. 193-79; Ord. No. 17-92; Ord. No. 51-96; Ord. No. 99-07)

Sec. 78.300. Stop work orders; permit revocation; civil penalties; enforcement.

(a) *Stop work orders and permit revocation.*

(1) The Director may suspend work or revoke a permit required by this chapter upon a finding that:

(A) The work is not authorized by a valid permit;

(B) Inaccurate information was used to obtain the permit;

(C) The applicant is not complying with the terms of the permit or the provisions of this chapter; or

(D) The work is, or threatens to become, a hazard to property or public safety; is adversely affecting or about to adversely affect adjacent property or rights-of-way; or is otherwise adversely affecting the public health, safety, or welfare.

(2) The Director shall issue a written notice specifying the nature of the violation or problem which must be remedied prior to resuming other work on the project.

(b) *Permit/inspection fee penalty.* In the event the owner or the owner's contractor fails to obtain a permit as required by SRC 78.120 or fails to call for a form inspection as required by SRC 78.150, the Director shall collect a fee double the normal fee currently prescribed by resolution of the Council.

(c) *Civil penalty.* Any person who fails to comply with the requirements of this chapter or the terms of a permit issued hereunder, who undertakes an activity regulated by this chapter without first obtaining a permit, or who fails to comply with a stop work order issued pursuant to this chapter, shall also be subject to a civil penalty not to exceed $2,000.00 per violation. Each day that a violation continues shall constitute a separate violation.

(d) *Civil penalties against agents.* Any person who acts as the agent of, or otherwise assists, a person who engages in an activity which would be subject to a civil penalty may likewise be subject to a civil penalty.

(e) *Prohibition of final occupancy; injunctive relief.*

(1) The City shall not issue a Notice of Final Occupancy for property on which a violation of this chapter has occurred or is occurring, until the violation has been cured and any penalty imposed for the violation is paid.

(2) The City may seek injunctive relief against any person who has willfully disobeyed a permit or order or has willfully engaged in a violation of SRC 78.110(d), 78.120, 78.150, 78.154(a), 78.156(b), 78.180, 78.182, 78.210, 78.220, 78.230, 78.240, 78.250, or 78.280, such relief to be in effect for a period not to exceed five years.

(f) *Remedy when owner refuses to maintain, construct or repair.*

(1) Whenever a person has been ordered to comply with SRC 78.150, 78.154(a), 78.156, 78.180, 78.182, 78.220, or 78.250 and the Director determines that the person subject to that order failed to act in accordance with the order within the time stated in the order, then the Director may proceed to construct, reconstruct, clean, repair, or take such action as is necessary to bring a sidewalk or the space below or around the sidewalk into conformance with this chapter.

(2) Where the Director takes action under subsection (f)(1) of this section, the Director shall keep an accurate account of the cost of labor, including inspection services, and material required for the construction, reconstruction, cleaning, repair, or other action necessary to bring the sidewalk into compliance with this chapter. Such cost, plus an amount equal to ten percent of the cost of labor and materials to defray administrative costs, including, but not limited to, preparing and serving the notice, engineering, and advertising, shall be a lien upon the owner's property. The lien shall be entered in the City lien docket and shall be collected and foreclosed as any other lien.

(g) *Remedies not exclusive.* The remedies provided in this chapter are cumulative and not mutually exclusive and are in addition to any other rights, remedies and penalties available to the City under any other provision of law.

(Prior Code, § 78.300; Ord. No. 99-07)

~~**Editor's note**~~ ~~Original section 78.300 was repealed May 20, 2003, by referendum Ballot Measure No. 24-104.~~

Sec. 78.310. Violations.

Violation of SRC 78.110(d), 78.120, 78.150, 78.154(a), 78.156(b), 78.180, 78.182, 78.210, 78.220, 78.230, 78.240, 78.250, 78.280 or 78.290 is an infraction. Each day that a violation continues shall constitute a separate violation.

(Prior Code, § 78.310; Ord. No. 99-07)

~~**Editor's note**~~ ~~Original section 78.310 was repealed May 20, 2003, by referendum Ballot Measure No. 24-104.~~

CHAPTER 79. PAVING OF PARKING AREAS

Sec. 79.010. Definition and purpose.

(a) The term “landscape strip," as used in this chapter, ~~shall~~ means that part of any public street right-of-way lying between the sidewalk and the curb or pavement, or lying between the edge of the pavement and the edge of the right-of-way if there is no sidewalk, also known as the parking strip, planting area, or planting strip.

(b) The purpose of having a landscape strip is to provide a landscaped buffer between the sidewalk and the curb and roadway section of the public street right-of-way. A non-hard surface landscape strip may also provide a limited amount of pervious surface area for stormwater run-off.

(Prior Code, § 79.010; Ord. No. 4060; Ord. No. 72-2002)

Sec. 79.020. Option of property owners.

(a) Except as otherwise provided by SRC 78.192, every property owner whose property abuts upon any street that has been improved with hard surface pavement and curbs shall construct a sidewalk conforming to the provisions of this chapter within 100 days from the completion of construction of any building located upon the property. For the purposes of this section, sidewalks shall be required along the entire length of the property abutting any improved street. As used in this section, the term "building" shall not include accessory buildings, as defined in SRC 111.005, in a residential zone.

(b) Whenever any property owner refuses to perform any duty imposed under this section, the Director shall issue a notice and order the property owner to satisfy such duty, and if the property owner fails to perform such duty within such time as the Director may have specified in the notice and order, then the Director shall proceed as provided in SRC 78.300.

(Prior Code, § 79.020; Ord. No. 4539; Ord. No. 186-82; Ord. No. 72-2002; Ord. No. 31-13)

Sec. 79.030. Permit; required.

It shall be unlawful for any person to pave or attempt to pave any landscape strip or, for that purpose, to remove any curbing without first obtaining a permit from the ~~Public Works~~ Director ~~of public works~~ or the Director’s designee.

(Prior Code, § 79.030; Ord. No. 4040; Ord. No. 72-2002)

Sec. 79.040. Application; generally.

Before paving any landscape strip, the abutting owner shall make application in accordance with the provisions, standards, and fees prescribed for a street construction permit in SRC chapter 77. As part of the permit application the abutting owner shall demonstrate compliance with SRC chapters 86, ~~chapter~~ 807, and this chapter.

(Prior Code, § 79.040; Ord. No. 4060; Ord. No. 69-89; Ord. No. 72-2002; Ord. No. 31-13)

Sec. 79.050. Reserved.

Sec. 79.060. False statement.

It shall be unlawful for any person to make any false statement in an application for a permit under this chapter.

(Prior Code, § 79.060; Ord. No. 4060)

Sec. 79.070. Investigation and issuance.

When an application for a permit is made under this chapter, the ~~Public Works~~ Director shall make an investigation, and if the Director determines that the paving of the landscape strip will not damage the street or sidewalk, not interfere with proper storm drainage, not interfere with its use for travel, parking, and pedestrian purposes, not create safety hazards for vehicles, bicyclists and pedestrians, and is not contrary to the public interest, then the Director shall issue a permit for the construction and installation of the improvement of the landscape strip; provided, if the landscape strip falls within an area planned for future tree planting, any permit shall require

"blockouts" or “tree wells” in the paved area at points and of a size determined by the ~~Public Works~~ Director. No permit shall be issued to any applicant to pave any landscape strip in front of any premises not owned by the applicant.

(Prior Code, § 79.070; Ord. No. 4060; Ord. No. 5723; Ord. No. 51-96; Ord. No. 72-2002; Ord. No. 42-09)

Sec. 79.080. Extent of paving.

Whenever a permit is granted under this chapter, the landscape strip in front of the premises owned by the applicant shall be paved from the sidewalk to the pavement and lineally for such distance as may be specified in the permit or application therefor.

(Prior Code, § 79.080; Ord. No. 4060; Ord. No. 72-2002)

Sec. 79.090. Drainage.

Any paving laid in a landscape strip shall be laid so that the drainage therefrom will be toward the gutter or approved on-site facility and such existing drainage shall be maintained.

(Prior Code, § 79.090; Ord. No. 4060; Ord. No. 72-2002)

Sec. 79.100. Installation of curb.

When a landscape strip is paved, and such area is to be used for angled parking, a new curb of such height and width as the ~~director of Public Works~~ Director shall uniformly prescribe shall be installed three feet from the outside edge of the sidewalk so as to prevent parked vehicles from extending over the sidewalk.

(Prior Code, § 79.100; Ord. No. 4060; Ord. No. 72-2002)

Sec. 79.110. Compliance with ~~Public Works~~ Director's specifications.

All paving laid down pursuant to any permit issued under this chapter, the base therefor and all curbing installed shall be done in such manner and meet the specifications and be of such materials as the Director ~~of Public Works~~ may prescribe, which may be equal to, but not greater than, standard specifications for street improvements made by the City. Any area paved pursuant to a permit issued under this chapter shall be maintained by the owner of the property abutting upon or adjacent to the area paved in accordance with SRC 78.220.

(Prior Code, § 79.110; Ord. No. 4060)

Sec. 79.120. Liability for costs.

The City shall not be liable for the cost of any part of the installation of any improvement of a planting strip made pursuant to this chapter, the entire cost thereof to be borne by the abutting owner.

(Prior Code, § 79.120; Ord. No. 4060; Ord. No. 72-2002)

Sec. 79.130. Work does not divest city of control.

The improvement or paving of any landscape strip as authorized by this chapter shall not be construed as granting to any person any property interest or control over any such paved landscape strip, but the control thereof, including the regulations of the parking and standing of vehicles thereon, shall remain with the City.

(Prior Code, § 79.130; Ord. No. 4060; Ord. No. 72-2002)

Sec. 79.140. Variances.

In case any property owner desires the paving of a landscape strip at variance with the provisions of this chapter they ~~he~~ may apply for the same to the Council, setting forth in his or her application all information required by the Director ~~of public works~~ in applications for paving of landscape strip permits, and also setting forth the peculiar, exceptional, or extraordinary circumstances or conditions prompting the application for the variance. The Council may approve or reject the application, and, if approved, such action shall be by resolution. Upon approval, the Director ~~of public works~~ shall issue the permit upon the payment of the required fee.

(Prior Code, § 79.140; Ord. No. 5768; Ord. No. 72-2002)

Secs. 79.150—79.980. Reserved.

Sec. 79.990. Violations.

(a) It shall be unlawful for any person to cause, suffer, or permit the paving of a landscape strip without a permit issued pursuant to this chapter. Violation of this subsection is an infraction.

(b) Violation of SRC 79.060 is a misdemeanor.

(Prior Code, § 79.990; Ord. No. 193-79; Ord. No. 72-2002)

CHAPTER 80. RESERVED

CHAPTER 81. EXCAVATIONS

Sec. 81.010. Permit; required.

It shall be unlawful for any person to cut, break, dig up, damage in any manner, undermine or tunnel under any public street or alley without first obtaining a permit therefor.

(Prior Code, § 81.010; Ord. No. 3378)

Sec. 81.020. Application.

Applications for permits required by ~~the preceding section~~ SRC 81.010 shall be in the form prescribed by the ~~director of Public Works~~ Director and shall specify the name and address of the applicant; the date of the application; the name of the street or alley to be cut or tunneled under; the nature of the street surface or pavement involved; the purpose of the work; the size and nature of the cut or excavation; the number of days required to complete the work; and an agreement to deposit such security as required by the ~~director of Public Works~~ Director, to comply with the provisions of this chapter and with the specifications of the ~~director of Public Works~~ Director pertaining to the conduct of the work, to save the City and its employees harmless against any injury or damages that may result from the acts of the applicant, and to file a report of the work done within 48 hours of its completion. Applications shall also contain or be accompanied by such maps, plans, information, and stipulations as may be required by the ~~director of Public Works~~ Director, together with fees as prescribed by resolution of the Council to cover the full cost of plan review services or permit issuance and inspections.

(Prior Code, § 81.020; Ord. No. 162-68; Ord. No. 107-84; Ord. No. 51-91; Ord. No. 51-96)

Sec. 81.030. Issuance; contents.

If the ~~director of Public Works~~ Director is satisfied that the excavation, cut, or tunnel covered by an application for a permit under this chapter is feasible and proper, that the application has been made in due form and that adequate security has been filed, as required by the provisions of this chapter, he or she shall issue a permit which shall designate the name and address of the person to whom the permit is granted; the date of the issuance of the permit; the street to be cut or tunneled under; the nature of the street surface or pavement involved; the purpose of the work; the size and nature of the cut or excavation; the estimated cost of restoration; the nature and amount of security deposited; the time within which the work is to be completed, as determined by the ~~director of Public Works~~ Director; and such other restrictions as may be deemed necessary or proper by the ~~director of Public Works~~ Director for the safety of the public and the protection of public interests.

(Prior Code, § 81.030; Ord. No. 3378)

Sec. 81.040. Controls as to work undertaken.

No work shall be undertaken other than that specified in the application and permit for the particular cut or excavation.

(Prior Code, § 81.040; Ord. No. 3378)

Sec. 81.050. Exhibition of permit.

Upon demand of the ~~director of Public Works~~ Director or any police officer, the permit issued under this chapter shall be produced at the place where the work is in progress, or such work shall be stopped until the permit is produced.

(Prior Code, § 81.050; Ord. No. 3378)

Sec. 81.060. Security required; exceptions.

(a) Before the issuance of any permit under this chapter, the ~~director of Public Works~~ Director shall require the applicant to file with him or her, as security, either:

(1) A surety bond in the amount fixed by the ~~director of Public Works~~ Director, but not to exceed $500.00, conditioned that the applicant will, immediately upon the completion of the work, remove all surplus

earth, rubbish, or other material and replace the pavement cut or undermined in a condition as good or better than it was before, and keep the same in good repair, at his or her own expense, for a period of time to be designated by the ~~director of Public Works~~ Director, but not to exceed one year from the completion of the work;

(2) Cash or certified checks in an amount equal to twice the estimated replacement value of the pavement to be cut, together with the cost of reexcavation and refilling with proper material, if necessary, as determined by the ~~director of Public Works~~ Director, to be held and returned subject to the same conditions as set forth above in the case of surety bonds; or

(3) A blanket surety bond to cover all street cuts made by any particular applicant for a period of one year in an amount to be fixed by the ~~director of Public Works~~ Director, but not to exceed $5,000.00, and subject to the same conditions as stated above with reference to bonds for particular street cuts.

(b) In lieu of a surety bond required by this section, the applicant may make an assignment of equivalent cash in bank account, savings certificates, treasury notes, or other securities having the approval of the City Attorney.

(c) In the case of unimproved streets, no security shall be required, unless, in the opinion of the ~~director of Public Works~~ Director, such security is necessary for the protection of the public interest.

(Prior Code, § 81.060; Ord. No. 3378; Ord. No. 41-87)

Sec. 81.070. Conduct of work generally.

All work under a permit obtained as required by this chapter shall be done in conformity with the provisions of this chapter and the terms of the application and permit and under the supervision and subject to the approval of the ~~director of Public Works~~ Director.

(Prior Code, § 81.070; Ord. No. 3378)

Sec. 81.080. Barricades, lights, and flaggers ~~watchmen~~.

Whenever any person shall, under authority of this chapter, or otherwise, place any obstruction in any street or alley or make any excavation therein for any purpose whatsoever, it shall be the duty of such person to keep such obstruction or excavation properly safeguarded by substantial barricades and to display lights in accordance with the most recent edition of the Manual on Uniform Traffic Control Devices and other ~~lighted red lanterns or other lights or flares from dusk until daylight in conformity with~~ such regulations as may be specified by the ~~director of Public Works~~ Director. Whenever, in the opinion of the ~~director of Public Works~~ Director, the public safety is so seriously endangered by such cuts or excavations as to require constant supervision from dusk to daylight to ensure that all barricades are in proper condition, that all warning lights are functioning ~~burning~~, and that traffic is properly routed around such barricades, the person to whom the permit for the work has been granted shall be responsible for furnishing a night flagger ~~watchman~~ for that purpose.

(Prior Code, § 81.080; Ord. No. 3378)

Sec. 81.090. Completion report.

Within 48 hours of the completion of any cut or excavation authorized under this chapter, the person to whom the permit to do such work has been issued shall report to the ~~director of Public Works~~ Director, stating that such work has been completed and give such other information as may be required by the ~~director of Public Works~~ Director.

(Prior Code, § 81.090; Ord. No. 3378)

Sec. 81.100. Removal of earth, rubbish.

Upon completion of the excavation, cut, or tunnel authorized by a permit issued under this chapter, all surplus earth, rubbish, or other material shall be removed immediately and the street or surface shall be replaced in as good as or better condition than it was before.

(Prior Code, § 81.100; Ord. No. 3378)

Sec. 81.110. Maintenance and repair of surface generally.

All persons to whom permits are granted under this chapter shall be personally responsible for the maintenance and repair of the street surface or pavement cut, dug up, damaged, tunneled under, or undermined under the provisions of such permits, in as good as or better condition than before such work was undertaken, at their own expense and for such period of time as may be required by the ~~director of Public Works~~ Director, but not to exceed one year.

(Prior Code, § 81.110; Ord. No. 3378)

Sec. 81.120. Repairs and replacements by City.

Whenever, in the opinion of the ~~director of Public Works~~ Director, it would be to the best interests of the City for the City itself to replace or repair the street surface or pavement cut, dug up, damaged, tunneled under, or undermined under the provisions of this chapter, such work shall be done by the City under the direction of the ~~director of Public Works~~ Director and the cost of such work shall be either charged to the person to whom the permit for the cut or excavation was granted or deducted from the security deposited by him or her with the ~~director of Public Works~~ Director.

(Prior Code, § 81.120; Ord. No. 3378)

Sec. 81.130. Liability for accidents.

Every person having occasion to place any obstruction in any street or alley or to make any excavation therein under the provisions of this chapter shall be responsible for any injury to any person by reason of the presence of such obstruction or excavation in the public highways and also shall be liable to the City, in the event that the City shall be held responsible for any accident claims or otherwise arising out of the presence of any such obstruction or excavation.

(Prior Code, § 81.130; Ord. No. 3378)

Sec. 81.140. Applicability of chapter to City and public utilities.

The provisions of this chapter shall not be deemed to apply to the construction or maintenance of pavement by the City, by its employees, or by persons operating under contract with the City, nor to cuts or excavations made by the employees of the Public Works Department, nor to public utility corporations operating under the provisions of franchises regulating street cuts or excavations by such corporations; but both the employees of the City and all public utility corporations shall give prior notice to the ~~director of Public Works~~ Director of all street cuts which would otherwise be subject to the provisions of this chapter.

(Prior Code, § 81.140; Ord. No. 3378)

Secs. 81.150—81.980. Reserved.

Sec. 81.990. Violations.

Violation of any of the provisions of this chapter is an infraction.

(Prior Code, § 81.990; Ord. No. 193-79)

CHAPTER 82. ~~SIDEWALK BENCHES~~ CLEARING AND GRADING OF LAND

Sec. 82.001. Purpose.

The purpose of this chapter is to protect life, property, and the environment from loss, injury, or damage by pollution, erosion, flooding, landslides, strong ground motion, soil liquefaction, accelerated soil creep, settlement and subsidence, and other potential hazards, whether from natural causes or from human activity related to clearing and grading activities. The provisions of this chapter shall be liberally construed to accomplish this purpose.

(Ord. No. 6-16, § 1(82.001), 5-23-2016)

Sec. 82.005. Definitions.

(a) ~~Unless the context specifically indicates otherwise, as used in this Chapter the following mean:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(1)~~ *Bench* means a relatively level step excavated or constructed into earth material on which fill is to be placed.

~~(4)~~ *Certified professional* means any person licensed in Oregon as a civil engineer, geotechnical engineer, engineering geologist, architect, or landscape architect and who possesses the knowledge, experience, and ability to successfully design and oversee a project regulated by this chapter.

~~(2)~~ *Compact* means to compress fill by mechanical means.

~~(3)~~ *Cut.* See *Excavation*.

~~(5) *Director* means the Public Works Director, or the Director's designee.~~

~~(6)~~ *Down drain* means a device for collecting water from a swale or ditch located on or above a slope, and safely delivering it to an approved drainage facility.

~~(7)~~ *Earth material* means all naturally occurring rock and soil, or combination thereof, including clay, silt, sand, gravel-size particles, and naturally occurring and naturally formed aggregates. The term "earth material" does not include manmade materials such as fill, concrete, or asphalt.

~~(8)~~ *Erosion* means the wearing away of the ground surface, or the movement, detachment or dislocation and transport of sediment including soil particles by the action of water or wind.

~~(9)~~ *Excavation* means the removal of earth material by artificial means; also referred to as a cut.

~~(10)~~ *Fill* means earth material that has been deposited by artificial means.

~~(11)~~ *Grade* means the vertical location of the ground surface.

~~(12)~~ *Grade, existing,* means the grade of the site prior to grading.

~~(13)~~ *Grade, finished,* means the grade of the site at the conclusion of all ground disturbing activities.

~~(14)~~ *Grading* means the movement of earth material through mechanical or other means to create the finished surface and contour of the project site, which may involve excavation, fill or leveling activities, and is meant to include the resulting conditions, spoils or byproducts.

~~(15)~~ *Ground disturbing activity* means any activity that exposes earth material through the use of mechanical equipment. By way of illustration, but not of limitation, ground disturbing activity includes grading, excavating, filling, clearing, grubbing, or working of land. Such disturbance may be permanent, such as gravel mining, farming, gardening, and sports fields; or short-term duration, such as construction, excavation, fill, grading, landscape installation, or other vegetative clearing activities.

~~(16)~~ *Key* means a compacted fill placed in a trench excavated in earth material beneath the toe of a slope.

~~(17)~~ *Site* means a unit of land, or portions of street, highway, or other right-of-way, or contiguous combination thereof, where a project is proposed or performed.

~~(18)~~ *Slope* means an inclined surface, the inclination of which is expressed as a ratio of horizontal distance to vertical distance.

~~(19)~~ *Technical report* means the report prepared by a certified professional pursuant to SRC 82.035.

~~(20)~~ *Terrace* means a relatively level step constructed in the face of a graded slope for drainage and maintenance purposes.

~~(21)~~ *Waterway* means any watercourse within the City ~~of Salem~~ as designated by the Director.

(b) Words and phrases not defined in this section shall be construed according to their customary and usual meaning unless the context indicates a special or technical meaning. Words used in the present tense include the future, the singular number includes the plural, and the ~~word~~ term "shall" is mandatory and not discretionary.

(Ord. No. 6-16, § 1(82.005), 5-23-2016)

Sec. 82.010. Limitation of liability.

Nothing contained in this chapter is intended to be nor shall be construed to create or form the basis for any claim, action, or liability against the City, its officers, employees or agents for any injury or damage resulting from the failure of responsible parties to comply with the provisions of this chapter, or by reason or in consequence of any inspection, notice, order, certificate, permission, or approval authorized, issued, or done in connection with the implementation or enforcement of this chapter, or by reason of any action or inaction on the part of the City related in any manner to the enforcement of this chapter by its officers, employees, or agents. Nothing in this chapter is intended to nor shall be construed to create a standard of care or impose a duty upon the City.

(Ord. No. 6-16, § 1(82.010), 5-23-2016)

Sec. 82.015. Administration.

The Director shall administer and enforce the provisions of this chapter, and shall have the authority to render written and oral interpretations and to adopt administrative rules, design standards, and procedures for its proper administration and enforcement.

(Ord. No. 6-16, § 1(82.015), 5-23-2016)

Sec. 82.020. Applicability, exemptions.

(a) The standards set forth in this chapter apply to all ground disturbing activity regardless of whether a permit has been issued by the City, unless the activity is exempted in SRC 82.020(b).

(b) The following activities are exempt from this chapter:

(1) Ground disturbing activities that constitute “farm use” or “accepted farming practices,” as those terms are defined or used in ORS ch. 215.

(2) Mining activities conducted under permits issued by the Oregon Department of Geology and Mineral Industries.

(3) Routine maintenance of gravel roads, road shoulders, paths, parking lots, and storage yards.

(4) Routine maintenance of sports fields or playgrounds.

(5) Ground disturbing activities conducted for the purpose of opening or closing cemetery graves.

(6) Ground disturbing activities performed for wells.

(7) Ground disturbing activities performed for underground utilities.

(8) Boring or exploration for the purpose of soil analysis or testing as performed under the direction of a certified professional.

(9) Excavation for basements and footings of a building, retaining wall, or other structure for which a complete building permit application has been submitted or that has been authorized by a building permit.

This shall not exempt any fill made with the material from such excavation, nor exempt any excavation having an unsupported height greater than five feet after the completion of such structure.

(10) Excavation for constructing a segmented wall or other minor landscape terracing that does not require a building permit.

(11) Excavation for installing fence posts.

(Ord. No. 6-16, § 1(82.020), 5-23-2016)

Sec. 82.025. Emergencies.

Where the Director determines that an emergency exists, the Director is empowered to act with all necessary speed to address the emergency situation, including suspension or waiver of permit requirements when necessary to eliminate an imminent hazard to public health, safety or welfare. Compliance with the provisions of this chapter may not be required where strict compliance with the provisions would impair the ability of the Director to address an imminent threat to public health, safety or property.

(Ord. No. 6-16, § 1(82.025), 5-23-2016)

Sec. 82.030. Clearing and grading permit.

~~(a) Permit Required, Exemptions.~~

(a) *Permit required.* Except as provided in ~~paragraph (2)~~ subsection (b) of this ~~sub~~section, a clearing and grading permit is required for any activity that involves ground disturbing activity exceeding two feet in depth or 25 cubic yards of volume, if:

(1) The ground disturbing activity involves more than 1,000 square feet;

(2) The ground disturbing activity is within 50 feet of a waterway as measured from top of bank;

(3) The ground disturbing activity is within 50 feet of the boundary of a wetland; or

(4) The ground disturbing activity will result in a finished grade slope steeper than two units horizontal to one unit vertical.

(b) *Permit exemptions.* A clearing and grading permit is not required for activities exempted by ~~Section~~ SRC 82.020(b), or for ground disturbing activities performed by, or under contract for, the City ~~of Salem~~ and conducted in an existing public right-of-way or easement. An exemption from permit requirements does not authorize work to be done in a manner that violates the provisions of this chapter or any other laws or ordinances, except to the extent allowed under local, state, or federal permits issued for a specific site or purpose.

(c) *Submittal requirements.* An application for a clearing and grading permit shall include the following:

(1) Location of the property involved.

(2) Identification of the type of work proposed.

(3) Identification of soil type, if soil is to be excavated from one location and placed as fill at another location.

(4) A grading plan, of a size and form and in the number of copies meeting the standards established by the Director, containing the following:

(A) Property lines, dimensions, and orientation relative to north;

(B) Recorded property lines, easements, and right-of-way locations;

(C) Street and curbline locations and elevations, where applicable;

(D) Existing and finished grades for the subject property shown by at least two-foot contour intervals and in sufficient detail to identify the nature and extent of the work and demonstrate conformance with the requirements of this chapter;

(E) Existing grade on adjoining properties in sufficient detail to identify how grade changes will conform to the requirements of this chapter;

(F) Location of any buildings or structures on the property where the work is to be performed and the location of any buildings or structures on land of abutting owners that are within 15 feet of the property boundary, or which may be affected by the proposed ground disturbing activity; and

(G) Intended methods of stormwater drainage, if applicable.

(5) The Director may require additional information on the grading plan view or require cross-section views.

(6) The Director may require additional information on involved persons, such as the name and address of the permittee, property owner, owner's engineer, certified professional, contractor, and other persons associated with the work.

(7) A technical report, prepared by a certified professional, shall be submitted by the applicant if the proposed activity cannot meet the excavation, fill, setback, terracing, or drainage requirements of this chapter.

(d) *Criteria.* A clearing and grading permit shall be granted if the proposed ground disturbing activity conforms to the requirements of this chapter.

(e) *Indemnification.* The permittee shall indemnify and hold the City, its agents, employees, and officers harmless from and shall process and defend at its own expense any and all claims, demands, or suits of whatsoever kind or nature brought against the City arising out of, or in connection with, or incident to, the execution of the permit or the permittee's performance or failure to perform any aspect of the permit.

(Ord. No. 6-16, § 1(82.030), 5-23-2016)

Sec. 82.035. Technical report.

(a) The technical report, if required, shall include:

(1) A comprehensive description of the site topography and geology;

(2) An opinion as to the adequacy of the proposed activity;

(3) An opinion as to the extent that instability on adjacent properties may adversely affect the project;

(4) A description of the field investigation and findings;

(5) Conclusions regarding the effect of geologic conditions on the proposed development;

(6) Specific requirements for grading plan modification, corrective grading, and special techniques and systems to facilitate a safe and stable development; and

(7) Other recommendations, as necessary, commensurate with the project grading and development.

(b) The technical report shall bear the signature and stamp of a certified professional.

(c) Any recommendations made in the technical report that are more stringent than the requirements of this chapter shall be made part of any permit issued pursuant to this chapter. Any recommendations made in the technical report that are less stringent than the requirements of this chapter may be made part of any permit issued pursuant to this chapter, if approved by the Director. The Director may require a geotechnical report prepared and stamped by a geotechnical engineer or equally qualified person approved by the Director in order to approve less stringent standards or methods.

(Ord. No. 6-16, § 1(82.035), 5-23-2016)

Sec. 82.040. Inspections.

(a) General. All activities for which a permit is required by this chapter shall be subject to inspection by the Director.

(1) The Director shall be notified at least 24 hours, but not more than 72 hours, prior to the commencement of any ground disturbing activity requiring a permit under this chapter.

(2) Inspection by the Director may occur at any time during the project.

(b) For projects identified as requiring a technical report:

(1) The certified professional shall be responsible for incorporating all recommendations from the technical report into the grading plan.

(2) The certified professional shall be responsible for inspecting and approving the activities contained in the grading plan that are regulated by this chapter.

(3) The certified professional shall act as the coordinating agent in the event a need arises for liaison between any other professionals, the contractor, and the Director regarding activities regulated by this chapter.

(4) The certified professional shall be responsible for preparing as-built plans and submitting plans to the Director upon completion of the work.

(5) If the certified professional finds that the work is not being done in conformity with this chapter or the approved grading plan, the discrepancies shall be reported immediately in writing to the person in charge of the work and to the Director.

(6) If the certified professional is changed during the course of the work, the work shall be stopped until a new certified professional has assumed the responsibilities contained in this chapter.

(Ord. No. 6-16, § 1(82.040), 5-23-2016)

Sec. 82.045. Completion of work.

(a) Upon completion of work, the owner shall notify the Director that the site is ready for final inspection. The Director shall not give final approval until all work has been completed in accordance with the final approved grading plan and all required reports have been submitted.

(b) For projects identified as requiring a certified professional per SRC 82.030(c)(7):

(1) Upon completion of the work, a final site plan shall be prepared by the certified professional and submitted to the Director that includes original ground surface elevations, finished graded ground surface elevations, lot drainage patterns, and locations and elevations of all surface and subsurface drainage facilities.

(2) Prior to final approval by the Director, the certified professional shall provide documentation that the work has been done in accordance with the final approved grading plan.

(Ord. No. 6-16, § 1(82.045), 5-23-2016)

Sec. 82.050. Excavations.

(a) *General.* Unless otherwise recommended in a technical report, excavations shall comply with the provisions of this section.

(b) *Maximum slope.* The finished slope of cut surfaces shall be no steeper than two units horizontal to one unit vertical or as recommended in a technical report.

(c) *Maximum slope, exceptions.*

(1) A cut surface shall be permitted to be at a slope of 1.5 units horizontal to one unit vertical provided that all of the following are met:

(A) It is not intended to support structures or surcharges;

(B) It is protected against erosion;

(C) It is no more than eight feet in height;

(D) Groundwater is not encountered.

(2) A cut surface in bedrock shall be permitted to be at a slope of one unit horizontal to one unit vertical.

(Ord. No. 6-16, § 1(82.050), 5-23-2016)

Sec. 82.055. Fills.

(a) *General.* Unless otherwise recommended in a technical report, fills shall comply with the provisions of this section.

(b) *Maximum depth and slope.* The depth of fill surfaces shall be no more than four feet. The slope of fill surfaces shall be no steeper than two units horizontal to one unit vertical or as recommended in a technical report.

(c) *Surface preparation.* The ground surface shall be prepared to receive fill by removing vegetation, topsoil, and other unsuitable materials, and scarifying the ground to provide a bond with the fill material.

(d) *Benching.* Where the existing grade is at a slope steeper than five units horizontal to one unit vertical and the depth of the fill exceeds five feet, benching shall be provided in accordance with Figure 1. A key shall be provided that is at least ten feet in width and two feet in depth.

(e) *Fill material.* Fill material shall not include organic, frozen, or other deleterious materials. No rock or similar irreducible material greater than 12 inches in any dimension shall be included in fills. Rocks shall be placed so as to assure filling all voids with fines. Topsoil may be used in the top 12-inch surface layer to aid in planting and landscaping.

(f) *Compaction.* All fill material not intended for use for roadway, landscaping or infiltration purposes shall be compacted to 90 percent of maximum density as determined by ASTM D 1557, Modified Proctor, in lifts not exceeding 12 inches in depth. Fill material intended for use for roadway embankments shall be placed and compacted in accordance with the City of Salem Standard Construction Specifications. A higher relative dry density, or additional compaction tests, or both, may be required as determined by a certified professional.

(Ord. No. 6-16, § 1(82.055), 5-23-2016)

Sec. 82.060. Setbacks.

(a) *General.* Unless otherwise recommended in a technical report, cut and fill slopes shall be set back from property lines in accordance with this section. Setback dimensions shall be measured perpendicular to the property line and shall be as shown in Figure 2.

(b) *Top of slope.* The setback at the top of a cut slope shall not be less than that shown in Figure 2, or than is required to accommodate the required interceptor drains, whichever is greater.

(c) *Slope protection.* Except as otherwise recommended in a technical report, the following minimum slope protection measures shall be included to protect abutting properties at the toe of a slope from adverse effects of the ground disturbing activity:

(1) Setbacks greater than those required by Figure 2;

(2) Provisions for retaining walls or similar structures;

(3) Erosion protection of the fill slopes; and

(4) Provision for the control of stormwater runoff.

(Ord. No. 6-16, § 1(82.060), 5-23-2016)

Sec. 82.065. Terracing and drainage.

(a) *General.* Unless otherwise recommended in a technical report, terracing and drainage facilities shall comply with the provisions of this section.

(b) *Terraces.*

(1) Terraces at least six feet in width shall be established at not more than 30-foot vertical intervals on all cut or fill slopes. Access shall be provided to allow for cleaning and maintenance.

(2) Where more than two terraces are required, one terrace, located at approximately mid-height, shall be at least 12 feet in width. For cut or fill slopes greater than 60 feet and up to 120 feet in vertical height, one terrace at approximately mid-height shall be 12 feet in width.

(3) Terrace widths and spacing for cut and fill slopes greater than 120 feet in height shall be designed by a certified professional.

(c) *Drainage facilities on terraces.*

(1) Swales or ditches shall be provided on terraces. The swales or ditches shall have a minimum gradient of 20 horizontal to one vertical and shall be paved with concrete not less than three inches in thickness, or with other materials suitable to the application. Swales and ditches shall have a minimum depth of 12 inches and a minimum width of five feet.

(2) A single run of swale or ditch shall not collect runoff from a tributary exceeding 13,500 square feet without discharging into a down drain.

(d) *Interceptor drains.*

(1) Interceptor drains shall be installed along the top of cut slopes receiving drainage from a tributary width greater than 40 feet, measured horizontally.

(2) Interceptor drains shall have a minimum depth of one foot and a minimum width of three feet. The slope shall not be less than 50 horizontal to one vertical. The drain shall be paved with concrete not less than three inches in thickness, or by other materials suitable to the application.

(3) Discharges from the drains shall be accomplished in a manner to prevent erosion.

(e) *Drainage across property lines.* Drainage across property lines shall not exceed that which existed prior to ground disturbing activity. Excess or concentrated drainage shall be contained on site or directed to a drainage facility. Erosion of the ground in the area of discharge shall be prevented.

(f) *Subsurface drainage.*

(1) Cut and fill slopes shall be provided with subsurface drainage as necessary for site stability.

(2) Appropriate culverts shall be laid under all fills placed in natural watercourses and along the flow line of any tributary branches in such a manner that the hydraulic characteristics of any stream are not adversely altered.

(3) Subsurface drainage shall be installed if active or potential springs or seeps are covered by the fill.

(4) All culverts and subsurface drainage systems shall be installed after subgrade preparation. Design details of culverts and subsurface drainage shall be shown on the grading plan.

(5) A subsurface drain system shall be provided for embedded foundation/retaining walls and floor slabs where groundwater or seepage has a potential to affect the performance of the structure. The grading plan shall indicate:

(A) Subsurface drainage details with appropriate specifications;

(B) Location of footing subsurface drain/discharge lines; and

(C) Method of disposal.

In lieu of above, walls/floors may be waterproofed and designed to resist hydrostatic pressure.

(Ord. No. 6-16, § 1(82.065), 5-23-2016)

Sec. 82.070. Stop work orders; permit revocation; civil penalties; enforcement.

(a) *Stop work orders and permit revocation.* The Director may suspend work or revoke a permit specifying the basis for the suspension or revocation that must be remedied prior to resuming other work on the project, upon a finding that:

(1) The work is not authorized by a valid permit;

(2) Inaccurate information was used to obtain the permit;

(3) The applicant is not complying with the terms of the permit, the grading plan, or this chapter;

(4) The work is, or threatens to become, risk to property or public safety; is adversely affecting or about to adversely affect adjacent property or rights-of-way; or is otherwise adversely affecting the public health, safety, or welfare; or

(5) The permit was issued in error.

(b) *Rescinding a stop work order or revocation.* Penalty fees shall be paid to the City before a stop work order or permit revocation is rescinded.

(c) *Civil penalty.* Any person who fails to comply with the requirements of this chapter, or the terms of a permit issued hereunder, who undertakes an activity regulated by this chapter without first obtaining a permit, or who fails to comply with a stop work order issued pursuant to this chapter shall also be subject to a civil penalty, not to exceed $2,000 per violation. Each day that a permit violation continues shall constitute a separate violation.

(d) *Civil penalties against agents.* Any person who acts as the agent of, or otherwise assists, a person who engages in an activity that would be subject to a civil penalty may likewise be subject to a civil penalty.

(e) *Injunctive relief.* The City may seek injunctive relief against any person who has willfully engaged in violation of this chapter, such relief to be in effect for a period not to exceed five years.

(f) *Appeal.* Appeals from all orders, decisions and determinations of the Director under this chapter shall be to the Hearings Officer, and shall be initiated by filing a notice of intent to appeal with the City Recorder within 15 business days after notice of the Director's final decision is deemed to have been received by the applicant under SRC 20J.100. The notice of appeal shall satisfy the requirements of SRC 20J.110, and the appeal shall proceed as a contested case under the procedures established in SRC 20J.240 through 20J.430. Notwithstanding SRC 20J.270, the Director's decision, action, or determination shall remain in effect during such period of the appeal. Appeals to the Hearings Officer under this section shall extend any applicable plan review deadline by the number of days it takes for a final decision to be issued upon the appeal.

(g) *Prohibition of further approvals.* The City shall not issue any final approvals or any additional permits for property on which a violation of this chapter has occurred or is occurring, until the violation has been cured by restoration or other means acceptable to the Director and any penalty imposed for the violation is paid.

(Ord. No. 6-16, § 1(82.070), 5-23-2016)

Sec. 82.075. Remedies not exclusive.

The remedies provided in this chapter are cumulative and not mutually exclusive and are in addition to any other right, remedies, and penalties available to the City under any other provision of law.

(Ord. No. 6-16, § 1(82.075), 5-23-2016)

Sec. 82.080. Violations.

Violation of any of the provisions of this chapter is an infraction. Each day that a violation continues shall constitute a separate infraction.

(Ord. No. 6-16, § 1(82.080), 5-23-2016)

Figure 1. Benching Details

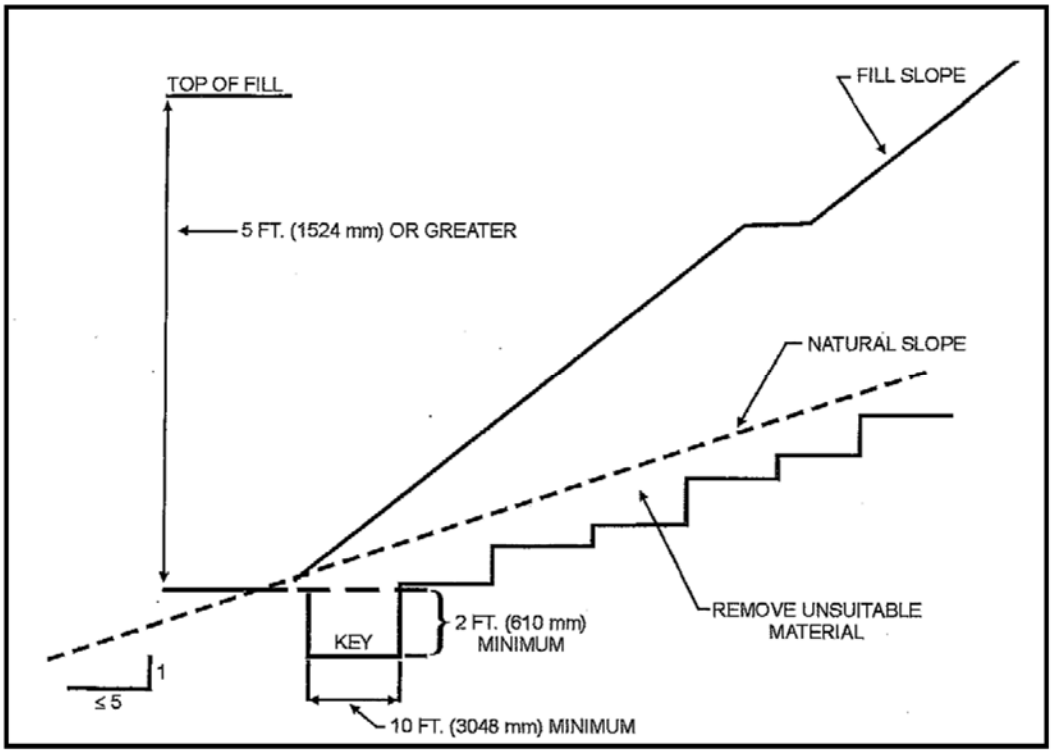
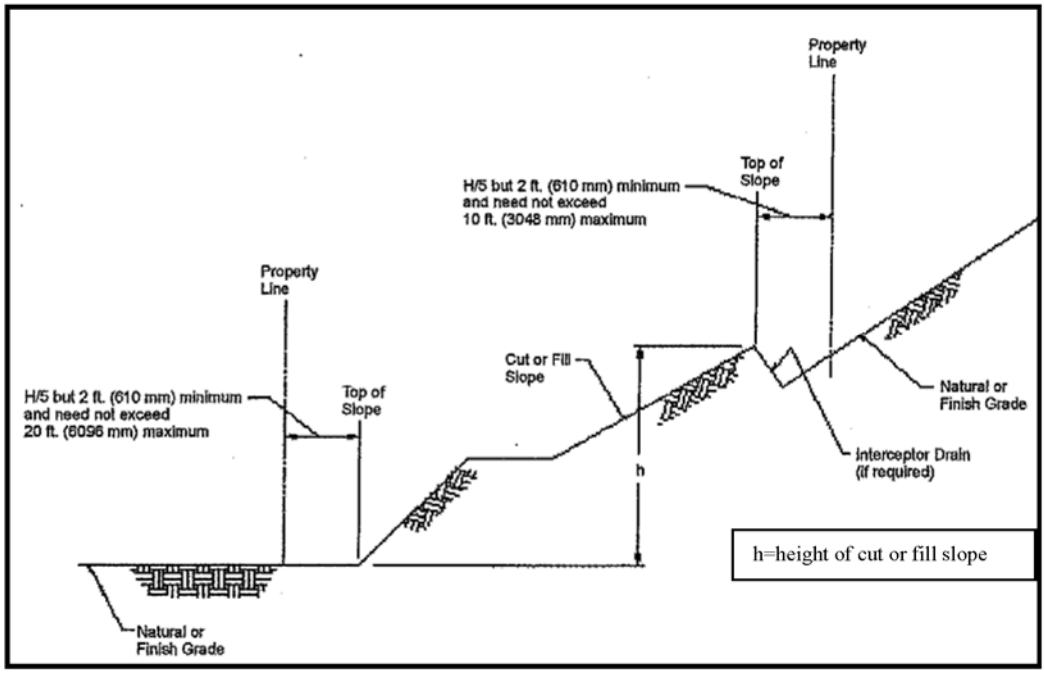


Figure 2. Drainage Dimensions



~~Sec. 82.070. Sidewalk benches prohibited; removal required.~~

~~(a) It shall be unlawful for any person except the city to place or maintain in any portion of any public street, sidewalk, or right-of-way any bench for public or private use.~~

~~(b) All such benches existing on or after January 1, 1972, shall be removed by the owner at his expense.~~

~~(c) Violation of this section is an infraction.~~

~~(Prior Code, § 82.070; Ord. No. 54-67; Ord. No. 193-79)~~

CHAPTER 83. MOVING BUILDINGS

GENERALLY

Sec. 83.010. City official to be present.

The Director ~~of public works, or the Director's designee his deputy, or such inspector as the director may designate~~, shall be present when ~~and about~~ any Class Two or Class Three building or structure is being moved ~~at all times the same as within any street~~.

(Prior Code, § 83.010; Ord. No. 4112; Ord. No. 117-71)

Sec. 83.020. Barricades, lights, etc., required at night.

In case any building is moved at night, the mover shall provide such barricades, lights, flares, and flaggers ~~watchmen~~ as may be necessary to safeguard traffic and persons using the street.

(Prior Code, § 83.020; Ord. No. 4112)

Sec. 83.030. Abandoning work.

