



City of Independence

Work Session Agenda

City Council

Tuesday, February 24, 2026 @ 5:30 PM

Civic Center - Council Chambers

(see agenda footer for meeting attendance information)

1. **Call to Order**
2. **Roll Call**
3. **Work Sessions**
 - 3.1. Enterprise Zone School Fee (SEDCOR)
 - 3.2. Grant Updates (Irvine)
 - 3.3. Public Works Code Updates (Fisher)
4. **Adjournment**

Meeting Attendance Information:

The City Council will hold this work session in-person in City Hall Council Chambers, via video conference (Zoom) or by phone. Meetings are also live-streamed on the City's YouTube channel at: <https://www.youtube.com/c/CityofIndependenceOR>.

- To attend in person, the City Hall address is 555 S. Main St.
- For Zoom login
visit: <https://us06web.zoom.us/j/84149949690?pwd=8N5LTQv79HjlbtG0DYWpQlxl38kNOg.1>
- To participate in the meeting **by phone**, dial **US: +1-253-215-8782** and enter **Webinar ID: 841 4994 9690** and **Passcode: 551267**

Please Note: Public comments are not accepted during work sessions. Any written public comments received will be included in the agenda packet for the next regular meeting. Written comments may be delivered to City Hall or emailed to CouncilComments@ci.independence.or.us.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 72 hours in advance of the meeting to Myra Russell, City Recorder, 503-838-1212/TTY: 800-735-2900.

Chapter 26 STREETS, SIDEWALKS AND PUBLIC PLACES¹

ARTICLE I. IN GENERAL

Sec. 26-1. Adoption, conformance required, modification.

- (a) "City of Independence Public Works Design Standards", establishing design standards and construction specifications, shall be adopted by Council resolution and thereafter amended as set forth in this section.
- (b) All public works design and construction, including workmanship and materials, shall be in accordance with the current edition of the City of Independence Public Works Design Standards. This section applies to all public improvements within the city limits of the City of Independence, the Independence Urban Growth Boundary or otherwise required by law.
- (c) The Public Works Director may periodically update and modify the City of Independence Public Works Design Standards to reflect changes in policy, procedure, new technology, design methods and construction methods.
 - (1) Changes in federal, state, county and other regulatory agency requirements will be reviewed and incorporated into the City of Independence Public Works Design Standards.
 - (2) Requests for modifications may be initiated either by the city or by an interested party.
 - (3) The Public Works Director is hereby granted authority to approve or deny requests for modifications to the City of Independence Public Works Design Standards.
 - (4) Updates to the City of Independence Public Works Design Standards will be posted on the city's website. Copies may be purchased from the city.

(Ord. No. 1568, § 1(Exh. A), 9-25-2018)

Sec. 26-2. Violation.

Violation of any provision of this Article is an Independence Municipal Code Class B violation, per section 1-22.

(Ord. No. 1568, § 1(Exh. A), 9-25-2018)

Secs. 26-3—26-18. Reserved.

¹Charter reference(s)—Public improvements, ch. IX.

State law reference(s)—Streets, highways, roads, bridges and ferries, ORS 366.001 et seq.; roads and highways in cities, ORS 373.110 et seq.; powers of cities, ORS 373.210 et seq.; insurance of public property, ORS 278.005 et seq.; utility rights-of-way, ORS 758.010.

ARTICLE II. SIDEWALKS

DIVISION 1. GENERALLY

Secs. 26-19—26-39. Reserved.

DIVISION 2. CONSTRUCTION, MAINTENANCE, REPAIR²

Sec. 26-40. Generally.

- (a) *Definitions.* The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Owner means the person in whose name real property is assessed for tax purposes according to the latest assessment roll in the office of the County Assessor for Polk County, Oregon.

- (b) *Violations.* The offense described in this division is an Independence Municipal Code Class A violation, per section 1-22.

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-41. Sidewalk specifications.

All sidewalks hereafter constructed within the city right of way shall be constructed in accordance with adopted City of Independence Public Works Standards and sidewalks on private property shall be constructed in accordance with the Independence Development Code.

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-42. Sidewalk—Construction permit required.

- (a) No person, firm, corporation or unit of government other than the city shall construct any sidewalk without first applying for and receiving a permit from city to construct such sidewalk.
- (b) No sidewalk shall be constructed by any person, firm, corporation or unit of government other than the city without the construction thereof being inspected and approved by the Public Works Director or Designee as conforming to the standards of the city.

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

²Editor's note(s)—Ord. No. 1534, § 1(Exh. A), adopted Aug. 12, 2014, repealed the former div. 2, §§ 26-40—26-57, and enacted a new division as set out herein. The former div. 2 pertained to similar subject matter. See Code Comparative Table for a detailed history of derivation.

Sec. 26-43. Curbs—Specifications.

All curbs hereinafter constructed upon public streets within the city shall be constructed in accordance with adopted City of Independence Public Works Standards.

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-44. Curbs—Construction permit required.

- (a) No person, firm, corporation or unit of government other than the city or Oregon Department of Transportation shall construct any curb or make any cut or alteration in any existing curb without first obtaining a permit from the city for such construction, cut or alteration.
- (b) No curb shall be constructed, nor shall any cut or alteration be made in any existing curb without the construction thereof being inspected by the Public Works Director or Designee and approved by the Public Works Director or Designee as conforming to the standards of the city.

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-45. Driveway specifications.

Driveway construction in the public right of way shall be done in accordance with adopted Public Works Standards.

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-46. Sidewalk eating areas.

- (a) As an exception to the obstruction prohibitions set forth in section 18-60, pertaining to obstructing passageways, cafe and restaurant owners or proprietors who wish to operate a sidewalk eating area shall obtain a permit from the city for the sidewalk eating area. The sidewalk eating area shall meet the following requirements:
 - (1) The sidewalk eating area's boundaries shall be the business' property lines and an outer line not less than five feet from all streets, curbs or permanent landscaping;
 - (2) All tables, chairs and accessories shall be removed from public property during seasons when the sidewalk eating area is not in use;
 - (3) The owner or proprietor shall accept liability for any damage claims arising from the existence of the sidewalk eating area or for any costs arising from the abatement of any public nuisance arising from the existence of the sidewalk eating area.
 - (4) The sidewalk eating area shall not obstruct ADA accessibility along the right of way or cause pedestrians to meander across the property frontage.
- (b) An owner or proprietor who wishes to obtain a permit for a sidewalk eating area shall submit to the City Manager an application containing:
 - (1) The dimensions of the proposed eating area and distances to applicable streets, curbs and permanent landscaping;
 - (2) The specific beginning and ending dates of planned use and the planned hours of daily operation;

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- (3) Any information requested by the City Manager concerning care and management of the area;
 - (4) A statement that the applicant accepts liability and holds the city harmless for damage claims arising from the existence of the sidewalk eating area or for any costs arising from the abatement of any public nuisance arising from the existence of the sidewalk eating area;
 - (5) A certificate of liability insurance in an amount not less than \$500,000.00, naming the city as an additional insured;
 - (6) If alcoholic beverages will be served within a sidewalk eating area, then a certificate of liquor liability coverage naming the city as an additional insured shall also be provided.
- (c) The City Manager shall review each application and the site of the requested permit for a sidewalk eating area. The City Manager shall issue the permit if the request meets the requirements of subsection (a) of this section and the sidewalk eating area does not violate any city ordinance. The permit shall state the area boundaries, date of termination and hours of operation.
- (d) As used in this section, the term "sidewalk eating area" means an area of city sidewalk in front of a restaurant or cafe for which provision is made for consumption of food or beverages. The term does not include preparation or sale of food or beverages. Providing alcoholic beverages for consumption in a sidewalk eating area is subject to licensing requirements as stated in section 26-400(a) and (b).

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-47. Repair and maintenance—Owner responsible.

The person owning the real property adjacent to or abutting on a public sidewalk, shall, at the person's sole cost and expense, keep the sidewalk in good repair and free of hazards to persons lawfully on or adjacent to such sidewalk. The person owning the real property adjacent to or abutting on a public sidewalk shall be liable for any injuries or other damages resulting from a defective sidewalk which he is obligated to repair under this section, and the person shall, furthermore, hold harmless and indemnify the city for any costs the city may incur as a result of the defective sidewalk.

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-48. Abatement by the city.

Whenever a public sidewalk is found to be defective, out of repair, or hazardous by any officer of the city, or by any other person, a report thereof shall be made to the city. The City Manager may thereafter report such defective, out of repair, or hazardous sidewalk to the City Council or proceed with an enforcement action under section 26-40(b).

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-49. Defective walks declared nuisance.

After receiving the report from the City Manager, if given under section 26-48, the City Council, by resolution, may declare the defective, out of repair or hazardous sidewalk a nuisance, and direct that the defect or hazardous condition be eliminated or that the sidewalk be placed in a state of good repair.

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-50. Notice to owner.

Within five business days after the passage of the resolution referred to in section 26-49, the City Manager shall give notice to the owner of the real property adjacent to or abutting on the sidewalk of the defect therein, the state of disrepair thereof, or of the hazard resulting therefrom, and of the determination that such condition constitutes a nuisance, by sending to such owner, by certified mail, at the person's address as shown on the last tax assessment roll in the office of the County Assessor, a copy of such resolution and a copy of this division.

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-51. Repairs to city specifications.

All repairs undertaken pursuant to this division shall be according to city specifications as set forth in the provisions of this division, a copy of which shall be available for public inspection at the City Hall, during business hours. The owner shall submit a permit for the repairs and a no cost permit shall be issued by the Public Works Department. The repairs shall be inspected by the Public Works Director or Public Works Director designee.

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-52. Failure of owner to repair.

If the owner does not correct the defect, or eliminate the hazard in, or make repairs to the sidewalk as required by the resolution within the time specified therein, the City Manager may cause such defect or hazard to be eliminated or such repair to be made by the city and assess the cost thereof against the property abutting thereon and adjacent thereto. Repair costs shall include all construction and associated administrative costs. Any abatement by the city may be in addition to, not in lieu of issuance of any citation, as stated in section 26-40(b).

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-53. Assessment of costs of repair.

The assessment of the costs of eliminating the defect or hazard or making the repair to the sidewalk shall be declared by ordinance, and it shall be entered into the docket of city liens and shall thereupon become a lien against the property. The collection and enforcement of the lien shall be accomplished in the same manner as in the case of the collection and enforcement of the street liens, but irregularities or informalities in the procedure shall be disregarded.

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Secs. 26-54—26-87. Reserved.

ARTICLE III. STREETS

DIVISION 1. GENERALLY

Secs. 26-88—26-117. Reserved.

DIVISION 2. CURBLINES

Sec. 26-118. Distance from property lines.

(a)

- (a) All curblines shall comply with the Public Works Standards and the current Transportation Master Plan. When curblines in existing developed areas do not meet the current standards, the existing curblines shall remain until the property fronting the curbline is redeveloped or modified.

(Prior Code, § 30.110; Code 2006, § 12.6.1)

Sec. 26-119. Space between curblines and sidewalks.

- (a) All abutting property owners within the corporate limits of the city shall keep the space between the curblines built in the street abutting to their property and the sidewalk built on the street and adjacent to their property, lots or blocks in compliance with the current Development Code requirements for landscaping.
- (b) In case any such property owner shall neglect to comply with the provisions of subsection (a) of this section or any part thereof, the Code Enforcement Officer shall give such delinquent property owner five business days' notice to proceed to comply with the provisions of subsection (a) of this section and, if such property owner has not so complied therewith at the expiration of such time, then the Code Enforcement Officer shall proceed to carry out the provisions of subsection (a) of this section, keeping a strict account of all expenses incurred by reason thereof, and report the same to the City Council at its next regular meeting thereafter; and such expenses shall become a lien upon such abutting property, lots or blocks, or parts thereof liable therefor and shall be collected in the same manner street improvement assessments are collected.

(Prior Code, § 30.210; Code 2006, § 12.6.2)

Secs. 26-120—26-136. Reserved.

ARTICLE IV. ASSESSMENTS FOR LOCAL IMPROVEMENTS³

³Charter reference(s)—Special public improvements shall be by ordinance and state law, § 36; assessments for public improvements shall be by ordinance, § 37.

State law reference(s)—Charter or ordinance to govern construction and improvement of connecting city streets, ORS 373.223.

Sec. 26-137. Initiating a local improvement.

Council may consider the initiation of a local improvement district upon a petition by affected property owners, upon staff's recommendation, or upon its own motion.

(Code 2006, § 12.2.1)

Sec. 26-138. Methods and procedures.

The sections in this article are the methods and procedures for making public improvements in the city; for levying and collecting special assessments therefor; and for the creation and apportionment of assessment liens.

(Prior Code, § 32.110; Code 2006, § 12.2.2)

Sec. 26-139. City Engineer survey and report.

Whenever the Council shall deem it necessary, upon its own motion or upon the petition of the owners of one-half of the property to benefit specially from the improvement, to make any street, sewer, sidewalk, storm drain or other public improvement to be paid for in whole or in part by a special assessment according to benefits, then the Council shall, by motion, direct the City Engineer to make a survey and written report for such project and file the same with the City Recorder. Unless the Council shall direct otherwise, such report shall contain the following matters:

- (1) A map or plat showing the general nature, location and extent of the proposed improvement and the land to be assessed for the payment of any part of the cost thereof;
- (2) Plans, specifications and estimates of the work to be done; provided, however, that where the proposed project is to be carried out in cooperation with other governmental agency, the engineer may adopt the plans, specifications and estimates of such agency;
- (3) An estimate of the probable cost of the improvement, including any legal, administrative and engineering costs attributable thereto;
- (4) An estimate of the unit cost of the improvement to the specially benefited properties;
- (5) A recommendation as to the method of assessment to be used to arrive at a fair apportionment of the whole or any portion of the cost of the improvement to the properties specially benefited;
- (6) The description and assessed value of each lot, parcel of land, or portion thereof, to be specially benefited by the improvement, with the names of the record owners thereof and, when readily available, the names of the contract purchasers thereof;
- (7) A statement of outstanding assessments against property to be assessed.

(Prior Code, § 32.120; Code 2006, § 12.2.3)

Sec. 26-140. Survey and report; council action.

After the City Engineer's report shall have been filed with the City Recorder, the Council may thereafter by motion approve the report, modify the report and approve it as modified, require the engineer to supply additional or different information for such improvement, or it may abandon the improvement.

(Prior Code, § 32.130; Code 2006, § 12.2.4)

Sec. 26-141. Council approval; notice.

After the Council shall have approved the Engineer's report as submitted or modified, the Council shall, by resolution, declare its intention to make such improvement, provide the manner and method of carrying to the improvement, and shall direct the City Recorder to give notice of such improvement by two publications, one week apart, in a newspaper of general circulation within the city, and by mailing copies of such notice by certified mail to the owners to be assessed for the costs of such improvement, which notice shall contain the following matters:

- (1) That the report of the City Engineer is on file in the office of the City Recorder and is subject to public examination;
- (2) That the Council will hold a public hearing on the proposed improvement on a specified date, which shall not be earlier than ten days following the first publication of notice, at which objections and remonstrances to such improvement will be heard by the Council; and that if, prior to such hearing, there shall be presented to the City Recorder valid, written remonstrances of the owners of 51 percent of the property to be specially affected by such improvement, then the improvement will be suspended for at least six months. Owners of property to be specially affected shall include those persons who are purchasing property under contract if, under the terms of their contract, they are required to pay such assessments; and in all other cases, owners shall be those persons who appear on the records of the County Clerk and records of the County Assessor's office or the Assessor's office in which the property is located;
- (3) A description of the property to be specially benefited by the improvement, the owners of such property and the Engineer's estimate of the unit cost of the improvement to the property to be specially benefited, and the total cost of the improvement to be paid for by special assessments to benefited properties.

(Prior Code, § 32.140; Code 2006, § 12.2.5)

Sec. 26-142. Contracts for public improvements.

The Council may provide in the improvement resolution that the construction work may be done in whole or in part by the city, by a contract, or by any other governmental agency, or by any combination thereof.

(Prior Code, § 32.150; Code 2006, § 12.2.6)

Sec. 26-143. Approval or order of abandonment of improvement determined by Council.

At the time of the public hearing on the proposed improvement, if the written remonstrances shall represent less than the amount of property required to defeat the proposed improvement, then, on the basis of the hearing of written remonstrances and oral objections, if any, the Council may, by motion, at the time of the hearing or within 60 days thereafter, order the improvement to be carried out in accordance with the resolution; or the Council may, on its own motion, abandon the improvement.

(Prior Code, § 32.160; Code 2006, § 12.2.7)

Sec. 26-144. Assessment ordinance passed when.

After the aforesaid public hearing on the proposed improvement, and after the Council has moved to proceed with the improvement, it may pass an ordinance assessing the various lots, parcels of land, or parts thereof, to be specially benefited, with their apportioned share of the cost of the improvement; but the passage of

such an assessment ordinance may be delayed until the contract for the work is let, or until the improvement is completed and the total cost thereof is determined.

(Prior Code, § 32.310; Code 2006, § 12.2.8)

Sec. 26-145. Method of assessment.

The Council, in adopting a method of assessment of the costs of the improvement, may:

- (1) Use any just and reasonable method of determining the extent of any improvement district consistent with the benefits derived;
- (2) Use any method of apportioning the sum to be assessed as is just and reasonable between the properties determined to be specially benefited;
- (3) Authorize payment by the city of all or any part of the cost of any such improvement when, in the opinion of the Council, the topographical or physical conditions, or unusual or excessive public use, or other character of the work involved warrants only a partial payment or no payment by the benefited property of the costs of the improvement;
- (4) Nothing contained in this chapter shall preclude the Council from using any other available means of financing improvements, including federal or state grants-in-aid, sewer charges or fees, revenue bonds, general obligation bonds or any other legal means of finance. In the event that such other means of financing improvements are used, the Council may, in its discretion, levy special assessments according to the benefits derived to cover any remaining part of the costs of the improvement.

(Prior Code, § 32.315; Code 2006, § 12.2.9)

Sec. 26-146. Pre-assessment.

- (a) Council may levy an assessment prior to construction of a local improvement as provided herein. When the estimated cost of a local improvement has been ascertained on the basis of a City Engineer's estimate of costs, the award of a contract or any other basis acceptable to Council, the City Engineer shall prepare the proposed assessment roll for the lots within the local improvement district and, after its approval by the City Manager, shall file it in the office of the City Recorder and submit it to Council.
- (b) Notice of the proposed assessment shall be given in accordance with this article. The proposed assessment roll shall be considered by Council and processed by staff in accordance with the procedures described in this article.
- (c) If the initial assessment has been made on the basis of estimated cost and, upon completion of the improvement, the actual cost is found to be greater than the estimated cost, Council may make a definite or supplemental assessment for the additional cost. Proposed assessments upon the respective lots within the local improvement district for the proportionate share of the deficit shall be made, notices sent, a public hearing held and opportunity for objections considered, and determination of the assessment against each particular lot, block, or parcel of land shall be made as in the case of the initial assessment; and the deficit or supplemental assessment spread by ordinance. The deficit assessments shall be entered in the city lien docket, notices published and mailed, and the collection of the assessment made in accordance with the provisions of this article relating to the original assessment. Council may hold the pre-assessment hearing concurrently with any other hearing required.
- (d) If assessments have been made on the basis of estimated cost and, upon completion of the improvement project, the cost is found to be less than the estimated cost, Council shall, following public hearing, declare the same by ordinance; and when so declared, the excess amounts shall be entered on the city lien docket as

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a credit upon the appropriate assessment. Thereafter, the person who paid the original assessment, or his legal representative or successor, shall be entitled to repayment of the excess amounts. If the property owner has filed an application to pay the assessment by installment, he shall be entitled to such refund only when such installments, together with interest thereon, are fully paid. If the property owner has neither paid such assessment nor filed an application to pay in installments, the amount of such refund shall be deducted from such assessment, and the remainder shall remain a lien on such property until legally satisfied.

(Code 2006, § 12.2.10)

Sec. 26-147. Final report; notice of public hearing; installment applications.

- (a) When the improvement has been completed, the cost shall be determined by adding to the contract price of the work or, if not contracted, the city work crew cost of the work, the cost of right-of-way, condemnation expenses, cost of engineering, supervision, inspection, advertising, legal expenses, and any other necessary and proper expenses, which costs and expenses shall be a part of the amounts to be assessed to the benefited properties.
- (b) The final report of the above costs shall be submitted to Council, and when the final report has been approved by motion of Council, the engineering staff of the City of Independence shall prepare a proposed assessment roll ordering and describing each lot to be assessed, with the names of the owners, and shall levy against those lots in a manner directed by Council and provisions of ordinances applicable to special assessments. The proposed assessment roll shall be submitted for the approval of the City Manager. The City Manager may require the engineering staff to make any changes or modifications in the proposed assessment roll. When the proposed assessment roll has been approved by the City Manager, he shall file it with the City Recorder and refer it to Council for review, modification, acceptance or rejection by Council.
- (c) When the proposed assessment roll is received for filing Council shall publish a notice of the time and place of a public hearing in a newspaper published in and of general circulation in the city at least ten days before the public hearing. The notice shall state that at the public hearing Council will, at a stated time and place, consider oral and written remonstrances to the proposed assessment roll, and that written remonstrances should be filed with the City Recorder prior to the public hearing. This notice shall state that within 30 days after Council passage of the ordinance confirming the assessment roll, the owner of the assessed properties may file with the City Recorder, on a form provided for the purpose, an application to pay the assessment in whole or in part on an installment basis, as provided by the Bancroft Bonding Act, ORS 223.205 to 223.295, which is hereby adopted by reference and made a part of this article. This notice shall also state that, if the assessment is not eligible under the provisions of the Bancroft Bonding Act, or if the owner of the assessed property does not apply to use the installment basis, all or part of the assessment shall be excluded from the installment payment procedure and shall be paid in full by cash within 30 days of the date of entry in the unbonded lien docket.
- (d) The City Recorder shall, at least ten days before the public hearing, mail a notice to each owner of property to be assessed, which notice shall be deposited in the post office in the city, postage prepaid, addressed to such owners at their last known address. If the address of the owner is unknown to the City Recorder, he shall mail the notice to the owner or his agent at the address where the property to be assessed is located. The mailed notice shall show the amount proposed to be assessed to the addressee, owner or property proposed to be assessed.
- (e) The contents of the application to pay assessments on the installment basis shall be as provided by ORS 223.215.

(Code 2006, § 12.2.11)

Sec. 26-148. Public hearing; ordinance confirming assessments; lien recording.

- (a) Council shall hold a public hearing on the proposed assessment roll at the time and place stated in the notice of public hearing. Council may continue the hearing. After hearing the remonstrances, if any, Council may refer the proposed assessment roll to the City Manager for correction or adjustment, or may make corrections or adjustments, and shall pass an assessment ordinance confirming the assessment roll, including any corrections or adjustment, providing for the assessment of the benefited properties, and for the apportionment of the assessment to the individual lots within the local improvement district.
- (b) Immediately after Council has approved the assessment ordinance, the City Manager shall enter the assessments in the City unbonded lien docket, which assessments shall be a lien and charge upon the respective lots against which they are placed. Such liens shall be first and prior to all other liens or encumbrances insofar as the laws of the state allow. After applications have been made by the owners of assessed property to have the assessments bonded under Bancroft Bonding Act to provide for the installment payment procedure, the City Manager shall make proper entry in the unbonded lien docket and transfer such assessments from the unbonded lien docket to the bonded lien docket, as provided by ORS 223.230.
- (c) If there is no response from a property owner within 30 days after the notice of assessment is mailed, the City Manager shall verify the ownership of the property with a licensed title company or by any other means and shall mail a copy of the assessment notice to the owner so identified by certified mail. The City Manager shall establish policies regarding the acceptance of applications after 30 days from the date notice is mailed. The City Manager may require a late filing fee from any delinquent applicant.

(Code 2006, § 12.2.12)

Sec. 26-149. Writs of review and suits in equity.

Subject to the curative provisions of section 26-157 and the rights of the city to reassess, as provided in section 26-159, proceedings for writs of review and suits in equity may be filed not earlier than 30 days nor later than 60 days after the filing of written objections as provided herein. A property owner who has filed written objections with the City Recorder prior to the public hearing may have the right to apply for a writ of review based upon the City Council exercising its functions erroneously or arbitrarily or exceeding its jurisdiction to the injury of some substantial right of such owner, if the facts supporting such claim have been specifically set forth in the written objections. A property owner who has filed written objections with the City Recorder prior to the public hearing may commence a suit for equitable relief based upon a total lack of jurisdiction on the part of the city; and if notice of the improvement shall not have been sent to the owner, and if the owner did not have actual knowledge of the proposed improvement prior to the hearing, then the owner may file written objections alleging lack of jurisdiction with the City Recorder within 30 days after receiving notice or knowledge of the improvement. No provision of this section shall be construed to lengthen any period of redemption or so as to affect the running of any statute of limitation. Any proceeding on a writ of review or suit in equity shall be abated if proceedings are commenced and diligently pursued by the City Council to remedy or cure the alleged errors or defects.

(Prior Code, § 32.320; Code 2006, § 12.2.13)

Sec. 26-150. Notice of assessment.

Within ten days after the ordinance levying assessments has been passed, the City Recorder shall send by certified mail a notice of assessment to the owner of the assessed property and publish notice of such assessment twice in a newspaper of general circulation in the city, the first publication of which shall be made not later than ten days after the date of assessment ordinance. The notice of assessment shall recite the date of the assessment

ordinance and shall state that upon the failure of the owner of the property assessed to make application to pay the assessment in installments within ten days from the date of the first publication of notice, or upon failure of the owner to pay the assessment in full within 30 days from the date of the assessment ordinance, then interest will commence to run on the assessment, and that the property assessed will be subject to foreclosure; and the notice shall further set forth a description of the property assessed, the name of the owner of the property and the amount of each assessment.

(Prior Code, § 32.325; Code 2006, § 12.2.14)

Sec. 26-151. Lien docket.

After passage of the assessment ordinance by the Council, the City Recorder shall enter in the docket of city liens a statement of the amounts assessed upon each particular lot, parcel of land, or portion thereof, together with a description of the improvement, the name of the owners, and the date of the assessment ordinance. Upon such entry in the lien docket, the amount so entered shall become a lien and charge upon the respective lots, parcels of land, or portions thereof which have been assessed for such improvement. All assessment liens of the city shall be superior and prior to all other liens or encumbrances on property insofar as the laws of the state permit. Interest shall be charged at a rate to be established from time to time by ordinance of the City Council, such rate approximating the rate of interest available in the market-place for municipal bonds, until paid, on all amounts not paid within 30 days from the date of the assessment ordinance; and after expiration of 30 days from the date of such assessment ordinance, the city may proceed to foreclose or enforce collection of the assessment liens in the manner provided by the general law of the state; provided, however, that the city may, at its option, enter a bid for the property being offered at a foreclosure sale, which bid shall be prior to all bids except those made by persons who would be entitled under the laws of the state to redeem such property.

(Prior Code, § 32.330; Code 2006, § 12.2.15)

Sec. 26-152. Interest rate.

The maximum rate of interest per annum charged on unpaid public improvement assessments pursuant to section 26-151 shall be 12 percent per annum.

(Prior Code, § 32.331; Code 2006, § 12.2.16)

Sec. 26-153. Assessment errors.

Claimed errors in the calculation of assessment shall be called to the attention of the City Recorder, who shall determine whether there has been an error in fact. If the City Recorder finds that there has been an error in fact, the Recorder shall recommend to the Council an amendment to the assessment ordinance to correct such error; and upon enactment of such amendment, the City Recorder shall make the necessary correction in the docket of city liens and send a correct notice of assessment by certified mail.

(Prior Code, § 32.335; Code 2006, § 12.2.17)

Sec. 26-154. Deficit assessment.

In the event that an assessment shall be made before the total cost of the improvement is ascertained, and if it is found that the amount of the assessment is insufficient to defray the expenses of the improvement, the Council may, by motion, declare such deficit and prepare a proposed deficit assessment. Council shall set the date for hearing of objections to the deficit assessment, and direct the City Recorder to publish one notice thereof in a

newspaper of general circulation in the city. After such hearing, the Council shall make a just and equitable deficit assessment by ordinance, which shall be entered in the docket of city liens as provided by this article; and notices of the deficit assessment shall be published and mailed, and the collection of the assessment shall be made in accordance with sections 26-150 and 26-151.

(Prior Code, § 32.340; Code 2006, § 12.2.18)

Sec. 26-155. Assessment credits.

If, upon the completion of the improvement project, it is found that the assessment previously levied upon any property is more than sufficient to pay the costs of such improvements, then the Council must ascertain and declare the same by ordinance; and when so declared, the excess amounts must be entered on the lien docket as a credit upon the appropriate assessment. In the event that any assessment has been paid, the person who paid the same, or the person's legal representative, shall be entitled to the repayment of such rebate credit, or the portion thereof which exceeds the amount unpaid on the original assessment.

(Prior Code, § 32.345; Code 2006, § 12.2.19)

Sec. 26-156. Improvement proceedings; abandonment and rescission.

The Council shall have full power and authority to abandon and rescind proceedings for improvements made under this article at any time prior to the final completion of such improvements; and if liens have been assessed upon any property under such procedure, they shall be canceled, and any payments made on such assessments shall be refunded to the person paying the same, the person's assigns or legal representatives.

(Prior Code, § 32.350; Code 2006, § 12.2.20)

Sec. 26-157. Foreclosure.

The city may proceed to foreclose or enforce any lien to which it shall be entitled pursuant to any method provided by law. The city shall impose a penalty in the amount of ten percent of the outstanding principal and interest of the lien to recover the costs associated with foreclosure if the account is not paid within 30 days after mailing a certified notice of delinquency to the owner.

(Code 2006, § 12.2.21)

Sec. 26-158. Assessment validity.

No improvement assessment shall be rendered invalid by reason of a failure of the Engineer's report to contain all of the information required by section 26-154, or by reason of a failure to have all of the information required to be in the improvement resolution, the assessment ordinance, the lien docket or notices required to be published and mailed, nor by any property as required by this article, or by reason of any other error, mistake, delay, omission, irregularity or other act, jurisdictional or otherwise, of any of the proceedings or steps herein specified, unless it appears that the assessment is unfair or unjust in its effect upon the person complaining; and the Council shall have the power and authority to remedy and correct all such matters by suitable action and proceedings.

(Prior Code, § 32.355; Code 2006, § 12.2.22)

Sec. 26-159. Reassessment.

Whenever any assessment, deficit, or reassessment for any improvement which has been made by the city has been or shall be set aside, annulled, declared or rendered void, or its enforcement restrained by any court of this state, or any federal court having jurisdiction thereof, or when the Council shall be in doubt as to the validity of such assessment, deficit assessment or reassessment, or any part thereof, then the Council may make a reassessment in the manner provided by the laws of the state.

(Prior Code, § 32.360; Code 2006, § 12.2.23)

Sec. 26-160. Written consent; notice not required.

Other provisions of this article notwithstanding, the provisions of section 26-141, insofar as they require publication and mailing of notice of intent to improve, shall not be required where owners of all assessable property within the proposed improvement have consented in writing to such improvement, and by such written consent have waived the requirements of notice thereof.

(Prior Code, § 32.410; Code 2006, § 12.2.24)

Sec. 26-161. Improvements in progress.

Any street, sewer or other public improvement properly commenced and in process under any of the ordinances repealed hereby shall be specifically excluded from the provisions of this article, and shall be completed under the ordinance under which they were commenced.

(Prior Code, § 32.510; Code 2006, § 12.2.25)

Sec. 26-162. Segregation of liens.

When property which is subject to a lien for local improvements is partitioned or a lot line is adjusted, the property owner may apply to the city to segregate the original liens to the new parcels of property. The property owner shall submit an application developed by the City Manager to the City Engineer. The City Engineer shall calculate new assessment figures for the partitioned properties utilizing the original assessment formula employed by Council when it levied the original assessments. No lien shall be placed against any parcel that does not constitute a valid buildable lot in accordance with the Land Development Code. No application for segregation shall be considered by the City Engineer if the original liens are delinquent. The application shall be accompanied by a fee in an amount equal to two percent of the assessments to be segregated not to exceed the sum of \$1,000.00. No segregation of an assessment shall be approved which impairs the security of the municipal lien. No segregation shall be approved which results in the placement of a lien whose amount is greater than twice the assessed value of the new parcels. The City Engineer shall notify the City Manager of all segregation applications which have been approved by the City Engineer. The City Manager shall immediately make any adjustments to the municipal lien dockets.

(Code 2006, § 12.2.29)

Secs. 26-163—26-192. Reserved.

ARTICLE V. OFF-STREET PUBLIC PARKING FACILITIES

Sec. 26-193. Initiation of proceedings by resolution of intent.

- (a) Whenever the City Council shall deem it necessary to acquire or develop an off-street public parking facility to be paid for in whole or in part by special assessment according to the benefits, then the City Council shall, by resolution, declare the necessity for such an off-street and public parking facility and direct the City Manager to make a survey and written report for such project and file the same with the City Recorder. That resolution may be adopted upon the Council's own initiative, or upon the petition of the owners of one-half of the area of property to benefit specially from a proposed off-street motor vehicle parking facility. The benefited area shall not include any property upon which is located an existing public commercial off-street parking lot or facility operated for revenue and which is not operated for convenience of customers.
- (b) The resolution of intent shall contain a preliminary description of the land to be acquired or improved for the off-street parking district, or a preliminary description of a general area within which the land shall be acquired or improved.
- (c) The resolution of intent shall contain a preliminary description of the land proposed to be assessed for special benefits for such off-street public parking facility.
- (d) The resolution of intent shall contain a preliminary description of the type of improvement to be made on the land in question.

(Prior Code, § 31.110; Code 2006, § 12.11.1)

Sec. 26-194. Survey and written report.

Upon direction by the City Council, the City Manager shall make a survey and written report for the off-street public parking facility and file the same with the City Recorder. Unless the Council shall direct otherwise, such report shall contain, when applicable, the following matters:

- (1) A map or plat showing the general nature, location and extent of the proposed off-street parking facility and the lands to be assessed for the payment of all or any part of the cost thereof;
- (2) The plans, specifications and estimates of the work to be done;
- (3) An estimate of the probable cost of the acquisition and improvement, including any legal, administrative and engineering costs attributable thereto;
- (4) A recommendation as to the method of assessment to be used to arrive at a fair apportionment of the whole or any portion of the costs of the improvement to the properties specially benefited;
- (5) A legal description of the land to be acquired, together with the names of all persons claiming an interest of record in and to the land in question and individual parcels thereof and, when readily available, the names of any contract purchasers of the land and tenants and parties in possession thereof;
- (6) The description and assessed value of each lot, parcel of land, or a portion thereof to be specifically benefited by the off-street parking facility, with the names of the persons claiming an interest therein of record and, when readily available, the names of contract purchasers thereof;
- (7) A statement of outstanding assessments, if any, against property to be assessed for such improvements;
- (8) An estimate of the unit cost of the improvement to the specially benefited properties by applying the recommended assessment procedure;
- (9) The amount of city participation, if any, recommended by the City Manager;

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(10) A proposed time table for the completion of the project;

(11) A proposed method of interim financing.

(Prior Code, § 31.120; Code 2006, § 12.11.2)

Sec. 26-195. Survey and written report for Council review.

After the City Manager's report shall have been filed with the City Recorder, the Council shall thereafter, by motion, give preliminary approval to the report, modify the report and give preliminary approval to it as modified, require the City Manager to supply additional or different information for such improvements, and give preliminary approval to the report as supplemented, or it may abandon the improvement.

(Prior Code, § 31.125; Code 2006, § 12.11.3)

Sec. 26-196. Notice of hearing.

After the Council shall have given preliminary approval to the City Manager's report as submitted, modified or supplemented, the Council shall, by resolution, declare its intention to proceed with the off-street parking facility improvement and provide the proposed manner and method of carrying out the improvement. The Council shall, thereupon, set a time and place for a public hearing to be held on the improvement, and shall direct the Recorder to give notice of such improvement and of such public hearing by publishing, in a newspaper published in and of general circulation in the city, a notice of its intention to establish an off-street motor vehicle parking facility. The notice shall be published once a week for two consecutive weeks, making three publications in all, and will also be posted in three public places in the city for not less than two consecutive weeks prior to the hearing. The notice shall contain the following matters:

- (1) A statement that the City Council has declared its intention to make an off-street parking facility improvement in the city and to assess the cost or portion thereof to benefited properties;
- (2) A statement that a tentatively approved report of the City Manager, setting forth the detail of the proposed improvement, is on file in the office of the City Recorder and is subject to public examination;
- (3) A statement that the City Council will hold a public hearing on the proposed off-street parking facility improvement, and a statement of the time and place at which the hearing will be held;
- (4) A statement that at the hearing the city council will hear objections and remonstrances to the proposed improvement, and a further statement that if, prior to such hearing, there shall be presented to the Recorder written objections by more than one-half of the owners of property proposed to be assessed, based either upon percentage of area or upon the percentage of assessed valuation within the proposed assessment and benefited area, then the improvement will be abandoned for at least one year;
- (5) A description of the property to be specially benefited by the improvement, including the names of the owners of such property as are contained in the City Manager's report, and the City Manager's estimate of the unit cost of the improvement to the property to be specially benefited, and the estimate of the total cost of the improvement to be paid for by special assessment to benefited properties;
- (6) A statement that the matters set forth in the notice are the best available estimates only and are not necessarily exact and permanent, and that all matters in the basic plan are subject to change by the City Council at or subsequent to the hearing.

(Prior Code, § 31.130; Code 2006, § 12.11.4)

Sec. 26-197. Additional notice to owners.

The City Manager is authorized to give additional notice to the owners of property within the area of the proposed assessment by mailing copies of the notice to the owners at the last address had for them by the city. That additional notice is not mandatory, and shall not be considered as a part of the necessary service of process herein.

(Prior Code, § 31.135; Code 2006, § 12.11.5)

Sec. 26-198. Publication and posting of notice deemed sufficient.

The publication in the newspaper and the posting of the notice as provided in this article is deemed notice to the owners of all parcels of land described in the notice of the pendency of the proceedings for the establishment of the off-street motor vehicle parking facility and the proposed assessment therefor, regardless of whether or not those individuals are named in the notice. Any person who has actual notice of any proposed action or assessment hereunder, and fails to object to the proceedings, shall be deemed to have waived any absence or defect in the notice of method of service thereof.

(Prior Code, § 31.160; Code 2006, § 12.11.6)

Sec. 26-199. Hearing.

At the time and place of the public hearing on the proposed improvement, the Council shall hear written and oral objections and remonstrances to the proposed improvement and procedure. If written objections shall be received by the Council from more than one-half of the owners of property proposed to be assessed, based either upon percentage of area or upon the percentage of the assessed valuation within the proposed assessment and benefited area, then improvement shall be abandoned for at least one year. If the written objections shall represent less than the amount of property required to defeat the proposed improvement, then, on the basis of the hearing of written and oral objections, if any, the Council may, by motion, at the time of the hearing or at any time thereafter, order the improvement to be carried out in accordance with the terms of an ordinance provided therefor; or the Council may, on its own motion, abandon the improvement. The ordinance may adopt the plan set forth in the Manager's report either in whole or in part, or it may adopt the plan in whole or in part as amended or supplemented by the Council after the hearing.

(Prior Code, § 31.140; Code 2006, § 12.11.7)

Sec. 26-200. Manner of doing work.

The Council may provide in the improvement ordinance for the acquisition of necessary property for the improvement and that the construction work may be done in whole or in part by the city, by a contract or by any other governmental agency, or by any combination thereof.

(Prior Code, § 31.145; Code 2006, § 12.11.8)

Sec. 26-201. Purchase of property; contract bids.

- (a) The Council may, at its discretion, at any time either before or during the initiation of proceedings to provide public off-street parking facilities as herein contemplated, obtain options for the purchase of specific property for such purposes or enter into binding agreements for the purchase of property for such purposes, and may obtain preliminary bids for the improvement of such property. The costs of such property may be

taken into consideration in determining the assessment to benefited properties, regardless of whether or not the same was purchased or optioned prior to the initiation of the procedure. Preliminary bids shall be based upon the tentatively approved City Manager's report. If, after the ordinance to improve is passed, there has been no substantial change in the tentatively approved Manager's report, then the preliminary bids may be accepted by the city; and a contract for the improvement may be entered into with low preliminary bidder. Nothing herein contained shall be construed to prevent the Council from waiting until after the ordinance to improve in order to make its first call for bids or in order to obtain its first options or contract for the purchase and acquisition of property.

- (b) In the event that any part of the work of the improvement is to be done under contract bids, then the contract shall be let per Public Contracting Code (Section 2.7). The city shall provide for the bonding of all contractors for the faithful performance of any contract let under its authority; and the provisions thereof, in case of default, shall be enforced by an action in the name of the city.

(Prior Code, § 31.150; Code 2006, § 12.11.9)

Sec. 26-202. Cost of property acquisition and improvement; report.

Upon completion or substantial completion of the project, the City Manager shall make a report to the City Council showing the actual cost of the acquisition of properties and improvement thereof.

(Prior Code, § 31.155; Code 2006, § 12.11.10)

Sec. 26-203. Assessments.

The procedure for levying, collecting and enforcing special assessments for public improvements or other services to be charged against property specially benefited by any of such improvements or repair under the provisions of this article shall be made as provided by the Charter and ordinances of the city and by the provisions of the Oregon Bancroft Bonding Act (ORS 223.205 through 223.295) together with existing or future amendments thereto and thereof.

