

**INTERGOVERNMENTAL AGREEMENT
FOR WASTEWATER TREATMENT**

AGREEMENT between the **CITY OF SALEM** (Salem), an Oregon municipal corporation and the **LABISH VILLAGE SEWAGE AND DRAINAGE DISTRICT** (District), an Oregon municipal corporation.

Recitals:

- (1) Salem is the owner and operator of a wastewater collection and disposal system which serves the Salem/Keizer urban area and pursuant to a contractual arrangement has provided such service to District area; and
- (2) District desires to continue to receive service from Salem for wastewater disposal service and to connect to Salem trunk lines or interceptors as it may be necessary to provide adequate and proper wastewater collection service to District and to enter into an agreement therefor; and
- (3) Salem and District acknowledge the adoption of the Salem Area Comprehensive Plan which governs land use and development within the Salem Urban Growth Boundary.

Agreement:

Section 1. Duties of Salem. Salem shall:

- (a) Permit the District, except as provided in Section 3(c) & (e) of this agreement to connect to Salem trunk lines or interceptors, as necessary to provide adequate and proper wastewater collection service to the District, these connections, in keeping with sound engineering practices, to be at a point and in a manner designated by Salem.
- (b) Maintain, operate, and replace the sewer interceptor, trunk lines, collector mains, public laterals, and pumping stations owned by and within District and the same within Salem as necessary to serve District, the cost of such service being provided through the sewer service charge; provided, however, maintenance and repair of building sewers from the public lateral or main to individual premises within District shall not be the responsibility of the City; provided, further, maintenance or repair as the terms are used in this section in respect to District, shall not include cases of sewer pipeline breaks occasioned by unusual conditions such as earthquakes, floods, explosions, or other disasters. In such cases the cost of repairing such sewer pipeline breaks shall be the full responsibility of District.

The operation, maintenance, and replacement responsibilities of Salem shall include, but not be limited to, the following:

- (1) Periodic inspection, cleaning, and maintenance of the sewer interceptor, trunk lines, collector mains, public laterals, and pumping stations;
- (2) Removal of stoppages;
- (3) Repair of breaks;
- (4) Pump station repair and maintenance;

- (5) Clean-up of sewer spills and the enforcement of pretreatment regulations as provided in Salem Revised Code (SRC) Chapters 73 and 74;
 - (6) Wastewater treatment plant operations, maintenance, and replacement as necessary;
 - (7) Replacement of sewer interceptors, trunk lines, collector mains, public laterals, and pumping stations as necessary excluding interim facilities; and
 - (8) Furnish District, as requested, with copies of the annual National Pollutant Discharge Elimination System Waste Discharge Permit Annual Report that is submitted to the Department of Environmental Quality.
- (c) Receive applications and issue permits for all connections to the sewer system in District. Permits will be issued only if applicants comply with all applicable SRC requirements in effect at the time of application, including, SRC Chapter 41, "System Development Charges", SRC Chapter 70 "Utilities", SRC Chapter 73, "Wastewater," and SRC Chapter 74, "Pretreatment," and SRC Chapter 77, "Permits and Street Permits", 77.090-77.140, Salem shall provide inspection for all such connections and for this service each individual applicant shall pay to Salem the permit fees adopted by the Salem City Council.
- (d) Administer through its Public Works Department the rules and regulations adopted by District under this Agreement. To this end, the Public Works Director of Salem, or the Director's designee, may enforce compliance of said rules and regulations to the extent allowed by law. The Director shall notify District of all violations for which compliance has not been obtained and District shall take all necessary steps provided for by any applicable State law, County Ordinance, and those City ordinances made a part of this agreement, to diligently enforce same.
- (e) Consult District in the periodic review of Salem sewer maintenance and replacement plans of the collection system, and allow District to make recommendations regarding sewer interceptor, trunk lines, collector mains, public laterals, pump station, and replacement projects. Make reasonable efforts to notify District of public hearings before Salem's City Council regarding Salem's capital improvement planning process (CIP).
- (f) Deposit any System Development Charge fees required to be collected by Salem under Section 2(d) of this Agreement in the Extra Capacity Facilities Fund and dedicate such fees to system expansion. Process credit and reimbursement payments for qualified public improvements pursuant to Salem Revised Code Chapter 41 and any amendments thereto.
- (g) Collect from each sewer user the wastewater service charges as periodically adopted and adjusted by Salem City Council as provided Section 3(a) of this Agreement. Salem further agrees to collect any additional service charge levied by District for District purposes. Once each fiscal year, Salem will publish a statement of Reserve Accounts and either turn over to District any remaining service charges collected on District's behalf; or bill District for any outstanding delinquencies. Salem shall have first priority on any funds collected to meet the sewer service charge due Salem. Salem shall make all reasonable effort by billing and delinquent notices to collect sewer service charges. Twice each year, Salem shall certify to District all delinquent accounts older than six months. District shall pay to Salem any amount owed in excess of service charges levied by District and collected by Salem.
- (h) Make reasonable efforts to notify District of public hearings before Salem's City Council which will address utility rates or of proposed amendments to SRC Chapter 41, "System Development Charges",