If a building, or any part thereof, extends over or into or is upon any part of any street, alley, or highway, by virtue of the moving thereof, the person moving the same shall diligently and continuously employ himself or herself and his or her agents, employees, and facilities in the moving of such building until the same reaches its destination or is removed from any and all streets, alleys, or highways, and, except when the mover shall have the permission of the ~~director of Public Works~~ Director, it shall be unlawful for any such mover to leave standing or abandon the moving of such building while the same, or any part thereof, is in or upon any part of any street, alley, or highway.

(Prior Code, § 83.030; Ord. No. 4112)

Sec. 83.040. Chapter not applicable to certain buildings.

The provisions of this chapter shall not apply to the moving or hauling of any building or structure loaded upon a truck, trailer, or chassis when such building or structure is of a size and weight not exceeding the maximum width, length, height, or weight of a truck load that may be lawfully moved over a public highway without a special permit from the state highway division, or any other public authority.

(Prior Code, § 83.040; Ord. No. 4112; Ord. No. 117-17)

PERMITS

Sec. 83.050. Required.

It shall be unlawful for any person to move any building or structure upon, over, or along any public street, alley, or highway within the City without first obtaining a permit from the Director ~~of Community Development~~ unless otherwise exempted from this chapter.

(Prior Code, § 83.050; Ord. No. 4112; Ord. No. 117-71; Ord. No. 42-84)

Sec. 83.060. Classes of buildings.

For the purpose of this chapter, buildings and structures shall be separated into the following three classes:

(a) *Class One.* Any building or structure loaded upon a truck, trailer, or chassis when such building or structure does not exceed the maximum width, length, height, or weight that may be lawfully moved over a public highway with a special permit from the Oregon Department of Transportation. Class One buildings or structures being moved within the City, except in modular or prebuilt modular home parks, shall require a moving permit. Class One buildings or structures being moved within the City and meeting either of the following two criteria do not require a moving permit:

(1) The building or structure is being moved only on the interstate highway system under special permit from the Oregon Department of Transportation; or

(2) The building or structure is under 14 feet in height and is being moved only upon the interstate highway system and/or a major city street network as determined by the ~~Public Works~~ Director under special permit from the Oregon Department of Transportation.

(b) *Class Two.* Any building or structure having an overall width exceeding 14 feet, height over 14 feet, or overall length of over 50 feet, and which is being moved as a load upon a motor truck, trailer, chassis, or on pneumatic dollies and which may be moved along the specified route without the necessity of temporarily closing streets or the probability of destroying or significantly damaging public or private property as determined by the ~~Public Works~~ Director. Trimming of trees, shrubs, etc., shall be permitted provided the approval of the ~~Public Works~~ Director is obtained and any such work shall be done only under the supervision of the Director or the Director's designee.

(c) *Class Three.* Any building or structure which is of such width, height, length, or weight that it may require the temporary closure of streets or create the probability of destroying or significantly damaging public or private property as determined by the ~~Public Works~~ Director. No moving permit for a Class Three building or structure shall be issued unless the mover has first furnished a bond or surety in a sum covering such damages as required by SRC 83.160(b) and any additional bonding or surety the ~~Public Works~~ Director deems necessary for the protection of life and public or private property along the route.

(Prior Code, § 83.060; Ord. No. 4112; Ord. No. 6970; Ord. No. 117-71; Ord. No. 42-84; Ord. No. 78-85; Ord. No. 51-96; Ord. No. 42-09)

Sec. 83.070. Application; generally.

(a) Application for a permit to move any building or structure upon, over, or along any public street, alley, or highway shall be made in writing at the permit application center upon a form provided by the Public Works Department. The application which shall be signed by the owner of the building or structure to be moved or by the person engaged to move the same, and shall contain the following information:

(1) The name and address of the owner of the building or structure;

(2) The location of the building before moving;

(3) The location where the building is proposed to be set or re-established;

(4) The construction type, age, width, length, and height of the building. The width, length, and height of the building while on and attached to the transporting equipment and inclusive of the equipment's length and width if it is longer or wider than the building;

(5) The use or purpose for which the building was designed;

(6) The use or occupancy to be made of the building at its new location;

(7) The name and address of the person engaged to move the building;

(8) The means or manner by which the building is to be moved and the type of equipment used thereof;

(9) A map, sketch, or written description outlining the route over or along which the building is to be moved;

(10) The time that will be required to move the building, including the day, and hour when any part thereof will enter any street and the approximate date and hour every part of the building will be off every street, alley, or highway, and the time that will be required to complete the re-establishment and relocation of the building upon its new site; and

(11) Such other information as the Public Works or Community Development Departments may deem necessary.

(b) Where the building is to be moved outside of the corporate limits of the City, the information required by ~~paragraphs~~ subsection (a)(5) and (6) of this section need not be given.

(Prior Code, § 83.070; Ord. No. 4623; Ord. No. 42-84)

Sec. 83.080. Application—To contain damage agreement.

(a) Any application for a permit under this chapter shall contain a statement or agreement to the effect that the applicant will not damage any real or personal property upon, along, or adjacent to any street, alley, or highway while moving any building and that, in case any damage is so caused, the applicant will pay therefor.

(Prior Code, § 83.080; Ord. No. 4623)

Sec. 83.090. Application Same—To contain completion agreement.

(b) The application for a permit to move a building to any place within the City shall contain the agreement of the owner, executed by him or her, that he or she will, within one year of the date on which the move was commenced, complete relocation and establishment thereof in complete compliance with all applicable provisions of this Code; and will upon such completion or on the date required for completion, whichever is sooner, permit complete inspection of the building by the Building Official or his or her authorized inspectors, to determine if such relocation and establishment is, in fact, in compliance.

(Prior Code, § 83.090; Ord. No. 4623; Ord. No. 117-71; Ord. No. 93-74)

Sec. 83.100. Application Same—To be accompanied by statements from utilities.

(c) Except as to Class One buildings less than 14 feet in height, 14 feet in width, and 50 feet in length, there shall be attached to the application for a permit under this chapter, signed written statements from each person owning or operating any public utility maintaining any wires, conduits, cables, poles, or other appliances or appurtenances thereto along, over, or across any street, alley or highway along the route over which the building or structure is to be moved by or for the applicant, which statements shall state or set forth that the moving of such building or structure will not molest, damage, or interfere with, or interrupt the service of any such wires, conduits, cables, poles, or other appliances or appurtenances, or that the applicant has made appropriate arrangements for clearing the same at the time the building is to be moved.

(d) In case any Class Two or Class Three building is to be moved over, across, or along any railway track laid in any street, a similar statement from the owner or operator of such railroad, or his or her duly authorized agent, shall be furnished

(Prior Code, §§ 83.080--83.100; Ord. No. 4623; Ord. No. 117-71; Ord. No. 93-74; Ord. No. 42-84)

Sec. 83.110. Conditions concerning Code compliance.

Before issuing any permit to move a building to any location within the City, the director of Public Works Director shall first ascertain that the building is no greater in size than is permitted by this chapter, and that either of the following conditions, as applicable, is met:

(a) If the building was used for and is proposed to be used for purposes such as would cause its classification as an R or M occupancy pursuant to the provisions of SRC chapter 56 of this Code, no moving permit shall be issued unless the building has been given a complete inspection for compliance with the provisions of SRC chapter 59 of this Code; provided, however, that the building need not be brought into compliance with the provisions of said chapter prior to being moved if the owner signs the agreement provided in SRC 83.090, and posts the insurance and bonds provided for in SRC 83.160.

(b) For all other buildings other than those described in subsection (a) of this section, no moving permit shall be issued unless a building permit for establishment of the building in its new location has been issued by the Building Official.

(Prior Code, § 83.110; Ord. No. 4623; Ord. No. 117-71; Ord. No. 93-74; Ord. No. 42-84)

Sec. 83.120. Approval required.

(a) No moving permit shall be issued under this chapter until the application therefor has been approved by the Chief of Police, the Building Official, and the Public Works Director.

(b) Where applicable, no moving permit shall be approved until the requirements of SRC 73.050(h) have been met.

(Prior Code, § 83.120; Ord. No. 4623; Ord. No. 69-70; Ord. No. 42-84; Ord. No. 51-96; Ord. No. 42-09)

Sec. 83.130. Approval—By Chief of Police.

The Chief of Police shall consider the probable effect of the proposed moving under this chapter on the public safety and he or she shall not approve the application for a moving permit except where such moving will not jeopardize the public safety and the route proposed to be followed is the one least dangerous to the citizens of the City and the general public.

(Prior Code, § 83.130; Ord. No. 4112)

Sec. 83.140. ~~Approval~~ Same—By Building Official.

(a) The Building Official or his or her designee shall inspect the building to be moved, and, if he or she finds that the building is of substantial construction and in such condition that it may be moved without collapsing or falling apart and without endangering any person upon, along, or adjacent to any public street, and further finds that the building is designed and adaptable for the purpose, use, or occupancy to which it is proposed at the new location, he or she shall approve the permit application.

(b) In addition to the matters in this section enumerated, the ~~director of Public Works~~ Director and the Building Official shall require compliance with all provisions of this chapter which are a prerequisite to the granting of a moving permit.

(Prior Code, § 83.140; Ord. No. 4112; Ord. No. 42-84)

Sec. 83.150. ~~Approval~~ Same—By ~~director of Public Works~~ Director.

The ~~director of Public Works~~ Director shall determine that the mover has safe and sufficient equipment and facilities for moving the building or structure within the time allowed by the Director for such moving and that the mover has sufficient and adequate barricades, lights, flags, and personnel for warning the public both day and night, and for the safe direction of traffic and that the streets and the bridges in the streets along the route to be traversed by the moving are of sufficient width and strength and in condition to bear the moving of the building or structure described in the application and that such moving will not endanger any trees, shrubs, or improvements in, upon, or adjacent to any street.

(Prior Code, § 83.150; Ord. No. 4112; Ord. No. 42-84)

Sec. 83.160. Insurance required of applicant.

No permit to move a building or structure shall be granted unless the mover shall furnish an insurance policy which shall be approved by the City Attorney as follows:

(a) All vehicles to be used in accomplishing the move of any building shall have automobile liability insurance or qualified self-insurance meeting the minimum requirements of Oregon's Motor Vehicle Financial Responsibility Law.

(b) For moving Class Two or Class Three buildings, the applicant shall carry "commercial general" or "comprehensive general" liability insurance including the "explosion, collapse, underground" hazard coverage, in not less than $500,000.00 combined single limits per occurrence.

(Prior Code, § 83.160; Ord. No. 4623; Ord. No. 93-74; Ord. No. 42-84; Ord. No. 87-88; Ord. No. 18-92)

Sec. 83.165. Permit bonds or other security required.

(a) No permit to move a Class Two or Class Three building to any location within the City shall be granted unless the applicant shall furnish a bond or other security as provided in this section.

(b) The bond or other security shall be conditioned upon the applicant's faithful performance of all obligations imposed by this chapter, including obligations referenced in this chapter.

(c) The bond or other security shall be in not less than the following sums:

(1) For any building to be used for purposes which would cause its classification as an R-3 or M occupancy under SRC chapter 56 ~~of this Code~~, the sum of $3,500.00.

(2) For any other building, a sum equal to $0.50 per square foot of floor area as determined under SRC chapter 56 ~~of this Code~~.

(d) Every bond shall be issued by a corporate surety authorized to transact business within the State ~~of Oregon~~, and shall be subject to review and approval as to its form by the City Attorney.

(e) In lieu of a bond, the applicant may furnish cash or a certified or cashier's check in the amount determined under subsection (c) of this section. In addition, the applicant shall sign an agreement in a form approved by the City Attorney which shall stipulate that the security thus furnished is conditioned upon the same obligations as would be required under the bond for which it substitutes. If the security is cash on deposit as provided in subsection (f) of this section, the agreement shall further stipulate that the applicant waives any and all claim against the depositary for release of any or all funds on deposit when such withdrawal is authorized by signature of the City's ~~Director of~~ Finance ~~Director~~ Officer or other authorized signature.

(f) The applicant may deposit cash security in a demand deposit account with a federally insured banking institution. Such an account shall be in the name of the City ~~of Salem, Oregon~~ as account holder, and the applicant shall provide the necessary signature cards for execution by the City's ~~Director of~~ Finance ~~Director~~ Officer or designee covered by a public official's fidelity bond. Interest, if any, accruing to said account shall be subject to forfeiture upon default under the same terms as the principal sum deposited as security. Upon release of such security, both principal and interest, if any, shall become the property of the applicant, and the City's Finance ~~Director~~ Officer shall execute all necessary documents to transfer the City's interest therein.

(g) Upon default of any of the applicant's obligation under this chapter, the proceeds of any bond or security deposit shall be forfeited to the City and the moneys used to abate any public nuisance as declared in this Code which was created by the applicant's default. In abating any such nuisance, the City shall not be required to complete the relocation work contemplated by the applicant, and may demolish any dangerous building pursuant to SRC 56.200 to ~~56.450~~ 56.270.

(h) In the event the proceeds of any bond or security are insufficient to abate the nuisance, the applicant shall pay the difference within the ten days of demand.

(Prior Code, § 83.165; Ord. No. 18-92)

Sec. 83.170. Fees.

When application is made for a permit under this chapter, the applicant shall pay the fees as prescribed by resolution of the Council.

(Prior Code, § 83.170; Ord. No. 4112; Ord. No. 42-84; Ord. No. 78-85; Ord. No. 51-91; Ord. No. 51-96)

Secs. 83.180—83.980. Reserved.

Sec. 83.990. Violations.

Violation of SRC 83.010 to 83.050 is an infraction.

(Prior Code, § 83.990; Ord. No. 193-79)

CHAPTER 84. RESERVED

CHAPTER 85. DIRECTIONAL SIGNS

Sec. 85.010. Location, purpose, types, and specifications of permitted signs.

When an application therefor is filed and approved in this chapter ~~provided~~, it shall be lawful to place in the parking strip or other street area not ordinarily used by pedestrian or for vehicular traffic a directional sign indicating a business district, industrial area, community center, church, institution or manufacturing plant. Three types of directional signs are allowed:

(a) Type One signs shall be made of wood, or other approved material, not more than four feet in width, shall not exceed ten feet in height above the level of the street or curb, upon which may be painted or marked the words "industrial area," "business district," "community center," "church," "hospital," or similar designation with letters not more than five inches high. Attached to or suspended from this sign may be panels or shields containing the name or names of business concerns, factories, churches, or other activities or concerns but only one name to be on any individual panel, and the lettering thereon shall not exceed four inches in height. These panels may be suspended one below the other, and they may extend for the width of the sign. The sign or panels may also contain a directional arrow.

(b) Type Two signs shall consist of a single panel in a size, type, and height determined and approved by the ~~director of Public Works~~ Director, and may contain information designating a specific industrial area, business district, community center, church, hospital, or similar designation. More than one directional panel may be fastened to the same post. Such panel may be pointed on one end.

(c) Type Three signs may be allowed for individual businesses that have alley-only access. The design for Type Three signs shall be approved by the Director, and match the pedestrian wayfinding directional signs.

(Prior Code, § 85.010; Ord. No. 241-66; Ord. No. 43-84; Ord. No. 22-16, § 2, 12-12-2016)

Sec. 85.020. Permit to install; application contents.

Any person desiring the installation of a street directional sign of either type shall make application to the ~~director of Public Works~~ Director, which application shall state the name or names of the applicant, the type of sign desired, the location of the business, factory, plant, church, hospital, institution, district, zone, or area to be indicated on the sign or signs, the name or names of the industrial area, business district, community center, hospital, church, institution, or manufacturing plant desiring a directional panel upon the post or sign panel, and such other information as the ~~director of Public Works~~ Director may request.

(Prior Code, § 85.020; Ord. No. 241-66; Ord. No. 43-84)

Sec. 85.030. Issuance of permit.

If the directional sign conforms to the requirements of this chapter and the installation of the requested sign shall not constitute a traffic hazard or be a nuisance, but will serve the general public's convenience and necessity, the ~~director of Public Works~~ Director shall, upon the payment of the fee fixed by this chapter, issue the necessary permit.

(Prior Code, § 85.030; Ord. No. 241-66)

Sec. 85.040. Fees; generally.

There shall be charged a filing fee for applying for a directional sign permit and an annual privilege and maintenance charge in the amount prescribed by resolution of the Council. There shall be charged for the erection of a Type One sign panel and post, a Type Two sign, and a Type Three sign and post, a fee based upon the actual cost of labor, material, and equipment, plus ten percent for engineering and supervision. A fixed maintenance fee will be charged annually thereafter.

(Prior Code, § 85.040; Ord. No. 4986; Ord. No. 12-76; Ord. No. 43-84; Ord. No. 69-89; Ord. No. 51-91; Ord. No. 51-96; Ord. No. 22-16, § 3, 12-12-2016)

Sec. 85.050. Reserved.

Sec. 85.060. ~~Director of Public Works~~ Director to install signs.

All installations made pursuant to this chapter shall be made by the ~~director of Public Works~~ Director.

(Prior Code, § 85.060; Ord. No. 4986)

Sec. 85.070. Movement of signs; permit not to grant vested right.

Any directional sign panel, signpost, or sign installed pursuant to the provisions of this chapter may be moved or removed at any time the moving or removal thereof is necessary in connection with any improvement project or when deemed necessary for the public safety or when it is deemed that the directional signs are no longer necessary. Every permit in this chapter is issued and shall be accepted by the applicant therefor with the understanding and agreement that no vested rights to any sign panel or sign are granted, and any and all such sign panel, posts, and directional panels may be removed whenever the Council deems removal in the best interest of the City.

(Prior Code, § 85.070; Ord. No. 4986; Ord. No. 43-84)

Sec. 85.080. Applicability of certain regulations to existing signs.

The provisions of this chapter relating to fees for individual directional panels and for the maintenance of such panels and the provisions relating to the moving or removal of panels shall apply to existing directional panels or signs installed prior to the effective date of the ordinance from which this chapter is derived.

(Prior Code, § 85.080; Ord. No. 4986; Ord. No. 43-84)

CHAPTER 86. TREES ON CITY OWNED PROPERTY

~~Sec. 3.~~ Sec. 86.001. Title.

This ~~SRC~~ chapter ~~86~~ may be referred to as the "City Tree Code."

(Ord. No. 23-15, § 3, 10-12-2015)

Sec. 86.005. Purpose.

The purpose of this chapter is to provide a unified, consistent, and efficient means for the planning, planting, maintenance, and removal of trees located on city property and to limit the adverse impacts to city trees and city infrastructure. It is hereby declared that the public interest and welfare requires that the City conduct a program for the planting, maintenance, preservation, and removal of city trees, and that the City promote the development of tree canopy cover of all trees on city property.

(Ord. No. 23-15, § 2(86.005), 10-12-2015)

Sec. 86.010. Definitions.

Unless the context otherwise specifically requires, terms used in this chapter shall have the meanings set forth in this section; provided, however, where a term is not defined in this section, the term shall have its ordinary accepted meaning within the context in which it is used. *Webster's Third New Int'l Dictionary* (unabridged ed. 2002) shall be the standard reference to ordinary accepted meanings.

~~(a)~~*City property* means real property and improvements, if any, owned by, dedicated to, managed by, or subject to an easement in favor of, the City for the public's use, including, but not limited to, City parks, City rights-of-way and other City properties within city limits.

~~(b)~~ *City rights-of-way* means an area that allows for the passage of people and vehicles that is dedicated or deeded, or for which there is an easement to the City or the public, for public use and under the control of the City. As used in this chapter, the term "right-of-way" includes streets, bike paths, walkways, landscaping strips, and all other land within the area designated as right-of-way by the deed, dedication, or easement, but does not include alleys. Easements for utilities or other non-roadway purposes are not included in this definition.

~~(c)~~*City tree* means a tree on City property.

~~(e)~~*Construction activities* include, but are not limited to, excavation, filling, tunneling, trenching, land clearing, compacting, demolition, storage of construction materials, utility work, grading, or other ground disturbing activity.

~~(d)~~ *Critical Tree Zone (CTZ)* means a defined area surrounding the trunk intended to protect the tree's trunk, roots, branches, and soil to ensure tree health and stability. It is the area defined by the tree's dripline or an area measured one-foot per one-inch diameter at breast height, whichever is greater.

~~(f)~~*Development* means to construct or alter a structure, to make alterations or improvements to the land or to make a change in use or appearance of land, to divide or reconfigure land, or to create, alter, or terminate a right of access. The term "development" does not include:

(a) Maintenance and repair, usual and necessary for the continuance of an existing use;

(b) Reasonable emergency procedures necessary for the safety or operation of property; or

(c) Interior or exterior remodeling that does not increase the square footage or height of a structure, or substantially alter the appearance of a structure.

~~(g)~~ *Diameter at breast height (dbh)* means the diameter of the tree trunk measured at 4.5 feet above the ground level.

~~(h) *Director* means the City Manager, or the department head charged by the City Manager with the administration and enforcement of this chapter, or that department head's designee.~~

~~(i)~~ *Diseased tree* means any tree with an infectious condition that without reasonable treatment or pruning is likely to spread to adjacent trees and cause such adjacent trees to become infected or a risk.

~~(j)~~ *Emergency* means a situation exists in which action must be undertaken immediately to prevent an imminent threat to public health, public safety, or property.

~~(k)~~ *Ground disturbing activity* means any activity that exposes soil through the use of mechanical equipment, including, but not limited to, grading, excavating, filling, clearing, or working of land. Such disturbance may be permanent (i.e., gravel mining, farming, gardening, sports fields, etc.); or temporary or short-term duration, such as construction, excavation, fill, grading, landscape installation, or other vegetative clearing activities.

~~(l)~~ *Hedge* means a row or grouping of closely spaced woody plants that are planted and maintained to form a barrier or screen, or to mark a boundary.

~~(m)~~ *Heritage Tree* means a tree designated as such by ~~City~~ Council.

~~(n)~~ *Infrastructure* means streets, curbs, sidewalks, buildings, utilities, or other public improvements.

~~(o)~~ *Plant* means the placement of vegetation into the ground.

~~(p)~~ *Prohibited tree* means any tree listed in the administrative rules as prohibited.

~~(r)~~ *Property owner* means the owner(s) of record, as shown on the latest tax rolls or deed records of the county, of property containing or adjacent to a City tree.

~~(q)~~ *Prune* means to trim or remove branches or roots from a tree or other plant using approved practices to achieve a specified objective.

~~(s)~~ *Public Works Design Standards* means those promulgated by City Public Works Department as administrative rules through SRC chapter 20J.

~~(t)~~ *Risk tree* means a tree or part thereof that has a high probability of failure due to an uncorrectable structural defect or disease which poses a potential threat to the public or City property in the event of failure.

~~(u)~~ *Top* and *topping* means the practice of reducing the length of major limbs to prevent the limb from assuming a terminal role in an effort to reduce the height of the tree.

~~(v)~~ *Treat* means to reestablish the normal function, vigor, and condition through the use of products or actions.

~~(w)~~ *Tree* means a woody plant that is commonly sold by the Oregon nursery trade as a tree and not maintained as a hedge, shrub, or topiary form. Pursuant to SRC 86.015(f), the Director shall have the authority to determine whether a particular woody plant is considered a City tree.

~~(x)~~ *Tree removal* means to cut down a tree, or remove more than 30 percent of the crown, circumference of the bark down to the heartwood, or root system of a tree, or to damage a tree in any manner so as to cause the tree to decline, become unstable, or die.

~~(y)~~ *Tree trimmer* means any person engaged in the business of pruning, altering, removing, or providing tree surgery for City trees.

~~(z)~~ *Variance* means a situation where a modification to the requirements of this chapter is reasonably necessary to prevent undue hardship.

(Ord. No. 23-15, § 2(86.010), 10-12-2015)

Sec. 86.015. Administration; rulemaking; responsibilities.

(a) *General.* The Director shall have jurisdiction over all City trees, including the planting, removal, care, maintenance, and protection thereof. The Director shall administer and enforce this chapter and shall have the authority to render written and oral interpretations and to adopt administrative rules, design standards, and procedures for its proper administration and enforcement.

(b) *Removal or treatment of City trees.* The Director may remove or permit the removal of any City tree, or plant or part thereof that is in an unsafe condition or is causing damage to City property, when the condition of the tree cannot otherwise be remedied by accepted arboricultural practices. The Director may, or permit another to,

remove, treat, or cause to be treated any City tree or plant or part thereof that is currently infected with a fungus, disease, insect, or other pest such that it becomes a risk, as authorized by this chapter and administrative rules.

(c) *Pruning of trees projecting into City property.* It is the responsibility of the property owner to maintain and prune trees, shrubs, or other plants on private property that project into City property in accordance with applicable administrative rules. If the Director determines pruning of any such tree, shrub, or plant is deemed necessary, the Director shall have the power to prune or cause or order the same to be pruned. The City may assume the responsibility for pruning and bill the cost of pruning to the property owner, if notice to the property owner has been provided under SRC 86.105.

(d) *Disease and pest inspection on private property.* The Director shall have the authority, either by consent of the property owner or by appropriate legal process, to enter private property for the purpose of inspecting a tree thereon to determine if such tree may be a risk tree and threat to public safety or City property. Upon discovering that any such tree is a risk tree, an order shall be sent to the property owner advising the property owner of the conditions and the corrective measures to take. In the event the property owner fails to take the corrective measures indicated in the order, the Director shall have the power to cause the corrective measures to be made. If the Director undertakes the corrective measures, the Director may bill the cost to the property owner, if notice to the property owner has been provided under SRC 86.105.

(e) *Planting street trees.* Pursuant to SRC 803.035(k), any person undertaking development adjacent to public streets shall provide street trees to the maximum extent feasible in accordance with the standards and specifications set forth in this chapter and applicable administrative rules.

(f) *Determination of City tree.* The Director shall have the authority to determine whether a particular woody plant shall be considered a City tree. Such determination shall be final and not subject to local appeal.

(g) *Maintenance around tree.* The property owner, the property owner's lessee, occupant, or person in charge of property containing or adjacent to the City right-of-way is responsible for maintaining, in such a way as not to cause a hazard to public health or safety, or public property, the area around City trees. This responsibility includes maintaining landscaping, shrubs, or bushes, in accordance with applicable administrative rules, unless this responsibility is expressly assumed in writing by the City.

(h) *City not responsible.* The City is not responsible for maintaining trees, shrubs, vegetation, or landscaping on private property.

(Ord. No. 23-15, § 2(86.015), 10-12-2015)

Sec. 86.020. Role of the Salem Parks and Recreation Advisory Board.

(a) *Duties.* In addition to the functions and duties assigned in SRC chapter 13 ~~of the Salem Revised Code~~, the Salem Parks and Recreation Advisory Board shall have the following duties:

(1) Issue decisions on appeals of decisions of the Director as set forth in this chapter.

(2) Issue decisions on applications referred to the Board by the Director.

(3) Issue recommendations on nominations for Heritage Tree designations.

(4) Provide advisory recommendations to the Director, and to the ~~City~~ Council on matters relating to City trees.

(b) *Rules of procedure.* The Director may establish rules of procedure for appeals before the Salem Parks and Recreation Advisory Board by administrative rule.

(Ord. No. 23-15, § 2(86.020), 10-12-2015)

Sec. 86.025. Relationship to other regulations.

Where a conflict exists between the provisions of this chapter and other provisions of the Salem Revised Code, or state or federal law or regulations, the more restrictive provision shall govern.

(Ord. No. 23-15, § 2(86.025), 10-12-2015)

Sec. 86.030. Prohibited activities.

(a) It shall be unlawful for any person, except as expressly allowed by a written permit, exemption, or variance granted pursuant to the terms of this chapter, to willfully or negligently injure, destroy, top, or prevent the growth of a City tree, including, but not limited to, the following:

(1) Pouring or spraying of an injurious chemical on or around any City tree.

(2) Posting any sign on a City tree, tree stake, or tree guard.

(3) Attaching or fastening any structure or device to any City tree, tree stake, or tree guard.

(4) Piling materials or storing supplies or debris within the Critical Tree Zone that may cause injury or damage to the tree or damage the tree, tree stake, or tree guard.

(5) Using concrete, asphalt, brick, or impervious material that may cause injury or damage to the tree.

(6) Causing or permitting the growth of vines, ramblers, or other climbing plants on City trees.

(7) Construction within the Critical Tree Zone.

(8) Parking or maneuvering vehicles that may cause injury or damage to the City tree, not including parking or maneuvering on existing paved surfaces.

(b) The Director may exempt electrical utility providers from the prohibitions related to pruning and topping.

(Ord. No. 23-15, § 2(86.030), 10-12-2015)

Sec. 86.035. Certain trees prohibited.

It shall be unlawful for any person to plant any prohibited tree on City property. Established prohibited trees may be allowed to remain until the tree becomes dead, diseased, or a risk tree.

(Ord. No. 23-15, § 2(86.035), 10-12-2015)

Sec. 86.040. Diseased trees and shrubs prohibited.

To ensure the health of City trees, it shall be unlawful for any property owner or occupant of private property to allow any tree, or other vegetation growing on the property owner's or occupant's property to become infected with a fungus, disease, insect, or other pest such that it could adversely affect a City tree.

(Ord. No. 23-15, § 2(86.040), 10-12-2015)

Sec. 86.050. Activities requiring permits.

(a) A permit is required for the following activities:

(1) *Permit required to prune or remove City trees or tree protection devices.* It shall be unlawful for any person, without a written permit from the Director, to prune or remove a City tree, or to remove a tree protection device from a City tree, or cause or authorize or procure any person to do so. The Director may, by administrative rule, develop criteria for City tree pruning that does not require a permit where the Director finds the actions are minor and are unlikely to cause damage to the City tree.

(2) *Permit required for construction within Critical Tree Zone of City trees.* It shall be unlawful for any person, without a written permit from the Director, to undertake or cause or authorize or procure any person to undertake any construction activity within the Critical Tree Zone of City trees.

(3) *Permit required to treat City trees.* It shall be unlawful for any person, without a written permit from the Director, to treat a City tree, including, but not limited to, applying chemicals or biological controls; installing hardware or devices for the preservation of a City tree or for the control of insects or diseases; or causing or authorizing or procuring any person to do such treatment. A permit to treat a City tree may be granted if the Director determines the treatment proposed is beneficial and unlikely to harm the City tree. Any work authorized by written permit shall meet all local, state, and federal regulations.

(4) *Permit required to collect biological materials from City trees.* It shall be unlawful for any person, without a written permit from the Director, to remove plant material from a City tree or cause or authorize

or procure any person to do so. A written permit is not required for the noncommercial gathering of fruit or windfall.

(5) *Permit required to install lights or other attachments to City trees.* It shall be unlawful for any person, without a written permit from the Director, to install or otherwise physically place lighting or other attachments on a City tree or cause or authorize or procure any person to do so. If permitted, the installation and removal shall be accomplished without damage to the City tree. The correction of any damage to the tree or replacement of the tree shall be at the permit holder's cost and shall be accomplished by a tree trimmer licensed under SRC chapter 30. The City will not be responsible for damage to any attachments or associated devices related to the lighting under this permit. In addition, the City shall not be responsible for the cost associated with the repair or installation of replacement materials.

(6) *Permit required to plant trees on City property.* It shall be unlawful for any person to plant trees, tree seeds, seedlings, or cause or authorize or procure any person to do so, in or upon any City property or alleys without obtaining from the Director a written permit to do so, or obtaining approval of a landscape plan pursuant to SRC 807.020, and without first complying in all respects with the conditions set forth in such permit or approval and with the provisions of this chapter.

(b) City projects and programs will be considered in compliance with the permitting requirements of SRC 86.030(a) and this section where the City project complies with applicable Public Works Design Standards and input from the City's Urban Forester. The process for City projects to seek input from the City's Urban Forester shall be described in the administrative rules issued pursuant to this chapter.

(c) The Director may refer any permit decision to the Salem Parks and Recreation Advisory Board at the sole discretion of the Director.

(d) The Director may adopt administrative rules establishing the processes and procedures necessary to obtain a permit under this section, as well as the manner in which activities conducted pursuant to a permit are carried out. Activities conducted under a permit issued pursuant to this chapter must comply with the administrative rules issued pursuant to this chapter, as well as any other applicable administrative rules issued by the Director.

(e) The Director may require additional information from an applicant depending on the circumstances of the request.

(f) Removal of City trees under a written permit may be done by any licensed general contractor or licensed tree trimmer; any other work done to City trees under written permit must be performed by a City licensed tree trimmer in strict accordance with the terms of the permit, the provisions of this chapter, and all applicable design standards.

(Ord. No. 23-15, § 2(86.050), 10-12-2015)

Sec. 86.055. Variances.

A variance to the requirements of this chapter may be permitted where it is necessary to prevent unreasonable hardship. A permit application which includes a request for a variance shall be submitted to the Director for review and decision, along with any applicable fee.

(a) *Director's determination.* A variance to the requirements of this chapter may be permitted if the Director determines that:

(1) There is an unreasonable hardship or practical difficulty created by the physical characteristics of the land;

(2) The variance will not result in adverse effects that are unreasonably detrimental to the public health, safety, and welfare or to property or improvements in the vicinity; and

(3) The proposed variance is narrowly tailored to alleviate the unreasonable hardship on the applicant while preventing injury to City trees to the greatest extent practicable.

(b) *Conditions.* In granting a variance, the Director may impose such conditions to mitigate any adverse impacts that may result from granting relief.

(c) *Burden on applicant.* It shall be incumbent upon the applicant to prove that the applicant cannot secure reasonable use of the property; that the hardship claimed results from the application of the provisions of this chapter or administrative rule; that the hardship claimed is a result of conditions suffered by the applicant's property uniquely, and not by properties generally; and that the hardship claimed is not the result of the applicant's own actions.

(d) *Appeal of variance decisions.* Appeals shall be governed by SRC 86.095.

(Ord. No. 23-15, § 2(86.055), 10-12-2015)

Sec. 86.060. Fees.

Fees for applications and other related services provided by the City under this chapter, including variances and appeals, shall be set by resolution of the ~~City~~ Council. Fees shall be paid at the time the application is submitted or, if no application is required, at the time the request for a particular service is made. For applications or services requiring payment of a deposit, the amount of the deposit shall be credited against the exact final calculated costs. If applicable, any unused portion of the deposit shall be refunded once all incurred fees are paid.

(Ord. No. 23-15, § 2(86.060), 10-12-2015)

Sec. 86.065. Planting trees on City property.

(a) Except as provided in this chapter, the City shall be responsible for planting City trees.

(b) Any person required to or desiring to plant trees on City property must file a permit application with the City. Upon receipt of an application under this section, the Director shall investigate the location where the tree or trees are to be planted and may grant a permit only if the location will allow for the normal growth and development of each tree. The permit shall specify the location, variety, and grade of each tree and method of planting. The permit shall be valid for 180 days from date of issue.

(c) Every property owner whose property abuts upon any street shall plant City trees conforming to the provisions of this chapter as a condition of final occupancy for construction of any building located upon the property. Applications for tree planting shall be made at the time of application for building permits. An inspection shall be made to verify that trees have been planted at the time of the final inspection. In lieu of planting City trees, the applicant may elect to pay a fee for the City to install any required trees as set by resolution of the ~~City~~ Council.

(d) Upon passing final inspection, trees planted on City property shall become the property of the City.

(Ord. No. 23-15, § 2(86.065), 10-12-2015)

Sec. 86.070. Tree pruning and treating criteria.

A permit to prune a City tree may be granted if one or more of the following criteria are met, as determined by the Director:

(a) A City tree is encroaching onto private property and causing injury to privately-owned trees or shrubs.

(b) A City tree is having an adverse effect on adjacent infrastructure or buildings that may be resolved by pruning or treatment.

(c) A City tree's branches pose a threat to utility lines, cables, or other overhead structures.

(d) The pruning or treatment proposed is unlikely to harm the City tree.

(e) A City tree is obstructing clearance areas/zones as established in applicable administrative rules or Public Works Design Standards.

(Ord. No. 23-15, § 2(86.070), 10-12-2015)

Sec. 86.080. Review of applications for City tree removal.

Upon receipt of a complete permit application for City tree removal, the Director shall review the application, and if the application fails to meet the applicable criteria the application shall be denied, and a notice of denial shall be provided to the applicant, which notice shall identify the reasons for the denial. If the application meets the applicable criteria, the Director shall provide written notice to the neighborhood association where the tree or trees are located, and post notice of the approval as near as practicable to the tree or trees to be removed.

(a) The notice shall include the following:

(1) The name of the applicant;

(2) The location of the tree or trees subject to the decision;

(3) A reference to the criteria or standards applicable to the decision;

(4) A statement that interested persons may appeal the decision pursuant to SRC 86.095; and

(5) The effective date of the decision if no appeal is filed.

(b) The notice shall be provided to the neighborhood association and posted a minimum of 30 days prior to the effective date of the decision.

(c) Effective date. A decision to approve a permit application for City tree removal shall be effective no earlier than 30 calendar days after the decision has been issued, unless an appeal has been filed, and any appeal fee paid.

(Ord. No. 23-15, § 2(86.080), 10-12-2015)

Sec. 86.085. Removal of city trees in historic districts and city owned designated historic sites.

(a) In addition to the requirements in this chapter, an application to remove a City tree that is a historic contributing object or within a City owned historic site, as those terms are defined in SRC chapter 230, shall be subject to Historic Design Review under SRC chapter 230.

(b) Replanting, in conformance with the Public Works Design Standards, shall be required upon removal of any City tree located within a local historic district, a National Register historic district, or a City owned designated historic site. Waiver of this requirement may only be granted through Historic Design Review under SRC chapter 230.

(Ord. No. 23-15, § 2(86.085), 10-12-2015)

Sec. 86.090. City tree removal criteria.

(a) A permit to remove a City tree may be granted if one or more of the following criteria are met, as determined by the Director:

(1) The tree is dead.

(2) The tree is in an advanced state of decline.

(3) The tree is structurally unsound and poses an imminent risk to person or property, as determined by a tree risk assessment, and when the risk cannot be mitigated or the tree cannot be made sound by accepted arboricultural practices.

(4) The tree is infected with an acute fatal disease that cannot be treated successfully or there is a strong potential that the pathogen could spread and kill other trees in the immediate vicinity (e.g., Dutch Elm Disease).

(5) The tree is infested with an insect that cannot be treated successfully or there is a high likelihood that the infestation could spread and kill other trees or vegetation in the immediate vicinity (e.g., Emerald Ash Borer).

(6) When City trees have been planted too close to each other based on administrative rules and the spacing causes an adverse effect on neighboring trees. The tree with the greatest vigor will remain unless it meets other criteria for removal. The applicant shall bear the cost of tree and stump removal.

(7) When past pruning and other tree maintenance practices, other than required electrical line clearance, has destroyed the natural shape of the tree or caused the tree to go into decline.

(8) The Director may permit the removal of a City tree due to construction if there is no reasonable alternative. The applicant shall be required to bear all cost of the tree’s removal and replacement.

(9) The Director may permit the removal of a City tree if the tree is having an adverse effect on adjacent infrastructure and that effect cannot be mitigated by pruning, reasonable alternative construction techniques, or accepted arboricultural practices.

(b) Except as provided in SRC 86.085(b), if a tree is removed pursuant to subsection (a)(8) of this section, the tree will be replaced in conformance with the applicable administrative rules and Public Works Design Standards.

(c) The City shall not permit the removal of a City tree for any other reason, including, but not limited to, the following, unless the criteria for a variance has been approved:

(1) Dropping of leaves, flowers, seeds, bark, sap, stems, pests, or other matter.

(2) Improvement or maintenance of views.

(3) Competition with turf or impact on non-plant landscaping (e.g., mulch or gravel).

(4) Common allergies.

(5) Damage to items that have been placed too close to the trunk such as pavers, bricks, blocks and concrete.

(d) Removals by City.

(1) Where the City proposes to remove a City tree smaller than ten inches dbh, no posting shall be required.

(2) Where the City proposes to remove a City tree larger than ten inches dbh, the City shall post notice of the removal as near as practicable to the tree to be removed for a period of 15 days prior to the removal.

(3) No appeals of decisions related to removals by the City shall be allowed, unless part of another decision which provides for an appeal.

(Ord. No. 23-15, § 2(86.090), 10-12-2015)

Sec. 86.095. Appeal of decisions or orders.

(a) *General.* An appeal of a decision on a permit application issued by the Director shall be to the Salem Parks and Recreation Advisory Board. The appeal decision by the Salem Parks and Recreation Advisory Board is final; no further appeal or review shall be available. The Director shall send notice of the appeal decision issued by the Salem Parks and Recreation Advisory Board to the applicant, the applicable neighborhood association, and any person that participated in the appeal.

(b) *Director order.* Except as otherwise provided for in this chapter, an appeal of an order issued by the Director shall be governed by SRC chapter 20J.

(c) *Standing to appeal.*

(1) *Permit application decisions.* The applicant, the applicable neighborhood association where the tree or trees are located, and any interested person shall have standing to appeal a decision on a permit application by filing a notice of intent to appeal with the Director. In the event a permit application or variance is denied by the City and the applicant appeals the denial, the City shall provide written notice of appeal to the applicable neighborhood association, and post notice of appeal for 30 calendar days as near as practicable to the tree or trees at issue. The notice of appeal shall include the following;

(A) The name of the applicant;

(B) The location of the tree or trees subject to the decision;

(C) A reference to the criteria or standards applicable to the decision;

(D) The date, time and place of the hearing on the appeal; and

(E) A statement that any interested person may participate in the appeal by submitting written testimony, or by appearing in person to testify at the hearing.

(2) *Director order.* The property owner or the person to whom the order is issued has standing to appeal an order issued by the Director under this chapter.

(d) *Notice of intent to appeal.* A written notice of intent to appeal allowed by this chapter shall be filed with the Director not later than 30 calendar days after the date the decision was issued. The notice of appeal shall state the basis of the appeal and why the decision was in error, and shall be accompanied by the nonrefundable appeal fee as set by ~~City~~ Council.

(e) *Appeal procedures.* The Director shall provide rules of the procedure of appeals to the Salem Parks and Recreation Advisory Board under this chapter by administrative rule.

(Ord. No. 23-15, § 2(86.095), 10-12-2015)

Sec. 86.100. Master city tree plan.

(a) A master street tree plan may be prepared by the Director for the downtown historic district and central business district with the advice of the Salem Parks and Recreation Advisory Board. This plan shall be consistent with this chapter and shall include policies and guidelines that:

(1) Provide for the preservation of Heritage Trees.

(2) Encourage the preservation of trees in construction areas when said trees are desirable types and in healthy condition.

(b) A master street tree plan may be prepared for other areas of the City, including other historic districts and City owned historic resources and sites.

(Ord. No. 23-15, § 2(86.100), 10-12-2015)

Sec. 86.105. Enforcement.

(a) *Order to abutting property owner to prune trees and shrubs.* Whenever the property owner, or the property owner's lessee, occupant, or person in charge of abutting property shall neglect or refuse to prune any tree, shrub, or plant provided in SRC 86.015, the Director may serve upon such owner, lessee, occupant, or person in charge of abutting property a written order to prune or remove such trees, shrubs, or plants within ten days after the giving of such order, and in case such owner, lessees, occupants, or person in charge of abutting property fail to do so, such persons shall be in violation of this chapter and subject to the penalties provided by SRC 86.120. Such order shall be served upon the property owner, lessees, occupants, or person in charge of the abutting property by regular mail to the last known address of said person or persons.

(b) *Notice by City upon failure of abutting property owner.* If the property owner, or the property owner's lessee, occupant, or person in charge of the abutting property, shall fail and neglect to trim such trees, shrubs, or plants within ten days after receiving the order provided for in SRC 86.105(a), the Director may cause such trees, shrubs, or plants to be trimmed or removed.

(c) *Costs of restoration.* Persons violating this chapter, or a permit issued hereunder, shall be responsible for restoring damaged areas in conformance with a plan approved by the Director that provides for repair of any environmental or property damage and restoration of the site. Costs of restoration shall be not less than those determined equal to the monetary value of the regulated trees removed in violation of this chapter, or permit issued hereunder, as set forth in an appraisal acceptable to the Director and based upon applicable administrative rules. Each removal of a regulated tree in violation of this chapter shall result in a separate civil fine in addition to costs of restoration.

(Ord. No. 23-15, § 2(86.105), 10-12-2015)

Sec. 86.110. Statement of costs; billing and collection procedures.

Where the Director takes action under SRC 86.105(b), the Director shall keep an accurate account of the costs of enforcing this chapter. The Director shall invoice each affected property owner for the amount due the City, which shall include an amount equal to ten percent of the cost of labor and materials to defray administrative costs of enforcing this chapter. The affected property owner shall have 15 business days to file objections to the costs. If no objections are filed within the 15-day period, the Director may pursue all remedies available at law or equity, including referral to a collection agency. Collection of costs, fees, and penalties may be, in addition to any other remedy provided for by law, pursued through a contract collection agency or small claims court or entered into the

City's lien docket in the manner provided by SRC 20J.410 and a lien for the entire amount placed against the real property pursuant to SRC 20J.180.

(Ord. No. 23-15, § 2(86.110), 10-12-2015)

Sec. 86.115. Payments and credits.

Upon collection of the debt pursuant to SRC 86.110, the amount of the debt collected shall be credited to the Salem City Tree Fund.

(Ord. No. 23-15, § 2(86.115), 10-12-2015)

Sec. 86.120. Stop work orders; permit revocation; civil penalties; enforcement.

(a) *Stop work orders and permit revocation.* The Director may suspend work or revoke a permit specifying the basis for the suspension or revocation that must be remedied prior to resuming other work on the project, upon a finding that:

(1) The work is not authorized by a valid permit;

(2) Inaccurate information was used to obtain the permit;

(3) The applicant is not complying with the terms of the permit or this chapter;

(4) The work is, or threatens to become, risk to property or public safety; is adversely affecting or about to adversely affect adjacent property or rights-of-way; or is otherwise adversely affecting the public health, safety, or welfare; or

(5) The permit was issued in error.

(b) *Rescinding a stop work order or revocation.* Penalty fees shall be paid to the City and deposited to the Salem City Tree Fund as required before a stop work order or permit revocation is rescinded.

(c) *Civil penalty.* Any person who fails to comply with the requirements of this chapter, or the terms of a permit issued hereunder; who undertakes an activity regulated by this chapter without first obtaining a permit; or who fails to comply with a stop work order issued pursuant to this chapter, shall be subject to a civil penalty.