(Prior Code, § 31.170; Code 2006, § 12.11.11)

Sec. 26-204. Compliance with article provisions.

The provisions of this article are advisory and are not mandatory and are not meant to require any dispensable jurisdictional requirements not required by an applicable constitutional provision or the Charter of the city; and a substantial compliance with the terms of this article is sufficient compliance, regardless of the subject matter to which the requirements apply.

(Prior Code, § 31.165; Code 2006, § 12.11.12)

Secs. 26-205—26-231. Reserved.

ARTICLE VI. PARADES AND PROCESSIONS⁴

⁴State law reference(s)—Authority to regulate parades and processions, ORS 811.800 et seq. and 810.020.

DIVISION 1. GENERALLY

Secs. 26-232—26-255. Reserved.

DIVISION 2. PARADES

Sec. 26-256. Permit—Required.

No person shall organize or participate in a parade which may disrupt or interfere with traffic without obtaining a permit. A permit shall always be required of a procession of people utilizing the public right-of-way and consisting of 15 or more persons or five or more vehicles. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

(Prior Code, § 52.610; Code 2006, § 12.12.1)

Sec. 26-257. Same—Application; issuance.

- (a) Application for parade permits shall be made to the Chief of Police at least 15 days prior to the intended date of the parade, unless the time is waived by the Chief.
- (b) Applications shall include the following information:
 - (1) The name and address of the person responsible for the proposed parade;
 - (2) The date of the proposed parade;
 - (3) The desired route, including assembling points;
 - (4) The number of persons, vehicles and animals which will be participating in the parade;
 - (5) The proposed starting and ending time;
 - (6) A traffic control plan and traffic control contractor information.
 - (7) The application shall be signed by the person designated as Chairperson.
- (c) If the Chief of Police, upon receipt of the application, determines that the parade can be conducted without endangering public safety and without seriously inconveniencing the general public, the Chief shall approve the route and issue the permit.
- (d) If the Chief of Police determines that the parade cannot be conducted without endangering public safety or seriously inconveniencing the general public, the Chief may:
 - (1) Propose an alternate route;
 - (2) Propose an alternate date;
 - (3) Refuse to issue a parade permit.
- (e) The Chief of Police shall notify the applicant of the person's decision within five days of receipt of the application.

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- (f) If the Chief of Police proposes alternatives or refuses to issue a permit, the applicant shall have the right to appeal the decision to the City Council.

(Prior Code, § 52.615; Code 2006, § 12.12.2)

Sec. 26-258. Permit denied; appeal to Council.

- (a) An applicant may appeal the decision of the Chief of Police by filing a written request of appeal with the City Recorder within five days after the Chief of Police has proposed alternatives or refused to issue a permit.
- (b) The Council shall schedule a hearing date following the filing of the written appeal with the City Recorder, and shall notify the applicant of the date and time that the applicant may appear either in person or by a representative.

(Prior Code, § 52.620; Code 2006, § 12.12.3)

Sec. 26-259. Permit revocable.

The Chief of Police may revoke a parade permit if circumstances clearly show that the parade can no longer be conducted consistent with public safety.

(Prior Code, § 52.630; Code 2006, § 12.12.4)

Sec. 26-260. Interference with parade not permitted.

- (a) No person shall unreasonably interfere with a parade or parade participant.
- (b) No person shall operate a vehicle that is not part of a parade between the vehicles or persons comprising a parade.
- (c) The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

(Prior Code, § 52.625; Code 2006, § 12.12.6)

State law reference(s)—Disrupting funeral procession, ORS 811.810.

Secs. 26-261—26-283. Reserved.

DIVISION 3. FUNERAL PROCESSION⁵

Sec. 26-284. Permit not required.

A permit shall not be required to conduct a funeral procession.

- (1) The procession shall proceed to the place of interment by the most direct route which is both legal and practicable.
- (2) The procession shall be accompanied by adequate escort vehicles for traffic control purposes.

⁵State law reference(s)—Funeral procession, ORS 811.800 et seq.

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- (3) All motor vehicles in the procession shall be operated with their lights turned on.
 - (4) No person shall unreasonably interfere with a funeral procession.
 - (5) No person shall operate a vehicle that is not part of the procession between the vehicles of a funeral procession.

(Prior Code, § 52.635; Code 2006, § 12.12.5)

State law reference(s)—Funeral procession, ORS 811.800 et seq.

Secs. 26-285—26-301. Reserved.

ARTICLE VII. PARK TREES, STREET TREES AND SHRUBS⁶

Sec. 26-302. Definitions.

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

Board means the City Tree Advisory Board, established under the Parks Board, section 2-125.

Park trees means trees, shrubs, bushes and all other woody vegetation in public parks, public trails and all areas owned by the city or to which the public has free access as a park.

Street trees means trees, shrubs, bushes and all other woody vegetation on land lying within the public right-of-way on all streets, alleys or other public rights-of-way within the city.

(Ord. No. 1516, § 4(12.13.1), 12-13-2012)

Sec. 26-303. Duly authorized representative.

Unless otherwise delegated to the Board or Council by this article, the City Manager or his duly authorized representative is charged with the enforcement of this article.

(Ord. No. 1516, § 4(12.13.2), 12-13-2012)

Sec. 26-304. Duties and responsibilities of the Board.

In addition to those duties outlined in section 2-128(b), the Board shall:

- (1) When requested by the City Council, consider, investigate, make findings upon, report and recommend to the City Council any special matter or questions arising within the scope of its duties and responsibilities.
- (2) Perform all other duties assigned the Board by this article.

(Ord. No. 1516, § 4(12.13.3), 12-13-2012)

⁶Ord. No. 1584, § 2, adopted Oct. 27, 2020, amended the title of Art. VII to read as herein set out. Former Art. VII was titled, "Park Trees and Shrubs."

Sec. 26-305. Size Classes and tree species to be planted.

The Board shall review and maintain the city list of desirable street trees. Efforts shall be made to ensure a diversity of tree species. The Board shall also maintain the list of trees suitable for planting as park or street trees.

(Ord. No. 1516, § 4(12.13.4), 12-13-2012)

Sec. 26-306. Spacing.

The spacing of street trees will be in accordance with the Independence Public Works Standards. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

(Ord. No. 1516, § 4(12.13.5), 12-13-2012)

Sec. 26-307. Distance from curbs, street corners, fire hydrants and street lights, and utilities.

- (a) The distance of street trees from curbs and infrastructure will be in accordance with the Independence Public Works Standards.
- (b) The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

(Ord. No. 1516, § 4(12.13.6), 12-13-2012)

Sec. 26-308. Public tree care.

- (a) The city may plant, trim, prune, maintain and remove, trees, plants and shrubs within or extending over all public streets, public rights-of-way, parking strips and public grounds, or may require any adjacent land owner to take such actions, as may be necessary to ensure public safety or to preserve or enhance the beauty of such streets, public rights-of-way and public grounds. Failure of a property owner to comply with this section, after 30 days' notice by the Public Works Director or Public Works Director designee, shall be deemed a violation of this chapter.
- (b) The city may remove, cause to be removed, or require any owning or adjacent property owner to remove any tree, plant or shrub which, by reason of its size, location or condition, constitutes a threat to public health or safety, or a hazard to any sewer line, electric power line, gas line, water line or other public improvements or facilities, or is affected with any injurious fungus, disease, insect or other pest. Failure of a property owner to comply with this section, after 30 days' notice by the Public Works Director or Public Works Director designee, shall be deemed a violation of this chapter. The removal of such trees, plants or shrubs located on private property shall be in the manner provided for the abatement of noxious vegetation as provided in section 14-131.
- (c) The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

(Ord. No. 1516, § 4(12.13.7), 12-13-2012)

Sec. 26-309. Tree topping.

- (a) Except as provided in subsection (b) of this section, it shall be unlawful for any person to top any street tree, park tree or other tree on public property, unless prior application is made to and approved by the Public Works Director. For the purposes of this section, the term "to top" a tree is defined as the severe cutting

back of limbs to stubs within the tree's crown to such a degree so as to remove the normal canopy and cause unnatural disfigurement to the tree.

- (b) The section shall not apply in cases of emergency caused by storm damage or other unexpected casualty; provided, the person who directs or performs such emergency tree topping shall make a report of such tree topping promptly to the Board, including the grounds for the emergency.
- (c) The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.
(Ord. No. 1516, § 4(12.13.8), 12-13-2012)

Sec. 26-310. Tree pruning.

- (a) The owner of the property on which any street tree is situated, and the owner of any tree overhanging any street or public right-of-way shall regularly prune the branches so that the branches shall not significantly obstruct the light from any street lamp or obstruct the view of any street intersection, and so that there shall be a clear space of 14 feet above the street surface or eight feet above the curbline.
- (b) All tree pruning of street trees shall be done in conformance with the American National Standards Institute A-300 Standards for tree care operations.
- (c) The city shall have the right to prune any tree, shrub or plant on private property when it significantly obstructs the light of any street lamp or impairs the view of a public street or any traffic control sign or device. The pruning of such trees, shrubs or plants shall be in the manner provided for the abatement of noxious vegetation as provided in section 14-131.
- (d) Tree limbs that grow near high voltage electrical conductors shall be maintained clear of such conductors by the responsible electric utility in compliance with any franchise agreement. Except as otherwise provided in such franchise agreement, a utility tree trimming policy shall be subject to review and approval by the Board prior to any trimming by a utility company.
- (e) The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.
(Ord. No. 1516, § 4(12.13.9), 12-13-2012)

Sec. 26-311. Removal of trees.

- (a) It shall be unlawful for any person to remove, destroy, break or injure any tree, shrub or plant in a public place, or place a sign, poster, handbill or other thing on any tree growing in a public place, or to cause or permit any wire charged with electricity to come into contact with any such tree, or to allow any gaseous, liquid or solid substance which is harmful to such trees to come into contact with their roots or leaves, with the following exceptions:
 - (1) The tree is dangerous and may be made safe only by its removal.
 - (2) The tree is dead or dying, and its condition cannot be reversed. Prior to removal, the condition of the tree must be confirmed in writing by a licensed arborist.
 - (3) The tree is diseased and presents a potential threat to other trees within the city, unless removed. Prior to removal, the condition of the tree must be confirmed in writing by a licensed arborist.
 - (4) The tree is causing damage to nearby public or private facilities which cannot be corrected through normal tree maintenance.
 - (5) Removal of the tree is required to make room for trees growing on either side.

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- (b) Subject to City Staff verifying the circumstances listed in subsection (a) of this section, the City Manager or the City Manager's designee may conditionally approve removal of the tree with a requirement to: 1) replace the tree removed with a tree recommended in the city's approved street tree list; and 2) properly install a city approved root barrier for the replacement tree.
 - (c) If a tree is removed from the subject area without city approval, the city may cause the tree to be replaced by a suitable tree with a minimum of a two-inch caliper and assess the person responsible for the cost of the replacement, including the cost of the tree, labor and any administrative costs.
 - (d) Removal of historic or landmark trees is within the jurisdiction of the City Historic Preservation Commission, per section 16-126, review of demolitions.
 - (e) The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22. (Ord. No. 1516, § 4(12.13.10), 12-13-2012; Ord. No. 1584, § 2, 10-27-2020)

Sec. 26-312. Removal of stumps.

- (a) All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.
- (b) The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22. (Ord. No. 1516, § 4(12.13.11), 12-13-2012)

Sec. 26-313. Review by City Council.

Any person aggrieved by a decision of the city may appeal such decision to the City Council by filing a written notice setting forth the basis for the appeal with the City Recorder, within ten days of decision issuance. The fee for such appeal shall be established by resolution of the City Council. Action taken by the City Council on appeal is final.

(Ord. No. 1516, § 4(12.13.12), 12-13-2012)

Secs. 26-314—26-344. Reserved.

ARTICLE VIII. STREET NAMING AND ADDRESSING

Sec. 26-345. Uniform system.

Streets shall be named and structures numbered in accordance with the city's "Street Naming and Addressing Standards," adopted separately by City Council resolution.

(Ord. No. 1478, § 1(12.14.01), 9-22-2009)

Sec. 26-346. Designation of street names and numbers.

Streets shall be designated with names or numbers consistent with the adopted standards. All street names, numbers and directional prefixes shall be subject to approval by the City Manager or designee.

(Ord. No. 1478, § 1(12.14.02), 9-22-2009)

Sec. 26-347. Placing numbers.

It shall be the duty of every owner or agent in charge of any structure to have the proper number or numbers placed thereon and in accordance with the adopted standards. The offense described in this section is an Independence Municipal Code Class C violation, per section 1-22.

(Ord. No. 1478, § 1(12.14.03), 9-22-2009)

Sec. 26-348. Appeals.

- (a) The City Manager or designee's decision is final unless a written request for review is requested within ten days following the date the decision is mailed.
- (b) New road names, renaming of roads, assignment or reassignment of addresses requiring changes to existing addresses shall be considered final unless written objections are received within ten days of the mailing of the address/road name decision. All finalized designations of street names and numbers shall be on file in the City Recorder's office.

(Ord. No. 1478, § 1(12.14.04), 9-22-2009)

Sec. 26-349. Penalty.

Section 1-22, general penalty, shall apply.

(Ord. No. 1478, § 2, 9-22-2009)

Secs. 26-350—26-371. Reserved.

ARTICLE IX. CITY PARKS AND RECREATION AREAS

Sec. 26-372. Definitions.

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

Authorized liquor concessionaire means a person who has obtained a special permit from the City Council and any necessary license from the State Liquor Control Commission.

Class I fireworks means any combustible or explosive composition or substance, or any combination of such compositions or substances, or any other article which was prepared for the purpose of providing a visible or audible effect by combustion, explosion, deflagration or detonation, and includes blank cartridges or toy cannons in which explosives are used, balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles, bombs, rockets, wheels, colored fires, fountains, mines, serpents or any other article of like construction or any article containing any explosive or inflammable compound, or any tablets or other device containing any explosive substances or inflammable compound, except those devices listed as Class II fireworks.

Class II fireworks means:

- (1) Sparklers, toy pistol paper caps, toy pistols, toy canes, snakes, smoke-producing devices or other devices in which paper caps containing 0.25 grains or less of explosive compound are used, and when the rate of burning and the explosive force of the materials in such devices are not greater than an

equivalent weight of FFFG black powder, and when such devices are so constructed that the hand cannot come in contact with the cap when in place for explosion, and the major explosive force is contained or dispelled within the housing or shell of the device, there is no visible flame during discharge, there is no flaming or smoldering of any of the components or parts of the device after discharge, and the device does not produce sufficient heat to readily ignite combustible materials upon which the device may be placed;

- (2) Cone fountains, cylindrical fountains, flitter sparklers, ground spinners, illuminating torches and wheels, as defined in ORS 480.127.

Commercial purposes means to sell or expose for sales any food, beverage, merchandise, article or thing, or charge an admission fee.

Park means a park, playground, swimming pool, ballfield, recreation center or any other area in the city identified as a park by executive order of the City Manager.

(Prior Code, § 45.010; Code 2006, § 12.21.1; Ord. No. 1178, § 1(part), 1988; Ord. No. 1239, § 1, 1991; Ord. No. 1512, § 1(12.21.1), 7-24-2012; Ord. No. 1607, § 1(Exh. A), 6-13-2023)

Sec. 26-373. Use of parks encouraged.

The parks are maintained for the recreation of the public and the greatest possible use is encouraged, subject only to such regulation as will preserve the parks for the purposes for which they are laid out and the enjoyment, convenience and safety of all concerned.

(Prior Code, § 45.015; Code 2006, § 12.21.2; Ord. No. 1178, § 1(part), 1988; Ord. No. 1512, § 1(12.21.2), 7-24-2012)

Sec. 26-374. Park operating policy.

- (a) Except for unusual and unforeseen emergencies, city parks shall be open to the public every day of the year during designated hours. The City Manager may establish opening and closing hours for each individual park, which hours shall be posted therein for public information.
- (b) A park, or portion thereof, may be reserved for picnics, reunions, concerts, noncommercial activities or public gatherings. Reservations shall be made through the City Manager on an approved application form, subject to the conditions listed below:
 - (1) That the proposed activity or use of the park will not unreasonably interfere with or detract from the promotion of public health, welfare, safety or recreation;
 - (2) That the proposed activity or use of the park will not unreasonably interfere with or detract from the general public enjoyment of the park;
 - (3) That the proposed activity or use is not reasonably anticipated to incite violence, crime or disorderly conduct;
 - (4) That the proposed activity will not entail unusual, extraordinary activity, burdensome expenses or police operation by the city;
 - (5) That the facility desired has not been reserved for other use at the day and hour requested in the application;
 - (6) That any applicable permit deposits and fees have been paid prior to the date of the requested usage of the park facility;

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- (7) That the applicant agrees to any other conditions reasonably imposed on an application form approved by the city council.
- (c) A park, or portion thereof, may be used for commercial purposes only after obtaining a written permit from the city. Permits shall be issued by the City Manager upon a finding that the applicant has met the conditions set forth in subsection (b) of this section, plus the following conditions:
- (1) Provide an application fee and a deposit, which is refundable at the termination of the permit if the applicant has met all other conditions and obligations of the permit;
 - (2) For any person selling or dispensing food or beverage of any kind, submits documentation that he has obtained all health, sanitary and permit licenses from the state and county;
 - (3) Provides proof of public liability insurance in the amount of \$1,000.00 to \$300,000.00 bodily injury and \$50,000.00 property damage or a \$300,000.00 combined single limit policy (an amount not less than applicable Oregon Tort Claims limits);
 - (4) Provides a signed indemnity agreement agreeing to hold the city harmless for the person's or acts and for the acts of any employees or agents;
 - (5) Agrees to any other conditions reasonably imposed on an application form approved by the City Council.
- (d) In lieu of requiring individual applications for commercial activities, a single permit may be granted to sponsors of public events in which two or more commercial applicants will be in attendance. A permit shall be issued upon a finding that the sponsor has met the conditions set forth in subsection (b) of this section and the following conditions:
- (1) Provides an application fee and a deposit which is refundable at the termination of the permit if the sponsor has met all other conditions and obligations of the permit;
 - (2) Provides documentation of the required state and county health, sanitary and permit licenses for those commercial activities selling or dispensing food or beverages;
 - (3) Provides proof of public liability insurance in the amount of \$100,000.00 to \$300,000.00 bodily injury and \$50,000.00 property damage or a \$300,000.00 combined single limit policy (an amount not less than applicable Oregon Tort Claims limits);
 - (4) Provides a signed indemnity agreement agreeing to hold the city harmless for acts of the sponsor, its employees or agents acting in behalf of the sponsor of the public event;
 - (5) Agrees to any other conditions reasonably imposed on an application form approved by the City Council.
- (e) Duration of permits. Any permit granted in accordance with subsection (b) or (c) of this section shall be for a period not to exceed five consecutive days. No person shall be allowed to obtain more than four permits within any calendar year, unless agreed to by the City Manager.
- (f) Fees and deposits. Fees and deposits for use of city parks shall be adopted by resolution of the City Council.
- (g) The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22. (Prior Code, § 45.020; Code 2006, § 12.21.3; Ord. No. 1178, § 1(part), 1988; Ord. No. 1466, 2008; Ord. No. 1512, § 1(12.21.3), 7-24-2012)

Sec. 26-375. Activities prohibited exceptions.

- (a) *Prohibited acts.* The following activities shall be prohibited, except under specified conditions:

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- (1) *Use of alcoholic beverages in parks.* It is unlawful for any person to possess or consume any alcoholic beverage in a park, except under the following conditions:
 - a. The alcoholic beverage is obtained from an authorized liquor concessionaire at a park, as defined in section 26-372;
 - b. The alcoholic beverage is packaged in an individual container;
 - c. The alcoholic beverage is consumed in an area specifically designated by the City Manager or the City Manager's designee; and
 - d. At no time will any person who is visibly intoxicated, enter or remain in any city park.
 - (2) *Sale, possession, use and discharge of fireworks.*
 - a. It is unlawful for any person to sell, keep or offer for sale, expose for sale, possess, use, explode or have exploded any fireworks in any park, except as authorized by the State Fire Marshal.
 - b. In addition to the prohibitions listed in subsection (a)(2)a of this section, it is also unlawful for any person to sell, keep or offer for sale, expose for sale, possess, use, explode or have exploded any Class II fireworks in any park during the Western Days Celebration, the dates of which shall be determined annually by the City Council. Additionally, during Western Days events, the Western Days Commission may establish their own rules of conduct to add to this list of prohibited acts.
 - c. It is unlawful for any person to sell, offer for sale or expose for sale any Class II fireworks in any park at any time.
 - (3) *Overnight use of parks.* It is unlawful for any person to set up tents or any other temporary shelter or to use house trailers, campers, RVs or automobiles for the purpose of overnight camping in any city park without first obtaining written consent from the City Manager, or unless such camping is within the designated camping area within Riverview Park. The following additional restrictions apply to the overnight use of the Riverview Park Bicycle/Boater Campground:
 - a. Camping is only allowed within the designated camping area at the north end of Riverview Park.
 - b. Camping is limited to bicyclists and boaters. Camping by travelers using motor vehicles is not permitted. No overnight vehicle parking is allowed in Riverview Park.
 - c. Campground use is on a first come, first served basis. No reservations will be made.
 - d. Maximum occupancy of eight people per camping site.
 - e. No alcohol is allowed in the campground.
 - f. Riverview Park is smoke-free - smoking allowed in designated smoking areas only.
 - g. Campers may stay up to two nights. This may be extended by City Hall in special circumstances.
 - h. Camping fee - \$10.00 per site per night - pay at pay station.
 - i. Campers are responsible for securing their bicycles and boats.
 - j. Camp quiet hours are from 10:00 p.m. to 7:00 a.m.
 - k. The campground will be closed during the July 4th weekend and for other community events, check the website for closures.
 - l. Non-registered visitors to your campsite must exit the park by 10:00 p.m.
 - m. Campers are responsible for clearing their area of all litter before exiting the campsite. Failure to do so may result in a citation being issued for offensive litter.

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- n. Any violation of park policies, city ordinances, or state laws may also result in a camper being trespassed from the campground and asked to leave the park without a refund.

The restrictions set forth in this section governing the overnight use of the Riverview Park Bicycle/Boater Campground may be modified by City Manager Executive Order for the temporary use of public lands by individuals experiencing homelessness, based upon all factors that the City Manager deems relevant to comply with applicable state and federal law.

- (4) *Hunting.* It is unlawful for any person to hunt, trap or pursue wildlife at any time, or to use, carry or possess any kind of trapping device. Excepted are hunters using the park facility as access for boat hunting.
- (5) *Animals.* It is unlawful for any person to permit any domestic or other animal to run at large in a park, except as allowed within designated off-leash dog parks, subject to subsection (a)(18) of this section. Horseback riding shall be confined solely to vehicle roadways and designated bridle paths. Where permitted horses shall be thoroughly broken and properly restrained, ridden with due care and not be allowed to graze or go unattended.
- (6) *Swimming.* No person shall swim in any areas posted as a "no swimming area." No person shall use a public dock for the purpose of ingress or egress while swimming in the Willamette River.
- (7) *Boating.* It is unlawful for any person to navigate, direct or handle any boat in such a manner as to unjustifiably or unnecessarily annoy or frighten or endanger the occupants of any other boat or swimmer.
- (8) *Kindling fires.* It is unlawful for any person to light, kindle or use any fire in any park except in fireplaces, stoves or receptacles provided for that purpose.
- (9) *Vandalism.* It is unlawful for any person to break, destroy or damage any shrubs, grass, trees, plants, flowers, fences, buildings, tables, benches, seats or any other lands or property or improvements of any kind within city parks.
- (10) *Dumping refuse or debris in parks.* It is unlawful for any person to throw, leave or deposit any bottle, broken glass, ashes, wastepaper or other rubbish, or break any glass in any park, except at such places or in such receptacles as may be designated or provided by the city.
- (11) *Park traffic regulations.* It is unlawful for any person to drive any automobile or other vehicle as defined in the state motor vehicle code within such parks contrary to the rules and regulations set forth in the state motor vehicle code or any ordinance of the city for the operation of vehicles operating within the city limits. It is unlawful for any person to disobey any of the signs erected for the direction of traffic within such parks pursuant to this article, or any rules made pursuant to this chapter.
- (12) *Bodily fluids.* No person shall blow, spread or place any nasal or other bodily discharge or spit, urinate or defecate on the floors, walls, partitions, furniture, fittings or any portion of a public convenience station located in any park in the city, or in any other place in such park, excepting directly into the particular fixture provided for that purpose.
- (13) *Block plumbing fixtures.* No person shall place a bottle, can, cloth, rag or metal, wood or stone substance in the plumbing fixtures in such stations.
- (14) *Bathing.* No person shall bathe nor use public facilities for bathing purposes at a public park, except in facilities specifically designated for bathing or showering.
- (15) *Intimidation.* No person shall participate in intimidating behavior, such as blocking a walkway or walking more than three people abreast while not yielding to other pedestrians.

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- (16) *Limitation or prohibition of animals.* During those events with large attendance (Western Days, Mexican Fiesta, Hop Festival, etc), the Police Chief shall have the right to limit or prohibit animals and the use of bicycles, skate boards, skates or other wheeled devices in all city parks.
- (17) *Criminal act or violation.* The Commission of any criminal act or violation of any city ordinance.
- (18) *Dogs, leashes required.* Dogs shall be leashed at all times, except as allowed within a designated off-leash dog park. Rules for the Independence Community Off-Leash Dog Park are as follows:
- a. Dogs shall remain under handler's/keeper's voice command and control at all times.
 - b. Dog Park users enter at their own risk.
 - c. Handlers/keepers must accept liability for any damage or injury caused by their dog.
 - d. Children under 12 years of age must be accompanied by an adult.
 - e. Handlers/keepers must remove and dispose of their dog's waste.
 - f. Dogs must wear a visible and current license.
 - g. Aggressive, dangerous and potentially dangerous dogs, the characteristics of which are defined in section 4-52, are not allowed.
 - h. Dogs are allowed off-leash in designated areas only.
 - i. Handlers/keepers shall obey all Dog Park signage.
 - j. Handler/keepers 18 years of age or older shall be responsible for no more than three dogs in the Dog Park at any one time. Handler/keepers under 18 years of age shall be responsible for no more than one dog in the Dog Park at any one time.

- (b) *Penalty.* The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22. In addition to or in lieu of penalties available under section 1-22, violators may be excluded from the Independence Community Off-Leash Dog Park for a period of up to 30 days pursuant to section 26-378.

(Prior Code, § 45.025; Code 2006, § 12.21.4; Ord. No. 1178, § 1(part), 1988; Ord. No. 1239, § 2, 1991; Ord. No. 1247, § 1, 1991; Ord. No. 1467, § 1, 2008; Ord. No. 1471, § 1, 8-26-2008; Ord. No. 1512, § 1(12.21.4), 7-24-2012; Ord. No. 1523, § 1, 8-13-2013; Ord. No. 1541, § 1(Exh. A), 7-14-2015; Ord. No. 1584, § 3, 10-27-2020; Ord. No. 1592, § 1, 9-14-2021; Ord. No. 1607, § 1(Exh. A), 6-13-2023)

Sec. 26-376. Permits subject to ordinances and regulations.

All permits issued by the city shall be subject to city ordinances. The person to whom such permits are issued shall be bound by the rules, regulations and ordinances as fully as though the same were inserted in such permits. Any person or persons to whom such permits shall be issued shall be liable for any loss, damage or injury sustained by any person whatever by reason of the negligence of the person or persons to whom such permit shall be issued. The City Manager shall have the power to revoke any permit upon a finding that a person has violated any rule, regulation or ordinance of the city.

(Prior Code, § 45.035; Code 2006, § 12.21.5; Ord. No. 1178, § 1(part), 1988; Ord. No. 1512, § 1(12.21.5), 7-24-2012)

Sec. 26-377. Permits to be exhibited.

Any person claiming to have a permit from the city shall produce and exhibit such permit upon the request of any authorized person who may desire to inspect the same.

(Prior Code, § 5.040; Code 2006, § 12.21.6; Ord. No. 1178, § 1(part), 1988; Ord. No. 1512, § 1(12.21.6), 7-24-2012)

Sec. 26-378. Exclusion from parks.

- (a) In addition to other measures provided for violation of this chapter or the laws of the State of Oregon, any police officer may issue a written order excluding from all or any part of a park any person cited to appear, arrested, or otherwise taken into custody for violating any provision of section 26-375 for a period not to exceed 90 days.
- (b) The order shall specify the reason for the exclusion, the area from which the person is excluded, the length of the exclusion, the penalty for entering the excluded area, and contain information concerning the recipient's right to appeal the exclusion to the Independence Municipal Court. The person to whom the exclusion order is issued shall sign a written acknowledgement of receipt of the exclusion order. If that person refuses to do so, the arresting officer shall make a written record of the refusal.
- (c) A person receiving notice may, within five days, appeal in writing to the City Manager to have the written notice rescinded or the period shortened. At any time within the 30 days a person receiving a notice may apply in writing to the City Manager for a temporary waiver from the effects of the notice for good reason. The waiver shall be in writing and shall contain the time period of the waiver, and shall be kept in the possession of the person at all times while in the park.
- (d) If a person excluded from a park is found therein during the exclusion period, that person is subject to immediate arrest for criminal trespass in the second degree pursuant to ORS 164.245.

(Prior Code, § 45.045; Code 2006, § 12.21.7; Ord. No. 1178, § 1, 1980; Ord. No. 1247, § 2, 1991; Ord. No. 1279, § 1(part), 1993; Ord. No. 1314; Ord. No. 1607, § 1(Exh. A), 6-13-2023)

Sec. 26-379. Park exclusion appeal and variance.

Park exclusion appeals may be filed with the Independence Municipal Court in accordance with and pursuant to the same filing requirements and procedures as set forth in section 18-170, governing Drug Free Zone exclusion order appeals and variances. The municipal court judge shall determine whether the park exclusion was based upon conduct proscribed by section 26-375.

(Ord. No. 1607, § 2, 6-13-2023)

Secs. 26-380—26-399. Reserved.

ARTICLE X. ALCOHOLIC BEVERAGES⁷

⁷State law reference(s)—Alcoholic beverages, ORS 471.001 et seq.; authority of cities, ORS 471.045, 471.164, 471.166.

Sec. 26-400. Open containers of alcoholic beverages in public places prohibited.

- (a) No person shall drink or consume any alcoholic beverages in or upon any street, sidewalk, alley, public grounds or other public place unless such place has been licensed for that purpose by the State Liquor Control Commission.
- (b) No person shall possess any open container of alcoholic beverages in or upon any street, sidewalk, alley, public grounds or other public place unless such place has been licensed for that purpose by the State Liquor Control Commission.
- (c) Definitions. The term "public place," for the purpose of this section, includes schools, places of amusement, parks, playgrounds, parking lots and premises used in connection with public passenger transportation.
- (d) The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.
(Prior Code, § 44.525; Code 2006, § 5.7.1; Ord. No. 1274, § 1, 1993)

Sec. 26-401. Open container of alcoholic liquors in public park prohibited.

- (a) Unless otherwise authorized in section 26-375, no person shall have in his possession, while in any public park within the city, any bottle, can or other receptacle containing any alcoholic beverages which has been opened or the seal broken or the contents of which have been partially removed.
- (b) For the purposes of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

Public park means any area open to the public designated by a sign as a park, or commonly recognized as a park, including but not limited to Riverview Park, Pioneer Park, Pfaff Park, Mountain Fir Park, Wildfang Park, and Henry Hill Park.

- (c) The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.
(Prior Code, § 44.570; Code 2006, § 5.7.2; Ord. No. 1492, § 1(5.7.2), 8-24-2010)

Secs. 26-402—26-450. Reserved.

ARTICLE XI. ESTABLISHMENT OF ZONES OF BENEFIT AND REIMBURSEMENT FOR CERTAIN PUBLIC IMPROVEMENTS

Sec. 26-451. Purpose.

This article provides a method to reimburse a person or the city for financing the construction of park, sewer, water, surface water management, or street improvement facilities in whole or in a disproportionately large part. It is intended to be used to mitigate the cost of financing such public improvements by distributing those costs to other benefited property owners at the time those benefited property owners connect to or make use of the improvement.

(Ord. No. 1537, § 1, 11-18-2014)

Sec. 26-452. Definitions.

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

Person. An individual or any legal entity, including city.

Zone connection charge. The charge imposed pursuant to this article, designed to reimburse a person for the costs of financing park, sewer, street surface water management, or water improvement facilities. The zone connection charge is not intended to limit or replace, and is in addition to, any other existing fees or charges collected by the city.

Zone of benefit. The area benefited by the construction of park, sewer, water, surface water management or street public improvement facilities financed in whole or in part by a person without the formation of a local improvement district. A zone of benefit may be formed in conjunction with a local improvement district where a person finances a share of the cost of the improvement that is larger than the share that would result from a uniform application of the district assessment formula to property located in the district and owned by the person. A zone of benefit may include properties located outside the city.

(Ord. No. 1537, § 2, 11-18-2014)

Sec. 26-453. Initiation of proceedings.

- (a) Any person may apply to the city to form a zone of benefit where the person chooses or is required as a condition of permit approval to construct park, street, sewer, surface water management or water improvement facilities that includes additional or oversized improvements that would or could provide service to property other than property owned by the applicant.
- (b) An application to form a zone of benefit may be made no later than three months after completion and acceptance by city of the park, street, sewer, surface water management or water improvement facilities. The City Manager may waive this deadline if the applicant demonstrates that the delay was not caused by the applicant, and was created by unanticipated or unforeseen circumstances.
- (c) The application shall be accompanied by a processing fee established by resolution of the City Council sufficient to cover the administrative, notice and other city costs incurred to process the application. The application will consist of the standard form provided by the city and shall include the following:
 - (1) A description of the location, type, size and cost of the public improvement.
 - (2) A narrative explaining why the applicant believes all or part of the cost of the improvement is eligible for reimbursement pursuant to this article.
 - (3) A map showing the properties to be included in the proposed district, including the city's zoning designation; the square footage or frontage of the property or properties; and identification of the properties owned by the applicant, if any.
 - (4) The cost of the improvements to be reimbursed. If the application is filed after construction, the application shall include the actual cost of construction as evidenced by a contract, receipts, bids or other similar documents. If the application is filed prior to construction, the application shall include the estimated cost of the improvements as evidenced by bids, projections of the cost of labor and materials, or other similar evidence satisfactory to the City Manager.
 - (5) A proposed methodology for spreading the cost among the properties within the zone of benefit and, where appropriate, defining a "unit" for applying the zone connection charge to property that may, subject to City approval, be partitioned, adjusted or subdivided at a future date. The methodology

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should consider the factors set forth in section 26-454(a)(5) of this article pertaining to the City Engineer's report.

- (6) The date that the city accepted the public improvements or the date that the improvements are estimated to be completed.

The City Manager may request the submittal of any additional information deemed relevant.

(Ord. No. 1537, § 3, 11-18-2014)

Sec. 26-454. Engineer's report.

- (a) Upon receipt of a zone of benefit application, as determined by the City Engineer, the City Engineer shall review the request for the establishment of a zone of benefit and prepare a report containing the City Engineer's recommendation to be submitted to the Council within 30 days after receipt of the complete application. The report shall include the following information:
 - (1) An explanation as to why the applicant is or is not qualified for reimbursement pursuant to this article;
 - (2) A description of the proposed area for the zone of benefit. The description shall indicate whether properties located outside of city boundaries should be considered for inclusion within the zone of benefit upon annexation.
 - (3) An estimate of the actual total costs of the public improvement and the portion of the cost for which the applicant should be reimbursed in accordance with this article.
 - (4) The extent to which the improvement has relieved or will relieve other property owners or developers of the need to construct some or all of the improvement and whether or not the properties within the proposed zone of benefit would be required, as a condition of approval for future development, to construct some or all of the improvement. If quantifiable, this information should reflect the amount or percent of unused capacity provided for future users.
 - (5) A methodology for spreading the cost among the properties within the zone of benefit and, where appropriate, defining a "unit" for applying the reimbursement charge to property that may, subject to city approval, be partitioned, adjusted or subdivided at a future date. The methodology should consider the cost of the improvements, prior contributions of property owners (only if for the same type of improvement at the same location), the value of the unused capacity, rate making principles employed to finance public improvements, and other relevant factors.
 - (6) A proposed reimbursement charge for the district.
- (b) The cost to be reimbursed to the applicant, if other than the city, shall be limited to the cost of construction, engineering, acquiring off-site rights-of-way, and proportionate share of the value of property dedicated to the city. Engineering shall include surveying and inspection, but shall not exceed 15 percent of eligible construction costs. If the applicant is the city, the costs to be reimbursed shall also include an administration cost and all costs associated with the acquisition of easements and rights-of-way. If the applicant is other than the city, the costs to be reimbursed for rights-of-way shall be limited to the reasonable market value of land or easement purchased from a third party to complete off-site improvements. Actual costs shall not be deemed reasonable if the city determines that such costs significantly exceed prevailing market rates for similar projects or discreet portions thereof. In such a case, the city may reduce the reimbursable cost to the prevailing market rate for similar projects, or discreet portions thereof. In addition, the following costs shall not be subject to reimbursement:
 - (1) Costs for that portion of the improvement that benefits the applicant's own property.
 - (2) Costs for improvements that are not dedicated to and accepted by the city as a public improvement.

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- (3) Costs for a public improvement that is required as a condition of development approval, except in cases where the nature and degree of the public improvement is disproportionate to the impacts of the development or where the city desires an oversized or additional improvement beyond that which is roughly proportional to the impact of the development.
 - (4) Financing costs; permits or fees required for construction permits; land or easements dedicated by the applicant; costs that are eligible for system development charge credits; or any costs that cannot be clearly documented.
 - (5) Costs for relocation of electrical, telephone, cable television or natural gas utility relocation benefiting an applicant's property.
 - (6) Costs for extra work or materials required to correct deficiencies in construction to bring the improvement to city standards.
 - (7) Costs for water improvements that are the minimum size necessary to meet city standards and serve an applicant's property.
 - (8) Costs for a minor street realignment, except for the cost of right-of-way acquisition beyond the limits of the applicant's frontage along the improved street.

(Ord. No. 1537, § 4, 11-18-2014)

Sec. 26-455. Formation of zone of benefit.

- (a) Upon City Manager's receipt of a complete application for the establishment of a zone of benefit, the City Manager will set a hearing before the City Council to consider the request. Not less than ten days before the hearing, notice of the hearing shall be: (1) published in a paper of general circulation, and (2) mailed by regular mail to the applicant and to all property owners within the proposed zone of benefit as shown on the most recent assessment role in the county assessor's office. Notice shall be deemed effective on the date of mailing. Failure to receive notice by the applicant or affected property owners shall not invalidate or otherwise affect formation of the zone of benefit.
- (b) The notice shall:
 - (1) State a zone of benefit has been proposed that includes the property of the person receiving notice;
 - (2) Briefly describe the zone of benefit, the park, street, water, sewer, or surface water management improvement facilities to be reimbursed; the amount (or estimated amount) of the zone connection charge; and the circumstances under which the charge must be paid; and
 - (3) Set the time, date, and location of the hearing.

(Ord. No. 1537, § 5, 11-18-2014)

Sec. 26-456. Hearing.

At the hearing, the City Council shall consider:

- (1) The proper boundaries to the zone of benefit, taking particular consideration of all properties contiguous to or otherwise located so as to directly benefit from the improvement; and
- (2) The reasonable actual or estimate of costs for which applicant may be reimbursed pursuant to section 26-454(b) of this article. The applicant shall not be entitled to reimbursement for any costs in excess of reasonable actual costs. If the zone of benefit is formed before actual costs are known, the zone connection charge may be based on estimated costs. If estimated costs are used, the methodology or

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the certificate of payment or both shall provide for a recalculation of the cost not later than three months after completion and acceptance of the improvement by the city.

(Ord. No. 1537, § 6, 11-18-2014)

Sec. 26-457. Resolution.

- (a) If the Council determines that formation of a zone of benefit is appropriate, the Council shall establish that zone by resolution. The resolution shall:
 - (1) Establish the area of the zone of benefit, the zone formation date, and the date when the right of reimbursement ends.
 - (2) Set forth the actual or estimated cost of the park, street, water, surface water management, or sewer improvement facilities, and the portion of the costs for which the applicant should be reimbursed.
 - (3) Establish the zone connection charge methodology and show an example of the methodology used to calculate the zone connection charge.
 - (4) Establish the zone connection charge for the zone.
 - (5) Direct that a certificate of payment and right of reimbursement be issued to the zone applicant.
- (b) Upon the resolution's adoption, it shall be sent to the applicant and all affected property owners, and recorded in the office of the county recorder to provide notice to potential purchasers of property within the zone. The recording shall not create a lien. Failure to make such a recording shall not affect the legality of the formation or the obligation to pay the zone connection charge.

(Ord. No. 1537, § 7, 11-18-2014)

Sec. 26-458. Challenge to formation.

No legal action intended to challenge or contest the formation of the zone of benefit, the methodology, or the amount of the zone connection charge shall be filed after 60 days following formation of the zone of benefit. Challenge shall be only as provided in ORS 34.011 to 34.100, and not otherwise.