SRC Chapter 70 "Utilities", SRC Chapter 73, "Wastewater," and SRC Chapter 74, "Pretreatment," by notifying District at the address for notice provided herein. Nothing in this section shall be interpreted as limiting or otherwise changing Districts' obligations under Section 2(a) to regularly review the Salem Revised Code and to be aware of any amendments to the Salem Revised Code which are applicable to this Agreement.

Section 2. Duties of District. District shall:

- (a) Take all necessary steps to adopt, keep current, and enforce rules and regulations concerning the collection and disposal of wastewater within District. Such rules and regulations shall be in substantial conformity with all applicable ordinances of Salem, including, but not limited to those included in the attached Exhibit "A," and by this reference made a part of this Agreement. Such rules and regulations shall be adopted within 60 days of this Agreement. It shall be Districts' responsibility to regularly review the Salem Revised Code and to be aware of any amendments to the Salem Revised Code which are applicable to this Agreement, including any amendments to those provisions of the Salem Revised Code included in Exhibit "A". District shall amend its rules and regulations as necessary to remain in substantial conformity with the Salem Revised Code within 60 days of the effective date of any amendments to the Salem Revised Code.

All rules and regulations subject to this section shall, before adoption or amendment by District, be filed with Salem. Should District fail or refuse to adopt rules and regulations as provided in this section, such failure or refusal shall be grounds for termination of this agreement.

- (b) Delegate by proper order, authority to Salem and its employees to perform the duties imposed on Salem under this Agreement.
- (c) Compel all residents and property owners in District to connect their houses and other structures requiring wastewater disposal to available sewers in District within six months after the resident or property owner receives notice to so connect.
- (d) Require payment of, in addition to any fee that may be otherwise required, a Systems Development Charge (SDC) with every application to connect property to the sewer system. The SDC shall be established or modified using the methodology adopted pursuant to Salem Revised Code 41.170 and any amendments thereto.
- (e) Construct all District lines and facilities, including interim facilities, in conformance with the most current version of the Salem Wastewater Management Master Plan and Salem's Public Works Design Standards.
- (f) Be responsible for the following capital improvements:
 - (1) The adding of new sewers and pump station facilities to existing system within District.
 - (2) The replacement of undersized sewers and pump stations created by District system expansion after the date of this Agreement as determined by Salem.
- (g) Require its customers to pay the sewer service charges as adopted and approved by Salem as provided in Section 3(a) of this Agreement.

Section 3. General Provisions.

(a) Salem reserves the right at any time to review the sewer service charges and to make adjustments, after hearing, as may be found necessary.

In addition, Salem shall impose on customers in District a 7.5% (seven and one-half percent) outside-City surcharge "return on investment" and depreciation charges to compensate the City for additional risk and cost factors inherent in serving outside customers.