(1) Unauthorized City tree removal shall be subject to a civil penalty not to exceed $2,000.00 per violation in addition to the value of the tree as calculated in accordance with applicable administrative rules (or in the absence of administrative rules, in accordance with the most current edition of Council of Tree and Landscape Appraisers "Guide for Plant Appraisal").

(2) All other violations shall be subject to a civil penalty not to exceed $2,000.00 per violation. Each day that a violation continues shall constitute a separate violation.

(d) *Civil penalties against agents.* Any person who acts as the agent of, or otherwise assists, a person who engages in an activity that would be subject to a civil penalty may likewise be subject to a civil penalty.

(e) *Injunctive relief.* The City may seek injunctive relief against any person who has willfully engaged in violation of this chapter, such relief to be in effect for a period not to exceed five years.

(Ord. No. 23-15, § 2(86.120), 10-12-2015)

Sec. 86.125. Remedies not exclusive.

The remedies provided in this chapter are cumulative and not mutually exclusive and are in addition to any other right, remedies, and penalties available to the City under any other provision of law.

(Ord. No. 23-15, § 2(86.125), 10-12-2015)

Sec. 86.130. Violations.

Violation of any of the provisions of this chapter is an infraction. Each day that a violation continues shall constitute a separate infraction.

(Ord. No. 23-15, § 2(86.130), 10-12-2015)

Sec. 86.135. Emergencies.

Where the Director determines that an emergency exists, the Director is empowered to act with all necessary speed to address the emergency situation, including suspension or waiver of permit requirements when necessary to eliminate an imminent hazard to public health, safety or welfare. Compliance with the provisions of this chapter may not be required where strict compliance with the provisions would impair the ability of the Director to address an imminent threat to public health, safety or property. Risk trees ~~that~~ are not in danger of imminent failure and do not constitute an emergency.

(Ord. No. 23-15, § 2(86.135), 10-12-2015)

~~CHAPTER 86. TREES AND SHRUBS~~ RESERVED

CHAPTER 87. OFF-STREET PARKING FACILITIES

Sec. 87.010. Initiation of off-street parking ~~district~~ facilities.

It shall be the duty of the City Manager to advise the Council of the necessity and expediency for the establishment of motor vehicle off-street parking facilities, and whenever the Council shall intend to establish such facilities, it shall by resolution declare such intention. The Council shall require the City Manager to file with the City Recorder a report which shall contain, when applicable, the following information:

(a) A map or plat showing the general nature, location, and extent of the proposed off-street parking facilities and the land to be assessed for the payment of the cost thereof.

(b) Plans, specifications and estimates of the work to be done.

(c) An estimate of the probable cost of the improvement as those costs are defined in ~~section~~ SRC 87.060.

(d) An estimate of the unit cost of the improvement to the specially benefited properties.

(e) A recommendation as to the method of assessment to be used to arrive at a fair apportionment of the whole or a portion of the cost of the improvement to the properties specially benefited.

(f) The description of each lot, parcel of land or portion thereof to be specially benefited by said off-street parking facilities, with the names of the record owners thereof and when readily available the names of the contract purchasers thereof.

(Prior Code, § 87.010; Ord. No. 9-72; Ord. No. 51-96)

Sec. 87.020. Approval of report.

After the City Manager's report shall have been filed with the City Recorder, the Council may approve the report, modify the report and approve it as modified, require the City Manager to supply additional or different information for the improvement, or abandon the improvement. The declaration of intention to make the improvement and the approval of the report therefor, may be done at one session of the Council and may be included in one resolution.

(Prior Code, § 87.020; Ord. No. 9-72; Ord. No. 51-96)

Sec. 87.030. Notice of hearing on improvement.

The resolution whereby the Council declares its intention to establish off-street parking facilities shall fix a time and place at which the Council will meet and hear objections or protest against said improvement, the cost thereof, or a part of such cost. The City Recorder shall give notice of such hearing and such hearing may be continued to a later meeting of the Council, either regular, special or adjourned. The notice shall be given by the Recorder by publishing same in some daily newspaper published in the City ~~of Salem, Oregon~~ not less than ten days prior to the date of the hearing. A copy of the notice shall also be mailed to the record owner of each parcel of real property within the boundaries proposed to be assessed, at the address of the record owner as contained in the assessment records in the office of the assessor of the County. In the event there is a purchaser under a recorded land sale contract, the land sale contract purchaser shall be deemed to be the owner. The notice shall contain the following information:

(a) That the report of the City Manager is on file in the office of the City Recorder and is subject to public examination.

(b) That the Council will hold a public hearing on the proposed off-street parking facility improvement on a specified date.

(c) That a description of the property to be specially benefited by the improvement, the owners of the property and the City Manager's estimate of the unit cost of the improvement to the property to be specially benefited, and the total cost of the improvement to be paid for by special assessments to benefited properties is on file and subject to public inspection in the office of the City Recorder.

(Prior Code, § 87.030; Ord. No. 9-72; Ord. No. 51-96)

Sec. 87.040. Council determination.

After the conclusion of the hearing, the Council shall determine whether to proceed with the proposed improvement, and the Council may proceed with the improvement not withstanding objections and remonstrances thereto. If after the hearing the Council determines to proceed, it may at its discretion modify the improvement or the limits of the proposed improvement, and at the same time the Council shall determine whether or not the improvement shall be made by the City in its corporate capacity, using its own forces for that purpose, or whether the making of the improvement shall be let out on contract after competitive bids are received.

(Prior Code, § 87.040; Ord. No. 9-72; Ord. No. 51-96)

Sec. 87.050. Bids and contract.

In case the Council shall determine to let the improvement out on contract, the City Recorder shall give notice by publication for not less than five successive days in a daily newspaper published in the City ~~of Salem, Oregon~~, which notice shall invite bids for the making of the improvement. After the successful bidder has been determined, the Mayor and Recorder shall, on behalf of the City, sign the contract between the City and the contractor. The right to the City shall be reserved to reject any or all bids or accept any bid in the best interest of the City.

(Prior Code, § 87.050; Ord. No. 9-72)

Sec. 87.060. Assessment of cost generally.

In case the Council determines to proceed with the off-street parking facilities wholly or partly at the expense of the benefited property after the hearing has been held as in SRC 87.030 ~~provided~~, the Council may, either before or after completion of the work of said improvement, assess upon each lot, or part thereof or parcel of land benefited by said improvement, its proportionate share of the cost of such improvement. For the purposes of this section, cost of improvement shall include payment to the contractor, if said improvement ~~be~~ is done by and through a contractor, and all City labor, material, supplies, engineering, architect fees, equipment rental including rental for use of city-owned machinery, preparation of preliminary plans, specifications, and estimates, cost of acquiring descriptions of property, cost of acquisition of real property, advertising and other costs incurred by the City in making the improvement in its corporate capacity or having the work done by and through a contractor, together with a sum equal to ten percent of said cost of improvement to cover supervision, clerical, legal, administrative, interest during construction and miscellaneous or incidental expenses. Cost of improvement may be based or figured upon an estimated cost where the Council determines to assess before completion of the work.

(Prior Code, § 87.060; Ord. No. 9-72; Ord. No. 51-96)

Sec. 87.070. Notice to property owners of proposed assessment.

Before levying any assessment for off-street parking facilities, the City Recorder shall cause notice to be given to the affected property owners in the same manner as provided for street, sewer, and water improvements in SRC chapter 21 ~~of this Code~~.

(Prior Code, § 87.070; Ord. No. 9-72)

Sec. 87.080. Assessment ordinance.

After the public hearing on the proposed improvement and after the Council has determined to proceed with the improvement, and after giving notice of proposed assessment as provided in SRC 87.070, the Council may pass an ordinance assessing the various lots, parcels of land, or part thereof, to be specially benefited, with their apportioned share of the cost of the improvement, but the passage of the assessment ordinance may be delayed until the contract for the work is let, or until the improvement is completed and the total cost thereof is determined.

(Prior Code, § 87.080; Ord. No. 9-72)

Sec. 87.090. Method of assessment and alternative methods of financing.

In financing off-street parking facilities, the City may use any of the methods set forth in ORS 223.825. The Council in adopting a method of assessment may:

(a) Use a just and reasonable method of determining the extent of an improvement consistent with the benefits derived.

(b) Use a method of apportioning the sum to be assessed as is just and reasonable between the properties determined to be specially benefited.

(c) Authorize payment by the City of all, or part, of the cost of the improvement.

(Prior Code, § 87.090; Ord. No. 9-72)

Sec. 87.100. Appeals.

A person aggrieved by the assessment made under this chapter may, within 20 days from the passage of the ordinance levying the assessment by the Council, appeal to the ~~circuit court of the state for~~ Marion County Circuit Court~~,~~. The appeal, requirements, and formality thereof shall be heard, governed, and determined, and the judgment rendered and enforced in the manner provided for appeals from assessments contained in ORS ch. 223 and any amendments thereto. The results of the appeal shall be a final and conclusive determination of the matter of the assessment, except with respect to the City's right of reassessment as provided in this chapter.

(Prior Code, § 87.100; Ord. No. 9-72)

Sec. 87.110. Assessment procedures.

All applicable provisions of Title II of this Code relating to general assessment procedures, separation, and correction of assessments, collection of assessments and lien foreclosure shall apply to assessments levied for off-street parking facilities under the provisions of this chapter.

(Prior Code, § 87.110; Ord. No. 9-72)

Sec. 87.120. Deficit ordinance.

Where an assessment shall have been made before the completion of any parking facility improvement and the actual cost ascertained and it is found the sums assessed therefor upon any lot or parts thereof is ~~(are)~~ not sufficient to defray the cost thereof, the Council shall then ascertain the deficit and declare the same by ordinance. Once so declared, the Finance ~~Director~~ Officer shall enter the sum of the deficit in the docket of city liens, in a column reserved for that purpose in the original entry, with the date thereof, and such deficit shall thereafter be a lien upon such lot or part thereof, in like manner and with like effect as in the case of the sum originally assessed, and shall also be payable and may be collected in like manner and with like effect as in the case of such sum so assessed; provided, however, before any such deficit ordinance is passed the Council shall hold a hearing to consider any objections thereto. Notice of such hearing shall be given as provided in SRC 87.070.

(Prior Code, § 87.120; Ord. No. 9-72)

Sec. 87.130. Overplus ordinance.

Where an assessment shall have been made before the completion of any parking facility improvement and the actual cost ascertained, and it is found that the sum assessed therefor upon any lot or part thereof is more than sufficient to defray the cost thereof, the Council shall ascertain and declare the surplus in like manner as in the case of a deficit. When so declared, it shall be entered as in the case of a deficit in the docket of city liens. Thereafter, the person who paid said surplus, or his or her assigns or legal representative, shall be entitled to repayment of the same by the Finance ~~Director~~ Officer.

(Prior Code, § 87.130; Ord. No. 9-72)

Sec. 87.140. Abandonment of proceedings.

The Council shall have full power and authority to abandon and rescind proceedings for improvement made under this chapter at any time prior to the final completion of the improvements. If liens have been assessed on property under the procedure herein, they shall be canceled, and payments made on the assessments shall be refunded to the person paying the same, his or her assigns or legal representative.

(Prior Code, § 87.140; Ord. No. 9-72; Ord. No. 51-96)

Sec. 87.150. Curative provisions.

No parking facility improvement assessment shall be rendered invalid by reason of a failure of the City Manager's report to contain all of the information required by SRC 87.010 or by reason of a failure to have all of the information required to be in the improvement ordinance, the assessment ordinance, the lien docket or notices required to be published and mailed, nor by the failure to list the name of, or mail notice to, the record owner of property as required by this chapter, or by reason of any other error, mistake, delay, omission, irregularity, or other act, jurisdictional or otherwise, in any of the proceedings or steps specified, unless it appears that the assessment is unfair or unjust in its effect upon the person complaining. The Council shall have the power and authority to remedy and correct all matters by suitable action and proceedings.

(Prior Code, § 87.150; Ord. No. 9-72; Ord. No. 51-96)

Sec. 87.160. Reassessment.

Whenever an assessment, deficit assessment, or reassessment for an improvement which has been made by the City has been, or shall be, set aside, annulled, declared, or rendered void, or its enforcement restrained by a court of this State, or a federal court having jurisdiction thereof, or when the Council shall be in doubt as to the validity of the assessment, deficit assessment or reassessment, or a part thereof, ~~then~~ the Council may make a reassessment in the matter provided by the laws of this State.

(Prior Code, § 87.160; Ord. No. 9-72)

Sec. 87.170. Application to new or existing facility.

The procedures described in this chapter shall be applicable to either the development by the City of off-street parking facilities or to the purchase of or financing of existing off-street parking facilities.

(Prior Code, § 87.170; Ord. No. 9-72)

CHAPTERS 88, 89. RESERVED

Title VIII

OFFENSES

CHAPTER 90. ALCOHOLIC BEVERAGES*

***State law reference—**Liquor Control Act, ORS 471.001 et seq.; authority of city to adopt nuisance regulations, ORS 471.164.

Sec. 90.010. Reserved.

Sec. 90.015. Liquor license applications; fees.

(a) Application for liquor licenses required pursuant to the Oregon Liquor Control Act, ORS 471.166, shall be filed with the permit application center. Each application shall be accompanied with the applicable fee as prescribed by resolution of the ~~common~~ Council.

(b) Applications shall be processed in accordance with administrative procedures promulgated by the City Manager and approved by the ~~common~~ Council.

(Prior Code, § 90.015; Ord. No. 78-84; Ord. No. 51-91)

Sec. 90.020. Consumption, sale, prohibited in certain places.

(a) It shall be unlawful for any person to drink alcoholic liquor upon any public street, alley or public way, save and except those licensed premises who have obtained the appropriate permit from the City ~~of Salem~~.

(b) It shall be unlawful for any person to sell or serve alcoholic liquor to any person who is standing or loitering in, on, around or about any stairway, aisle, hallway or public place of business in the City, and it shall be unlawful for any person, while drinking alcoholic liquor, to stand or loiter in, on, around or about any stairway, aisle, hallway or any public place of business in the City, except as permitted by ORS 471.402.

(c) The term "public place of business," as used in this section, ~~shall~~ means any place of business open to the public or to which the public is invited, with the exception of those places for which a license has been issued by the Liquor Control Commission for the serving of alcoholic liquor.

(d) The term “public way,” as used in this section, ~~shall~~ means any public area intended, designed, or used for vehicular or pedestrian use including any landscaping strip or median separating a sidewalk from a lane of vehicular travel.

(Prior Code, § 90.020; Ord. No. 4364; Ord. No. 5557; Ord. No. 76-76)

Secs. 90.030—90.200. Reserved.

Sec. 90.210. Display of empty containers.

It shall be unlawful for any licensee of the Liquor Control Commission for any licensed premises within the City to permit empty or discarded containers of alcoholic liquor to be in public view on the exterior of the licensed premises or in parking areas maintained in connection with such premises.

(Prior Code, § 90.210; Ord. No. 4364)

Secs. 90.220—90.980. Reserved.

Sec. 90.990. Violations.

(a) Violation of SRC 90.210 is an infraction subject to a forfeiture of not more than $100.00.

(b) Violation of any other provision of this chapter is a misdemeanor.

(Prior Code, § 90.990; Ord. No. 193-79; Ord. No. 63-96)

CHAPTER 91. RESERVED

CHAPTER 92. GAMBLING*

***State law reference—**Gambling, ORS 167.108 et seq.

Sec. 92.005. ~~Adoption of state law~~ Reserved.

~~(a) ORS 167.117 (1995), 167.122 (1971), 167.132 (1971), 167.142 (1971), 167.147 (1995), and 167.153 (1971), are hereby adopted by reference and made a part of this chapter.~~

~~(b) All acts which are made unlawful by the above-mentioned sections of ORS shall be considered as offenses against the city when committed within its boundaries and shall be punished as provided in ORS 161.615(1) (1971) and 161.635(1)(a) (1993).~~

~~(c) Money found in any gambling device or used in gambling or other prohibited conduct under this chapter shall be confiscated and disposed of as provided in SRC 2.566.~~

~~(Prior Code, § 92.005; Ord. No. 80-73; Ord. No. 66-88; Ord. No. 46-94; Ord. No. 30-97)~~

Sec. 92.007. Social games permitted.

Social games as defined in ORS 167.117 are hereby ~~totally~~ prohibited in the City ~~of Salem~~, except that private homes, charitable, fraternal, and religious organizations may engage in social games where no house player, house bank, or house odds exist and there is no house income from the operation of the social game.

(Prior Code, § 92.007; Ord. No. 62-74)

State law reference—Definition of social games, ORS 167.117; authorization for social games required, ORS 167.121.

Sec. 92.010. Reserved.

Sec. 92.015. Coin-in-the-slot device defined.

As used in this chapter, the term "coin-in-the-slot device" means any mechanically or electrically operated game or device actuated by deposit of coin, currency, or some token for which some consideration is given, the play or use of which involves either an element of skill or an element of chance, or both; provided, however, that such definition shall not be deemed to include any of the following specified devices:

(a) Devices which dispense or vend music or some commodity or service for a fixed price per unit; which involve no element of contest, chance, or skill; and which accord no profit, prize, or bonus to the user;

(b) Amusement devices, including, but not limited to, ~~other than~~ those devices commonly known as "pinball," "digger," or "grabber" games, if:

(1) The play or use of such amusement device returns nothing of any value to the player other than extended play or replay of the device;

(2) No prize, profit, or bonus other than extended play or replay of the device is awarded for successful play of the device;

(3) The device is so designed and constructed that any extended play or replay of the device awarded for successful play cannot be readily cleared from the device except by further play of the device; and

(4) The device is so designed and constructed that insertion of additional coins can in no way alter the odds or chance of successful play.

(Prior Code, § 92.015; Ord. No. 80-73; Ord. No. 177-73)

State law reference—Definition of vending machine, ORS 624.310(15); definition of slot machine, ORS 167.117(21).

Sec. 92.017. Promoting gambling at a coin-in-the-slot device.

It shall be unlawful for any person to award or offer or advertise the award of any kind of value, other than extended play or replay, for successful play at a coin-in-the-slot device.

(Prior Code, § 92.017; Ord. No. 177-73)

Sec. 92.020. Reserved.

Sec. 92.025. Coin-in-the-slot devices declared public nuisances; possession and use unlawful.

The Council hereby finds, determines, and declares that gambling devices and coin-in-the-slot devices are a public nuisance. Notwithstanding any other provision of this chapter, ~~including any provision of ORS as adopted by SRC 92.005,~~ it shall be unlawful for any person to knowingly:

(a) Own or have in his or her possession any device declared to be a public nuisance pursuant to this section;

(b) Keep, store, or display any device declared to be a public nuisance pursuant to this section in any place or premises of which he or she is the owner or person entitled to possession;

(c) Permit any other person to keep, store, or display any device declared to be a public nuisance pursuant to this section in any place or premises of which he or she is the owner or person entitled to possession;

(d) Solicit, entice, or permit any person to play at or use any device declared to be a public nuisance pursuant to this section which is located at any place or premises within the City whether acting as owner, person entitled to possession, or employee or agent of the owner or person entitled to possession of such place or premises;

(e) Manufacture, sell, lease, rent, give, repair, transport, or store, whether for himself or herself or for another, any device declared to be a public nuisance pursuant to this section.

(Prior Code, § 92.025; Ord. No. 80-73; Ord. No. 51-96)

State law reference—Gambling devices declared public nuisances, ORS 167.162.

Sec. 92.030. Reserved.

Sec. 92.035. Coin-in-the-slot devices, seizure, and destruction.

(a) Except as provided in SRC 92.045, it shall be the duty of the Chief of Police to summarily seize any device declared to be a nuisance pursuant to SRC 92.025 and hold the same subject to the order of the Municipal Court.

(b) Whenever it shall appear to the municipal judge that any device seized pursuant to subsection (a) of this section was kept or used in connection with a violation of SRC 92.025 which has resulted in a judgment or conviction ~~therefore~~ thereof, ~~he~~ the judge may include in ~~his~~ the judgment an order forfeiting such device and commanding its destruction by the Chief of Police, which order may be in addition to any other sentence imposed by ~~him~~ the judge pursuant to this Code.

(c) The Chief of Police, upon receipt of a certified true copy of a judgment ordering forfeiture and destruction pursuant to subsection (b) of this section, shall hold the device subject of such order for a period of 60 days from the entry of the judgment; and shall, unless otherwise ordered by a court of competent jurisdiction, as soon as is possible thereafter destroy the device in any manner which will render it permanently unusable for the purposes for which it was intended. Upon completion of such destruction, ~~he~~ the Chief of Police shall then make return to the Municipal Court certifying that he or she has complied with the Court's order.

(Prior Code, § 92.035; Ord. No. 80-73)

Sec. 92.040. Reserved.

Sec. 92.045. Exceptions to nuisance.

(a) Notwithstanding the provisions of SRC 92.025 and 92.035, the manufacture, sale, lease, rental, gift, repair, transportation, storage, ownership, or possession of coin-in-the-slot devices shall not be unlawful and such devices shall not be subject to forfeiture and destruction where such devices are:

(1) Designed and manufactured for amusement purposes only;

(2) Licensed by the State ~~of Oregon~~; and

(3) Used only outside the corporate limits of the City, and are not displayed publicly within the City.

(b) Exception under this ~~sub~~section shall be an affirmative defense to any prosecution brought under SRC 92.025, and shall not relieve the Chief of Police of the responsibility to seize any such machines where he or she has reasonable grounds to believe that they were being kept or used in connection with a violation of SRC 92.025.

(Prior Code, § 92.045; Ord. No. 80-73)

Secs. 92.050—92.980. Reserved.

Sec. 92.990. Violations.

Violation of any of the provisions of this chapter is a misdemeanor.

(Prior Code, § 92.990; Ord. No. 193-79)

CHAPTER 93. NOISE*

***State law reference—**Adoption of statewide standards, ORS 467.010; local regulation of noise, ORS 467.100; motor vehicle noise standards, ORS 468A.360; train warning signals, ORS 824.208.

Sec. 93.001. Declaration of purpose.

It is the intent of the ~~City~~ Council to minimize the exposure of citizens to the potential negative physiological and psychological effects of excessive noise and to protect, promote and preserve the public health, safety and welfare. It is the intent of the ~~City~~ Council to control the level of noise in a manner that promotes the use, value and enjoyment of property, the conduct of business, and sleep and repose and that reduces unnecessary and excessive sound in the environment.

(Prior Code, § 93.001; Ord. No. 166-78; Ord. No. 37-10)

Sec. 93.005. Definitions.

~~Except where the context specifically requires otherwise, as used in this Chapter, the following words and phrases mean:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Domestic power equipment* means power tools or equipment, including, but not limited to, power hand tools, lawn mowers, power blowers, garden equipment and snow removal equipment, used for home or building repair, maintenance, landscaping, alteration or home manual arts projects.

~~(b)~~ *Dwelling unit* means a single-family dwelling, duplex, triplex, multifamily dwelling, apartment, condominium or mobile home.

~~(c)~~*Dynamic braking device* means a braking device used primarily on trucks and busses to convert a motor from an internal combustion engine to an air compressor for the purpose of vehicle braking without the use of wheel brakes.

~~(d)~~ *Motor vehicle* means a vehicle that is self-propelled or designed for self-propulsion.

~~(e)~~*Noise disturbance* means any sound that:

(a) Injures or endangers the health or safety of a human;

(b) Annoys or disturbs a reasonable person of normal sensitivities; or

(c) Injures or endangers personal or real property.

~~(f)~~*Plainly audible* means the listener can clearly hear the sound produced by a sound source with unaided hearing faculties. Sounds which may be plainly audible include, but are not limited to, musical rhythms, engine noises, spoken words or phrases even though not clearly discernable, and other vocal sounds.

(Prior Code, § 93.005; Ord. No. 179-82; Ord. No. 53-97; Ord. No. 91-99; Ord. No. 23–2002; Ord. No. 57-05; Ord. No. 31-06; Ord. No. 37-10)

Sec. 93.010. Noise disturbance prohibited.

It shall be unlawful for any person intentionally, knowingly, or recklessly to create, to permit, to continue, or to assist in the creation or continuance of any noise disturbance.

(Prior Code, § 93.010; Ord. No. 3408; Ord. No. 80-74; Ord. No. 179-82; Ord. No. 55-84; Ord. No. 20-2000; Ord. No. 23-2002; Ord. No. 37-10)

Sec. 93.020. Specific noise disturbances.

Except as provided in SRC 93.030, the following are declared to be noise disturbances per se. This section shall not be deemed to limit noise disturbances for the purposes of SRC 93.010 to those enumerated herein.

(a) *Sound producing, amplifying or reproducing equipment.* It shall be unlawful to operate or use, or to permit the operation or use of, any device that produces or amplifies sound, including, but not limited to,

musical instruments, radios, televisions, stereos, compact disc players, tape recorders, amplifiers and loudspeakers, in such a manner that the sound produced thereby is plainly audible:

(1) Within any dwelling unit, church, temple, synagogue, business, day care center or school, other than the source of the sound; or

(2) On public property or a public right-of-way 150 feet or more from such device, except as specifically authorized in writing by the city, county, state or federal government that owns or controls such property.

(b) *Dogs.* It shall be unlawful to keep, or to permit the keeping of, any dog or dogs that create any bark, cry, or other sound on a frequent, repetitive or continuous basis for ten minutes or longer.

(c) *Domestic power equipment.* It shall be unlawful to operate, or to permit the operation of, any domestic power equipment between the hours of 10:00 p.m. and 7:00 a.m. of the following day.

(d) *Construction or repair of buildings, streets, sidewalks, etc.* It shall be unlawful to construct, demolish, alter, excavate, rehabilitate or repair any building, street, sidewalk, driveway, sewer, or utility line between the hours of 10:00 p.m. and 7:00 a.m. of the following day.

(e) *Dynamic braking devices.* It shall be unlawful to use any dynamic braking device on any motor vehicle, except to avoid imminent danger to persons or property.

(f) *Idling engines on motor vehicles.* It shall be unlawful to operate any idling engine for more than ten consecutive minutes in a manner that is plainly audible within any dwelling unit between the hours of 10:00 p.m. and 7:00 a.m. of the following day.

(g) *Motor vehicle repair and testing.* It shall be unlawful to repair or test any motor vehicle in a manner that is plainly audible within any dwelling unit between the hours of 10:00 p.m. and 7:00 a.m. of the following day.

(h) *Steam whistles.* It shall be unlawful to blow a steam whistle attached to a stationary boiler, except to give notice of the time to begin or stop work.

(i) *Sirens or other aural warning devices.* It shall be unlawful to sound a stationary siren or other aural warning device, except where necessary to warn of fire or imminent danger to persons or property.

(j) *Pile drivers, steam shovels, pneumatic hammers, etc.* It shall be unlawful to operate, or permit the operation of, any pile driver, steam shovel, pneumatic hammer, derrick, hoist, or any other similar equipment between the hours of 10:00 p.m. and 7:00 a.m. of the following day.

(k) *Other.* It shall be unlawful to operate, to permit, or continue the operation of, any sound source not otherwise enumerated in this section in a manner that exceeds the maximum permissible sound levels set forth in Table 51-1 of SRC chapter 51.

(Prior Code, § 93.020; Ord. No. 37-10)

Sec. 93.030. Exemptions.

Notwithstanding SRC 93.010 and ~~SRC~~ 93.020, the following sounds shall not be deemed noise disturbances:

(a) Sounds made by work necessary to restore property to a safe condition following a natural or other disaster, or to protect persons or property from exposure to imminent danger.

(b) Sounds made by burglar or fire alarms operating repetitively or continuously for not more than ten minutes.

(c) Sounds made by an emergency vehicle, as defined in ORS 801.260, when responding to or from an emergency or when pursuing an actual or suspected violator of the law.

(d) Sounds made by the use of land and buildings as a farm for profit through the raising, harvesting, and selling of crops; through the feeding, breeding, management, and selling of livestock, poultry, fur-bearing animals or honeybees or the products thereof; through dairying and the selling of dairy products; or through engaging in any other agricultural or horticultural activity.

(e) Sounds produced by the City, Marion County, Polk County, the State ~~of Oregon~~ or their employees, agents, contractors or their subcontractors in the maintenance, construction or repair of public improvements.

(f) Sounds produced pursuant to a variance granted by the Oregon Environmental Quality Commission.

(g) Sounds produced pursuant to and in conformance with a valid permit issued under SRC 30.500 ~~Chapter 42~~ or SRC chapter 51.

(h) Sounds produced by sound amplifying equipment at athletic events sponsored by Salem–Keizer School District 24J, an educational institution registered with the Oregon Department of Education, an educational institution accredited by an accrediting agency recognized by the United States Secretary of Education, or the City ~~of Salem~~.

(i) Sounds made by motor vehicle exhaust systems that comply with the provisions of ORS 815.250, unless the sounds otherwise violate SRC 93.020(f), (g).

(j) Sounds produced by a public utility as defined in SRC 35.010, a public utility as defined in ORS 757.005, a current franchisee of the City or their employees, contractors or subcontractors in the construction, maintenance or repair of their respective facilities.

(Prior Code, § 93.030; Ord. No. 179-82; Ord. No. 12-84; Ord. No. 55-84; Ord. No. 10-85; Ord. No. 46-94; Ord. No. 23-2002; Ord. No. 31-05; Ord. No. 37-10)

Secs. 93.040—93.980. Reserved.

Sec. 93.990. Violations.

(a) Except as provided in subsection (b) of this section, violation of SRC 93.010 or ~~SRC~~ 93.020 is an infraction. In addition to any other penalty provided by law, a person adjudged responsible for violation of this chapter may be ordered by the Court to correct the violation.

(b) A second or subsequent violation of SRC 93.010 or ~~SRC~~ 93.020 within six months of having been convicted of a violation of SRC 93.010 or ~~SRC~~ 93.020 is a misdemeanor.

(Prior Code, § 93.990; Ord. No. 193-79; Ord. No. 179-82; Ord. No. 47-97; Ord. No. 20-2000; Ord. No. 23-2002; Ord. No. 57-05; Ord. No. 37-10)

CHAPTER 94. OFFENSES IN PARKS

Sec. 94.010. Definitions.

~~Unless the context specifically requires otherwise, as used in this Chapter, the following words and phrases mean:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Alcoholic beverage* means any liquid or solid containing more than three percent alcohol by volume and capable of being consumed by a human being.

~~(b) *Director* means the City Manager, or the department director~~ head ~~charged by the City Manager with the administration and enforcement of this chapter, or that department head's designee.~~

~~(c)~~*Park* means any public grounds owned, supervised, or controlled by the City, whether within or outside of the corporate limits of the City. As used in this chapter, the ~~word~~ term "park" ~~shall~~ also means the grounds of the State Capitol, including Wilson Park, Capitol Park, and other parks and grounds in the Capitol area as defined in ORS 276.010, save and except that property used for residential purposes, provided that the Director of the Department of General Services of the State ~~of Oregon~~ has the authority to issue permits and to establish rules and regulations for such areas.

~~(d)~~ *Sports field* means any publicly-owned field, stadium, or grounds designed and used for sports, including, but not limited to, baseball, softball, soccer, football, and basketball, and including areas designated for spectators to attend the sport.

(Prior Code, § 94.010; Ord. No. 4685; Ord. No. 19-81; Ord. No. 43-82; Ord. No. 30-97; Ord. No. 57-05; Ord. No. 100-07; Ord. No. 42-09)

Sec. 94.020. Animals prohibited; exceptions.

(a) It shall be unlawful for any person to permit any domestic or other animal, excepting dogs in the company and under the control of such person, to be within, to enter upon, or to go at large in any park.

(b) It shall be unlawful for any person to permit any dog to be within, or to enter upon, any park unless such dog is kept on a leash held by the person at all times, except within that portion of the park posted by the Director as a "dog exercise area." This subsection does not apply to public safety officers in the official performance of their duties.

(c) Notwithstanding subsections (a) and (b) of this section, it shall be unlawful for any person to permit any dog to enter upon, or to be within, any portion of a park posted by the Director as an area prohibited to dogs.

(d) It shall be unlawful for any person who permits any domestic or other animal, including a dog, to enter upon or go at large in any park, to fail to immediately remove any and all feces deposited by such animal upon any park property.

(e) Notwithstanding any other provision of this section, authority is hereby granted to the Director to issue permits, for use of the parks, or portions thereof, for animals in conjunction with special events, services or uses under conditions to be determined by the Director.

(Prior Code, § 94.020; Ord. No. 4685; Ord. No. 104-73; Ord. No. 45-89; Ord. No. 1-94; Ord. No. 30-97; Ord. No. 57-05)

Sec. 94.030. Picking flowers, injuring trees, buildings, fences, etc.

(a) It shall be unlawful for any person to pick any flowers, foliage, or fruit, in any park without first obtaining a permit issued by the Director.

(b) It shall be unlawful for any person to willfully cut, break, dig up, or in any way to mutilate, injure or destroy any tree, shrub, plant, grass, turf, railing, seat, fence, structure, building, or any thing in any park, or to cut, carve, paint, mark, or paste on any tree, stone, fence, wall, building, or other structure in any park with any bill, poster, advertisement, or inscription whatsoever.

(Prior Code, § 94.030; Ord. No. 4685; Ord. No. 57-05)

Sec. 94.040. Reserved.

Sec. 94.050. Discharge of fireworks.

It shall be unlawful for any person to discharge, set off, or explode any firecracker, torpedo, rocket, or other fireworks of any kind in any park, without first obtaining a permit under SRC 58.315 and written permission from the Director. The Director shall not grant any permit for the explosion of fireworks, except for public firework displays that are permitted and are under the jurisdiction of the Chief of the Fire Department.

(Prior Code, § 94.050; Ord. No. 4685; Ord. No. 30-97; Ord. No. 57-05)

Sec. 94.060. Kindling fires.

It shall be unlawful for any person to light, kindle, or use any fire in any park except with permission from the Director, but this provision shall not apply to fires kindled or set in fireplaces or stoves provided for that purpose in any park or in a portable grill.

(Prior Code, § 94.060; Ord. No. 4685; Ord. No. 30-97; Ord. No. 57-05)

Sec. 94.070. Throwing, batting, etc., missiles.

No stone, ball, or other missile shall be thrown, batted, hit, or projected, or rolled from, into, within, or upon any park, except in such place as may be designated for a specific activity in which such ball or other object customarily is used.

(Prior Code, § 94.070; Ord. No. 4685)

Secs. 94.080, 94.090. Reserved.

Sec. 94.100. Sales and solicitations.

It shall be unlawful for any person to sell or expose for sale any merchandise, article, or thing, or to solicit any collection, donation, or charge in any park, unless the person first obtains a permit therefor from the Director. The requirements of this section are in addition to the requirements of any other applicable ordinance pertaining to the sale of any merchandise or any solicitation or collection in the City.

(Prior Code, § 94.100; Ord. No. 4685; Ord. No. 30-97; Ord. No. 57-05)

Sec. 94.110. Bathing.

No person shall bathe in any public body of water in or adjacent to any park, except in such places and subject to such regulations as the Director may, from time to time, specially designate for that purpose.

(Prior Code, § 94.110; Ord. No. 4685; Ord. No. 30-97; Ord. No. 42-09)

Sec. 94.120. Disturbing, injuring, etc., animals and birds.

(a) It shall be unlawful for any person to disturb, injure, damage, or kill any bird, bird nest, egg, or any squirrel or other animal within any park.

(b) Notwithstanding any other provision of this section, authority is hereby granted to the Director to issue permits to state agencies and educational institutions to conduct field experiments, trapping, and wildlife relocation within any park, under conditions to be determined by the Director.

(Prior Code, § 94.120; Ord. No. 4685; Ord. No. 57-05)

Sec. 94.130. Excavating, blasting, etc.

No person shall dig up or remove any dirt, stone, rock, or other thing whatsoever, make any excavation, quarry any stone, or lay or set off any blast, or cause or assist in doing any of such things within any park, without a permit from the Director.

(Prior Code, § 94.130; Ord. No. 4685; Ord. No. 30-97; Ord. No. 42-09)

Sec. 94.140. Deposit of rubbish and broken glass.

It shall be unlawful for any person to throw, leave, or deposit any bottle, broken glass, ashes, coals, burnt materials or refuse, wastepaper or other rubbish, or break any glass in any park, except at such places or in such receptacles as may be designated or provided by the Director.

(Prior Code, § 94.140; Ord. No. 4685; Ord. No. 30-97; Ord. No. 42-09)

Sec. 94.150. Deposit of junk.

It shall be unlawful for any person to leave or deposit any automobile body, automobile part, junk, metal tank, or like material in any park.

(Prior Code, § 94.150; Ord. No. 4685)

Sec. 94.160. Use of motor vehicles.

It shall be unlawful for any person to drive or take any automobile or other motor vehicle into or upon any park except upon such driveways and roadways as may be provided from time to time and as may be designated for that purpose, and then only when such automobile or other vehicle is operated or driven pursuant to such rules and regulations as the Director may promulgate.

(Prior Code, § 94.160; Ord. No. 4685; Ord. No. 30-97; Ord. No. 57-05)

Sec. 94.170. Speed limit.

It shall be unlawful for any person to drive or operate any motor vehicle upon any driveway or roadway within any park at a speed in excess of five miles per hour unless a higher rate or speed is permitted, as indicated by signs posted by the Director.

(Prior Code, § 94.170; Ord. No. 5588; Ord. No. 30-97; Ord. No. 57-05)

Sec. 94.180. Parking regulations in areas where fee charged.

(a) It shall be unlawful for anyone to park a motor vehicle in any park where a parking fee is charged, unless the motor vehicle has thereon under the windshield wiper a card issued by the Director showing the date upon which such motor vehicle may be parked, which shall be the date shown on such card.

(b) In lieu of a card required by subsection (a) of this section, it shall be lawful for a motor vehicle to be in a park in which a parking fee is charged if it has attached to the windshield wiper a valid temporary pass issued by the Director showing the date on which such pass is valid and showing the date on which such pass shall be returned to the Director.

(c) All cards entitling motor vehicles to park in any park wherein a parking fee is charged shall be surrendered to the Director when such motor vehicles leave the park area.

(Prior Code, § 94.180; Ord. No. 5588; Ord. No. 30-97; Ord. No. 57-05)

Sec. 94.190. Overnight use of parks.

(a) It shall be unlawful for any person to set up camp, tents or any temporary shelter or to use house trailers, recreational vehicles, campers, or automobiles for the purpose of overnight camping in any park between sunset and sunrise.

(b) Notwithstanding any other provision of this section, authority is hereby granted to the Director to issue overnight camping permits to groups, under conditions to be determined by the Director.

(Prior Code, § 94.190; Ord. No. 124-68; Ord. No. 6-80; Ord. No. 30-97; Ord. No. 57-05)

Sec. 94.195. Possession of alcoholic beverages in parks.

(a) It shall be unlawful for any person to possess an alcoholic beverage in any park, sports field, city-owned facility, or any event on property controlled by the City and requiring a permit from the Director, except as provided in subsection (b) of this section.

(b) Notwithstanding subsection (a) of this section, a person 21 years of age or older may possess an alcoholic beverage that is less than 14 percent of alcohol by volume in the following places and under the following circumstances:

(1) At Wallace Marine Softball Complex if the alcoholic beverage is purchased from a concessionaire that is operating pursuant to a permit issued by the Department of Community Services and licensed by the Oregon Liquor Control Commission; provided, however, that the person shall not remove the alcoholic beverage, or cause or permit the alcoholic beverage to be removed by any other person, from the Wallace Marine Softball Complex.

(2) At events authorized by the Director and conducted on city-owned premises, if the alcoholic beverage is purchased from a concessionaire that is operating pursuant to a permit issued by the City and licensed by the Oregon Liquor Control Commission; provided, however, that the person may not possess the alcoholic beverage on such premises, or cause or permit the alcoholic beverage to be possessed by any other person on such premises, more than one hour following closure of the event.

(3) As part of an event for which the Director has issued a permit for the consumption of alcohol pursuant to regulations adopted by the Director.

(4) At events at city-owned facilities, including, but not limited to, Deepwood Estate, Bush Art Barn, Bush House, the Riverfront Carousel, and A.C. Gilbert's Discovery Village, if such possession has been authorized by the Director or the City's authorized operational contractor of the facility.

(c) As used in this section, the terms "possession" and "to possess" means the physical possession of, or the exercise of dominion and control over, the alcoholic beverage; provided, however, that a person shall not be deemed to possess an alcoholic beverage if the beverage is in any bottle, can, or other receptacle that is unopened or where the seal has not been broken, and which is contained within a vehicle owned or controlled by the person.

(Prior Code, § 94.195; Ord. No. 21-78; Ord. No. 79-91; Ord. No. 79-94; Ord. No. 30-97; Ord. No. 57-05; Ord. No. 100-07; Ord. No. 42-09)

Sec. 94.200. Park operating policy.

(a) Except for unusual and unforeseen emergencies, City parks shall be open to the public every day of the year during designated hours. The Director may establish opening and closing hours for each individual park. The hours shall be posted in the park.

(b) The Director may, as part of a park use permit, allow the erection and maintenance of temporary signs in conjunction with park reservations, special events, services or uses under sign regulations promulgated by the Director.

(c) A park, or portion thereof, may be reserved for organized or group activities. Reservations shall be made through the Director on an approved application form. The Director may approve such application upon finding:

(1) That the proposed activity or use of the park will not unreasonably interfere with or detract from the general public enjoyment of the park;

(2) That the proposed activity and use will not unreasonably interfere or detract from the promotion of public health, welfare, safety, and recreation;

(3) That the proposed activity or use is not reasonably anticipated to incite violence, crime, or disorderly conduct;

(4) That the proposed activity will not entail unusual, extraordinary activity, or burdensome expense, or police operation by the City; and

(5) That the facilities desired have not been reserved for other use at the day and hour required in the application.

(d) The Director shall have the authority to regulate the activities in park areas when necessary to prevent congestion and to procure the maximum use and safety for the convenience of all. Visitors shall comply with any directions given to achieve this end. Failure to so comply with such regulations shall be considered a violation of this section.

(Prior Code, § 94.200; Ord. No. 30-97; Ord. No. 35-2002; Ord. No. 57-05; Ord. No. 4-12)

Sec. 94.210. Park exclusion.

(a) In addition to other measures provided in SRC 94.990, or other sections of the Salem Revised Code or any of the laws of the State ~~of Oregon~~, any person who, within any park, violates any provision of the Salem Revised Code or any non-felony criminal laws of the State ~~of Oregon~~ or any regulation duly made and issued by the Director may be excluded from any park for a period of 30 days, and any person who violates any felony law of the State ~~of Oregon~~ may be excluded from any or all parks for a period of 90 days.

(b) Written notice shall be given to any person excluded from any park. Such notice shall specify the reason for the exclusion, and the dates and places of exclusion. The notice shall prominently display warning of the consequences of failure to comply, right of appeal and opportunity to apply for temporary waiver from the effects of the notice. Exclusion shall commence immediately upon delivery of the notice to the excluded person.

(c) A person who has received written notice of exclusion and who violates the notice restrictions may be charged with trespass under SRC 95.550. In addition, the person may be excluded from any or all parks for an additional period of not more than 90 days.

(d) Any person receiving a second written notice of exclusion within six months of receiving another such notice may be excluded from any or all parks for a period of not more than 90 days.

(e) For the purposes of this section a person violates a provision of law if based on the evidence reason exists to believe that more likely than not an offense was committed and the person committed it.

(f) Persons with authority to enforce this section are any peace officer, any official or employee designated by the Director to enforce this section, and any individuals under contract with the City for park security services.

(g) The appeal provisions in SRC 95.770 apply to exclusion notices issued under this section.

(Prior Code, § 94.210; Ord. No. 9-93; Ord. No. 30-97; Ord. No. 31-2003; Ord. No. 57-05; Ord. No. 42-09)

Secs. 94.220—94.970. Reserved.

Sec. 94.980. Rules.

The Director shall adopt rules governing the issuance of permits. The Director may adopt such additional rules and regulations not inconsistent with the provisions of this chapter, that the Director determines to be required for the administration and enforcement of this chapter.

(Prior Code, § 94.980; Ord. No. 57-05)

Sec. 94.990. Violations.

(a) Violation of SRC ~~94.040, 94.080,~~ 94.120, or 94.195 is a misdemeanor.

(b) Violation of any other provision of this chapter is an infraction.

(Prior Code, § 94.990; Ord. No. 193-79; Ord. No. 108-81)

CHAPTER 95. MISCELLANEOUS OFFENSES

Sec. 95.010. Dropping articles from aircraft.

It shall be unlawful for any person to throw or drop any printed matter, goods, wares, merchandise, missile, or other article or thing from any aircraft in flight over the corporate limits of the City, over the municipal airport, or over any other area or grounds over which the City exercises police control. This section shall not be construed as prohibiting the use of airplane for crop dusting or for dusting or spraying in furtherance of insect and pest control~~; provided that a permit therefore is first obtained from the city administrator~~.

(Prior Code, § 95.010; Ord. No. 3817)

Sec. 95.020. Discharge of airguns prohibited.

(a) It shall be unlawful for any person to discharge any airgun within the corporate limits of the City.

(b) Notwithstanding subsection (a) of this section, it shall not be unlawful to discharge an airgun within the corporate limits of the City if:

(1) The person is discharging an airgun on a commercially operated shooting range, field, or other area designed and built exclusively for the use of airguns.

(2) The person is discharging an airgun while acting as a registered participant in an organized competition or tournament held within a park for which a community event permit has been issued pursuant to SRC chapter 104. As used in this ~~paragraph~~ subsection, the term "park" means any public grounds owned, supervised, or controlled by the City, whether within or outside of the corporate limits of the City.

(Prior Code, § 95.020; Ord. No. 4824; Ord. No. 19-12)

Sec. 95.025. Prohibiting sale of live animals.

It shall be unlawful for any person to display, sell, deliver, give away, or dispose in any other method a live animal on City property or the public right-of-way within the City ~~of Salem~~. Adoption events conducted or sponsored by a registered animal control agency, humane society, or animal shelter, if authorized by a duly issued right-of-way permit, are exempt.