(Ord. No. 1537, § 8, 11-18-2014)

Sec. 26-459. Agreement and right to reimbursement.

The right to reimbursement is a contractual right between the city and the applicant. When the applicant is other than the city, the resolution shall instruct the city to enter into an agreement with the applicant pertaining to the zone of benefit improvements. If the agreement is entered into prior to construction, the agreement shall be contingent upon the improvements being accepted by the city. The agreement shall contain at least the following provisions:

- (1) Identification of the person receiving the right of reimbursement;
- (2) The improvement(s) shall meet all applicable city standards;
- (3) That the total amount of potential reimbursement shall not exceed the actual cost of the public improvement(s);
- (4) The reimbursable amount;
- (5) The zone connection charge;

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- (6) The area of the zone of benefit;
 - (7) The date of zone formation;
 - (8) The date upon which the right to reimbursement ends;
 - (9) Applicant shall guarantee the improvement(s) for a period of no less than 12 months from the date of installation;
 - (10) Applicant shall defend, indemnify, and hold the city harmless from any and all losses, claims, damage, judgments or other costs or expenses arising as a result of or related to the city establishment of the zone of benefit, including the city's costs or expenses related to collection of the reimbursement charges pursuant to the resolution;
 - (11) Applicant may not assign or otherwise transfer its right to reimbursement without city's prior written consent, which will not unreasonably be withheld.
 - (12) The city shall make reasonable efforts to properly account for and collect the zone connection charge from an affected property, including the city's costs or expenses related to collection of the zone connection charge.
 - (13) Any other provisions the Council deems necessary and property to carry out the provisions of the zone of benefit ordinance, resolution and agreement.

(Ord. No. 1537, § 9, 11-18-2014)

Sec. 26-460. Payment.

- (a) An owner of property within any zone of benefit shall pay the city, in addition to any other applicable fees and charges, the zone connection charge established by city resolution when any of the following events occur:
 - (1) The property owner receives final approval for a development permit to develop, subdivide, or partition property located within the zone.
 - (2) A use of property is expanded to create additional "units," as that term is defined in the resolution for the particular zone or changed to increase usage. The term "unit" is not limited to residential uses.
 - (3) A property owner connects to the sewer line or water line or makes use of the surface water management or street improvement. As used in this subsection, "makes use of the surface water management improvement" means installation of an improvement that substantially increases impervious surface on the property at the time of or following construction of the surface water management improvement for which the zone of benefit has been formed. As used in this subsection, "makes use of the street improvement" means installation of an improvement or changing the use of the property at the time of or following construction of the street improvement that increases traffic or congestion on the road improvement for which the zone of benefit was formed.
- (b) The zone connection charge is due and payable as a precondition of receiving the first city permit applicable to the development activity undertaken, or, in the case of a connection to a line, as a precondition of receiving the connection permit.
- (c) A person who becomes obligated for payment of the zone connection charge as a result of connection to a line constructed through the local improvement district process and who owns property within the district upon which an assessment is levied may be assessed for the zone connection charge in addition to the assessment levied through the local improvement district.

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- (d) Zone connection charges shall be collected by city and paid to the zone applicant until the earlier of ten years from the zone formation date or the reimbursement amount specified in the appropriate zone of benefit resolution is recouped. If the city paid the initial cost of construction or a portion thereof, the city will deposit that amount in the fund corresponding to the improvement made. The city may apply collected zone connection charges to any outstanding assessments owed to the city by the applicant.

(Ord. No. 1537, § 10, 11-18-2014)

Chapter 26 STREETS, SIDEWALKS AND PUBLIC PLACES¹

ARTICLE I. IN GENERAL

Sec. 26-1. Adoption, conformance required, modification.

- (a) "City of Independence Public Works Design Standards", establishing design standards and construction specifications, shall be adopted by Council resolution and thereafter amended as set forth in this section.
- (b) All public works design and construction, including workmanship and materials, shall be in accordance with the current edition of the City of Independence Public Works Design Standards. This section applies to all public improvements within the city limits of the City of Independence, the Independence Urban Growth Boundary or otherwise required by law.
- (c) The Public Works Director may periodically update and modify the City of Independence Public Works Design Standards to reflect changes in policy, procedure, new technology, design methods and construction methods.
 - (1) Changes in federal, state, county and other regulatory agency requirements will be reviewed and incorporated into the City of Independence Public Works Design Standards.
 - (2) Requests for modifications may be initiated either by the city or by an interested party.
 - (3) The Public Works Director is hereby granted authority to approve or deny requests for modifications to the City of Independence Public Works Design Standards.
 - (4) Updates to the City of Independence Public Works Design Standards will be posted on the city's website. Copies may be purchased from the city.
 - ~~(5) The Public Works Director will provide the City Council with an annual report which lists the updates and modifications made to the City of Independence Public Works Design Standards during the preceding year.~~

(Ord. No. 1568, § 1(Exh. A), 9-25-2018)

Sec. 26-2. Violation.

Violation of any provision of this Article is an Independence Municipal Code Class B violation, per section 1-22.

(Ord. No. 1568, § 1(Exh. A), 9-25-2018)

¹Charter reference(s)—Public improvements, ch. IX.

State law reference(s)—Streets, highways, roads, bridges and ferries, ORS 366.001 et seq.; roads and highways in cities, ORS 373.110 et seq.; powers of cities, ORS 373.210 et seq.; insurance of public property, ORS 278.005 et seq.; utility rights-of-way, ORS 758.010.

Secs. 26-3—26-18. Reserved.

ARTICLE II. SIDEWALKS

DIVISION 1. GENERALLY

Secs. 26-19—26-39. Reserved.

DIVISION 2. CONSTRUCTION, MAINTENANCE, REPAIR²

Sec. 26-40. Generally.

- (a) *Definitions.* The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Owner means the person in whose name real property is assessed for tax purposes according to the latest assessment roll in the office of the County Assessor for Polk County, Oregon.

- (b) *Violations.* The offense described in this division is an Independence Municipal Code Class A violation, per section 1-22.

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-41. Sidewalk specifications.

All sidewalks hereafter constructed within the city [right of way](#) shall be constructed in accordance with adopted City of Independence Public Works Standards and [sidewalks on private property shall be constructed in accordance with](#) the Independence Development Code.

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-42. Sidewalk—Construction permit required.

- (a) No person, firm, corporation or unit of government other than the city shall construct any sidewalk without first applying for and receiving a permit from city to construct such sidewalk.
- (b) No sidewalk shall be constructed by any person, firm, corporation or unit of government other than the city without the construction thereof being inspected and approved by the Public Works Director or Designee as conforming to the standards of the city.

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

²Editor's note(s)—Ord. No. 1534, § 1(Exh. A), adopted Aug. 12, 2014, repealed the former div. 2, §§ 26-40—26-57, and enacted a new division as set out herein. The former div. 2 pertained to similar subject matter. See Code Comparative Table for a detailed history of derivation.

Sec. 26-43. Curbs—Specifications.

All curbs hereinafter constructed upon public streets within the city shall be constructed in accordance with adopted City of Independence Public Works Standards.

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-44. Curbs—Construction permit required.

- (a) No person, firm, corporation or unit of government other than the city or ~~State Highway Division~~Oregon Department of Transportation shall construct any curb or make any cut or alteration in any existing curb without first obtaining a permit from the city for such construction, cut or alteration.
- (b) No curb shall be constructed, nor shall any cut or alteration be made in any existing curb without the construction thereof being inspected by the Public Works Director or Designee and approved by the Public Works Director or Designee as conforming to the standards of the city.

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-45. Driveway specifications.

Driveway construction ~~specifications in the public right of way~~ shall be done in accordance with adopted Public Works Standards ~~and the Independence Development Code.~~

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-46. Sidewalk eating areas.

- (a) As an exception to the obstruction prohibitions set forth in section 18-60, pertaining to obstructing passageways, cafe and restaurant owners or proprietors who wish to operate a sidewalk eating area shall obtain a permit from the city for the sidewalk eating area. The sidewalk eating area shall meet the following requirements:
 - (1) The sidewalk eating area's boundaries shall be the business' property lines and an outer line not less than five feet from all streets, curbs or permanent landscaping;
 - (2) All tables, chairs and accessories shall be removed from public property during seasons when the sidewalk eating area is not in use;
 - (3) The owner or proprietor shall accept liability for any damage claims arising from the existence of the sidewalk eating area or for any costs arising from the abatement of any public nuisance arising from the existence of the sidewalk eating area.
 - ~~(4) The sidewalk eating area shall not obstruct ADA accessibility along the right of way or cause pedestrians to meander across the property frontage.~~
- (b) An owner or proprietor who wishes to obtain a permit for a sidewalk eating area shall submit to the City Manager an application containing:
 - (1) The dimensions of the proposed eating area and distances to applicable streets, curbs and permanent landscaping;
 - (2) The specific beginning and ending dates of planned use and the planned hours of daily operation;

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- (3) Any information requested by the City Manager concerning care and management of the area;
 - (4) A statement that the applicant accepts liability and holds the city harmless for damage claims arising from the existence of the sidewalk eating area or for any costs arising from the abatement of any public nuisance arising from the existence of the sidewalk eating area;
 - (5) A certificate of liability insurance in an amount not less than \$500,000.00, naming the city as an additional insured;
 - (6) If alcoholic beverages will be served within a sidewalk eating area, then a certificate of liquor liability coverage naming the city as an additional insured shall also be provided.
- (c) The City Manager shall review each application and the site of the requested permit for a sidewalk eating area. The City Manager shall issue the permit if the request meets the requirements of subsection (a) of this section and the sidewalk eating area does not violate any city ordinance. The permit shall state the area boundaries, date of termination and hours of operation.
- (d) As used in this section, the term "sidewalk eating area" means an area of city sidewalk in front of a restaurant or cafe for which provision is made for consumption of food or beverages. The term does not include preparation or sale of food or beverages. Providing alcoholic beverages for consumption in a sidewalk eating area is subject to licensing requirements as stated in section 26-400(a) and (b).

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-47. Repair and maintenance—Owner responsible.

The person owning the real property adjacent to or abutting on a public sidewalk, shall, at the person's sole cost and expense, keep the sidewalk in good repair and free of hazards to persons lawfully on or adjacent to such sidewalk. The person owning the real property adjacent to or abutting on a public sidewalk shall be liable for any injuries or other damages resulting from a defective sidewalk which he is obligated to repair under this section, and the person shall, furthermore, hold harmless and indemnify the city for any costs the city may incur as a result of the defective sidewalk.

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-48. Abatement by the city.

Whenever a public sidewalk is found to be defective, out of repair, or hazardous by any officer of the city, or by any other person, a report thereof shall be made to the city. The City Manager may thereafter report such defective, out of repair, or hazardous sidewalk to the City Council or proceed with an enforcement action under section 26-40(b).

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-49. Defective walks declared nuisance.

After receiving the report from the City Manager, if given under section 26-48, the City Council, by resolution, may declare the defective, out of repair or hazardous sidewalk a nuisance, and direct that the defect or hazardous condition be eliminated or that the sidewalk be placed in a state of good repair.

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-50. Notice to owner.

Within five business days after the passage of the resolution referred to in section 26-49, the City Manager shall give notice to the owner of the real property adjacent to or abutting on the sidewalk of the defect therein, the state of disrepair thereof, or of the hazard resulting therefrom, and of the determination that such condition constitutes a nuisance, by sending to such owner, by certified mail, at the person's address as shown on the last tax assessment roll in the office of the County Assessor, a copy of such resolution and a copy of this division.

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-51. Repairs to city specifications.

All repairs undertaken pursuant to this division shall be according to city specifications as set forth in the provisions of this division, a copy of which shall be available for public inspection at the City Hall, during business hours. The owner shall submit a permit for the repairs and a no cost permit shall be issued by the Public Works Department. The repairs shall be inspected by the Public Works Director or Public Works Director designee.

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-52. Failure of owner to repair.

If the owner does not correct the defect, or eliminate the hazard in, or make repairs to the sidewalk as required by the resolution within the time specified therein, the City Manager may cause such defect or hazard to be eliminated or such repair to be made by the city and assess the cost thereof against the property abutting thereon and adjacent thereto. Repair costs shall include all construction and associated administrative costs. Any abatement by the city may be in addition to, not in lieu of issuance of any citation, as stated in section 26-40(b).

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Sec. 26-53. Assessment of costs of repair.

The assessment of the costs of eliminating the defect or hazard or making the repair to the sidewalk shall be declared by ordinance, and it shall be entered into the docket of city liens and shall thereupon become a lien against the property. The collection and enforcement of the lien shall be accomplished in the same manner as in the case of the collection and enforcement of the street liens, but irregularities or informalities in the procedure shall be disregarded.

(Ord. No. 1534, § 1(Exh. A), 8-12-2014)

Secs. 26-54—26-87. Reserved.

ARTICLE III. STREETS

DIVISION 1. GENERALLY

Secs. 26-88—26-117. Reserved.

DIVISION 2. CURBLINES

Sec. 26-118. Distance from property lines.

- (a) ~~All curblines on the west side of Second Street from the north line of Monmouth Street to the south line of B Street shall be ten feet from the abutting property line, and all curblines on the east side of Second Street from the north line of C Street to the south line of B Street shall be ten feet from the abutting property line and shall conform to the official grades of the street and shall be uniform as to material, dimensions and distances from the property lines along which they are built and shall be composed of cement concrete and shall be six inches at the top and eight inches at the bottom and 14 inches in height and depth; and the spaces between the curblines and the sidewalk shall be filled with earth on a level with the sidewalk and in the space may also be planted flowers and ornamental shrubbery for the purpose of beautifying the city.~~
- (b) ~~All curblines on the west side of Second Street from the south line of Monmouth Street to the north line of E Street shall be ten feet from the property line abutting thereto, and all curblines on the east side of Second Street from the south line of C Street to the south line of E Street shall be ten feet from the abutting property line and shall conform to the official grade of the street and shall be uniform as to material, dimensions and distances from the property lines along which they are built and shall be composed of cement concrete and shall be eight inches at the bottom and six inches at the top and 14 inches in height and depth; and the spaces between the curblines and the sidewalk may be filled with earth on a level with the sidewalk and in the spaces may be planted shrubbery, ornamental, and flowers for the purpose of beautifying the city.~~
- (c) ~~All curblines on B Street between First and Second Streets in the city shall be ten feet from the property line; and on E and D Streets in the city they shall be built 14 feet from the property lines abutting thereon and shall conform to the official grades of the streets and shall be uniform as to material, dimensions and distances from the property lines along which they are built and shall be composed of cement concrete and shall be eight inches at the bottom, six inches at the top and 14 inches in height and depth; and the spaces between the sidewalk and the curbline shall be filled in with earth to a level with the sidewalk and planted to rose bushes and ornamental shrubbery for the purpose of beautifying the city.~~
- (d) ~~All curblines on Main Street shall be 14 feet from the abutting property lines. All curblines on Log Cabin and Walnut Streets shall be 14 feet from the abutting property lines. On Marsh Street the curblines on the west side thereof shall be ten feet from the abutting property lines and on the east side thereof the curblines shall be 14 feet from the abutting property lines thereto. All curblines on Polk, Williams, Picture, Boatlanding, Grand and Oak Streets shall be 14 feet from the abutting property lines, and all of such curblines shall be uniform as to materials, dimensions and distances from the property lines and shall conform to the official grades of the streets along which they are built and shall be constructed of cement concrete, and shall be six inches at the top and eight inches at the bottom and 14 inches in height and depth; and the space between the curblines and the sidewalks shall be filled with earth on a level with the sidewalks and shall be seeded to yard grass and kept well sprinkled during the dry season by the abutting property owners in front of their respective abutting property to keep the grass thereon green and may be set to rose bushes or other ornamental shrubbery for the purpose of beautifying the city, and such grass shall be kept mowed and shrubbery well trimmed.~~
- (e) ~~All curblines in the city, on all streets lying south of E. A. Thorp's Town of Independence, west of Second Street, and south of E Street on east side of Second Street shall be 14 feet from the abutting property lines, and all such curblines shall be of uniform size and dimension, also as to materials used therein, and shall be~~

concrete curblines and shall be 14 inches in height, eight inches wide at the bottom and six inches wide at the top; and the spaces between the sidewalk and such curblines shall be filled with earth on a level with the sidewalk and shall be seeded to yard grass and kept sprinkled during the dry season by the abutting property owners in front of their respective abutting property to keep the grass green thereon during such dry season, and may also be set to rose bushes or other ornamental shrubbery for the beautifying of the city; and such grass shall be kept mowed and shrubbery well trimmed at proper times and season; provided, however, C Street and E Street are excepted from the operations of this division.

~~(f) All curblines in the city, on all streets lying south of E. A. Thorp's Town of Independence west of Second Street and south of E Street on east side of Second Street shall be 14 feet from the abutting property lines, excepting the curblines on Third Street between A and B Streets in the city, which shall be 18 feet from the abutting property lines; and all such curblines shall be of uniform size and dimensions, also as to lines, and shall be 14 inches in height, eight inches wide at the bottom and six inches wide at the top, and be of concrete material; and the spaces between the sidewalk and such curblines shall be filled with earth on a level with the sidewalk and shall be seeded to yard grass and kept sprinkled during the dry season in each year by the abutting property owners in front of their respective abutting property, and may also be set to rose bushes, or other ornamental shrubbery, for the purpose of beautifying the same, and such grass shall be kept mowed and the shrubbery well trimmed at proper times and seasons, provided, however, curblines on C Street shall be 18 feet from property lines abutting thereon.~~

(a) All curblines shall comply with the Public Works Standards and the current Transportation Master Plan. When curblines in existing developed areas do not meet the current standards, the existing curblines shall remain until the property fronting the curbline is redeveloped or modified.

(Prior Code, § 30.110; Code 2006, § 12.6.1)

Sec. 26-119. Space between curblines and sidewalks.

- (a) All abutting property owners within the corporate limits of the city shall keep the space between the curblines built in the street abutting to their property and the sidewalk built on the street and adjacent to their property, lots or blocks ~~filled with rich soil or earth to a level with such sidewalk and shall sow the same to lawn grass and may plant flowering shrubbery thereon and shall at all times keep such parking in a neat and attractive condition by keeping such grass mown and shrubbery trimmed so as to make the same an ornament to such parking and, during the dry summer and fall months of each year, shall keep such parking well sprinkled with water so as to keep such grass green, all of which shall be done at the expense of such property owner in compliance with the current Development Code requirements for landscaping.~~
- (b) In case any such property owner shall neglect to comply with the provisions of subsection (a) of this section or any part thereof, the ~~City Marshal~~Code Enforcement Officer shall give such delinquent property owner five business days' notice to proceed to comply with the provisions of subsection (a) of this section and, if such property owner has not so complied therewith at the expiration of such time, then the ~~City Marshal~~Code Enforcement Officer shall proceed to carry out the provisions of subsection (a) of this section, keeping a strict account of all expenses incurred by reason thereof, and report the same to the City Council at its next regular meeting thereafter; and such expenses shall become a lien upon such abutting property, lots or blocks, or parts thereof liable therefor and shall be collected in the same manner street improvement assessments are collected.

(Prior Code, § 30.210; Code 2006, § 12.6.2)

Secs. 26-120—26-136. Reserved.

ARTICLE IV. ASSESSMENTS FOR LOCAL IMPROVEMENTS³

Sec. 26-137. Initiating a local improvement.

Council may consider the initiation of a local improvement district upon a petition by affected property owners, upon staff's recommendation, or upon its own motion.

(Code 2006, § 12.2.1)

Sec. 26-138. Methods and procedures.

The sections in this article are the methods and procedures for making public improvements in the city; for levying and collecting special assessments therefor; and for the creation and apportionment of assessment liens.

(Prior Code, § 32.110; Code 2006, § 12.2.2)

Sec. 26-139. City Engineer survey and report.

Whenever the Council shall deem it necessary, upon its own motion or upon the petition of the owners of one-half of the property to benefit specially from the improvement, to make any street, sewer, sidewalk, [storm](#) drain or other public improvement to be paid for in whole or in part by a special assessment according to benefits, then the Council shall, by motion, direct the City Engineer to make a survey and written report for such project and file the same with the City Recorder. Unless the Council shall direct otherwise, such report shall contain the following matters:

- (1) A map or plat showing the general nature, location and extent of the proposed improvement and the land to be assessed for the payment of any part of the cost thereof;
- (2) Plans, specifications and estimates of the work to be done; provided, however, that where the proposed project is to be carried out in cooperation with other governmental agency, the engineer may adopt the plans, specifications and estimates of such agency;
- (3) An estimate of the probable cost of the improvement, including any legal, administrative and engineering costs attributable thereto;
- (4) An estimate of the unit cost of the improvement to the specially benefited properties;
- (5) A recommendation as to the method of assessment to be used to arrive at a fair apportionment of the whole or any portion of the cost of the improvement to the properties specially benefited;

³Charter reference(s)—Special public improvements shall be by ordinance and state law, § 36; assessments for public improvements shall be by ordinance, § 37.

State law reference(s)—Charter or ordinance to govern construction and improvement of connecting city streets, ORS 373.223.

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- (6) The description and assessed value of each lot, parcel of land, or portion thereof, to be specially benefited by the improvement, with the names of the record owners thereof and, when readily available, the names of the contract purchasers thereof;
 - (7) A statement of outstanding assessments against property to be assessed.

(Prior Code, § 32.120; Code 2006, § 12.2.3)

Sec. 26-140. Survey and report; council action.

After the City Engineer's report shall have been filed with the City Recorder, the Council may thereafter by motion approve the report, modify the report and approve it as modified, require the engineer to supply additional or different information for such improvement, or it may abandon the improvement.

(Prior Code, § 32.130; Code 2006, § 12.2.4)

Sec. 26-141. Council approval; notice.

After the Council shall have approved the Engineer's report as submitted or modified, the Council shall, by resolution, declare its intention to make such improvement, provide the manner and method of carrying to the improvement, and shall direct the [City Recorder](#) to give notice of such improvement by two publications, one week apart, in a newspaper of general circulation within the city, and by mailing copies of such notice by certified mail to the owners to be assessed for the costs of such improvement, which notice shall contain the following matters:

- (1) That the report of the City Engineer is on file in the office of the [City Recorder](#) and is subject to public examination;
- (2) That the Council will hold a public hearing on the proposed improvement on a specified date, which shall not be earlier than ten days following the first publication of notice, at which objections and remonstrances to such improvement will be heard by the Council; and that if, prior to such hearing, there shall be presented to the [City Recorder](#) valid, written remonstrances of the owners of 51 percent of the property to be specially affected by such improvement, then the improvement will be suspended for at least six months. Owners of property to be specially affected shall include those persons who are purchasing property under contract if, under the terms of their contract, they are required to pay such assessments; and in all other cases, owners shall be those persons who appear on the records of the County Clerk and records of the County Assessor's office or the Assessor's office in which the property is located;
- (3) A description of the property to be specially benefited by the improvement, the owners of such property and the Engineer's estimate of the unit cost of the improvement to the property to be specially benefited, and the total cost of the improvement to be paid for by special assessments to benefited properties.

(Prior Code, § 32.140; Code 2006, § 12.2.5)

Sec. 26-142. Contracts for public improvements.

The Council may provide in the improvement resolution that the construction work may be done in whole or in part by the city, by a contract, or by any other governmental agency, or by any combination thereof.

(Prior Code, § 32.150; Code 2006, § 12.2.6)

Sec. 26-143. Approval or Order of abandonment of improvement determined by Council.

At the time of the public hearing on the proposed improvement, if the written remonstrances shall represent less than the amount of property required to defeat the proposed improvement, then, on the basis of the hearing of written remonstrances and oral objections, if any, the Council may, by motion, at the time of the hearing or within 60 days thereafter, order the improvement to be carried out in accordance with the resolution; or the Council may, on its own motion, abandon the improvement.

(Prior Code, § 32.160; Code 2006, § 12.2.7)

Sec. 26-144. Assessment ordinance passed when.

After the aforesaid public hearing on the proposed improvement, and after the Council has moved to proceed with the improvement, it may pass an ordinance assessing the various lots, parcels of land, or parts thereof, to be specially benefited, with their apportioned share of the cost of the improvement; but the passage of such an assessment ordinance may be delayed until the contract for the work is let, or until the improvement is completed and the total cost thereof is determined.

(Prior Code, § 32.310; Code 2006, § 12.2.8)

Sec. 26-145. Method of assessment.

The Council, in adopting a method of assessment of the costs of the improvement, may:

- (1) Use any just and reasonable method of determining the extent of any improvement district consistent with the benefits derived;
- (2) Use any method of apportioning the sum to be assessed as is just and reasonable between the properties determined to be specially benefited;
- (3) Authorize payment by the city of all or any part of the cost of any such improvement when, in the opinion of the Council, the topographical or physical conditions, or unusual or excessive public use, or other character of the work involved warrants only a partial payment or no payment by the benefited property of the costs of the improvement;
- (4) Nothing contained in this chapter shall preclude the Council from using any other available means of financing improvements, including federal or state grants-in-aid, sewer charges or fees, revenue bonds, general obligation bonds or any other legal means of finance. In the event that such other means of financing improvements are used, the Council may, in its discretion, levy special assessments according to the benefits derived to cover any remaining part of the costs of the improvement.

(Prior Code, § 32.315; Code 2006, § 12.2.9)

Sec. 26-146. Pre-assessment.

- (a) Council may levy an assessment prior to construction of a local improvement as provided herein. When the estimated cost of a local improvement has been ascertained on the basis of a City Engineer's estimate of costs, the award of a contract or any other basis acceptable to Council, the City Engineer shall prepare the proposed assessment roll for the lots within the local improvement district and, after its approval by the City Manager, shall file it in the office of the City Recorder and submit it to Council.

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- (b) Notice of the proposed assessment shall be given in accordance with this article. The proposed assessment roll shall be considered by Council and processed by staff in accordance with the procedures described in this article.
 - (c) If the initial assessment has been made on the basis of estimated cost and, upon completion of the improvement, the actual cost is found to be greater than the estimated cost, Council may make a definite or supplemental assessment for the additional cost. Proposed assessments upon the respective lots within the local improvement district for the proportionate share of the deficit shall be made, notices sent, a public hearing held and opportunity for objections considered, and determination of the assessment against each particular lot, block, or parcel of land shall be made as in the case of the initial assessment; and the deficit or supplemental assessment spread by ordinance. The deficit assessments shall be entered in the city lien docket, notices published and mailed, and the collection of the assessment made in accordance with the provisions of this article relating to the original assessment. Council may hold the pre-assessment hearing concurrently with any other hearing required.
 - (d) If assessments have been made on the basis of estimated cost and, upon completion of the improvement project, the cost is found to be less than the estimated cost, Council shall, following public hearing, declare the same by ordinance; and when so declared, the excess amounts shall be entered on the city lien docket as a credit upon the appropriate assessment. Thereafter, the person who paid the original assessment, or his legal representative or successor, shall be entitled to repayment of the excess amounts. If the property owner has filed an application to pay the assessment by installment, he shall be entitled to such refund only when such installments, together with interest thereon, are fully paid. If the property owner has neither paid such assessment nor filed an application to pay in installments, the amount of such refund shall be deducted from such assessment, and the remainder shall remain a lien on such property until legally satisfied.

(Code 2006, § 12.2.10)

Sec. 26-147. Final report; notice of public hearing; installment applications.

- (a) When the improvement has been completed, the cost shall be determined by adding to the contract price of the work or, if not contracted, the city work crew cost of the work, the cost of right-of-way, condemnation expenses, cost of engineering, supervision, inspection, advertising, legal expenses, and any other necessary and proper expenses, which costs and expenses shall be a part of the amounts to be assessed to the benefited properties.
- (b) The final report of the above costs shall be submitted to Council, and when the final report has been approved by motion of Council, the engineering staff of the City of Independence shall prepare a proposed assessment roll ordering and describing each lot to be assessed, with the names of the owners, and shall levy against those lots in a manner directed by Council and provisions of ordinances applicable to special assessments. The proposed assessment roll shall be submitted for the approval of the City Manager. The City Manager may require the engineering staff to make any changes or modifications in the proposed assessment roll. When the proposed assessment roll has been approved by the City Manager, he shall file it with the City Recorder and refer it to Council for review, modification, acceptance or rejection by Council.
- (c) When the proposed assessment roll is received for filing Council shall publish a notice of the time and place of a public hearing ~~in a newspaper published in and of general circulation in the city~~~~in a newspaper of general circulation published in county~~ at least ten days before the public hearing. The notice shall state that at the public hearing Council will, at a stated time and place, consider oral and written remonstrances to the proposed assessment roll, and that written remonstrances should be filed with the City Recorder prior to the public hearing. This notice shall state that within 30 days after Council passage of the ordinance confirming the assessment roll, the owner of the assessed properties may file with the City Recorder, on a form provided for the purpose, an application to pay the assessment in whole or in part on an installment basis, as

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provided by the Bancroft Bonding Act, ORS 223.205 to 223.295, which is hereby adopted by reference and made a part of this article. This notice shall also state that, if the assessment is not eligible under the provisions of the Bancroft Bonding Act, or if the owner of the assessed property does not apply to use the installment basis, all or part of the assessment shall be excluded from the installment payment procedure and shall be paid in full by cash within 30 days of the date of entry in the unbonded lien docket.

- (d) The City Recorder shall, at least ten days before the public hearing, mail a notice to each owner of property to be assessed, which notice shall be deposited in the post office in the city, postage prepaid, addressed to such owners at their last known address. If the address of the owner is unknown to the City Recorder, he shall mail the notice to the owner or his agent at the address where the property to be assessed is located. The mailed notice shall show the amount proposed to be assessed to the addressee, owner or property proposed to be assessed.
- (e) The contents of the application to pay assessments on the installment basis shall be as provided by ORS 223.215.

(Code 2006, § 12.2.11)

Sec. 26-148. Public hearing; ordinance confirming assessments; lien recording.

- (a) Council shall hold a public hearing on the proposed assessment roll at the time and place stated in the notice of public hearing. Council may continue the hearing. After hearing the remonstrances, if any, Council may refer the proposed assessment roll to the City Manager for correction or adjustment, or may make corrections or adjustments, and shall pass an assessment ordinance confirming the assessment roll, including any corrections or adjustment, providing for the assessment of the benefited properties, and for the apportionment of the assessment to the individual lots within the local improvement district.
- (b) Immediately after Council has approved the assessment ordinance, the City Manager shall enter the assessments in the City unbonded lien docket, which assessments shall be a lien and charge upon the respective lots against which they are placed. Such liens shall be first and prior to all other liens or encumbrances insofar as the laws of the state allow. After applications have been made by the owners of assessed property to have the assessments bonded under Bancroft Bonding Act to provide for the installment payment procedure, the City Manager shall make proper entry in the unbonded lien docket and transfer such assessments from the unbonded lien docket to the bonded lien docket, as provided by ORS 223.230.
- (c) If there is no response from a property owner within 30 days after the notice of assessment is mailed, the City Manager shall verify the ownership of the property with a licensed title company or by any other means and shall mail a copy of the assessment notice to the owner so identified by certified mail. The City Manager shall establish policies regarding the acceptance of applications after 30 days from the date notice is mailed. The City Manager may require a late filing fee from any delinquent applicant.

(Code 2006, § 12.2.12)

Sec. 26-149. Writs of review and suits in equity.

Subject to the curative provisions of section 26-157 and the rights of the city to reassess, as provided in section 26-159, proceedings for writs of review and suits in equity may be filed not earlier than 30 days nor later than 60 days after the filing of written objections as provided herein. A property owner who has filed written objections with the City Recorder prior to the public hearing may have the right to apply for a writ of review based upon the City Council exercising its functions erroneously or arbitrarily or exceeding its jurisdiction to the injury of some substantial right of such owner, if the facts supporting such claim have been specifically set forth in the

written objections. A property owner who has filed written objections with the City Recorder prior to the public hearing may commence a suit for equitable relief based upon a total lack of jurisdiction on the part of the city; and if notice of the improvement shall not have been sent to the owner, and if the owner did not have actual knowledge of the proposed improvement prior to the hearing, then the owner may file written objections alleging lack of jurisdiction with the City Recorder within 30 days after receiving notice or knowledge of the improvement. No provision of this section shall be construed to lengthen any period of redemption or so as to affect the running of any statute of limitation. Any proceeding on a writ of review or suit in equity shall be abated if proceedings are commenced and diligently pursued by the City Council to remedy or cure the alleged errors or defects.

(Prior Code, § 32.320; Code 2006, § 12.2.13)

Sec. 26-150. Notice of assessment.

Within ten days after the ordinance levying assessments has been passed, the City Recorder shall send by certified mail a notice of assessment to the owner of the assessed property and publish notice of such assessment twice in a newspaper of general circulation in the city, the first publication of which shall be made not later than ten days after the date of assessment ordinance. The notice of assessment shall recite the date of the assessment ordinance and shall state that upon the failure of the owner of the property assessed to make application to pay the assessment in installments within ten days from the date of the first publication of notice, or upon failure of the owner to pay the assessment in full within 30 days from the date of the assessment ordinance, then interest will commence to run on the assessment, and that the property assessed will be subject to foreclosure; and the notice shall further set forth a description of the property assessed, the name of the owner of the property and the amount of each assessment.

(Prior Code, § 32.325; Code 2006, § 12.2.14)

Sec. 26-151. Lien docket.

After passage of the assessment ordinance by the Council, the City Recorder shall enter in the docket of city liens a statement of the amounts assessed upon each particular lot, parcel of land, or portion thereof, together with a description of the improvement, the name of the owners, and the date of the assessment ordinance. Upon such entry in the lien docket, the amount so entered shall become a lien and charge upon the respective lots, parcels of land, or portions thereof which have been assessed for such improvement. All assessment liens of the city shall be superior and prior to all other liens or encumbrances on property insofar as the laws of the state permit. Interest shall be charged at a rate to be established from time to time by ordinance of the City Council, such rate approximating the rate of interest available in the market-place for municipal bonds, until paid, on all amounts not paid within 30 days from the date of the assessment ordinance; and after expiration of 30 days from the date of such assessment ordinance, the city may proceed to foreclose or enforce collection of the assessment liens in the manner provided by the general law of the state; provided, however, that the city may, at its option, enter a bid for the property being offered at a foreclosure sale, which bid shall be prior to all bids except those made by persons who would be entitled under the laws of the state to redeem such property.

(Prior Code, § 32.330; Code 2006, § 12.2.15)

Sec. 26-152. Interest rate.

The maximum rate of interest per annum charged on unpaid public improvement assessments pursuant to section 26-151 shall be 12 percent per annum.

(Prior Code, § 32.331; Code 2006, § 12.2.16)

Sec. 26-153. Assessment errors.

Claimed errors in the calculation of assessment shall be called to the attention of the City Recorder, who shall determine whether there has been an error in fact. If the City Recorder ~~shall find~~ finds that there has been an error in fact, the Recorder shall recommend to the Council an amendment to the assessment ordinance to correct such error; and upon enactment of such amendment, the City Recorder shall make the necessary correction in the docket of city liens and send a correct notice of assessment by certified mail.

(Prior Code, § 32.335; Code 2006, § 12.2.17)

Sec. 26-154. Deficit assessment.

In the event that an assessment shall be made before the total cost of the improvement is ascertained, and if it is found that the amount of the assessment is insufficient to defray the expenses of the improvement, the Council may, by motion, declare such deficit and prepare a proposed deficit assessment. Council shall set the date for hearing of objections to the deficit assessment, and direct the City Recorder to publish one notice thereof in a newspaper of general circulation in the city. After such hearing, the Council shall make a just and equitable deficit assessment by ordinance, which shall be entered in the docket of city liens as provided by this article; and notices of the deficit assessment shall be published and mailed, and the collection of the assessment shall be made in accordance with sections 26-150 and 26-151.

(Prior Code, § 32.340; Code 2006, § 12.2.18)

Sec. 26-155. Assessment credits.

If, upon the completion of the improvement project, it is found that the assessment previously levied upon any property is more than sufficient to pay the costs of such improvements, then the Council must ascertain and declare the same by ordinance; and when so declared, the excess amounts must be entered on the lien docket as a credit upon the appropriate assessment. In the event that any assessment has been paid, the person who paid the same, or the person's legal representative, shall be entitled to the repayment of such rebate credit, or the portion thereof which exceeds the amount unpaid on the original assessment.

(Prior Code, § 32.345; Code 2006, § 12.2.19)

Sec. 26-156. Improvement proceedings; abandonment and rescission.

The Council shall have full power and authority to abandon and rescind proceedings for improvements made under this article at any time prior to the final completion of such improvements; and if liens have been assessed upon any property under such procedure, they shall be canceled, and any payments made on such assessments shall be refunded to the person paying the same, the person's assigns or legal representatives.

(Prior Code, § 32.350; Code 2006, § 12.2.20)

Sec. 26-157. Foreclosure.

The city may proceed to foreclose or enforce any lien to which it shall be entitled pursuant to any method provided by law. The city shall impose a penalty in the amount of ten percent of the outstanding principal and interest of the lien to recover the costs associated with foreclosure if the account is not paid within 30 days after mailing a certified notice of delinquency to the owner.

(Code 2006, § 12.2.21)

Sec. 26-158. Assessment validity.

No improvement assessment shall be rendered invalid by reason of a failure of the Engineer's report to contain all of the information required by section 26-154, or by reason of a failure to have all of the information required to be in the improvement resolution, the assessment ordinance, the lien docket or notices required to be published and mailed, nor by any property as required by this article, or by reason of any other error, mistake, delay, omission, irregularity or other act, jurisdictional or otherwise, of any of the proceedings or steps herein specified, unless it appears that the assessment is unfair or unjust in its effect upon the person complaining; and the Council shall have the power and authority to remedy and correct all such matters by suitable action and proceedings.

(Prior Code, § 32.355; Code 2006, § 12.2.22)

Sec. 26-159. Reassessment.

Whenever any assessment, deficit, or reassessment for any improvement which has been made by the city has been or shall be set aside, annulled, declared or rendered void, or its enforcement restrained by any court of this state, or any federal court having jurisdiction thereof, or when the Council shall be in doubt as to the validity of such assessment, deficit assessment or reassessment, or any part thereof, then the Council may make a reassessment in the manner provided by the laws of the state.

(Prior Code, § 32.360; Code 2006, § 12.2.23)

Sec. 26-160. Written consent; notice not required.

Other provisions of this article notwithstanding, the provisions of section 26-141, insofar as they require publication and mailing of notice of intent to improve, shall not be required where owners of all assessable property within the proposed improvement have consented in writing to such improvement, and by such written consent have waived the requirements of notice thereof.

(Prior Code, § 32.410; Code 2006, § 12.2.24)

Sec. 26-161. Improvements in progress.

Any street, sewer or other public improvement properly commenced and in process under any of the ordinances repealed hereby shall be specifically excluded from the provisions of this article, and shall be completed under the ordinance under which they were commenced.

(Prior Code, § 32.510; Code 2006, § 12.2.25)

Sec. 26-162. Segregation of liens.

When property which is subject to a lien for local improvements is partitioned or a lot line is adjusted, the property owner may apply to the city to segregate the original liens to the new parcels of property. The property owner shall submit an application developed by the City Manager to the City Engineer. The City Engineer shall calculate new assessment figures for the partitioned properties utilizing the original assessment formula employed by Council when it levied the original assessments. No lien shall be placed against any parcel that does not constitute a valid buildable lot in accordance with the Land Development Code. No application for segregation

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shall be considered by the City Engineer if the original liens are delinquent. The application shall be accompanied by a fee in an amount equal to two percent of the assessments to be segregated not to exceed the sum of \$1,000.00. No segregation of an assessment shall be approved which impairs the security of the municipal lien. No segregation shall be approved which results in the placement of a lien whose amount is greater than twice the assessed value of the new parcels. The City Engineer shall notify the City Manager of all segregation applications which have been approved by the City Engineer. The City Manager shall immediately make any adjustments to the municipal lien docket.

(Code 2006, § 12.2.29)

Secs. 26-163—26-192. Reserved.

ARTICLE V. OFF-STREET PUBLIC PARKING FACILITIES

Sec. 26-193. Initiation of proceedings by resolution of intent.

- (a) Whenever the City Council shall deem it necessary to acquire or develop an off-street public parking facility to be paid for in whole or in part by special assessment according to the benefits, then the City Council shall, by resolution, declare the necessity for such an off-street and public parking facility and direct the City Manager to make a survey and written report for such project and file the same with the City Recorder. That resolution may be adopted upon the Council's own initiative, or upon the petition of the owners of one-half of the area of property to benefit specially from a proposed off-street motor vehicle parking facility. The benefited area shall not include any property upon which is located an existing public commercial off-street parking lot or facility operated for revenue and which is not operated for convenience of customers.
- (b) The resolution of intent shall contain a preliminary description of the land to be acquired or improved for the off-street parking district, or a preliminary description of a general area within which the land shall be acquired or improved.
- (c) The resolution of intent shall contain a preliminary description of the land proposed to be assessed for special benefits for such off-street public parking facility.
- (d) The resolution of intent shall contain a preliminary description of the type of improvement to be made on the land in question.

(Prior Code, § 31.110; Code 2006, § 12.11.1)

Sec. 26-194. Survey and written report.