- (b) Wastewater emanating from within Salem or from property which has executed an agreement to annex to Salem may be transported through District lines; provided such transporting does not overtax or overburden said District sewer lines as determined by District's engineers. Wastewater emanating from within District shall be transported through Salem sewers provided such transport does not overtax or overburden Salem sewers as determined by Salem's Public Works Director. Should such a determination be made by either District's Engineer or Salem's Public Works Director, then the parties shall enter into a negotiation process for the purpose of identifying and implementing reasonable and timely solutions to the capacity issues defined.
- (c) District shall not enlarge its service area beyond the boundary existing as of the Effective Date of this Agreement nor shall it provide service outside of its service area; except as may be agreed between the parties.
- (d) The Salem Wastewater Management Master Plan will include any planning for expansion of the Willow Lake wastewater treatment plant.
- (e) Extension of sewer service in District shall be governed by the version of the Salem Wastewater Management Master Plan current at the time of such extension. The full cost of construction of sewer line extensions, exclusive of Salem's interceptors within District, shall be borne by District. Cost of construction shall include such items as engineering, acquisition of right-of-way, election costs, legal service, bond opinion, preparation of assessment rolls, bond discount, and other costs incurred in the administration of the project.
- (f) Salem shall have the authority to review and approve plans and specifications for all new sewer lines and facilities to be constructed within District; such approval shall not be unreasonably withheld. In the event such lines or facilities are privately designed, the plans and specifications therefor shall be filed with Salem for its review and approval and a Salem sewer construction permit issued prior to the initiation of the construction pursuant to SRC 77.090 through SRC 77.140.
- (g) After approval of the plans and specifications by Salem, the same shall be forwarded to the engineer for District. District shall call for bids and let all contracts for construction of new sewer lines and facilities and shall be responsible for the levying of any assessments pertaining thereto, all as required under the appropriate provisions of the statutes of the State of Oregon.

Salem shall have the authority to make appropriate recommendations to District throughout the bidding, award, and construction of the project. Salem will issue a construction permit and charge plan check and permit fees adopted by Salem and may take full charge of inspections during the construction phase of the project.

- (h) Salem shall assume and alone be responsible for any and all wastewater treatment within District determined necessary by the Department of Environmental Quality and approved by the parties to this Agreement, provided that such treatment may be accomplished at the Willow Lake Wastewater Treatment Plant or other sites acquired by Salem.

- (i) All sewer collection, transport, and pumping facilities installed by District shall be owned by District until such time as the immediate service area is annexed to Salem. At that time ownership shall transfer to Salem. ORS 222.560 shall provide the framework for all such activities.
- (j) If a property is adjacent to or abuts Salem, the property must annex to Salem or the owner must submit a consent to annex, prior to receiving sanitary sewer service. District shall not allow any connections to District facilities until the parcel is annexed or until an annexation agreement is received by Salem. For the purpose of this section, any intervening street and/or public right-of-way shall not be considered to interrupt boundaries or adjacent or abutting parcels.
- (k) Developed properties located within District but not currently served by District or vacant property located within District shall not be provided sanitary sewer service without meeting the requirements of SRC Chapter 200, "Urban Growth Management," and SRC Chapter 41, "Development Fee." As a condition of receiving sewer service, the owners of such property shall sign a consent to annexation agreement, which shall be recorded; annexation may occur when the property is contiguous to Salem or according to the terms of any annexation plan which may be in effect at that time.
- (l) Except as otherwise expressly provided in this Agreement, any notices to be given relating to this Agreement shall be given in writing by email, personal delivery, facsimile, or mailing the same, postage prepaid, to a Party's Authorized Representative at the address, number or email address set forth in this Agreement, or to such other addresses or numbers as a Party may indicate pursuant to this Section. Notice required under this Agreement shall be provided as set forth below:

<u>City of Salem</u>		<u>District</u>	
Attn:	Public Works Director	Attn:	District Secretary
Address:	555 Liberty St. SE, Rm 325 Salem, Or 97301	Address:	5155 Silverton Road NE Salem, OR 97305
Email:	PFernandez@cityofsalem.net	Email:	DMansfield@co.marion.or.us
Fax:	503-588-6025		

Except as otherwise expressly provided for in this Agreement, any such notice or communication delivered by personal delivery shall be deemed delivered and effective upon actual receipt. Any notice or communication sent by United States mail, postage prepaid, shall be deemed delivered and effective five (5) days after mailing. Any notice or communication sent by overnight or commercial courier shall be deemed delivered and effective five (5) days after dispatch. Any notice or communication sent by facsimile transmission shall be deemed delivered when receipt of the transmission is generated by the transmitting machine. To be effective against either Party, such facsimile transmission shall be confirmed by telephone notice to the other Party.

Section 4. Merger and Amendment. This Agreement sets forth the entire understanding of the parties with respect to its subject matter, supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter, and may not be altered, modified, supplemented, or amended in any manner whatsoever, except by mutual agreement of the parties in writing. Any such modification, supplementation, or amendment, if made, shall be effective only in the specific instance and for the specific purpose given, and shall be valid and binding only if signed by the parties. The failure of Salem to enforce any provision of this Agreement shall not constitute a waiver by Salem of that or any other provision.