(Prior Code, § 95.025; Ord. No. 10-14)

Sec. 95.030. Archery.

It shall be unlawful for any person to shoot an arrow with a metal point or head or to shoot an arrow or dart of any description with a long bow, gun, blowgun or any propelling device which has a pull exceeding ten pounds; provided, however, the provisions of this section shall not apply to the use of archery devices on ranges either in or out of doors, having a permit from the Chief of Police; provided, further, that this section shall not be construed as prohibiting the use of archery devices by an instructor or by pupils or students under supervision of an authorized officer or instructor of a public or parochial high school or institution of higher learning. Supervised archery competitions or tournaments may be held within the City under the auspices of such public or parochial schools, or other nonprofit sponsor provided that a permit therefor is first obtained from the Chief of Police. If such competition is to be held within a public park, a permit therefor shall also be obtained from the Director. Such a permit shall not be granted unless such officials are satisfied that the competition or tournament will be so supervised and conducted that the safety of the public and participants will be guarded; and, if sponsored by other than a public or parochial school, only upon presentation of proof of public liability insurance in the amount and coverage approved by the City's Risk Manager.

(Prior Code, § 95.030; Ord. No. 4824; Ord. No. 5726; Ord. No. 47-80; Ord. No. 101-94; Ord. No. 42-09)

~~Sec. 95.040. Assault and battery.~~

~~It shall be unlawful for any person, not being armed with a dangerous weapon, to assault or to commit any assault and battery upon another in the city.~~

~~(Prior Code, § 95.040; Ord. No. 3655)~~

Sec. 95.040. Assault.

(a) A person commits the crime of assault if the person:

(1) Intentionally, knowingly or recklessly causes physical injury to another; or

(2) With criminal negligence causes physical injury to another by means of a deadly weapon.

(b) The term "physical injury" means impairment of physical condition or substantial pain.

State law reference—Assault in the fourth degree, ORS 163.160.

Sec. 95.041. Menacing.

(a) A person commits the crime of menacing if by word or conduct the person intentionally attempts to place another person in fear of imminent serious physical injury.

(b) The term "serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

State law reference—Menacing, ORS 163.190.

Sec. 95.042. Harassment.

A person commits the crime of harassment if the person intentionally harasses or annoys another person by subjecting such other person to offensive physical contact.

State law reference—Harassing or annoying another person, ORS 166.065(1)(a)(A).

Sec. 95.043. Recklessly endangering another.

(a) A person commits the crime of recklessly endangering another person if the person recklessly engages in conduct which creates a substantial risk of serious physical injury to another person.

(b) Recklessly endangering another person is a Class A misdemeanor.

State law reference—Recklessly endangering another person, ORS 163.195.

Sec. 95.050. Bean shooters and slingshots.

It shall be unlawful for any person to use any bean shooter, slingshot or any other contrivance used in shooting beans, stones, pebbles, or other substance or thing, in or upon any street, alley, or public place within the City.

(Prior Code, § 95.050; Ord. No. 4824)

Sec. 95.060. ~~Begging~~ Reserved.

~~It shall be unlawful for any person in the city to beg or solicit alms as a business or as a means of support.~~

~~(Prior Code, § 95.060; Ord. No. 3389)~~

Sec. 95.065. Cemeteries; vandalization of.

It shall be unlawful for any person to intentionally, knowingly, or recklessly vandalize any public or private cemetery within the City. For purposes of this section the term "vandalize" includes, but is not limited to, burning, damaging, defacing, defiling, destroying, digging, marring, painting or writing upon, the grounds or property located within a cemetery.

(Prior Code, § 95.065; Ord. No. 46-89)

Sec. 95.070. Reserved.

Sec. 95.080. City-owned areas outside city limits.

(a) *Offenses.* It shall be unlawful for any person within any of the areas owned by the City and outside its municipal boundaries to commit any disorderly conduct or assault; to be in an intoxicated condition; to injure or deface any property within such areas; to molest, kill, or injure any wildlife; to place or scatter any trash, junk, or

refuse upon any of such areas; to trespass upon or to deface, injure, or remove any part of any tree, fence, gate, or building, or to place any sign, card, bill, or mark upon any part thereof; or to enter or remain upon any such area, or part of such area, posted against trespassing, while in possession of a firearm.

(b) *Special police officers.* The Chief of Police is hereby authorized and directed to deputize suitable persons to act as police officers in any areas owned by the City and outside of its municipal boundaries, and such officers are hereby given all of the authority and powers of police officers of the City, with authority to arrest and to bring before the municipal judge persons violating any of the provisions of this section. Such officers shall be sworn before taking office.

(Prior Code, § 95.080; Ord. No. 3313; Ord. No. 54-05)

Sec. 95.085. City property—Defacing or injuring.

It shall be unlawful for any person to deface or injure any public property or to remove any part of any tree, fence, gate, or building, or to place any sign, card, bill, mark or paint upon public property.

(Prior Code, § 95.085; Ord. No. 108-84)

Sec. 95.090. ~~City property;~~ Same—Unauthorized use.

It shall be unlawful for any officer or employee of the City, or any department thereof, to allow or permit any machinery, tools, equipment, or other personal property owned by the City, or any department thereof, to be used for any other than municipal purposes unless the consent of the Council is first had and obtained. It shall likewise be unlawful for any person to use any such property for any other than municipal purposes except with the consent of the Council. The provisions of this section shall not apply to loaning the City Fire Department apparatus to other cities or communities. If any such machinery, tools, equipment, or other personal property owned by the City, or any department thereof, is damaged or destroyed while used in violation of this section, the officer or employee of the City, or any department thereof, responsible for such use and the person using such machinery, tools, equipment, or other personal property in violation of this section shall be liable in damages to the City for such damages to or destruction of such City property in an action at law brought in any court of competent jurisdiction. The violation of this section shall conclusively be deemed the proximate cause of any such damage to or destruction of any such City property.

(Prior Code, § 95.090; Ord. No. 2558)

Sec. 95.095. Loaded firearms.

(a) It shall be unlawful for any person to possess a loaded firearm, whether the shell or cartridge is a blank or is live ammunition, while in a public place as defined in ORS 161.015.

(b) Nothing in subsection (a) of this section shall apply to:

(1) A law enforcement officer in the performance of official duty.

(2) A member of the military in the performance of official duty.

(3) A person licensed to carry a concealed handgun.

(4) A person authorized to possess a loaded firearm while in or on a public building under ORS 166.370.

(5) A government employee or contractor of the City ~~of Salem~~ engaged in flight safety hazard abatement to comply with chapter 14 of the Code of Federal Regulations, part 139.337 at McNary Field.

(Prior Code, § 95.095; Ord. No. 29-96; Ord. No. 54-05)

Sec. 95.100. Concealed weapons.

(a) It shall be unlawful for any person to carry concealed upon the person any knife having a blade that projects or swings into position by force of a spring or by centrifugal force and commonly known as a switchblade knife, any dirk, dagger, ice pick, sling shot, metal knuckles or any other similar instrument by the use of which injury could be inflicted upon the person or property of another person.

(b) Nothing in subsection (a) of this section shall apply to any peace officer as defined in ORS 133.005, whose duty it is to serve process or make arrests.

(Prior Code, § 95.100; Ord. No. 3389; Ord. No. 27-70; Ord. No. 48-76; Ord. No. 181-79; Ord. No. 24-89; Ord. No. 33-90; Ord. No. 96-91; Ord. No. 29-96)

State law reference—Similar provisions, ORS 166.240.

Sec. 95.110. Reserved.

Sec. 95.120. Disorderly conduct.

(a) ~~It shall be unlawful for any person, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, to~~ A person commits the crime of disorderly conduct in the second degree if, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof, the person:

(1) Engages in fighting or in violent, tumultuous, or threatening behavior; ~~or~~

(2) Makes unreasonable noise;

(3) Disturbs any lawful assembly of persons without lawful authority; ~~or~~

(4) Obstructs vehicular or pedestrian traffic on a public way;

(5) Initiates or circulates a report, knowing it to be false, concerning an alleged or impending fire, explosion, crime, catastrophe or other emergency; or

(6) Creates a hazardous or physically offensive condition by any act which the person is not licensed or privileged to do.

(b) Disorderly conduct in the second degree is a Class B misdemeanor.

(c) Notwithstanding subsection (b) of this section, disorderly conduct in the second degree is a Class A misdemeanor if the crime is committed within 200 feet of the real property on which the person knows a funeral service is being conducted.

(d) As used in this section, the term "funeral service" means a burial or other memorial service for a deceased person

~~(c) Disobey, except while passively resisting an arrest, an order of a peace officer present at an assembly of three or more persons, to disperse or abandon any weapon. For the purposes of this subsection an order of an officer is lawful if two or more persons present:~~

~~(1) Are threatening bodily harm to another or damage to property, with immediate power to carry out that threat, or~~

~~(2) Have committed an unlawful act of violence during the course of the assembly.~~

~~(d) Initiate or circulate a report, knowing it to be false, concerning an alleged or impending fire, explosion, crime, catastrophe, or other emergency, which report reasonably would be expected to cause alarm; or~~

~~(e) Obstruct with his person vehicular or pedestrian traffic on a public street or way.~~

(Prior Code, § 95.120; Ord. No. 3389; Ord. No. 192-71; Ord. No. 72-82; Ord. No. 56-84; Ord. No. 88-95; Ord. No. 69-99)

State law reference—Similar provisions, ORS 166.025.

Sec. 95.125. Urinating or defecating in public.

It shall be unlawful for any person to intentionally or recklessly urinate or defecate in any public place except a restroom or toilet facility maintained for such purposes.

(Prior Code, § 95.125; Ord. No. 69-99)

Sec. 95.130. Disorderly houses.

It shall be unlawful to keep or maintain a bawdyhouse, house of prostitution, or disorderly house, or to suffer or allow any disorderly, boisterous or riotous conduct in any house of building, or upon any premises in the City.

(Prior Code, § 95.130; Ord. No. 3389)

State law reference—Maintenance of disorderly establishment, ORS 471.425.

Secs. 95.140, 95.150. Reserved.

Sec. 95.160. Firearms; discharge.

(a) It shall be unlawful for any person to discharge any firearm within the City.

(b) The provisions in subsection (a) of this section do not apply to:

(1) A person discharging a firearm in the lawful defense of person or property.

(2) A person discharging a firearm on a public or private shooting range, shooting gallery or other area designed and built for the purpose of target shooting.

(3) A person authorized or required by his or her employment or office to discharge blank ammunition for signal purposes at athletic or sports events, or as part of a military or police ceremony.

(4) A government employee or contractor of the City ~~of Salem~~ engaged in flight safety hazard abatement to comply with chapter 14 of the Code of Federal Regulations, part 139.337 at McNary Field.

(5) An employee of the United States Department of Agriculture, acting within the scope of employment, discharging a firearm in the course of the lawful taking of wildlife.

(Prior Code, § 95.160; Ord. No. 4824; Ord. No. 29-96; Ord. No. 54-05; Ord. No. 24-12)

State law reference—Authority of city to regulate discharge of firearm, ORS 166.l72.

Sec. 95.163. Intentional false fire alarms.

(a) It shall be unlawful for any person to intentionally activate a fire alarm except to signal an actual emergency involving fire or other condition threatening human life or major property loss.

(b) A violation of this section is a misdemeanor.

(Prior Code, § 95.163; Ord. No. 27-12)

State law reference—False alarms, ORS 162.375.

Sec. 95.164. Initiating a false report.

(a) A person commits the crime of initiating a false report if the person knowingly initiates a false alarm or report that is transmitted to a fire department, law enforcement agency or other organization that deals with emergencies involving danger to life or property.

(b) Initiating a false report is a Class A misdemeanor.

(c) The Court shall include in the sentence of any person convicted under this section a requirement that the person repay the costs incurred in responding to and investigating the false report.

(d) If the response to the false report involved the deployment of a law enforcement special weapons and tactics (SWAT) team or a similar law enforcement group, the Court shall impose, and may not suspend, a term of incarceration of at least ten days.

State law reference—Similar provisions, ORS 166.375.

Sec. 95.165. Garage sales limitation.

(a) For the purposes of this section, the term "garage sale" ~~shall~~ means the public sale of new or used goods within the corporate limits of the City ~~of Salem~~ by any individual or group of individuals from any private property, including, but not limited to, garages, porches, carports, yards, when said individual or group of individuals is not in the business of selling such goods or not licensed as a secondhand dealer, junk dealer or when the property from which such sale is to be conducted is not within a zone permitting commercial business or otherwise permitted under the provisions of this Code. The offering for sale of one item by public display with a sign indicating the item is for sale and the price thereof attached to or upon such item, and sale of more than one individual item not offered by public display and where no signs are posted concerning a sale or place of sale are transactions exempt from the provisions of this section. Provided, further, that sales by organizations, societies, associations, leagues, or corporations that are organized and operated exclusively for religious, educational, philanthropic, benevolent,

fraternal, or charitable purposes and are not operated for the pecuniary profit of its members or shareholders shall be exempt from this definition.

(b) It shall be unlawful to conduct within the City ~~of Salem~~ more than three garage sales in any calendar year, each of said sales to extend no longer than three days.

(Prior Code, § 95.165; Ord. No. 159-84)

Secs. 95.170—95.190. Reserved.

~~**Sec. 95.190. Handbills deposited in motor vehicles.**~~

~~It shall be unlawful for any person, except an authorized officer, marshal, constable, or policeman, without the consent of the owner or person lawfully in charge of a motor vehicle, to place, deposit, throw, distribute, or dump any handbill sheet of paper, envelope, sample, catalogue, package, or any paper or printed matter of any kind, character, or description in any automobile whether such motor vehicle is at rest or in motion or unattended, on any street, public park, parking lot, public place, alley, highway, or county road within the boundaries of the city.~~

~~(Prior Code, § 95.190; Ord. No. 4374)~~

Sec. 95.200. Fastening handbills to public property.

Except as provided by SRC 255.055, it shall be unlawful for any person, except a public officer or employee in the performance of a public duty, to stick, stamp, paint, print, paste, nail, tack, or otherwise fasten any card, banner, handbill, sign, poster, advertisement, or notice of any kind, or to cause the same to be done, on any sidewalk, crosswalk, curb, pavement, curbstone, lamppost, pole, hydrant, bridge, or tree upon public property in the City.

(Prior Code, § 95.200; Ord. No. 3335; Ord. No. 53-84; Ord. No. 12-12)

Sec. 95.210. Fastening handbills to City property.

(a) It shall be unlawful for any person, except a public officer or employee in the performance of a public duty, to paste, post, print, nail, tack, or otherwise fasten any card, banner, handbill, sign, poster, advertisement, or notice of any kind, or to cause the same to be done, on any property of the City without the consent of the Mayor.

(b) Any advertisement prohibited by this section may be taken down, moved, or destroyed by anyone.

(Prior Code, § 95.210; Ord. No. 3335)

Sec. 95.220. Fastening handbills to private property.

(a) It shall be unlawful for any person, except a public officer or employee in the performance of a public duty, or a private person in giving a legal notice, to paste, post, paint, nail or tack, or otherwise fasten any card, banner, handbill, sign, poster, advertisement, or notice of any kind upon any property without the written consent of the owner, holder, lessee, agent, or trustee thereof.

(b) Any advertisement prohibited by this section may be taken down, moved, or destroyed by anyone.

(Prior Code, § 95.220; Ord. No. 3335)

Sec. 95.230. Reserved.

Sec. 95.235. Killing or molesting ducks prohibited.

(a) It shall be unlawful for any person to kill, injure, take, or molest any duck or any duck nest in, upon, or adjacent to any waters within the corporate limits of the City, except as provided in subsection (b) of this section. This section shall not apply to any person otherwise lawfully killing or taking ducks by the ducks' legal owner, by the lawful agent of the ducks' legal owner, or by a government employee or contractor of the City ~~of Salem~~ engaged in flight safety hazard abatement to comply with chapter 14 of the Code of Federal Regulations, part 139.337 at McNary Field.

(b) Whenever the number or actions of ducks upon any premises, public or private, constitute a nuisance in the judgment of the Director, the Director shall have the authority to remove any of such ducks as may reasonably appear to be wild or not owned by any person. In addition or in lieu thereof, the Director may, in the Director's

discretion, authorize any person in possession of any premises affected by such nuisance to remove or cause the removal of any such ducks.

(Prior Code, § 95.235; Ord. No. 5365; Ord. No. 15-81; Ord. No. 96-88; Ord. No. 54-05; Ord. No. 42-09)

Secs. 95.240—95.280. Reserved.

Sec. 95.290. Iceboxes and other containers; abandonment.

It shall be unlawful for any person to place, leave, or maintain, in a place accessible to children, any abandoned, unattended, or discarded icebox, refrigerator, or other container of any kind which has an airtight door with a snap lock or other lock or mechanism which may not be released for opening from the inside of the icebox, refrigerator, or container, without first removing therefrom the snaplock or other lock mechanism or removing the airtight door.

(Prior Code, § 95.290; Ord. No. 4577)

Sec. 95.300. Kite flying.

(a) It shall be unlawful for any person to fly any kite containing any metal, wire, or tinsel string either in the kite, the tail of the kite, or the kite string.

(b) It shall be unlawful for any person to fly any kite in such a manner that the kite, kite tail, or kite string will come within 50 feet of any power line, measured on a horizontal plane.

(c) In case any kite, kite tail, or kite string shall become entangled in any electric power line, it shall be unlawful for any unauthorized person to undertake to remove the same from such power line. In such event, the person who was flying the kite shall notify the police, and the electric power company concerned, upon notification by the police department, shall remove such kite, kite tail, or kite string as soon as possible.

(Prior Code, § 95.300; Ord. No. 3389)

Secs. 95.310, 95.320. Reserved.

Sec. 95.330. Minors nighttime curfew.

(a) No minor under the age of 18 years shall be in or upon any street, highway, park, alley, or other public place between the hours specified in subsection (b) of this section, unless:

(1) The minor is accompanied by a parent, guardian, or other person 18 years of age or over and authorized by the parent or by law to have care and custody of the minor;

(2) The minor is then engaged in a lawful pursuit or activity which requires the presence of the minor in such public places during the hours specified in this section; or

(3) The minor is lawfully emancipated pursuant to ORS 419B.550 to 419B.558.

(b) For minors under the age of 16 years, the curfew is between 10:00 p.m. and ~~6:00~~ 4:00 a.m. of the following morning. For minors 16 years of age or older, the curfew is between 12:00 ~~a.m.~~ midnight and ~~6:00~~ 4:00 a.m.

(Prior Code, § 95.330; Ord. No. 3677; Ord. No. 5287; Ord. No. 5369; Ord. No. 85-74; Ord. No. 53-95; Ord. No. 23-97; Ord. No. 63-98)

Sec. 95.334. Findings and purpose.

(a) The Council determines that prior to enactment of ~~Ordinance No. 23-97 (daytime curfew) May 27, 1997 (sunset June 30, 1998) section~~ SRC 95.335, there had been an increase in truancy and juvenile crime, victimization, and gang activity involving persons under the age of 18 during regular school hours in the City ~~of Salem~~, and that there was a decrease in these incidents during the 1997—1998 school year when the daytime curfew was in effect.

(b) The Council determines that the State ~~of Oregon~~ compulsory school attendance law has no immediate sanction for juvenile violators, and truancy is not effectively controlled by existing laws and ordinances.

(c) The Council determines that the City ~~of Salem~~ has a compelling interest in providing for the enforcement of school attendance, for the protection of juveniles from gang activity and the perpetrators of crime, for the

reduction of juvenile criminal activities and for the protection of the general public during regular school hours, and that a daytime curfew is the least intrusive method for the City to further these interests.

(Prior Code, § 95.334; Ord. No. 23-97; Ord. No. 63-98)

Sec. 95.335. Minors daytime curfew.

(a) No minor between the ages of seven and 18 years who has not completed the ~~twelfth~~ 12th grade shall be in or upon any street, highway, park, alley or other public place during regular school hours except while attending school as required by ORS 339.010 to 339.065, unless:

(1) The minor is accompanied by a parent, guardian, or other person 18 years of age or over and authorized by the parent or by law to have care and custody of the minor;

(2) The minor is then engaged in a lawful pursuit or activity which requires the presence of the minor in such public places during regular school hours and is authorized by the minor's parent, guardian, or other person having the legal care and custody of such minor;

(3) The minor is lawfully emancipated pursuant to ORS 419B.550 to 419B.558; or

(4) The minor is authorized and approved to be away from the school as provided in ORS 339.030 and 339.065, but is not suspended or expelled.

(b) For purposes of this section, regular school hours are those hours for the full-time school which the child would attend in the school district in which the child resides, on any day for which school is in session, unless such day is a scheduled vacation or holiday observed by the school.

(Prior Code, § 95.335; Ord. No. 23-97; Ord. No. 63-98)

State law reference—Similar provisions, ORS 339.010.

Sec. 95.340. Parent or guardian not to allow curfew violation.

(a) No parent, guardian, or person having the care and custody of a minor under the age of 18 years shall allow such minor to be in or upon any street, highway, park, alley, or other public place between the hours specified in SRC 95.330, except as otherwise provided in that section.

(b) No parent, guardian, or person having care and custody of a minor between the ages of seven and 18 years who has not completed the 12th grade shall allow such minor to be in or upon any street, highway, park, alley, or other public place during regular school hours except as otherwise provided in SRC 95.335.

(Prior Code, § 95.340; Ord. No. 3677; Ord. No. 5287; Ord. No. 85-74; Ord. No. 23-97; Ord. No. 63-98)

State law reference—Similar provisions, ORS 419C.680(2).

Sec. 95.350. Enforcement.

Any police officer or any other law enforcement officer is hereby authorized and empowered to take charge of any person under the age of 18 years violating the provisions of SRC 95.330 or 95.335 and it shall be the duty of any such officer taking charge of any such person to thereafter notify the parent or guardian of such person immediately of such violation and to notify such parent or legal guardian that such person will be held in the custody of the police officer until he or she can come get such minor person. For violations of SRC 95.335, a police officer in lieu of holding the minor person in custody for delivery to a parent or legal guardian may release that person to the principal or other designated official at the school at which the minor is enrolled.

(Prior Code, § 95.350; Ord. No. 3677; Ord. No. 5287; Ord. No. 23-97; Ord. No. 63-98)

Sec. 95.360. Duty of parent or guardian to pick up violators.

It shall be unlawful and shall be considered a separate offense for any parent, guardian, or any other adult person having the legal care and custody of any person under the age of 18 years to refuse to come to the police officer and take the minor person under his or her custody immediately to the minor's home upon being notified by the Police Department as provided in SRC 95.350.

(Prior Code, § 95.360; Ord. No. 3677; Ord. No. 5287; Ord. No. 23-97; Ord. No. 63-98)

Sec. 95.370. Reserved.

Sec. 95.380. Furnishing tobacco to minors.

It shall be unlawful to sell, give, or furnish tobacco in any form to any minor under 18 years of age. ~~provided, in the event the laws of the state make it unlawful to sell, give, or furnish tobacco to any minor under the age of 21 years, then it shall also be unlawful to sell, give, or furnish tobacco to any minor under 21 years of age in the city.~~

(Prior Code, § 95.380; Ord. No. 3389; Ord. No. 5641)

State law reference—Distribute, sell or allow to be sold tobacco in any form to a person under 18 years of age prohibited, ORS 163.5756(1)(d).

Sec. 95.390. Minors; loitering in certain places.

It shall be unlawful for any minor under the age of ~~21~~ 18 years to go into, visit, or loiter in or about any gambling house ~~or house of prostitution~~.

(Prior Code, § 95.390; Ord. No. 3389)

State law reference—Induces, causes or permits a person under 18 years of age to participate in gambling prohibited, ORS 163.575(1)(c).

Sec. 95.395. False swearing.

(a) A person commits the offense of false swearing if the person makes a false sworn statement, knowing it to be false.

(b) False swearing is a misdemeanor.

(Prior Code, § 95.395; Ord. No. 6-08)

State law reference—False swearing, ORS 162.075.

Sec. 95.400. Failure to appear.

(a) It shall be unlawful for any person who has been served with a summons or a citation to willfully fail to appear as required in such summons or citation, unless the person has obtained prior permission by the Court upon good cause shown, or for any person to fail to appear at any other time ordered by the Court.

(b) Violation of this section is a misdemeanor.

(Prior Code, § 95.400; Ord. No. 6-08)

State law reference—Compliance with summons, ORS 419C-317.

Sec. 95.410. Reserved.

Sec. 95.420. Interfering with a peace officer.

(a) A person commits the crime of interfering with a peace officer if the person, knowing that another person is a peace officer:

(1) Intentionally acts in a manner that prevents, or attempts to prevent, a peace officer from performing the lawful duties of the officer with regards to another person; or

(2) Refuses to obey a lawful order by the peace officer.

(b) This section does not apply in situations in which the person is engaging in activity that would constitute resisting arrest under SRC 95.430 or passive resistance.

Sec. 95.430. Resisting officers.

(a) A person commits the crime of resisting arrest if the person intentionally resists a person known by the person to be a peace officer or parole and probation officer in making an arrest.

(b) As used in this section:

Arrest has the meaning given that term in ORS 133.005 (Definitions for ORS 133.005 to 133.400 and 133.410 to 133.450) and includes, but is not limited to, the booking process.

Parole and probation officer has the meaning given that term in ORS 181A.355 (Definitions for ORS 181A.355 to 181A.670).

Resists means the use or threatened use of violence, physical force or any other means that creates a substantial risk of physical injury to any person and includes, but is not limited to, behavior clearly intended to prevent being taken into custody by overcoming the actions of the arresting officer. The behavior does not have to result in actual physical injury to an officer. Passive resistance does not constitute behavior intended to prevent being taken into custody.

(c) It is no defense to a prosecution under this section that the peace officer or parole and probation officer lacked legal authority to make the arrest or book the person, provided the officer was acting under color of official authority.

(d) Resisting arrest is a Class A misdemeanor.

~~(a) It shall be unlawful for any person acting intentionally to resist any peace officer known by the person to be a peace officer acting in the discharge or apparent discharge of duty.~~

~~(b) The term~~ "resist," ~~as used in this subsection, means the use or threatened use of violence, physical force or any other means that creates a substantial risk of physical injury to any person and includes,~~ but is ~~not limited to, behavior clearly intended to prevent being taken into custody by overcoming the actions of the arresting officer. The behavior does not have to result in actual physical injury to the arresting officer. Passive resistance does not constitute behavior intended to prevent being taken into custody.~~

~~(c) It is no defense to a prosecution under this subsection that the peace officer lacked legal authority to make the arrest, provided the peace officer was acting under color of official authority.~~

(Prior Code, § 95.430(a); Ord. No. 59-65; Ord. No. 182-79; Ord. No. 88-95)

State law reference—Similar provisions, ORS 162.315.

Sec. 95.431. Hindering or interfering with peace officer.

~~(b)~~ It shall be unlawful for any person acting intentionally to hinder or interfere materially with any peace officer known by the person to be a peace officer acting in the discharge or apparent discharge of duty by intimidation, force or physical contact. This ~~sub~~section shall not apply to the hindrance of an unlawful action by a peace officer or interference with the making of an arrest.

(Prior Code, § 95.430(b); Ord. No. 59-65; Ord. No. 182-79; Ord. No. 88-95)

State law reference—Interfering with a peace officer, ORS 162.247.

Sec. 95.~~431.~~ 432. Giving false information to police officers.

It shall be unlawful for any person to knowingly and willfully give any false, untrue, or misleading information to a police officer while he or she is acting in his or her official capacity with intent to hinder, delay, impede, or mislead said officer in the prosecution of his or her official work, or with the intent to obstruct justice.

(Prior Code, § 95.431; Ord. No. 55-69; Ord. No. 175-69)

State law reference—False report to fire department, police department, etc., ORS 162.375.

Sec. 95.435. Refusing to assist officers; aiding escape and escape.

It shall be unlawful for any person acting intentionally, knowingly or recklessly:

(a) To refuse, except while passively resisting an arrest, to assist any peace officer in the lawful discharge of duty when requested to do so by the peace officer.

(b) To aid or assist any person in custody upon charge of a violation of any section of this Code, in the person's endeavors to escape from such custody, whether such escape is expected or not.

(c) To escape or attempt to escape while a prisoner or otherwise in custody of a City peace officer. It is a defense to a prosecution under this subsection that the person escaping or attempting to escape was in custody pursuant to an illegal arrest.

(Prior Code, § 95.435; Ord. No. 88-95)

State law reference—Refusing to assist a peace officer, ORS 162.245; citizens use of force assisting an attempted escape, ORS 161.249.

Secs. 95.440—95.530. Reserved,

~~**Sec. 95.440. Smoke and soot.**~~

~~It shall be unlawful for the owner, agent, lessee, or manager of any building, locomotive, or other structure, or for the person employed as engineer or otherwise in the operation of the furnace or engine in such building, locomotive, or other structure within the city, to cause smoke containing soot, cinders, or other substance to issue or be emitted from the chimney or smokestack of such building or structure, which soot, cinders, or other substance shall damage the property or injure the health of any person or shall especially annoy the public.~~

~~Any chimney or smokestack within the city from which there shall issue or be emitted smoke containing soot, cinders, or other substance in sufficient quantity to cause such soot, cinders, or other substance to be deposited on any surface within the corporate limits of the city shall be deemed and is hereby declared a public nuisance.~~

~~The provisions of this section shall not apply to buildings used exclusively for private residences.~~

~~(Prior Code, § 95.440; Ord. No. 1834)~~

~~**Sec. 95.510. Trains standing on streets.**~~

~~It shall be unlawful for any person owning, operating, or in charge of any railway train, car, or locomotive to leave, stop, or stand the same upon or over any crosswalk, street crossing, or street intersection in such a manner as to obstruct the free use thereof by pedestrians or vehicles.~~

~~It shall also be unlawful for any such person in charge of any railway train, car, or locomotive to leave, stop, or stand the same upon any other part or portion of any street in the city for a longer period of time than thirty minutes; provided, however, that this section shall not apply to Water Street between Chemeketa Street and Court Street, Front Street between Trade Street and South Street, or to Trade Street between 12th Street and Front Street, or to industrial spur tracks upon such portions of Water Street. Front Street or Trade Street or tributaries thereto.~~

~~(Prior Code, § 95.510; Ord. No. 3399; Ord. No. 5616)~~

~~**State law reference**—Authority over railroad crossing preempted to state, ORS § 824.222.~~

~~**Sec. 95.520. Lights on train required at night.**~~

~~Whenever any railway train, car, or locomotive is left standing upon any street pursuant to the provisions of SRC 95.510 for more than 30 minutes between sunset and sunrise, the same shall be lighted with a red warning light at each corner of each end of each cut of cars or car so standing, such warning lights to be sufficient candle power to be plainly visible at a distance of not less than three hundred feet; provided, however, this section shall not apply to any railway train, car, or locomotive left standing upon any industrial spur track upon that portion of any street between the curb, or, in the absence of a curb, the edge of the traveled roadway and the adjacent property line; and provided further, that locomotives shall be lighted at either end with a headlight or white light.~~

~~(Prior Code, § 95.520; Ord. No. 3399; Ord. No. 5616)~~

~~**Sec. 95.530. Unauthorized boarding.**~~

~~It shall be unlawful for any person, other than a railroad employee, or his assistant, to climb or enter upon or to get on board of any portion of any railroad car or railroad train at any place within the corporate limits of this city, except that passengers shall be allowed to board passenger cars and cabooses if at a regular depot platform of such railroad company.~~

~~(Prior Code, § 95.530; Ord. No. 3389)~~

Sec. 95.540. Trees and shrubs; unauthorized removal or destruction.

It shall be unlawful for any person to in any manner cut, break, remove, or otherwise mutilate or destroy any tree, shrub, flower, or other plant, or any part thereof, growing in any parking space, public park, square, opening, street, or alley without first having obtained the permission therefor from the Director, or, growing upon private grounds or premises, the permission of the owner thereof.

(Prior Code, § 95.540; Ord. No. 3389; Ord. No. 42-09)

Sec. 95.548. Definitions.

~~As used in SRC 95.548 and 95.550, except as the context requires otherwise:~~ The following words, terms and phrases, when used in SRC 95.548 and 95.550, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Open to the public* means premises which by their physical nature, function, custom, usage, notice or lack thereof, or other circumstances at the time would cause a reasonable person to believe that no permission to enter or remain is required.

~~(b)~~ *Person in charge* means a person, a representative or employee of the person who has lawful control of premises by ownership, tenancy, official position, or other legal relationship. The term "person in charge" includes, but is not limited to, the person, or holder of a position, designated as the person or position-holder in charge by the governor, board, commission, or governing body of any political subdivision of this State.

~~(c)~~*Premises* includes any building and any real property, whether privately or publicly owned.

(Prior Code, § 95.548; Ord. No. 60-76; Ord. No. 30-2003)

Sec. 95.550. Trespass.

(a) It shall be unlawful for any person to enter or remain in or upon premises when the premises, at the time of such entry or remaining, are not open to the public, or when the entrant is not otherwise licensed or privileged to do so.

(b) It shall be unlawful for any person to fail to leave premises that are open to the public after being lawfully directed to do so by the person in charge.

(c) It shall be unlawful for any person, with the intent to cause substantial inconvenience to the owner or to another person, and having no right to do so, nor reasonable ground to believe that he or she has such right, to tamper or interfere with or damage property of another.

(d) It shall be unlawful for any person to enter premises that are open to the public after being lawfully prohibited from entry to the premises.

(Prior Code, § 95.550; Ord. No. 3389; Ord. No. 60-76; Ord. No. 30-2003)

State law reference—Trespass, ORS 164.243—164.278.

~~**Sec. 95.560. Vagrancy.**~~

~~It shall be unlawful for any person to lodge or sleep in or upon any public highway, street, alley, public park, parking lot, or other public place; or to lodge or sleep in any barn, shed, shop, warehouse, railroad car, automobile, vessel, or place other than such as is kept for lodging purposes, without the permission of the owner or party entitled to possession thereof.~~

~~(Prior Code, § 95.560; Ord. No. 3389; Ord. No. 5282; Ord. No. 28-70; Ord. No. 203-70; Ord. No. 139-76)~~

Secs. 95.560—95.590. Reserved.

Sec. 95.600. Graffiti definitions.

~~As used in SRC 95.600 to 95.660:~~ The following words, terms and phrases, when used in SRC 95.600 to 95.660, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Graffiti* means any inscriptions, words, figures or designs that are marked, etched, scratched, drawn, painted, pasted or otherwise affixed to the surface of property.

~~(b)~~ *Graffiti nuisance property* means property to which graffiti has been applied, if the graffiti is visible from any public right-of-way, from any other public or private property or from any premises open to the public, and if the graffiti has not been abated within the time provided in SRC 95.650.

~~(c)~~*Owner* has the meaning set forth in SRC 98.140(d) and, in addition, includes the state and political subdivisions of the State, school districts and special districts.

~~(d)~~ *Permit* has the meaning set forth in SRC 98.140(e).

~~(e)~~*Property* means any real or personal property and that which is affixed, incident or appurtenant to real property, including, but not limited to, any premises, house, building, fence, structure or any separate part thereof, whether permanent or not.

~~(f)~~*Structure* has the meaning set forth in SRC 98.140(h).

(Prior Code, § 95.600; Ord. No. 37-94; Ord. No. 96-95)

State law reference—Graffiti definitions, ORS 164.381.

Sec. 95.610. Graffiti prohibited.

(a) It shall be unlawful for any person to apply graffiti.

(b) It shall be unlawful for any person to solicit or command another person to apply graffiti.

(c) It shall be unlawful for any person to aid or abet or agree to aid or abet another person to plan to apply or apply graffiti.

(Prior Code, § 95.610; Ord. No. 37-94; Ord. No. 96-95)

State law reference—Applying graffiti prohibited, ORS 164.383.

~~Prohibited~~ Sec. 95.620. Penalty.

Violation of SRC 95.610 is an infraction. In addition to any other penalty provided by law, a person adjudged responsible for violation of SRC 95.610 or any other offense within the jurisdiction of the Court may be ordered by the Court to perform community service including graffiti removal at any locations within the jurisdiction of the Court and to pay restitution.

(Prior Code, § 95.620; Ord. No. 37-94; Ord. No. 96-95)

State law reference—Community service, ORS 164.381.

Sec. 95.630. Graffiti removal.

(a) The term "graffiti removal" means:

(1) Removal or attempted removal of graffiti from or painting or repair of public or private property with the written consent, on a form approved by the ~~Salem~~ City Attorney, of the owner of such property or of a person authorized by the owner of such property to give written consent; or

(2) Abatement under SRC 95.660.

(b) Graffiti removal shall be supervised by the Chief of Police or his or her designee.

(Prior Code, § 95.630; Ord. No. 37-94; Ord. No. 96-95)

Sec. 95.635. Reward.

The Chief of Police may offer a reward of $100.00 or such other sum as the Council may direct for information leading to the arrest and conviction of an adult or a finding that a juvenile is within the jurisdiction of the Court for violating SRC 95.610.

(Prior Code, § 95.635; Ord. No. 37-94)

Sec. 95.640. Graffiti nuisance property.

(a) It is hereby found and declared that graffiti creates a visual blight and property damage. When graffiti is allowed to remain on property and is not ~~is~~ promptly removed, it invites additional graffiti and criminal activity and constitutes a nuisance.

(b) Any property within the City which becomes graffiti nuisance property is in violation of this chapter and subject to its remedies.

(c) Any owner of property who permits said property to be a graffiti nuisance property shall be in violation of this chapter and subject to its remedies.

(Prior Code, § 95.640; Ord. No. 96-95)

Sec. 95.645. Notice procedure.

(a) When the Chief of Police believes in good faith that property within the City is a potential public nuisance property, the Chief of Police shall notify the owner and the owner's registered agent under SRC 98.180, if known, in writing that the property is potential graffiti nuisance property. The notice shall contain the following information:

(1) The street address or description sufficient for identification of the property.

(2) That the Chief of Police has found the property to be potential graffiti nuisance property with a concise description of the conditions leading to his or her findings.

(3) A direction to abate the graffiti, or show good cause to the Chief of Police why the owner cannot abate the graffiti, within five City business days from the date of mailing the notice.

(4) That if the graffiti is not abated and good cause for failure to abate is not shown, the Council may order abatement, with appropriate conditions. The Council may also employ any other remedy deemed by it to be appropriate to abate the nuisance, including, but not limited to, authorizing a civil complaint in a court of competent jurisdiction.

(5) That the rental dwelling license, if any, of the property is subject to suspension or revocation.

(6) That permitting graffiti nuisance property is an infraction.

(7) That the above remedies are in addition to those otherwise provided by law.

(b) Service of the notice is completed upon mailing the notice first class, postage prepaid, addressed to:

(1) The owner's registered agent under SRC 98.180, if any; or

(2) The owner at the address of the property believed to be a potential graffiti nuisance property, and to such other address as shown on the tax rolls of the County in which the property is located or such other place which is believed to give the owner actual notice of the determination by the Chief of Police.

(c) A copy of the notice shall be served on occupants of the property, if different from the owner. Service shall be completed upon mailing the notice first class, postage prepaid, addressed to "occupant" of each unit of the property believed to be a potential graffiti nuisance property.

(d) The failure of any person or owner to receive actual notice of the determination by the Chief of Police shall not invalidate or otherwise affect the proceedings under this chapter.

(Prior Code, § 95.645; Ord. No. 96-95; Ord. No. 51-96)

Sec. 95.650. Abatement procedures.

(a) Within five City business days of the mailing of the notice the owner shall abate the graffiti or show good cause why the owner cannot abate the graffiti within that time.

(b) Upon good cause shown, the Chief of Police may grant an extension of up to ten additional City business days.

(c) If the owner does not comply with subsection (a) or (b) of this section, the Chief of Police may refer the matter to the Council for hearing as a part of its regular agenda at the next succeeding meeting. The City Recorder shall give notice of the hearing to the owner and occupants, if different from the owner. At the time set for hearing,

the owner and occupants may appear and be heard by the Council. The Council shall determine whether the property is graffiti nuisance property and whether the owner has complied with subsections (a) and (b) of this section. The City has the burden of showing by a preponderance of the evidence that the property is graffiti nuisance property. The owner has the burden of showing by a preponderance of the evidence that there is good cause for failure to abate the nuisance within five City business days of the mailing of the notice.

(Prior Code, § 95.650; Ord. No. 96-95; Ord. No. 51-96)

Sec. 95.655. Remedies by Council.

(a) In the event the Council determines that property is graffiti nuisance property, the Council may order that the nuisance be abated. The order may include conditions under which abatement is to occur. The Council may also employ any other remedy deemed by it to be appropriate to abate the nuisance, including, but not limited to, authorizing a civil complaint in a court of competent jurisdiction.

(b) The remedies in this section are in addition to those otherwise provided by law.

(Prior Code, § 95.655; Ord. No. 96-95; Ord. No. 51-96)

Sec. 95.660. Abatement by City.

If the owner fails to abate the nuisance as ordered by the Council, the City may cause the nuisance to be abated as provided in SRC 50.840 to 50.845, except that the Chief of Police shall be responsible for causing abatement instead of the Health Officer.

(Prior Code, § 95.660; Ord. No. 96-95; Ord. No. 8-2000)

Secs. 95.670—95.690. Reserved.

Sec. 95.700. Pedestrian interference.

(a) No person shall block or interfere with, or attempt to block or interfere with, any other person along a public sidewalk by any means, including, but not limited to, standing on that part of the sidewalk used for pedestrian travel or placing any object or vehicle in such area, with the intent to interfere with free passage.

(b) No person shall block or interfere with, or attempt to block or interfere with, pedestrian or vehicular entrances to public or private property abutting a public sidewalk with the intent to interfere with the free ingress to or egress from such property.

(c) This section shall not apply to any activity otherwise made lawful, including, but not limited to, lawful protesting activity and lawful picketing activity.

(Prior Code, § 95.700; Ord. No. 19-2000)

Sec. 95.710. Sports activity prohibited in certain areas.

(a) It shall be unlawful for any person to engage in sports activity upon any of the streets, alleys or sidewalks within the district bounded on the north by the north curbline of Union Street, on the south by the south curbline of Trade Street, on the east by the east curbline of Cottage Street and on the west by the west curbline of Front Street, except that this prohibition shall not apply to that area designated Marion Square Park, its walkways and contiguous sidewalks.

(b) As used in this section, the term "sports activity" means an activity engaged in for recreational purposes, or for the amusement of the person performing the activity, including, but not limited to, dropping, kicking, throwing, rolling, flying or batting of any object; throwing, squirting, dumping, or dropping of any liquid, solid or gaseous substance, other than into a designated trash receptacle; grabbing, holding, tackling, hitting, shoving, pulling, or pushing another person; football, boxing, sparring, martial arts, wrestling, soccer, Frisbee tossing, volleyball, basketball, baseball, softball, hacky sack, knife throwing, tree climbing or scaling of exterior walls.

(c) This prohibition does not apply to any business performing landscaping, maintenance, pruning, construction or related activities under contract, or activities engaged in pursuant to a lawfully issued City permit or as part of a city-approved community event.

(Prior Code, § 95.710; Ord. No. 16-2003)

Sec. 95.720. Violations.

(a) Violation of SRC 95.010, 95.025, 95.190, 95.200, 95.210, 95.220, 95.300, 95.340, 95.440, 95.510, 95.520, 95.530, 95.610, 95.640 or 95.710 is an infraction.

(b) Violation of SRC 95.580 is a misdemeanor punishable by a fine of not more than $250.00, imprisonment for a period not to exceed 30 days, or by both such fine and imprisonment.

(c) Except as provided in subsections (a) and (b) of this section, violation of any other provision of SRC 95.010-95.720 is a misdemeanor.

(Prior Code, § 95.720; ~~Formerly 95.990,~~ Ord. No. 16-2003; Ord. No. 10-14)

~~CIVIL EXCLUSION~~

Sec. 95.730. Definitions.

~~Unless the context otherwise requires, as used in SRC 95.730-95.770, the following mean:~~ The following words, terms and phrases, when used in SRC 95.730 through 95.770, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Arrest* means to place a person under actual or constructive restraint, or to take a person into custody, for the purpose of charging that person with the commission of any enumerated offense which is a misdemeanor or felony.

~~(b)~~ *Cite* means to issue a citation to appear to a person for commission of an enumerated offense.

~~(c)~~*Crime prevention district* means a geographic area of exclusion to which the provisions of SRC 95.730 through 95.770 apply.

~~(f)~~*Enforcement officer* means a peace officer as defined by ORS 133.005, or any other person with authority to enforce the Salem Revised Code.

~~(d)~~ *Enumerated offense* means any of the offenses establishing the basis for exclusion in a crime free zone.

~~(e)~~*Hearings Officer* means a person appointed pursuant to SRC 2.315 to serve in a quasi-judicial capacity in the review of civil penalties or disabilities imposed under the Salem Revised Code.

~~(g)~~ *Pedestrian ways* means any sidewalk, plaza, alley, parking structure or parking area, or other way designed and regularly used for pedestrian travel, any planter strip or landscaped area located adjacent to or contained within such streets, plazas, alleys, or other ways, and includes that portion of public rights-of-way used for the parking of vehicles, but does not include that portion of public rights-of-way regularly and traditionally used for vehicular travel.

~~(h)~~ *Public ways* means any highway, roadway, street, alley or other way designed and regularly used for vehicular travel, but excluding that portion of public rights-of-way used for the parking of vehicles.

~~(i)~~ *Travel* means movement by foot on a pedestrian public way, from one point to another, without delay other than to obey traffic control devices, or by vehicle on a public way, from one point to another without delay other than to obey traffic control devices.

(Prior Code, § 95.730; Ord. No. 16-2003; Ord. No. 74-07)

Sec. 95.735. Downtown Crime Prevention District created.

(a) The geographic area bounded on the north by the north curbline of Union Street, on the south by the south curbline of Trade Street, on the east by the east curbline of Cottage Street and on the west by the west curbline of Front Street is hereby designated as the Downtown Crime Prevention District.