Upon direction by the City Council, the City Manager shall make a survey and written report for the off-street public parking facility and file the same with the City Recorder. Unless the Council shall direct otherwise, such report shall contain, when applicable, the following matters:

- (1) A map or plat showing the general nature, location and extent of the proposed off-street parking facility and the lands to be assessed for the payment of all or any part of the cost thereof;
- (2) The plans, specifications and estimates of the work to be done;
- (3) An estimate of the probable cost of the acquisition and improvement, including any legal, administrative and engineering costs attributable thereto;

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- (4) A recommendation as to the method of assessment to be used to arrive at a fair apportionment of the whole or any portion of the costs of the improvement to the properties specially benefited;
 - (5) A legal description of the land to be acquired, together with the names of all persons claiming an interest of record in and to the land in question and individual parcels thereof and, when readily available, the names of any contract purchasers of the land and tenants and parties in possession thereof;
 - (6) The description and assessed value of each lot, parcel of land, or a portion thereof to be specifically benefited by the off-street parking facility, with the names of the persons claiming an interest therein of record and, when readily available, the names of contract purchasers thereof;
 - (7) A statement of outstanding assessments, if any, against property to be assessed for such improvements;
 - (8) An estimate of the unit cost of the improvement to the specially benefited properties by applying the recommended assessment procedure;
 - (9) The amount of city participation, if any, recommended by the City Manager;
 - (10) A proposed time table for the completion of the project;
 - (11) A proposed method of interim financing.

(Prior Code, § 31.120; Code 2006, § 12.11.2)

Sec. 26-195. Survey and written report for Council review.

After the City Manager's report shall have been filed with the City Recorder, the Council shall thereafter, by motion, give preliminary approval to the report, modify the report and give preliminary approval to it as modified, require the City Manager to supply additional or different information for such improvements, and give preliminary approval to the report as supplemented, or it may abandon the improvement.

(Prior Code, § 31.125; Code 2006, § 12.11.3)

Sec. 26-196. Notice of hearing.

After the Council shall have given preliminary approval to the City Manager's report as submitted, modified or supplemented, the Council shall, by resolution, declare its intention to proceed with the off-street parking facility improvement and provide the proposed manner and method of carrying out the improvement. The Council shall, thereupon, set a time and place for a public hearing to be held on the improvement, and shall direct the Recorder to give notice of such improvement and of such public hearing by publishing, in a newspaper published in and of general circulation in the city, a notice of its intention to establish an off-street motor vehicle parking facility. The notice shall be published once a week for two consecutive weeks, making three publications in all, and will also be posted in three public places in the city for not less than two consecutive weeks prior to the hearing. The notice shall contain the following matters:

- (1) A statement that the City Council has declared its intention to make an off-street parking facility improvement in the city and to assess the cost or portion thereof to benefited properties;
- (2) A statement that a tentatively approved report of the City Manager, setting forth the detail of the proposed improvement, is on file in the office of the City Recorder and is subject to public examination;
- (3) A statement that the City Council will hold a public hearing on the proposed off-street parking facility improvement, and a statement of the time and place at which the hearing will be held;

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- (4) A statement that at the hearing the city council will hear objections and remonstrances to the proposed improvement, and a further statement that if, prior to such hearing, there shall be presented to the Recorder written objections by more than one-half of the owners of property proposed to be assessed, based either upon percentage of area or upon the percentage of assessed valuation within the proposed assessment and benefited area, then the improvement will be abandoned for at least one year;
 - (5) A description of the property to be specially benefited by the improvement, including the names of the owners of such property as are contained in the City Manager's report, and the City Manager's estimate of the unit cost of the improvement to the property to be specially benefited, and the estimate of the total cost of the improvement to be paid for by special assessment to benefited properties;
 - (6) A statement that the matters set forth in the notice are the best available estimates only and are not necessarily exact and permanent, and that all matters in the basic plan are subject to change by the City Council at or subsequent to the hearing.

(Prior Code, § 31.130; Code 2006, § 12.11.4)

Sec. 26-197. Additional notice to owners.

The City Manager is authorized to give additional notice to the owners of property within the area of the proposed assessment by mailing copies of the notice to the owners at the last address had for them by the city. That additional notice is not mandatory, and shall not be considered as a part of the necessary service of process herein.

(Prior Code, § 31.135; Code 2006, § 12.11.5)

Sec. 26-198. Publication and posting of notice deemed sufficient.

The publication in the newspaper and the posting of the notice as provided in this article is deemed notice to the owners of all parcels of land described in the notice of the pendency of the proceedings for the establishment of the off-street motor vehicle parking facility and the proposed assessment therefor, regardless of whether or not those individuals are named in the notice. Any person who has actual notice of any proposed action or assessment hereunder, and fails to object to the proceedings, shall be deemed to have waived any absence or defect in the notice of method of service thereof.

(Prior Code, § 31.160; Code 2006, § 12.11.6)

Sec. 26-199. Hearing.

At the time and place of the public hearing on the proposed improvement, the Council shall hear written and oral objections and remonstrances to the proposed improvement and procedure. If written objections shall be received by the Council from more than one-half of the owners of property proposed to be assessed, based either upon percentage of area or upon the percentage of the assessed valuation within the proposed assessment and benefited area, then improvement shall be abandoned for at least one year. If the written objections shall represent less than the amount of property required to defeat the proposed improvement, then, on the basis of the hearing of written and oral objections, if any, the Council may, by motion, at the time of the hearing or at any time thereafter, order the improvement to be carried out in accordance with the terms of an ordinance provided therefor; or the Council may, on its own motion, abandon the improvement. The ordinance may adopt the plan set

forth in the Manager's report either in whole or in part, or it may adopt the plan in whole or in part as amended or supplemented by the Council after the hearing.

(Prior Code, § 31.140; Code 2006, § 12.11.7)

Sec. 26-200. Manner of doing work.

The Council may provide in the improvement ordinance for the acquisition of necessary property for the improvement and that the construction work may be done in whole or in part by the city, by a contract or by any other governmental agency, or by any combination thereof.

(Prior Code, § 31.145; Code 2006, § 12.11.8)

Sec. 26-201. Purchase of property; contract bids.

- (a) The Council may, at its discretion, at any time either before or during the initiation of proceedings to provide public off-street parking facilities as herein contemplated, obtain options for the purchase of specific property for such purposes or enter into binding agreements for the purchase of property for such purposes, and may obtain preliminary bids for the improvement of such property. The costs of such property may be taken into consideration in determining the assessment to benefited properties, regardless of whether or not the same was purchased or optioned prior to the initiation of the procedure. Preliminary bids shall be based upon the tentatively approved City Manager's report. If, after the ordinance to improve is passed, there has been no substantial change in the tentatively approved Manager's report, then the preliminary bids may be accepted by the city; and a contract for the improvement may be entered into with low preliminary bidder. Nothing herein contained shall be construed to prevent the Council from waiting until after the ordinance to improve in order to make its first call for bids or in order to obtain its first options or contract for the purchase and acquisition of property.
- (b) In the event that any part of the work of the improvement is to be done under contract bids, then the contract shall be let per Public Contracting Code (Section 2.7). The city shall provide for the bonding of all contractors for the faithful performance of any contract let under its authority; and the provisions thereof, in case of default, shall be enforced by an action in the name of the city.

(Prior Code, § 31.150; Code 2006, § 12.11.9)

Sec. 26-202. Cost of property acquisition and improvement; report.

Upon completion or substantial completion of the project, the City Manager shall make a report to the City Council showing the actual cost of the acquisition of properties and improvement thereof.

(Prior Code, § 31.155; Code 2006, § 12.11.10)

Sec. 26-203. Assessments.

The procedure for levying, collecting and enforcing special assessments for public improvements or other services to be charged against property specially benefited by any of such improvements or repair under the provisions of this article shall be made as provided by the Charter and ordinances of the city and by the provisions of the Oregon Bancroft Bonding Act (ORS 223.205 through 223.295) together with existing or future amendments thereto and thereof.

(Prior Code, § 31.170; Code 2006, § 12.11.11)

Sec. 26-204. Compliance with article provisions.

The provisions of this article are advisory and are not mandatory and are not meant to require any dispensable jurisdictional requirements not required by an applicable constitutional provision or the Charter of the city; and a substantial compliance with the terms of this article is sufficient compliance, regardless of the subject matter to which the requirements apply.

(Prior Code, § 31.165; Code 2006, § 12.11.12)

Secs. 26-205—26-231. Reserved.

ARTICLE VI. PARADES AND PROCESSIONS⁴

DIVISION 1. GENERALLY

Secs. 26-232—26-255. Reserved.

DIVISION 2. PARADES

Sec. 26-256. Permit—Required.

No person shall organize or participate in a parade which may disrupt or interfere with traffic without obtaining a permit. A permit shall always be required of a procession of people utilizing the public right-of-way and consisting of 15 or more persons or five or more vehicles. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

(Prior Code, § 52.610; Code 2006, § 12.12.1)

Sec. 26-257. Same—Application; issuance.

- (a) Application for parade permits shall be made to the Chief of Police at least 15 days prior to the intended date of the parade, unless the time is waived by the Chief.
- (b) Applications shall include the following information:
 - (1) The name and address of the person responsible for the proposed parade;
 - (2) The date of the proposed parade;
 - (3) The desired route, including assembling points;
 - (4) The number of persons, vehicles and animals which will be participating in the parade;
 - (5) The proposed starting and ending time;
 - (6) [A traffic control plan and traffic control contractor information.](#)

⁴State law reference(s)—Authority to regulate parades and processions, ORS 811.800 et seq. and 810.020.

~~(6)(7)~~ The application shall be signed by the person designated as Chairperson.

- (c) If the Chief of Police, upon receipt of the application, determines that the parade can be conducted without endangering public safety and without seriously inconveniencing the general public, the Chief shall approve the route and issue the permit.
- (d) If the Chief of Police determines that the parade cannot be conducted without endangering public safety or seriously inconveniencing the general public, the Chief may:
 - (1) Propose an alternate route;
 - (2) Propose an alternate date;
 - (3) Refuse to issue a parade permit.
- (e) The Chief of Police shall notify the applicant of the person's decision within five days of receipt of the application.
- (f) If the Chief of Police proposes alternatives or refuses to issue a permit, the applicant shall have the right to appeal the decision to the City Council.

(Prior Code, § 52.615; Code 2006, § 12.12.2)

Sec. 26-258. Permit denied; appeal to Council.

- (a) An applicant may appeal the decision of the Chief of Police by filing a written request of appeal with the City Recorder within five days after the Chief of Police has proposed alternatives or refused to issue a permit.
- (b) The Council shall schedule a hearing date following the filing of the written appeal with the City Recorder, and shall notify the applicant of the date and time that the applicant may appear either in person or by a representative.

(Prior Code, § 52.620; Code 2006, § 12.12.3)

Sec. 26-259. Permit revocable.

The Chief of Police may revoke a parade permit if circumstances clearly show that the parade can no longer be conducted consistent with public safety.

(Prior Code, § 52.630; Code 2006, § 12.12.4)

Sec. 26-260. Interference with parade not permitted.

- (a) No person shall unreasonably interfere with a parade or parade participant.
- (b) No person shall operate a vehicle that is not part of a parade between the vehicles or persons comprising a parade.
- (c) The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

(Prior Code, § 52.625; Code 2006, § 12.12.6)

State law reference(s)—Disrupting funeral procession, ORS 811.810.

Secs. 26-261—26-283. Reserved.

PART II - CODE OF ORDINANCES
Chapter 26 - STREETS, SIDEWALKS AND PUBLIC PLACES
ARTICLE VI. - PARADES AND PROCESSIONS
DIVISION 3. FUNERAL PROCESSION

DIVISION 3. FUNERAL PROCESSION⁵

Sec. 26-284. Permit not required.

A permit shall not be required to conduct a funeral procession.

- (1) The procession shall proceed to the place of interment by the most direct route which is both legal and practicable.
- (2) The procession shall be accompanied by adequate escort vehicles for traffic control purposes.
- (3) All motor vehicles in the procession shall be operated with their lights turned on.
- (4) No person shall unreasonably interfere with a funeral procession.
- (5) No person shall operate a vehicle that is not part of the procession between the vehicles of a funeral procession.

(Prior Code, § 52.635; Code 2006, § 12.12.5)

State law reference(s)—Funeral procession, ORS 811.800 et seq.

Secs. 26-285—26-301. Reserved.

ARTICLE VII. PARK TREES, STREET TREES AND SHRUBS⁶

Sec. 26-302. Definitions.

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

Board means the City Tree Advisory Board, established under the Parks ~~and Recreation~~ Board, section 2-125.

Park trees means trees, shrubs, bushes and all other woody vegetation in public parks, public trails and all areas owned by the city or to which the public has free access as a park.

Street trees means trees, shrubs, bushes and all other woody vegetation on land lying within the public right-of-way on all streets, alleys or other public rights-of-way within the city.

(Ord. No. 1516, § 4(12.13.1), 12-13-2012)

⁵State law reference(s)—Funeral procession, ORS 811.800 et seq.

⁶Ord. No. 1584, § 2, adopted Oct. 27, 2020, amended the title of Art. VII to read as herein set out. Former Art. VII was titled, "Park Trees and Shrubs."

Sec. 26-303. Duly authorized representative.

Unless otherwise delegated to the Board or Council by this article, the City Manager or his duly authorized representative is charged with the enforcement of this article.

(Ord. No. 1516, § 4(12.13.2), 12-13-2012)

Sec. 26-304. Duties and responsibilities of the Board.

In addition to those duties outlined in section 2-128(b), the Board shall:

~~(1) Establish a tree inventory of street trees and park trees. The inventory shall be updated periodically, not less frequently than every three years.~~

~~(2)(1)~~ When requested by the City Council, consider, investigate, make findings upon, report and recommend to the City Council any special matter or questions arising within the scope of its duties and responsibilities.

~~(3)(2)~~ Perform all other duties assigned the Board by this article.

(Ord. No. 1516, § 4(12.13.3), 12-13-2012)

Sec. 26-305. Size Classes and tree species to be planted.

The Board shall review and maintain the city list of desirable street trees, ~~in three size classes based on mature height: small (under 25 feet), medium (25 to 45 feet) and large (over 45 feet).~~ Efforts shall be made to ensure a diversity of tree species. The Board shall also maintain the list of trees ~~not~~ suitable for planting as park or street trees.

(Ord. No. 1516, § 4(12.13.4), 12-13-2012)

Sec. 26-306. Spacing.

The spacing of street trees will be in accordance with the ~~three tree species classes listed in section 26-305, and no trees may be planted closer together than the following: small trees, 15 feet; medium trees, 25 feet; large trees, 35 feet except in special plantings designed or approved by a licensed landscape architect. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22 Independence Public Works Standards. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.~~

(Ord. No. 1516, § 4(12.13.5), 12-13-2012)

Sec. 26-307. Distance from curbs, street corners, fire hydrants and street lights, and utilities.

~~(a) No street tree may be planted closer than five feet to any curb, unless planted with a root guard or other appropriate device to prevent damage by the roots to streets, curbs and sidewalks.~~

~~(b) No street tree shall be planted within 20 feet of any street corner, measured from the point of nearest intersecting curbs or curblines.~~

~~(c) No street tree shall be planted within ten feet of any fire hydrant or street light.~~

Commented [GF1]: Recommend removing this. Cost of this survey will be in the general fund and will provide little useful information for the cost.

~~(d) No street tree shall be placed under or within ten lateral feet of any overhead utility wire, underground water line, sewer line, transmission line or other utility, other than a species designated as a small tree under section 26-305.~~

~~(a) The distance of street trees from curbs and infrastructure will be in accordance with the Independence Public Works Standards.~~

~~(e) The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22. (Ord. No. 1516, § 4(12.13.6), 12-13-2012)~~

Sec. 26-308. Public tree care.

- (a) The city may plant, trim, prune, maintain and remove, trees, plants and shrubs within or extending over all public streets, public rights-of-way, parking strips and public grounds, or may require any adjacent land owner to take such actions, as may be necessary to ensure public safety or to preserve or enhance the beauty of such streets, public rights-of-way and public grounds. Failure of a property owner to comply with this section, after 30 days' notice by the ~~City Recorder~~Public Works Director or Public Works Director designee, shall be deemed a violation of this chapter.
- (b) The city may remove, cause to be removed, or require any owning or adjacent property owner to remove any tree, plant or shrub which, by reason of its size, location or condition, constitutes a threat to public health or safety, or a hazard to any sewer line, electric power line, gas line, water line or other public improvements or facilities, or is affected with any injurious fungus, disease, insect or other pest. Failure of a property owner to comply with this section, after 30 days' notice by the Public Works Director or Public Works Director designee~~City Recorder~~, shall be deemed a violation of this chapter. The removal of such trees, plants or shrubs located on private property shall be in the manner provided for the abatement of noxious vegetation as provided in section 14-131.
- (c) The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22. (Ord. No. 1516, § 4(12.13.7), 12-13-2012)

Sec. 26-309. Tree topping.

- (a) Except as provided in subsection (b) of this section, it shall be unlawful for any person to top any street tree, park tree or other tree on public property, unless prior application is made to and approved by the ~~Board~~Public Works Director. For the purposes of this section, the term "to top" a tree is defined as the severe cutting back of limbs to stubs within the tree's crown to such a degree so as to remove the normal canopy and cause unnatural disfigurement to the tree.
- (b) The section shall not apply in cases of emergency caused by storm damage or other unexpected casualty; provided, the person who directs or performs such emergency tree topping shall make a report of such tree topping promptly to the Board, including the grounds for the emergency.
- (c) The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22. (Ord. No. 1516, § 4(12.13.8), 12-13-2012)

Sec. 26-310. Tree pruning.

- (a) The owner of the property on which any street tree is situated, and the owner of any tree overhanging any street or public right-of-way shall regularly prune the branches so that the branches shall not significantly

obstruct the light from any street lamp or obstruct the view of any street intersection, and so that there shall be a clear space of ~~13-14~~ feet above the street surface or ~~nine-eight~~ feet above the curbline.

- (b) All tree pruning of street trees shall be done in conformance with the American National Standards Institute A-300 Standards for tree care operations.
- (c) The city shall have the right to prune any tree, shrub or plant on private property when it significantly obstructs the light of any street lamp or impairs the view of a public street or any traffic control sign or device. The pruning of such trees, shrubs or plants shall be in the manner provided for the abatement of noxious vegetation as provided in section 14-131.
- (d) Tree limbs that grow near high voltage electrical conductors shall be maintained clear of such conductors by the responsible electric utility in compliance with any franchise agreement. Except as otherwise provided in such franchise agreement, a utility tree trimming policy shall be subject to review and approval by the Board prior to any trimming by a utility company.
- (e) The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

(Ord. No. 1516, § 4(12.13.9), 12-13-2012)

Sec. 26-311. Removal of trees.

- (a) It shall be unlawful for any person to remove, destroy, break or injure any tree, shrub or plant in a public place, or place a sign, poster, handbill or other thing on any tree growing in a public place, or to cause or permit any wire charged with electricity to come into contact with any such tree, or to allow any gaseous, liquid or solid substance which is harmful to such trees to come into contact with their roots or leaves, with the following exceptions:
 - (1) The tree is dangerous and may be made safe only by its removal.
 - (2) The tree is dead or dying, and its condition cannot be reversed. Prior to removal, the condition of the tree must be confirmed in writing by a licensed arborist.
 - (3) The tree is diseased and presents a potential threat to other trees within the city, unless removed. Prior to removal, the condition of the tree must be confirmed in writing by a licensed arborist.
 - (4) The tree is causing damage to nearby public or private facilities which cannot be corrected through normal tree maintenance.
 - (5) Removal of the tree is required to make room for trees growing on either side, ~~in accordance with the street tree plan.~~
- (b) Subject to City Staff verifying the circumstances listed in subsection (a) of this section, the City Manager or the City Manager's designee may conditionally approve removal of the tree with a requirement to: 1) replace the tree removed with a tree recommended in the city's approved street tree list; and 2) properly install a city approved root barrier for the replacement tree.
- (c) If a tree is removed from the subject area without ~~Board-city~~ approval, the ~~Board-city~~ may cause the tree to be replaced by a suitable tree with a minimum of a ~~threetwo~~-inch caliper and assess the person responsible for the cost of the replacement, including the cost of the tree, labor and any administrative costs.
- (d) Removal of historic or landmark trees is within the jurisdiction of the City Historic Preservation Commission, per section 16-126, review of demolitions.
- (e) The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

(Ord. No. 1516, § 4(12.13.10), 12-13-2012; Ord. No. 1584, § 2, 10-27-2020)

Sec. 26-312. Removal of stumps.

- (a) All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.
- (b) The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22. (Ord. No. 1516, § 4(12.13.11), 12-13-2012)

Sec. 26-313. Review by City Council.

Any person aggrieved by a decision of the ~~Board-city~~ may appeal such decision to the City Council by filing a written notice setting forth the basis for the appeal with the City Recorder, within ten days of decision issuance. The fee for such appeal shall be established by resolution of the City Council. Action taken by the City Council on appeal is final.

(Ord. No. 1516, § 4(12.13.12), 12-13-2012)

Secs. 26-314—26-344. Reserved.

ARTICLE VIII. STREET NAMING AND ADDRESSING

Sec. 26-345. Uniform system.

Streets shall be named and structures numbered in accordance with the city's "Street Naming and Addressing Standards," adopted separately by City Council resolution.

(Ord. No. 1478, § 1(12.14.01), 9-22-2009)

Sec. 26-346. Designation of street names and numbers.

Streets shall be designated with names or numbers consistent with the adopted standards. All street names, numbers and directional prefixes shall be subject to approval by the City Manager or designee.

(Ord. No. 1478, § 1(12.14.02), 9-22-2009)

Sec. 26-347. Placing numbers.

It shall be the duty of every owner or agent in charge of any structure to have the proper number or numbers placed thereon and in accordance with the adopted standards. The offense described in this section is an Independence Municipal Code Class C violation, per section 1-22.

(Ord. No. 1478, § 1(12.14.03), 9-22-2009)

Sec. 26-348. Appeals.

- (a) The City Manager or designee's decision is final unless a written request for review is requested within ten days following the date the decision is mailed.

(Supp. No. 17)

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- (b) New road names, renaming of roads, assignment or reassignment of addresses requiring changes to existing addresses shall be considered final unless written objections are received within ten days of the mailing of the address/road name decision. All finalized designations of street names and numbers shall be on file in the City Recorder's office.

(Ord. No. 1478, § 1(12.14.04), 9-22-2009)

Sec. 26-349. Penalty.

Section 1-22, general penalty, shall apply.

(Ord. No. 1478, § 2, 9-22-2009)

Secs. 26-350—26-371. Reserved.

ARTICLE IX. CITY PARKS AND RECREATION AREAS

Sec. 26-372. Definitions.

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

Authorized liquor concessionaire means a person who has obtained a special permit from the City Council and any necessary license from the State Liquor Control Commission.

Class I fireworks means any combustible or explosive composition or substance, or any combination of such compositions or substances, or any other article which was prepared for the purpose of providing a visible or audible effect by combustion, explosion, deflagration or detonation, and includes blank cartridges or toy cannons in which explosives are used, balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles, bombs, rockets, wheels, colored fires, fountains, mines, serpents or any other article of like construction or any article containing any explosive or inflammable compound, or any tablets or other device containing any explosive substances or inflammable compound, except those devices listed as Class II fireworks.

Class II fireworks means:

- (1) Sparklers, toy pistol paper caps, toy pistols, toy canes, snakes, smoke-producing devices or other devices in which paper caps containing 0.25 grains or less of explosive compound are used, and when the rate of burning and the explosive force of the materials in such devices are not greater than an equivalent weight of FFFG black powder, and when such devices are so constructed that the hand cannot come in contact with the cap when in place for explosion, and the major explosive force is contained or dispelled within the housing or shell of the device, there is no visible flame during discharge, there is no flaming or smoldering of any of the components or parts of the device after discharge, and the device does not produce sufficient heat to readily ignite combustible materials upon which the device may be placed;
- (2) Cone fountains, cylindrical fountains, flitter sparklers, ground spinners, illuminating torches and wheels, as defined in ORS 480.127.

Commercial purposes means to sell or expose for sales any food, beverage, merchandise, article or thing, or charge an admission fee.

Park means a park, playground, swimming pool, ballfield, recreation center or any other area in the city identified as a park by executive order of the City Manager.

(Prior Code, § 45.010; Code 2006, § 12.21.1; Ord. No. 1178, § 1(part), 1988; Ord. No. 1239, § 1, 1991; Ord. No. 1512, § 1(12.21.1), 7-24-2012; Ord. No. 1607, § 1(Exh. A), 6-13-2023)

Sec. 26-373. Use of parks encouraged.

The parks are maintained for the recreation of the public and the greatest possible use is encouraged, subject only to such regulation as will preserve the parks for the purposes for which they are laid out and the enjoyment, convenience and safety of all concerned.

(Prior Code, § 45.015; Code 2006, § 12.21.2; Ord. No. 1178, § 1(part), 1988; Ord. No. 1512, § 1(12.21.2), 7-24-2012)

Sec. 26-374. Park operating policy.

- (a) Except for unusual and unforeseen emergencies, city parks shall be open to the public every day of the year during designated hours. The City Manager may establish opening and closing hours for each individual park, which hours shall be posted therein for public information.
- (b) A park, or portion thereof, may be reserved for picnics, reunions, concerts, noncommercial activities or public gatherings. Reservations shall be made through the City Manager on an approved application form, subject to the conditions listed below:
 - (1) That the proposed activity or use of the park will not unreasonably interfere with or detract from the promotion of public health, welfare, safety or recreation;
 - (2) That the proposed activity or use of the park will not unreasonably interfere with or detract from the general public enjoyment of the park;
 - (3) That the proposed activity or use is not reasonably anticipated to incite violence, crime or disorderly conduct;
 - (4) That the proposed activity will not entail unusual, extraordinary activity, burdensome expenses or police operation by the city;
 - (5) That the facility desired has not been reserved for other use at the day and hour requested in the application;
 - (6) That any applicable permit deposits and fees have been paid prior to the date of the requested usage of the park facility;
 - (7) That the applicant agrees to any other conditions reasonably imposed on an application form approved by the city council.
- (c) A park, or portion thereof, may be used for commercial purposes only after obtaining a written permit from the city. Permits shall be issued by the City Manager upon a finding that the applicant has met the conditions set forth in subsection (b) of this section, plus the following conditions:
 - (1) Provide an application fee and a deposit, which is refundable at the termination of the permit if the applicant has met all other conditions and obligations of the permit;
 - (2) For any person selling or dispensing food or beverage of any kind, submits documentation that he has obtained all health, sanitary and permit licenses from the state and county;

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- (3) Provides proof of public liability insurance in the amount of \$1,000.00 to \$300,000.00 bodily injury and \$50,000.00 property damage or a \$300,000.00 combined single limit policy (an amount not less than applicable Oregon Tort Claims limits);
 - (4) Provides a signed indemnity agreement agreeing to hold the city harmless for the person's or acts and for the acts of any employees or agents;
 - (5) Agrees to any other conditions reasonably imposed on an application form approved by the City Council.
- (d) In lieu of requiring individual applications for commercial activities, a single permit may be granted to sponsors of public events in which two or more commercial applicants will be in attendance. A permit shall be issued upon a finding that the sponsor has met the conditions set forth in subsection (b) of this section and the following conditions:
- (1) Provides an application fee and a deposit which is refundable at the termination of the permit if the sponsor has met all other conditions and obligations of the permit;
 - (2) Provides documentation of the required state and county health, sanitary and permit licenses for those commercial activities selling or dispensing food or beverages;
 - (3) Provides proof of public liability insurance in the amount of \$100,000.00 to \$300,000.00 bodily injury and \$50,000.00 property damage or a \$300,000.00 combined single limit policy (an amount not less than applicable Oregon Tort Claims limits);
 - (4) Provides a signed indemnity agreement agreeing to hold the city harmless for acts of the sponsor, its employees or agents acting in behalf of the sponsor of the public event;
 - (5) Agrees to any other conditions reasonably imposed on an application form approved by the City Council.
- (e) Duration of permits. Any permit granted in accordance with subsection (b) or (c) of this section shall be for a period not to exceed five consecutive days. No person shall be allowed to obtain more than four permits within any calendar year, unless agreed to by the City Manager.
- (f) Fees and deposits. Fees and deposits for use of city parks shall be adopted by resolution of the City Council.
- (g) The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22. (Prior Code, § 45.020; Code 2006, § 12.21.3; Ord. No. 1178, § 1(part), 1988; Ord. No. 1466, 2008; Ord. No. 1512, § 1(12.21.3), 7-24-2012)

Sec. 26-375. Activities prohibited exceptions.

- (a) *Prohibited acts.* The following activities shall be prohibited, except under specified conditions:
- (1) *Use of alcoholic beverages in parks.* It is unlawful for any person to possess or consume any alcoholic beverage in a park, except under the following conditions:
 - a. The alcoholic beverage is obtained from an authorized liquor concessionaire at a park, as defined in section 26-372;
 - b. The alcoholic beverage is packaged in an individual container;
 - c. The alcoholic beverage is consumed in an area specifically designated by the City Manager or the City Manager's designee; and
 - d. At no time will any person who is visibly intoxicated, enter or remain in any city park.

(2) *Sale, possession, use and discharge of fireworks.*

- a. It is unlawful for any person to sell, keep or offer for sale, expose for sale, possess, use, explode or have exploded any fireworks in any park, except as authorized by the State Fire Marshal.
- b. In addition to the prohibitions listed in subsection (a)(2)a of this section, it is also unlawful for any person to sell, keep or offer for sale, expose for sale, possess, use, explode or have exploded any Class II fireworks in any park during the Western Days Celebration, the dates of which shall be determined annually by the City Council. Additionally, during Western Days events, the Western Days Commission may establish their own rules of conduct to add to this list of prohibited acts.
- c. It is unlawful for any person to sell, offer for sale or expose for sale any Class II fireworks in any park at any time.

(3) *Overnight use of parks.* It is unlawful for any person to set up tents or any other temporary shelter or to use house trailers, campers, RVs or automobiles for the purpose of overnight camping in any city park without first obtaining written consent from the City Manager, or unless such camping is within the designated camping area within Riverview Park. The following additional restrictions apply to the overnight use of the Riverview Park Bicycle/Boater Campground:

- a. Camping is only allowed within the designated camping area at the north end of Riverview Park.
- b. Camping is limited to bicyclists and boaters. Camping by travelers using motor vehicles is not permitted. No overnight vehicle parking is allowed in Riverview Park.
- c. Campground use is on a first come, first served basis. No reservations will be made.
- d. Maximum occupancy of eight people per camping site.
- e. No alcohol is allowed in the campground.
- f. Riverview Park is smoke-free - smoking allowed in designated smoking areas only.
- g. Campers may stay up to two nights. This may be extended by City Hall in special circumstances.
- h. Camping fee - \$10.00 per site per night - pay at pay station.
- i. Campers are responsible for securing their bicycles and boats.
- j. Camp quiet hours are from 10:00 p.m. to 7:00 a.m.
- k. The campground will be closed during the July 4th weekend and for other community events, check the website for closures.
- l. Non-registered visitors to your campsite must exit the park by 10:00 p.m.
- m. Campers are responsible for clearing their area of all litter before exiting the campsite. Failure to do so may result in a citation being issued for offensive litter.
- n. Any violation of park policies, city ordinances, or state laws may also result in a camper being trespassed from the campground and asked to leave the park without a refund.

The restrictions set forth in this section governing the overnight use of the Riverview Park Bicycle/Boater Campground may be modified by City Manager Executive Order for the temporary use of public lands by individuals experiencing homelessness, based upon all factors that the City Manager deems relevant to comply with applicable state and federal law.

(4) *Hunting.* It is unlawful for any person to hunt, trap or pursue wildlife at any time, or to use, carry or possess any kind of trapping device. Excepted are hunters using the park facility as access for boat hunting.

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- (5) *Animals.* It is unlawful for any person to permit any domestic or other animal to run at large in a park, except as allowed within designated off-leash dog parks, subject to subsection (a)(18) of this section. Horseback riding shall be confined solely to vehicle roadways and designated bridle paths. Where permitted horses shall be thoroughly broken and properly restrained, ridden with due care and not be allowed to graze or go unattended.
 - (6) *Swimming.* No person shall swim in any areas posted as a "no swimming area." No person shall use a public dock for the purpose of ingress or egress while swimming in the Willamette River.
 - (7) *Boating.* It is unlawful for any person to navigate, direct or handle any boat in such a manner as to unjustifiably or unnecessarily annoy or frighten or endanger the occupants of any other boat or swimmer.
 - (8) *Kindling fires.* It is unlawful for any person to light, kindle or use any fire in any park except in fireplaces, stoves or receptacles provided for that purpose.
 - (9) *Vandalism.* It is unlawful for any person to break, destroy or damage any shrubs, grass, trees, plants, flowers, fences, buildings, tables, benches, seats or any other lands or property or improvements of any kind within city parks.
 - (10) *Dumping refuse or debris in parks.* It is unlawful for any person to throw, leave or deposit any bottle, broken glass, ashes, wastepaper or other rubbish, or break any glass in any park, except at such places or in such receptacles as may be designated or provided by the city.
 - (11) *Park traffic regulations.* It is unlawful for any person to drive any automobile or other vehicle as defined in the state motor vehicle code within such parks contrary to the rules and regulations set forth in the state motor vehicle code or any ordinance of the city for the operation of vehicles operating within the city limits. It is unlawful for any person to disobey any of the signs erected for the direction of traffic within such parks pursuant to this article, or any rules made pursuant to this chapter.
 - (12) *Bodily fluids.* No person shall blow, spread or place any nasal or other bodily discharge or spit, urinate or defecate on the floors, walls, partitions, furniture, fittings or any portion of a public convenience station located in any park in the city, or in any other place in such park, excepting directly into the particular fixture provided for that purpose.
 - (13) *Block plumbing fixtures.* No person shall place a bottle, can, cloth, rag or metal, wood or stone substance in the plumbing fixtures in such stations.
 - (14) *Bathing.* No person shall bathe nor use public facilities for bathing purposes at a public park, except in facilities specifically designated for bathing or showering.
 - (15) *Intimidation.* No person shall participate in intimidating behavior, such as blocking a walkway or walking more than three people abreast while not yielding to other pedestrians.
 - (16) *Limitation or prohibition of animals.* During those events with large attendance (Western Days, Mexican Fiesta, Hop Festival, etc), the Police Chief shall have the right to limit or prohibit animals and the use of bicycles, skate boards, skates or other wheeled devices in all city parks.
 - (17) *Criminal act or violation.* The Commission of any criminal act or violation of any city ordinance.
 - (18) *Dogs, leashes required.* Dogs shall be leashed at all times, except as allowed within a designated off-leash dog park. Rules for the Independence Community Off-Leash Dog Park are as follows:
 - a. Dogs shall remain under handler's/keeper's voice command and control at all times.
 - b. Dog Park users enter at their own risk.
 - c. Handlers/keepers must accept liability for any damage or injury caused by their dog.

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- d. Children under 12 years of age must be accompanied by an adult.
 - e. Handlers/keepers must remove and dispose of their dog's waste.
 - f. Dogs must wear a visible and current license.
 - g. Aggressive, dangerous and potentially dangerous dogs, the characteristics of which are defined in section 4-52, are not allowed.
 - h. Dogs are allowed off-leash in designated areas only.
 - i. Handlers/keepers shall obey all Dog Park signage.
 - j. Handler/keepers 18 years of age or older shall be responsible for no more than three dogs in the Dog Park at any one time. Handler/keepers under 18 years of age shall be responsible for no more than one dog in the Dog Park at any one time.
- (b) *Penalty.* The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22. In addition to or in lieu of penalties available under section 1-22, violators may be excluded from the Independence Community Off-Leash Dog Park for a period of up to 30 days pursuant to section 26-378.

(Prior Code, § 45.025; Code 2006, § 12.21.4; Ord. No. 1178, § 1(part), 1988; Ord. No. 1239, § 2, 1991; Ord. No. 1247, § 1, 1991; Ord. No. 1467, § 1, 2008; Ord. No. 1471, § 1, 8-26-2008; Ord. No. 1512, § 1(12.21.4), 7-24-2012; Ord. No. 1523, § 1, 8-13-2013; Ord. No. 1541, § 1(Exh. A), 7-14-2015; Ord. No. 1584, § 3, 10-27-2020; Ord. No. 1592, § 1, 9-14-2021; Ord. No. 1607, § 1(Exh. A), 6-13-2023)

Sec. 26-376. Permits subject to ordinances and regulations.

All permits issued by the city shall be subject to city ordinances. The person to whom such permits are issued shall be bound by the rules, regulations and ordinances as fully as though the same were inserted in such permits. Any person or persons to whom such permits shall be issued shall be liable for any loss, damage or injury sustained by any person whatever by reason of the negligence of the person or persons to whom such permit shall be issued. The City Manager shall have the power to revoke any permit upon a finding that a person has violated any rule, regulation or ordinance of the city.

(Prior Code, § 45.035; Code 2006, § 12.21.5; Ord. No. 1178, § 1(part), 1988; Ord. No. 1512, § 1(12.21.5), 7-24-2012)

Sec. 26-377. Permits to be exhibited.

Any person claiming to have a permit from the city shall produce and exhibit such permit upon the request of any authorized person who may desire to inspect the same.

(Prior Code, § 5.040; Code 2006, § 12.21.6; Ord. No. 1178, § 1(part), 1988; Ord. No. 1512, § 1(12.21.6), 7-24-2012)

Sec. 26-378. Exclusion from parks.

- (a) In addition to other measures provided for violation of this chapter or the laws of the State of Oregon, any police officer may issue a written order excluding from all or any part of a park any person cited to appear, arrested, or otherwise taken into custody for violating any provision of section 26-375 for a period not to exceed 90 days.

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- (b) The order shall specify the reason for the exclusion, the area from which the person is excluded, the length of the exclusion, the penalty for entering the excluded area, and contain information concerning the recipient's right to appeal the exclusion to the Independence Municipal Court. The person to whom the exclusion order is issued shall sign a written acknowledgement of receipt of the exclusion order. If that person refuses to do so, the arresting officer shall make a written record of the refusal.
 - (c) A person receiving notice may, within five days, appeal in writing to the City Manager to have the written notice rescinded or the period shortened. At any time within the 30 days a person receiving a notice may apply in writing to the City Manager for a temporary waiver from the effects of the notice for good reason. The waiver shall be in writing and shall contain the time period of the waiver, and shall be kept in the possession of the person at all times while in the park.
 - (d) If a person excluded from a park is found therein during the exclusion period, that person is subject to immediate arrest for criminal trespass in the second degree pursuant to ORS 164.245.

(Prior Code, § 45.045; Code 2006, § 12.21.7; Ord. No. 1178, § 1, 1980; Ord. No. 1247, § 2, 1991; Ord. No. 1279, § 1(part), 1993; Ord. No. 1314; Ord. No. 1607, § 1(Exh. A), 6-13-2023)

Sec. 26-379. Park exclusion appeal and variance.

Park exclusion appeals may be filed with the Independence Municipal Court in accordance with and pursuant to the same filing requirements and procedures as set forth in section 18-170, governing Drug Free Zone exclusion order appeals and variances. The municipal court judge shall determine whether the park exclusion was based upon conduct proscribed by section 26-375.

(Ord. No. 1607, § 2, 6-13-2023)

Secs. 26-380—26-399. Reserved.

ARTICLE X. ALCOHOLIC BEVERAGES⁷

Sec. 26-400. Open containers of alcoholic beverages in public places prohibited.

- (a) No person shall drink or consume any alcoholic beverages in or upon any street, sidewalk, alley, public grounds or other public place unless such place has been licensed for that purpose by the State Liquor Control Commission.
- (b) No person shall possess any open container of alcoholic beverages in or upon any street, sidewalk, alley, public grounds or other public place unless such place has been licensed for that purpose by the State Liquor Control Commission.
- (c) Definitions. The term "public place," for the purpose of this section, includes schools, places of amusement, parks, playgrounds, parking lots and premises used in connection with public passenger transportation.
- (d) The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.

(Prior Code, § 44.525; Code 2006, § 5.7.1; Ord. No. 1274, § 1, 1993)

⁷State law reference(s)—Alcoholic beverages, ORS 471.001 et seq.; authority of cities, ORS 471.045, 471.164, 471.166.

Sec. 26-401. Open container of alcoholic liquors in public park prohibited.

- (a) Unless otherwise authorized in section 26-375, no person shall have in his possession, while in any public park within the city, any bottle, can or other receptacle containing any alcoholic beverages which has been opened or the seal broken or the contents of which have been partially removed.
- (b) For the purposes of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

Public park means any area open to the public designated by a sign as a park, or commonly recognized as a park, including but not limited to Riverview Park, Pioneer Park, Pfaff Park, Mountain Fir Park, Wildfang Park, and Henry Hill Park.

- (c) The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22. (Prior Code, § 44.570; Code 2006, § 5.7.2; Ord. No. 1492, § 1(5.7.2), 8-24-2010)

Secs. 26-402—26-450. Reserved.

ARTICLE XI. ESTABLISHMENT OF ZONES OF BENEFIT AND REIMBURSEMENT FOR CERTAIN PUBLIC IMPROVEMENTS

Sec. 26-451. Purpose.

This article provides a method to reimburse a person or the city for financing the construction of park, sewer, water, surface water management, or street improvement facilities in whole or in a disproportionately large part. It is intended to be used to mitigate the cost of financing such public improvements by distributing those costs to other benefited property owners at the time those benefited property owners connect to or make use of the improvement.