Section 5. Severability. The Parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

Section 6. Compliance with Applicable Law. The parties shall comply with all federal, state, and local laws, ordinances, and regulations applicable to this agreement, including, but not limited to federal and state civil rights laws. Without in any manner limiting the applicability of the foregoing, the following laws of the State of Oregon are hereby incorporated by reference into this agreement: ORS 279B.220, ORS 279B.230, and ORS 279B.235.

Section 7. Effective Date; Term and Termination. This Agreement shall be effective on the date last signed by both parties ("Effective Date"). Notwithstanding the Effective Date, the term of this Agreement shall be retroactive from July 1, 2021, and end on June 30, 2041; provided, however, Salem or District shall have the right at the end of each five-year period to renegotiate any of the terms of this Agreement. This agreement may be terminated by written mutual consent of the parties. In addition, this contract may be terminated by either party, for good cause shown, upon not less than thirty days written notice to the other party specifying the basis for termination and the termination date.

Section 8. ALTERNATIVE DISPUTE RESOLUTION. The parties agree to attempt in good faith to resolve any dispute arising out of this Agreement. This may be done at any management level, including at a level higher than persons directly responsible for administration of the agreement. In addition, the parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.

Section 9. NO ASSIGNMENT. Neither Party may assign, delegate or transfer any of its rights or obligations under this Agreement, without the prior written consent of the other Party.

Section 10. NO THIRD PARTY BENEFICIARIES. Salem and District are the only Parties to this Agreement and are the only Parties entitled to enforce its terms. Nothing in this Agreement gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Agreement.

Section 11. FORCE MAJEURE. Neither Party is responsible for any failure to perform or any delay in performance of any obligation under this Agreement caused by fire, riot, acts of God, terrorism, war, or any other cause which is beyond that Party's reasonable control.

Section 12. WAIVER OF BREACH. One or more waivers or failures to object by either Party to the other's breach of any provision, term, condition, or covenant contained in this Agreement shall not be construed as a waiver of any subsequent breach, whether or not of the same nature.

Section 13. Liability:

- 13.1 Subject to the limitations set forth in the Oregon Tort Claims Act, the Oregon Constitution, and the Charter of the City of Salem, each Party shall forever indemnify, defend and hold harmless the other, and the other's officials, agents and employees, against any and all claims, demands, causes of action, suits, proceedings, damages, costs, reasonable attorney's fees or liabilities ("Claims") arising out of, pertaining to, or occurring through the exercise of, the rights and privileges retained by, granted to, or exercised by that Party pursuant to this Agreement.

- 13.2 If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against a Party (the "Notified Party") with respect to which the other Party ("Other Party") may have liability, the Notified Party must promptly notify the Other Party in writing of the Third Party Claim and deliver to the Other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Either Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by the Other Party of the notice and copies required in this paragraph and meaningful opportunity for the Other Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to the Other Party's liability with respect to the Third Party Claim.
- 13.3 With respect to a Third Party Claim for which District may be jointly liable with Salem (or would be, if joined in the Third Party Claim), District shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by Salem in such proportion as is appropriate to reflect the relative fault of each Party in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. Nothing in this Agreement shall be understood to prevent either Party from disputing the relative fault of the Party or that the Party bears any fault at all. The relative fault of each Party shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. District's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if District had sole liability in the proceeding.
- 13.4 With respect to a Third Party Claim for which Salem may be jointly liable with District (or would be if joined in the Third Party Claim), Salem shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by District in such proportion as is appropriate to reflect the relative fault of each Party in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. Nothing in this Agreement shall be understood to prevent either Party from disputing the relative fault of the Party or that the Party bears any fault at all. The relative fault of each Party shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. Salem's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law if it had sole liability in the proceeding.

Section 14. Urban Growth Management Agreements. Salem and District recognize that provisions in ORS Chapter 195 concerning coordination and urban service agreements may necessitate amendment of this Agreement prior to the expiration date. Upon the request of either party, Salem and District agree to negotiate and pursue in good faith such agreements or amendments to this Agreement to comply with ORS Chapter 195.