(b) An enumerated offense in the Downtown Crime Prevention District means any of the following felonies, misdemeanors, violations, or infractions, unless the offense was committed entirely within a private residence:

(1) Felonies: ORS 161.405(1)(2)(b)--(c), "Attempt," if the crime is an enumerated offense; ORS 161.450(1)(2)(b)--(c), "Conspiracy," if the crime is an enumerated offense; ORS 163.165, "Assault in

the third degree"; ORS 163.175, "Assault in the second degree"; ORS 163.185, "Assault in the first degree"; ORS 163.425, "Sexual abuse in the second degree"; ORS 163.427, "Sexual abuse in the first degree"; ORS 163.465(1)(2)(b), "Public indecency"; ORS 164.315, "Arson in the second degree"; ORS 164.325, "Arson in the first degree"; ORS 166.165, "Intimidation in the first degree"; ORS 167.012, "Promoting prostitution"; or ORS 167.017, "Compelling prostitution"; ORS 475.840(1)(a)--(c), (2)(a)--(c) and (3)(a), "Prohibited acts generally; penalties"; ORS 475.850, "Unlawful delivery of heroin"; ORS 475.852, "Unlawful delivery of heroin within 1,000 feet of school"; ORS 475.854, "Unlawful possession of heroin"; ORS 475.860(1)(2) and (4)(a) "Unlawful delivery of marijuana"; ORS 475.862, "Unlawful delivery of marijuana within 1,000 feet of school"; ORS 475.864(1)(2) "Unlawful possession of marijuana"; ORS 475.870, "Unlawful delivery of 3,4-methylenedioxymethamphetamine"; ORS 475.872, "Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school"; ORS 475.874, "Unlawful possession of 3,4-methylenedioxymethamphetamine"; ORS 475.880 "Unlawful delivery of cocaine"; ORS 475.882, "Unlawful delivery of cocaine within 1,000 feet of school"; ORS 475.884, "Unlawful possession of cocaine"; ORS 475.890, "Unlawful delivery of methamphetamine"; ORS 475.892, "Unlawful delivery of methamphetamine within 1,000 feet of school"; ORS 475.894, "Unlawful possession of methamphetamine"; ORS 475.904, "Unlawful manufacture or delivery of controlled substance within 1,000 feet of school"; ORS 475.906(1) and (2), "Penalties for distribution to minors."

(2) "Class A" Misdemeanors: ORS 161.405(1)(2)(d), "Attempt," if the crime is an enumerated offense; ORS 450(1)(2)(d), "Conspiracy," if the crime is an enumerated offense; ORS 163.160, "Assault in the fourth degree"; ORS 163.190, "Menacing"; ORS 163.435, "Contributing to the sexual delinquency of a minor"; ORS 163.465(1) and (2)(a), "Public indecency"; ORS 164.255, "Criminal trespass in the first degree"; ORS 164.265, "Criminal trespass while in possession of firearm"; ORS 164.335, "Reckless burning"; ORS 163.415, "Sexual abuse in the third degree"; ORS 165.155, "Intimidation in the second degree"; ORS 166.065(1) and (4), "Harassment"; ORS 167.007, "Prostitution"; ORS 475.840(3)(c), "Prohibited acts generally; penalties"; ORS 475.860(1)(3)(a) "Unlawful delivery of marijuana"; ORS 475.906(3), "Penalties for distribution to minors."

(3) "Class B" Misdemeanors, "Class C" Misdemeanors, Violations and Infractions: ORS 161.405(1)(2)(e)-(g), "Attempt," if the crime is an enumerated offense; ORS 163.445, "Sexual misconduct"; ORS 164.245, "Criminal Trespass in the second degree"; ORS 164.383, "Unlawfully applying graffiti"; ORS 164.386, "Unlawfully possessing graffiti implement"; ORS 164.805, Offensive littering"; ORS 166.025, "Disorderly conduct in the second degree"; ORS 166.065(1) and (3), "Harassment"; ORS 167.400, "Tobacco possession by minors"; ORS 167.401(1) and (2), "Tobacco purchase by minors"; ORS 471.430(1), "Purchase or possession of liquor by person under 21"; ORS 471.410(2), "Providing liquor to person under 21"; ORS 475.840(1)(d)--(e), (2)(d)--(e) and (3)(d)--(e), "Prohibited acts generally; penalties"; ORS 475.860(1)(3)(b) and (4)(b) "Unlawful delivery of marijuana"; ORS 475.864(1)(3) and (4) "Unlawful possession of marijuana"; ORS 475.904, "Unlawful manufacture or delivery of controlled substance within 1,000 feet of school"; ORS 475.906(4), "Penalties for distribution to minors"; SRC 90.020, "Consumption and Sale of Alcohol Prohibited in Certain Places"; SRC 93.010, "Noise Disturbance Prohibited"; SRC 95.040, "Assault and Battery"; SRC 95.120, "Disorderly Conduct"; SRC 95.125, "Urinating or Defecating in Public"; SRC 95.160, "Firearms; Discharge"; SRC 95.330, "Minors Nighttime Curfew"; SRC 95.335, "Minors Daytime Curfew"; SRC 95.550, "Trespass"; SRC 95.580, "Littering Public Places"; SRC 95.610, "Prohibited Graffiti"; SRC 95.700, "Pedestrian Interference"; SRC 95.710, "Sports Activity Prohibited in Certain Areas"; SRC 96.220, "Public Indecency"; ~~SRC 96.300, "Prohibited Touching";~~ SRC 96.400, "Prohibited Prostitution Conduct"; or SRC 97.080, "Intimidation."

(Prior Code, § 95.735; Ord. No. 74-07)

Sec. 95.736. North Salem Crime Prevention District created.

(a) The geographic area bounded on the west by the west curbline of Front Street NE, on the south by the south curbline of Market Street NE, on the east by the west side of the Union Pacific right-of-way between Market Street NE to the intersection with Silverton Road NE, continuing with the west curbline of Silverton Road NE to

the east curbline of Hawthorne Avenue NE, continuing north to Hyacinth Street NE, on the north, the north curbline of Hyacinth Street NE to the Salem Parkway, bounded by the north/west curbline of the Salem Parkway, to the north curbline of Tryon Street NE is hereby designated at the North Salem Crime Prevention District.

(b) An enumerated offense in the North Salem Crime Prevention District means any of the following felonies, misdemeanors, violations or infractions, unless the offense was committed entirely within a private residence:

(1) Felonies: ORS 161.405(1)(2)(b)--(c), "Attempt," if the crime is an enumerated offense; ORS 161.450(1)(2)(b)--(c), "Conspiracy," if the crime is an enumerated offense; ORS 163.425, "Sexual abuse in the second degree"; ORS 163.427, "Sexual abuse in the first degree"; ORS 163.465(1) and (2)(b), "Public indecency"; ORS 167.012, "Promoting prostitution"; ORS 167.017, "Compelling prostitution"; ORS 475.840(1)(a)--(c), (2)(a)--(c) and (3)(a), "Prohibited acts generally; penalties"; ORS 475.850, "Unlawful delivery of heroin"; ORS 475.852, "Unlawful delivery of heroin within 1,000 feet of school"; ORS 475.854, "Unlawful possession of heroin"; ORS 475.860(1), (2) and (4)(a) "Unlawful delivery of marijuana"; ORS 475.862, "Unlawful delivery of marijuana within 1,000 feet of school"; ORS 475.864(1)(2) "Unlawful possession of marijuana"; ORS 475.870, "Unlawful delivery of 3,4-methylenedioxymethamphetamine"; ORS 475.872, "Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school"; ORS 475.874, "Unlawful possession of 3,4-methylenedioxymethamphetamine"; ORS 475.880 "Unlawful delivery of cocaine"; ORS 475.882, "Unlawful delivery of cocaine within 1,000 feet of school"; ORS 475.884, "Unlawful possession of cocaine"; ORS 475.890, "Unlawful delivery of methamphetamine"; ORS 475.892, "Unlawful delivery of methamphetamine within 1,000 feet of school"; ORS 475.894, "Unlawful possession of methamphetamine"; ORS 475.904, "Unlawful manufacture or delivery of controlled substance within 1,000 feet of school"; ORS 475.906(1) and (2), "Penalties for distribution to minors."

(2) "Class A" Misdemeanors: ORS 161.405(1)(2)(d), "Attempt," if the crime is an enumerated offense; ORS 450(1)(2)(d), "Conspiracy," if the crime is an enumerated offense; ORS 163.435, "Contributing to the sexual delinquency of a minor"; ORS 163.465(1)(2)(a), "Public indecency"; ORS 164.255, "Criminal trespass in the first degree"; ORS 164.265, "Criminal trespass while in possession of firearm"; ORS 163.415, "Sexual abuse in the third degree"; or ORS 167.007, "Prostitution"; ORS 475.840(3)(c), "Prohibited acts generally; penalties"; ORS 475.860(1)(3)(a) "Unlawful delivery of marijuana"; ORS 475.906(3), "Penalties for distribution to minors."

(3) "Class B" Misdemeanors, "Class C" Misdemeanors, Violations and Infractions: ORS 161.405(1)(2)(e)--(g), "Attempt," if the crime is an enumerated offense; ORS 163.445, "Sexual misconduct"; ORS 164.245, "Criminal Trespass in the second degree"; ORS 475.840(1)(d)--(e), (2)(d)--(e) and (3)(d)--(e), "Prohibited acts generally; penalties"; ORS 475.860(1)(3)(b) and (4)(b) "Unlawful delivery of marijuana"; ORS 475.864(1)(3) and (4) "Unlawful possession of marijuana"; ORS 475.904, "Unlawful manufacture or delivery of controlled substance within 1,000 feet of school"; ORS 475.906(4), "Penalties for distribution to minors"; SRC 95.550, "Trespass"; SRC 96.220, "Public Indecency"; ~~SRC 96.300, "Prohibited Touching";~~ or SRC 96.400, "Prohibited Prostitution Conduct."

(Prior Code, § 95.736; Ord. No. 74-07)

Sec. 95.740. Civil exclusion.

(a) Any person arrested and either cited to appear in Court for charging or lodged in jail for presentation to a judicial officer for charging, based upon probable cause to believe that the person has committed an enumerated offense within a crime prevention district shall be prohibited from being present on pedestrian ways or public ways within the district for any purpose, except as allowed by a variance granted pursuant to SRC 97.750. If the enumerated offense is a "Class B" misdemeanor, "Class C" misdemeanor, violation or infraction, the period of exclusion shall be 30 days; if one or more of the enumerated offenses are felonies or "Class A" misdemeanors, the period of exclusion shall be 90 days. If the enumerated offense was a felony or a "Class A" misdemeanor, the period of exclusion shall be extended by a period of one year, effective upon date of conviction.

(b) The exclusion notice shall be issued by the enforcement officer at the time the person is arrested or cited for the commission of the enumerated offense. The exclusion notice shall be in writing, and shall specify the

enumerated offenses, the geographical extent of exclusion, the date exclusion takes effect, the procedure for filing an appeal, the availability of a variance, and the extension of the period of exclusion by an additional one-year period upon conviction, if the enumerated offense was a felony or "Class A" misdemeanor. The period of exclusion shall commence upon the issuance of the notice of exclusion, but shall be stayed upon the filing of a notice of appeal under SRC 95.770(a) which stay shall remain in place until the Hearings Officer issues a decision upon the appeal under SRC 95.770(f).

(c) Any person who is issued an additional exclusion notice within six months of the expiration of any prior notice shall have an additional 90-day period of exclusion added onto the period of the additional notice.

(Prior Code, § 95.740; Ord. No. 16-2003; Ord. No. 74-07; Ord. No. 111-07)

Sec. 95.750. Variances from exclusion.

(a) Notwithstanding SRC 95.740, the Chief of Police, or the Chief's designee, may grant a variance to an excluded person at any time during the period of exclusion, upon a showing by the excluded person of a plausible need to engage in one of the following:

(1) To travel to and from a scheduled meeting with an attorney or scheduled meetings with criminal justice personnel; to and from obligations performed in compliance with an order of the Court or a justice agency; and to and from an administrative or judicial hearing to which the person is a party;

(2) To travel to and from a public or private establishment located in the crime prevention district to obtain goods or services not otherwise reasonably available outside the district to satisfy the essential needs of the person. As used in this ~~paragraph~~ subsection, the term "essential needs" means food, physical care, and medical attention;

(3) To travel to and from the person's place of employment;

(4) To travel to and from a government agency, private nonprofit corporation, or charity to obtain social services needed for the health or well-being of the person, and which are provided pursuant to written rules and regulations prohibiting unlawful use or possession of controlled substances;

(5) To travel to and from an educational facility to enroll as a student or to attend classes;

(6) To travel to and from a religious institution for the purposes of exercising the person's right to worship;

(7) To travel to and from the person's permanent place of residence for any purpose specified in ~~paragraphs~~ subsections (1) through (6) of this section, or to travel to and from the residence of the person or any member of the person's immediate family. For the purposes of this ~~paragraph~~ subsection, "immediate family" means the person's parents, in-laws, stepparents, siblings, grandparents, children, or grandchildren.

(b) A request for a variance shall be in writing, shall state the purpose for which the variance is sought, and the period of time during which the variance is requested to be effective. If granted, the variance shall allow relief from exclusion only for travel to and from specified locations, activities and events, or for presence at specified locations, activities and events, within the crime prevention district. The variance shall be in writing, shall clearly state the terms of the variance, including that travel within, or presence in, the crime prevention district is allowed only in accordance with the terms specified in the variance. The variance must be carried by the excluded person while within the crime prevention district in order to be effective, and shall be presented to any enforcement officer upon request.

(c) A person who is present on a pedestrian way or public way pursuant to a variance shall travel by the shortest direct route to and from the locations specified in subsection (a) of this section, and, if stopped by an enforcement officer, has the burden to demonstrate, by clear and convincing evidence, that the person is traveling to and from one of the locations for the purposes specified in the variance.

(d) A variance may be revoked if:

(1) The request for the variance contained false information;

(2) There is probable cause to believe the excluded person has committed another enumerated offense within the crime prevention district; or

(3) Circumstances upon which the variance was granted no longer exist.

(e) Refusal to issue a variance or revocation of a variance may be appealed to the Hearings Officer, as provided in SRC 97.770. A variance shall become effective upon issuance; a revocation of a variance shall become effective upon the fifth business day after the date of the mailing of notice of revocation to the excluded person.

(Prior Code, § 95.750; Ord. No. 16-2003; Ord. No. 74-07)

Sec. 95.760. Violation of exclusion notice.

Any person to whom an exclusion notice has been issued and who is present in a crime prevention district in violation of the notice or the terms of a variance issued pursuant to SRC 95.750 is subject to immediate arrest for criminal trespass under SRC 95.550(a) or ORS 164.245, and shall have the exclusion extended for an additional period of 30 days.

(Prior Code, § 95.760; Ord. No. 16-2003; Ord. No. 30-2003; Ord. No. 74-07)

Sec. 95.770. Appeals.

(a) A person who has been issued an exclusion notice, who has had the period of exclusion extended, who has been refused a request for a variance, or who has had a variance revoked, may appeal the action or decision by filing a written request with the City recorder, within 15 business days after receipt of notice of the action or decision, setting forth the name and address of the applicant and the reasons why the notice or extension should be rescinded, the variance granted, or the revocation reversed. Failure to file an appeal within such 15-day period shall be a waiver of all rights to review the action or decision, and any such appeal shall be dismissed by the Hearings Officer. The name and address set forth in the request shall be deemed conclusively correct, and mailing to the person at such address, by first class mail, shall be deemed ~~delivery~~ delivered three days after the date of mailing. Failure of the person to actually receive a notice of hearing or the Hearings Officer's decision if mailed to the address set forth in the request shall not in any way invalidate or otherwise affect the validity of any action or decision.

(b) If a request for an appeal is filed, an exclusion notice, extension of exclusion period or revocation of a variance shall be subject to a stay until such time as the Hearings Officer has issued a final decision upholding or rescinding the action or decision.

(c) The request shall be accompanied by an appeal fee, in an amount established by resolution of the ~~City~~ Council. Except as provided in subsection (g) of this section, the appeal fee is nonrefundable.

(d) Unless the appellant and the City agree to a longer period, an appeal shall be heard by a Hearings Officer within ten business days of the filing of the request. At least five business days prior to the hearing, the City shall mail notice of the time and location of the hearing to the appellant at the address set forth on the request.

(e) The Hearings Officer shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence the Hearings Officer deems appropriate. At the hearing, the appellant may present testimony and oral argument personally or by counsel. The City has the burden of proof to demonstrate, by a preponderance of the evidence, that the issuance of the exclusion notice is based upon the requisite enumerated offenses by the appellant, that extension of the exclusion notice is based upon the appellant's presence in a crime prevention district in violation of SRC 95.760, or that the grounds for revocation of a variance exist. The appellant has the burden of proof to demonstrate, by a preponderance of the evidence, that the grounds for issuance of a variance exist.

(f) The Hearings Officer shall issue a written decision within ten business days of the hearing date. A copy of the decision shall be mailed to the person's address as set forth on the request, and shall be deemed effective upon actual receipt, or three days after mailing, whichever is sooner. If issuance of an exclusion notice, extension of period of exclusion, or revocation of variance is upheld, a period of exclusion shall commence immediately upon the effective date of the decision.

(g) The decision of the Hearings Officer is final, and may include a determination that the appeal fee be refunded to the appellant upon a finding that the issuance of the exclusion notice, an extension thereof, the refusal to issue a variance, or the revocation thereof, was not grounded in law or fact. Appeals from a decision of the Hearings Officer shall be to circuit court by writ of review, and not otherwise.

(Prior Code, § 95.770; Ord. No. 16-2003; Ord. No. 74-07)

CHAPTER 96. PUBLIC DECENCY AND MORALS*

***State law reference—**Offenses, ORS 163.305 et seq.; offenses against family, ORS 163.505 et seq.

Sec. 96.010. ~~Advertising purposes and deliver defined~~ Definitions.

~~As used in this chapter, except where the context otherwise requires:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~"*Advertising purposes*~~"~~ means purposes of propagandizing in connection with the commercial sale of a product or type of product, the commercial offering of a service, or the commercial exhibition of an entertainment.

~~(b)~~ "*Deliver*~~"~~ means to do any act which is intended and has the result of placing the thing delivered in the actual or constructive possession of another, whether the person making delivery ~~be~~ is the owner, lessee, bailee, or other custodian of the thing delivered.

~~(Prior Code, § 96.010; Ord. No. 116-71)~~

~~Sec. 96.020. "display publicly", "furnish", and "juvenile" defined.~~

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

~~(a)~~"*Display publicly*~~"~~ means to expose, place, post, exhibit, or in any fashion display visibly or audibly in any location, whether public or private, an item or thing in such a manner that it may be readily seen or heard and its content or character distinguished by normal, unaided vision, or hearing from a public place.

~~(b)~~ "*Furnish*~~"~~ means to sell, give, rent, loan, or otherwise provide.

~~(c)~~"*Minor*~~"~~ means an unmarried person under 18 years of age.

~~(Prior Code, § § 96.010 96.020; Ord. No. 116-71)~~

~~Sec. 96.030. "nudity", "obscene material", and "obscene performance" defined.~~

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

~~(a)~~"*Nudity*~~"~~ means uncovered, or less than opaquely covered, post-pubertal human genitals, pubic areas, the post-pubertal human female breast below a point immediately above the top of the areola, or the covered human male genitals in a discernibly turgid state. For purpose of this definition, a female breast is considered uncovered if the nipple only or the nipple and the areola only are covered.

~~(b)~~ "*Obscene material*~~"~~ means:

(a) Any picture, photograph, drawing, sculpture or other visual representation or image of a person or portion of the human body that depicts nudity, sexual conduct, sexual excitement or sadomasochistic abuse;

(b) Any book, magazine, paperback, pamphlet, or other written or printed matter however reproduced; any sound record or recording; or any picture, drawing, photograph, sculpture, motion picture, film, or other visual representation or image; any of which, in whole or in part, depicts, explicitly describes, portrays, reproduces, or otherwise represents nudity, sado-masochistic abuse, sexual conduct, or sexual excitement; or contains obscene words; or

(c) Any device, artifact, mechanism, or thing which is designed or represented as being a means for aiding or engaging in sexual conduct, or for artificially producing or stimulating sexual excitement.

~~(c)~~"*Obscene performance*~~"~~ means any play, motion picture, dance, show, tableau, or other presentation, whether pictured, animated, or live, before an audience of at least one person, and which, in whole or in part, depicts, explicitly describes, portrays, reproduces, or otherwise represents nudity, sado-masochistic abuse, sexual conduct or sexual excitement, or includes obscene words.

~~(Prior Code, § 96.030; Ord. No. 116-71)~~

~~Sec. 96.040. "obscene word" and "public place" defined.~~

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

~~(a)~~"*Obscene word*~~"~~ means any slang word currently generally rejected for regular use in mixed society that is used to refer to genitals, female breasts, sexual conduct, or excretory functions or products, either that has no other meaning or that, in context, is clearly used for its bodily, sexual, or excretory meaning.

~~(b)~~ "*Public place*~~"~~ means any public street, sidewalk, alley, public conveyance, or any other place, whether publicly- or privately-owned, which is open to the general public, including juveniles, by general invitation or permission; or any place or property in plain view or hearing from such places.

~~(Prior Code, § 96.040; Ord. No. 116-71)~~

~~Sec. 96.050. "sadomasochistic abuse", "sexual conduct", and "sexual excitement" defined.~~

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

~~(a)~~"*Sadomasochistic abuse*~~"~~ means flagellation or torture by or upon a person who is in a state of nudity or clad in undergarments or bizarre or revealing costume, or in the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

~~(b)~~ "*Sexual conduct*~~"~~ means ~~human masturbation, sexual intercourse, or any touching of the genitals, pubic areas or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals, in an act of apparent sexual stimulation or gratification.~~ sexual intercourse or deviate sexual intercourse.

~~(d)~~ "*Sexual contact*~~"~~ means any touching of the sexual organs or other intimate parts of a person not married to the actor for the purpose of arousing or gratifying the sexual desire of either party.

~~(c)~~"*Sexual excitement*~~"~~ means the condition of human male or female genitals or the breasts of the female when in a state of sexual stimulation, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

(Prior Code, §§ 96.010---96.050; Ord. No. 116-71)

State law reference—Definitions, ORS 163.665, 163.760, 167.002, 167.080.

Secs. 96.020—96.090. Reserved.

~~JUVENILES~~MINORS

Sec. 96.100. Furnishing obscene material to ~~juveniles~~minors.

It shall be unlawful for any person knowing or having good reason to know the character of the materials to furnish any obscene material to any ~~juvenile~~ minor.

(Prior Code, § 96.100; Ord. No. 116-71)

Sec. 96.110. Delivering obscene material to ~~juveniles~~minors.

(a) It shall be unlawful for any person knowing or having good reason to know the character of the material, to deliver or cause or permit to be delivered any obscene material to any ~~juvenile~~ minor.

(b) Unless the defendant knows or has good reason to know that the person to whom the materials are delivered is a ~~juvenile~~minor, it is a defense to a prosecution under this section that there was, at the time of the delivery, prominently printed on the outer package, wrapper, or cover of the materials to be delivered, in words or substance, "This package (wrapper) (publication) contains material that, by law, cannot be furnished to a ~~juvenile~~minor."

(Prior Code, § 96.110; Ord. No. 116-71)

Sec. 96.120. Displaying obscene materials to ~~juveniles~~minors.

It shall be unlawful for any person being the owner, operator, or manager of a business, or acting in a managerial capacity, to knowingly or recklessly permit any ~~juvenile~~ minor who is not then and there accompanied

by his or her parent or lawful guardian to enter or remain upon any premises or any portion thereof, where there is visually displayed or offered for sale any obscene material.

(Prior Code, § 96.120; Ord. No. 116-71)

State law reference—Displaying obscene material to minors, ORS 167.080.

Sec. 96.130. Exhibiting an obscene performance to ~~juveniles~~minors.

(a) It shall be unlawful for any person to knowingly or recklessly, for monetary consideration or other valuable commodity or service:

(1) Exhibit an obscene performance to any ~~juvenile~~ minor who is not then and there accompanied by his or her parent or lawful guardian; ~~or~~

(2) Sell an admission ticket or other means to gain entrance to an obscene performance to any ~~juvenile~~minor who is not then and there accompanied by his or her parent or lawful guardian; or

(3) Permit the admission of any ~~juvenile~~minor who is not then and there accompanied by his or her parent or guardian to any premises whereon there is exhibited an obscene performance.

(b) No employee is liable to prosecution under this section for exhibiting any obscene motion picture provided the employee is acting within the scope of his or her regular employment at a showing open to the public.

(c) As used in this section, the term "employee" means any person regularly employed by the owner or operator of the motion picture theater if he or she has no financial interest other than salary or wages in the ownership or operation of the motion picture theater, no financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the motion picture theater where he or she is regularly employed, but does not include a manager of the motion picture theater.

(Prior Code, § 96.130; Ord. No. 116-71)

State law reference—Exhibiting obscene performance to minor, ORS 167.075.

Sec. 96.140. ~~Juveniles~~Minors not to loiter in certain places.

It shall be unlawful for any ~~juvenile~~ minor who is not then and there accompanied by his or her parent or lawful guardian to enter or loiter in or upon any premises or portion thereof where there is sold, offered for sale, or displayed any obscene material, where there is exhibited any obscene performance, or where there are signs posted as required by the provisions of ~~section~~ SRC 96.150 ~~of this Code~~.

(Prior Code, § 96.140; Ord. No. 116-71)

Sec. 96.150. Certain locations to be posted; form and contents; responsibility.

(a) On every business premises, or every physically and visually distinct and separate portion thereof, where there is sold, offered by sale or in any manner displayed any obscene material, or where there is exhibited any obscene performance, there shall be conspicuously posted at every entrance thereto, and at no less than two conspicuous locations therein, signs conforming to the requirements of this section.

(b) The sign required by subsection (a) of this section shall be of a design and character so as to be clearly and unmistakably legible and conspicuous to a person of normal, unaided vision from a distance of at least 15 feet; shall be at least nine inches by ten inches in size; and shall contain in words of substance the following language reproduced in roman letters and Arabic numerals on a white background: "NO ONE UNDER 18 YEARS PERMITTED ON THESE PREMISES UNLESS ACCOMPANIED BY A PARENT OR GUARDIAN," and beneath that, in smaller letters and numerals, "Section 96.140, Salem Revised Code."

(c) It shall be the responsibility of the owner, manager, or other person in charge of any premises mentioned in subsection (a) of this section to post signs of the required number and form in the prescribed locations; to ascertain that such signs are posted in such a manner as not to be easily removed or dislodged; and to make reasonable inspections of such signs during such times as they are required to be displayed so as to ascertain that they remain on display in the condition required by this section. Failure to carry out such responsibilities shall be unlawful.

(d) The fact that signs were posted pursuant to the provisions of this section shall not, of itself, constitute a defense to a prosecution brought under any other section of this chapter.

(e) Signs of the number, size, and design required by this section, but imposing stricter requirements than those provided in subsection (b) of this section, shall be deemed to comply with the provisions of that subsection.

(Prior Code, § 96.150; Ord. No. 116-71)

Sec. 96.160. Employment of ~~juvenile~~ minor for certain purposes prohibited.

It shall be unlawful for any person to knowingly or recklessly hire, employ, or otherwise engage for payment in money or any valuable consideration any ~~juvenile~~minor for the purpose of furnishing obscene material to any person, for the purpose of selling admission to or acting as an usher or attendant at any obscene performance, for the purpose of delivering obscene materials, or for any other purpose when the duties of such ~~juvenile~~minor will require or permit him or her to enter upon any premises where obscene materials are sold or displayed or any obscene performance is exhibited; provided, however, this section shall have no application where the parent or lawful guardian of a ~~juvenile~~ minor consent to such employment and the employment is not otherwise prohibited by state law regarding ~~juvenile~~ minors.

(Prior Code, § 96.160; Ord. No. 116-71)

State law reference—Employment of minor in place of public entertainment, ORS 167.030.

Sec. 96.170. Use of ~~juveniles~~ minors in an obscene performance.

It shall be unlawful for any person to knowingly or recklessly cause or permit any ~~juvenile~~ minor to engage or participate in any obscene performance.

(Prior Code, § 96.170; Ord. No. 116-71)

Sec. 96.180. Defenses, ~~juveniles~~ minors.

In any prosecution under ~~sections~~ SRC 96.100 through 96.170 ~~of this Code~~, it is an affirmative defense for the defendant to prove that the defendant:

(a) Was in a parental or guardianship relationship with a ~~juvenile~~ minor; ~~or~~

(b) Was a bona fide school, museum, or public library, or was acting in the course of his or her employment as an employee of such organization or of a retail outlet affiliated with and serving the educational purpose of such organizations; ~~or~~

(c) Was charged with the sale, showing, or display of an item, those portions of which might otherwise be contraband forming nearly an incidental part of an otherwise non-offending whole, and serving some legitimate purpose therein other than titillation; or

(d) Had reasonable cause to believe that the person involved was not a ~~juvenile~~ minor.

(Prior Code, § 96.180; Ord. No. 116-71; Ord. No. 193-71)

Secs. 96.190—96.210. Reserved.

PUBLIC OBSCENITY

~~**Sec. 96.200. Public display of obscene material.**~~

~~(a) It shall be unlawful for any person to display publicly, or to cause or permit to be displayed publicly, any obscene material, or any obscene performance, for advertising purposes.~~

~~(b) In any prosecution brought under this section it shall be an affirmative defense for the defendant to prove:~~

~~(1) That the public display, even though in connection with a commercial venture, was primarily for artistic purposes or as a public service; or~~

~~(2) That the public display was of nudity, exhibited by a bona fide art, antique, or similar gallery or exhibition, and visible in a normal display setting.~~

~~(Prior Code, § 96.200; Ord. No. 116-71)~~

~~**Sec. 96.210. Obscene conduct in public.**~~

~~It shall be unlawful for any person who is in any public place or in a place where food or alcoholic beverage is offered for sale or consumption on the premises to:~~

~~(a) Appear in a state of nudity with the intent of arousing sexual excitement in himself or another person;~~

~~(b) Engage in any sexual conduct;~~

~~(c) Do any act or participate in any activity involving sado-masochistic abuse.~~

~~(Prior Code, § 96.210; Ord. No. 116-71)~~

Sec. 96.220. Public indecency.

It shall be unlawful for any person to knowingly expose his or her genitals to the view of any person under circumstances in which such conduct creates a risk of public inconvenience, annoyance, or alarm.

(Prior Code, § 96.220; Ord. No. 18-85)

State law reference—Public indecency**,** ORS 163.465**.**

Secs. 96.230—96.300. Reserved.

~~**Sec. 96.300. Prohibited touching.**~~

~~(a) It shall be unlawful for any person to pay a fee, or to receive a fee, directly or indirectly, for touching or offering to touch the clothed or unclothed body of another for the purpose of arousing sexual excitement in himself or any other person.~~

~~(b) It shall be unlawful for any person to pay a fee, or to receive a fee, directly or indirectly, for allowing another person to touch his clothed or unclothed body for the purpose of arousing sexual excitement in himself or any other person.~~

~~(c) It shall be unlawful for any principal, agent, or employee of a business to cause, permit, aid, or abet any violation of this section by any principal, agent, or employee of the business.~~

~~(Prior Code, § 96.300; Ord. No. 96-72; Ord. No. 70-74)~~

Sec. 96.310. Nudity in massage.

(a) It shall be unlawful for any masseur to appear in a state of nudity while engaged in the practice of massage.

(b) It shall be unlawful for any principal, officer, agent, or employee of a massage business to appear in a state of nudity in any portion of a massage establishment where massage is given or where there is any patron of the establishment.

(c) It shall be unlawful for any principal, agent, or employee of a massage business to cause, permit, aid, or abet any violation of this section by any agent or employee of the massage business.

(d) As used in this section, the terms "massage," "massage business," "massage establishment," and "masseur" shall have the meanings provided in SRC 31.732.

(Prior Code, § 96.310; Ord. No. 96-72; Ord. No. 70-74; Ord. No. 110-82)

Secs. 96.320—96.390. Reserved.

Sec. 96.400. Prohibited prostitution conduct.

(a) As used in this section, the term "prostitution" means engaging in, offering, or agreeing to engage in sexual conduct or sexual contact in return for a fee or paying, offering, or agreeing to pay a fee to engage in sexual conduct or sexual contact. As used in this section, the term "prostitution procurement activity" means any conduct by any person that constitutes a substantial step in furtherance of an act of prostitution. Such activity includes, but is not limited to, lingering in or near any street or public place, repeatedly circling an area in a motor vehicle, or repeatedly beckoning to, contacting, or attempting to stop pedestrians or motor vehicle operators.

(b) It is unlawful for any person to engage in any prostitution procurement activity with an intent to induce, entice, solicit, procure, locate, or contact another person to commit an act of prostitution.

~~(a) It shall be unlawful for any person to remain in or near any street, sidewalk, alley or other place open to the public with the intent of committing, or inducing, enticing, soliciting or procuring another to commit, an act of prostitution. Among the circumstances which may be considered in determining whether the actor intends such prohibited conduct are:~~

~~(1) That the actor is a known prostitute or panderer; or~~

~~(2) The actor repeatedly beckons to, stops or attempts to stop, or engages passersby in conversation, or repeatedly stops or attempts to stop motor vehicle operators by hailing, waving of arms or any other bodily gesture; or~~

~~(3) The actor circles an area in a vehicle and repeatedly beckons to, contacts, or attempts to stop pedestrians; or~~

~~(4) The actor inquires whether a potential patron, procurer or prostitute is a police officer, searches the potential patron, procurer or prostitute for articles that would identify a police officer, or requests the touching or exposing of genitals or female breasts to prove that the potential patron, procurer or prostitute is not a police officer.~~

~~(b) For purposes of this section, a "known prostitute, or panderer" is a person who has, within the knowledge of the investigating officer, been convicted in any court within this state of any violation of the prostitution laws, including solicitation of prostitution, or substantially similar laws or ordinances of any political subdivision of this state or of any other state or jurisdiction.~~

(Prior Code, § 96.400; Ord. No. 45-96)

Secs. 96.410—96.980. Reserved.

Sec. 96.990. Violations.

Violation of any provision of this chapter is a misdemeanor.

(Prior Code, § 96.990; Ord. No. 193-79)

CHAPTER 97. HUMAN RIGHTS*

***State law reference—**Unlawful discrimination, ORS 659A.001 et seq.; Oregon Equality Act, ORS 659A.004.

Sec. 97.005. Policy.

It is the policy of the City ~~of Salem~~ to eliminate discrimination based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity and source of income. The ~~City~~ Council finds that such discrimination poses a threat to the health, safety and general welfare of the citizens of Salem and menaces the institutions and foundation of our community. ~~Furthermore, the City Council finds that although the State of Oregon generally prohibits discrimination in employment, housing, and public accommodation on the basis of race, religion, color, sex, marital status, familial status, national origin, age, and disability, the State does not generally prohibit such discrimination on the basis of sexual orientation, gender identity, domestic partnership, or source of income.~~ It is the intent of the Council to supplement the state protections against discrimination. Furthermore, it is the intent of the Council, in the exercise of its powers for the protection of the public health, safety, and general welfare and for the maintenance of peace and good government, that every individual shall have an equal opportunity to participate fully in the life of the City and that discriminatory barriers to equal participation in employment, housing, and public accommodations be removed.

(Prior Code, § 97.005; Ord. No. 36-2002)

Sec. 97.010. Definitions.

(a) ~~As used in this chapter, except where the context otherwise requires:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Age* means age 18 or older.

~~(b)~~ *Agent* means any person (not an employee or officer), who is an agent of a public body for purposes of the Tort Claims Act, if that person meets the usual control tests with respect to the manner of performance of duties, or if that person performs a function or responsibility of the City ~~of Salem~~ on behalf of the City. A person is not an agent if he or she merely performs a service without supervision or control for the City and not on its behalf.

~~(.)~~ *Commission* means the Human Rights and Relations Advisory Commission created by ordinance.

~~(c)~~*Domestic partnership* means a relationship between two persons who meet either of the following requirements:

(1) Have registered, certified or affirmed their relationship with any appropriate, legally established domestic partnership registry within any jurisdiction in the United States, or with the State ~~of Oregon's~~ Public Employees Benefits Board; or

(2) Are 18 years of age or older; are each unmarried; are each other's sole domestic partner and intend to remain so indefinitely; are not related by blood closer than would bar marriage in the State ~~of Oregon~~; and are residing together, share the common necessities of life and are responsible for each other's common welfare.

~~(d)~~ *Employer* means any person, wherever situated, who employs one or more employees within the City, or who solicits individuals within the City to apply for employment, whether privately or by general advertisement.

~~(e)~~*Gender identity* means a person's actual or perceived sex, including a person's identity, appearance, expression, or behavior with respect to actual or perceived sex, whether or not that identity, appearance, expression or behavior is different from that traditionally associated with the person's sex at birth.

~~(f)~~*Person* means an individual, partnership, association, organization, corporation, board, commission, or other organized and identifiable group. The term "person" includes a public body, as that term is defined by ORS 30.260(4), other than the State ~~of Oregon~~ or a county.

~~(g)~~ *Registered volunteer* ~~is~~ means a person who donates labor or services to the City under the supervision of an employee of the City ~~of Salem~~ and performs a function or responsibility of the City on behalf of the City.

~~(h)~~ *Sexual orientation* means actual or perceived heterosexuality, homosexuality, or bisexuality.

~~(i)~~ *Source of income* refers to the means by which a person supports himself or herself and any dependents, including, but not limited to, money and property from any occupation, profession or activity, from any contract, settlement or agreement, from federal or state payments, Court-ordered payments, gifts, bequests, annuities, life insurance policies, and compensation for illness or injury, but excluding any money or property derived in a manner made illegal or criminal by any law, statute or ordinance.

~~(j)~~ *Vocational school* means any person who trains and teaches individuals to engage in any trade, business, or vocational pursuit.

(~~k~~ b) Any term used but not defined in this chapter ~~97~~ shall be interpreted consistently with definitions provided in ~~Oregon Revised Statutes,~~ ORS ch. 659A ~~(2001)~~.

(Prior Code, § 97.010; Ord. No. 60-72; Ord. No. 59-75; Ord. No. 239-78; Ord. No. 93-90; Ord. No. 46-96; Ord. No. 36-2002)

Sec. 97.020. Unlawful employment practices.

It shall be an unlawful employment practice:

(a) For any employer to discriminate on the basis of an individual's race, religion, color, sex, national origin, marital status, age, disability, sexual orientation, gender identity, source of income, domestic partnership or familial status, by committing against any such individual any of the acts made unlawful under ORS 659A.006(2), 659A.030, 659A.100 to 659A.139, 659A.142(1) or 659A.142(2); and

(b) For any vocational school to discriminate because of race, religion, color, sex, national origin, marital status, age, disability, sexual orientation, gender identity, source of income, domestic partnership or familial status, against any individual in its admission or other operating procedures and practices relating to students or prospective students.

(Prior Code, § 97.020; Ord. No. 60-72; Ord. No. 239-78; Ord. No. 36-2002)

State law reference—Unlawful employment discrimination, ORS 659A.003 et seq.

Sec. 97.030. Reserved.

Sec. 97.040. Unlawful housing practices.

It shall be unlawful housing practice for a person to discriminate in selling, renting, or leasing real property on the basis of an individual's race, religion, color, sex, national origin, marital status, age, disability, sexual orientation, gender identity, source of income, domestic partnership or familial status, by committing against any such individual any of the acts made unlawful under ORS 659A.145 or 659A.421.

(Prior Code, § 97.040; Ord. No. 60-72; Ord. No. 239-78; Ord. No. 36-2002)

State law reference—Discrimination against persons with disabilities in real property transactions, ORS 659A.145; discrimination in real property transactions, ORS 659A.421.

Sec. 97.050. Reserved.

Sec. 97.060. Unlawful public accommodations practices.

It shall be an unlawful public accommodations practice for a person to discriminate on the basis of an individual's race, religion, color, sex, national origin, marital status, age, disability, sexual orientation, gender identity, source of income, domestic partnership or familial status, by committing against any such individual any of the acts made unlawful under ORS 659A.142(3) or ~~ORS~~ 659A.400 to 659A.409.

(Prior Code, § 97.060; Ord. No. 60-72; Ord. No. 239-78; Ord. No. 36-2002)

State law reference—Unlawful discrimination in public accommodations, ORS 659A.400 et seq.

Sec. 97.070. Reserved.

Sec. 97.080. Intimidation.

(a) It shall be unlawful for any person to commit any of the following acts:

(1) Tamper or interfere with property, having no right to do so nor reasonable ground to believe that the person has such right, with the intent to cause substantial inconvenience to another, because of the person's perception of the other's race, color, religion, national origin, familial status, age, marital status, domestic partnership, disability, sexual orientation, gender identity or source of income.

(2) Intentionally, knowingly or recklessly subject another to offensive physical contact because of the person's perception of the other's race, color, religion, national origin, familial status, age, marital status, domestic partnership, disability, sexual orientation, gender identity or source of income.

(3) Intentionally, knowingly or recklessly publicly insult another by abusive words or gestures in a manner likely to provoke a violent response because of the person's perception of the other's race, color, religion, national origin, familial status, age, marital status, domestic partnership, disability, sexual orientation, gender identity or source of income.

(4) Intentionally, knowingly or recklessly, because of the person's perception of race, color, religion, national origin, familial status, age, marital status, domestic partnership, disability, sexual orientation, gender identity or source of income, subject another to alarm by threatening to:

(A) ~~To~~ Inflict physical injury upon or commit a crime affecting that other person, or member of that other person's family.

(B) ~~To~~ Cause damage to the property of that other person or member of that other person's family.

(5) Willfully violate a Court order issued under SRC 97.090, or of an order issued by any court of competent jurisdiction under an equivalent statute or ordinance.

(b) For the purposes of SRC 97.080, the term "property" means any tangible personal property or real property.

(Prior Code, § 97.080; Ord. No. 16-90; Ord. No. 36-2002)

State law reference—Intimidation in the second degree, ORS 166.155.

Sec. 97.085. Exceptions.

(a) The prohibitions in this chapter against discriminating on the basis of sexual orientation and gender identity do not apply to:

(1) ~~To~~ The leasing or renting of a room or rooms within an individual living unit which is occupied by the lessor as his or her residence;

(2) ~~To~~ The leasing or renting of dwellings with not more than two individual living units where one of the units is owner occupied;

(3) ~~To~~ The leasing or renting of space within a church, temple, synagogue, religious school, or other facility used primarily for religious purposes.

(b) The prohibitions in this chapter against discriminating on the basis of source of income do not prohibit:

(1) Inquiry into and verification of a source or amount of income;

(2) Inquiry into, evaluation of, and decisions based on the amount, stability, security or creditworthiness of any source of income;

(3) Screening prospective purchasers and tenants on bases not specifically prohibited by this chapter or by state or federal law;

(4) Refusal to contract with a governmental agency under 42 USC 1437f(a) "Section 8."

(c) The prohibitions in this chapter against discriminating on the basis of gender identity do not prohibit:

(1) Health or athletic clubs or other entities that operate gender-specific facilities involving public nudity, such as showers and locker rooms, from requiring an individual to document their gender or transitional status. Such documentation can include, but is not limited to, a Court order, letter from a physician, birth certificate, passport, or driver's license;

(2) Otherwise valid employer dress codes or policies, so long as the employer provides, on a case-by-case basis, for reasonable accommodation based on the health and safety needs of persons protected on the basis of gender identity.

The exceptions in ~~paragraphs~~ subsections (c)(1) and (2) of this ~~sub~~section do not excuse a failure to provide reasonable and appropriate accommodations permitting all persons access to restrooms consistent with their expressed gender.

(d) The prohibitions in ~~section~~ SRC 97.040 against discriminating on the basis of age do not apply to housing for older persons, as defined in ORS 659A.421(7)(b) and (c).

(e) The prohibitions in ~~section~~ SRC 97.060 against discriminating on the basis of age or familial status do not apply to the use of special rates or services or to the promotion of business through the issuance of special rates for families with children, or persons 55 years of age or older.

(f) The prohibitions contained in this chapter ~~97~~ shall not mandate or otherwise affect the scope or content of medical insurance or other forms of medical or health benefits provided by employers.

(Prior Code, § 97.085; Ord. No. 36-2002)

State law reference—Discrimination in public accommodations, ORS 659.400 et seq.

Sec. 97.090. Disregarding Court orders.

(a) When any person ~~is~~ charged with violating SRC 97.080 is released from custody before trial by bail or personal recognizance, the Salem Municipal Court Judge authorizing the release shall require that the person:

(1) Stay at least 100 yards away from the home, school, business or place of employment of the victim or victims of the alleged offense or other location, as shall be specifically named by the Court in the order.

(2) Refrain from contacting, intimidating, threatening, or otherwise interfering with the victim or victims of the alleged offense and such other persons, including, but not limited to, members of the family or household of the victim, as shall be specifically named by the Court in the order.

(3) The Court shall determine the necessity for imposing a no-contact order or other conditions of pre-trial release. The Salem Police Department and Salem Municipal Court may enforce this section as it relates to orders restricting the defendant's ability to have contact with the victims or others.

(b) The victim shall be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim is involved. If a defendant is found guilty of a crime of intimidation and a condition of the sentence restricts the defendant's ability to have contact with the victim or witnesses, the condition shall be recorded and a written certified copy of that order shall be provided to the victim or witnesses by the clerk of the court. The written order shall contain the Court's directives and shall bear the legend: Violation of this order is criminal offense under SRC 97.080 and will subject a violator to arrest.

(Prior Code, § 97.090; Ord. No. 16-90; Ord. No. 36-2002)

~~**Sec. 97.100. Severability.**~~

~~If any section, portion, clause or phrase of SRC Chapter 97 is held to be invalid or unconstitutional, the remaining sections, portions, clauses and phrases shall not be affected but shall remain in full force and effect.~~

~~(Prior Code, § 97.100; Ord. No. 16-90; Ord. No. 36-2002)~~

Secs. 97.100—97.850. Reserved.