(Ord. No. 1537, § 1, 11-18-2014)

Sec. 26-452. Definitions.

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

Person. An individual or any legal entity, including city.

Zone connection charge. The charge imposed pursuant to this article, designed to reimburse a person for the costs of financing park, sewer, street surface water management, or water improvement facilities. The zone connection charge is not intended to limit or replace, and is in addition to, any other existing fees or charges collected by the city.

Zone of benefit. The area benefited by the construction of park, sewer, water, surface water management or street public improvement facilities financed in whole or in part by a person without the formation of a local improvement district. A zone of benefit may be formed in conjunction with a local improvement district where a person finances a share of the cost of the improvement that is larger than the share that would result from a uniform application of the district assessment formula to property located in the district and owned by the person. A zone of benefit may include properties located outside the city.

(Ord. No. 1537, § 2, 11-18-2014)

Sec. 26-453. Initiation of proceedings.

- (a) Any person may apply to the city to form a zone of benefit where the person chooses or is required as a condition of permit approval to construct park, street, sewer, surface water management or water improvement facilities that includes additional or oversized improvements that would or could provide service to property other than property owned by the applicant.
- (b) An application to form a zone of benefit may be made no later than three months after completion and acceptance by city of the park, street, sewer, surface water management or water improvement facilities. The City Manager may waive this deadline if the applicant demonstrates that the delay was not caused by the applicant, and was created by unanticipated or unforeseen circumstances.
- (c) The application shall be accompanied by a processing fee established by resolution of the City Council sufficient to cover the administrative, notice and other city costs incurred to process the application. The application will consist of the standard form provided by the city and shall include the following:
 - (1) A description of the location, type, size and cost of the public improvement.
 - (2) A narrative explaining why the applicant believes all or part of the cost of the improvement is eligible for reimbursement pursuant to this article.
 - (3) A map showing the properties to be included in the proposed district, including the city's zoning designation; the square footage or frontage of the property or properties; and identification of the properties owned by the applicant, if any.
 - (4) The cost of the improvements to be reimbursed. If the application is filed after construction, the application shall include the actual cost of construction as evidenced by a contract, receipts, bids or other similar documents. If the application is filed prior to construction, the application shall include the estimated cost of the improvements as evidenced by bids, projections of the cost of labor and materials, or other similar evidence satisfactory to the City Manager.
 - (5) A proposed methodology for spreading the cost among the properties within the zone of benefit and, where appropriate, defining a "unit" for applying the zone connection charge to property that may, subject to City approval, be partitioned, adjusted or subdivided at a future date. The methodology should consider the factors set forth in section 26-454(a)(5) of this article pertaining to the City Engineer's report.
 - (6) The date that the city accepted the public improvements or the date that the improvements are estimated to be completed.

The City Manager may request the submittal of any additional information deemed relevant.

(Ord. No. 1537, § 3, 11-18-2014)

Sec. 26-454. Engineer's report.

- (a) Upon receipt of a zone of benefit application, as determined by the City Engineer, the City Engineer shall review the request for the establishment of a zone of benefit and prepare a report containing the City Engineer's recommendation to be submitted to the Council within 30 days after receipt of the complete application. The report shall include the following information:
 - (1) An explanation as to why the applicant is or is not qualified for reimbursement pursuant to this article;

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- (2) A description of the proposed area for the zone of benefit. The description shall indicate whether properties located outside of city boundaries should be considered for inclusion within the zone of benefit upon annexation.
 - (3) An estimate of the actual total costs of the public improvement and the portion of the cost for which the applicant should be reimbursed in accordance with this article.
 - (4) The extent to which the improvement has relieved or will relieve other property owners or developers of the need to construct some or all of the improvement and whether or not the properties within the proposed zone of benefit would be required, as a condition of approval for future development, to construct some or all of the improvement. If quantifiable, this information should reflect the amount or percent of unused capacity provided for future users.
 - (5) A methodology for spreading the cost among the properties within the zone of benefit and, where appropriate, defining a "unit" for applying the reimbursement charge to property that may, subject to city approval, be partitioned, adjusted or subdivided at a future date. The methodology should consider the cost of the improvements, prior contributions of property owners (only if for the same type of improvement at the same location), the value of the unused capacity, rate making principles employed to finance public improvements, and other relevant factors.
 - (6) A proposed reimbursement charge for the district.
- (b) The cost to be reimbursed to the applicant, if other than the city, shall be limited to the cost of construction, engineering, acquiring off-site rights-of-way, and proportionate share of the value of property dedicated to the city. Engineering shall include surveying and inspection, but shall not exceed 15 percent of eligible construction costs. If the applicant is the city, the costs to be reimbursed shall also include an administration cost and all costs associated with the acquisition of easements and rights-of-way. If the applicant is other than the city, the costs to be reimbursed for rights-of-way shall be limited to the reasonable market value of land or easement purchased from a third party to complete off-site improvements. Actual costs shall not be deemed reasonable if the city determines that such costs significantly exceed prevailing market rates for similar projects or discreet portions thereof. In such a case, the city may reduce the reimbursable cost to the prevailing market rate for similar projects, or discreet portions thereof. In addition, the following costs shall not be subject to reimbursement:
- (1) Costs for that portion of the improvement that benefits the applicant's own property.
 - (2) Costs for improvements that are not dedicated to and accepted by the city as a public improvement.
 - (3) Costs for a public improvement that is required as a condition of development approval, except in cases where the nature and degree of the public improvement is disproportionate to the impacts of the development or where the city desires an oversized or additional improvement beyond that which is roughly proportional to the impact of the development.
 - (4) Financing costs; permits or fees required for construction permits; land or easements dedicated by the applicant; costs that are eligible for system development charge credits; or any costs that cannot be clearly documented.
 - (5) Costs for relocation of electrical, telephone, cable television or natural gas utility relocation benefiting an applicant's property.
 - (6) Costs for extra work or materials required to correct deficiencies in construction to bring the improvement to city standards.
 - (7) Costs for water improvements that are the minimum size necessary to meet city standards and serve an applicant's property.

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- (8) Costs for a minor street realignment, except for the cost of right-of-way acquisition beyond the limits of the applicant's frontage along the improved street.

(Ord. No. 1537, § 4, 11-18-2014)

Sec. 26-455. Formation of zone of benefit.

- (a) Upon City Manager's receipt of a complete application for the establishment of a zone of benefit, the City Manager will set a hearing before the City Council to consider the request. Not less than ten days before the hearing, notice of the hearing shall be: (1) published in a paper of general circulation, and (2) mailed by regular mail to the applicant and to all property owners within the proposed zone of benefit as shown on the most recent assessment role in the county assessor's office. Notice shall be deemed effective on the date of mailing. Failure to receive notice by the applicant or affected property owners shall not invalidate or otherwise affect formation of the zone of benefit.
- (b) The notice shall:
 - (1) State a zone of benefit has been proposed that includes the property of the person receiving notice;
 - (2) Briefly describe the zone of benefit, the park, street, water, sewer, or surface water management improvement facilities to be reimbursed; the amount (or estimated amount) of the zone connection charge; and the circumstances under which the charge must be paid; and
 - (3) Set the time, date, and location of the hearing.

(Ord. No. 1537, § 5, 11-18-2014)

Sec. 26-456. Hearing.

At the hearing, the City Council shall consider:

- (1) The proper boundaries to the zone of benefit, taking particular consideration of all properties contiguous to or otherwise located so as to directly benefit from the improvement; and
- (2) The reasonable actual or estimate of costs for which applicant may be reimbursed pursuant to section 26-454(b) of this article. The applicant shall not be entitled to reimbursement for any costs in excess of reasonable actual costs. If the zone of benefit is formed before actual costs are known, the zone connection charge may be based on estimated costs. If estimated costs are used, the methodology or the certificate of payment or both shall provide for a recalculation of the cost not later than three months after completion and acceptance of the improvement by the city.

(Ord. No. 1537, § 6, 11-18-2014)

Sec. 26-457. Resolution.

- (a) If the Council determines that formation of a zone of benefit is appropriate, the Council shall establish that zone by resolution. The resolution shall:
 - (1) Establish the area of the zone of benefit, the zone formation date, and the date when the right of reimbursement ends.
 - (2) Set forth the actual or estimated cost of the park, street, water, surface water management, or sewer improvement facilities, and the portion of the costs for which the applicant should be reimbursed.

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- (3) Establish the zone connection charge methodology and show an example of the methodology used to calculate the zone connection charge.
 - (4) Establish the zone connection charge for the zone.
 - (5) Direct that a certificate of payment and right of reimbursement be issued to the zone applicant.
- (b) Upon the resolution's adoption, it shall be sent to the applicant and all affected property owners, and recorded in the office of the county recorder to provide notice to potential purchasers of property within the zone. The recording shall not create a lien. Failure to make such a recording shall not affect the legality of the formation or the obligation to pay the zone connection charge.

(Ord. No. 1537, § 7, 11-18-2014)

Sec. 26-458. Challenge to formation.

No legal action intended to challenge or contest the formation of the zone of benefit, the methodology, or the amount of the zone connection charge shall be filed after 60 days following formation of the zone of benefit. Challenge shall be only as provided in ORS 34.011 to 34.100, and not otherwise.

(Ord. No. 1537, § 8, 11-18-2014)

Sec. 26-459. Agreement and right to reimbursement.

The right to reimbursement is a contractual right between the city and the applicant. When the applicant is other than the city, the resolution shall instruct the city to enter into an agreement with the applicant pertaining to the zone of benefit improvements. If the agreement is entered into prior to construction, the agreement shall be contingent upon the improvements being accepted by the city. The agreement shall contain at least the following provisions:

- (1) Identification of the person receiving the right of reimbursement;
- (2) The improvement(s) shall meet all applicable city standards;
- (3) That the total amount of potential reimbursement shall not exceed the actual cost of the public improvement(s);
- (4) The reimbursable amount;
- (5) The zone connection charge;
- (6) The area of the zone of benefit;
- (7) The date of zone formation;
- (8) The date upon which the right to reimbursement ends;
- (9) Applicant shall guarantee the improvement(s) for a period of no less than 12 months from the date of installation;
- (10) Applicant shall defend, indemnify, and hold the city harmless from any and all losses, claims, damage, judgments or other costs or expenses arising as a result of or related to the city establishment of the zone of benefit, including the city's costs or expenses related to collection of the reimbursement charges pursuant to the resolution;
- (11) Applicant may not assign or otherwise transfer its right to reimbursement without city's prior written consent, which will not unreasonably be withheld.

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- (12) The city shall make reasonable efforts to properly account for and collect the zone connection charge from an affected property, including the city's costs or expenses related to collection of the zone connection charge.
 - (13) Any other provisions the Council deems necessary and property to carry out the provisions of the zone of benefit ordinance, resolution and agreement.

(Ord. No. 1537, § 9, 11-18-2014)

Sec. 26-460. Payment.

- (a) An owner of property within any zone of benefit shall pay the city, in addition to any other applicable fees and charges, the zone connection charge established by city resolution when any of the following events occur:
 - (1) The property owner receives final approval for a development permit to develop, subdivide, or partition property located within the zone.
 - (2) A use of property is expanded to create additional "units," as that term is defined in the resolution for the particular zone or changed to increase usage. The term "unit" is not limited to residential uses.
 - (3) A property owner connects to the sewer line or water line or makes use of the surface water management or street improvement. As used in this subsection, "makes use of the surface water management improvement" means installation of an improvement that substantially increases impervious surface on the property at the time of or following construction of the surface water management improvement for which the zone of benefit has been formed. As used in this subsection, "makes use of the street improvement" means installation of an improvement or changing the use of the property at the time of or following construction of the street improvement that increases traffic or congestion on the road improvement for which the zone of benefit was formed.
- (b) The zone connection charge is due and payable as a precondition of receiving the first city permit applicable to the development activity undertaken, or, in the case of a connection to a line, as a precondition of receiving the connection permit.
- (c) A person who becomes obligated for payment of the zone connection charge as a result of connection to a line constructed through the local improvement district process and who owns property within the district upon which an assessment is levied may be assessed for the zone connection charge in addition to the assessment levied through the local improvement district.
- (d) Zone connection charges shall be collected by city and paid to the zone applicant until the earlier of ten years from the zone formation date or the reimbursement amount specified in the appropriate zone of benefit resolution is recouped. If the city paid the initial cost of construction or a portion thereof, the city will deposit that amount in the fund corresponding to the improvement made. The city may apply collected zone connection charges to any outstanding assessments owed to the city by the applicant.

(Ord. No. 1537, § 10, 11-18-2014)

Chapter 32 TRAFFIC AND VEHICLES¹

ARTICLE I. IN GENERAL

Sec. 32-1. Short title.

This chapter may be cited as the "Independence Uniform Traffic Ordinance."

(Prior Code, § 52.110; Code 2006, § 10.4.1)

Sec. 32-2. Vehicle code adopted; exceptions.

The 2012 Vehicle Code of the State of Oregon, as printed and published by the Legislative Counsel Committee, including selective laws relating to infraction procedures, administrative procedures for state agencies, and Motor Vehicle and Aircraft Fuel Taxes, including the penalties therefor, is hereby adopted in its entirety, save and except any sections thereof pertaining to felonies.

(Prior Code, § 52.120; Code 2006, § 10.4.2; Ord. No. 1280, § 2, 1993; Ord. No. 97-1353; Ord. No. 1376, § 1, 1999; Ord. No. 1399, § 1, 2001; Ord. No. 1427, § 1, 2003)

Sec. 32-3. Definitions.

In addition to those definitions contained in the ORS chapters set out in section 32-2, 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:

Bus stop means a space on the edge of a roadway designated by sign for use by buses loading or unloading passengers.

Holiday means New Year's Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and any other day proclaimed by the council to be a holiday.

Loading zone means a space on the edge of a roadway designated by sign for the purpose of loading or unloading passengers or materials during specified hours of specified days.

Taxicab stand means a space on the edge of a roadway designated by sign for use by taxicabs.

Traffic control device means a device to direct, guide, warn or regulate vehicular or pedestrian traffic and parking, including but not limited to a sign, signaling mechanism, barricade, button or street or curb marking installed by the city or other authority.

Traffic lane means that area of the roadway used for the movement of a single lane of traffic.

Vehicle includes bicycles.

(Prior Code, § 52.130; Code 2006, § 10.4.3)

¹State law reference(s)—Oregon Vehicle Code, ORS 801.100 et seq.; authority of local governments, ORS 801.040.

State law reference(s)—Definitions, ORS 801.100—801.610.

Secs. 32-4—32-24. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

Sec. 32-25. City Council—Powers and authority.

- (a) Subject to state laws, the City Council shall exercise all municipal traffic authority for the city except those powers specifically and expressly delegated under this title or by another ordinance.
- (b) The powers of the Council shall include but not be limited to:
 - (1) Designation of through streets;
 - (2) Designation of one-way streets;
 - (3) Designation of truck routes;
 - (4) Designation of city-owned or -leased lots, or property on which public parking will be permitted;
 - (5) Designation of parking meter zones;
 - (6) Restriction of the use of certain streets by any class or kind of vehicle to protect the streets from damage;
 - (7) Authorization of greater maximum weights or lengths for vehicles using city streets than specified by state law;
 - (8) Initiation of proceedings to change speed zones;
 - (9) Revision of speed limits in parks;
- (c) The City Council shall, by resolution:
 - (1) Install traffic control devices to implement this title and other traffic control measures. Such installations shall be based on the standards contained in the Oregon Manual on Uniform Traffic Control Devices for Streets and Highways;
 - (2) Establish, maintain, remove or alter the following classes of traffic controls:
 - a. Crosswalks, safety zones and traffic lanes;
 - b. Intersection channelization and areas where drivers of vehicles shall not make right, left or U-turns, and the time when the prohibition applies;
 - c. Parking areas and time limitations, including the form of permissible parking (e.g., parallel or diagonal);
 - (3) Issue oversize or overweight vehicle permits;
 - (4) Establish, maintain, remove or alter traffic control signals;
 - (5) Establish, maintain, remove or alter loading zones and stops for all vehicles;
 - (6) Designate certain streets as bridle paths and prohibit horses and animals on other streets;
 - (7) Temporarily block or close streets.

(Prior Code, § 52.210; Code 2006, § 10.8.1)

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State law reference(s)—Authority to prohibit or restrict the use of streets in the city, ORS 810.020, 810.030; authority to designate truck routes, ORS 810.040; authority to determine weight limits on city streets, ORS 810.050; authority to adopt other restrictions for city streets, ORS 810.060—810.160.

Sec. 32-26. Same—Delegation of powers.

The City Council may delegate powers set forth in section 32-25 at their discretion. Duties exercised thereafter by the City Manager or designee shall be reported to the Council at the regular meeting immediately following their implementation, and the Council may reject or modify such action. This reporting requirement may be dispensed with when the Council so orders.

(Prior Code, § 52.215; Code 2006, § 10.8.2)

Sec. 32-27. Same—Regulations standards.

The regulations of the City Council and City Manager or designee shall be based upon:

- (1) Traffic engineering principles and traffic investigations;
- (2) Standards, limitations and rules promulgated by the Oregon Department of Transportation and the Independence Public Works Standards;
- (3) Other recognized traffic control standards.

(Prior Code, § 52.225; Code 2006, § 10.8.3)

Sec. 32-28. Temporary control devices allowed when.

Under conditions constituting a danger to the public, the City Manager or designee may install temporary control devices deemed by the City Engineer to be necessary.

(Prior Code, § 52.220; Code 2006, § 10.8.4)

State law reference(s)—Authority to establish temporary speed limits, ORS 810.180.

Sec. 32-29. Police and fire officers; authority.

- (a) It is the duty of the Chief of Police or designee(s) to enforce the provisions of this chapter.
- (b) In the event of a fire or other public emergency, officers of the Police and Fire Department may direct traffic as conditions require, notwithstanding the provisions of this chapter.

(Prior Code, § 52.230; Code 2006, § 10.8.5; Ord. No. 1543, § 1(Exh. A), 1-12-2016)

State law reference(s)—Obedience to police officer, ORS 811.535.

Sec. 32-30. Obedience to and alteration of control devices.

- (a) No person shall disobey the instruction of a traffic officer or a traffic control device.
- (b) No unauthorized person shall install, move, remove, obstruct, alter the position of, deface or tamper with a traffic control device.
- (c) No person shall install or place a sign, ribbons, balloons, or other personal items on any traffic control device.

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- (d) The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.
(Prior Code, § 52.235; Code 2006, § 10.8.6)

State law reference(s)—Obedience to traffic patrol member, ORS 811.015, 811.017; obedience to police officer, ORS 811.535.

Sec. 32-31. Existence of device evidence of lawful installation.

The existence of a traffic control device shall be prima facie evidence that the device was lawfully authorized and installed.

(Prior Code, § 52.240; Code 2006, § 10.8.7)

Sec. 32-32. Vehicle impoundment.

- (a) Whenever a vehicle is placed in a manner or location that constitutes an obstruction to traffic or a hazard to public safety, a police officer shall order the owner or operator of the vehicle to remove it. If the vehicle is unattended, the officer may cause the vehicle to be towed and stored at the owner's expense. The owner shall be liable for the costs of towing and storing, notwithstanding that the vehicle was parked by another, or that the vehicle was initially parked in a safe manner but subsequently became an obstruction or hazard.
- (b) The disposition of a vehicle towed and stored under authority of this section shall be in accordance with the provisions of article VII of this chapter, relating to impoundment and disposition of vehicles abandoned on the city streets.
- (c) The impoundment of a vehicle will not preclude the issuance of a citation for violation of a provision of this title.
- (d) Stolen vehicles may be towed from public or private property and stored at the expense of the vehicle owner.
- (e) Whenever a police officer observes a vehicle parked in violation of a provision of this title, if the vehicle has four or more unpaid parking violations outstanding against it, the officer may, in addition to issuing a citation, cause the vehicle to be impounded. A vehicle so impounded shall not be released until all outstanding fines and charges have been paid. Vehicles impounded under authority of this subsection shall be disposed of in the same manner as provided in subsection (b) of this section.

(Prior Code, § 52.910; Code 2006, § 10.8.8)

State law reference(s)—Towing and storage of unlawfully parked vehicles in parking facilities, requirements, ORS 98.812; impoundment of vehicles, ORS 809.010 et seq.

Secs. 32-33—32-52. Reserved.

ARTICLE III. TOWING²

²State law reference(s)—Towing vehicles, ORS 819.100 et seq.

Sec. 32-53. Authority to tow.

Any police officer may, without prior notice, order a vehicle towed when the police officer reasonably believes that the vehicle's operator is driving uninsured.

(Code 2006, § 10.10.1; Ord. No. 1301)

Sec. 32-54. Post tow notice.

After a vehicle has been towed pursuant to this article, notice shall be provided to the registered owners and any other persons who reasonably appears to have an interest in the vehicle. Notice shall be personally served or mailed by the Police Department to such persons within 48 hours after the tow of the vehicle, Saturdays, Sundays and holidays excluded, and shall state:

- (1) The vehicle has been towed;
- (2) The location of the vehicle and that it may be reclaimed only upon evidence that the claimant is the owner or person entitled to possession;
- (3) The address and telephone number of the person or facility that may be contacted for information and the charges that must be paid before the vehicle will be released and the procedures for obtaining the release of the vehicle;
- (4) The vehicle and its contents are subject to a lien for the towing and storage charges and will be subject to sale by the towing and storage facility where the vehicle is located;
- (5) A hearing may be requested to contest the validity of the tow;
- (6) The time in which a hearing must be requested and the method of requesting a hearing;
- (7) That an application for a hearing must be filed with and received by the Municipal Judge not later than five business days after the vehicle was towed.

(Code 2006, § 10.10.2; Ord. No. 1301)

Sec. 32-55. Exemption from notice.

No notice need be provided pursuant to this article when:

- (1) A vehicle does not display license plates or other identifying markings by which the registration or ownership of the vehicle can be determined; or
- (2) When the identity of the owner of the vehicle is not available from the appropriate motor vehicle licensing and registration authority and when the identity and address of the owner and/or other persons with an interest in the vehicle cannot otherwise be reasonably determined.

(Code 2006, § 10.10.3; Ord. No. 1301)

Sec. 32-56. Request for a hearing to contest the validity of tow.

Written notice of the opportunity to contest the validity of the tow of a vehicle, together with a statement of the time in which a hearing may be requested and the method of requesting a hearing, must be given to each person who seeks to redeem a vehicle which has been towed pursuant to this article. This information will be made available by the tow company or other facility holding said vehicle.

(Code 2006, § 10.10.4; Ord. No. 1301)

Sec. 32-57. Request for a hearing after tow.

After a vehicle has been towed pursuant to this article the owners and any other persons who reasonably appears to have an interest in the vehicle are, upon timely application filed with the Municipal Judge, entitled to request a hearing to contest the validity of the tow or intended tow of the vehicle.

(Code 2006, § 10.10.5; Ord. No. 1301)

Sec. 32-58. Deadline for hearing.

Application for a hearing must be filed with and received by the Municipal Judge not more than five business from the mailing date of the post tow notice.

(Code 2006, § 10.10.6; Ord. No. 1301)

Sec. 32-59. Judicial waiver.

The Municipal Judge may, for good cause shown, grant a request for hearing filed after the foregoing time requirements have expired.

(Code 2006, § 10.10.7; Ord. No. 1301)

Sec. 32-60. Basis for hearing request.

The request for hearing must be in writing and shall state the grounds upon which the person requesting the hearing believes the tow or proposed tow invalid, or, for any other reason, unjustified. The request for hearing will also contain such other information, relating to the purposes of this article, as the Municipal Judge may require

(Code 2006, § 10.10.8; Ord. No. 1301)

Sec. 32-61. Judicial hearing.

The Municipal Judge shall set and conduct an administrative hearing on the matter within 72 hours, excluding holidays and weekends, from receipt of a proper request filed pursuant to this article. In all cases where a vehicle has been towed and not yet released, however, the Municipal Judge shall set and conduct the hearing on the next regularly scheduled municipal court day, whichever is sooner.

(Code 2006, § 10.10.9; Ord. No. 1301)

Sec. 32-62. Burden of proof.

At the hearing, the city shall have the burden of proving by a preponderance of the evidence that there were reasonable grounds to believe that the vehicle was being operated in violation of ORS 806.010. The police officer who ordered the vehicle impounded may submit an affidavit to the Municipal Judge in lieu of making a personal appearance at the hearing.

(Code 2006, § 10.10.10; Ord. No. 1301)

Sec. 32-63. Rulemaking authority.

The Municipal Judge shall make any necessary rules and regulations regarding the conduct of such hearings, consistent with this article.

(Code 2006, § 10.10.11; Ord. No. 1301)

Sec. 32-64. Order.

If the Municipal Judge finds that the towing and impoundment of the vehicle was proper, the Municipal Judge shall enter an order supporting the removal and shall find that the owner or person entitled to possession of the vehicle is liable for the usual and customary towing and storage costs. The Municipal Judge may also find the owner or person entitled to possession of the vehicle liable for the costs of the hearing.

(Code 2006, § 10.10.12; Ord. No. 1301)

Sec. 32-65. Order of improper tow.

If the Municipal Judge finds that the towing and impoundment of the vehicle was improper, the Municipal Judge shall order the vehicle released to the person entitled to possession and shall enter a finding that the owner or person entitled to possession of the vehicle is not liable for any towing and storage charges resulting from the impoundment. If there is a lien on the vehicle for towing and storage charges, the Municipal Judge shall order it paid by the city.

(Code 2006, § 10.10.13; Ord. No. 1301)

Sec. 32-66. Final decision.

The decision of the Municipal Judge is final, is not appealable to the City Council, and is only appealable to Circuit Court by Writ of Review. Any person who has a hearing scheduled and fails to appear at such hearing without good cause shown, as determined by the Municipal Judge, shall not be entitled to have such hearing rescheduled. The owner and any other person who have an interest in the vehicle are only entitled to one hearing for each tow of that vehicle.

(Code 2006, § 10.10.14; Ord. No. 1301)

Sec. 32-67. Storage charges.

Any private company that tows and stores any vehicle pursuant to this article shall have a lien on the vehicle, in accordance with ORS 87.152, for the just and reasonable charges for the tow and storage services performed. The company may retain possession of that vehicle, consistent with this article and state law until towing and storage charges have been paid.

(Code 2006, § 10.10.15; Ord. No. 1301)

Sec. 32-68. Release of vehicle.

A vehicle towed pursuant to this article shall be immediately released to the person entitled to lawful possession upon proof of compliance.

(Code 2006, § 10.10.16; Ord. No. 1301)

Secs. 32-69—32-94. Reserved.

ARTICLE IV. TRAFFIC RULES³

Sec. 32-95. Rules of the road.

- (a) In addition to state law, the following shall apply to the operation of vehicles upon the streets of the city:
- (1) The operator of a vehicle shall not back the vehicle unless the movement can be made with reasonable safety and without interfering with other traffic, and shall yield the right-of-way to moving traffic and pedestrians.
 - (2) The operator of a vehicle in the traffic lane shall have the right-of-way over an operator of a vehicle departing from a parking space.
 - (3) No operator of a vehicle shall pull away from a curb or other parking area without giving an appropriate turn signal when other traffic may be affected.
 - (4) Where a stop sign is erected at or near the entrance to an intersection, the operator of a vehicle approaching shall bring the vehicle to a stop before crossing a stop line or crosswalk; or, if none, then before entering the intersection. Stopping at a point which does not yield an unobstructed view of traffic on the intersecting street shall not constitute compliance with the requirements of this section.
 - (5) Notwithstanding an indication by a traffic control device to proceed:
 - a. No operator of a vehicle shall enter an intersection unless there is sufficient space on the opposite side of the intersection to accommodate the person's vehicle without obstructing the passage of other vehicles;
 - b. No operator shall enter a marked crosswalk, whether or not at an intersection, unless there is sufficient space on the opposite side of the crosswalk to accommodate the person's vehicle without obstructing the passage of pedestrians.
- (b) The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.
(Prior Code, § 52.310; Code 2006, § 10.12.1)

State law reference(s)—Failure to stop when emerging from alley, etc., ORS 811.505.

Sec. 32-96. Crossing private property.

No operator of a vehicle shall proceed from one street to an intersecting street by crossing private property. This provision shall not apply to the operator of a vehicle who stops on the property for the purpose of procuring or providing goods or services. The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.

(Prior Code, § 52.315; Code 2006, § 10.12.2)

³State law reference(s)—Rules of the road, ORS 811.005.

Sec. 32-97. Emerging from vehicle.

No person shall open the door of a motor vehicle into a traffic lane without first ascertaining that it can be done in safety. The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.

(Prior Code, § 52.320; Code 2006, § 10.12.3)

State law reference(s)—Emerging from vehicle, ORS 811.490.

Sec. 32-98. Unlawful riding.

- (a) No operator shall permit a passenger and no passenger shall ride on a vehicle upon a street except on a portion of the vehicle designed or intended for the use of passengers. This provision shall not apply to an employee engaged in the necessary discharge of a duty, or to a person riding within a truck body in space intended for merchandise.
- (b) No person shall board or alight from a vehicle while the vehicle is in motion upon a street.
- (c) The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.

(Prior Code, § 52.325; Code 2006, § 10.12.4)

State law reference(s)—Carrying minor on external areas of vehicle, ORS 811.205.

Sec. 32-99. Clinging to vehicles.

No person riding upon a bicycle, motorcycle, coaster, roller skates, sled or other device shall attach the device or the person to a moving vehicle upon a street. Nor shall the operator of a vehicle upon a street knowingly allow a person riding on any of the vehicles or devices listed in this section to attach themselves, the vehicle or the device to the person's vehicle. The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.

(Prior Code, § 52.330; Code 2006, § 10.12.5)

State law reference(s)—Clinging to vehicles prohibited, ORS 814.480.

Sec. 32-100. Sleds on streets.

No person shall use the streets for traveling on skis, toboggans, sleds or similar devices, except where authorized. The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.

(Prior Code, § 52.335; Code 2006, § 10.12.6)

Sec. 32-101. Damaging sidewalks and curbs.

- (a) The operator of a motor vehicle shall not drive upon a sidewalk or roadside planting strip except to cross at a permanent or temporary driveway.
- (b) No unauthorized person shall place dirt, wood or other material in the gutter or space next to the curb of a street with the intention of using it as a driveway.

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- (c) No person shall remove a portion of a curb or move a motor vehicle or device moved by a motor vehicle upon a curb or sidewalk without first obtaining a city right of way permit and posting bond, if required. A person who causes damage shall be held responsible for the cost of repair.
 - (d) The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22. (Prior Code, § 52.340; Code 2006, § 10.12.7)

Sec. 32-102. Obstructing streets.

- (a) No unauthorized person shall obstruct the free movement of vehicles or pedestrians using the streets.
- (b) No person shall park or stand a vehicle in such a manner or location that it constitutes a hazard to public safety or an obstruction on the street.
- (c) The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22. (Prior Code, § 52.345; Code 2006, § 10.12.8)

Sec. 32-103. Removing glass and debris.

A party to a vehicle accident or a person causing broken glass or other debris to be upon a street shall remove the glass and other debris from the street. The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22. (Prior Code, § 52.350; Code 2006, § 10.12.9)

Sec. 32-104. Speed limits in public parks.

No person shall drive a vehicle upon any street in any public park of this city at a speed exceeding 15 miles per hour, unless signs erected indicate otherwise. The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22. (Prior Code, § 52.355; Code 2006, § 10.12.10)

Sec. 32-105. Vehicles discharging flames.

No person shall operate any motor vehicle on any street or public property of the city in such a manner or with the vehicle in such condition that fire or flames are discharged from the vehicle. (Prior Code, § 52.360; Code 2006, § 10.12.11)

Sec. 32-106. Illegal cancellation of traffic citations.

No person shall cancel any traffic citation in any manner except when approved by the municipal judge. (Prior Code, § 52.365; Code 2006, § 10.12.12; Ord. No. 1485, § 1(10.12.12), 12-8-2009)

Sec. 32-107. Vehicle weight restrictions.

No person shall operate upon any street or bridge in this city a vehicle the weight of which exceeds the maximum for such street or bridge, as such maximum may be posted by sign erected by the city. In addition to any

penalty provided in this Code for the violation of this section, any person convicted of a violation of this section may be required by the court to pay the cost of repairing any street or bridge damaged by reason of such violation, which cost may exceed the cost of repairing the damage proximately caused by the violation.

(Prior Code, § 52.370; Code 2006, § 10.12.13)

Secs. 32-108—32-129. Reserved.

ARTICLE V. PEDESTRIANS⁴

Sec. 32-130. Use of sidewalks.

A pedestrian shall not use a roadway for travel when a sidewalk is available. The offense described in this section is an Independence Municipal Code Class C violation, per section 1-22.

(Prior Code, § 52.560; Code 2006, § 10.16.1)

Sec. 32-131. Pedestrians must use crosswalks.

No pedestrian shall cross a street other than within a crosswalk in blocks with marked crosswalks. The offense described in this section is an Independence Municipal Code Class C violation, per section 1-22.

(Prior Code, § 52.565; Code 2006, § 10.16.2)

Sec. 32-132. Crossing the street.

A pedestrian shall cross a street at a right angle, unless crossing within a crosswalk. The offense described in this section is an Independence Municipal Code Class C violation, per section 1-22.

(Prior Code, § 52.570; Code 2006, § 10.16.3)

State law reference(s)—Authority to require crossing at crosswalk, ORS 810.080(1)(c).

Sec. 32-133. Obedience to traffic lights and bridge and railroad signals.

- (a) At an intersection where a pedestrian control light is in operation, no pedestrian shall start to cross the street except when the walk signal is illuminated. Where only vehicle control lights are in operation, no pedestrian shall start to cross the street except when the green light is illuminated.
- (b) No pedestrian shall enter or remain upon a railroad grade crossing, an openable bridge, or the approach thereto beyond a crossing gate or barrier, after an operation signal indication has been given.
- (c) No pedestrian shall pass through, around, over or under a crossing gate or barrier at a railroad grade crossing or bridge while the gate or barrier is closed or is being opened or closed.
- (d) The offense described in this section is an Independence Municipal Code Class C violation, per section 1-22.

⁴State law reference(s)—Pedestrians, ORS 814.010 et seq.

(Prior Code, § 52.575; Code 2006, § 10.16.4)

Secs. 32-134—32-150. Reserved.

ARTICLE VI. STOPPING, STANDING AND PARKING⁵

Sec. 32-151. Exemption.

The provisions of this article regulating the parking or standing of vehicles shall not apply to an emergency service vehicle (police, fire, ambulance), or any vehicle of the city, county or state or public utility while necessarily in use for construction or repair work on a street, or a vehicle owned by the United States while in use for the collection, transportation or delivery of mail.

(Prior Code, § 52.460; Code 2006, § 10.20.1; Ord. No. 1439, § 1, 2004)

State law reference(s)—Exemptions, ORS 811.560.

Sec. 32-152. Parking—Method.

(a) *Parking on public streets.*

- (1) No person shall stand or park a vehicle in a street other than parallel with the edge of the roadway, headed in the direction of lawful traffic movement and with the curbside wheels of the vehicle within 12 inches of the edge of the curb, except where the street is marked or signed for angle parking; provided, however, if a vehicle is totally within the markings of a parallel parking area, it shall not be deemed in violation of this subsection, notwithstanding it is more than 12 inches from the curb.
- (2) Where parking space markings are placed on a street, no person shall stand or park a vehicle other than in the indicated direction and, unless the size or shape of the vehicle makes compliance impossible, within a single marked space.
- (3) The operator who first begins maneuvering the person's motor vehicle into a vacant parking space on a street shall have priority to park in that space, and no vehicle operator shall attempt to deprive the first operator of the first's priority or block the person's access.
- (4) Whenever the operator of a vehicle discovers that the person's vehicle is parked close to a building to which the fire department has been summoned, the operator shall immediately remove the vehicle from the area, unless otherwise directed by police or fire officers.

(b) *Parking in city-owned or city-operated parking lots.* No person shall stand or park a vehicle overnight in a city-owned or city-operated parking lot. This requirement shall not apply to city-owned vehicles, or to vehicles of individuals that have received prior approval from the City Manager or designee.

(Prior Code, § 52.410; Code 2006, § 10.20.2; Ord. No. 1574, § 1, 12-10-2019)

⁵State law reference(s)—Stopping, standing, parking, ORS 811.550 et seq.

Sec. 32-153. Same—Time limits.

The City Council may, by resolution establish maximum limits to the number of consecutive units of time during which a vehicle may be parked upon the city streets within areas designated by such resolution. Signs shall be posted in the areas so designated declaring the maximum so established. Except as otherwise set by Council resolution, no person shall park any vehicle upon any street for a continuous period of 72 hours or more.

(Prior Code, § 52.416; Code 2006, § 10.20.3; Ord. No. 1607, § 1(Exh. A), 6-13-2023)

Sec. 32-154. Same—Extension of time.

Where maximum parking time limits are designated by sign, movement of a vehicle within a block shall not extend the time limits for parking.

(Prior Code, § 52.455; Code 2006, § 10.20.4)

Sec. 32-155. Lights on parked vehicle.

No lights need be displayed upon a vehicle that is parked in accordance with this article upon a street where there is sufficient light to reveal a person or object at a distance of at least 500 feet from the vehicle.

(Prior Code, § 52.450; Code 2006, § 10.20.5)

Sec. 32-156. Prohibited parking, stopping, or standing.

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

Beauty strip means as used in this subsection, the area between the curb and the sidewalk.

Stopping/standing means in reference to vehicles, the terms "stopping" and "standing" will be used interchangeably for the purposes of this subsection.

Vehicle includes any motor vehicle, boat, motor truck, truck tractor, trailer, pull trailer, utility trailer, camp trailer, camper shell, canopy, bus, motor home, house trailer, vacation trailer, manufactured home, tractor, implement of husbandry, article of machinery, or any parts thereof. In addition, the term "vehicle" also includes any motor vehicle as those terms are defined in the Oregon Vehicle Code.

- (b) In addition to the state vehicle code vehicle laws prohibiting parking, no person shall stop or park a vehicle except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control signal, in any of the following places:
- (1) Alongside any curb which is painted yellow or which has signs indicating that parking, or stopping, is prohibited.
 - (2) For an amount of time which exceeds the amount of time permitted as indicated by signs restricting the duration of parking or standing.
 - (3) So that it is not completely within the lines indicating the limits of angle parking spaces where angle parking is allowed.
 - (4) In a manner that causes the vehicle to occupy more than one designated parking stall in areas where stalls are indicated by markings on the street or curb, or by markings in a city-owned or city-operated parking lot.

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- (5) Upon any street, alley, public way or city-owned or city-operated parking lot for:
 - a. The display of the vehicle or equipment for sale or trade;
 - b. The servicing or repair of the vehicle or equipment unless servicing or repairs are necessitated by an emergency situation;
 - c. The storage of the vehicle or equipment;
 - d. With reference to subsection (b)(5)c of this section, a vehicle shall be conclusively determined to have been parked for storage if it is permitted to remain in substantially the same position for a continuous period of 72 hours or more.
 - (6) Upon, or over a sidewalk, or upon that portion of a driveway which intersects a sidewalk.
 - (7) Upon a bridge, viaduct, or other elevated structure used as a street or within a street tunnel, unless authorized.
 - (8) In an alley other than for the expeditious loading or unloading of persons or materials, but in no case for a period in excess of 30 consecutive minutes.
 - (9) Any connected combination of vehicles and trailer on a street at any time within the city if the combination thereof, is longer than 23 feet or wider than seven feet, except:
 - a. When engaged in the delivery or receipt of cargo and when no facilities for the receipt or discharge of the cargo exists except from the street or parking strip; or
 - b. When the person in charge is immediately engaged in the maintenance or repair of public or private property adjacent to a street or parking strip and no off-street parking is reasonably available.

No person in charge of any combination of vehicles and trailers engaged in the delivery or receipt of cargo under the circumstances authorized in subsection (a) of this section shall park in such a manner that any part thereof shall project or be more than 15 feet into the street when measured at right angles from the face of the curb nearest to the vehicle or combination thereof.
 - (10) In a properly marked bike lane, including such time as the vehicle is being used for the temporary loading or unloading of passengers or materials.
 - (11) Upon private property without the consent of the owners or persons in charge of such private property.
 - (12) Within an intersection.
 - (13) On a crosswalk.
 - (14) Within 25 feet from the intersection of curblines or, if none, within 15 feet of the intersection of property lines at an intersection.
 - (15) Within ten feet from the intersection of an alley.
 - (16) Within 30 feet of an official flashing beacon, stop sign, or traffic control sign located at the side of the roadway.
 - (17) Within 15 feet of the driveway entrance to a fire station.
 - (18) Within ten feet of a fire hydrant.
 - (19) In front of a private driveway or public or private alley.
 - (20) On a curb.

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- (21) Alongside or opposite a street or highway excavation or obstruction when such stopping, standing or parking would obstruct traffic.
 - (22) On the roadway side of a vehicle stopped or parked at the edge or beside the curb of a highway or street (commonly known as double parking).
 - (23) At a place where official traffic signs have been erected prohibiting, limiting or restricting standing and parking.
 - (24) Within a 25-foot radius of the intersection of the centerline of a highway and a railway crossing.
 - (25) On a beauty strip.
 - (26) Overnight in a city-owned or city-operated parking lot, except for the vehicles detailed in section 32-152(b).