Section 15. Venue. This Agreement shall be governed by the laws of the State of Oregon without regard to conflict of laws principles. Exclusive venue for litigation of any action arising under the Agreement shall be in the Circuit Court of the State of Oregon for Marion County unless exclusive jurisdiction is in federal court, in which case exclusive venue shall be in the federal district court for the district of Oregon. The parties to this Agreement expressly waive any and all rights to maintain an action

under the Agreement in any other venue and expressly consent that, upon motion of the other party, any case may be dismissed or its venue transferred, as appropriate, so as to effectuate this choice of venue.


Section 16. Execution in Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute an original hereof.

IN WITNESS WHEREOF:

CITY OF SALEM


LABISH VILLAGE SEWAGE AND
DRAINAGE DISTRICT

By: _____
City Manager

By:  _____
District Secretary

Date: _____

Date: 9-3-21

By:  _____
Marion County Contracts
& Procurement

Date: Sept. 18, 2021

Exhibit "A" includes: Salem Revised Code Chapters 41, 70, 73, 74, and 77.

CHAPTER 41. SYSTEM DEVELOPMENT CHARGES¹

Secs. 41.010—41.090. Reserved.

Sec. 41.095. Title and purpose.

This chapter shall be known and may be cited as the "System 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; Ord. No. 9-20 , § 1(Exh. A), 7-27-2020)

Sec. 41.097. Scope.

The system 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 system 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; Ord. No. 9-20 , § 1(Exh. A), 7-27-2020)

Sec. 41.100. 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:

Capital improvement.

- (a) The term "capital improvement" means facilities or assets used for the following:
 - (1) Water supply, treatment and distribution;
 - (2) Wastewater collection, transmission, treatment and disposal;
 - (3) Parks or recreation;
 - (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.

¹Editor's note(s)—Ord. No. 9-20 Editor's note(s)—, § 1Editor's note(s)—(Exh. A), adopted July 27, 2020, changed the title of Ch. 41Editor's note(s)— from "Development Fee" to read as herein set out.

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.

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.

Improvement means any building, structure, impervious area, including parking areas, plazas and walkways, and landscaping requiring new or increased usage of a capital improvement.

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.

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.

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.

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.

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 41.140. The term "system development charge" includes that portion of a wastewater, 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 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 or building permit.

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) System development charges are hereby imposed upon all development within the City 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 system development charge at the time established under SRC 41.140.

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- (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) System 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; Ord. No. 9-20 , § 1(Exh. A), 7-27-2020)

Sec. 41.120. Expenditure of funds from system development charge.

The revenues received from the system 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 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 chapter, including the costs of developing system development charge methodologies and providing an annual accounting of system development expenditures.
- (e) The system 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; Ord. No. 9-20 , § 1(Exh. A), 7-27-2020)

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 Officer or the Finance Officer's designee shall establish and keep such accounts as may be necessary showing the total SDC revenues collected for water, wastewater, 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 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 system;
 - (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 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 upon request of the owner of the land on which the development was permitted if the permit expires or is revoked before the development, or portion thereof, is constructed. If, prior to request for refund, the property is sold or the entity that paid the SDC ceases to exist, by way of dissolution, bankruptcy, or death, then eligibility for refund of the SDC is terminated, and the SDC payment shall be eligible for exemption toward future development pursuant to SRC 41.150(a)(7).
- (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, 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; Ord. No. 9-20 , § 1(Exh. A), 7-27-2020)

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.

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- (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, Oregon; the Housing Authority of the City; or the Urban Renewal Agency of the City.
 - (5) Any housing unit that is rental or lease-to-purchase housing located in a housing project of one or more housing units if the project receives federal housing funds administered by the City or is affordable to households with an income at or below 80 percent of the area median income as determined by the State Housing Council based on information from the United States Department of Housing and Urban Development. Eligible rental or lease-to-purchase housing units under this subsection shall be exempted at a rate of 1/30th per year of affordability for a time period not less than 5 years and not more than 30 years as elected by the applicant and must also meet the following standards:
 - (A) If new development consists of only part of the uses described in this subsection, only that portion of the development that qualifies under this subsection is eligible for an exemption;
 - (B) A deed restriction is recorded that maintains affordability of the property as required in this subsection for not less than the number of years elected for exemption; and
 - (C) In the event that the project or portion of the development subject to this subsection is no longer affordable as required in this subsection, the exemption shall terminate, and the City shall make due and payable all previously exempt portions of the system development charges based on rates in effect on the date of submittal of a complete building permit application, plus accrued interest from the date of issuance of the building permit to the date of the termination of the exemption. The City may collect reinstated system development charges by filing a lien in the City's lien docket, or by recording a lien in the lien records of the applicable county.
 - (6) Any owner-occupied housing unit that is affordable to households with an income at or below 80 percent of the area median income as determined by the State Housing Council based on information from the United States Department of Housing and Urban Development. Eligible owner-occupied housing units under this subsection must also meet the following standards:
 - (A) The developer of the housing unit is a non-profit corporation partnering with owner-occupants who do not qualify for a traditional mortgage.
 - (B) The developer shall demonstrate to the satisfaction of the Director that owner-occupants do not have a financial incentive to sell the housing unit for profit within less than 20 years after the housing unit is completed and occupied.
 - (7) 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 Director.