Sec. 97.860. Action upon complaints.

(a) Upon receiving a complaint of a possible violation of the provisions of this chapter ~~97 of this Code~~, the Commission shall provide information to the complainant concerning options to resolve the complaint, including,

but not limited to, the provisions of this section and referral to governmental officers or bodies with authority over the complaint.

(b) If the complaint is not referred to a governmental officer or body under subsection (a) of this section or withdrawn by the complainant, the Commission shall determine if the complaint is timely under SRC 97.880 and has a reasonable basis.

(c) If the complaint is timely under SRC 97.880 and has a reasonable basis, the Commission shall attempt to resolve the complaint through informal means, including, but not limited to, fact-finding, mediation and discussion with all parties concerning the complaint. The term "fact-finding" means identification of the major issues in the particular dispute by one or more Commissioners or other impartial individuals who review the positions of the parties, resolve factual differences and make recommendations for settlement of the dispute.

(d) If informal resolution of the complaint under subsection (c) of this section is not achieved, the Commission shall refer the matter to the City Attorney for determination as to whether a complaint for an infraction or crime should be issued in Municipal Court.

(Prior Code, § 97.860; Ord. No. 60-72; Ord. No. 40-76; Ord. No. 61-93; Ord. No. 42-09)

Sec. 97.870. Duties of the City Attorney.

In addition to giving legal advice and counsel to the Commission, and prosecuting on behalf of the City all criminal complaints filed in Municipal Court, the City Attorney shall review any case which comes before him or her involving possible violations of this chapter ~~97 of this Code~~, and shall determine whether a complaint for an infraction or crime should issue in Municipal Court.

(Prior Code, § 97.870; Ord. No. 60-72; Ord. No. 61-93; Ord. No. 42-09)

Sec. 97.880. Limitations on actions upon complaints.

The Commission shall dismiss any complaint concerning an alleged violation of the provisions of this ~~chapter 97 of this Code~~ where such violation is found to have been committed more than one year prior to the receipt of the complaint by the Commission.

(Prior Code, § 97.880; Ord. No. 60-72; Ord. No. 61-93; Ord. No. 42-09)

Sec. 97.890. Conflicts with state agencies.

The Commission shall, upon learning that there is a proceeding pending before any state court or administrative agency or tribunal having jurisdiction to administer or enforce the provisions of ORS ch. 659, regardless of when such proceeding was commenced, abate any matter before the Commission involving the same subject matter and parties and forward to the appropriate officer of such court, agency, or tribunal a full report of the matter by the Commission. The Commission shall then furnish whatever assistance and cooperation may be requested by the State Officer.

(Prior Code, § 97.890; Ord. No. 60-72; Ord. No. 61-93; Ord. No. 42-09)

Sec. 97.900. Administration and enforcement.

(a) Nothing in this section shall be construed as barring or preventing direct prosecution of a criminal violation of this chapter, or as requiring that a criminal violation be investigated or heard before the Human Rights and Relations Advisory Commission, as provided in SRC 97.860 through 97.990.

(b) Claims against City.

(1) Any person who claims discrimination by the City in violation of this chapter may file a complaint with the Commission under SRC 97.860 only after exhausting all other administrative remedies provided by the City pursuant to contract, rule, or policy. If a claim is filed prior to exhaustion of available City administrative remedies, the Commission shall inform the person of those remedies and forward the complaint to the appropriate city official to address it.

(2) Any claim against the City filed with the Commission by a City employee, registered volunteer or agent shall be subject to the additional requirements of subsection (d) of this section.

(3) If the Commission takes action under SRC 97.860(a) through (c) based on a claim alleging discrimination against the City and an informal resolution is not thereby achieved, the Commission shall refer the complaint to the City Manager for a determination whether the complaint should be forwarded to the Bureau of Labor and Industries, which shall act as the City's enforcement agent.

(c) Claims by City employees, registered volunteers, or agents against City.

(1) Any employee, registered volunteer, or agent of the City who claims discrimination by the City in violation of this chapter may file a complaint with the Commission under SRC 97.860. Such complaint may be filed only after all applicable internal grievance processes have been followed and completed. If the complaining party files a complaint upon the completion of those internal processes, the Commission's actions shall be limited to SRC 97.860(a) through (c), subject to the conditions in ~~paragraphs 2 through 5 below~~ subsection (c)(2) through (5) of this section.

(2) The Commission shall take no action on the complaint if the party:

(A) Has proceeded to arbitration pursuant to a collective bargaining agreement between a labor organization and the City;

(B) Has filed with the Bureau of Labor and Industries ("BOLI") a claim under ORS ch. 659A concerning the same event or set of circumstances that form the basis of the claim under this section, and BOLI has accepted jurisdiction on that claim; or

(C) Has filed a civil complaint in state or federal court against the City or any of its employees, agents or registered volunteers based on the same event or set of circumstances that form the basis of the claim under this section.

(3) The Commission shall take action on the complaint as provided in SRC 97.860(a) through (c) if the party has not taken any of the steps listed in ~~paragraph~~ subsection (c)(2) of this ~~sub~~section, or if BOLI or the Court has dismissed the claim on procedural grounds.

(4) The Commission shall stay its action on the complaint if, subsequent to the filing of the complaint, the complaining party files a BOLI claim or civil complaint based on the same event or circumstances that form the basis of the claim under this section. It shall resume its action if the BOLI claim or civil complaint is dismissed on procedural grounds.

(5) The Commission shall dismiss the complaint if, subsequent to the filing of the complaint, the complaining party files a BOLI claim or civil complaint based on the same event or circumstances that form the basis of the claim under this section, and that claim proceeds to a final order, other than a dismissal on procedural grounds.

(d) Private cause of action.

(1) Any person who claims to be aggrieved by an unlawful discriminatory act listed below shall have a cause of action in any court of competent jurisdiction.

(A) An unlawful employment practice based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity and source of income; ~~sexual orientation, gender identity, source of income, familial status, or domestic partnership;~~

(B) An unlawful housing practice based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity and source of income; or ~~sexual orientation, gender identity, source of income, familial status, or domestic partnership;~~

(C) An unlawful public accommodations practice based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity and source of income. ~~sexual orientation, gender identity, source of income, familial status, or domestic partnership;~~

(2) A cause of action filed pursuant to this subsection (d) shall be subject to the following limitations:

(A) The civil action must be commenced within one year after the occurrence of the unlawful practice, or within 90 days after the close of the last administrative action, whichever is later.

(B) The Court may order any injunctive relief and such other equitable relief as may be appropriate, and compensatory and punitive damages.

(C) The Court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal.

(D) In any action under SRC 97.020, the Court may order reinstatement or hiring of employees with or without back pay, subject to the time limitations provided in ORS 659A.885(1).

(e) If a complaint is filed with the Commission alleging discrimination based on a claim not listed in ~~subparagraphs~~ subsections (e)(1)(A) through (C) of this section, then notwithstanding SRC 97.860 through 97.890, the Commission shall not refer a complaint to the City Attorney's Office. Instead, if the Commission is unable to resolve such a complaint, the complaint shall be referred to the appropriate state agency.

(Prior Code, § 97.900; Ord. No. 60-72; Ord. No. 36-2002; Ord. No. 42-09)

Sec. 97.910. Engaging in reprisal or retaliation.

(a) It shall be unlawful for any person to in any manner discriminate against, penalize, or harass, as defined by ORS 166.065, any person who has been a witness for, filed a complaint with, or otherwise participated in any matter before the Commission concerning an alleged violation of the provisions of this chapter.

(b) It shall not be a defense to prosecution for violation of this section that the matter before the Commission has not yet proceeded to final determination before the Commission, or that the matter has been dismissed by the Commission, or that a criminal or infraction complaint has been dismissed or the defendant or respondent found not guilty or not responsible by any court having jurisdiction thereof.

(Prior Code, § 97.910; Ord. No. 60-72; Ord. No. 61-93)

Secs. 97.920—97.980. Reserved.

Sec. 97.990. Violations.

Knowing and willful violation of SRC 97.010 to 97.890 is an infraction; save and except that violation of SRC 97.080 is a misdemeanor.

(Prior Code, § 97.990; Ord. No. 60-72; Ord. No. 193-79; Ord. No. 16-90)

CHAPTER 98. PUBLIC NUISANCE*

***State law reference—**Nuisance activities or conditions, ORS 105.550 et seq**.**

Secs. 98.010—98.090. Reserved.

Sec. 98.100. Violations.

Violation of any of the provisions of this chapter is a misdemeanor.

(Prior Code, § 98.100; Ord. No. 103-87)

Sec. 98.110. ~~Severability~~ Reserved.

~~If any provision of this chapter, or its application to any person, or circumstances is held to be invalid for any reason, the remainder of the chapter, or the application of its provisions to other persons or circumstances shall not in any way be affected.~~

~~(Prior Code, § 98.110; Ord. No. 103-87)~~

Sec. 98.120. Declaration of purpose.

It is hereby found and declared that:

(a) Because of repeated disruptive behavior on them, properties within the City ~~of Salem~~ can create unreasonable disruptions to the neighborhoods where the properties are located.

(b) The properties become chronic nuisances to surrounding property owners and degrade neighborhoods.

(c) Existing state criminal statutes and City ordinances are inadequate to address, control or remedy the denigration that results from the chronic unlawful activity occurring at the properties.

(d) Civil regulation of these properties will provide a remedy to the problems caused by these chronic behaviors and will promote and protect the public health, safety and welfare.

(Prior Code, § 98.120; Ord. No. 24-93)

Sec. 98.130. Public nuisance property.

(a) Any property within the City ~~of Salem~~ which becomes public nuisance property is in violation of this chapter and subject to its remedies.

(b) Any person who permits property under his or her ownership or control to be a public nuisance property shall be in violation of this chapter and subject to its remedies.

(Prior Code, § 98.130; Ord. No. 24-93)

Sec. 98.140. Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Chief of Police* means the duly appointed and acting Chief of Police of the City ~~of Salem, Oregon,~~ or the Chief of Police's designee.

~~(b)~~ *Control* means the ability to regulate, restrain, dominate, counteract or govern conduct that occurs on property.

~~(c)~~*Good cause* means circumstances beyond the ability of a person acting with reasonable care and diligence to control.

~~(d)~~ *Owner* means any person, agent, firm or corporation having a legal or equitable or management interest in a property. The term "owner" includes, but is not limited to:

(a) A mortgagee in possession in whom is vested:

(1) All or part of the legal title to the property; or

(2) All or part of the beneficial ownership and a right to present use and enjoyment of the premises; or

(b) A person who can control what occurs on that property.

~~(e)~~*Permit* means to suffer, allow, consent to, acquiesce by failure to prevent, or expressly assent or agree to the doing of an act.

~~(f)~~*Property* means any real property including land and that which is affixed, incidental or appurtenant to land, including, but not limited to, any premises, room, house, building or structure or any separate part or portion thereof, whether permanent or not.

~~(g)~~ *Public nuisance property* means property upon which three or more instances of any of the below listed behaviors occur, or whose patrons, employees, residents, owners or occupants engage in three or more instances of any of the below listed behaviors within 400 feet of the property, during any 30-day period as a result of three or more separate factual incidents.

(a) Harassment as defined in ORS 166.065 ~~(1987)~~.

(b) Intimidation as defined in ORS 166.155 to 166.165 ~~(1993)~~ or SRC 97.080.

(c) Disorderly conduct as defined in SRC 95.120 or ORS 166.023 to 166.025 ~~(1983)~~.

(d) Discharge of a firearm as defined in SRC 95.160.

(e) Noise disturbance as defined in SRC 93.010.

(f) Drinking in public as defined in SRC 90.020.

(g) Minor in possession of alcohol as defined in ~~SRC 90.130 or~~ ORS 471.430 ~~(1991)~~.

(h) Assault as defined in SRC 95.040, ORS 163.160, or ~~ORS~~ 163.165 to 163.185 ~~(1991)~~.

(i) Sexual abuse as defined in ORS 163.415 to 163.427 ~~(1991)~~.

(j) Public indecency as defined in ORS 163.465 ~~(1977)~~ or SRC 96.220.

(k) Trespass as defined in SRC 95.550 or ORS 164.245 to 164.265 ~~(1979)~~.

(l) Criminal mischief as defined in ORS 164.345 to ~~ORS~~ 164.365 ~~(1993)~~.

(m) Prostitution or related offenses as defined in ORS 167.007 to ~~ORS~~ 167.017.

(n) Illegal gambling as defined in ORS 167.117 or ~~ORS~~ 167.122 to ~~ORS~~ 167.127.

(o) Alcoholic liquor violations as defined in ORS ~~Chapter~~ 471.105 to 471.482.

(p) Possession, manufacture, or delivery of a controlled substance or related offenses as defined in ORS 167.203, ~~ORS~~ 475.005 to 475.285, or ~~ORS~~ 475.940 to 475.995, or 475.752 to 475.980.

(q) Littering as defined in ORS 164.805.

(r) Curfew offenses as defined in SRC 95.330 to 95.360.

(s) Menacing as defined in ORS 163.190.

(t) Arson or reckless burning as defined in ORS 164.315 to 164.335.

(u) Contributing to the sexual delinquency of a minor as defined in ORS 163.435.

(v) Sexual misconduct as defined in ORS 163.445.

~~(w) Prohibited touching as defined in SRC 96.300.~~

~~(x)~~ (w) Any attempt to commit (as defined in ORS 161.405) and conspiracy to commit (as defined in ORS 161.450) any of the above behaviors.

~~(h)~~ *Structure* means that which is built or constructed, an edifice or building of any kind including units thereof or mobile homes; any of which is an addition to or a fixture on real property.

(Prior Code, § 98.140; Ord. No. 24-93; Ord. No. 46-94; Ord. No. 64-97; Ord. No. 84-98)

State law reference—Places declared nuisances for abatement, ORS 105.555; places declared nuisances per se, ORS 105.597.

Sec. 98.150. Notice procedure.

(a) When the Chief of Police believes in good faith that property within the City has become public nuisance property, the Chief of Police shall notify the owner and the owner's registered agent under SRC 98.180, if known, in writing that the property has been determined to be public nuisance property. The notice shall contain the following information:

(1) The street address or description sufficient for identification of the property.

(2) That the Chief of Police has found the property to be public nuisance property with a concise description of the conditions leading to his or her findings.

(3) A direction to notify the Chief of Police in writing within 15 days from the date of mailing the notice of the actions the owner intends to take to abate the nuisance.

(4) A direction to abate the nuisance, enter into a compliance plan agreement mutually agreed upon by the owner and the Chief of Police designed to abate the nuisance, or show good cause to the Chief of Police why the owner cannot abate the nuisance, within 60 days from the date of mailing the notice.

(5) That if the nuisance is not abated, good cause for failure to abate is not shown, a compliance plan is not entered into, or if a compliance plan agreement does not result in abatement of the nuisance, the Council may order abatement, with appropriate conditions. The Council may also employ any other remedy deemed by it to be appropriate to abate the nuisance, including, but not limited to, authorizing a civil complaint in a court of competent jurisdiction which may include seeking closure of the property or enforcement of any compliance plan agreement entered into under this chapter.

(6) That the owner may be required to pay to the City a civil penalty of $100.00 a day for each day the nuisance continues after the Council orders abatement.

(7) That the multifamily dwelling ~~rental dwelling~~ license, if any, of the property is subject to suspension or revocation.

(8) That permitting public nuisance property is a misdemeanor.

(9) That the above remedies are in addition to those otherwise provided by law.

(b) Service of the notice is completed upon:

(1) Personal service on the owner or owner’s registered agent under SRC 98.180, if any; or

(2) Mailing the notice first class, postage prepaid, addressed to:

(A) The owner's registered agent under SRC 98.180, if any; or

(B) The owner at the address of the property believed to be a public nuisance property, and to such other address as shown on the tax rolls of the county in which the property is located or such other place which is believed to give the owner actual notice of the determination by the Chief of Police.

(c) A copy of the notice shall be served on occupants of the property, if different from the owner. Service shall be completed upon personal service of the notice or upon mailing the notice first class, postage prepaid, addressed to "occupant" of each unit of the property believed to be a public nuisance property.

(d) The failure of any person or owner to receive actual notice of the determination by the Chief of Police shall not invalidate or otherwise affect the proceedings under this chapter.

(Prior Code, § 98.150; Ord. No. 24-93; Ord. No. 51-96; Ord. No. 84-98)

State law reference—Action regarding such nuisances in circuit court, ORS 105.660.

Sec. 98.160. Abatement procedures.

(a) Within 15 days of the mailing of the notice, the owner shall notify the Chief of Police in writing of the actions that owner intends to take to abate the nuisance.

(b) Within 60 days of the mailing of the notice, the owner shall abate the nuisance, enter into a compliance plan agreement mutually agreed to by the owner and the Chief of Police and designed to abate the nuisance, or show good cause to the Chief of Police why the owner cannot abate the nuisance within that time.

(c) If the owner does not comply with subsection (a) or (b) of this section or fails to comply with the terms of a compliance plan agreement entered into under this chapter, the Chief of Police may refer the matter to the Council for hearing as a part of its regular agenda at the next succeeding meeting. The City Recorder shall give notice of the hearing to the owner and occupants, if different from the owner. At the time set for hearing the owner and occupants may appear and be heard by the Council. The Council shall determine whether the property is public nuisance property and whether the owner has complied with subsections (a) and (b) of this section and whether the owner has complied with the terms of any compliance plan agreement entered into under this chapter. The City has the burden of showing by a preponderance of the evidence that the property is public nuisance property and that the owner has failed to comply with the terms of any compliance plan agreement entered into under this chapter. The owner has the burden of showing by a preponderance of the evidence that there is good cause for failure to abate the nuisance or enter into a compliance plan agreement within 60 days of the mailing of the notice.

(Prior Code, § 98.160; Ord. No. 24-93; Ord. No. 51-96; Ord. No. 84-98)

Sec. 98.170. Remedies by Council.

(a) In the event the Council determines that property is public nuisance property, and that the owner has failed to comply with SRC 98.160(a) or (b) or the terms of any compliance plan agreement entered into under this chapter, the Council may order that the nuisance be abated. The order may include conditions under which abatement is to occur. The Council may also employ any other remedy deemed by it to be appropriate to abate the nuisance, including, but not limited to, authorizing a civil complaint in a court of competent jurisdiction which may include seeking closure of the property or enforcement of any compliance plan agreement entered into under this chapter.

(b) The remedies in this section are in addition to those otherwise provided by law.

(Prior Code, § 98.170; Ord. No. 24-93; Ord. No. 51-96; Ord. No. 84-98)

Sec. 98.180. Registered agent for service.

The owner of a ~~rental dwelling who does not possess a license for that dwelling under SRC 31.005 and 31.993~~ "multifamily dwelling," as defined by SRC 59.010, who does not possess a license for that dwelling under SRC 59.400, may register the name and address of an agent for service of notice under this chapter with the Building Official of the Department of Community Development. ~~"Rental dwelling" is any hotel, motel, apartment house or dwelling wherein rooms or structures are offered or maintained for rent or lease as permanent or temporary dwelling places. "Rental dwelling" does not include those dwellings described in SRC 31.993(b) and (c).~~

(Prior Code, § 98.180; Ord. No. 24-93)

Sec. 98.190. Civil penalty.

(a) The Chief of Police is authorized to assess a civil penalty of $100.00 a day, payable to the City, for each day the nuisance continues to exist after the Council orders that the nuisance be abated. A nuisance continues to exist if there is any single occurrence of a behavior listed in SRC 98.140(g) upon the property or by any patron, employee, resident, owner or occupant within 400 feet of the property.

(b) A civil penalty is assessed by issuing written notice of penalty to the owner of public nuisance property and the owner's registered agent under SRC 98.180, if known. The notice shall contain the following information:

(1) The street address or description sufficient for identification of the property.

(2) That the Chief of Police has found the nuisance continues to exist after the Council ordered the nuisance be abated, with a concise description of the conditions leading to his or her findings.

(3) That the owner may request a hearing on the validity of the assessment of the penalty. A hearing request must be in writing and filed with the Salem Municipal Court, 555 Liberty St. SE, Salem, Oregon 97301 within ten days of the mailing of the notice. The request must state the grounds upon which the owner believes that the penalty is not valid.

The Court may assess the costs of the hearing against the owner if the Court determines the penalty is valid. The penalty and hearing costs will become a lien against the property unless paid.

(c) The penalty is final when ten days have elapsed from the date of mailing the notice if a request for hearing is not filed, or upon entry of an order by the Municipal Court declaring the penalty valid if a request for hearing is filed.

(Prior Code, § 98.190; Ord. No. 24-93)

Sec. 98.200. Hearing.

The Municipal Court shall hold a hearing upon a request filed as provided in SRC 98.190. At the hearing the owner may contest the validity of the penalty. The City shall have the burden of showing the validity of the penalty by a preponderance of the evidence. The Court shall enter an order determining whether the penalty is valid or not valid. The action of the Court pursuant to this section is final. If the Court determines that the penalty is valid, the Court may assess costs of the hearing against the owner.

(Prior Code, § 98.200; Ord. No. 24-93)

Sec. 98.210. Penalty and costs of hearing as lien.

The Chief of Police and Municipal Court shall forward statements of the assessments for penalties and hearing costs to the ~~Director of Finance~~ Finance Officer. The ~~Director of Finance~~ Finance Officer shall notify the owner by mail of the sum of money due to the City ~~of Salem~~. If that sum is not paid within 30 days of the billing date, the ~~Director~~ Finance Officer shall file with the Council a statement of the sum due, plus an additional charge of five percent to cover assessment procedure expense. After a reasonable opportunity to be heard in objection thereto, the Council shall then, by ordinance, declare the correctness of such statement and declare the same to be a lien upon the property involved, to be entered in the minor lien docket and enforced against the property, in the same manner provided for enforcement of liens for street improvement.

(Prior Code, § 98.210; Ord. No. 24-93; Ord. No. 51-96)

Secs. 98.220—98.290. Reserved.

ABANDONED SHOPPING CARTS*

***State law reference—**Unauthorized appropriation of shopping carts, ORS 98.520.

Sec. 98.300. Purpose; nuisance declared.

The presence of abandoned carts within the City is hereby declared to be a public nuisance, and the purpose of SRC 98.300 through 98.380 is to provide a means to allow for the voluntary abatement of the nuisance by the owners of shopping carts through a notification and retrieval process. Notwithstanding any other provision of this chapter, the abatement of abandoned carts shall be made pursuant to SRC 98.300 through 98.380.

(Prior Code, § 98.300; Ord. No. 41-09)

Sec. 98.310. Definitions.

~~Unless the context otherwise specifically requires, as used in SRC 98.300-98.380, the following mean:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Abandoned cart* means any shopping cart that has been removed from the owner's premises without written consent of the owner and which is located on either public or private property.

~~(c)~~*Code Compliance Officer* means the department director charged with the enforcement of SRC 98.300 through 98.380 by the City Manager, or that department director's designee.

~~(d)~~ *Owner* means a person that, in connection with the operation of a business, makes a shopping cart available to a customer.

~~(e)~~*Person* means a natural person, corporation, partnership, limited liability company, limited liability partnership, co-operative, trust, or other entity in law or fact.

~~(f)~~*Premises* means the entire area of the real property owned, occupied or utilized by an owner, including any parking lot or other property provided by or on behalf of an owner for customer parking or use.

~~(g)~~ *Shopping cart* means a basket that is mounted on wheels and used for the transportation of goods, or any other similar device, that is provided by an owner for use by a customer.

(Prior Code, § 98.310; Ord. No. 41-09)

Sec. 98.320. Cart identification required.

Every shopping cart must have a permanently affixed sign that contains all of the following information:

(a) The identity of the owner of the shopping cart;

(b) A toll-free telephone number of the owner for shopping cart return; and

(c) A statement that the unauthorized removal of the shopping cart from the premises is a crime under ORS 164.015.

(Prior Code, § 98.320; Ord. No. 41-09)

Sec. 98.330. Posted notice.

An owner shall conspicuously post a sufficient number of signs on the owner's business premises that unauthorized appropriation of a shopping cart is a crime under ORS 164.015 and to provide the toll free telephone number that members of the public may use to report abandoned shopping carts.

(Prior Code, § 98.330; Ord. No. 41-09)

Sec. 98.340. Toll-free telephone line required.

(a) A toll-free telephone line shall be established, maintained and made available to the public, at the owner's expense, for the purpose of reporting abandoned carts.

(b) The agreement between the owner and the toll-free telephone provider shall provide that operator of the toll-free telephone line forward a report of each call concerning an abandoned cart to the owner and to the Code Compliance Office, within one business day of receipt of the call, and that such report be provided through electronic mail or by fax.

(c) More than one owner may use the same toll-free telephone number to share expenses. Any agreement by two or more owners to share a toll-free telephone number shall comply with the requirements of this section.

(Prior Code, § 98.340; Ord. No. 41-09)

Sec. 98.350. Notification and retrieval of abandoned carts.

(a) The Code Compliance Officer or any member of the public may report the location of an abandoned cart by calling the toll-free telephone number provided by the owner.

(b) If the City has notice of the location of an abandoned cart, the Code Compliance Officer shall use the toll-free telephone number provided by the owner to report the location of the abandoned cart.

(c) If an abandoned cart does not have a sign with the information required by SRC 98.330, the City may take custody of the abandoned cart. If the owner can be identified and, after reasonable effort, the Code Compliance Officer is unable to contact the owner of the abandoned cart and 72 hours has passed, or if the owner cannot be identified, the Code Compliance Officer may dispose of the abandoned cart as provided in SRC 98.370(b).

(Prior Code, § 98.350; Ord. No. 41-09)

Sec. 98.360. Duty to retrieve cart.

An owner, or an owner's contractor, shall retrieve an abandoned cart within 72 hours from the date the report is made to the owner under SRC 98.350.

(Prior Code, § 98.360; Ord. No. 41-09)

State law reference—Similar provisions, ORS 98.520(3).

Sec. 98.370. Custody and disposition.

(a) The Code Compliance Officer may take custody of an abandoned cart and impose a civil penalty of $50.00 on the owner of the abandoned cart if the owner does not retrieve the abandoned cart within 72 hours after the owner receives a report of an abandoned cart under SRC 98.350. The Code Compliance Officer shall release the shopping cart to the owner after the civil penalty is paid.

(b) Disposition after 30 days. Title to any abandoned cart not reclaimed by the owner within 30 days after notification from the Code Compliance Officer, or to any abandoned cart where the City has been unable to identify the owner after reasonable efforts and which has been in the City's custody for 30 days, shall be forfeited to the City and the shopping cart may be sold or otherwise disposed of by the City.

(Prior Code, § 98.370; Ord. No. 41-09)

Sec. 98.380. Violation.

Failure by an owner to comply with SRC 98.320, ~~SRC~~ 98.330 or ~~SRC~~ 98.340, or to retrieve an abandoned cart under SRC 98.360 is an infraction, punishable by a fine not to exceed $500.00.

(Prior Code, § 98.380; Ord. No. 41-09)

CHAPTER 99. RESERVED

Title IX

VEHICLES AND TRAFFIC

CHAPTER 100. GENERALLY

Sec. 100.010. Definitions.

The definitions provided in ORS 801.100 ~~010~~ to 801.610 ~~(2011)~~ are hereby adopted by reference and made a part of this chapter. In addition, ~~the following words and phrases, when used in this Chapter, shall have the following meanings, except where the context clearly indicates a different meaning.~~ the following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Coaster* means a footboard mounted upon two or more wheels, controlled by an upright steering handle, designed to be ridden by a person, propelled exclusively by human power, and most often propelled by the operator usually in an upright position or kneeling.

~~(b)~~ *Highway* means all highways, streets, and alleys in the City.

~~(c)*Interurban stage* means any motor vehicle used for the purpose of transportation of passengers for hire on the streets of the City and operated between points, one or more of which are within the City, and one or more of which are three miles or more outside the City limits.~~

~~(d)~~ *Light delivery vehicle* means every motor vehicle designed for carrying, conveying, or removing any article or thing and used for general delivery purposes and recognizable by the name of the owner and the nature of the business being plainly visible upon the body of such vehicle, and which has a total overall width of less than six feet six inches, and a total overall length of less than 18 feet, including all bumpers, fenders, load and the like, but not including any vehicle designed or used for carrying passengers.

~~(e)~~*Loading zone* means that space adjacent to the curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or materials.

~~(f)~~*Motorcycle parking zone* means that space adjacent to the curb reserved for two-wheeled self-propelled cycles, including mopeds.

~~(g)~~ *Off-highway area* means any area that is not a highway, or a highway which is closed to off-highway vehicles and posted as such; provided, however, an area commonly held open to vehicular use, such as parking lots and automobile service stations, shall not be considered off-highway areas.

~~(h)~~ *Off-highway vehicle* means every self-propelling motor vehicle designed or capable of transversing on or over natural terrain, including, but not limited to, motorcycles, minibikes, motor scooters, dune buggies, and jeeps.

~~(i)~~*Roller skates* means a pair of shoes or boots, each mounted upon wheels, propelled exclusively by human power, and most often propelled by the user in an upright, standing position.

~~(j)~~*Small car parking zone* means that space adjacent to the curb with a maximum width of 8.5 feet and a maximum length of 14.5 feet and reserved for small or compact type vehicles.

~~(k) *Terminal* means every place in the City where any interurban stage regularly stops for the purpose of taking on or discharging passengers, baggage, or cargo.~~

(Prior Code, § 100.010; Ord. No. 3401; Ord. No. 147-73; Ord. No. 85-76; Ord. No. 167-80; Ord. No. 150-81; Ord. No. 37-86; Ord. No. 46-94; Ord. No. 30-97; Ord. No. 26-13)

State law reference—Definitions, ORS 801.100 et seq.

Sec. 100.020. Reserved.

Sec. 100.025. Traffic offense procedure.

Offenses under SRC 100 through 105 shall be subject to the procedures specified in ORS chs. 133 and 153 and ~~133.310,~~ ORS 221.333 ~~and ORS Chapter 153~~.

(Prior Code, § 100.025; Ord. No. 130-71; Ord. No. 96-91; Ord. No. 46-94; Ord. No. 30-97; Ord. No. 21-08)

Sec. 100.030. Delegation of traffic authority to ~~Public Works~~ Director.

(a) The ~~Public Works~~ Director ~~of Public Works~~ shall have the authority to adopt administrative orders:

(1) Designating stop signs;

(2) Designating crosswalks, safety zones, and traffic lanes;

(3) Designating truck routes and bus routes;

(4) Closing pedestrian crosswalks;

(5) Designating the striping and marking of streets and the turning movements thereon;

~~(6) Directing the placement and maintenance of such other traffic signs as may be reasonable or necessary for the regulation and safety of traffic. Notwithstanding SRC 5.030, the Director of Public Works may cause the placement of temporary signs and barriers necessary to protect the public in emergency situations without obtaining a recommendation from the Citizens Advisory Traffic Commission; and~~

(6) ~~(7)~~Designating speeds for vehicles upon any portion of a street or alley upon which temporary conditions constituting a danger to the public exist or above, below, or upon which construction or maintenance work is being carried on so close to the street or alley as to be a danger to passing traffic or to be endangered by passing traffic. ~~Notwithstanding SRC 5.030, the Director of Public Works may designate speeds pursuant to this subsection without obtaining a recommendation from a Citizens Advisory Traffic Commission.~~

(b) Any administrative order issued by the ~~Public Works~~ Director ~~of Public Works~~ pursuant to this section shall be in writing, and shall contain a clear statement of the regulation and identify the street or streets subject to the order. Administrative orders shall be filed with the City Recorder, and a copy provided to the Chief of Police. No administrative order issued pursuant to this section shall be effective until ~~the order has been filed with the City Recorder and~~ all necessary steps have been taken to implement the order, including, but not limited to, the installation, removal, or modification of any signs, signals, parking meters, or other traffic devices. Adoption of an administrative order pursuant to this section shall not be deemed rulemaking under SRC chapter 20J.

(c) It shall be unlawful for any person to violate any administrative order issued by the ~~Public Works~~ Director ~~of Public Works~~ pursuant to this section.

(Prior Code, § 100.030; Ord. No. 183-66; Ord. No. 44-72; Ord. No. 15-73; Ord. No. 167-80; Ord. No. 150-81; Ord. No. 50-82; Ord. No. 42-88; Ord. No. 51-96; Ord. No. 21-08)

Secs. 100.040, 100.050. Reserved.

Sec. 100.060. Closing of streets to traffic.

The ~~Public Works~~ Director ~~and~~ or Chief of Police may temporarily close any street, alley, or sidewalk to traffic and may direct traffic in such a manner as the ~~Public Works~~ Director or Chief of Police think necessary for traffic regulation and traffic safety.

(Prior Code, § 100.060; Ord. No. 3401)

Sec. 100.070. Traffic signs and signals.

~~(a)~~All official traffic signs and signals existing at the time of the adoption of the ordinance from which this section is derived, such as stop signs, caution signs, slow signs, no-reverse-turn signs, signs designating time limits for parking, lines painted or marked on streets or curbs designating parking areas, markers designating loading zones or no-parking areas, and all other official traffic signs or signals erected, installed, or painted for the purpose

of directing, controlling, and regulating traffic, shall be considered official under the provisions of this chapter; provided, however, that the Council may, by resolution, at any time have any such official traffic signs or signals removed or changed.

~~(b) Any additional official traffic signs or signals erected, installed, painted, or marked shall first be authorized by resolution by the council, except that traffic signs, signals, or barriers placed pursuant to SRC 100.030 or 100.060 need not have council authorization.~~

(Prior Code, § 100.070; Ord. No. 3401; Ord. No. 50-82; Ord. No. 21-83)

State law reference—Traffic control signals, ORS 811.260 et seq.

Sec. 100.080. Obstructing traffic.

It shall be unlawful for any person to park, place, or leave any motor vehicle, or any part thereof, or any trailer, box, ware, or merchandise of any description, or any other thing that in any way impedes the traffic or obstructs the view upon any street, alley, bike lane, parking strip, sidewalk, or curb of the City, except such lawful use and parking of vehicles upon streets and alleys as is allowed in this chapter, without first having a permit pursuant to SRC chapter 76, ~~SRC Chapter~~ 77, or ~~SRC Chapter~~ 102 ~~obtained the written permission of the Chief of Police~~. This section shall not apply to any tree regulated by SRC chapter 86.

(Prior Code, § 100.080; Ord. No. 3401; Ord. No. 91-99; Ord. No. 42-09)

State law reference—Obstructing traffic, ORS 811.290.

Secs. 100.090—100.140. Reserved.

~~**Sec. 100.140. Use of streets by interurban stages.**~~

~~It shall be unlawful for any person to use any street as a terminal for interurban stages. For the purpose of occasionally receiving or discharging passengers, any such interurban stage may be stopped at street intersections only and shall be stopped on such portion of the street or in the manner provided in SRC 100.150 for the stopping of motorbuses. All the provisions of SRC 100.150 shall be applicable to interurban stages when occasionally stopping for the purpose of receiving or discharging passengers; provided, however, that interurban stages shall not regularly stop in the City for the purpose of receiving or discharging passengers, excepting at terminals.~~

~~(Prior Code, § 100.140; Ord. No. 3401)~~

Sec. 100.150. Use of streets by buses.

Any person operating or in charge of a motorbus shall stop such motorbus pulled in as close to the curb as possible and shall not have any part of such vehicle projecting into or over a pedestrian lane or crosswalk, whether such pedestrian lane or crosswalk is marked or unmarked, and no part of such vehicle shall project toward or into the main vehicular traffic lane farther than is absolutely necessary. The stopping of one motorbus behind another motorbus which is within a loading zone and the standing of the same at an angle toward the street curbline shall constitute a violation of this section. There shall be but one motorbus stopped at any corner of any intersection at any one time, unless all such vehicles are wholly within the area of the loading zone as indicated. It shall be unlawful for any person to stop or double park any motorbus behind parked vehicles within the following boundaries: From the north curbline of Chemeketa Street on the north to the north curbline of Trade Street on the south and from the alley running north and south between High and Church Streets on the east to the west curb of Commercial Street on the west.

(Prior Code, § 100.150; Ord. No. 3401; Ord. No. 91-99)

State law reference—Similar parking, etc. restrictions, ORS 811.550(5)—(7).

Secs. 100.160, 100.170. Reserved.

Sec. 100.180. Entering or leaving alleys~~, driveways, etc~~.

It shall be unlawful for any person to drive a motor vehicle across any street from the alley in one block to the alley in another block within that area of the City bounded on the north by the north line of Marion Street, on the south by the south line of Trade Street, on the east by the west line of Cottage Street and on the west by the east line of Front Street.

(Prior Code, § 100.180; Ord. No. 4894; Ord. No. 5127; Ord. No. 85-76; Ord. No. 66-83; Ord. No. 14-93)

Sec. 100.190. Reserved.

Sec. 100.200. Operation of vehicles with flame-throwing devices.

It shall be unlawful for any person to operate any motor vehicle in the City which is equipped with any device designed to expel flame to gaseous substance capable of combustion from the exhaust pipe or any other part of such vehicle, where such flame or combustible gas is or may be propelled beyond the frame or body of such motor vehicle. The prohibition contained in this section shall apply to motor vehicles in motion or parked upon any street, avenue, alley, or other public way or place in the City and shall be equally applicable whether such device is operated by the motor of such motor vehicle or by a separate machine, engine, or other device.

(Prior Code, § 100.200; Ord. No. 4307)

Sec. 100.202. Golf carts--Permitted on certain streets.

(a) ~~As used in this section:~~ The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

~~(2)~~ *Golf cart* means a motor vehicle having not less than three wheels in contact with the ground, having an unladen weight less than 1,300 pounds, which is designed to be and is operated at not more than 15 miles per hour and designed to carry golf equipment and not more than two persons, including the driver, and has affixed thereto a sign indicating a slow moving vehicle.

~~(1)~~ *Real estate development* means an area of single-family or multifamily residences, the owners or occupants of which are eligible for membership in, or the use of, one or more golf courses within the development by virtue of their ownership or occupancy of a residential dwelling unit in the development.

(b) The operation of golf carts is hereby permitted during daylight hours on any public street which is located adjacent to a golf course and between the golf course and the place where golf carts are parked or stored or located within or bounded by a real estate development provided the provisions of this section are complied with and appropriate signs giving notice thereof are posted along the street affected.

(c) Every person operating a golf cart upon a designated public street permitted by this section shall be at least 16 years of age and shall be subject to all of the duties applicable to the driver of a vehicle by the laws of this State or by the traffic laws of this City applicable to the driver of a vehicle, except those provisions of the law with respect to vehicle licensing, registration, equipment, or condition.

(d) No person shall operate a golf cart at a greater speed than is reasonable and prudent under the conditions then existing.

(e) Every person operating a golf cart upon a designated public street shall drive as near to the right-hand side of the street as practicable.

(Prior Code, § 100.202; Ord. No. 156-75)

State law reference—Authority to adopt ordinance permitting operation of golf cars on certain streets, ORS 810.070.

Sec. 100.203. Same--Appropriate signs to be erected.

(a) Any owner or occupant of a real estate development as defined in SRC 100~~1~~.202 may request the ~~Public Works~~ Director ~~of public works~~ to designate a public street for operation of golf carts. If the ~~Public Works~~ Director determines the street meets the requirements of SRC 100~~1~~.202, the ~~Public Works~~ Director ~~he~~ shall cause to have erected on said street appropriate signs giving notice that golf carts are permitted.

(b) In no event shall a public street be designated for combined operation of motor vehicles and golf carts for a distance of more than one-half mile from the golf course if the street is not located within a real estate development or beyond the area of the development if the street is located within a real estate development.

(Prior Code, § 100.203; Ord. No. 156-75; Ord. No. 30-97)

State law reference—Signs must be erected, ORS 810.070(4).

Sec. 100.205. Declared policy on off-highway vehicles.

The Council hereby determines that off-highway vehicles can provide appropriate, useful, and energy-efficient alternatives to automobiles when properly operated, but that the unregulated use of such vehicles is a public nuisance to the people of the City ~~of Salem~~ and causes damage to and deterioration of the environment, detrimental to the health, safety, and welfare of the people.

(Prior Code, § 100.205; Ord. No. 67-76)

State law reference—Operation of all-terrain vehicles in state parks, etc., ORS 390.550 et seq.; off-road vehicles, ORS 821.010 et seq.

Sec. 100.206. Operation of off-highway vehicles.

(a) It shall be unlawful for any person to operate an off-highway vehicle on any off-highway area between the hours of 9:00 p.m. and 9:00 a.m.

(b) It shall be unlawful for any person to operate an off-highway vehicle on any off-highway area which the operator does not own between the hours of 9:00 a.m. and 9:00 p.m., unless:

(1) The operator possesses written permission from the owner, contract purchaser, or lessee of the off-highway area; ~~or~~

(2) The operator possesses written evidence of membership in a club or association to which the owner, contract purchaser, or lessee of the off-highway area has given written permission and a copy of which has been filed with the Chief of Police; or

(3) The owner, contract purchaser, or lessee has designated the off-highway area as being open to off-highway vehicle use by posting notice thereof in a form and manner prescribed by the City ~~chief of police~~;

(c) It shall be unlawful for any person to intentionally or knowingly:

(1) Falsify the written permission required by subsection (b)(1) of this section; ~~or~~

(2) Falsify the evidence of a club or association membership or the written permission required by subsection (b)(2) of this section; or

(3) Post the notice or remove the posted notice required by subsection (b)(3) of this section without the consent of the owner, contract purchaser, or lessee.

(Prior Code, § 100.206; Ord. No. 67-76; Ord. No. 193-79)

Sec. 100.207. Exemptions.

The provisions of SRC 100.205 and 100.206 shall not apply to implements of husbandry, publicly-owned vehicles, authorized emergency vehicles used for legal purposes, or non-highway vehicles legally operated on licensed automobile race tracks.

(Prior Code, § 100.207; Ord. No. 67-76)

State law reference—Equipment and exemptions for off-road vehicles, ORS 821.010 et seq.; implements of husbandry, ORS 820.400.

Sec. 100.208. Conformance with law.

SRC 100.206 shall not be a substitute for or eliminate the necessity of conformity with any and all state laws, rules, and regulations, and any other provisions of this Code which are now or may be in the future in effect which relate to the activities herein regulated.

(Prior Code, § 100.208; Ord. No. 67-76)

Sec. 100.210. Vehicles on sidewalks generally.

It shall be unlawful for any person to drive, propel, or otherwise move any wagon, wood saw, truck, automobile, or vehicle of any description upon or across any sidewalk; provided, however, that it shall not be

unlawful to drive, propel, or otherwise move any automobile or auto truck upon or across any sidewalk leading into a private or public garage, or upon or across any sidewalk into an open alley.

(Prior Code, § 100.210; Ord. No. 3401)

State law reference—Stopping, standing parking on sidewalk prohibited, ORS 811.550(4).

Sec. 100.211. Riding motorcycles on sidewalks or in parks.

It shall be unlawful for any person to ride a motorcycle upon any sidewalk or in any public park in the City, provided that this section shall not apply to paths duly constructed for that purpose.

(Prior Code, § 100.211; Ord. No. 3401; Ord. No. 183-71; Ord. No. 91-99)

Sec. 100.212. Motorcycles not to be left on sidewalks.

It shall be unlawful for any person to leave a motorcycle either standing or lying down upon any sidewalk.

(Prior Code, § 100.212; Ord. No. 3401; Ord. No. 183-71; Ord. No. 91-99)

Sec. 100.220. Carts, wagons, etc., prohibited on sidewalks.

It shall be unlawful for any person to drive, wheel, draw, or otherwise propel or move any handcart, handtruck, handwagon, papercart, or wheelbarrow exceeding 24 inches in width upon or along any sidewalk, except street vendors operating licensed carts meeting the requirements of SRC chapter 30 ~~31.1055~~.

(Prior Code, § 100.220; Ord. No. 3401; Ord. No. 10-80)

Sec. 100.230. Roller skates prohibited in certain areas.

(a) It shall be unlawful for any person to operate or ride upon roller skates or coasters:

(1) In or upon any of the streets, alleys or sidewalks within the area bounded on the north by Union Street, on the south by the south line of Trade Street, on the east by Cottage Street and on the west by Front Street, but excluding the sidewalks contiguous to, and located in, Marion Square Park;

(2) In or upon the Salem Civic Center, as defined ~~described~~ in SRC 102.005~~(b)(22)~~;

(3) In or upon the Liberty Parkade, the Chemeketa Parkade, the Pringle Parkade, or the City of Salem Library public parking structure.

(4) In or upon the area commonly known as Center 50+, and its related parking, and more particularly described the area bounded on the east by Portland Road, on the south by Highland Avenue, on the west by Brooks Avenue, and on the north by the southern boundary of Lot 2, Hollywood Station No. 2, in the City ~~of Salem~~, recorded August 30, 2007, in Volume 46, Page 49, Marion County, Oregon, Record of Subdivision Plats.

(b) Any roller skates and coasters used in violation of this section by a person previously cited for a violation of this section shall be impounded by the police officer and held until released by order of the Municipal Court or other court of competent jurisdiction.

(c) In addition to any other penalty or fine, roller skates or coasters used in violation of this section may be impounded by the police officer for a period not to exceed 90 days.

(Prior Code, § 100.230; Ord. No. 3401; Ord. No. 124-81; Ord. No. 170-81; Ord. No. 74-87; Ord. No. 134-87; Ord. No. 72-96; Ord. No. 73-2002; Ord. No. 14-11; Ord. No. 26-13)

Sec. 100.240. Sleds, toboggans, etc., not to be attached to vehicles.

It shall be unlawful for any person to attach or tie to any motor vehicle which is operated on the streets of the City any sled, toboggan, or similar contrivance or thing and it shall be unlawful for the operator of any motor vehicle to permit any sled, toboggan, or similar contrivance or thing to be attached or tied to any motor vehicle being driven by such operator; provided that the provisions of this section shall not apply to trailers, bus trailers, or pole or pipe dollies, nor to cars being towed, when the same are attached or towed in accordance with this chapter.

(Prior Code, § 100.240; Ord. No. 3401)

State law reference—Clinging to other vehicles prohibited, ORS 814.220, 814.230, 814.480.