(Prior Code, § 52.415; Code 2006, § 10.20.6; Ord. No. 1206, § 1, 1989; Ord. No. 1330, § 1; Ord. No. 1439, § 2, 2004; Ord. No. 1494, § 1(10.20.6), 11-9-2010; Ord. No. 1574, § 2, 12-10-2019)

State law reference(s)—Stopping, standing and parking in certain areas, ORS 811.550.

Sec. 32-157. Use of loading zone.

No person shall stand or park a vehicle for any purpose or length of time, other than for the expeditious loading or unloading of persons or materials, in a place designated as a loading zone when the hours applicable to that loading zone are in effect. In no case, when the hours applicable to the loading zone are in effect, shall the stop for loading and unloading of materials exceed the time limits posted. If no time limits are posted, then the use of the zone shall not exceed 30 minutes.

(Prior Code, § 52.425; Code 2006, § 10.20.7)

Sec. 32-158. Unattended vehicle—Prohibited.

No operator or person in charge of a motor vehicle shall park it or allow it to be parked on a street, on other property open to public travel or on a new or used car lot without first stopping the engine, locking the ignition, removing the ignition key from the vehicle and effectively setting the brake. If the vehicle is attended, the ignition key need not be removed. The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.

(Prior Code, § 52.430; Code 2006, § 10.20.8)

State law reference(s)—Securing vehicle, ORS 811.585.

Sec. 32-159. Same—Action by police officer.

Whenever a police officer shall find a motor vehicle parked unattended with the ignition key in the vehicle in violation of section 32-159, the police officer is authorized to remove the key from vehicle and deliver the key to the person in charge of the police station.

(Prior Code, § 52.435; Code 2006, § 10.20.9)

Sec. 32-160. Buses and taxicabs—Standing or parking.

The operator of a bus or taxicab shall not stand or park the vehicle upon a street in a business district at a place other than a bus stop or taxicab stand, respectively; except, that this provision shall not prevent the operator of a taxicab from temporarily stopping the person's vehicle outside a traffic lane while loading or unloading passengers.

(Prior Code, § 52.440; Code 2006, § 10.20.10)

Sec. 32-161. Same—Restricted use of stands.

No person shall stand or park a vehicle other than a taxicab in a taxicab stand, or a bus in a bus stop; except that the operator of a passenger vehicle may temporarily stop for the purpose of and while actually engaged in loading or unloading passengers, when stopping does not interfere with a bus or taxicab waiting to enter or about to enter the restricted space.

(Prior Code, § 52.445; Code 2006, § 10.20.11)

Sec. 32-162. Illegally parked vehicle—Citation.

- (a) Whenever a vehicle without an operator is found parked in violation of a restriction imposed by this section, the officer finding the vehicle shall take its license number and any other information displayed on the vehicle which may identify its owner, and shall conspicuously affix to the vehicle a traffic citation for the operator to answer to the charge against the operator or pay the penalty imposed within five days during the hours and at a place specified in the citation.
- (b) Violations of sections 32-152 through 32-161 shall be punishable by a fine in an amount set by resolution of the City Council. Such fine shall be recoverable from the owner or person in possession of the vehicle, or from said vehicle in the nature of an in rem proceeding. The Municipal Court of the city shall have authority to levy such penalty against such vehicle in an in rem proceeding.

(Prior Code, § 52.810; Code 2006, § 10.20.12; Ord. No. 1482, § 1(10.20.12), 11-10-2009)

State law reference(s)—Citations, ORS 810.410; parking violations, ORS 810.425.

Sec. 32-163. Same—Citation; failure to comply.

If the operator does not respond to a traffic citation affixed to a vehicle within a period of 30 days, the municipal court may send to the owner of the vehicle to which the traffic citation was affixed a letter informing the owner of the violation and warning the owner that, in the event that the penalty is not paid or the citation is not answered for by the assigned court date, a warrant for the person's arrest will be issued.

(Prior Code, § 52.815; Code 2006, § 10.20.13; Ord. No. 1574, § 3, 12-10-2019)

Sec. 32-164. Owner responsibility.

The owner of a vehicle placed in violation of a parking restriction shall be responsible for the offense, except where the use of the vehicle was secured by the operator without the owner's consent.

(Prior Code, § 52.820; Code 2006, § 10.20.14)

Sec. 32-165. Registered owner presumption.

In a prosecution of a vehicle owner, charging a violation of a restriction on parking, proof that the vehicle at the time of the violation was registered to the defendant shall constitute a presumption that the defendant was then the owner in fact.

(Prior Code, § 52.825; Code 2006, § 10.20.15)

Sec. 32-166. Unattended minors in vehicles.

It is unlawful for any person having the care and custody of a minor under six years of age to leave such minor unattended in a locked vehicle, or to leave such minor unattended in an unlocked vehicle for more than 15 minutes. A minor is unattended within the meaning of this section if the oldest person with the minor is under the age of ten years. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

(Code 2006, § 10.20.20; Ord. No. 1409, § 1, 2002)

Secs. 32-167—32-185. Reserved.

ARTICLE VII. ABANDONED VEHICLES⁶

Sec. 32-186. Definitions.

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

Abandoned means, in addition to its ordinary meaning any vehicle which is either unlicensed, inoperative, junked, partially or completely dismantled, or used for storage purposes.

Building means a permanent, four-sided, roofed structure built or used for the shelter or enclosure of persons, animals, chattels, or property of any kind.

Chief of police includes any authorized law enforcement officer of the city.

Costs means the expense of removing, storing and selling an impounded vehicle.

Owner means any individual, firm, corporation or unincorporated association with a claim, either individually or jointly, of ownership or any interest, legal or equitable, in a vehicle.

Vehicle means every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, or any portion of such vehicle or device, except devices used exclusively upon stationary rails or tracks. The term "vehicle" includes wheeled devices which do not require licensing by the state.

(Code 2006, § 10.28.1; Ord. No. 1327)

⁶State law reference(s)—Abandoned vehicles, ORS 819.100 et seq.; towing vehicles abandoned on private property, ORS 98.830—98.840.

Sec. 32-187. Application of article.

This article shall apply to all abandoned vehicles now in the possession of the city as well as to abandoned vehicles that are hereafter impounded.

(Prior Code, § 50.140; Code 2006, § 10.28.2)

Sec. 32-188. Vehicles affected.

- (a) It is unlawful to park, store or leave or permit the parking, storing or leaving of any vehicle of any kind for a period of time in excess of 72 hours on any public property or in excess of seven days on any private property, which is in an abandoned condition, whether attended or not unless the same is completely enclosed within a building. Lawfully authorized and operated automobile wrecking yards are exempt from the requirements of this section. The offense described in this subsection is an Independence Municipal Code Class A violation, per section 1-22.
- (b) Exempt from the provisions of this section are unlicensed vehicles which do not otherwise meet the definition of an abandoned vehicle and which are parked on a concrete, asphalt or gravel driveway or pad on private property. In no case, however, shall there be more than one unlicensed vehicle per household at any one time on private property within the city. The offense described in this subsection is an Independence Municipal Code Class A violation, per section 1-22.

(Prior Code, § 43.110; Code 2006, § 10.28.3; Ord. No. 1154, § 1, 1986; Ord. No. 1259, § 1, 1992; Ord. No. 1327)

State law reference(s)—Stopping, standing, parking, ORS 811.550 et seq.

Sec. 32-189. Abandoned vehicles for commercial use.

When used in connection with a business enterprise properly operated in the appropriate business zone pursuant to the zoning laws of Independence, it is unlawful to park, store or leave or permit the parking, storing or leaving of an abandoned vehicle of any kind on such private property for a period of time in excess of 15 days, unless the same is completely enclosed within a building. Lawfully authorized and operated automobile wrecking yards located in an industrial zone are exempt from the requirements of this section. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

(Code 2006, § 10.28.4; Ord. No. 1327)

Sec. 32-190. Vehicle service on public streets.

It is unlawful to disassemble, construct, reconstruct, repair and/or service vehicles of any kind in or upon any street, road, alley or other public thoroughfare in the city except for emergency service, provided, however, that such emergency service shall not extend over a period of four hours, and the same does not interfere with or impede the flow of traffic. The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.

(Code 2006, § 10.28.5; Ord. No. 1327)

Sec. 32-191. Nuisance; duty to remove.

Any vehicle parked, stored, left or permitted to be parked, stored or left in violation of this article shall constitute a nuisance detrimental to the health, safety and welfare of the inhabitants of the city. It is the duty of

the owner of the property, and it shall also be the duty of the registered owner of the vehicle or the person in charge of said vehicle, either to remove the same from the city or to have the same housed completely enclosed within a building.

(Code 2006, § 10.28.6; Ord. No. 1327)

Sec. 32-192. Notice of nuisance—Public property.

It is the duty of the Police Department, whenever a vehicle is found abandoned upon the streets, alleys, or other public way in the same position for a period of 72 hours to:

- (1) Make a routine investigation to discover the owner and request compliance and to provide notice of removal; or
- (2) If the owner cannot be identified or contacted, to place a notice of removal upon the windshield, or some other part of the vehicle easily seen by the passing public;
- (3) The contents of the notice under this section shall comply with the requirements under section 32-201.

(Code 2006, § 10.28.7)

Sec. 32-193. Same—Private property.

- (a) It is the duty of the Police Department, whenever a vehicle is found abandoned upon private property for a period of seven days to:
 - (1) Make a routine investigation to discover the vehicle or property owner and request compliance and to provide notice of removal; or
 - (2) If the vehicle or property owner cannot be identified or contacted, to place a notice of removal upon the windshield, or some other part of the vehicle easily seen by the passing public or to send notice of removal to the property owner by certified mail.
- (b) The contents of the notice under this section shall comply with the requirements under section 32-201.

(Code 2006, § 10.28.8)

Sec. 32-194. Impoundment.

- (a) An abandoned vehicle which remains in the same position for a period of 72 hours on public property or seven days on private property, after an owner has been requested to remove it or after a notice to remove has been posted upon the vehicle, and no person has appeared to show good cause why the vehicle should not be moved, shall constitute a nuisance.
- (b) It is the duty of the Police Department to remove, store and dispose of, under the provisions of this article, any vehicle constituting a nuisance.
- (c) After impoundment, the Chief of Police shall cause the vehicle to be appraised.

(Prior Code, § 50.130; Code 2006, § 10.28.9)

Sec. 32-195. Immediate custody and removal of vehicle constituting hazard.

- (a) The city may immediately take custody of a vehicle that is disabled, abandoned, parked or left standing unattended on a road or highway right-of-way and that is in such a location as to constitute a hazard or obstruction to motor vehicle traffic using the road or highway.
- (b) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
Hazard or obstruction.
 - (1) Includes, but is not necessarily limited to:
 - a. Any vehicle that is parked so that any part of the vehicle extends within the paved portion of the travel lane.
 - b. Any vehicle that is parked so that any part of the vehicle extends within the traffic lane or bicycle lane.
 - (2) Does not include parking in a designated parking area along any street or, except as described in this definition, parking temporarily on the shoulder of the highway as indicated by a short passage of time and by the operation of the hazard lights of the vehicle, the raised hood of the vehicle, or advance warning with emergency flares or emergency signs.
- (c) After taking a vehicle into custody under this section the Chief of Police is required to give the notice described under this Code and, if requested, provide a hearing.
- (d) The authority in this section to remove and take vehicles into custody is in addition to any authority to remove and take vehicles into custody under this Code.
- (e) Subject to state law, vehicles and the contents of vehicles removed and taken into custody under this section are subject to a lien as provided under ORS 819.160.
- (f) Vehicles removed under this section shall be appraised within a reasonable time by a person authorized to perform such appraisals under ORS 819.230.
- (g) Vehicles removed and taken into custody under this section are subject to sale or disposition under this Code if the vehicles are not reclaimed or returned to the owner or person entitled thereto.

(Code 2006, § 10.28.10)

State law reference(s)—Removal of vehicles constituting hazard, ORS 819.120.

Sec. 32-196. Hearing to contest validity of removal and custody.

A person provided notice under this article or any other person who reasonably appears to have an interest in the vehicle may request a hearing under this section to contest the validity of the removal and custody under this article or proposed removal and custody of a vehicle under this article by submitting a request for hearing with the Police Chief not more than five days from the mailing date of the notice. The five-day period in this section does not include holidays, Saturdays or Sundays. Except as otherwise provided under state law a hearing under this section shall comply with all of the following:

- (1) If a request for hearing is received before the vehicle is taken into custody and removed, the vehicle shall not be removed unless the vehicle constitutes a hazard.
- (2) A request for hearing shall be in writing and shall state grounds upon which the person requesting the hearing believes that the custody and removal of the vehicle is not justified.

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- (3) Upon receipt of a request for a hearing under this section, the city shall set a time for the hearing within 72 hours of the receipt of the request and shall provide notice of the hearing to the person requesting the hearing and to the owners of the vehicle and any lessors or security interest holders shown in the records of the Department of Transportation, if not the same as the person requesting the hearing. The 72-hour period in this subsection does not include holidays, Saturdays or Sundays.

(Code 2006, § 10.28.11)

Sec. 32-197. Determination on removal and custody.

- (a) If the hearings officer finds, after hearing and by substantial evidence on the record that the custody and removal of a vehicle was:
- (1) Invalid, the hearings officer shall order the immediate release of the vehicle to the owner or person with right of possession. If the vehicle is released under this subsection, the person to whom the vehicle is released is not liable for any towing or storage charges. If the person has already paid the towing and storage charges on the vehicle, the city shall reimburse the person for the charges. New storage costs on the vehicle will not start to accrue until 24 hours after the time the vehicle is officially released to the person under this subsection.
 - (2) Valid, the hearings officer shall order the vehicle to be held in custody until the costs of the hearing and all towing and storage costs are paid by the party claiming the vehicle. If the vehicle has not yet been removed, the hearings officer shall order its removal.
- (b) A person who fails to appear at a hearing under this section is not entitled to another hearing unless the person provides reasons satisfactory to the hearings officer for the person's failure to appear.
- (c) The hearings officer is only required to provide one hearing under this section for each time the city takes a vehicle into custody and removes the vehicle or proposes to do so.
- (d) A hearing may be used to determine the reasonableness of the charge for towing and storage of the vehicle. Towing and storage charges set by law, ordinance or rule or that comply with law, ordinance or rule are reasonable for purposes of this subsection.
- (e) The hearings officer shall provide a written statement of the results of a hearing held under this section to the person requesting the hearing.
- (f) Hearings held under this section may be informal in nature, but the presentation of evidence in a hearing shall be consistent with the presentation of evidence required for contested cases under ORS 183.450.
- (g) The hearings officer at a hearing under this section may be the City Manager or the City Manager's designee, but shall not have participated in any determination or investigation related to taking into custody and removing the vehicle that is the subject of the hearing.
- (h) The determination of a hearings officer at a hearing under this section is final and is not subject to appeal.

(Code 2006, § 10.28.12)

Sec. 32-198. Inventory of unclaimed vehicles.

The Chief of Police shall, from time to time, transmit to the City Manager an inventory of all unclaimed motor vehicles subject to sale as provided in sections 32-199 and 32-200. After this transmittal, such vehicles shall come into the custody and control of the City Manager.

(Prior Code, § 51.150; Code 2006, § 10.28.13)

Sec. 32-199. Disposition of motor vehicles valued at greater than \$1,000.00.

Any motor vehicle appraised at a value greater than \$1,000.00, by a person who holds a certificate issued under ORS 819.480 and not redeemed for a period of 60 days after the date of mailing notice pursuant to section 2-437, or the taking of the vehicle into the custody of the city, whichever is later, may be disposed of by the City Manager in accordance with section 2-435(6) and (8).

(Prior Code, § 51.165; Code 2006, § 10.28.14)

State law reference(s)—Vehicles of low appraisal, ORS 819.280.

Sec. 32-200. Disposition of motor vehicle appraised at \$1,000.00 or less.

Any motor vehicle appraised at a value of \$1,000.00 or less by a person who holds a certificate issued under ORS 819.480, will be released to the tow company removing the vehicle. That tow company will be required to comply with ORS in regards to release of the vehicle to its owner or the transferring of title to a new owner.

(Code 2006, § 10.28.15)

State law reference(s)—Vehicles of low appraisal, ORS 819.280.

Sec. 32-201. Notice prior to removal; methods; contents.

If the city proposes to take custody of a vehicle under this article, the city shall provide notice and shall provide an explanation of procedures available for obtaining a hearing under sections 2-438 and 2-439. Except as otherwise provided under state law, notice required under this section shall comply with all of the following:

- (1) Notice shall be given by affixing a notice to the vehicle with the required information. The notice shall be affixed to the vehicle at least 24 hours before taking the vehicle into custody. The 24-hour period under this subsection includes holidays, Saturdays and Sundays.
- (2) Notice shall state all of the following:
 - a. That the vehicle will be subject to being taken into custody and removed by the city if the vehicle is not removed before the time set by the city.
 - b. The statute, ordinance or rule violated by the vehicle and under which the vehicle will be removed.
 - c. The place where the vehicle will be held in custody or the telephone number and address of the city that will provide the information.
 - d. That the vehicle, if taken into custody and removed by the city, will be subject to towing and storage charges and that a lien will attach to the vehicle and its contents.
 - e. That the vehicle will be sold to satisfy the costs of towing and storage if the charges are not paid.
 - f. That the owner, possessor or person having an interest in the vehicle is entitled to a hearing, before the vehicle is impounded, to contest the proposed custody and removal if a hearing is timely requested.
 - g. That the owner, possessor or person having an interest in the vehicle may also challenge the reasonableness of any towing and storage charges at the hearing.
 - h. The time within which a hearing must be requested and the method for requesting a hearing.

(Code 2006, § 10.28.16)

Sec. 32-202. Notice after removal; method; contents.

- (a) If the city takes custody of a vehicle, the city shall provide, by certified mail within 48 hours of the removal, written notice with an explanation of procedures available for obtaining a hearing under this article to the owners of the vehicle and any lessors or security interest holders as shown in the records of the Department of Transportation. The notice shall state that the vehicle has been taken into custody and shall give the location of the vehicle and describe procedures for the release of the vehicle and for obtaining a hearing. The 48-hour period under this subsection does not include holidays, Saturdays or Sundays.
- (b) Any notice given under this section after a vehicle is taken into custody and removed shall state all of the following:
 - (1) That the vehicle has been taken into custody and removed by the city and the statute, ordinance or rule under which the vehicle has been taken into custody and removed.
 - (2) The location of the vehicle or the telephone number and address of the Police Department.
 - (3) That the vehicle is subject to towing and storage charges, the amount of charges that have accrued to the date of the notice and the daily storage charges.
 - (4) That the vehicle and its contents are subject to a lien for payment of the towing and storage charges and that the vehicle and its contents will be sold to cover the charges if the charges are not paid by a date specified by the city.
 - (5) That the owner, possessor or person having an interest in the vehicle and its contents is entitled to a prompt hearing to contest the validity of taking the vehicle into custody and removing it and to contest the reasonableness of the charges for towing and storage if a hearing is timely requested.
 - (6) The time within which a hearing must be requested and the method for requesting a hearing.
 - (7) That the vehicle and its contents may be immediately reclaimed by presentation to the Chief of Police of satisfactory proof of ownership or right to possession and either payment of the towing and storage charges or the deposit of cash security or a bond equal to the charges with the city.

(Code 2006, § 10.28.17)

Sec. 32-203. Procedure for vehicles that have no identification markings.

If there is no vehicle identification number on a vehicle and there are no registration plates and no other markings through which the Department of Transportation could identify the owner of the vehicle, then the city is not required to provide such notice and the vehicle may be removed and disposed of as though notice and an opportunity for a hearing had been given.

(Code 2006, § 10.28.18)

Sec. 32-204. Inventory.

All impounded vehicles shall be inventoried by the Chief of Police or designee as soon as reasonably possible after the impoundment. The person conducting the inventory shall make a written record of the condition of the vehicle and of any personal property located therein, including all self-contained items. Locked containers shall be inventoried as a singular item and shall not be forced open unless special circumstances exist which justify the opening of the container under the policy reasons set forth herein. The glove box, the trunk, and all other closed

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compartments of the vehicle shall be inspected, provided they are unlocked or a key is available to unlock said compartments. Objects found within the vehicle shall be scrutinized only to the extent necessary to identify them. Once the inventory is completed, the vehicle shall be secured in a safe place.

(Code 2006, § 10.28.19; Ord. No. 1315; Ord. No. 1543, § 2(Exh. B), 1-12-2016)

Secs. 32-205—32-220. Reserved.

ARTICLE VIII. SKATEBOARDS, ROLLER BLADES, SCOOTERS, AND BICYCLES

DIVISION 1. GENERALLY

Secs. 32-221—32-240. Reserved.

DIVISION 2. BICYCLES

Sec. 32-241. Application.

- (a) No parent of any minor child, and no guardian of any minor ward, shall authorize or knowingly permit any such minor child or ward to violate any of the provisions of this division.
- (b) Provisions of this chapter relating to bicycles shall apply whenever a bicycle is operated upon any street or public path set aside for the exclusive use of bicycles, subject to those exceptions stated herein.
- (c) The offense described in this section is an Independence Municipal Code Class C violation, per section 1-22.

(Prior Code, § 52.510; Code 2006, § 10.36.1)

Sec. 32-242. Registration required.

No person who resides within the city shall ride or propel a bicycle on any street or public property unless such bicycle has been registered with the Chief of Police. The Chief of Police shall register a bicycle, providing the applicant submits satisfactory proof of ownership of the bicycle and evidences reasonable knowledge of safety rules. Fees for registering bicycles shall be set by council resolution. The offense described in this section is an Independence Municipal Code Class D violation, per section 1-22.

(Prior Code, § 52.515; Code 2006, § 10.36.2)

Sec. 32-243. Inspection of bicycle required.

The Chief of Police shall inspect each bicycle before registering, and shall refuse to register any bicycle which the Chief determines is in unsafe mechanical condition.

(Prior Code, § 52.520; Code 2006, § 10.36.3)

Sec. 32-244. Transfer of ownership.

Upon the sale or other transfer of a registered bicycle, the registered owner may, upon proper application and without payment of a fee, have the registration assigned to the purchaser or to another bicycle owned by the applicant.

(Prior Code, § 52.525; Code 2006, § 10.36.4)

Sec. 32-245. Bicycle dealers.

Every person engaged in the business of buying secondhand bicycles shall maintain a record of every bicycle purchased, giving the name and address of the person from whom purchased, a description of such bicycle by name or make, the frame number thereof and the registration number, if any, found thereon.

(Prior Code, § 52.530; Code 2006, § 10.36.5)

Sec. 32-246. Rental agencies.

A rental agency shall not rent or offer any bicycle or rent unless the bicycle is registered and such bicycle is equipped with all equipment required by this division.

(Prior Code, § 52.535; Code 2006, § 10.36.6)

Sec. 32-247. Bicycle operating rules.

- (a) In addition to observing all other applicable provisions of this division and state law, a rider of a bicycle upon a street shall:
- (1) Not ride upon a sidewalk within the area specifically designated by resolution of the City Council;
 - (2) On a two-way street, ride to the extreme right, except when preparing for a left turn. On a one-way street, ride to the extreme curbside of the traffic lane and with the direction of travel designated for that lane. If the curb lane is designated for left-turn or right-turn only, and the operator is not intending to turn, the bicyclist shall operate in the through lane;
 - (3) Not operate a bicycle in a careless or reckless manner which endangers or would be likely to endanger himself, another or any property. Racing or trick riding shall be included in this offense;
 - (4) Not leave a bicycle, except in a bicycle rack. If no rack is provided, the cyclist shall leave the bicycle so as not to obstruct any roadway, sidewalk, driveway or building entrance. Nor shall the cyclist leave the bicycle in violation of the provisions relating to the parking of motor vehicles;
 - (5) Any person riding a bicycle upon a sidewalk shall yield the right-of-way to any pedestrian, and shall give audible signal before overtaking and passing such pedestrian.
- (b) The offense described in this section is an Independence Municipal Code Class D violation, per section 1-22.
- (Prior Code, § 52.540; Code 2006, § 10.36.7)

Sec. 32-248. Impoundment.

- (a) It is unlawful to leave a bicycle on public or private property without the consent of the person in charge or the owner thereof.

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- (b) A bicycle left on public property for a period in excess of 24 hours may be impounded by the Police Department.
 - (c) In addition to any citation issued, a bicycle parked in violation of this division may be immediately impounded by the Police Department.
 - (d) If a bicycle impounded under this division is licensed, or other means of determining its ownership exist, the police shall make reasonable efforts to notify the owner. An impounding fee of \$1.00 shall be charged to the owner. No impounding fee shall be charged to the owner of a stolen bicycle which has been impounded.
 - (e) A bicycle impounded under this chapter which remains unclaimed shall be disposed of in accordance with the city's procedures for disposal of abandoned or lost personal property.
 - (f) The offense described in this section is an Independence Municipal Code Class D violation, per section 1-22. (Prior Code, § 52.545; Code 2006, § 10.36.8)

Secs. 32-249—32-264. Reserved.

DIVISION 3. SKATEBOARDS, ROLLERBLADES, NON-MOTORIZED SCOOTERS AND BICYCLES IN BUSINESS DISTRICTS AND CITY PARKING LOTS⁷

Sec. 32-265. Definitions.

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

Business district means all the area inside the boundaries as illustrated on the attached map.

(Code 2006, § 10.37.1; Ord. No. 1413, § 1, 10-22-2002; Ord. No. 1448, 6-28-2005; Ord. No. 1452, 12-13-2005)

Editor's note(s)—See map at end of this division.

Sec. 32-266. Operation of skateboards, roller skates, rollerblades, non-motorized scooters and bicycles prohibited.

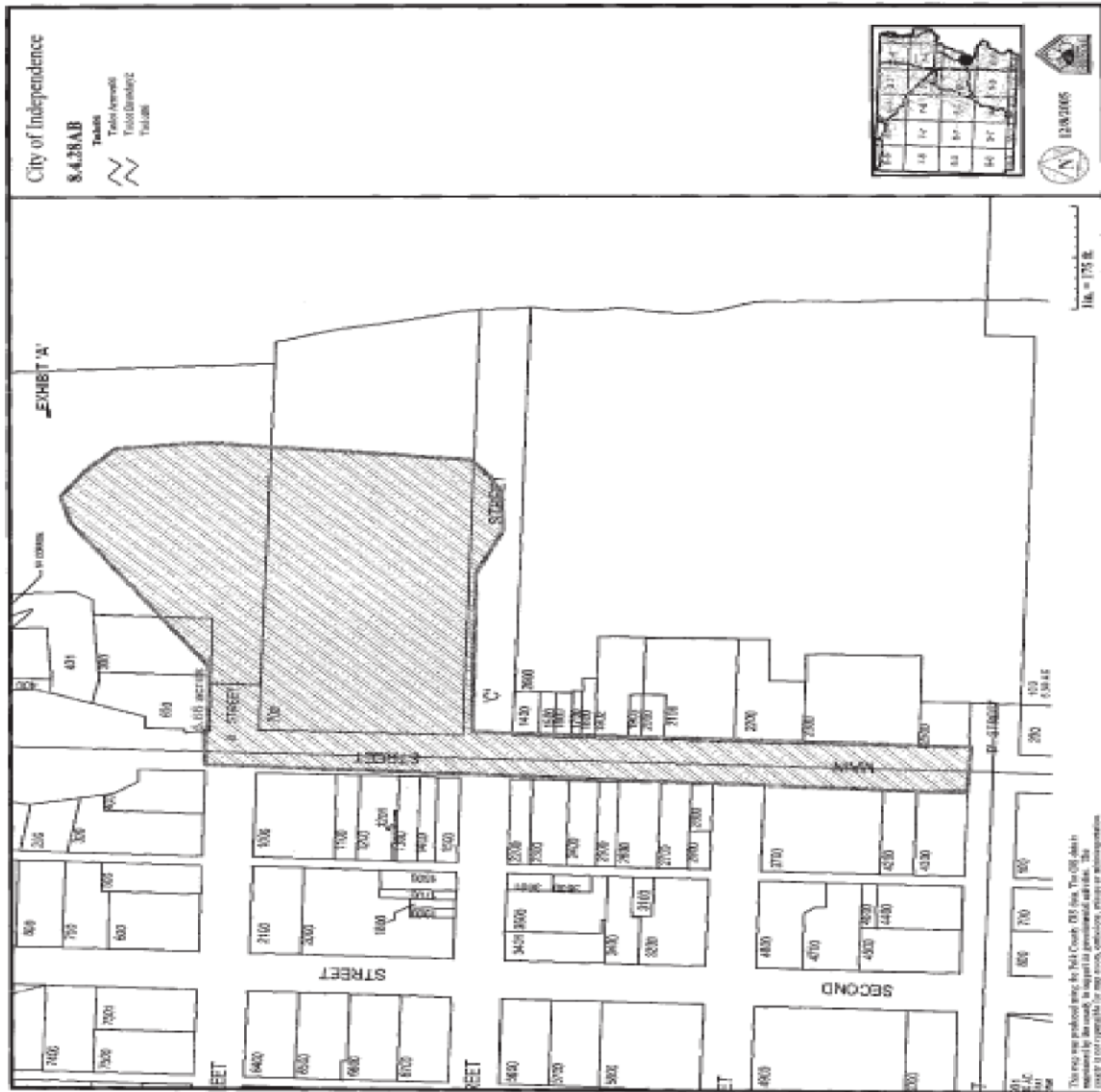
- (a) No person shall ride or operate a skateboard, roller skates or non-motorized scooter upon any sidewalk, alley, street or place open to the public within the downtown business district of the city as defined in section 32-265.
- (b) No person shall ride or operate a bicycle upon any sidewalk within the business district of the city as defined in section 32-265.
- (c) The offense described in this section is an Independence Municipal Code Class D violation, per section 1-22. (Code 2006, § 10.37.2; Ord. No. 1413, § 1, 10-22-2002)

⁷State law reference(s)—Nonmotorized vehicles, ORS 814.600.

Sec. 32-267. Penalties.

Violation of any provision of this division is punishable by a fine of up to \$75.00.

(Code 2006, § 10.37.3; Ord. No. 1413, § 1, 10-22-2002)



Chapter 32 TRAFFIC AND VEHICLES¹

ARTICLE I. IN GENERAL

Sec. 32-1. Short title.

This chapter may be cited as the "Independence Uniform Traffic Ordinance."

(Prior Code, § 52.110; Code 2006, § 10.4.1)

Sec. 32-2. Vehicle code adopted; exceptions.

The 2012 Vehicle Code of the State of Oregon, as printed and published by the Legislative Counsel Committee, including selective laws relating to infraction procedures, administrative procedures for state agencies, and Motor Vehicle and Aircraft Fuel Taxes, including the penalties therefor, is hereby adopted in its entirety, save and except any sections thereof pertaining to felonies.

(Prior Code, § 52.120; Code 2006, § 10.4.2; Ord. No. 1280, § 2, 1993; Ord. No. 97-1353; Ord. No. 1376, § 1, 1999; Ord. No. 1399, § 1, 2001; Ord. No. 1427, § 1, 2003)

Sec. 32-3. Definitions.

In addition to those definitions contained in the ORS chapters set out in section 32-2, 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:

Bus stop means a space on the edge of a roadway designated by sign for use by buses loading or unloading passengers.

Holiday means New Year's Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and any other day proclaimed by the council to be a holiday.

Loading zone means a space on the edge of a roadway designated by sign for the purpose of loading or unloading passengers or materials during specified hours of specified days.

Taxicab stand means a space on the edge of a roadway designated by sign for use by taxicabs.

Traffic control device means a device to direct, guide, warn or regulate vehicular or pedestrian traffic and parking, including but not limited to a sign, signaling mechanism, barricade, button or street or curb marking installed by the city or other authority.

Traffic lane means that area of the roadway used for the movement of a single lane of traffic.

Vehicle includes bicycles.

(Prior Code, § 52.130; Code 2006, § 10.4.3)

Commented [GF1]: I found the following at the DOT website.
Oregon DMV no longer compiles the Vehicle Code Book. You can find the complete listing of Oregon vehicle code laws on the [Oregon Legislature website](#). (Volume 19, Title 59, Chapters 801-826). Not sure what to replace this with or if we need it.

¹State law reference(s)—Oregon Vehicle Code, ORS 801.100 et seq.; authority of local governments, ORS 801.040.

State law reference(s)—Definitions, ORS 801.100—801.610.

Secs. 32-4—32-24. Reserved.

ARTICLE II. ADMINISTRATION AND ENFORCEMENT

Sec. 32-25. City Council—Powers and authority.

- (a) Subject to state laws, the City Council shall exercise all municipal traffic authority for the city except those powers specifically and expressly delegated under this title or by another ordinance.
- (b) The powers of the Council shall include but not be limited to:
 - (1) Designation of through streets;
 - (2) Designation of one-way streets;
 - (3) Designation of truck routes;
 - (4) Designation of city-owned or -leased lots, or property on which public parking will be permitted;
 - (5) Designation of parking meter zones;
 - (6) Restriction of the use of certain streets by any class or kind of vehicle to protect the streets from damage;
 - (7) Authorization of greater maximum weights or lengths for vehicles using city streets than specified by state law;
 - (8) Initiation of proceedings to change speed zones;
 - (9) Revision of speed limits in parks;
- (c) The City Council shall, by resolution:
 - (1) Install traffic control devices to implement this title and other traffic control measures. Such installations shall be based on the standards contained in the Oregon Manual on Uniform Traffic Control Devices for Streets and Highways;
 - (2) Establish, maintain, remove or alter the following classes of traffic controls:
 - a. Crosswalks, safety zones and traffic lanes;
 - b. Intersection channelization and areas where drivers of vehicles shall not make right, left or U-turns, and the time when the prohibition applies;
 - c. Parking areas and time limitations, including the form of permissible parking (e.g., parallel or diagonal);
 - (3) Issue oversize or overweight vehicle permits;
 - (4) Establish, maintain, remove or alter traffic control signals;
 - (5) Establish, maintain, remove or alter loading zones and stops for all vehicles;
 - (6) Designate certain streets as bridle paths and prohibit horses and animals on other streets;
 - (7) Temporarily block or close streets.

(Prior Code, § 52.210; Code 2006, § 10.8.1)

State law reference(s)—Authority to prohibit or restrict the use of streets in the city, ORS 810.020, 810.030; authority to designate truck routes, ORS 810.040; authority to determine weight limits on city streets, ORS 810.050; authority to adopt other restrictions for city streets, ORS 810.060—810.160.

Sec. 32-26. Same—Delegation of powers.

The City Council may delegate powers set forth in section 32-25 at their discretion. Duties exercised thereafter by the City Manager or designee shall be reported to the Council at the regular meeting immediately following their implementation, and the Council may reject or modify such action. This reporting requirement may be dispensed with when the Council so orders.

(Prior Code, § 52.215; Code 2006, § 10.8.2)

Sec. 32-27. Same—Regulations standards.

The regulations of the City Council and City Manager or designee shall be based upon:

- (1) Traffic engineering principles and traffic investigations;
- (2) Standards, limitations and rules promulgated by the ~~State Highway Division~~Oregon Department of Transportation and the Independence Public Works Standards;
- (3) Other recognized traffic control standards.

(Prior Code, § 52.225; Code 2006, § 10.8.3)

Sec. 32-28. Temporary control devices allowed when.

Under conditions constituting a danger to the public, the City Manager or designee may install temporary control devices deemed by the ~~Manager~~City Engineer to be necessary.

(Prior Code, § 52.220; Code 2006, § 10.8.4)

State law reference(s)—Authority to establish temporary speed limits, ORS 810.180.

Sec. 32-29. Police and fire officers; authority.

- (a) It is the duty of the Chief of Police or designee(s) to enforce the provisions of this chapter.
- (b) In the event of a fire or other public emergency, officers of the Police and Fire Department may direct traffic as conditions require, notwithstanding the provisions of this chapter.

(Prior Code, § 52.230; Code 2006, § 10.8.5; Ord. No. 1543, § 1(Exh. A), 1-12-2016)

State law reference(s)—Obedience to police officer, ORS 811.535.

Sec. 32-30. Obedience to and alteration of control devices.

- (a) No person shall disobey the instruction of a traffic officer or a traffic control device.
- (b) No unauthorized person shall install, move, remove, obstruct, alter the position of, deface or tamper with a traffic control device.
- (c) No person shall install or place a sign, ribbons, balloons, or other personal items on any traffic control device.

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~~(c)~~(d) The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.
(Prior Code, § 52.235; Code 2006, § 10.8.6)

State law reference(s)—Obedience to traffic patrol member, ORS 811.015, 811.017; obedience to police officer, ORS 811.535.

Sec. 32-31. Existence of device evidence of lawful installation.

The existence of a traffic control device shall be prima facie evidence that the device was lawfully authorized and installed.

(Prior Code, § 52.240; Code 2006, § 10.8.7)

Sec. 32-32. Vehicle impoundment.

- (a) Whenever a vehicle is placed in a manner or location that constitutes an obstruction to traffic or a hazard to public safety, a police officer shall order the owner or operator of the vehicle to remove it. If the vehicle is unattended, the officer may cause the vehicle to be towed and stored at the owner's expense. The owner shall be liable for the costs of towing and storing, notwithstanding that the vehicle was parked by another, or that the vehicle was initially parked in a safe manner but subsequently became an obstruction or hazard.
- (b) The disposition of a vehicle towed and stored under authority of this section shall be in accordance with the provisions of article VII of this chapter, relating to impoundment and disposition of vehicles abandoned on the city streets.
- (c) The impoundment of a vehicle will not preclude the issuance of a citation for violation of a provision of this title.
- (d) Stolen vehicles may be towed from public or private property and stored at the expense of the vehicle owner.
- (e) Whenever a police officer observes a vehicle parked in violation of a provision of this title, if the vehicle has four or more unpaid parking violations outstanding against it, the officer may, in addition to issuing a citation, cause the vehicle to be impounded. A vehicle so impounded shall not be released until all outstanding fines and charges have been paid. Vehicles impounded under authority of this subsection shall be disposed of in the same manner as provided in subsection (b) of this section.

(Prior Code, § 52.910; Code 2006, § 10.8.8)

State law reference(s)—Towing and storage of unlawfully parked vehicles in parking facilities, requirements, ORS 98.812; impoundment of vehicles, ORS 809.010 et seq.

Secs. 32-33—32-52. Reserved.

ARTICLE III. TOWING²

²State law reference(s)—Towing vehicles, ORS 819.100 et seq.

Sec. 32-53. Authority to tow.

Any police officer may, without prior notice, order a vehicle towed when the police officer reasonably believes that the vehicle's operator is driving uninsured.

(Code 2006, § 10.10.1; Ord. No. 1301)

Sec. 32-54. Post tow notice.

After a vehicle has been towed pursuant to this article, notice shall be provided to the registered owners and any other persons who reasonably appears to have an interest in the vehicle. Notice shall be personally served or mailed by the Police Department to such persons within 48 hours after the tow of the vehicle, Saturdays, Sundays and holidays excluded, and shall state:

- (1) The vehicle has been towed;
- (2) The location of the vehicle and that it may be reclaimed only upon evidence that the claimant is the owner or person entitled to possession;
- (3) The address and telephone number of the person or facility that may be contacted for information and the charges that must be paid before the vehicle will be released and the procedures for obtaining the release of the vehicle;
- (4) The vehicle and its contents are subject to a lien for the towing and storage charges and will be subject to sale by the towing and storage facility where the vehicle is located;
- (5) A hearing may be requested to contest the validity of the tow;
- (6) The time in which a hearing must be requested and the method of requesting a hearing;
- (7) That an application for a hearing must be filed with and received by the Municipal Judge not later than five business days after the vehicle was towed.

(Code 2006, § 10.10.2; Ord. No. 1301)

Sec. 32-55. Exemption from notice.

No notice need be provided pursuant to this article when:

- (1) A vehicle does not display license plates or other identifying markings by which the registration or ownership of the vehicle can be determined; or
- (2) When the identity of the owner of the vehicle is not available from the appropriate motor vehicle licensing and registration authority and when the identity and address of the owner and/or other persons with an interest in the vehicle cannot otherwise be reasonably determined.

(Code 2006, § 10.10.3; Ord. No. 1301)

Sec. 32-56. Request for a hearing to contest the validity of tow.

Written notice of the opportunity to contest the validity of the tow of a vehicle, together with a statement of the time in which a hearing may be requested and the method of requesting a hearing, must be given to each person who seeks to redeem a vehicle which has been towed pursuant to this article. This information will be made available by the tow company or other facility holding said vehicle.

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(Code 2006, § 10.10.4; Ord. No. 1301)

Sec. 32-57. Request for a hearing after tow.

After a vehicle has been towed pursuant to this article the owners and any other persons who reasonably appears to have an interest in the vehicle are, upon timely application filed with the Municipal Judge, entitled to request a hearing to contest the validity of the tow or intended tow of the vehicle.

(Code 2006, § 10.10.5; Ord. No. 1301)

Sec. 32-58. Deadline for hearing.

Application for a hearing must be filed with and received by the Municipal Judge not more than five business from the mailing date of the post tow notice.

(Code 2006, § 10.10.6; Ord. No. 1301)

Sec. 32-59. Judicial waiver.

The Municipal Judge may, for good cause shown, grant a request for hearing filed after the foregoing time requirements have expired.