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- (8) Development occurring within a development district established pursuant to SRC 200.200 through 200.275.
 - (9) Any accessory dwelling unit for which a building permit application was received after June 30, 2019, and before July 1, 2024.
 - (10) SDC reimbursement fees shall be reduced by the amount of connection fees, assessments, or deferred assessments paid under SRC chapter 21 prior to the date of connection.
 - (11) A reduction of 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 Director and on file in the Department of Public Works, prepared by the applicant, approved by the Director and designed to reduce generated trips as set forth in the adopted Transportation SDC Methodology.
 - (12) 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.

(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; Ord. No. 1-19 , § 1(Exh. A), 3-11-2019; Ord. No. 9-20 , § 1(Exh. A), 7-27-2020)

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 except as provided in subsection (c) of this section. 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 Director under SRC 41.300 and 41.305. For improvements that are located within or abutting the property subject to development approval, no credit shall be given for the cost of that portion of any water or wastewater line, eight inches or less in diameter, or any storm drainage line 12 inches or less in diameter, 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) When a development phase is subject to improvement fees and qualified public improvements associated with the system for which the fee is assessed, the credit shall be issued as a true credit. The amount of the true credit shall be based on the allowable costs as determined by the Director under SRC 41.300 and 41.305. If SDC improvement fees are due and payable prior to determination of allowable costs, SDC improvement fees shall be temporarily reduced by the SDC-eligible portion of the estimated cost of the qualified public improvements as determined by a registered professional engineer, subject to any change in such amount as deemed necessary by the Director.

(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; Ord. No. 1-19 , § 1(Exh. A), 3-11-2019; Ord. No. 9-20 , § 1(Exh. A), 7-27-2020)

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 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 Director 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 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.

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- (b) A decision made by the Director 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 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 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 may periodically delete names from the list, but at least 30 days prior to removing a name from the list, the Director 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 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 Council intends to fund, in whole or in part, with SDCi fee revenues;

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- (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 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 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 Council delegates authority to the Director to adopt necessary procedures to implement the provisions of this chapter. All rules made pursuant to this delegated authority shall be filed with the office of Director 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 is constructed by a developer for which reimbursement or SDC credits may be available, the developer shall prepare a sworn statement of all allowable costs incurred in the construction, and submit the same, together with proof of payment thereof, to the Director no later than 90 days after the date City makes final written acceptance of the improvement. The Director may extend the time period up to an additional 60 days if the Director requires 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; Ord. No. 1-19 , § 1(Exh. A), 3-11-2019)

Sec. 41.305. Certification of costs by City.

Upon completion and final acceptance of a qualified public improvement as defined by SRC 41.100, 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 Director shall certify the allowable costs thereof to the Finance 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) *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 Council for the methodologies for the facilities. Full reimbursement for certified allowable costs under this 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 subsection (a)(1) of this section.

- (b) *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 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; Ord. No. 1-19 , § 1(Exh. A), 3-11-2019)

CHAPTER 70. UTILITIES¹

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. 70.005. Definitions.

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:

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:

¹State law reference(s)—Municipal public utilities, ORS 225.010State law reference(s)— 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.

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- (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;
 - (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;
 - (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.

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.

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.

Flow control facility means a stormwater facility designed to control the flow rate, flow volume, or flow duration of drainage water.

Green stormwater infrastructure means a stormwater facility that mimics natural surface hydrologic functions through infiltration or evapotranspiration, or that involves stormwater reuse.

Ground disturbing activity means any activity that exposes earth material through the use of mechanical equipment.

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.

Impervious surface means any surface exposed to rainwater from which most water runs off.

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.