Sec. 100.250. Removal of vehicles, glass, etc., after accidents.

Any party to a collision or other motor vehicle accident upon any street, alley or public place in the City shall immediately remove or cause to be removed from such street, alley, or public place all glass and foreign substance resulting from such collision or accident as well as the motor vehicle which such party was driving at the time of such collision or accident.

(Prior Code, § 100.250; Ord. No. 3401)

State law reference—Duties regarding accidents with property damage, ORS 811.700; failure to remove injurious material, ORS 822.225.

Sec. 100.260. Unauthorized entering, maneuvering, tampering with, etc., motor vehicle.

It shall be unlawful for any person, except an authorized officer, marshal, constable, or police~~man~~ officer, without the consent of the owner or person lawfully in charge of a motor vehicle, to climb upon or into such motor vehicle, whether it is at rest or in motion, or, while it is at rest or unattended, to attempt to maneuver any of the levers, the starting crank or other device, brake or mechanism, or to start the vehicle in motion.

(Prior Code, § 100.260; Ord. No. 5742)

Sec. 100.270. Injuring, defacing, etc., motor vehicle.

It shall be unlawful for any person who, individually or in association with one or more others and against the will or without the consent of the owner of any motor vehicle, to willfully break, injure, tamper with, or remove any part of such vehicle for the purpose of injuring, defacing, or destroying it or temporarily or permanently preventing its useful operation for any purpose, or to in any manner willfully or maliciously interfere with, or prevent the running or operation of such motor vehicle.

(Prior Code, § 100.270; Ord. No. 5742)

Secs. 100.280—100.300. Reserved.

Sec. 100.310. Prohibited tire noise.

It shall be unlawful for the driver of any motor vehicle on any public street or other property open to public travel to cause any squealing or screeching noise from the tires thereof as a result of unnecessary rapid acceleration, whether or not the production of such noise was an intended result of such an acceleration. Noise resulting from emergency action to avoid imminent danger to a person or property is exempt from this prohibition.

(Prior Code, § 100.310; Ord. No. 82-72; Ord. No. 179-82)

Sec. 100.320. Bicycle trails; motor vehicles prohibited; exceptions.

(a) As used in this section, the term "bicycle trail" means any such trail as defined ~~described~~ in ORS 366.514 ~~(1993)~~.

(b) It shall be unlawful for any person to operate or park any motor vehicle on, over, along, or across any bicycle trail except:

(1) Where necessary to cross such trail in making a turn from one public street to another at an intersection or from a public street to a private road or drive at the place where such private road or drive joins the public street; and in either case such crossing shall be made as nearly at a right angle as possible.

(2) In circumstances necessitating emergency action or stopping.

(3) When so directed by any police or traffic officer.

(Prior Code, § 100.320; Ord. No. 176-72; Ord. No. 30- 97)

Sec. 100.330. Reserved.

Sec. 100.331. Adoption of state traffic offenses.

(a) The following sections of the Oregon Revised Statutes are hereby adopted by reference:

(1) ORS 807.570 “Fail to Carry or Present License; Penalty”;

(2) ORS 807.620 “Giving False Information to Police Officer; Penalty”;

(3) ORS 811.135 “Careless Driving; Penalty”;

(4) ORS 811.140 “Reckless Driving; Penalty”;

(5) ORS 811.175 “Violation Driving while Suspended or Revoked; Penalties”;

(6) ORS 811.180 “Affirmative Defenses”;

(7) ORS 811.182(1), (2) and (4) “Criminal Driving while Suspended or Revoked; Penalties”;

(8) ORS 811.540 “Fleeing or Attempting to Elude Police Officer; Penalty”;

(9) ORS 811.700 “Failure to Perform Duties of Driver When Property is Damaged; Penalty”; and

(10) ORS 813.010 “Driving Under the Influence of Intoxicants; Penalty.”

(b) The penalty for offenses established by this section shall be as provided in ORS 161.615~~(1)~~ and ~~ORS~~ 161.635~~(1)(a)~~.

(Prior Code, § 100.331; Ord. No. 86-82; Ord. No. 40-85; Ord. No. 108-85; Ord. No. 138-85; Ord. No. 37-86; Ord. No. 8-88; Ord. No. 46-94; Ord. No. 30-97; Ord. No. 21-08)

CRUISING

Sec. 100.340. Declaration of purpose.

(a) It is hereby found and declared that:

(1) The repeated driving of a motor vehicle, commonly referred to as "cruising," along or across one portion of a public street or highway contributes to vehicle congestion, obstruction of streets, sidewalks and parking lots, impediment of access to retail businesses or other buildings open to the public, or interference with the use of property or conduct of business in the area adjacent thereto; and

(2) The continued occurrence of such "cruising" activity is detrimental to the health, safety and welfare of the people of the City ~~of Salem~~ and the businesses and residences thereof.

(b) The purpose of SRC 100.340 to 100.420 is to prohibit the repeated driving of a motor vehicle along and across one portion of a congested public street or highway, which shall constitute a strict liability violation without any requirement of culpable mental state, all as described in said sections.

(Prior Code, § 100.340; Ord. No. 29-88)

Sec. 100.350. Traffic congested street defined.

For the purposes of SRC 100.340 to 100.420, a public street shall be defined to be a traffic congested street when a public street, or portion thereof, because of the repeated driving of the same motor vehicle thereon, becomes so congested with traffic as to cause obstruction of streets, sidewalks or parking lots, impediment of access to retail businesses or other buildings open to the public, or interference with the use of property or conduct of business in the area adjacent thereto or that emergency vehicles cannot respond in that area within a reasonable period of time.

(Prior Code, § 100.350; Ord. No. 29-88)

Sec. 100.360. Declaration of traffic congested street.

When a public street becomes a traffic congested street, the Chief of Police, or his or her designee, may make such a declaration and cause signs to be erected as provided in SRC 100.370 notifying of that designation.

(Prior Code, § 100.360; Ord. No. 29-88)

Sec. 100.370. Signs; erection and content.

Signs, as provided in SRC 100.360, shall be erected notifying vehicle operators that they are entering a traffic congested street; that repeated passage of a motor vehicle through or across the traffic congested street is a violation of SRC 100.380; and that for a subsequent violation the vehicle will be towed.

(Prior Code, § 100.370; Ord. No. 29-88)

Sec. 100.380. Acts prohibited.

No vehicle shall pass along or across the same point on a traffic congested street, designated as such by signs as described in SRC 100.370, four or more times in any direction within a two-hour period and after a police officer has given written notice to the person operating the vehicle passing the same point the third time that passing said point by said vehicle a fourth time shall constitute a violation of this Code. The fact that the operator of the vehicle which has passed the same point the fourth time did not get said written notice shall be no defense to a charge of a violation of this section.

(Prior Code, § 100.380; Ord. No. 29-88)

Sec. 100.390. Penalty.

Violation of SRC 100.380 shall be an infraction, the penalty for which shall be a fine not to exceed the sum of $150.00.

(Prior Code, § 100.390; Ord. No. 29-88)

Sec. 100.400. Subsequent violation.

If a vehicle passes along or across a traffic congested street as designated by signs referred to in SRC 100.370, in violation of SRC 100.380, any single subsequent drive-through of that traffic congested street by that vehicle within a period ending at 5:00 a.m. the following morning shall constitute a separate violation of SRC 100.380, punishable as provided in SRC 100.390; and the vehicle may be towed and taken to a storage area designated by the City and may be held for not more than 24 hours, all at the expense of the owner or person entitled to possession.

(Prior Code, § 100.400; Ord. No. 29-88)

Sec. 100.410. Notice of towing for subsequent violations.

Upon issuing a citation for a violation of SRC 100.380, the officer shall give the person to whom the citation is issued a written notice which shall state:

NOTICE

You have been cited for violation of SRC 100.380 for repeated passage of a motor vehicle on or across a traffic congested street. If the vehicle you are driving is again driven along or across this traffic congested street before 5:00 a.m. the morning following the violation, the driver will be cited for violation of SRC 100.380 and this vehicle shall be impounded and towed in accordance with SRC 100.400.

Chief of Police

(Prior Code, § 100.410; Ord. No. 29-88)

Sec. 100.420. Exemptions.

SRC 100.340 to 100.410 shall not apply to:

(a) Any publicly owned vehicle of any city, county, public district, state or federal agency;

(b) Any vehicle licensed for public transportation;

(c) Any other vehicle granted an exemption by the City ~~Chief of Police~~ because passage of the vehicle along or across the traffic congested street is necessary for commercial or medical reasons.

(Prior Code, § 100.420; Ord. No. 29-88)

Secs. 100.430—100.980. Reserved.

Sec. 100.990. Violations.

(a) Violation of SRC 100.206(c), 100.260, or 100.270 is a misdemeanor.

(b) Violation of any other provision of this chapter is an infraction.

(Prior Code, § 100.990; Ord. No. 193-79)

CHAPTER 101. BICYCLES*

***State law reference—**Definition of bicycle, ORS 801.150; duty to bicycle riders, ORS 811.005 et seq.; yield to bicycle rider on bicycle lane, ORS 811.050; bicycles, ORS 814.400 et seq.

Secs. 101.010—101.080. Reserved.

~~**Sec. 101.060. Riding motorcycles on sidewalks or in parks.**~~

~~It shall be unlawful for any person to ride a motorcycle upon any sidewalk or in any public park in the City; provided that this section shall not apply to paths duly constructed for that purpose.~~

~~(Prior Code, § 101.060; Ord. No. 3401; Ord. No. 183-71)~~

~~**Sec. 101.070. Motorcycles not to be left on sidewalks.**~~

~~It shall be unlawful for any person to leave a motorcycle either standing or lying down upon any sidewalk.~~

~~(Prior Code, § 101.070; Ord. No. 3401; Ord. No. 183-71)~~

Sec. 101.090. Traffic laws apply to riding bicycles.

Every person riding a bicycle upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by the laws of this State declaring rules of the road applicable to vehicles or by the traffic laws of this City applicable to the driver of a vehicle, except as to special regulations in this chapter and except as to those provisions of laws which by their nature can have no application.

(Prior Code, § 101.090; Ord. No. 183-71)

State law reference—Vehicle laws apply to bicycles, ORS 814.400.

Sec. 101.100. Riding bicycles on sidewalks.

(a) The term "bicycle" means a vehicle that:

(1) Is designed to be operated on the ground on wheels;

(2) Has a seat or saddle for use of the rider;

(3) Is designed to travel with not more than three wheels in contact with the ground;

(4) Is propelled exclusively by human power; and

(5) Has every wheel more than 14 inches in diameter or two tandem wheels either of which is more than 14 inches in diameter.

(b) It shall be unlawful to ride a bicycle upon a sidewalk within that area bounded by and including Front Street on the west, save and except the bridges, Cottage Street on the east, Union Street on the north, and Trade Street on the south; provided this subsection shall not apply to three-wheeled bicycles being ridden by a handicapped or elderly person.

(c) Whenever any person is riding a bicycle upon a sidewalk, such person shall yield the right-of-way to any pedestrian.

(Prior Code, § 101.100; Ord. No. 183-71; Ord. No. 66-85)

State law reference—Definition of bicycle, ORS 801.150; operation of bicycles on sidewalks, ORS 814.410**.**

Sec. 101.105. Riding bicycles at the Salem Civic Center.

It shall be unlawful for any person to ride a bicycle in or upon the Salem Civic Center described in SRC 102.005~~(b)(22)(t)~~. This ~~sub~~section shall not apply to three-wheeled bicycles ridden by a handicapped or elderly person.

(Prior Code, § 101.105; Ord. No. 74-87; Ord. No. 73-2002)

Sec. 101.110. Riding on street and bicycle paths.

(a) Every person operating a bicycle upon a two-way street shall ride as near to the right-hand side of the street as practicable, and on a one-way street, he or she shall ride to the extreme curb side of the traffic lane and with the direction of travel designated for that lane. If the curb lane is designated for "left turn" or "right lane" only, and the operator is not intending to turn, he or she shall operate in the through lane.

(b) A person is not in violation under this section under the following circumstances:

(1) When overtaking and passing another bicycle or vehicle that is proceeding in the same direction.

(2) When preparing to execute a left turn.

(3) When reasonably necessary to avoid hazardous conditions, including, but not limited to, fixed or moving objects, parked or moving vehicles, bicycles, pedestrians, animals, surface hazards or other conditions that make continued operation along the right curb or edge unsafe or to avoid unsafe operation in a lane on the roadway that is too narrow for a bicycle and motor vehicle to travel safely side by side.

(4) When operating in a bicycle lane traveling in the direction of traffic or a bicycle path.

(5) When operating a bicycle alongside not more than one other bicycle as long as the bicycles are both being operated within a single lane and in a manner that does not impede the normal and reasonable movement of traffic.

(6) When operating a bicycle in a lane marked with sharrows. As used in this subsection, the term "sharrows" means a pavement marking consisting of two chevrons and a bicycle symbol indicating a shared lane for vehicles and bicycles.

(Prior Code, § 101.110; Ord. No. 183-71; Ord. No. 91-99)

State law reference—Improper use of lanes, ORS 814.430; signal to turn, ORS 814.440.

Sec. 101.120. Speed.

No person shall operate a bicycle at a greater speed than is reasonable and prudent under the conditions then existing.

(Prior Code, § 101.120; Ord. No. 183-71)

Sec. 101.130. Carrying articles.

No person operating a bicycle shall carry a package, bundle, or article which prevents him or her from keeping at least one hand upon the handle bars and having unhindered vision.

(Prior Code, § 101.130; Ord. No. 183-71)

Sec. 101.140. Riding on bicycles.

(a) A person propelling a bicycle shall not ride other than astride a permanent and regular seat attached thereto.

(b) No bicycle shall be used to carry more persons at any one time than the number for which said bicycle is designed and equipped.

(Prior Code, § 101.140; Ord. No. 183-71)

State law reference—Use bicycle seat, ORS 814.407; carrying more than number of persons which it is designed, ORS 814.460.

Sec. 101.150. Parking of bicycles.

It shall be unlawful for any person to leave a bicycle upon any sidewalk, except in a bicycle rack. If no rack is provided, ~~he shall leave the bicycle~~ a bicycle shall be left so as not to obstruct any roadway, sidewalk, driveway or building entrance; nor shall any person leave a bicycle on public or private property without the consent of the person in charge or the owner thereof.

(Prior Code, § 101.150; Ord. No. 183-71)

Sec. 101.160. Exemption.

Every police officer and any other officer with responsibility for enforcement of this Code or of the laws of the State ~~of Oregon~~ shall be exempt from the provisions of this chapter when acting in the discharge or apparent discharge of duty.

(Prior Code, § 101.160; Ord. No. 81-89)

Secs. 101.170—101.980. Reserved.

Sec. 101.990. Violations.

Violation of any provision of this chapter is an infraction.

(Prior Code, § 101.990; Ord. No. 193-79)

CHAPTER 102. PARKING

~~**State law reference**—Stopping, standing, parking, ORS § 811.550 et seq.; city parking ordinance violation, ORS § 221.277—221.290.~~

Sec. 102.005. Definitions.

(a) Unless otherwise provided in this chapter, terms shall have the meaning prescribed in ORS chs. 801 through 826, the Oregon Vehicle Code. Where terms are not defined by this chapter or by the Oregon Vehicle Code, terms shall be given their plain and ordinary meaning.

(b) ~~Unless the context otherwise specifically requires, as used in this Chapter, the following mean:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(1)~~ *Alley* means a public easement or right-of-way not more than 20 feet and not less than ten feet in width, which intersects a street.

~~(2)~~ *Block* means the properties abutting both sides of a street:

(1) Between two cross streets;

(2) Between the city limits and the nearest cross street; or

(3) When there is only one cross street:

(A) Between a cross street and the dead end of a street; or

(B) Between a cross street and a line projected from the centerline of an intersecting street, such as a "T" intersection.

(4) When a block is abutted by a street which, if extended through the block, would create a cross street, but when no such street extends through the property, then the block shall be the area commencing at the curbline of the cross street with the next lowest consecutive numbering, and extending in units of 600 feet along the block.

~~(3)~~ *Commercial vehicle* means a vehicle used primarily for the delivery or transport of goods or services from a business to a premises or the transportation of persons for compensation. A vehicle that is not conspicuously marked with the business name, or that does not have a sign displayed on the dashboard with the business name, shall not be considered a commercial vehicle. For purposes of this definition, a "sign displayed on the dashboard" means a sign measuring a minimum of 8.5 inches by 11 inches with lettering not less than two inches high.

~~(4)~~ *Curbline* means the line defined by the raised edge forming the gutter of a vehicular roadway within the right-of-way, or, where no raised edge exists, the edge of the pavement.

~~(5)~~ *Designated fire lane* means a street or other passageway designated to allow the passage of fire apparatus, and identified by signs, marking, or other similar devices commonly used to indicate the road or passageway is a fire lane. A designated fire lane is not necessarily intended for vehicular traffic other than fire apparatus, and may be located on private property.

~~(6)~~ *Designated parking area* means an area which is identified by signs, markings, or other similar devices commonly used to indicate vehicle parking spaces.

~~(7) *Director* means the City Manager, or department head charged by the City Manager with the implementation and enforcement of this chapter, or that department head's designee.~~

~~(8)~~ *Downtown Parking District* means the Downtown Parking District established by SRC 7.010.

~~(9)~~ *Enforcement officer* means a person designated by the Director to enforce the provisions of this chapter, or any person who is defined as an enforcement officer under ORS 153.005.

~~(10)~~ *Immobilizer* means a device that is attached to a vehicle and is designed to restrict the normal movement of that vehicle.

~~(11)~~ *Landscape strip* means that area between the curbline or edge of the roadway and the sidewalk line which has not been specifically dedicated, designated or improved for parking.

~~(12)~~ *Loading zone* means a designated parking area reserved for the exclusive use of vehicles during the loading or unloading of passengers or cargo.

~~(13)~~ *Metered parking zone* means a parking zone where the length of time allowed for parking is controlled by a parking meter.

~~(14)~~ *Off-street parking facility* means any off-street motor vehicle parking facility established pursuant to ORS 223.805—223.845.

~~(15)~~ *Park* means to stop, or to cause to permit, or to remain stopped, any vehicle or combination of vehicles, or any portion thereof, on any street, off-street parking facility, or other public right-of-way, including sidewalks, or within any designated fire lane, except such stops as are made in response to legal controls or requirements, conditions created by other traffic, emergencies related to the operation of the vehicle during the actual period of such emergency, or momentary stops for the expeditious loading or unloading of passengers.

~~(16)~~ *Parking control device* means any sign, standard, painted curb, marking, or any device, inscription, or designation giving notice of, delineating, controlling or restricting parking or use of parking zones.

~~(17)~~ *Parking meter* means a device placed at or near the curb adjacent to a street or on City ~~of Salem~~ owned property and designed to register the duration of time and the limit thereof for parking in a parking zone, upon payment by United States coins, United States currency, a credit card, or a debit card. Parking meter as used in this chapter includes a pay station.

~~(17)~~ *Parking zone* means any space adjacent to the curb or edge of a street where parking is not prohibited and which is either designated by painted lines for the parking of one vehicle or is large enough to accommodate the parking of one vehicle with no part of such vehicle occupying any area prohibited; or any space in an off-street parking facility which is designated by painted lines for the parking of one vehicle.

~~(18)~~ *Permit* means an authorization issued in accordance with this chapter to park a vehicle at a location in the manner, at the times, and in compliance with the conditions specified by the permit.

~~(19)~~ *Private street* means highway, road, street, alley or way within the corporate limits of the City ~~of Salem~~ that is privately-owned or -maintained.

~~(20)~~ *Residential Parking District* means an area within an RA, RS, RD, RM or RH zone and designated with time limited parking zones or metered parking zones. For the purpose of this chapter, a Residential Parking District shall include both sides of a street when the residential zone is fronted on the street by a nonresidential zone, if there are designated time limited parking zones or metered parking zones on both sides of the street.

~~(22)~~ *Salem Civic Center* means that area bounded on the north by the south line of Trade Street, on the east by the west line of Liberty Street, on the south by the north line of Leslie Street, and on the west by the east line of Commercial Street.

~~(21)~~ *Street* means any public highway, road, street, alley or way within the corporate limits of the City of Salem. As used in this chapter, the term "street" does not include private streets.

~~(23)~~ *Time limited parking zone* means a parking zone designated by official signs or markings as restricted in use for a specified period of time.

~~(24)~~ *Vehicle* means any device in, upon or by which any person or property is or may be transported or drawn upon a street and includes vehicles that are propelled or powered by any means.

(Prior Code, § 102.005; Ord. No. 136-73; Ord. No. 183-79; Ord. No. 63-95; Ord. No. 64-99; Ord. No. 73-2002; Ord. No. 31-06; Ord. No. 21-08; Ord. No. 9-17, § 1(102.005), 6-12-2017)

Sec. 102.010. Administrative rulemaking; fees.

(a) The Director shall administer and enforce the provisions of this chapter, and shall have the authority to render written and oral interpretations, to adopt administrative rules and procedures necessary for its proper administration and enforcement, and to create classes of permits, and to adopt administrative parking regulations for permit parking and the operation of off-street parking facilities.

(b) Fees for parking, including parking permits, shall be set by resolution of the ~~City~~ Council.

(Prior Code, § 102.010; Ord. No. 73-2002; Ord. No. 21-08)

Sec. 102.015. Suspension of parking regulations.

(a) The Director may temporarily suspend parking regulations established by this chapter when it is in the public interest to do so. In making a determination that the suspension of parking regulations would be in the public interest, the Director shall consider:

(1) Time limits for the suspension;

(2) The vehicle types and purposes that will be subject to the suspension;

(3) The seasonal and special event demand for parking spaces within the areas where the parking regulations will be suspended;

(4) The effect of the suspension on City goals and policies;

(5) The impact on nearby commercial uses; and

(6) The availability of other parking that could accommodate the need that gives rise to the proposed suspension.

(b) The decision to suspend enforcement shall be posted on the City's website. The posting shall describe the territorial limits of the suspension, the times during which the suspension will be effective, the basis for the suspension, and any other matters that are necessary to give the public reasonable notice of the terms of the suspension. The suspension shall be effective upon the date of such posting.

(Prior Code, § 102.015; Ord. No. 73-2002; Ord. No. 21-08)

Sec. 102.020. Authority of Director to adopt administrative parking orders relating to on-street and off-street parking.

(a) The Director shall, as provided in this subsection, have the authority to adopt administrative orders relating to on-street and off-street parking.

(1) *Off-street parking facilities.* The Director may adopt administrative parking regulations relating to off-street parking facilities: ~~to:~~

(A) Designating stop signs;

(B) Designating metered parking zones, time limited parking zones, and the time limits thereof; crosswalks; loading zones; safety zones; and traffic lanes;

(C) Designating the striping and marking of lanes and the turning movements thereon;

(D) Directing the placement and maintenance of signs as may be reasonable or necessary for the safety of traffic; and

(E) Designating speeds for vehicles within an off-street parking facility.

(2) *On-street parking zones.* The Director may adopt administrative parking regulations relating to on-street parking zones, including, but not limited to, designating metered parking zones, time limited parking zones, small car parking zones, motorcycle parking zones, and loading zones, and establishing the time limits thereof.

(b) Any administrative order issued pursuant to this section shall be in writing, and shall contain a clear statement of the regulation and identify the street or streets subject to the order. Administrative orders shall be filed with the City Recorder, and a copy provided to the Chief of Police prior to the effective date of the order. No

administrative order issued pursuant to this section shall be effective until the order has been filed with the City Recorder and all necessary steps have been taken to implement the order, including, but not limited to, the installation, removal, or modification of any signs, signals, parking meters, or other traffic devices. The adoption of administrative orders pursuant to this section shall not be deemed administrative rulemaking for purposes of SRC chapter 20J.

(Prior Code, § 102.020; Ord. No. 21-08)

Sec. 102.025. Enforcement authority.

Every enforcement officer shall have the authority to enforce this chapter, and shall be considered an "issuing officer" for the purposes of ORS 221.333.

(Prior Code, § 102.025; Ord. No. 73-2002; Ord. No. 21-08)

Sec. 102.030. Application; adoption of state parking offenses.

(a) The provisions of this chapter prohibiting the stopping, standing or parking of a vehicle shall not apply to the stopping, standing or parking of a vehicle that is necessary to avoid conflict with other traffic or is made in compliance with directions of an enforcement officer.

(b) The following sections of the Oregon Vehicle Code are hereby adopted by reference:

(1) ORS 811.550 “Places Where Stopping, Standing and Parking Prohibited”;

(2) ORS 811.555 “Illegal Stopping, Standing or Parking; Affirmative Defense; Penalty”;

(3) ORS 811.560 “Exemptions from Prohibitions on Stopping, Standing and Parking”;

(4) ORS 811.565 “Dangerous Movement of Stopped, Standing or Parked Vehicle; Penalty”;

(5) ORS 811.570 “Improperly Positioning Parallel Parked Vehicle; Exception; Affirmative Defense; Penalty”;

(6) ORS 811.575 “Violation of Posted Parking Restrictions on State Highways; Affirmative Defense; Penalty”;

(7) ORS 811.580 “Parking Vehicle on State Highway for Ending Purposes; Penalty”;

(8) ORS 811.585 “Failure to Secure Motor Vehicle; Affirmative Defense; Penalty”;

(9) ORS 811.615 “Unlawful Parking in Space Reserved for Persons with Disabilities; Exceptions; Penalty;

(10) ORS 811.617 “Blocking Parking Space Reserved for Persons with Disabilities; Penalty”;

(11) ORS 811.625 “Unlawful use of Disabled Person Parking Permit; Penalty”;

(12) ORS 811.627 “Use of Invalid Disabled Person Parking Permit; Penalty”;

(13) ORS 811.630 “Misuse of Program Placard; Penalty.”

(Prior Code, § 102.030; Ord. No. 73-2002; Ord. No. 21-08)

Sec. 102.035. Method of parking.

(a) A vehicle which is parked without a licensed driver in the driver's seat thereof shall be parked with the brakes effectively set; the engine off; the keys removed from the ignition and the ignition system left in such a condition that it cannot be readily activated without a key; and, when parked upon any perceptible grade, with the front wheel or wheels turned toward the nearest curb or edge of the roadway.

(b) A vehicle which is parked in an unmarked or parallel parking zone shall be headed as though proceeding in the same direction as traffic in the traffic lane immediately adjacent to such parking zone, and shall be parked parallel to the curb or edge of the roadway with the tires on the side of the vehicle adjacent to the curb or edge no further than 12 inches into the roadway therefrom.

(c) A vehicle which is parked in an angle parking zone shall be parked headed toward the nearest curb or edge of the roadway.

(d) A vehicle which is parked in a marked parking zone shall be parked so that no portion of such vehicle is upon, over, or across the lines marking such zone.

(Prior Code, § 102.035; Ord. No. 73-2002)

Sec. 102.040. Prohibited parking.

It shall be unlawful for any person to park:

(a) Any vehicle at any place prohibited by ORS 811.550;

(b) Any vehicle at any place adjacent to a curb which has been painted yellow or red by the City;

(c) Any vehicle within the landscape strip;

(d) Any vehicle contrary to any parking control device;

(e) Any vehicle in any public alley, except for the purpose of loading or unloading passengers or cargo, and then only for a period of time not to exceed 30 minutes;

(f) Any vehicle in any parking zone when the vehicle is parked for the principal purpose of:

(1) Displaying the vehicle for sale;

(2) Selling, taking orders for, or attempting to sell or take orders for the present or future delivery of goods or services of any nature, if such sales or orders are made, taken, or attempted from the vehicle;

(3) Displaying advertising from the vehicle; or

(4) Repairing, constructing, reconstructing, or servicing the vehicle;

(g) Any vehicle, or a combination of vehicles and trailers in excess of 23 feet in overall length or eight feet in overall width:

(1) On a street within any district zoned residential, except while actually engaged in the process of loading or unloading passengers or cargo or providing services in the district; ~~or~~

(2) On a street within that area bounded on the west by the west line of Front Street, on the north by the south line of Union Street, on the east by the west line of 12th Street, and on the south by the centerline of Trade Street, except while actually engaged in the process of loading or unloading passengers or cargo or providing services in the area, and then only for a period of time that shall not exceed 30 minutes; or

(3) On any street which is less than 30 feet in overall width;

(h) Any motorized recreational vehicle:

(1) On a street within any district zoned residential between 10:00 p.m. and 6:00 a.m., if the motorized recreational vehicle is in excess of ~~23~~20 feet in overall length, or in excess of eight feet in overall width;

(2) On a street within that area bounded on the west by the west line of Front Street, on the north by the south line of Union Street, on the east by the west line of 12th Street, and on the south by the centerline of Trade Street, except while actually engaged in the process of loading or unloading passengers or cargo or providing services in the area, and then only for a period of time that shall not exceed 30 minutes; or

(3) On any street which is 30 feet or less in overall width;

(i) Any vehicle that is not designed for self propulsion, or is not connected to a vehicle designed for self propulsion and is parked on a street or off-street parking facility;

(j) Any vehicle in the same location on a street or in an off-street parking facility for a continuous period of time of more than five days;

(k) Any junk motor vehicle as described in SRC 50.025~~(a)(25)~~ on a street, or in an off-street parking facility;

(l) Any vehicle in violation of SRC 806.025(a);

(m) Any vehicle in any crime prevention zone designated in SRC chapter 95 when the vehicle is in the zone for the principal purpose of transporting a person in violation of an exclusion order issued pursuant to SRC 95.740;

(n) Any vehicle within any area which is designated as a fire ~~land~~ lane;

(o) Any vehicle in violation of an administrative parking order relating to on-street and off-street parking issued pursuant to SRC 102.020.

(Prior Code, § 102.040; Ord. No. 4251; Ord. No. 5638; Ord. No. 136-73; Ord. No. 148-79; Ord. No. 183-79; Ord. No. 37-86; Ord. No. 46-94; Ord. No. 30-2002; Ord. No. 73-2002; Ord. No. 74-07; Ord. No. 21-08; Ord. No. 31-13; Ord. No. 9-17, § 2(102.040), 6-12-2017)

Sec. 102.045. Prohibited parking in Downtown Parking District.

(a) Within the Downtown Parking District described in SRC 7.010, parking meters and time limits are prohibited for any city-owned parking (on- or off-street), except as permitted ~~below~~ in this section.

(b) The city-owned multi-level parking structures (Chemeketa, Liberty, and Marion Parkades) and any city-owned surface parking lot are exempted from the prohibition of subsection (a) ~~above~~ of this section.

(c) Increased annual assessments to finance the operation of the Downtown Parking District, SRC 7.110(a), are capped at the lesser of the percentage increase in the Bureau of Labor Statistics general consumer price index for the Portland, Oregon, metropolitan area for the preceding year or 2.0 percent.

(d) Except when authorized by a valid parking permit, the following persons may not park a motor vehicle in the Downtown Parking District in any on-street parking zone or in an off-street parking facility, between the hours of 8:00 a.m. and 9:00 p.m., except Sundays and legal holidays:

(1) A student, during the time the student is attending a class at an educational institution. This subsection shall not apply to any student attending the first scheduled day of class in which the student is enrolled;

(2) A person working in his or her place of employment, except that such persons may park in 30 minute parking zones for up to 30 minutes;

(3) A person engaged in the conduct of his or her business or profession at one location within the Downtown Parking District for a period lasting two or more consecutive days;

(4) A person summoned to serve as a juror in the circuit court of the State ~~of Oregon~~ for Marion County;

(5) A person who is an unsalaried employee or volunteer worker who is assigned to or working at any agency, office, or business establishment, including nonprofit organizations located within the Downtown Parking District, but not including volunteers who are working temporarily within the Downtown Parking District for recognized nonprofit charitable organizations whose immediate purpose is the temporary promotion of their organization whose normal place of business is located outside the area described in SRC 7.010.

(Prior Code, § 102.045; Ord. No. 69-77; Ord. No. 132-78; Ord. No. 167-78; Ord. No. 68-80; Ord. No. 34-83; Ord. No. 65-85; Ord. No. 74-87; Ord. No. 33-91; Ord. No. 31-98; Ord. No. 73-2002; Ord. No. 29-2004; Ord. No. 74-07; Ord. No. 21-08; Ord. No. 27-10; Resolution No. 2013-68; Ord. No. 20-14; Ord. No. 9-17, § 3(102.045), 6-12-2017)

Sec. 102.050. Required information for the downtown parking district.

(a) Upon request by the City:

(1) An employer of a person employed part time or full time in the City shall furnish the City the full name of the employer and employee, including unsalaried or volunteer workers;

(2) A person self-employed part time or full time in the City shall furnish to the City his or her full name.

(b) The information requested by this section shall be supplied in a mode and on forms prescribed by the Director.

(Prior Code, § 102.050; Ord. No. 69-77; Ord. No. 107-77; Ord. No. 68-80; Ord. No. 74-87; Ord. No. 73-2002)

Sec. 102.055. Overtime parking in time limited parking zones.

(a) It shall be unlawful to park a vehicle in violation of the maximum time limits applicable in any time limited parking zone. The maximum time limits in a time limited parking zone shall be a period of time, designated as the time limit on the parking control device designating the time limited parking zone.

(b) In all time limited parking zones, maximum time limits shall apply to parking in the entire block, not merely to parking in one or more particular parking spaces in the block. No person in charge of a vehicle may extend the permissible time for parking the vehicle in the block by causing the vehicle to be moved from one parking space to another in the block.

(Prior Code, § 102.055; Ord. No. 136-73; Ord. No. 183-79; Ord. No. 27-81; Ord. No. 35-97; Ord. No. 73-2002; Ord. No. 21-08; Ord. No. 20-14; Ord. No. 9-17, § 4(102.055), 6-12-2017)

Sec. 102.060. Overtime parking in metered zones.

It shall be unlawful for any person to park in a metered parking zone:

(a) At any time when the parking meter indicates that the parking time authorized by the parking meter has expired;

(b) At any time when the receipt received from a parking meter indicates that the authorized parking time has expired; or

(c) In excess of the maximum lawful time limits applicable in a metered parking zone. For purposes of this subsection, the term "maximum time limits" ~~shall~~ means a continuous period of time designated as the time limit on the parking meter. Calculation of the continuous period of time shall commence when the vehicle enters the metered parking zone, and shall not be extended beyond such continuous period of time by the deposit of coins that add time beyond maximum time limits; or

(d) At any time when the parking meter indicates that parking is prohibited.

(Prior Code, § 102.060; Ord. No. 136-73; Ord. No. 147-74; Ord. No. 73-2002; Ord. No. 21-08; Ord. No. 9-17, § 5(102.060), 6-12-2017)

Sec. 102.065. Application of time limits on certain days.

(a) Except as provided in subsection (b) of this section, and unless specifically designated otherwise by a parking control device, the time limitations and deposit requirements imposed on metered or time limited parking zones shall not apply on January 1, Martin Luther King Day, Presidents Day, Memorial Day, July 4, Labor Day, Veterans Day, Thanksgiving Day, December 25, and the following Monday if any such day falls on a Sunday in any year.

(b) Unless specifically designated otherwise by a parking control device, time limited parking zones in the Downtown Parking District apply all days of the year except December 25.

(Prior Code, § 102.065; Ord. No. 3401; Ord. No. 4551; Ord. No. 5303; Ord. No. 160-72; Ord. No. 136-73; Ord. No. 63-95; Ord. No. 35-97; Ord. No. 73-2002; Ord. No. 20-14)

Sec. 102.067. Failure to display proof of payment.

It shall be unlawful to park or permit to be parked any vehicle in a parking space metered by a pay station without properly displaying valid proof of payment. As used in this section, properly displaying valid proof of payment means placing the payment receipt on the dashboard of the vehicle in such a manner that the expiration time and date are readily visible from the exterior. For motorcycles, the payment receipt shall be displayed in a manner where it is readily visible.

(Ord. No. 9-17, § 8(102.067), 6-12-2017)

Sec. 102.070. Failure to display permit when required.

It shall be unlawful for a person to park a vehicle in a permit area when the person is an authorized permit holder in good standing, but has failed to display a parking permit as required.

(Prior Code, § 102.070; Ord. No. 73-2002)

Sec. 102.075. Failure to obey administrative parking regulations.

It shall be unlawful for any person to violate any rule, regulation or order adopted pursuant to SRC 102.010 or ~~SRC~~ 102.020.

(Prior Code, § 102.075; Ord. No. 21-08)

Sec. 102.080. Prohibited parking in carpool permit zone.

No two carpool permits issued with the same permit number shall be parked in the same carpool permit zone at the same time. Each vehicle having the same permit number shall be considered in violation of this section.

(Prior Code, § 102.080; Ord. No. 21-08)

Sec. 102.085. Parking for persons with disabilities; parking in violation of disabled parking laws prohibited.

(a) Pursuant to ORS 811.635(2), a person holding a "Wheelchair User" placard or decal, or another person while transporting its holder to or from the parking location, may:

(1) Park a motor vehicle in any public parking zone restricted as to the length of time without incurring penalties imposed for overtime parking in such zones.

(2) Park a motor vehicle in any public parking zone with metered parking without being required to pay any parking meter fee.

(b) The privileges granted by subsection (a) of this section do not include any of the following:

(1) Parking in zones where stopping, parking, or standing of all motor vehicles is prohibited.

(2) Parking in the late evening or overnight when such parking is prohibited.

(3) Parking in zones reserved for special types of motor vehicles or activities.

(4) Parking in zones where parking is permitted only for 30 minutes or less.

(c) Except as allowed under subsection (a) of this section, it shall be unlawful for any person to park at any place, including private property, in violation of ORS 811.615 through 811.625.

(d) Notwithstanding the requirements of SCR 102.145, the Municipal Court judge may promulgate Court rules regarding waiver of personal appearance for a person cited under this section.

(Prior Code, § 102.085; Ord. No. 111-82; Ord. No. 37-86; Ord. No. 46-94; Ord. No. 73-2002; Ord. No. 21-08; Ord. No. 11-15)

State law reference--Similar provisions, ORS 811.635(2), (4).

Sec. 102.090. Obstructing enforcement.

It shall be unlawful for any person to:

(a) Cover, erase, or otherwise render indistinguishable any mark placed on the tires of a vehicle by an enforcement officer.

(b) Intentionally resist such an officer who is acting in the discharge or apparent discharge of duty.

(1) The term "resist," as used in this subsection (b) has the meaning set forth in SRC 95.430.

(2) It is no defense to a prosecution under this subsection (b) that the enforcement officer lacked legal authority to make the arrest or enforce the regulations of this chapter, provided the enforcement officer was acting under color of official authority.

(c) Interfere with, or in any way hinder any enforcement officer acting in the discharge or apparent discharge of duty by intimidation, force or physical contact. This subsection shall not apply to the hindrance of an unlawful action by an enforcement officer or interference with the making of an arrest.

(d) Knowingly and willfully give any false, untrue, or misleading information to such an officer who is acting in the discharge or apparent discharge of duty with the intent to hinder, delay, mislead, or impede such officer in the prosecution of official duties or with the intent to obstruct justice.

(e) Discard, mutilate, or destroy any parking citation which charges a violation of this chapter if such charge has not yet been finally resolved by payment of fine or final Court action.

(Prior Code, § 102.090; Ord. No. 68-96; Ord. No. 73-2002)

Sec. 102.095. Tampering with parking control devices.

It shall be unlawful to tamper with, remove or alter any parking control device.

(Prior Code, § 102.095; Ord. No. 136-73; Ord. No. 57-88; Ord. No. 73-2002)

Sec. 102.100. Unauthorized use of a parking meter.

It shall be unlawful for any person to:

(a) Deposit any counterfeit coin, foreign coin, "slug," or other thing or material in any parking meter other than a coin in lawful coinage of the United States of America of a denomination designated on the meter as appropriate for deposit therein.

(b) Deface, injure, tamper with or willfully break, destroy, or impair the usefulness of any parking meter installed pursuant to this chapter.

(Prior Code, § 102.100; Ord. No. 136-73; Ord. No. 73-2002)

Sec. 102.105. Unauthorized use of parking permits.

(a) It shall be unlawful for any person to copy, reproduce, or alter any parking decal, form, sticker, or other device issued by the City ~~of Salem~~ pursuant to the provisions of this chapter.

(b) It shall be unlawful for any person to use any altered, forged, or expired permit on any vehicle for the purpose of representing that such vehicle is in compliance with any section of this chapter which requires a sticker, form, decal, or other device when that vehicle and the owner are not so entitled.

(Prior Code, § 102.105; Ord. No. 85-79)

Sec. 102.110. Unauthorized parking control devices.

It shall be unlawful for any person to place, erect, paint, inscribe, or otherwise establish any parking control device which purports to restrict or control parking, except such parking control devices as are authorized by this chapter, any other provision of the Salem Revised Code, or the laws of the State ~~of Oregon~~.

(Prior Code, § 102.110; Ord. No. 136-73; Ord. No. 73-2002)

Sec. 102.115. False statements by applicant.

It shall be unlawful for any person to willfully make any false, untrue, or misleading statement on any application for a parking permit or renewal thereof, or to willfully withhold information or make incomplete disclosure concerning any matter required to be furnished in connection with any such parking permit.

(Prior Code, § 102.115; Ord. No. 35-97)

Sec. 102.120. Method of charging parking violations.

Citations issued for violations of this chapter shall, in addition to any other applicable laws, conform with ORS 221.333.

(Prior Code, § 102.120; Ord. No. 73-2002; Ord. No. 21-08)

Sec. 102.125. Separate offenses in time limited parking zones and metered parking zones.

Each multiple of the maximum time limits in a time limited parking zone or metered parking zone during which a vehicle is unlawfully parked shall constitute a separate offense. Example: Where a time limited parking zone or metered parking zone is designated as two hours, each two-hour period during which a vehicle remains parked in excess of the initial two hours shall constitute a separate offense.

(Prior Code, § 102.125; Ord. No. 136-73; Ord. No. 27-81; Ord. No. 73-2002; Ord. No. 21-08)

Sec. 102.130. Responsibility for violations.

Except as otherwise provided in this chapter:

(a) The owner of a vehicle parked in violation of this chapter shall be responsible for the offense, except where the use of the vehicle was secured by the operator without the owner's consent.

(b) In a prosecution of a vehicle owner, proof that, at the time of the alleged violation, the vehicle was registered with the appropriate motor vehicle licensing authority as belonging to the defendant shall raise a rebuttable presumption that the defendant was the owner in fact.

(Prior Code, § 102.130; Ord. No. 73-2002; Ord. No. 21-08)

Sec. 102.135. Violations.

(a) *Infractions.*

(1) Violation of SRC 102.030(b) "Application; Adoption of State Parking Offenses"; SRC 102.035 "Method of Parking"; SRC 102.040 "Prohibited Parking"; SRC 102.045 "Prohibited Parking in Downtown Parking District"; SRC 102.055 "Overtime Parking in Time Limited Parking Zones"; SRC 102.060 "Overtime Parking in Metered Zones"; SRC 102.070 "Failure to Display Permit when Required"; SRC 102.075 "Failure to Obey Administrative Parking Regulations"; SRC 102.080 "Prohibited Parking in Carpool Permit Zone"; and SRC 102.085(b) "Parking for Persons with Disabilities; Parking in Violation of Disabled Parking Laws Prohibited" is an infraction and is punishable by the fines set forth in subsection (2) of this section.

(2) Fines for infractions established by this chapter shall be:

(A) SRC 102.030(b) "Application; Adoption of State Parking Offenses": The fine amounts provided for the specific violation of the Oregon Vehicle Code and incorporated by reference under SRC 102.030(b).

(B) SRC 102.035 "Method of Parking": $25.00.

(C) SRC 102.040 "Prohibited Parking": $50.00.

(D) SRC 102.045 "Prohibited Parking in Downtown Parking District": $100.00. If a person has violated this section two times within any one-year period, the fine shall be $175.00, and if a person has violated this section more than two times, within any one-year period, then the fine shall be $250.00.

(E) SRC 102.055 "Overtime Parking in Time Limited Parking Zones": $25.00; Residential Permit Overtime Parking: $30.00; Loading Zone Over-Time: $30.00.

(F) SRC 102.060 "Overtime Parking in Metered Zones": $30.00.

(G) SRC 102.067 "Failure to Display Proof of Payment": $25.00

(H) SRC 102.070 "Failure to Display Permit when Required": $15.00.

(I) SRC 102.075 "Failure to Obey Administrative Parking Regulations": $20.00.

(J) SRC 102.080 "Prohibited Parking in Carpool Permit Zone": $40.00.

(K) SRC 102.085 "Parking for Persons with Disabilities; Parking in Violation of Disabled Parking Laws Prohibited": The fine amounts listed in ORS 811.615—811.630.

(b) *Misdemeanors.* A violation of SRC 102.090 "Obstructing Enforcement"; SRC 102.095 "Tampering with Parking Control Devices"; SRC 102.100 "Unauthorized Use of a Parking Meter"; SRC 102.105 "Unauthorized Use of Parking Permits"; SRC 102.110 "Unauthorized Parking Control Devices"; SRC 102.115 "False Statement by Applicant"; SRC 102.165 "Immobilizer Removal"; and SRC 102.180 "Tampering with or Damaging an Immobilizer" is a misdemeanor.

(Prior Code, § 102.135; Ord. No. 136-73; Ord. No. 69-77; Ord. No. 193-79; Ord. No. 27-81; Ord. No. 63-81; Ord. No. 111-82; Ord. No. 47-90; Ord. No. 45-92; Ord. No. 27-93; Ord. No. 82-94; Ord. No. 49-95; Ord. No. 46-97; Ord. No. 73-2002; Ord. No. 21-08; Ord. No. 22-13; Ord. No. 9-15; Ord. No. 9-17, § 6(102.135), 6-12-2017)

Sec. 102.140. Payment of parking fines; late payment of fees.

(a) Before 12:00 midnight of the 14th calendar day following the date of the alleged violation, any person charged with an infraction under this chapter shall pay the fine in the amount shown on the citation, or enter a plea of not guilty or no contest as provided in SRC 102.145.

(b) If the fine remains unpaid at the end of the 14-calendar-day period set forth in subsection (a) of this section, the person shall pay, in addition to the fine in the amount shown on the citation, a late charge of $10.00.