(Code 2006, § 10.10.7; Ord. No. 1301)

Sec. 32-60. Basis for hearing request.

The request for hearing must be in writing and shall state the grounds upon which the person requesting the hearing believes the tow or proposed tow invalid, or, for any other reason, unjustified. The request for hearing will also contain such other information, relating to the purposes of this article, as the Municipal Judge may require

(Code 2006, § 10.10.8; Ord. No. 1301)

Sec. 32-61. Judicial hearing.

The Municipal Judge shall set and conduct an administrative hearing on the matter within 72 hours, excluding holidays and weekends, from receipt of a proper request filed pursuant to this article. In all cases where a vehicle has been towed and not yet released, however, the Municipal Judge shall set and conduct the hearing on the next regularly scheduled municipal court day, whichever is sooner.

(Code 2006, § 10.10.9; Ord. No. 1301)

Sec. 32-62. Burden of proof.

At the hearing, the city shall have the burden of proving by a preponderance of the evidence that there were reasonable grounds to believe that the vehicle was being operated in violation of ORS 806.010. The police officer who ordered the vehicle impounded may submit an affidavit to the Municipal Judge in lieu of making a personal appearance at the hearing.

(Code 2006, § 10.10.10; Ord. No. 1301)

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Sec. 32-63. Rulemaking authority.

The Municipal Judge shall make any necessary rules and regulations regarding the conduct of such hearings, consistent with this article.

(Code 2006, § 10.10.11; Ord. No. 1301)

Sec. 32-64. Order.

If the Municipal Judge finds that the towing and impoundment of the vehicle was proper, the Municipal Judge shall enter an order supporting the removal and shall find that the owner or person entitled to possession of the vehicle is liable for the usual and customary towing and storage costs. The Municipal Judge may also find the owner or person entitled to possession of the vehicle liable for the costs of the hearing.

(Code 2006, § 10.10.12; Ord. No. 1301)

Sec. 32-65. Order of improper tow.

If the Municipal Judge finds that the towing and impoundment of the vehicle was improper, the Municipal Judge shall order the vehicle released to the person entitled to possession and shall enter a finding that the owner or person entitled to possession of the vehicle is not liable for any towing and storage charges resulting from the impoundment. If there is a lien on the vehicle for towing and storage charges, the Municipal Judge shall order it paid by the city.

(Code 2006, § 10.10.13; Ord. No. 1301)

Sec. 32-66. Final decision.

The decision of the Municipal Judge is final, is not appealable to the City Council, and is only appealable to Circuit Court by Writ of Review. Any person who has a hearing scheduled and fails to appear at such hearing without good cause shown, as determined by the Municipal Judge, shall not be entitled to have such hearing rescheduled. The owner and any other person who have an interest in the vehicle are only entitled to one hearing for each tow of that vehicle.

(Code 2006, § 10.10.14; Ord. No. 1301)

Sec. 32-67. Storage charges.

Any private company that tows and stores any vehicle pursuant to this article shall have a lien on the vehicle, in accordance with ORS 87.152, for the just and reasonable charges for the tow and storage services performed. The company may retain possession of that vehicle, consistent with this article and state law until towing and storage charges have been paid.

(Code 2006, § 10.10.15; Ord. No. 1301)

Sec. 32-68. Release of vehicle.

A vehicle towed pursuant to this article shall be immediately released to the person entitled to lawful possession upon proof of compliance.

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(Code 2006, § 10.10.16; Ord. No. 1301)

Secs. 32-69—32-94. Reserved.

ARTICLE IV. TRAFFIC RULES³

Sec. 32-95. Rules of the road.

- (a) In addition to state law, the following shall apply to the operation of vehicles upon the streets of the city:
- (1) The operator of a vehicle shall not back the vehicle unless the movement can be made with reasonable safety and without interfering with other traffic, and shall yield the right-of-way to moving traffic and pedestrians.
 - (2) The operator of a vehicle in the traffic lane shall have the right-of-way over an operator of a vehicle departing from a parking space.
 - (3) No operator of a vehicle shall pull away from a curb or other parking area without giving an appropriate turn signal when other traffic may be affected.
 - (4) Where a stop sign is erected at or near the entrance to an intersection, the operator of a vehicle approaching shall bring the vehicle to a stop before crossing a stop line or crosswalk; or, if none, then before entering the intersection. Stopping at a point which does not yield an unobstructed view of traffic on the intersecting street shall not constitute compliance with the requirements of this section.
 - (5) Notwithstanding an indication by a traffic control device to proceed:
 - a. No operator of a vehicle shall enter an intersection unless there is sufficient space on the opposite side of the intersection to accommodate the person's vehicle without obstructing the passage of other vehicles;
 - b. No operator shall enter a marked crosswalk, whether or not at an intersection, unless there is sufficient space on the opposite side of the crosswalk to accommodate the person's vehicle without obstructing the passage of pedestrians.
- (b) The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.
(Prior Code, § 52.310; Code 2006, § 10.12.1)

State law reference(s)—Failure to stop when emerging from alley, etc., ORS 811.505.

Sec. 32-96. Crossing private property.

No operator of a vehicle shall proceed from one street to an intersecting street by crossing private property. This provision shall not apply to the operator of a vehicle who stops on the property for the purpose of procuring or providing goods or services. The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.

(Prior Code, § 52.315; Code 2006, § 10.12.2)

³State law reference(s)—Rules of the road, ORS 811.005.

Sec. 32-97. Emerging from vehicle.

No person shall open the door of a motor vehicle into a traffic lane without first ascertaining that it can be done in safety. The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.

(Prior Code, § 52.320; Code 2006, § 10.12.3)

State law reference(s)—Emerging from vehicle, ORS 811.490.

Sec. 32-98. Unlawful riding.

- (a) No operator shall permit a passenger and no passenger shall ride on a vehicle upon a street except on a portion of the vehicle designed or intended for the use of passengers. This provision shall not apply to an employee engaged in the necessary discharge of a duty, or to a person riding within a truck body in space intended for merchandise.
- (b) No person shall board or alight from a vehicle while the vehicle is in motion upon a street.
- (c) The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.

(Prior Code, § 52.325; Code 2006, § 10.12.4)

State law reference(s)—Carrying minor on external areas of vehicle, ORS 811.205.

Sec. 32-99. Clinging to vehicles.

No person riding upon a bicycle, motorcycle, coaster, roller skates, sled or other device shall attach the device or the person to a moving vehicle upon a street. Nor shall the operator of a vehicle upon a street knowingly allow a person riding on any of the vehicles or devices listed in this section to attach themselves, the vehicle or the device to the person's vehicle. The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.

(Prior Code, § 52.330; Code 2006, § 10.12.5)

State law reference(s)—Clinging to vehicles prohibited, ORS 814.480.

Sec. 32-100. Sleds on streets.

No person shall use the streets for traveling on skis, toboggans, sleds or similar devices, except where authorized. The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.

(Prior Code, § 52.335; Code 2006, § 10.12.6)

Sec. 32-101. Damaging sidewalks and curbs.

- (a) The operator of a motor vehicle shall not drive upon a sidewalk or roadside planting strip except to cross at a permanent or temporary driveway.
- (b) No unauthorized person shall place dirt, wood or other material in the gutter or space next to the curb of a street with the intention of using it as a driveway.

(c) No person shall remove a portion of a curb or move a motor vehicle or device moved by a motor vehicle upon a curb or sidewalk without first obtaining ~~authorization~~ a city right of way permit and posting bond, if required. A person who causes damage shall be held responsible for the cost of repair.

(d) The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

(Prior Code, § 52.340; Code 2006, § 10.12.7)

Sec. 32-102. Obstructing streets.

(a) No unauthorized person shall obstruct the free movement of vehicles or pedestrians using the streets.

(b) No person shall park or stand a vehicle in such a manner or location that it constitutes a hazard to public safety or an obstruction on the street.

(c) The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.

(Prior Code, § 52.345; Code 2006, § 10.12.8)

Sec. 32-103. Removing glass and debris.

A party to a vehicle accident or a person causing broken glass or other debris to be upon a street shall remove the glass and other debris from the street. The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.

(Prior Code, § 52.350; Code 2006, § 10.12.9)

Sec. 32-104. Speed limits in public parks.

No person shall drive a vehicle upon any street in any public park of this city at a speed exceeding 15 miles per hour, unless signs erected indicate otherwise. The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.

(Prior Code, § 52.355; Code 2006, § 10.12.10)

Sec. 32-105. Vehicles discharging flames.

No person shall operate any motor vehicle on any street or public property of the city in such a manner or with the vehicle in such condition that fire or flames are discharged from the vehicle.

(Prior Code, § 52.360; Code 2006, § 10.12.11)

Sec. 32-106. Illegal cancellation of traffic citations.

No person shall cancel any traffic citation in any manner except when approved by the municipal judge.

(Prior Code, § 52.365; Code 2006, § 10.12.12; Ord. No. 1485, § 1(10.12.12), 12-8-2009)

Sec. 32-107. Vehicle weight restrictions.

No person shall operate upon any street or bridge in this city a vehicle the weight of which exceeds the maximum for such street or bridge, as such maximum may be posted by sign erected by the city. In addition to any

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penalty provided in this Code for the violation of this section, any person convicted of a violation of this section may be required by the court to pay the cost of repairing any street or bridge damaged by reason of such violation, which cost may exceed the cost of repairing the damage proximately caused by the violation.

(Prior Code, § 52.370; Code 2006, § 10.12.13)

Secs. 32-108—32-129. Reserved.

ARTICLE V. PEDESTRIANS⁴

Sec. 32-130. Use of sidewalks.

A pedestrian shall not use a roadway for travel when a sidewalk is available. The offense described in this section is an Independence Municipal Code Class C violation, per section 1-22.

(Prior Code, § 52.560; Code 2006, § 10.16.1)

Sec. 32-131. Pedestrians must use crosswalks.

No pedestrian shall cross a street other than within a crosswalk in blocks with marked crosswalks. The offense described in this section is an Independence Municipal Code Class C violation, per section 1-22.

(Prior Code, § 52.565; Code 2006, § 10.16.2)

Sec. 32-132. Crossing the street.

A pedestrian shall cross a street at a right angle, unless crossing within a crosswalk. The offense described in this section is an Independence Municipal Code Class C violation, per section 1-22.

(Prior Code, § 52.570; Code 2006, § 10.16.3)

State law reference(s)—Authority to require crossing at crosswalk, ORS 810.080(1)(c).

Sec. 32-133. Obedience to traffic lights and bridge and railroad signals.

- (a) At an intersection where a pedestrian control light is in operation, no pedestrian shall start to cross the street except when the walk signal is illuminated. Where only vehicle control lights are in operation, no pedestrian shall start to cross the street except when the green light is illuminated.
- (b) No pedestrian shall enter or remain upon a railroad grade crossing, an openable bridge, or the approach thereto beyond a crossing gate or barrier, after an operation signal indication has been given.
- (c) No pedestrian shall pass through, around, over or under a crossing gate or barrier at a railroad grade crossing or bridge while the gate or barrier is closed or is being opened or closed.
- (d) The offense described in this section is an Independence Municipal Code Class C violation, per section 1-22.

⁴State law reference(s)—Pedestrians, ORS 814.010 et seq.

(Prior Code, § 52.575; Code 2006, § 10.16.4)

Secs. 32-134—32-150. Reserved.

ARTICLE VI. STOPPING, STANDING AND PARKING⁵

Sec. 32-151. Exemption.

The provisions of this article regulating the parking or standing of vehicles shall not apply to an emergency service vehicle (police, fire, ambulance), or any vehicle of the city, county or state or public utility while necessarily in use for construction or repair work on a street, or a vehicle owned by the United States while in use for the collection, transportation or delivery of mail.

(Prior Code, § 52.460; Code 2006, § 10.20.1; Ord. No. 1439, § 1, 2004)

State law reference(s)—Exemptions, ORS 811.560.

Sec. 32-152. Parking—Method.

(a) *Parking on public streets.*

- (1) No person shall stand or park a vehicle in a street other than parallel with the edge of the roadway, headed in the direction of lawful traffic movement and with the curbside wheels of the vehicle within 12 inches of the edge of the curb, except where the street is marked or signed for angle parking; provided, however, if a vehicle is totally within the markings of a parallel parking area, it shall not be deemed in violation of this subsection, notwithstanding it is more than 12 inches from the curb.
- (2) Where parking space markings are placed on a street, no person shall stand or park a vehicle other than in the indicated direction and, unless the size or shape of the vehicle makes compliance impossible, within a single marked space.
- (3) The operator who first begins maneuvering the person's motor vehicle into a vacant parking space on a street shall have priority to park in that space, and no vehicle operator shall attempt to deprive the first operator of the first's priority or block the person's access.
- (4) Whenever the operator of a vehicle discovers that the person's vehicle is parked close to a building to which the fire department has been summoned, the operator shall immediately remove the vehicle from the area, unless otherwise directed by police or fire officers.

- (b) *Parking in city-owned or city-operated parking lots.* No person shall stand or park a vehicle overnight in a city-owned or city-operated parking lot. This requirement shall not apply to city-owned vehicles, or to vehicles of individuals that have received prior approval from the City Manager or designee.

(Prior Code, § 52.410; Code 2006, § 10.20.2; Ord. No. 1574, § 1, 12-10-2019)

⁵State law reference(s)—Stopping, standing, parking, ORS 811.550 et seq.

Sec. 32-153. Same—Time limits.

The City Council may, by resolution establish maximum limits to the number of consecutive units of time during which a vehicle may be parked upon the city streets within areas designated by such resolution. Signs shall be posted in the areas so designated declaring the maximum so established. Except as otherwise set by Council resolution, no person shall park any vehicle upon any street for a continuous period of 72 hours or more.

(Prior Code, § 52.416; Code 2006, § 10.20.3; Ord. No. 1607, § 1(Exh. A), 6-13-2023)

Sec. 32-154. Same—Extension of time.

Where maximum parking time limits are designated by sign, movement of a vehicle within a block shall not extend the time limits for parking.

(Prior Code, § 52.455; Code 2006, § 10.20.4)

Sec. 32-155. Lights on parked vehicle.

No lights need be displayed upon a vehicle that is parked in accordance with this article upon a street where there is sufficient light to reveal a person or object at a distance of at least 500 feet from the vehicle.

(Prior Code, § 52.450; Code 2006, § 10.20.5)

Sec. 32-156. Prohibited parking, stopping, or standing.

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

Beauty strip means as used in this subsection, the area between the curb and the sidewalk.

Stopping/standing means in reference to vehicles, the terms "stopping" and "standing" will be used interchangeably for the purposes of this subsection.

Vehicle includes any motor vehicle, boat, motor truck, truck tractor, trailer, pull trailer, utility trailer, camp trailer, camper shell, canopy, bus, motor home, house trailer, vacation trailer, manufactured home, tractor, implement of husbandry, article of machinery, or any parts thereof. In addition, the term "vehicle" also includes any motor vehicle as those terms are defined in the Oregon Vehicle Code.

(b) In addition to the state vehicle code vehicle laws prohibiting parking, no person shall stop or park a vehicle except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control signal, in any of the following places:

- (1) Alongside any curb which is painted yellow or which has signs indicating that parking, or stopping, is prohibited.
- (2) For an amount of time which exceeds the amount of time permitted as indicated by signs restricting the duration of parking or standing.
- (3) So that it is not completely within the lines indicating the limits of angle parking spaces where angle parking is allowed.
- (4) In a manner that causes the vehicle to occupy more than one designated parking stall in areas where stalls are indicated by markings on the street or curb, or by markings in a city-owned or city-operated parking lot.

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- (5) Upon any street, alley, public way or city-owned or city-operated parking lot for:
- a. The display of the vehicle or equipment for sale or trade;
 - b. The servicing or repair of the vehicle or equipment unless servicing or repairs are necessitated by an emergency situation;
 - c. The storage of the vehicle or equipment;
 - d. With reference to subsection (b)(5)c of this section, a vehicle shall be conclusively determined to have been parked for storage if it is permitted to remain in substantially the same position for a continuous period of 72 hours or more.
- (6) Upon, or over a sidewalk, or upon that portion of a driveway which intersects a sidewalk.
- (7) Upon a bridge, viaduct, or other elevated structure used as a street or within a street tunnel, unless authorized.
- (8) In an alley other than for the expeditious loading or unloading of persons or materials, but in no case for a period in excess of 30 consecutive minutes.
- (9) Any connected combination of vehicles and trailer on a street at any time within the city if the combination thereof, is longer than 23 feet or wider than seven feet, except:
- a. When engaged in the delivery or receipt of cargo and when no facilities for the receipt or discharge of the cargo exists except from the street or parking strip; or
 - b. When the person in charge is immediately engaged in the maintenance or repair of public or private property adjacent to a street or parking strip and no off-street parking is reasonably available.
- No person in charge of any combination of vehicles and trailers engaged in the delivery or receipt of cargo under the circumstances authorized in subsection (a) of this section shall park in such a manner that any part thereof shall project or be more than 15 feet into the street when measured at right angles from the face of the curb nearest to the vehicle or combination thereof.
- (10) In a properly marked bike lane, including such time as the vehicle is being used for the temporary loading or unloading of passengers or materials.
- (11) Upon private property without the consent of the owners or persons in charge of such private property.
- (12) Within an intersection.
- (13) On a crosswalk.
- (14) Within 25 feet from the intersection of curblines or, if none, within 15 feet of the intersection of property lines at an intersection.
- (15) Within ten feet from the intersection of an alley.
- (16) Within 30 feet of an official flashing beacon, stop sign, or traffic control sign located at the side of the roadway.
- (17) Within 15 feet of the driveway entrance to a fire station.
- (18) Within ten feet of a fire hydrant.
- (19) In front of a private driveway or public or private alley.
- (20) On a curb.

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- (21) Alongside or opposite a street or highway excavation or obstruction when such stopping, standing or parking would obstruct traffic.
 - (22) On the roadway side of a vehicle stopped or parked at the edge or beside the curb of a highway or street (commonly known as double parking).
 - (23) At a place where official traffic signs have been erected prohibiting, limiting or restricting standing and parking.
 - (24) Within a 25-foot radius of the intersection of the centerline of a highway and a railway crossing.
 - (25) On a beauty strip.
 - (26) Overnight in a city-owned or city-operated parking lot, except for the vehicles detailed in section 32-152(b).

(Prior Code, § 52.415; Code 2006, § 10.20.6; Ord. No. 1206, § 1, 1989; Ord. No. 1330, § 1; Ord. No. 1439, § 2, 2004; Ord. No. 1494, § 1(10.20.6), 11-9-2010; Ord. No. 1574, § 2, 12-10-2019)

State law reference(s)—Stopping, standing and parking in certain areas, ORS 811.550.

Sec. 32-157. Use of loading zone.

No person shall stand or park a vehicle for any purpose or length of time, other than for the expeditious loading or unloading of persons or materials, in a place designated as a loading zone when the hours applicable to that loading zone are in effect. In no case, when the hours applicable to the loading zone are in effect, shall the stop for loading and unloading of materials exceed the time limits posted. If no time limits are posted, then the use of the zone shall not exceed 30 minutes.

(Prior Code, § 52.425; Code 2006, § 10.20.7)

Sec. 32-158. Unattended vehicle—Prohibited.

No operator or person in charge of a motor vehicle shall park it or allow it to be parked on a street, on other property open to public travel or on a new or used car lot without first stopping the engine, locking the ignition, removing the ignition key from the vehicle and effectively setting the brake. If the vehicle is attended, the ignition key need not be removed. The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.

(Prior Code, § 52.430; Code 2006, § 10.20.8)

State law reference(s)—Securing vehicle, ORS 811.585.

Sec. 32-159. Same—Action by police officer.

Whenever a police officer shall find a motor vehicle parked unattended with the ignition key in the vehicle in violation of section 32-159, the police officer is authorized to remove the key from vehicle and deliver the key to the person in charge of the police station.

(Prior Code, § 52.435; Code 2006, § 10.20.9)

Sec. 32-160. Buses and taxicabs—Standing or parking.

The operator of a bus or taxicab shall not stand or park the vehicle upon a street in a business district at a place other than a bus stop or taxicab stand, respectively; except, that this provision shall not prevent the operator of a taxicab from temporarily stopping the person's vehicle outside a traffic lane while loading or unloading passengers.

(Prior Code, § 52.440; Code 2006, § 10.20.10)

Sec. 32-161. Same—Restricted use of stands.

No person shall stand or park a vehicle other than a taxicab in a taxicab stand, or a bus in a bus stop; except that the operator of a passenger vehicle may temporarily stop for the purpose of and while actually engaged in loading or unloading passengers, when stopping does not interfere with a bus or taxicab waiting to enter or about to enter the restricted space.

(Prior Code, § 52.445; Code 2006, § 10.20.11)

Sec. 32-162. Illegally parked vehicle—Citation.

- (a) Whenever a vehicle without an operator is found parked in violation of a restriction imposed by this section, the officer finding the vehicle shall take its license number and any other information displayed on the vehicle which may identify its owner, and shall conspicuously affix to the vehicle a traffic citation for the operator to answer to the charge against the operator or pay the penalty imposed within five days during the hours and at a place specified in the citation.
- (b) Violations of sections 32-152 through 32-161 shall be punishable by a fine in an amount set by resolution of the City Council. Such fine shall be recoverable from the owner or person in possession of the vehicle, or from said vehicle in the nature of an in rem proceeding. The Municipal Court of the city shall have authority to levy such penalty against such vehicle in an in rem proceeding.

(Prior Code, § 52.810; Code 2006, § 10.20.12; Ord. No. 1482, § 1(10.20.12), 11-10-2009)

State law reference(s)—Citations, ORS 810.410; parking violations, ORS 810.425.

Sec. 32-163. Same—Citation; failure to comply.

If the operator does not respond to a traffic citation affixed to a vehicle within a period of 30 days, the municipal court may send to the owner of the vehicle to which the traffic citation was affixed a letter informing the owner of the violation and warning the owner that, in the event that the penalty is not paid or the citation is not answered for by the assigned court date, a warrant for the person's arrest will be issued.

(Prior Code, § 52.815; Code 2006, § 10.20.13; Ord. No. 1574, § 3, 12-10-2019)

Sec. 32-164. Owner responsibility.

The owner of a vehicle placed in violation of a parking restriction shall be responsible for the offense, except where the use of the vehicle was secured by the operator without the owner's consent.

(Prior Code, § 52.820; Code 2006, § 10.20.14)

Sec. 32-165. Registered owner presumption.

In a prosecution of a vehicle owner, charging a violation of a restriction on parking, proof that the vehicle at the time of the violation was registered to the defendant shall constitute a presumption that the defendant was then the owner in fact.

(Prior Code, § 52.825; Code 2006, § 10.20.15)

Sec. 32-166. Unattended minors in vehicles.

It is unlawful for any person having the care and custody of a minor under six years of age to leave such minor unattended in a locked vehicle, or to leave such minor unattended in an unlocked vehicle for more than 15 minutes. A minor is unattended within the meaning of this section if the oldest person with the minor is under the age of ten years. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

(Code 2006, § 10.20.20; Ord. No. 1409, § 1, 2002)

Secs. 32-167—32-185. Reserved.

ARTICLE VII. ABANDONED VEHICLES⁶

Sec. 32-186. Definitions.

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

Abandoned means, in addition to its ordinary meaning any vehicle which is either unlicensed, inoperative, junked, partially or completely dismantled, or used for storage purposes.

Building means a permanent, four-sided, roofed structure built or used for the shelter or enclosure of persons, animals, chattels, or property of any kind.

Chief of police includes any authorized law enforcement officer of the city.

Costs means the expense of removing, storing and selling an impounded vehicle.

Owner means any individual, firm, corporation or unincorporated association with a claim, either individually or jointly, of ownership or any interest, legal or equitable, in a vehicle.

Vehicle means every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, or any portion of such vehicle or device, except devices used exclusively upon stationary rails or tracks. The term "vehicle" includes wheeled devices which do not require licensing by the state.

(Code 2006, § 10.28.1; Ord. No. 1327)

⁶State law reference(s)—Abandoned vehicles, ORS 819.100 et seq.; towing vehicles abandoned on private property, ORS 98.830—98.840.

Sec. 32-187. Application of article.

This article shall apply to all abandoned vehicles now in the possession of the city as well as to abandoned vehicles that are hereafter impounded.

(Prior Code, § 50.140; Code 2006, § 10.28.2)

Sec. 32-188. Vehicles affected.

- (a) It is unlawful to park, store or leave or permit the parking, storing or leaving of any vehicle of any kind for a period of time in excess of 72 hours on any public property or in excess of seven days on any private property, which is in an abandoned condition, whether attended or not unless the same is completely enclosed within a building. Lawfully authorized and operated automobile wrecking yards are exempt from the requirements of this section. The offense described in this subsection is an Independence Municipal Code Class A violation, per section 1-22.
- (b) Exempt from the provisions of this section are unlicensed vehicles which do not otherwise meet the definition of an abandoned vehicle and which are parked on a concrete, asphalt or gravel driveway or pad on private property. In no case, however, shall there be more than one unlicensed vehicle per household at any one time on private property within the city. The offense described in this subsection is an Independence Municipal Code Class A violation, per section 1-22.

(Prior Code, § 43.110; Code 2006, § 10.28.3; Ord. No. 1154, § 1, 1986; Ord. No. 1259, § 1, 1992; Ord. No. 1327)

State law reference(s)—Stopping, standing, parking, ORS 811.550 et seq.

Sec. 32-189. Abandoned vehicles for commercial use.

When used in connection with a business enterprise properly operated in the appropriate business zone pursuant to the zoning laws of Independence, it is unlawful to park, store or leave or permit the parking, storing or leaving of an abandoned vehicle of any kind on such private property for a period of time in excess of 15 days, unless the same is completely enclosed within a building. Lawfully authorized and operated automobile wrecking yards located in an industrial zone are exempt from the requirements of this section. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

(Code 2006, § 10.28.4; Ord. No. 1327)

Sec. 32-190. Vehicle service on public streets.

It is unlawful to disassemble, construct, reconstruct, repair and/or service vehicles of any kind in or upon any street, road, alley or other public thoroughfare in the city except for emergency service, provided, however, that such emergency service shall not extend over a period of four hours, and the same does not interfere with or impede the flow of traffic. The offense described in this section is an Independence Municipal Code Class B violation, per section 1-22.

(Code 2006, § 10.28.5; Ord. No. 1327)

Sec. 32-191. Nuisance; duty to remove.

Any vehicle parked, stored, left or permitted to be parked, stored or left in violation of this article shall constitute a nuisance detrimental to the health, safety and welfare of the inhabitants of the city. It is the duty of

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the owner of the property, and it shall also be the duty of the registered owner of the vehicle or the person in charge of said vehicle, either to remove the same from the city or to have the same housed completely enclosed within a building.

(Code 2006, § 10.28.6; Ord. No. 1327)

Sec. 32-192. Notice of nuisance—Public property.

It is the duty of the Police Department, whenever a vehicle is found abandoned upon the streets, alleys, or other public way in the same position for a period of 72 hours to:

- (1) Make a routine investigation to discover the owner and request compliance and to provide notice of removal; or
- (2) If the owner cannot be identified or contacted, to place a notice of removal upon the windshield, or some other part of the vehicle easily seen by the passing public;
- (3) The contents of the notice under this section shall comply with the requirements under section 32-201.

(Code 2006, § 10.28.7)

Sec. 32-193. Same—Private property.

(a) It is the duty of the Police Department, whenever a vehicle is found abandoned upon private property for a period of seven days to:

- (1) Make a routine investigation to discover the vehicle or property owner and request compliance and to provide notice of removal; or
- (2) If the vehicle or property owner cannot be identified or contacted, to place a notice of removal upon the windshield, or some other part of the vehicle easily seen by the passing public or to send notice of removal to the property owner by certified mail.

(b) The contents of the notice under this section shall comply with the requirements under section 32-201.

(Code 2006, § 10.28.8)

Sec. 32-194. Impoundment.

(a) An abandoned vehicle which remains in the same position for a period of 72 hours on public property or seven days on private property, after an owner has been requested to remove it or after a notice to remove has been posted upon the vehicle, and no person has appeared to show good cause why the vehicle should not be moved, shall constitute a nuisance.

(b) It is the duty of the Police Department to remove, store and dispose of, under the provisions of this article, any vehicle constituting a nuisance.

(c) After impoundment, the Chief of Police shall cause the vehicle to be appraised.

(Prior Code, § 50.130; Code 2006, § 10.28.9)

Sec. 32-195. Immediate custody and removal of vehicle constituting hazard.

- (a) The city may immediately take custody of a vehicle that is disabled, abandoned, parked or left standing unattended on a road or highway right-of-way and that is in such a location as to constitute a hazard or obstruction to motor vehicle traffic using the road or highway.
- (b) Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:
Hazard or obstruction.
 - (1) Includes, but is not necessarily limited to:
 - a. Any vehicle that is parked so that any part of the vehicle extends within the paved portion of the travel lane.
 - b. Any vehicle that is parked so that any part of the vehicle extends within the traffic lane or bicycle lane.
 - (2) Does not include parking in a designated parking area along any street or, except as described in this definition, parking temporarily on the shoulder of the highway as indicated by a short passage of time and by the operation of the hazard lights of the vehicle, the raised hood of the vehicle, or advance warning with emergency flares or emergency signs.
- (c) After taking a vehicle into custody under this section the Chief of Police is required to give the notice described under this Code and, if requested, provide a hearing.
- (d) The authority in this section to remove and take vehicles into custody is in addition to any authority to remove and take vehicles into custody under this Code.
- (e) Subject to state law, vehicles and the contents of vehicles removed and taken into custody under this section are subject to a lien as provided under ORS 819.160.
- (f) Vehicles removed under this section shall be appraised within a reasonable time by a person authorized to perform such appraisals under ORS 819.230.
- (g) Vehicles removed and taken into custody under this section are subject to sale or disposition under this Code if the vehicles are not reclaimed or returned to the owner or person entitled thereto.

(Code 2006, § 10.28.10)

State law reference(s)—Removal of vehicles constituting hazard, ORS 819.120.

Sec. 32-196. Hearing to contest validity of removal and custody.

A person provided notice under this article or any other person who reasonably appears to have an interest in the vehicle may request a hearing under this section to contest the validity of the removal and custody under this article or proposed removal and custody of a vehicle under this article by submitting a request for hearing with the Police Chief not more than five days from the mailing date of the notice. The five-day period in this section does not include holidays, Saturdays or Sundays. Except as otherwise provided under state law a hearing under this section shall comply with all of the following:

- (1) If a request for hearing is received before the vehicle is taken into custody and removed, the vehicle shall not be removed unless the vehicle constitutes a hazard.
- (2) A request for hearing shall be in writing and shall state grounds upon which the person requesting the hearing believes that the custody and removal of the vehicle is not justified.

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- (3) Upon receipt of a request for a hearing under this section, the city shall set a time for the hearing within 72 hours of the receipt of the request and shall provide notice of the hearing to the person requesting the hearing and to the owners of the vehicle and any lessors or security interest holders shown in the records of the Department of Transportation, if not the same as the person requesting the hearing. The 72-hour period in this subsection does not include holidays, Saturdays or Sundays.

(Code 2006, § 10.28.11)

Sec. 32-197. Determination on removal and custody.

- (a) If the hearings officer finds, after hearing and by substantial evidence on the record that the custody and removal of a vehicle was:
- (1) Invalid, the hearings officer shall order the immediate release of the vehicle to the owner or person with right of possession. If the vehicle is released under this subsection, the person to whom the vehicle is released is not liable for any towing or storage charges. If the person has already paid the towing and storage charges on the vehicle, the city shall reimburse the person for the charges. New storage costs on the vehicle will not start to accrue until 24 hours after the time the vehicle is officially released to the person under this subsection.
 - (2) Valid, the hearings officer shall order the vehicle to be held in custody until the costs of the hearing and all towing and storage costs are paid by the party claiming the vehicle. If the vehicle has not yet been removed, the hearings officer shall order its removal.
- (b) A person who fails to appear at a hearing under this section is not entitled to another hearing unless the person provides reasons satisfactory to the hearings officer for the person's failure to appear.
- (c) The hearings officer is only required to provide one hearing under this section for each time the city takes a vehicle into custody and removes the vehicle or proposes to do so.
- (d) A hearing may be used to determine the reasonableness of the charge for towing and storage of the vehicle. Towing and storage charges set by law, ordinance or rule or that comply with law, ordinance or rule are reasonable for purposes of this subsection.
- (e) The hearings officer shall provide a written statement of the results of a hearing held under this section to the person requesting the hearing.
- (f) Hearings held under this section may be informal in nature, but the presentation of evidence in a hearing shall be consistent with the presentation of evidence required for contested cases under ORS 183.450.
- (g) The hearings officer at a hearing under this section may be the City Manager or the City Manager's designee, but shall not have participated in any determination or investigation related to taking into custody and removing the vehicle that is the subject of the hearing.
- (h) The determination of a hearings officer at a hearing under this section is final and is not subject to appeal.

(Code 2006, § 10.28.12)

Sec. 32-198. Inventory of unclaimed vehicles.

The Chief of Police shall, from time to time, transmit to the City Manager an inventory of all unclaimed motor vehicles subject to sale as provided in sections 32-199 and 32-200. After this transmittal, such vehicles shall come into the custody and control of the City Manager.

(Prior Code, § 51.150; Code 2006, § 10.28.13)

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Sec. 32-199. Disposition of motor vehicles valued at greater than \$1,000.00.

Any motor vehicle appraised at a value greater than \$1,000.00, by a person who holds a certificate issued under ORS 819.480 and not redeemed for a period of 60 days after the date of mailing notice pursuant to section 2-437, or the taking of the vehicle into the custody of the city, whichever is later, may be disposed of by the City Manager in accordance with section 2-435(6) and (8).

(Prior Code, § 51.165; Code 2006, § 10.28.14)

State law reference(s)—Vehicles of low appraisal, ORS 819.280.

Sec. 32-200. Disposition of motor vehicle appraised at \$1,000.00 or less.

Any motor vehicle appraised at a value of \$1,000.00 or less by a person who holds a certificate issued under ORS 819.480, will be released to the tow company removing the vehicle. That tow company will be required to comply with ORS in regards to release of the vehicle to its owner or the transferring of title to a new owner.

(Code 2006, § 10.28.15)

State law reference(s)—Vehicles of low appraisal, ORS 819.280.

Sec. 32-201. Notice prior to removal; methods; contents.

If the city proposes to take custody of a vehicle under this article, the city shall provide notice and shall provide an explanation of procedures available for obtaining a hearing under sections 2-438 and 2-439. Except as otherwise provided under state law, notice required under this section shall comply with all of the following:

- (1) Notice shall be given by affixing a notice to the vehicle with the required information. The notice shall be affixed to the vehicle at least 24 hours before taking the vehicle into custody. The 24-hour period under this subsection includes holidays, Saturdays and Sundays.
- (2) Notice shall state all of the following:
 - a. That the vehicle will be subject to being taken into custody and removed by the city if the vehicle is not removed before the time set by the city.
 - b. The statute, ordinance or rule violated by the vehicle and under which the vehicle will be removed.
 - c. The place where the vehicle will be held in custody or the telephone number and address of the city that will provide the information.
 - d. That the vehicle, if taken into custody and removed by the city, will be subject to towing and storage charges and that a lien will attach to the vehicle and its contents.
 - e. That the vehicle will be sold to satisfy the costs of towing and storage if the charges are not paid.
 - f. That the owner, possessor or person having an interest in the vehicle is entitled to a hearing, before the vehicle is impounded, to contest the proposed custody and removal if a hearing is timely requested.
 - g. That the owner, possessor or person having an interest in the vehicle may also challenge the reasonableness of any towing and storage charges at the hearing.
 - h. The time within which a hearing must be requested and the method for requesting a hearing.

(Code 2006, § 10.28.16)

Sec. 32-202. Notice after removal; method; contents.

- (a) If the city takes custody of a vehicle, the city shall provide, by certified mail within 48 hours of the removal, written notice with an explanation of procedures available for obtaining a hearing under this article to the owners of the vehicle and any lessors or security interest holders as shown in the records of the Department of Transportation. The notice shall state that the vehicle has been taken into custody and shall give the location of the vehicle and describe procedures for the release of the vehicle and for obtaining a hearing. The 48-hour period under this subsection does not include holidays, Saturdays or Sundays.
- (b) Any notice given under this section after a vehicle is taken into custody and removed shall state all of the following:
- (1) That the vehicle has been taken into custody and removed by the city and the statute, ordinance or rule under which the vehicle has been taken into custody and removed.
 - (2) The location of the vehicle or the telephone number and address of the Police Department.
 - (3) That the vehicle is subject to towing and storage charges, the amount of charges that have accrued to the date of the notice and the daily storage charges.
 - (4) That the vehicle and its contents are subject to a lien for payment of the towing and storage charges and that the vehicle and its contents will be sold to cover the charges if the charges are not paid by a date specified by the city.
 - (5) That the owner, possessor or person having an interest in the vehicle and its contents is entitled to a prompt hearing to contest the validity of taking the vehicle into custody and removing it and to contest the reasonableness of the charges for towing and storage if a hearing is timely requested.
 - (6) The time within which a hearing must be requested and the method for requesting a hearing.
 - (7) That the vehicle and its contents may be immediately reclaimed by presentation to the Chief of Police of satisfactory proof of ownership or right to possession and either payment of the towing and storage charges or the deposit of cash security or a bond equal to the charges with the city.

(Code 2006, § 10.28.17)

Sec. 32-203. Procedure for vehicles that have no identification markings.

If there is no vehicle identification number on a vehicle and there are no registration plates and no other markings through which the Department of Transportation could identify the owner of the vehicle, then the city is not required to provide such notice and the vehicle may be removed and disposed of as though notice and an opportunity for a hearing had been given.

(Code 2006, § 10.28.18)

Sec. 32-204. Inventory.

All impounded vehicles shall be inventoried by the Chief of Police or designee as soon as reasonably possible after the impoundment. The person conducting the inventory shall make a written record of the condition of the vehicle and of any personal property located therein, including all self-contained items. Locked containers shall be inventoried as a singular item and shall not be forced open unless special circumstances exist which justify the opening of the container under the policy reasons set forth herein. The glove box, the trunk, and all other closed

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compartments of the vehicle shall be inspected, provided they are unlocked or a key is available to unlock said compartments. Objects found within the vehicle shall be scrutinized only to the extent necessary to identify them. Once the inventory is completed, the vehicle shall be secured in a safe place.

(Code 2006, § 10.28.19; Ord. No. 1315; Ord. No. 1543, § 2(Exh. B), 1-12-2016)

Secs. 32-205—32-220. Reserved.

ARTICLE VIII. SKATEBOARDS, ROLLER BLADES, SCOOTERS, AND BICYCLES

DIVISION 1. GENERALLY

Secs. 32-221—32-240. Reserved.

DIVISION 2. BICYCLES

Sec. 32-241. Application.

- (a) No parent of any minor child, and no guardian of any minor ward, shall authorize or knowingly permit any such minor child or ward to violate any of the provisions of this division.
- (b) Provisions of this chapter relating to bicycles shall apply whenever a bicycle is operated upon any street or public path set aside for the exclusive use of bicycles, subject to those exceptions stated herein.
- (c) The offense described in this section is an Independence Municipal Code Class C violation, per section 1-22.

(Prior Code, § 52.510; Code 2006, § 10.36.1)

Sec. 32-242. Registration required.

No person who resides within the city shall ride or propel a bicycle on any street or public property unless such bicycle has been registered with the Chief of Police. The Chief of Police shall register a bicycle, providing the applicant submits satisfactory proof of ownership of the bicycle and evidences reasonable knowledge of safety rules. Fees for registering bicycles shall be set by council resolution. The offense described in this section is an Independence Municipal Code Class D violation, per section 1-22.

(Prior Code, § 52.515; Code 2006, § 10.36.2)

Sec. 32-243. Inspection of bicycle required.

The Chief of Police shall inspect each bicycle before registering, and shall refuse to register any bicycle which the Chief determines is in unsafe mechanical condition.

(Prior Code, § 52.520; Code 2006, § 10.36.3)

Sec. 32-244. Transfer of ownership.

Upon the sale or other transfer of a registered bicycle, the registered owner may, upon proper application and without payment of a fee, have the registration assigned to the purchaser or to another bicycle owned by the applicant.

(Prior Code, § 52.525; Code 2006, § 10.36.4)

Sec. 32-245. Bicycle dealers.

Every person engaged in the business of buying secondhand bicycles shall maintain a record of every bicycle purchased, giving the name and address of the person from whom purchased, a description of such bicycle by name or make, the frame number thereof and the registration number, if any, found thereon.

(Prior Code, § 52.530; Code 2006, § 10.36.5)

Sec. 32-246. Rental agencies.

A rental agency shall not rent or offer any bicycle or rent unless the bicycle is registered and such bicycle is equipped with all equipment required by this division.

(Prior Code, § 52.535; Code 2006, § 10.36.6)

Sec. 32-247. Bicycle operating rules.