Large project means a project including 10,000 square feet or more of new pervious surface, new impervious surface, or replaced impervious surface, individually or combined, on private property; or, a project including 10,000 square feet or more of new pervious surface, new impervious surface, or replaced impervious surface, individually or combined, in public right-of-way.

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.

New pervious surface means any pervious surface that is exposed to ground disturbing activity and is neither made impervious nor returned to its predevelopment condition through soil amendment, landscaping, or other surface that mimics natural hydrologic functions.

Line means a pipe connecting a meter to a building's plumbing system.

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.

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.

Postdevelopment means the conditions that reasonably may be expected or anticipated to exist after completion of development activity on a site.

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.

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.

Private wastewater collection system means a privately owned wastewater collection system installed on private property that is not controlled by or under the jurisdiction of the City.

Project means ground disturbing activity, or the addition or replacement of impervious surface.

Receiving water means the surface water, groundwater, or wetland receiving any discharge of drainage water or pollutants.

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.

Service lateral means a pipe connecting a water, wastewater, or stormwater main to a facility's water, wastewater, or stormwater system.

Sewage means the wastewater derived from human habitation and use of buildings for domestic, commercial, institutional, or industrial purpose and free from drainage waste.

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.

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.

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.

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.

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.

Streetlight system means a system of streetlights, poles, fixtures, ancillary equipment, located within the City, and the provision of electricity therefor, owned or operated by the City, and the City's provision of electricity for streetlight systems owned for private utilities.

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.

Treatment facility means a stormwater facility designed to remove pollutants from drainage water.

User means any person using the City public water, wastewater, streetlight, or stormwater system.

Utility Code means SRC chapters 70 through 75.

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.

Utility system means the City's public water, wastewater, stormwater, and streetlight systems.

Wastewater means all sewage and industrial wastes, treated or untreated, discharged to a collection system.

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.

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; Ord. No. 8-20, § 1(Exh. A), 9-28-2020)

Sec. 70.010. Authorization.

The Public Works Department shall be responsible for extension, operation and maintenance of utility systems for the City.

(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 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;
- (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;
- (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 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;

- (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;
- (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;
- (b) Periodically inspect the stormwater facility to ensure the facility is in proper operation for effective pollutant removal, infiltration, and/or flow control;
- (c) Maintain a record of the construction of, and all maintenance and repair activities to, the stormwater facility;
- (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;
- (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.

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- (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 Council.

(Prior Code, § 70.200; Ord. No. 31-09)

Sec. 70.205. Utility billing program.

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(s)—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 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.

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, operations fee, 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; Ord. No. 12-19, § 1(Exh. A), 11-12-2019)

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 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 penalties, shall be an infraction.

(Ord. No. 7-17, § 30(70.350), 6-12-2017)

CHAPTER 73. WASTEWATER¹

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 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 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; Ord. No. 1-19, § 1(Exh. A), 3-11-2019)

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 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)

¹State law reference(s)—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. 73.030. 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—73.060. 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.

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- (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).
- (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 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 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—73.160. 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 PROVISIONS¹

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) Prevent the introduction of pollutants into the municipal wastewater system which will interfere with the operation of the municipal wastewater system;
 - (2) 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) Ensure the quality of the treatment plant sludge allows its beneficial use;
 - (4) 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) Preserve the hydraulic capacity of the municipal wastewater system;
 - (6) Improve the opportunity to recycle and reclaim wastewater and sludge from the municipal wastewater system;
 - (7) Ensure the City complies with its NPDES permit and any other federal or state laws to which the municipal wastewater system is subject;
 - (8) 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) 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. 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).

¹State law reference(s)—Water pollution control requirements, ORS 468B.005 et seq.

(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:

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.

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.

Best Management Practices (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to as described in 109-001—109-007 public-works-design-standards, DIVISION 003 SANITARY SEWER COLLECTION SYSTEM, 3.4—Pretreatment and Monitoring Systems to implement the prohibitions listed in section 40 CFR 403.5(a)(1) and (b). BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage.

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).

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.

CFR means the Code of Federal Regulations.

Clean Air Act means 42 USC 7401 et seq.

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).

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.

Control authority means the Director. The control authority has a pretreatment program approved by Oregon DEQ according to the provisions of 40 CFR 403.11.

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.

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(Supp. No. 11, Update 2)

DEQ means the Oregon Department of Environmental Quality or, where the context indicates, the Director or other duly authorized DEQ official.