(c) If the date for payment specified in subsection (a) or (c) of this section falls on a Saturday, Sunday or a legal holiday, the date for payment shall be not later than 5:00 p.m. of the next business day following the Saturday, Sunday or legal holiday.

(Prior Code, § 102.140; Ord. No. 136-73; Ord. No. 9-75; Ord. No. 72-77; Ord. No. 115-77; Ord. No. 193-79; Ord. No. 27-81; Ord. No. 111-82; Ord. No. 57-86; Ord. No. 22-90; Ord. No. 47-90; Ord. No. 38-92; Ord. No. 45-92; Ord. No. 82-94; Ord. No. 80-96; Ord. No. 89-96; Ord. No. 35-97; Ord. No. 46-97; Ord. No. 73-2002; Ord. No. 5-2003; Ord. No. 29-2004; Ord. No. 21-08)

Sec. 102.145. Appearance by defendant.

(a) A defendant must, within 14 days of the date a citation for a violation of this chapter is issued, make a first appearance by one of the following methods:

(1) Personally appearing before the Municipal Court and entering a plea;

(2) Entering a plea of guilty or no contest in writing, by regular mail or personal delivery to the Court Clerk, accompanied by the sum fixed as bail;

(3) Depositing the sum fixed as bail, by regular mail or personal delivery to the Court Clerk, without a specific plea. Depositing a sum pursuant to this subsection shall be deemed a plea of no contest.

(b) If the defendant fails, within the time provided by subsection (a) of this section, to make a first appearance or to deposit the required bail, the Municipal Court shall enter an order and judgment of default against the defendant, with the sum fixed as bail entered as a judgment in favor of the City.

(Prior Code, § 102.145; Ord. No. 136-73; Ord. No. 73-2002; Ord. No. 21-08; Ord. No. 17-10)

Sec. 102.150. Exclusion from off-street parking facilities.

(a) In addition to other measures provided in any other ordinances of the Code or any of the laws of the State ~~of Oregon~~, any person who within any off-street parking facility violates any provision of the Code or any non-felony criminal laws of the State ~~of Oregon~~ or any regulation duly made and issued by the Director may be excluded from any off-street parking facility for a period of 30 days and any person who violates any felony law of the State ~~of Oregon~~ may be excluded from any or all off-street parking facilities for a period of 90 days.

(b) Written notice shall be given to any person excluded from any off-street parking facility. Such notice shall specify the reason for the exclusion, and the dates and places of exclusion. The notice shall prominently display warning of the consequences of failure to comply, right of appeal and opportunity to apply for temporary waiver from the effects of the notice. Exclusion shall commence immediately upon delivery of the notice to the excluded person.

(c) A person who has received written notice of exclusion and who violates the notice restrictions may be charged with trespass under SRC 95.550. In addition, the person may be excluded from any or all off-street parking facilities for an additional period of not more than 90 days.

(d) Any person receiving a second written notice of exclusion within six months of receiving another such notice may be excluded from any or all off-street parking facilities for a period of not more than 90 days.

(e) For the purposes of this section a person "violates" a provision of law if based on the evidence reason exists to believe that more likely than not an offense was committed and the person committed it.

(f) Persons with authority to enforce this section are any enforcement officers or other persons designated by the Director to enforce this section, and any individuals providing security services under contract with the ~~Department of Administrative Services~~ City.

(g) The appeal provisions in SRC 95.770 apply to exclusion notices issued under this section.

(Prior Code, § 102.150; Ord. No. 73-2002; Ord. No. 31-2003; Ord. No. 31-06)

Sec. 102.155. Towing and impoundment of vehicles.

(a) An enforcement officer may, in addition to or in lieu of issuing a parking citation, cause such vehicle to be towed and impounded if any of the following conditions exist:

(1) The vehicle is parked in violation of this chapter;

(2) The vehicle has been immobilized and the past due parking fines and immobilizer fees have not been paid by 12:00 noon of the day following immobilization;

(3) The vehicle presents a traffic or public safety hazard;

(4) An immobilizer was removed following the payment of a check or other instrument and the payment was returned to the City because of insufficient funds, stop payment order, account closure, or other similar action;

(5) Following the tampering with and/or unauthorized removal of an immobilizer; or

(6) When so ordered by the Municipal Court.

(b) The owner of the vehicle, or any person authorized by the owner to act on the owner's behalf, may redeem the vehicle pursuant to SRC 102.220.

(c) A motor vehicle which has been towed and impounded shall, if not lawfully redeemed pursuant to SRC 102.220, be disposed of as provided in SRC 102.230 through 102.240.

(Prior Code, § 102.155; Ord. No. 136-73; Ord. No. 32-82; Ord. No. 73-2002; Ord. No. 21-08; Ord. No. 26-11)

State law reference—Unlawfully parked vehicles in parking facilities, ORS 98.805 et seq.; towing of parked vehicles constituting hazard or obstruction, ORS 819.120.

Sec. 102.160. Immobilizer installation.

Any enforcement officer may immobilize a motor vehicle located upon a public street or City off-street parking facility or designated parking facility owned or operated by the State of Oregon Department of Administrative Services by installing on or attaching to the vehicle an immobilizer if:

(a) The vehicle is parked in violation of any of the provisions of this chapter and at the time displays no license plates;

(b) The driver, owner, or person in charge of the motor vehicle has bails, fines, or bail forfeitures of not less than $60.00 outstanding for more than 30 days;

(c) The vehicle is parked in a designated permit parking area displaying an altered parking permit or a permit obtained under fraudulent conditions; or

(d) The vehicle is parked in violation of any of the provisions of this chapter and the car is owned by or registered to a person excluded from a crime prevention district in which the car is parked.

(Prior Code, § 102.160; Ord. No. 51-81; Ord. No. 22-90; Ord. No. 35-97; Ord. No. 73-2002; Ord. No. 74-07)

State law reference—Impoundment for specified offenses, ORS 809.720.

Sec. 102.165. Immobilizer removal.

No person, except an enforcement officer, may remove or attempt to remove the immobilizer and no person shall move or attempt to move the vehicle until the device is removed by the City.

(Prior Code, § 102.165; Ord. No. 51-81; Ord. No. 57-88; Ord. No. 73-2002)

Sec. 102.170. Hearing.

If a vehicle is immobilized or impounded, the person entitled to the vehicle may request a hearing on the immobilization or impoundment as provided by SRC 102.215.

(Prior Code, § 102.170; Ord. No. 51-81; Ord. No. 73-2002; Ord. No. 27-10)

Sec. 102.175. Immobilization penalty.

(a) At the time of immobilization, an enforcement officer shall, in addition to all unpaid bails, fines, or bail forfeitures, affix an additional penalty of $75.00.

(b) The total of all unpaid bails, fines, and bail forfeitures shall be paid before the immobilizer is removed. This shall include the immobilizer penalty and all parking citations that have become adjudicated as final due to the passage of the 14 day appeal period under SRC 102.145(a) and no appeal having been filed.

(Prior Code, § 102.175; Ord. No. 51-81; Ord. No. 51-91; Ord. No. 46-97; Ord. No. 73-2002; Ord. No. 21-08; Ord. No. 22-13)

Sec. 102.180. Tampering with or damaging an immobilizer.

It shall be unlawful for any person to willfully destroy, damage, deface, alter, tamper with, or in any way impair the usefulness, temporarily or permanently, of any immobilizer.

(Prior Code, § 102.180; Ord. No. 73-2002)

State law reference—Tampering with court ordered immobilization device, ORS 809.702.

Sec. 102.190. Reserved.

Sec. 102.200. Towing of vehicles.

(a) In addition to any other authority a police officer has to tow vehicles, a police officer is authorized to order a motor vehicle towed if the driver of the vehicle is arrested, the vehicle is parked unattended on private property, and the officer reasonably believes the driver lacks permission to allow the vehicle to remain parked on the property.

(b) Any vehicle which is to be towed shall be inventoried for its condition and contents by the enforcement officer. The purpose of the inventory is to identify and protect known property within the vehicle and to prevent erroneous claims of damage or loss to the vehicle or its contents.

(c) The City may contract the services of one or more competent towing service firms for the removal and storage of motor vehicles taken into the custody of the City for any reason. The contract shall provide for a schedule of maximum charges for towing and storage of such motor vehicles.

(d) A towing service company who, at the request of the City, takes a vehicle into custody shall have a lien on the vehicle and its contents for the just and reasonable towing and storage charges, and may retain possession of the vehicle and its contents until the charges are paid.

(Prior Code, § 102.200; Ord. No. 72-76; Ord. No. 18-81; Ord. No. 32-82; Ord. No. 89-94; Ord. No. 24-2002; Ord. No. 59-2002; Ord. No. 42-09)

State law reference—Authority to take vehicle into custody, ORS 819.140.

Sec. 102.205. Notice prior to the removal of an abandoned vehicle.

If the City proposes to take custody of any vehicle ~~under~~ parked in violation of SRC 102.040(j), the City shall provide notice in a manner set forth under ORS 819.170.

(Prior Code, § 102.205; Ord. No. 18-81; Ord. No. 32-82; Ord. No. 89-94; Ord. No. 57-96; Ord. No. 24-2002; Ord. No. 73-2002; Ord. No. 42-09)

State law reference—Notice requirement, ORS 819.170.

Sec. 102.210. Post-tow notice to owner.

Except for abandoned vehicles appraised at less than $500.00, if the City takes custody of a vehicle, the City shall provide notice as required in ORS 819.180.

(Prior Code, § 102.210; Ord. No. 72-76; Ord. No. 90-80; Ord. No. 18-81; Ord. No. 32-82; Ord. No. 89-94; Ord. No. 95-95; Ord. No. 25-98; Ord. No. 24-2002; Ord. No. 42-09)

State law reference—Notice after custody of vehicle, ORS 819.180.

Sec. 102.215. Hearing.

(a) Upon written request of the legal owner, ~~or~~ the registered owner, or any other person who reasonably appears to have an interest in the vehicle, delivered to the Municipal Court not more than five days from the mailing date of the notice provided under SRC 102.205, a hearing shall be held before the municipal judge. The written request shall state the grounds upon which the person requesting the hearing believes that the removal and custody of the vehicle is not justified. The five-day period in this subsection does not include holidays, Saturdays or Sundays.

(b) The hearing shall be set and conducted within two regular Court days of receipt of the request, holidays, Saturdays, and Sundays not included. The hearing can be set for a later date if the owner or person entitled to possession so requests. At the hearing, the owner may contest:

(1) The validity of the action of the enforcement officer in taking the vehicle into custody; and

(2) The reasonableness of the charge set for towing and storage of the vehicle. Towing and storage charges set by ordinance or by contract entered into pursuant to ordinance are presumed to be reasonable for purposes of this section.

(c) The City shall have the burden of showing the validity of the taking of the vehicle.

(d) At any time prior to the requested hearing, the owner or the person entitled to possession of the vehicle may regain possession of the vehicle as provided by SRC 102.220 by posting with the City security in the form of cash or bond in an amount sufficient to cover costs of removing and storage, together with any fines or bails owed pursuant to SRC 102.135 and a fee in an amount set by resolution of the ~~City~~ Council.

(e) If the municipal judge finds, after the hearing, that:

(1) The action of the City in taking the vehicle into custody was proper, the municipal judge shall enter an order supporting the removal and may assess costs of the hearing against the person requesting the hearing.

(2) The action of the enforcement officer in taking the vehicle into custody was invalid, the judge shall:

(A) Order the immediate release of the vehicle ~~released~~ to the owner;

(B) Find that the owner is not liable for any towing or storage charges occasioned by the taking;

(C) Order the City to satisfy the towing and storage lien; and

(D) Order the City to reimburse the owner for any towing and storage charges and City fees paid by the owner for the vehicle. New storage costs on the vehicle will not start to accrue until more than 24 hours after the time the vehicle is officially released to the owner under this ~~paragraph~~ subsection (2).

(f) If the person requesting the hearing does not appear at the scheduled hearing, the municipal judge may enter an order supporting the removal of the vehicle and the assessment of towing and storage costs and may apply any security posted against such costs. A person who fails to appear at a hearing under this section is not entitled to another hearing unless the person provides reasons satisfactory to the appropriate authority for the person's failure to appear.

(g) The action of the municipal judge pursuant to this section is final and is not subject to appeal.

(h) The municipal judge shall provide a written statement of the results of the hearing held under this section to the person requesting the hearing.

(Prior Code, § 102.215; Ord. No. 18-81; Ord. No. 32-82; Ord. No. 89-94; Ord. No. 95-95; Ord. No. 73-2002; Ord. No. 42-09)

Sec. 102.220. Owner reclaiming vehicle.

The legal owner, registered owner, or person entitled to possession of an unclaimed vehicle may reclaim such vehicle any time after it is taken into custody, and before it is sold upon presentation of satisfactory proof of ownership or right to possession to the Chief of Police ~~or the purchasing supervisor, whoever has custody of said vehicle at the time of the claiming~~, and payment of towing and storage charges, unpaid fines, bails, forfeitures attached to the vehicle, and City fees or posting of security required under this chapter.

(Prior Code, § 102.220; Ord. No. 72-76; Ord. No. 90-80; Ord. No. 18-81; Ord. No. 95-95; Ord. No. 24-2002; Ord. No. 42-09)

Sec. 102.225. Appraisal of unclaimed vehicles.

The City shall cause an unclaimed vehicle to be appraised within a reasonable time by a person holding a certificate issued under ORS ~~819.230~~ 819.480.

(Prior Code, § 102.225; Ord. No. 24-2002; Ord. No. 42-09)

Sec. 102.230. Disposition of motor vehicles valued at greater than $2,000.00.

Any motor vehicle appraised at a value greater than $2,000.00 under SRC 102.225, and not redeemed for a period of 30 days after the date of mailing notice pursuant to SRC 102.210, or the taking of the vehicle into the custody of the City, whichever is later, may be disposed of in accordance with the City of Salem Public Contracting Rules.

(Prior Code, § 102.230; Ord. No. 72-76; Ord. No. 19-78; Ord. No. 32-82; Ord.. No. 107-87; Ord. No. 89-94; Ord. No. 30-97; Ord. No. 24-2002; Ord. No. 31-06; Ord. No. 42-09)

Sec. 102.235. Disposition of motor vehicles appraised at $2,000.00 or less.

Any motor vehicle appraised at a value of $2,000.00 or less, except an abandoned vehicle appraised at a value less than $500.00, ~~under~~ pursuant to SRC 102.225, and which remains unclaimed and not redeemed for a period of 30 days after the date of mailing notice pursuant to SRC 102.210, or the taking of the vehicle into the custody by the City, whichever is later, may be disposed of as follows:

(a) The Chief of Police shall transmit to the ~~Purchasing Administrator~~ Contracts and Procurement Manager an affidavit describing the vehicle, including the license plates, if any, stating the location and appraised value of the vehicle, that the vehicle will be junked or dismantled, and that:

(1) Notice of intent to junk or dismantle the vehicle has been sent with the notification required under SRC 102.210; ~~or~~

(2) The owner has signed a release under oath, disclaiming any further interest in the vehicle, which release shall be forwarded with the affidavit; or

(3) No legal owner, registered owner, or other person entitled to possession has been located after reasonable efforts under SRC 102.210.

(b) If any of the persons notified under SRC 102.210 has not signed a release, and has not, within 30 days after the date notice is mailed, reclaimed the vehicle, such action shall constitute a waiver of the interest of such person.

(c) Upon receipt of the affidavit described in subsection (a) of this section, the ~~Purchasing Administrator~~ Contracts and Procurement Manager may, without further notice or public auction, dispose of the vehicle by sale in accordance with the provisions of any contract authorized by the ~~City~~ Council and pertaining thereto, or as otherwise provided in the City of Salem Public Contracting Rules.

~~(d) No such vehicle shall be sold or transferred to any person without first requiring that such person comply with the provisions of, and execute the forms required by ORS 819.220.~~

(Prior Code, § 102.235; Ord. No. 72-76; Ord. No. 32-82; Ord. No. 107-87; Ord. No. 89-94; Ord. No. 6-96; Ord. No. 24-2002; Ord. No. 31-06; Ord. No. 42-09)

Sec. 102.240. Disposal of abandoned vehicles appraised at $500.00 or less.

If an abandoned vehicle is appraised at $500.00 or less by a person who holds a certificate under ORS ~~819.230~~ 819.480, the City may choose to dispose of the vehicle in conformance with ORS 819.215.

(Prior Code, § 102.240; Ord. No. 89-94; Ord. No. 24-2002; Ord. No. 42-09)

State law reference—Disposal of vehicle appraised a $500 or less, ORS 819.215.

Sec. 102.245. Exemptions.

Notwithstanding any other provision of this chapter, city-owned and marked vehicles, when in use for official City business, may park in loading zones for up to 30 minutes.

(Prior Code, § 102.245; Ord. No. 20-14; Ord. No. 9-17, § 7(102.245), 6-12-2017)

CHAPTER 103. ~~RESERVED~~ SKATEBOARDS

Sec. 103.005. Definitions.

(a) Unless otherwise provided in this chapter, terms shall have the meaning prescribed in ORS chs. 801 through 826, the Oregon Vehicle Code. Where terms are not defined by this chapter or by the Oregon Vehicle Code, terms shall be given their plain and ordinary meaning.

(b) ~~Unless the context otherwise specifically requires, as used in this Chapter, the following mean:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(1)~~ *Coaster* means a footboard mounted upon two or more wheels, controlled by an upright steering handle, designed to be ridden by a person, propelled exclusively by human power, and most often propelled by the user usually in an upright position or kneeling.

~~(2)~~ *High visibility safety equipment* means lighting or reflective clothing equipment worn by an operator that meets one of the following:

(1) Lighting that emits white light visible from a distance of at least 500 feet to the front of the skateboard and a red light visible from a distance of at least 600 feet to the rear of the skateboard.

(2) High visibility garments or safety vest meeting the ANSI 107-2004 Class 2 or 3 standard.

~~(3)~~ *Night* means the period of time commencing 30 minutes before sunset and ending 30 minutes after sunrise.

~~(4)~~ *Roller skates* means a pair of shoes or boots, each mounted upon wheels, propelled exclusively by human power, and most often propelled by the user in an upright, standing position.

~~(5)~~ *Shared use path* means a paved or unpaved path that is physically separated from motor vehicle traffic and is intended to serve, and is used by, bicyclists, pedestrians, in-line skaters, skateboarders, wheelchairs, and other non-motorized users. Shared use paths typically allow bi-directional use.

~~(6)~~ *Skateboard* means a board of any material with wheels affixed to the underside, that is not controlled by an upright steering handle, designed to be ridden by a person, and propelled exclusively by human power. For the purposes of this chapter, the term "skateboard" does not include coasters or roller skates.

~~(7)~~ *Vehicle* means any device in, upon, or by which any person or property is or may be transported or drawn upon a public highway and includes vehicles that are propelled or powered by any means. As used in this chapter, the term "vehicle" does not include skateboards or manufactured structures as defined in the Oregon Motor Vehicle Code.

(Prior Code, § 103.005; Ord. No. 26-13)

Sec. 103.010. Skateboarding on sidewalks, shared use paths, crosswalks, and pedestrian bridges.

Except as otherwise specifically provided in this chapter, an operator of a skateboard on a sidewalk, shared use path, crosswalk, or pedestrian bridge has the same rights and duties as a pedestrian.

(Prior Code, § 103.010; Ord. No. 26-13)

Sec. 103.015. Skateboarding prohibited in certain areas.

(a) Notwithstanding any other provision in this chapter, no person shall skateboard in the following areas:

(1) In or upon any of the alleys or sidewalks within the area bounded on the north by Union Street, on the south by the south line of Trade Street, on the east by Cottage Street and on the west by Front Street, but excepting those sidewalks contiguous to and located within Marion Square Park;

(2) In or upon the Salem Civic Center described in SRC 102.005;

(3) In or upon the Liberty Parkade, the Chemeketa Parkade, the Pringle Parkade, or the City of Salem Library public parking structure;

(4) In or upon the area commonly known as Center 50+ and its related parking, and more particularly described as the area bounded on the east by Portland Road, on the south by Highland Avenue, on the West by Brooks Avenue, and on the north by the southern boundary of Lot 2, Hollywood Station No. 2, in the City ~~of Salem~~, recorded August 30, 2007, in Volume 46, Page 49, Marion County, Oregon, Record of Subdivision Plats;

(5) On private property, unless the owner or person in charge of the property consented to such use of the property;

(6) On any public or private property where signs on the property indicate that skateboard use is prohibited; or

(7) In City parks where skateboarding is prohibited by park operating rules established pursuant to SRC 94.200.

(b) A violation of this section is an infraction, punishable by a fine not to exceed $110.00.

(Prior Code, § 103.015; Ord. No. 26-13)

Sec. 103.020. Prohibited operation on streets with designated speeds.

(a) No person shall operate a skateboard:

(1) On any street where the designated speed is 25 mph or less, unless the skateboard is operated as close as practicable to the right curb or edge of the roadway and travels with the flow of traffic;

(2) On any street where the designated speed is greater than 25 miles per hour, unless the skateboard is operated within a marked bike lane and travels with the flow of traffic.

(b) A violation of this section is an infraction, punishable by a fine not to exceed $110.00.

(Prior Code, § 103.020; Ord. No. 26-13)

Sec. 103.025. Prohibited operation on streets.

(a) No person shall operate a skateboard on a street:

(1) So as to leave a bike lane or place of safety and move into the path of a vehicle that is so close to the operation as to constitute an immediate hazard.

(2) So as to execute a left turn on a street, unless the left turn is executed within a crosswalk.

(3) Without giving the appropriate hand and arm signal before stopping or making a right turn.

(4) When a pedestrian tunnel or pedestrian overhead crossing is present that serves as the pedestrian crossing for the street.

(5) So as to impede traffic or create a traffic hazard.

(b) A violation of this section is an infraction, punishable by a fine not to exceed $110.00.

(Prior Code, § 103.025; Ord. No. 26-13)

Sec. 103.030. Protective headgear required.

(a) No person under 16 years of age shall operate a skateboard on any street, sidewalk, shared use path, crosswalk, or pedestrian bridge without wearing protective headgear of a type approved by the Oregon Department of Transportation under administrative rules adopted pursuant to ORS 815.052.

(b) A violation of this section is an infraction, punishable by a fine not to exceed $25.00.

(Prior Code, § 103.030; Ord. No. 26-13)

State law reference—Protective headgear required for skateboarder, scooter rider or in-line skater, ORS 814.600.

Sec. 103.035. High visibility safety equipment required.

(a) No person shall operate a skateboard on any street, sidewalk, shared use path, crosswalk, or pedestrian bridge at night unless the skateboard or operator is equipped with high visibility safety equipment.

(b) A violation of this section is an infraction, punishable by a fine not to exceed $110.00.

(Prior Code, § 103.035; Ord. No. 26-13)

Sec. 103.040. Prohibited operation on sidewalks.

(a) No person shall operate a skateboard on a sidewalk:

(1) So as to suddenly leave a curb or other place of safety and move into the path of a vehicle in a manner that creates an imminent hazard for the operator or the vehicle;

(2) Without giving an audible warning before overtaking and passing a pedestrian; or

(3) At a speed greater than an ordinary walk when approaching or entering a crosswalk, approaching or crossing a driveway, or crossing a curb cut or pedestrian ramp at a time when a vehicle is approaching the crosswalk, driveway, curb cut, or pedestrian ramp.

(b) A violation of this section is an infraction, punishable by a fine not to exceed $110.00.

(Prior Code, § 103.040; Ord. No. 26-13)

Sec. 103.045. Traffic control devices.

(a) No person operating a skateboard shall fail to obey official traffic control signals, signs, and other control devices applicable to vehicles.

(b) A violation of this section is an infraction, punishable by a fine not to exceed $110.00.

(Prior Code, § 103.045; Ord. No. 26-13)

Sec. 103.050. Failure to yield right-of-way.

(a) No person operating a skateboard shall fail to yield the right-of-way to any vehicle or pedestrian, including any vehicle or pedestrian that is approaching or crossing a driveway.

(b) A violation of this section is an infraction, punishable by a fine not to exceed $110.00.

(Prior Code, § 103.050; Ord. No. 26-13)

Sec. 103.055. Operation of skateboard in standing position.

(a) No person shall operate a skateboard within the public right-of-way in other than a standing position.

(b) A violation of this section is an infraction, punishable by a fine not to exceed $110.00.

(Prior Code, § 103.055; Ord. No. 26-13)

Sec. 103.060. Riding single file.

(a) No person shall intentionally operate a skateboard on any street alongside another person riding a skateboard, or any vehicle, unless overtaking and passing such skateboard or vehicle.

(b) A violation of this section is an infraction, punishable by a fine not to exceed $110.00.

(Prior Code, § 103.060; Ord. No. 26-13)

Sec. 103.065. Racing.

(a) No person shall engage in, or cause others to engage in, a skateboard race upon the streets, sidewalks, shared use path, crosswalk, pedestrian bridge, or any other public property, unless the racing occurs in a City park and is in conformance with park operating rules adopted pursuant to SRC 94.200.

(b) A violation of this section is an infraction, punishable by a fine not to exceed $110.00.

(Prior Code, § 103.065; Ord. No. 26-13)

Sec. 103.070. Hitching on vehicles.

(a) No person shall, while operating a skateboard, in any way attach themselves or the skateboard to any moving motor vehicle.

(b) A violation of this section is an infraction, punishable by a fine not to exceed $110.00.

(Prior Code, § 103.070; Ord. No. 26-13)

Sec. 103.075. Careless riding.

(a) No person shall ride a skateboard in a manner that endangers or would be likely to endanger any person or property.

(b) A violation of this section is an infraction, punishable by a fine not to exceed $110.00.

(Prior Code, § 103.075; Ord. No. 26-13)

CHAPTER 104. PARADES AND COMMUNITY EVENTS

Sec. 104.001. Purpose.

The purpose of this chapter is to establish a process for permitting use of city streets, parks, open spaces, or facilities for community events; to provide a coordinated process for managing community events to ensure the health and safety of event patrons, City residents, workers, and other visitors; to protect the rights of community event permit holders; to protect the rights of persons to engage in expressive activities in the City's public places, while establishing reasonable time, place and manner regulations of these activities; and to create mechanisms for cost recovery and use charges, to the extent authorized by law, while not unduly impacting the viability of community events.

(Prior Code, § 104.001; Ord. No. 44-09)

Sec. 104.010. Definitions.

~~Except where the context specifically otherwise requires, as used in this Chapter:~~ The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

~~(a)~~*Activity* or *event* means a parade, procession, march, assembly, meeting or other similar gathering, but excludes public employees engaged in the performance of public duties, including, but not limited to, the construction of public improvements in public right-of-way.

~~(b)~~ *Approved assembly space* means a public building or structure, or space therein, designated by the City for use by the public for meetings, assemblies and other similar functions, and for which a facilities use or rental fee is charged. Approved assembly spaces include, but are not limited to, Pringle Hall and the Anderson Rooms in the Salem Public Library.

~~(c)*Director* means the City Manager, or the department head charged by the City Manager with the implementation and enforcement of this chapter, or that department head's designee.~~

~~(d)~~ *Indigent person* means:

(a) A person who is receiving benefits pursuant to the Federal Supplemental Security Income (SSI) Program or the Supplemental Nutrition Assistance Program ~~Food Stamp program~~ (7 USC ~~Sec.~~ 2011 et seq.);

(b) A person whose monthly income is 125 percent or less of the current monthly poverty line annually established by the United States Department of Health and Human Services pursuant to the Omnibus Budget Reconciliation Act of 1981, as amended, and published in the Federal Register; or

(c) An organization in which 51 percent or more of its members meet the criteria for indigent status, as established in ~~paragraphs (1) or (2) of this subsection~~ subsection (a) or (b) of this definition.

~~(e)~~*Person* means, as the context requires, natural person, ~~a~~ corporation, limited liability company, partnership, co-operative, or any other entity in law or fact.

~~(f)~~*Public property* means any real property or any facility, other than public right-of-way, that is owned, controlled, or maintained by the City, or any portion or space therein.

~~(g)~~ *Public right-of-way* or *right-of-way* means the surface of, and the space above and below any street, road, alley, bridge, highway, sidewalk or pathway, that is used or intended to be used by the general public for movement or passage.

(Prior Code, § 104.010; Ord. No. 44-09)

Sec. 104.020. Administration; rulemaking.

The Director shall administer and enforce the provisions of this chapter, have the authority to render written and oral interpretations, and have authority to adopt administrative rules that are consistent with, and otherwise implement, the terms of this chapter.

(Prior Code, § 104.020; Ord. No. 44-09)

Sec. 104.030. Permit requirement.

Except as otherwise provided by the Salem Revised Code or any other applicable law, rule or regulation, a community event permit shall be obtained from the Director for the following activities:

(a) An activity or event consisting of persons, animals, vehicles, or any combination thereof, which is to assemble or travel in unison on any public right-of-way and that:

(1) The organizer expects or intends to impede, obstruct, impair or interfere with the free use of public right-of-way or other public property; ~~or~~

(2) Will create a high degree of probability that free use of public right-of-way will be impeded, obstructed, impaired or interfered with. In evaluating the probability of such impediment, obstruction, impairment or interference, the Director shall consider the size of the group, the organizer's precise plans for the route, duration and course of the activity or event, and known or predictable conditions at the location and time of the activity or event; or

(3) Will not comply with normal or usual traffic laws, regulations or controls.

(b) Any activity or event that the organizer expects or intends to involve 200 or more persons assembling on public property.

(c) Any activity or event on public property which requires the placement of a tent, canopy, or other temporary structure, if such placement requires a permit from the City's Fire Department or Building and Safety Division.

(d) Notwithstanding subsection (a) of this section, an activity or event consisting of vehicles traveling in unison on any public right-of-way does not require a community event permit, if such activity's or event's use of public right-of-way is specifically regulated as such under the Oregon ~~Motor~~ Vehicle Code, ORS chs. 801 to 826.

(e) Notwithstanding subsection (c) of this section, activities or events on public property that occur in an approved assembly space do not require a community event permit, unless such activity or event requires a street closure or traffic diversion or requires the use of other public property for the activity or event and such public property is not part of the approved assembly space.

(Prior Code, § 104.030; Ord. No. 44-09)

Sec. 104.040. Spontaneous events.

(a) Spontaneous activities or events which are occasioned by news or affairs coming into public knowledge less than 48 hours prior to such activity or event may be conducted without the organizers first having to obtain a community event permit. If practicable, the organizers should give notice to the Director at least four hours prior to the activity or event informing the Director of the date and time of the activity or event and providing an estimate of the approximate number of persons who will be participating.

(b) Spontaneous activities or events undertaken pursuant to this section shall be subject to departmental cost recovery under SRC 104.120.

(Prior Code, § 104.040; Ord. No. 44-09)

Sec. 104.050. Community event permit application.

(a) To receive a community event permit, a person must complete and file a community event permit application with the Director on a form approved by the Director. The applicant must provide the following information:

(1) A description of the proposed activity or event;

(2) The public right-of-way or other public property and the specific area or areas thereof which will be utilized in connection with the proposed activity or event;

(3) The manner in which the public right-of-way or public property will be utilized;

(4) The date or dates and the specific times of the activity or event, including set-up and tear-down, that the public right-of-way or public property is to be utilized for the activity or event;

(5) The name, address and telephone number of the person, entity or organization sponsoring or conducting the proposed activity or event; and

(6) The name, address and telephone number of the person or persons to be contacted regarding the application or permit.

(b) The Director may refer the application to such city departments or personnel as the Director deems necessary from the nature of the application for review, evaluation, investigation and recommendations regarding approval or disapproval of the application.

(c) A completed application for any community event permit that does not require the closure of part or all of an arterial street, as defined in the Salem Transportation System Plan, must be submitted and reviewed not less than three business days prior to the date the activity or event is planned to commence. A completed application for a community event permit that will require the closure of part or all of an arterial street, as defined in the Salem Transportation System Plan, shall be submitted and reviewed not less than 20 business days prior to the date the activity or event is planned to commence.

(d) A completed application shall be accompanied by a permit application fee and other additional fees, including any neighborhood notification fees, as may be adopted pursuant to this chapter.

(Prior Code, § 104.050; Ord. No. 44-09)

Sec. 104.060. Permit fees.

(a) A community event permit application fee and any other additional fees, including any neighborhood notification fees, imposed for the use of the public right-of-way or public property pursuant to this chapter shall be established by resolution of the ~~City~~ Council.

(b) An indigent person who otherwise cannot apply for a community event permit because of an inability to pay the permit application or any other additional fee due to such indigence shall not be required to pay the fee or fees. The determination of exemption from such fee or fees shall be made in accordance with the administrative rules adopted pursuant to this chapter. Requests for indigent status shall be made at the time of filing the application and shall be accompanied by such information and documentation as is reasonably necessary to verify such status.

(Prior Code, § 104.060; Ord. No. 44-09)

Sec. 104.070. Review process.

(a) The Director shall issue a community event permit, if the Director determines that all of the following criteria have been met:

(1) The proposed use of the public right-of-way or public property does not conflict with any other permit procedures provided for elsewhere in the Salem Revised Code or any other applicable laws, rules, or regulations.

(2) The preparation for, or the conduct of, the proposed activity or event will not unreasonably or unfeasibly burden City resources necessary to preserve the public's use of the streets in the area contiguous to the public right-of-way or other public property proposed to be used.

(3) The preparation for or the conduct of the proposed activity or event will not unduly impede, obstruct, or interfere with the operation of emergency vehicles or equipment in or through the particular permit area or adversely affect the City's ability to perform any municipal functions or furnish City services in the vicinity of the permit area.

(4) The proposed activity or event does not present a substantial safety or traffic hazard, and does not violate any noise regulations.

(5) The proposed activity or event will be of a nature and size appropriate to the proposed venue, location or site; will occur during a time period approved for that venue, location or site; and will fall within any frequency limitations established by the administrative rules adopted pursuant to this chapter.

(6) If the proposed activity or event will occur in a park, the activity or event will not include any live animals, except as provided in SRC 94.020.

(7) A transportation management/parking plan has been approved for the activity or event by the Director, if such a plan is required by the administrative rules adopted pursuant to this chapter.

(8) The proposed activity or event will not cause significant adverse impacts on the health or safety of the surrounding residential or commercial uses that cannot be effectively mitigated.

(b) A community event permit may contain a condition that the permit holder, at the permit holder's sole cost and expense, place and maintain signs and barricades the Director deems necessary for the safety and protection of the public.

(c) In deciding whether to approve an application for a community event permit, no consideration shall be given to the message the activity or use will convey; the content of any speech used or likely to be used; or the identity or associational relationships of the applicant or applicants; or to any assumptions or predictions regarding public reaction to the content of the speech or the message conveyed by the event.

(Prior Code, § 104.070; Ord. No. 44-09)

Sec. 104.080. Denial or revocation of permit.

(a) The Director shall deny an application for a community event permit if the Director finds any of the following have occurred:

(1) One or more of the approval criteria specified in SRC 104.070 were not met.

(2) The applicant made a false, misleading or fraudulent statement of fact on the application during the application process.

(3) The application does not contain all of the information required by this chapter.

(4) The application does not satisfy any administrative rules adopted pursuant to this chapter.

(5) The applicant fails to agree as a condition of permit issuance that if City property is damaged or destroyed by reason of the activity or event, and the damage or destruction is directly attributable to the activity or event, the permit holder will reimburse the City for the actual replacement or repair cost of the damaged or destroyed City property.

(b) The Director may revoke a community event permit if the Director finds any of the following have occurred:

(1) The permit holder made a false, misleading or fraudulent statement of fact on the application, during the application process, or in connection with the community event permit.

(2) The permit holder fails to comply with any conditions of permit approval, including, but not limited to:

(A) Remittance of fees or deposits as required by this chapter.

(B) Submittal of an indemnification agreement as required by this chapter.

(C) Submittal of proof of insurance as required by this chapter, unless a written waiver of the insurance requirement has been given by the City's Risk Manager.

(D) Failure to place and maintain signs and barricades required for the safety and protection of the public.

(3) Failure to maintain insurance as required by this chapter.

(4) The community event permit was issued in error.

(c) The Director shall provide a written notice of denial or revocation of a community event permit, stating the reasons therefor, within 24 hours of the Director's decision.

(Prior Code, § 104.080; Ord. No. 44-09)

Sec. 104.090. Appeals.

Any person who has been denied a community event permit, or who has had a community event permit revoked under SRC 104.080, may appeal such decision to the Municipal Court by filing a written notice of such appeal stating the reasons the Director erred in denying or revoking the permit, within five business days of the date of the decision. The Municipal Court shall hear and decide the appeal within five business days of the date of filing of the notice of appeal.

(Prior Code, § 104.090; Ord. No. 44-09)

Sec. 104.100. Indemnity agreement.

Each permit holder shall execute an indemnity agreement with the City prior to commencement of the activity or event in a form approved by the City Attorney agreeing to defend, indemnify, release, and hold harmless the City against any losses and liabilities that are ~~is~~ incurred as a result of the conduct of the permit holder, its officers, employees, and agents in connection with, or during, the activity or event.

(Prior Code, § 104.100; Ord. No. 44-09)

Sec. 104.110. Insurance requirements.

(a) Except as otherwise prohibited by law or unless a waiver is obtained as provided by this chapter, the permit holder shall procure and maintain in full force and effect during the term of the community event permit, a policy of insurance from a reliable insurance company authorized to do business in the State ~~of Oregon~~. Such insurance shall provide coverage of which the combined single limit per occurrence shall be not less than that required under the Oregon Tort Claims Act, ORS 30.270 et seq., or $~~1~~2,000,000, whichever is greater. Such insurance shall be without prejudice to coverage otherwise existing therein and shall name the City ~~of Salem~~, its officers, agents and employees as additional insureds. Such insurance shall further provide that the policy shall not terminate or be canceled prior to the completion of the community event without 30 days' written notice to the Director. Proof of insurance shall be submitted to the City prior to issuance of the community event permit, and maintenance of this insurance shall be a continuing condition of the community event permit.

(b) If the City's Risk Manager determines that a particular activity or event, for which the permit period is not more than one day, does not present substantial or significant likelihood of public liability or property damage, the Risk Manager may give a written waiver of the insurance requirements of this section. In making such determination, the Risk Manager may require information or documentation from the applicant regarding the applicant's history organizing similar events, the course of such events, and whether such events resulted in property damage. In making a determination under this section, the Risk Manager may not consider the message the activity or use will convey; the content of any speech used or likely to be used; or the identity or associational relationships of the applicant or applicants.

(Prior Code, § 104.110; Ord. No. 44-09)

Sec. 104.120. Departmental cost recovery.

(a) In addition to payment of any required application or other fees, a permit holder shall reimburse the City for the following actual costs, when such costs are directly attributable to an activity or event requiring the City to exceed its usual staffing levels:

(1) Costs of city personnel, including any overtime pay, required to close public rights-of-way before the community event or activity commences and costs of city personnel, including any overtime pay, required to reopen public rights-of-way after the community event or activity ends, including, but not limited to, the erection of barricades or other obstacles necessary to direct or manage pedestrian or vehicular traffic.

(2) Costs of city personnel, including any overtime pay, required to direct or manage vehicular or pedestrian traffic.

(3) Costs of city personnel, including any overtime pay, required to clean up litter and other debris left on the public rights-of-way or other public property following the community event or activity.

(b) City departments shall submit final invoices and billings for departmental cost recovery to the permit holder no later than 30 business days after the conclusion of the activity or event or the expiration date of the community event permit, if the expiration date is later.

(c) The permit holder shall not be required to provide or pay for public safety personnel who are present to protect event attendees from hostile members of the public or counter-demonstrators or for general law enforcement in the vicinity of the event.

(d) The City shall provide the permit holder, in advance of the activity or event, a good-faith estimate of the anticipated costs that will be incurred under subsection (a) of this section based on the projected route of the activity or event, the duration of the activity or event, and estimated number of persons participating in or attending the activity or event. Actual costs shall be calculated following the activity or event, and shall be paid from an itemized invoice provided to the permit holder following the community event or activity.

(e) It shall be a condition of granting a community event permit that the permit holder agrees to reimburse the City for all actual costs described in this section.

(f) The Director shall have the discretion to waive departmental cost recovery under this section upon a satisfactory showing by the permit holder that the payment of such costs is likely to create an undue hardship upon the permit holder or that the permit holder is an indigent person. The Director shall provide application forms for such purpose.

(g) In addition to any departmental cost recovery required to be paid under this section, if any public right-of-way or public property is damaged or destroyed by reason of the activity or event, the permit holder shall reimburse the City for the actual repair or replacement cost of the damaged or destroyed public right-of-way or public property.

(Prior Code, § 104.120; Ord. No. 44-09)

Sec. 104.130. Community event temporary signage.

Temporary signs identifying or pertaining to the community event may be installed by the permit holder within the event site as described in the community event permit. Signs erected pursuant to this section shall not require a sign permit under SRC chapter 900, but shall be removed immediately upon the conclusion of the activity or event, and any damage resulting for the installation of the sign promptly repaired.

(Prior Code, § 104.130; Ord. No. 44-09; Ord. No. 4-12)

Sec. 104.140. Routes.

(a) With the exception of Court Street between 12th Street and Cottage Street, activities or events shall not be conducted on any street classified as an arterial street in the Salem Transportation System Plan between the hours of 6:30 a.m. to 9:30 a.m. and 3:30 p.m. to 6:30 p.m. on any weekday (Monday through Friday).

(b) Notwithstanding subsection (a) of this section, activities and events shall not be conducted on any street classified as a major arterial in the Salem Transportation System Plan within the Downtown Parking District, as defined by SRC 7.010, between the hours of 6:30 a.m. and 6:30 p.m. on any weekday.

(Prior Code, § 104.140; Ord. No. 44-09)

Sec. 104.150. Races, runs, and walks.

The procedures and criteria for conducting races, runs, or walks shall be as follows:

(a) No race involving motor vehicles shall be permitted.

(b) Activities or events which include multiple modes of travel (e.g., walking, running and bicycling) shall be permitted so long as the start times for the different modes of travel are staggered.

(c) Prior to the issuance of a community event permit for a race, run or walk, the Director shall determine the specific portions of lanes or roadway that may be used by the participants. This determination shall be based on safety considerations and the preservation of access to businesses and other scheduled activities along the route.

(d) In addition to the routes established by subsection (c) of this section, races, walks or runs may be permitted on other streets in the City so long as the majority of the race, walk or run occurs outside of the City and that portion of the races, walks or runs within the City does not exceed three ~~one~~ miles in length. Races, walks or runs permitted pursuant to this subsection shall not be subject to the requirements set forth in subsection (b) of this section.

(Prior Code, § 104.150; Ord. No. 44-09)

Sec. 104.160. Other permits and licenses.

The issuance of a community event permit does not relieve the permit holder from the obligation to obtain any other permit or license required pursuant to the Salem Revised Code or other applicable law.

(Prior Code, § 104.160; Ord. No. 44-09)

Sec. 104.170. Display of community event permit.

The permit holder shall display a copy of the community event permit at the site and shall present a copy of the permit to any city official upon demand.

(Prior Code, § 104.170; Ord. No. 44-09)

Sec. 104.180. Failure to obtain a permit; failure to comply with permit term.

(a) It shall be unlawful for any person to engage in an activity or event for which a community event permit is required under this chapter without first obtaining a permit.

(b) It shall be unlawful for any person to violate the terms of a community event permit.

(c) It shall be unlawful for any person to provide a false, misleading or fraudulent statement of fact on the application, during the application process, or in connection with a community event permit.

(d) It shall be unlawful for any person to knowingly participate in an activity or event for which a community event permit is required without a community event permit having been granted, or to continue to participate in such an activity or event after a community event permit has been revoked.

(Prior Code, § 104.180; Ord. No. 44-09)

Sec. 104.190. Use of City name or logo without authorization.

It shall be unlawful for a permit holder to use the words "~~the~~ City of Salem" or "Salem," to suggest or indicate that the activity or event is sponsored by the City, or to use a facsimile of the seal or logo of the City ~~of Salem~~ in the promotional materials or advertising for the activity or event without the City's prior express written authorization.

(Prior Code, § 104.190; Ord. No. 44-09)

Sec. 104.200. Vending or sale of food prohibited.

It shall be unlawful for any person to vend or sell any food or merchandise from the roadway, curb to curb, of the route of an activity or event permitted under this chapter during the hours the route is closed to normal motor vehicle traffic, without first having obtained the written permission of the permit holder and any permits and/or licenses required for such activity by the City or any other governmental entity.

(Prior Code, § 104.200; Ord. No. 44-09)

Sec. 104.210. Interference with a community event prohibited.

It shall be unlawful for any person to interfere with an activity or event permitted under this chapter, by engaging in any of the following acts with the intent to disrupt the event or to harass or annoy participants in the activity or event:

(a) Blocking, obstructing or impeding the passage of participants, vehicles or animals in the community event along the route of the activity or event.

(b) Walking or running, driving a vehicle, riding a bicycle or skateboard or operating any similar device through, between, with or among any participants, vehicles or animals in the activity or event.

(c) Dropping, throwing, rolling or flying any object toward, among or between participants, vehicles or animals in the activity or event.

(d) Grabbing, taking hold of, hitting, pulling or pushing any participant, vehicle or animal in the activity or event or anything in the possession of any participant in the activity or event.

(e) Throwing, squirting, dumping or dropping any liquid or gaseous substance on, toward, among or between participants, vehicles, or animals in the activity or event.

(Prior Code, § 104.210; Ord. No. 44-09)

Sec. 104.220. Penalties.

(a) Any person who violates SRC 104.170, ~~SRC~~ 104.180, or ~~SRC~~ 104.200 shall be guilty of an infraction, ~~and~~ punishable by a fine of not less than $100.00 and not more than $250.00.

(b) Any person who violates SRC 104.190 or ~~and SRC~~ 104.210 shall be guilty of a misdemeanor, ~~and~~ punishable by a fine not to exceed $500.00.

(Prior Code, § 104.220; Ord. No. 44-09)

CHAPTERS 105—109. RESERVED