Discharge means the introduction of pollutants into the municipal wastewater system from any nondomestic source regulated under 33 USC 1317(b), (c) or (d).

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.

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.

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.

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.

Industrial user means a user that is a source of nondomestic pollutants.

Industrial wastewater means nondomestic wastewater originating from a nonresidential source.

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; the Marine Protection Research and Sanctuaries Act; or any more stringent state or local regulations.

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.

Marine Protection Research and Sanctuaries Act means 16 USC 1431 et seq.

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.

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.

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;
 - (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)(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 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 subsection.

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.

Nondomestic pollutants means any pollutants other than human waste and household gray water.

NPDES permit means the National Pollutant Discharge Elimination System Permit issued to the City.

Obstruct means a discharge which blocks, closes or hinders passage, action or operation.

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.

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.

pH means the logarithm (base 10) of the reciprocal of the hydrogen ion concentration, expressed in moles per liter of solution.

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.

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.

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.

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).

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.

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.

Residential users means persons contributing only domestic sewage to the municipal wastewater system.

Resource Conservation and Recovery Act means 42 USC 6901 et seq.

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.

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.

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 74.100.

Solid Waste Disposal Act means 42 USC 6901 et seq.

Stormwater means any flow occurring as a result of any form of natural precipitation, including snowmelt.

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.

Toxic Substances Control Act means 15 USC 2601 et seq.

Treatment plant means that portion of the municipal wastewater system designed to provide treatment of sewage and industrial wastewater.

Treatment plant effluent means any discharge of treated wastewater which is permitted by NPDES permit.

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.

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.

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.

Waters of the State means the receiving streams or waters, which are contained within, flow through, or border upon the State, 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; Ord. No. 2-21 , § 1(Exh. A), 4-12-2021)

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 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:

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- (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, but in no case discharges with pH lower than 5.0, unless the works is specifically designed to accommodate such discharges; 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.

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- (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 not excluded from regulation 40 CFR 261.4, and if the material exhibits the characteristics of hazardous waste as defined by 40 CFR 261 subpart C or D.
 - (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; Ord. No. 2-21 , § 1(Exh. A), 4-12-2021)

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.
- (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.

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- (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; 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 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 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.

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. 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 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 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;

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- (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 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;

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- (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

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- (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.

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- (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 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 136, and amendments thereto. Where 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, or where the administrator determines that the 40 CFR 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).

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- (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 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 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 that flow proportional sampling is infeasible, the Director may authorize the use of time proportional sampling if time proportional sampling is representative of the discharge, and the City must document its decision to allow time proportional sampling for the specific industrial user. 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; Ord. No. 2-21 , § 1(Exh. A), 4-12-2021)

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 136. If 40 CFR 136 does not contain sampling or analytical techniques for the pollutant in question, 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. 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 261.

(Prior Code, § 74.455; Ord. No. 22-2003; Ord. No. 2-21 , § 1(Exh. A), 4-12-2021)

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.

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- (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, such as authorized EPA representatives (contractor or subcontractor) and state or local 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.

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(Supp. No. 11, Update 2)

(Prior Code, § 74.500; Ord. No. 13-96; Ord. No. 65-2002; Ord. No. 2-21 , § 1(Exh. A), 4-12-2021)

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.
 - (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 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

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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. Reserved.

CHAPTER 77. PERMITS AND STREET IMPROVEMENTS¹

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 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, generally.

The Director 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 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)

¹State law reference(s)—Local improvements, ORS 223.001 et seq.

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.

(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 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 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.

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- (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.

(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 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 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 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 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 as required by SRC 77.090 shall file an application with the Director. Such applications shall include:

- (a) Name and address of the 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 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 (a) 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 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 a performance guarantee in the form specified in SRC 110.100, sufficient to satisfy the Director that the work shall be done in accordance with City standards and specifications.
- (b) The Director 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, 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) As-built drawings, consistent with Public Works Design Standards, prepared and certified by a registered professional engineer licensed by the State;
 - (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;
 - (4) Such other information as the Director 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 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 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 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 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 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 as provided in SRC chapter 20J. Notwithstanding the provisions of SRC chapter 20J, 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.

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- (c) *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 DEVELOPERS²

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 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 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;

²State law reference(s)—Official traffic control devices, ORS 810.200.

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- (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 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 41.300 and 41.305.

(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)