(a) In addition to observing all other applicable provisions of this division and state law, a rider of a bicycle upon a street shall:

- (1) Not ride upon a sidewalk within the area specifically designated by resolution of the City Council;
- (2) On a two-way street, ride to the extreme right, except when preparing for a left turn. On a one-way street, ride to the extreme curbside of the traffic lane and with the direction of travel designated for that lane. If the curb lane is designated for left-turn or right-turn only, and the operator is not intending to turn, the bicyclist shall operate in the through lane;
- (3) Not operate a bicycle in a careless or reckless manner which endangers or would be likely to endanger himself, another or any property. Racing or trick riding shall be included in this offense;
- (4) Not leave a bicycle, except in a bicycle rack. If no rack is provided, the cyclist shall leave the bicycle so as not to obstruct any roadway, sidewalk, driveway or building entrance. Nor shall the cyclist leave the bicycle in violation of the provisions relating to the parking of motor vehicles;
- (5) Any person riding a bicycle upon a sidewalk shall yield the right-of-way to any pedestrian, and shall give audible signal before overtaking and passing such pedestrian.

(b) The offense described in this section is an Independence Municipal Code Class D violation, per section 1-22.

(Prior Code, § 52.540; Code 2006, § 10.36.7)

Sec. 32-248. Impoundment.

(a) It is unlawful to leave a bicycle on public or private property without the consent of the person in charge or the owner thereof.

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- (b) A bicycle left on public property for a period in excess of 24 hours may be impounded by the Police Department.
 - (c) In addition to any citation issued, a bicycle parked in violation of this division may be immediately impounded by the Police Department.
 - (d) If a bicycle impounded under this division is licensed, or other means of determining its ownership exist, the police shall make reasonable efforts to notify the owner. An impounding fee of \$1.00 shall be charged to the owner. No impounding fee shall be charged to the owner of a stolen bicycle which has been impounded.
 - (e) A bicycle impounded under this chapter which remains unclaimed shall be disposed of in accordance with the city's procedures for disposal of abandoned or lost personal property.
 - (f) The offense described in this section is an Independence Municipal Code Class D violation, per section 1-22. (Prior Code, § 52.545; Code 2006, § 10.36.8)

Secs. 32-249—32-264. Reserved.

DIVISION 3. SKATEBOARDS, ROLLERBLADES, NON-MOTORIZED SCOOTERS AND BICYCLES IN BUSINESS DISTRICTS AND CITY PARKING LOTS⁷

Sec. 32-265. Definitions.

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

Business district means all the area inside the boundaries as illustrated on the attached map.

(Code 2006, § 10.37.1; Ord. No. 1413, § 1, 10-22-2002; Ord. No. 1448, 6-28-2005; Ord. No. 1452, 12-13-2005)

Editor's note(s)—See map at end of this division.

Sec. 32-266. Operation of skateboards, roller skates, rollerblades, non-motorized scooters and bicycles prohibited.

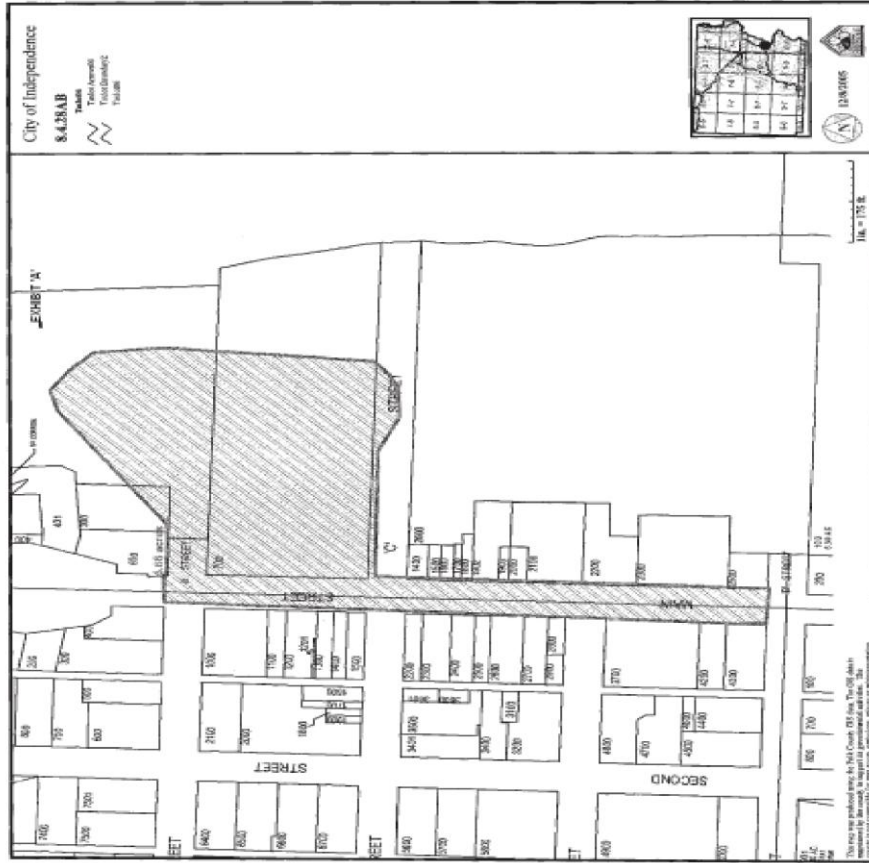
- (a) No person shall ride or operate a skateboard, roller skates or non-motorized scooter upon any sidewalk, alley, street or place open to the public within the downtown business district of the city as defined in section 32-265.
- (b) No person shall ride or operate a bicycle upon any sidewalk within the business district of the city as defined in section 32-265.
- (c) The offense described in this section is an Independence Municipal Code Class D violation, per section 1-22. (Code 2006, § 10.37.2; Ord. No. 1413, § 1, 10-22-2002)

⁷State law reference(s)—Nonmotorized vehicles, ORS 814.600.

Sec. 32-267. Penalties.

Violation of any provision of this division is punishable by a fine of up to \$75.00.

(Code 2006, § 10.37.3; Ord. No. 1413, § 1, 10-22-2002)



Chapter 34 UTILITIES

ARTICLE I. IN GENERAL

Secs. 34-1—34-18. Reserved.

ARTICLE II. PUBLIC UTILITIES¹

Sec. 34-19. Public utility defined.

As used in this article, the term "public utility" means and includes all persons, firms and corporations serving customers within the city or running transmission lines in or through the city for the service or transmission of electricity, water, wastewater, stormwater, internet, gas, telephone or other service provided to properties.

Sec. 34-20. Alteration of services permit required.

No public utility operating within the city without a franchise from the city shall extend, alter or modify its services or facilities without having first obtained a permit therefor from the Public Works Department as provided in this article.

Sec. 34-21. Permit application fee.

Permits as herein provided shall be issued only upon a written application by the public utility upon forms to be prescribed by the Public Works Department with the approval of the City Engineer. Each application shall be accompanied by a fee as established by resolution of the City Council.

Sec. 34-22. Indemnification agreements.

Each application for a permit shall be accompanied by a written agreement by the public utility to indemnify the city for all damage to city property or facilities and to indemnify and save the city harmless from the claims and demands of all persons for personal injury and property damage caused directly or indirectly as a result of the applicant's work and activities under such permit.

Sec. 34-23. Application approval by City Engineer.

Before approval of any such application and issuance of any permit the Public Works Department shall submit the application to the City Engineer which shall first determine that the work covered by the application will not interfere with any programs of the city or with the use by the city of streets and other facilities, and that the work will be carried out in such a manner as to afford maximum protection to the public.

¹State law reference(s)—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.

Sec. 34-24. Relocation of facilities.

Any public utility operating within the city without a franchise from the city shall relocate their facilities upon ten days' written notice given by the city pursuant to a determination by the City Engineer that such relocation is necessary in order to accommodate city improvements of any nature. In the event that public utility shall not comply with the notice within the prescribed time, the city may, at its discretion, remove or relocate such facilities and charge the cost of such removal or relocation to the public utility owning the same. The time allowed for relocating as prescribed herein may be extended upon a showing by the public utility of the necessity for such extension.

Sec. 34-25. Annual fee.

All public utilities operating within the city without a franchise shall pay to the city an annual fee, which shall be payable quarterly on or before March 15, June 15, September 15, and December 15 of each year for the periods ending February 28, May 31, August 31, and November 30 prior to the payable date, equal to seven percent of its gross annual receipts obtained from its subscribers and customers residing within the city. Gross annual receipts as used herein shall include all sums obtained from city subscribers and customers including service charges, late charges, connection fees, or other revenues obtained from said subscribers and customers.

Secs. 34-26—34-53. Reserved.

ARTICLE III. WATER SERVICE SYSTEM

DIVISION 1. GENERALLY

Sec. 34-54. Definitions.

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

City means the City of Independence

Commercial and industrial service means service available to commercial and industrial customers, including mercantile establishments, stores, offices, public buildings not otherwise classified, public and private hospitals, schools, churches, mercantile and industrial establishments combined with residences, and apartment houses except those in which service to each apartment is metered separately.

Council means the Mayor and City Council of the City of Independence, Oregon.

Customer means any person granted water service after due application.

Customer line means the pipe, valves and fittings leading from the water meter into the premises served.

Director means the Director of Public Works of the City of Independence, employed by the City of Independence.

Dwelling unit means a facility designed for permanent or semi-permanent occupancy and provided with kitchen, sleeping and sanitary facilities.

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.

Main or water main means the pipe in the street, alley or right-of-way owned and maintained by the City for the purpose of distributing water to customers and servicing fire hydrants.

Person means and includes any natural person, firm, co partnership, association or corporation.

Residential service means service to single-family residences and to individual apartments or flats where service is furnished through a separate meter for each individual apartment or other such dwelling unit.

Service line or service connection means the pipe, valves, stops and fitting from a main to and including the meter and meter box.

System means all or any part of the water system owned and operated by the City and includes all service lines to and including all meters

Temporary service means a line connecting the nearest water main to the premises, in lieu of a permanent main adjacent to the users' property.

Sec. 34-55. Ownership of system.

The water system is owned by the City of Independence and the people residing therein, and none of the properties may be disposed of except as by Charter or ordinance provided.

Sec. 34-56. Jurisdiction and operation.

- (a) The entire system including all mains, service lines, meters, reservoirs, pumping stations, treatment plants, and all facilities and appurtenances shall be operated only by regularly employed and authorized personnel of the City.
- (b) No person shall connect to any main or service of the system or interfere with the operation of any of the facilities whatsoever, or turn on any meter or service, or operate any valves or fire hydrants; provided, however, that members of regularly constituted fire departments shall be permitted to connect to and use fire hydrants for the express purpose of fighting fire, testing and use consistent therewith.

Sec. 34-57 Responsibility and liability of City.

- (a) The City shall maintain and repair its mains, service pipes, meters, structures, facilities and all appurtenances so as to keep them in repair and operative condition at all times insofar as practical and reasonable.
- (b) The City shall not be liable for damages or otherwise responsible because of interruptions or discontinuance of water service. The Council shall have the right in cases of inadequate supply or shortages of water to determine how water shall be used, and give preference to those uses determined to be in the best interest of the public health and public convenience or necessity.
- (c) The City shall not be liable for any damage or injury whatsoever for leakage or the running of water on the premises from the pipe lines, plumbing fixtures, open faucets, valves, fixtures and hoses beyond meters set at property lines.

Sec. 34-58 Use of water.

The City shall furnish water for ordinary domestic, business and community use and for such sprinkling, irrigation, industrial, commercial and firefighting purposes as the system may reasonably supply and as may be approved by the Council.

Sec. 34-59 Restricted use of water.

- (a) The City Council may, by resolution, at such times as it deems appropriate, restrict the use of City water.

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- (b) It is unlawful for anyone to use water in violation of the terms of a water restriction resolution duly imposed by the City Council. Violation of such restrictions may be punishable by a fine not exceeding \$100.00 for each day of the violation.

Sec. 34-60 Furnishing water.

The City shall not be obligated to furnish and install at its expense system facilities for all property within the City. The City shall, so far as reasonable and practicable and within its financial means, however, provide adequate source of supply, necessary primary feeder mains, storage facilities and other improvements necessary to make water service generally available to all areas within the City. Extensions to furnish water to areas at present not now obtaining water from the system shall, at the expense of those persons requesting service, be made by the City or by those expressly authorized to do so.

Sec. 34-61 Spider connections prohibited.

Water service shall be provided only from pipes or mains located within streets, alleys, or rights-of-way controlled by the City, and to property or premises abutting such mains. So-called "spider connections" which would provide service from one street or road to property or premises abutting another street or road shall not be permitted, and requests for such service shall be disapproved.

Sec. 34-62 Location of meters – pipes and meters to be City property.

Meters shall be set at property lines or within City owned public utility easement next to City right of way, and the service pipe from the main to the meter as well as the meter and meter box shall be the property of the City and not the person owning the premises or paying for the installation.

Sec. 34-63 Service outside City.

New service connections to persons residing outside of the corporate limits of the City shall not be provided. The City shall require annexation as a condition of providing a new water service. Existing services outside of the City at the time of code adoption may continue and rates for service shall be set per Sec. 34-66.

Sec. 34-64 Establishment of rate schedules.

Rate schedules for water service within and without the City shall be established and may from time to time be revised by the Council by resolution.

Sec. 34-65. Construction to conform to standards.

All public or private water distribution systems to be connected to the municipal water system, whether publicly or privately constructed, shall conform to standards of design, sizing, materials and workmanship prescribed by the City. Failure to meet standards shall be grounds for refusal to allow connection to the municipal water system or stoppage of service. Service connections will not be made until the system is approved and accepted.

Sec. 34-66. Construction inspection and approval.

Reasonable notice shall be given to the city to inspect and test all work in connection with the construction of water mains by private contractors. Mains shall meet construction standards and standards for leakage tests and bacteriological tests prior to acceptance.

Sec. 34-67. Tampering with pipes unlawful.

Connections to water distribution mains for the purpose of extending such lines or for providing water service shall be made only by employees of the city in the normal performance of their duties or by private contractor under a Public Works Department permit. It is unlawful for any person to attach to or to detach from any water main or connection through which water is supplied by the city from the municipal water system, or to interfere in any manner or tamper with such pipes or connections, without having first obtained the written consent of the city. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

Sec. 34-68. Unlawful to operate valves and appurtenances.

It is unlawful for any person, other than an employee of the Public Works Department in the normal performance of that person's duties, to operate valves and appurtenances connected with the municipal water system. In addition, fire hydrants may be operated by personnel of the Fire Department or district in performance of their regular duties. Fire hydrants shall not be used for purposes other than firefighting, flushing mains and filling street cleaning and similar equipment, unless application for service has been made and the meter set to measure water use for private purposes, as provided in section 34-84. Operation of fire hydrants by use of any wrench other than the standard fire hydrant wrench designed for that purpose is prohibited. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

Sec. 34-69. Public fire protection.

Consistent with its primary purpose of providing adequate potable water for residential, commercial and industrial use, the water distribution system shall be designed to provide public fire protection by means of fire hydrants located as directed by the Chief of Polk County Fire District #1 or a corresponding official in any fire district that may be authorized to serve the city. The main system shall be designed insofar as possible to provide fire flows recommended by the insurance services office. All mains, constructed or reconstructed, upon which fire protection depends, shall be a minimum of eight inches in diameter and wherever possible, shall be looped to provide flow from two or more directions.

Sec. 34-70. Contamination of water unlawful.

- (a) It is unlawful for any person to in any way contaminate or pollute the water in the reservoirs or pipes of the municipal water system or in any fountain, hydrant or source or place of storage of the water supply of the city or any of its inhabitants.
- (b) It is unlawful for any person to throw any rubbish, debris or any other thing into any water reservoir belonging to the city.
- (c) The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

Sec. 34-71. Special contracts to sell water.

Notwithstanding the provisions of this article, the City Council may, at its discretion, enter into special contracts to sell water at other than the water rates established by this article in situations where special considerations exist justifying charges other than regular rates.

Sec 34-72. Connection required.

The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes, situated within the city and abutting on any street, alley or right-of-way in which there is located a public water system of the city, is required at the owner's expense to install suitable water facilities therein, and to connect such facilities directly with the proper public water in accordance with the provisions of this article, within

90 days after date of official notice to do so, provided that the public water is within 100 feet of the property line or property corner. Properties with wells are required to install an approved reduced pressure backflow device to prevent contamination of the City's water system.

Secs. 34-73—80. Reserved.

DIVISION 2. CONDITIONS OF SERVICE

Sec. 34-81. Application for connection to city water system.

Each person desiring to connect to the municipal water system shall make application in conformance with the requirements of section 34-401.

Sec. 34-82. Service lines and meters; sizing.

- (a) Unless otherwise requested, approved, and paid for, service connections shall be a minimum of one inch and meters shall be three-fourths inch meters, together with such corporations stop, fittings, connections, yoke or setter, meter box, shutoff cocks, etc., as the City shall require.
- (b) Services larger than one inch may be installed when requested in writing, provided the system is able to adequately service such larger connection without interfering with the meter service of others. The charges made for the installation of larger services shall be sufficient to cover all costs thereof, and the minimum of "ready to serve" charge may be higher than for standard one inch service connections.

Sec. 34-83. Meters and system to be owned by city.

All water meters, water mains, hydrants, and services shall be owned and maintained by the city. Systems on the property side of the meters shall be owned and maintained by the property owner. Meters and other system appurtenances may be tested, repaired, relocated and interchanged by the city as required without regard to who paid the initial cost of the water system so long as the premises continues to be supplied through the meter adequate for its needs.

Sec. 34-84. Users to be individually metered.

- (a) Each dwelling or building, or building complex under the same ownership shall be provided with its own water service connection and meter. Multifamily dwellings and other multi-occupancy units under the same ownership shall be provided with one meter, unless the customer requests and pays for additional meters.
- (b) No person shall furnish water to either buildings or premises without making application for water service with the City, and then only under the specific terms of any such authorization which might be granted.
- (c) No City water customer may furnish City-supplied water to a non-customer or customer who has had service stopped by the City by means of a hose, pipe or similar conveyance. A de minimis temporary use of City water does not constitute a violation of this subsection.
- (d) The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

Sec. 34-85. Meter accuracy.

Normal maintenance and repair of meters shall be carried on by the City at its expense. Should a customer wish to have his or her meter tested, the City will make such tests upon written request by the customer, but should the meter so tested be found accurate within two percent of true delivery, the customer requesting such testing shall pay the cost thereof; provided, however, that should such meter be found to under register in excess

of two percent testing shall be at the cost of the City. No more than one test shall be conducted during any 12 month period and the user will be charged for making additional tests during an annual period. All meters used to measure quantities of water for determining charges shall be maintained in such condition as to register within an accuracy of plus or minus two percent the amount of water passing through the meter. Meters used and accuracy of measurements shall conform to standards set by the American Water Works Association. If a meter is found to register water use with an error greater than two percent, billings shall be adjusted to correct the error for a period not exceeding the six months prior to the test.

Sec. 34-86. Meter change in size.

Size of the meter serving a premises may be changed at the request of the user upon payment of the estimated cost of making the change. Increase in size will require increase in the size of the service line in most cases. Meter size will not be changed for any premises more frequently than once per year. Meter size shall determine the minimum charge.

Sec. 34-87. Connection of service.

- (a) The point of delivery shall be at a mutually acceptable location, from the city water main adjacent to the property line, or curblineline of the premises upon which the water service is to be utilized by the user.
- (b) The city shall not be required to install or maintain more than one service extension from its distribution mains to supply the same class of service to any one user on any particular premises. Each user shall furnish, own, install and maintain at the user's own expense, all piping, plumbing, equipment and faucets located beyond the point of delivery.
- (c) Where service is to be newly established at a point of delivery, requiring that the city install a service pipe, the user shall, at the time of application for service, pay the city a connection charge, as set forth in section 34-133.
- (d) All plumbing and equipment located beyond the point of delivery, including outside hydrants and faucets, shall be connected to the service extension, at the expense of the user and in such a manner that all water used by the user shall pass through the meter.

Sec. 34-88. Access to premises.

Employees of the city shall have access, upon proper identification, to all premises at which city water is being used for the purpose of determining that no hazard exists to the public water system as a result of the manner in which the water is being used, and to allow the city employees to take readings from any water meter located on the premises. Such access shall be at reasonable hours and shall not interfere with the customer's normal use of the person's premises.

Sec. 34-89. Damage to facilities user responsible.

Each user of water shall protect the user's facilities so that hot water cannot be returned to the water mains. Users will be charged for the expense of repairs for meters and pipe lines damaged by hot water.

Sec. 34-90. Private booster pumps prohibited.

No booster pumps shall be installed by a user for the purpose of increasing water pressure or delivery without the express written permission of the city. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

Sec. 34-91. Interruption of service notification.

The City from time to time must interrupt service for repairing mains, making extensions, repairing valves, pumps, and control devices, etc., and for cleaning, maintaining and reconditioning reservoirs and storage tanks.

The City shall not be responsible for any damages caused by such interruptions of service or fluctuations in pressure, but shall, whenever feasible to do so, give customers advance notice whenever it is known that service is to be interrupted for any appreciable length of time, but failure to give such notice shall in no manner cause the City to become liable for loss or damage caused by service interruption.

Sec. 34-92 Pressure regulation.

- (a) Insofar as it is reasonably possible, feasible and economical for the City to do so, it will furnish water at desirable service pressures. In locations in which service pressures are higher than needed or desired by users, customers shall install and maintain within their premises any pressure regulators required.
- (b) The City shall not be responsible for damages or difficulties experienced by reason of variations in pressure within the system.

Sec. 34-93. Plumbing to be kept in repair.

- (a) It is the responsibility of the user to keep the user's piping and fixtures in good repair to prevent damage to premises and waste of water. The city shall not be responsible for damage to property resulting from turning on or continuing water service to premises with defective plumbing.
- (b) The user shall be responsible for the installation and maintenance of all piping, plumbing and equipment on the user's premises connected or to be connected to city's distribution system. The city shall not be liable for any loss or damage of any nature whatsoever caused by any defect in the user's piping or the user's equipment upon the premises of the user. The city does not assume the duty of inspecting the user's piping, plumbing and equipment and shall not be responsible therefor. This section shall not apply to any inspection responsibilities assumed by the city building inspector in conjunction with issuance of building permits.

Sec. 34-94. Electrical grounding.

Property owners are prohibited from using the city's water system for grounding of electrical circuits.

Sec. 34-95. Temporary service agreement.

- (a) In certain instances where, in the judgment of the Public Works Director, construction of a water main to serve a given piece of property is not advisable or feasible, water service may be provided by a temporary connection to some other main, pending construction of a permanent main to serve the property. Such temporary connection shall be acknowledged by the applicant, who shall execute a waiver of remonstrance applicable to assessment for a permanent water main in the future. Such acknowledgment and waiver shall be recorded in deed records of the county, and shall be binding upon subsequent owners.
- (b) When temporary service is desired, the applicant may be required to advance to the city a sum equal to the estimated cost of labor and material, including reasonable overhead charges, necessary to install and remove such service connection. At the termination of the service period, that portion of the advance which remains after deduction of the actual costs of labor and material necessary to connect and disconnect such service (less the salvage value of material removed), will be refunded to the applicant, after application of the advance to any unpaid fees or charges for water service.

Sec. 34-96. Abandonment of service lines and water mains.

- (a) The Public Works Director may cause the removal or abandonment of any unused service line when its further need is not apparent and when in the Public Works Director's judgment removal is appropriate to reduce leakage or future maintenance responsibility. Subsequent service to the properties that would have been served by the unused line shall be treated as a new service.
- (b) Within 90 days of the date of written notice from the city, customers shall connect at their expense to the new meter location provided at the customer's property line where a new water main is constructed to serve the property and there is an abandonment of the existing water main.

Sec. 34-97. Temporary water pump station installation.

- (a) In certain instances where, in the judgment of the Public Works Director, it is not practicable to provide adequate water flows to any area through the use of traditional water service methods, the city may, at its option, elect to serve the area through the installation and operation of a temporary water pump station.
- (b) As used in this section and section 34-98, unless the context otherwise requires, the term "temporary water pump station" or "temporary pump station" means any self-contained pump station designed, constructed and installed by the city with the intent of future relocation.

Sec. 34-98. Temporary water pump station payment.

- (a) At such time that any person requests water service requiring a temporary pump station, the Public Works Director shall review such request and if approved, shall cause the improvement to be installed.
- (b) The person requesting such service, and any person who shall make use of the pump system during future operation, shall pay for such service in a lump sum, before connection to the system, according to the following formula:
 - (1) Total payment equals the sum of fire flow plus domestic water use, calculated in gallons per minute, times \$10.00 per gallon per minute;
 - (2) Fire flow equals 1,000 gallons per minute unless otherwise specified by the Chief Local Fire Official;
 - (3) Domestic water use shall be calculated according to the water demand estimate method used in the Uniform Plumbing Code, where one housing unit shall be considered to be 30 fixture units.
- (c) All funds paid to the city pursuant to this section shall be submitted to the water fund.

Sec. 34-99. Sprinkling and irrigation restricted.

The city may restrict the use of water for sprinkling and irrigation purposes at such times and in such manner as may be necessary to maintain adequate service for other purposes.

Secs. 34-100—34-124. Reserved.

DIVISION 3. CHARGES, BILLINGS AND COLLECTIONS

Sec. 34-125. Water fund created.

A special fund is created known as the water fund, and the Finance Director shall deposit in this fund all proceeds of the charges imposed under this chapter. The water fund shall be used solely and exclusively for paying all or part or any part of the cost of operation, maintenance and repair of the water system; administration costs; planning and construction; and payments of the principal and interest on any debts of the city water system. Water funds shall not be used for other purposes without a resolution approved by the City Council specifying the terms of repayment within the timelines allowed by state law.

Sec. 34-126. Fees, rates and charges; Council authority.

All fees, rates and charges for water services shall be established by resolution of the City Council.

Sec. 34-127. Water service billing.

- (a) All billings for water service shall be made monthly on the basis of the amount of water used during the previous monthly period, and the monthly base rate minimum (See subsection (c) of this section below).

Amounts billed will not be reduced for loss of water due to waste caused by leakage of equipment of the customer, except as provided in section 34-409(a).

- (b) If, for any reason, it is impossible or impractical to read the meter, consumption may be estimated, based on the previous history of use, until the meter can be read.
- (c) The city shall commence charging the water base rate for all properties the day that connection is made to the public water system. Once the water base rate has commenced, no credit shall be given for vacancy, unless a property owner gives written notice to disconnect from the water system per section 34.405.2.
- (d) Water billing and collection procedures shall be performed as provided in article VI of this chapter.

Sec. 34-128. Computation and collection of charges.

All collections for user service charges shall be made by the appropriate city department. User service charges shall be computed and payable as provided in this division.

Sec. 34-129. Billing mailing address.

Bills for water service charges shall be mailed to the address specified in the application for permit to make the connection, or the address in the application for water service submitted pursuant to article VI of this chapter whichever was submitted most recently, unless or until a different owner or user of the property is reported in writing to the city not less than 25 days before the next billing.

Sec. 34-130. Fraud prevention devices.

The city reserves the right to install such meters or other devices as may be necessary for the detection and prevention of fraud or waste without notice to the customer. Whenever flat rate service is furnished for a special use and a demonstrated abuse of such service occurs, the city may, upon written notice to the customer, meter such service and bill, under an applicable schedule, for water supplied.

Sec. 34-131. Damage to meter equipment; user responsible.

Should damage result to metering equipment by reason of the customer's tampering or willful neglect of the equipment, the city will repair or replace such equipment and may require payment by the customer for all costs incurred.

Sec. 34-132. Rate schedule.

- (a) The monthly rates and charges for residential, commercial and industrial water service shall be adopted by resolution of the Council.
- (b) For all services outside the corporate limits of the city, a surcharge of 100 percent shall be added to the inside rate and charges, except as otherwise established by written agreement approved by the City Council.

Sec. 34-133. Service connection charges.

- (a) Where service is to be newly established or re-established at a point of delivery, requiring that the city install a service pipe or meter, the customer shall, at the time of application for service, pay the city a connection charge. The connection charge shall be established by resolution of the City Council.
- (b) Costs of the meter will be paid by the customer for all meters and they become property of the city.

Secs. 34-134—34-160. Reserved.

DIVISION 4. CROSS CONNECTION REQUIREMENTS

Sec. 34-161. Definitions.

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

Controlled cross-connections means a connection between a potable water system and a nonpotable water system, with an approved backflow-prevention device properly installed that will continuously afford the protection commensurate with the degree of hazard.

Cross-connection means any physical connection or arrangement of piping or fixtures between two otherwise separate piping systems, one of which contains potable water and the other nonpotable water or industrial fluids of questionable safety, through which, or because of which, backflow or back-siphonage may occur into the potable water system. Other types of cross-connections include, but are not limited to, connectors such as swing connections, removable sections, four-way plug valves, spools, dummy sections of pipe, swivel or changeover devices, sliding multi-port tube, and solid connections.

Customer means a utility consumer of the city, including residential, commercial, public, or industrial users.

State means any agency of the state charged with responsibility for establishing administrative regulations pertaining to cross connection requirements.

Sec. 34-162. Inspection of premises for compliance.

The customer's system shall be open for inspection at all reasonable times to authorized representatives of the city to determine whether cross-connections or other structural or sanitary hazards, including violations of these regulations, exist. When such a condition becomes known, the Public Works Director or designee shall deny or immediately discontinue service to the premises by providing a physical break in the service line until the customer has corrected the condition in conformance with the state and city statutes relating to plumbing and water supplies, and the regulations adopted pursuant thereto.

Sec. 34-163. Backflow-prevention device—Required when.

An approved backflow-prevention device shall also be installed on each service line to a customer's water system at or near the property line, or immediately inside the building served, but in all cases before the first branch line leading off the service line whenever the following conditions exist:

- (a) In case of premises having an auxiliary water supply which is not or may not be of safe bacteriological or chemical quality and which is not acceptable as an additional source by the Public Works Director or designee, the public water system shall be protected against backflow from the premises by installing a backflow prevention device in the service line appropriate to the degree of hazard.
- (b) In the case of premises on which any industrial fluid or any other objectionable substance is handled in such a fashion as to create an actual or potential hazard to the public water system, the public system shall be protected against backflow from the premises by installing a backflow-prevention device in the service line appropriate to the degree of hazard. This shall include the handling of process waters and waters originating from the utility system which have been subject to deterioration in quality.

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- (c) In the case of premises having:
 - (1) Internal cross-connections that cannot be permanently controlled; or
 - (2) Intricate plumbing and piping arrangements, or where entry to all portions of the premises is not readily accessible for inspection purposes, making it impracticable or impossible to ascertain whether or not dangerous cross-connections exist;

the public water system shall be protected against backflow from the premises by installing a backflow-prevention device in the service line.

- (d) Hard plumbed accessory components such as irrigation systems, are required to meet the standards of this division.

Sec. 34-164. Same—Types required.

The type of protection device required under section 34-163(1), (2) and (3) shall depend upon the degree of hazard which exists, as follows:

- (a) An approved air-gap or an approved RP device shall be installed where the substance which could backflow is hazardous to health (e.g., sewage treatment plants, sewage pumping stations, chemical manufacturing plants, plating plants, hospitals, mortuaries, carwashes, and medical clinics).
- (b) An approved double check valve assembly shall be installed where the substance which could backflow is objectionable but does not pose an unreasonable risk to health.
- (c) An approved pressure vacuum breaker shall be installed where the substance which could backflow is objectionable, but does not pose an unreasonable risk to health and where there is no possibility of back pressure in the downstream piping. A shutoff valve may be installed on the line downstream of a pressure vacuum breaker.

Sec. 34-165. Same—Specifications.

- (a) Any backflow-prevention device required herein shall be of a model and size approved by the Public Works Director or designee.
- (b) The term "approved backflow prevention device" is a device specifically designed to counteract back pressures or prevent back siphonage, and which must appear on the official list of approved devices issued by the Oregon Health Authority (OHA).
- (c) Devices are approved based on testing and certification by recognized national organizations. Assemblies listed in the currently approved backflow prevention assemblies list developed by the University of Southern California (USC) Foundation for Cross-Connection Control and Hydraulic Research are considered approved by the OHA. The specific type of assembly required for a property depends on the potential degree of contamination or pollution hazard, as determined by local water suppliers following OHA regulations (OAR Chapter 333, Division 061)
- (d) State and City code requires all backflow prevention assemblies be tested each year by a certified backflow assembly tester, after any repair, replacement, or relocation, and after initial installation..
- (e) Testers other than the testers listed on the city's approved tester list may request to be added to the list after providing a copy of their current backflow testing license by OHA. Testers must have current calibrated gauge with calibration certificate available for inspection upon request by the city.

Sec. 34-166. Tests and certified inspections.

- (a) It shall be the duty of the customer/user at any premises where backflow prevention devices are installed to have certified inspections and operational tests made at least once per year. In those instances where the Public Works Director or designee deems the hazard to be great enough, the Public Works Director or

designee may require certified inspections at more frequent intervals. These inspections and tests shall be at the expense of the water user, and shall be performed by the device manufacturer's representative, by City Public Works Department personnel, or by a certified tester approved by the State Health Division. All testers in the city shall have confined space entry training. The customer-user shall notify the Public Works Director or designee in advance when the tests are to be undertaken so that the Public Works Director or designee or the director's representative may witness the tests if so desired. Disposition of test results shall be as provided in state law.

- (b) These devices shall be repaired, overhauled or replaced at the expense of the customer-user whenever the devices are found to be defective. Records of such tests, repairs and overhaul shall be kept, and an original copy shall be sent to the Public Works Director or designee in a timely manner.

Sec. 34-167. Existing protection devices—Permitted when.

All presently installed backflow-prevention devices which do not meet the requirements of this division, but were approved devices for the purposes described herein at the time of installation, and which have been properly maintained, shall, except for the inspection and maintenance requirements under section 34-166, be excluded from the requirements of these rules so long as the Public Works Director or designee is assured that they will satisfactorily protect the utility system. Whenever the existing device is moved from the present location, or requires more than minimum maintenance, or when the Public Works Director or designee finds that the maintenance constitutes a hazard to health, the unit shall be replaced by a backflow-prevention device meeting the requirements of this chapter.

Sec. 34-168. Same—Discontinuance when.

If an existing backflow device required by this division is not tested and maintained, or it is found that a backflow-prevention device has been removed or bypassed, service will be discontinued until such conditions or defects are corrected.

Sec. 34-169. Conflicting regulations.

In the event that a conflict exists or develops between any provision of this division and the Uniform Plumbing Code, then the codes shall be interpreted as mutually consistent, if possible. In the event that the interpretation and application cannot be reconciled, then this Code shall prevail.

Sec. 34-170. Mobile units.

Any mobile apparatus which uses the city system or water from any premises within the city must obtain a permit and shall either have an adequate air gap or backflow assembly.

Sec. 34-171. Fire systems.

- (a) An approved double check valve assembly shall be the minimum protection for fire systems using piping materials that is not approved for potable water use and/or which does not provide for periodic flow through during each 24-hour period.
- (b) If antifreeze is used to keep fire sprinkler system from freezing a RP device will be required.

Secs. 34-172—34-181. Reserved.

DIVISION 5. EXTENSION OF WATER MAINS

Sec. 34-182. Water main extensions – Responsibility for payment.

The City as a whole shall pay for the cost of supply, pumping stations, storage facilities and primary mains for the general distribution of water within the city, but it shall not pay the cost of main extensions to service additional customers, properties, tracts or subdivisions. Such extensions, when requested, shall be paid for by the person or persons requesting such extensions.

Sec. 34-183 Water main extensions – To be made by City.

Unless part of an approved development or subdivision, all water main extensions shall be made by the City or by a contractor approved by the City. Water main extensions shall be constructed to such design standards as the City may designate.

Sec. 34-184 Water main extensions – Size.

The City shall determine the size of mains required, and in general they shall not be less than eight inches in diameter fittings, valves, valve boxes, and fire hydrants required shall be included in the cost of extensions. Extensions shall be made in the street to the furthestmost point of the property to be served, or to the end of the block if the property to be served extends to an intersection.

Sec. 34-185 Water main extensions—Advance payment by property owner—Cost assessment by City.

Advance payment for extensions shall be made by the owner or owners of the property for which service is desired. After receipt of a written request for a main extension, the Director of Public Works shall prepare an estimate of cost and furnish the applicant with a copy thereof. The City shall not proceed with the work until payments have been made for the full amount of the proposed work including 10% for overhead. After completion of the work and tabulation of costs of the installation, any excess monies deposited prior to the work shall be refunded and any deficiency shall forthwith be paid to the City by the owner.

Sec. 34-186 Water main extensions—Maintenance and operation by City.

The facilities after installation shall be the sole property of the City and shall be maintained and operated by the City's personnel exclusively, and all connections for services thereto shall be made in the manner elsewhere set forth in these regulations, and the charges made for service connections and meters shall be as therein set forth.

Sec. 34-187 Water main extensions—Reimbursement to persons paying for extensions.

After completion of the work, a tabulation of costs shall be prepared by the City and any excess money deposited prior to the work shall be refunded to the depositor, and any deficiencies shall be forthwith paid to the City of Independence by the depositor or owner as the case may be.

Sec. 34-188 Violations.

Any offense described in this Article 3 of Section 34 is an Independence Municipal Code Class A violation, per section 1-22.

Secs. 34-189—34-202. Reserved.

ARTICLE IV. SEWER SERVICE USE REGULATIONS²

DIVISION 1. GENERALLY

Sec. 34-203. Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this article shall be as follows:

Biochemical oxygen demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees Centigrade, expressed in milligrams per liter.

Building drain means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet outside the inner face of the building wall.

Building sewer means the extension from the building drain to the public sewer or other place of disposal, also called house connection.

Combined sewer means a sewer intended to serve as a sanitary sewer and a storm sewer, or as an industrial sewer and a storm sewer.

Easement means an acquired legal right for the specific use of land owned by others.

Floatable oil means oil, fat or grease in a physical state such that it will separate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable fat if it is properly pretreated and the wastewater does not interfere with the collection system.

Garbage means solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

Industrial user means any nongovernmental, nonresidential user discharging industrial wastes.

Industrial wastes means the liquid wastes from any nongovernmental, nonresidential to a publicly owned treatment work which is identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented under one of the following divisions:

- (1) Division A: Agriculture, Forestry and Fishing.
- (2) Division B: Mining.
- (3) Division D: Manufacturing.
- (4) Division E: Transportation, Communication, Electric, Gas, and Sanitary Services.
- (5) Division I: Services.

A user in the divisions listed may be excluded if it is determined that it will introduce primarily segregated domestic wastes or wastes from sanitary conveniences..

²State law reference(s)—Sewage treatment and disposal systems, ORS 454.010 et seq.

Natural outlet means any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake or other body of surface water or groundwater.

Person means any individual, firm, company, association, society, corporation, or group.

pH means the logarithm of the reciprocal of the hydrogen-ion concentration. The concentration is the weight of hydrogen ions, in grams, per liter of solution. Neutral water, for example, has a pH value of 7 and a hydrogen-ion concentration of 10^{-7} .

Properly shredded garbage means the wastes from the preparation, cooking and dispensing of foods that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch in any dimension.

Public sewer means a common sewer controlled by a governmental agency or public utility.

Public Works Director means the responsible person of the wastewater treatment works of the city or the person's authorized representative.

Sanitary sewer means a sewer intended to carry only sanitary or sanitary and industrial wastewaters from residences, commercial buildings, industrial plants and institutions.

Sewage means the spent water of a community.

Sewer means a pipe or conduit that carries wastewater or drainage water.

Slug means any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration or flows during normal operation and shall adversely affect the collection system and/or performance of the wastewater treatment works.

Storm drain, sometimes termed "storm sewer," means a sewer intended to carry only stormwater, surface runoff, street wash waters and drainage.

Suspended solids means total suspended matter that either floats on the surface of, or is in suspension in water, wastewater or other liquids, and that is removable by laboratory filtering as prescribed in Standard Methods for the Examination of Water and Wastewater and referred to as non-filterable residue.

Unpolluted water means water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.

Wastewater means the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with any groundwater, surface water and stormwater that may be present. The term "wastewater" means sewage.

Wastewater facilities means the structures, equipment and processes required to collect, carry away and treat domestic and industrial wastes and dispose of the effluent.

Wastewater treatment works means an arrangement of devices and structures for treating wastewater, industrial wastes and sludge. The term "wastewater treatment works" sometimes used as synonymous with "waste treatment plant" or "wastewater treatment plant" or "water pollution control plant" or "sewage treatment plant."

Watercourse means a natural or artificial channel for the passage of water either continuously or intermittently.

Sec. 34-204. Chapter provisions not exclusive.

No statement contained in this chapter shall be construed to interfere with any additional requirements that may be imposed by the state or county.

Sec. 34-205. Waste deposited on public or private property unlawful.

It is unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the city or in any area under the jurisdiction of the city, any human or animal excrement, garbage or other objectionable waste. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

Sec. 34-206. Privy, septic tank and cesspool not allowed for disposal of wastewater.

Except as provided in this article, it is unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of wastewater. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

Sec. 34-207. Connection required.

The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes, situated within the city and abutting on any street, alley or right-of-way in which there is located a public sanitary or combined sewer of the city, is required at the owner's expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this article, within 90 days after date of official notice to do so, provided that the public sewer is within 300 feet of the property line or property corner.

(Prior Code, § 70.050; Code 2006, § 13.10.5)

Commented [GF1]: Oregon legislature updated OAR 340-071-0160 effective Jan 1 to set distance at 300

Sec. 34-208. Connection permit required.

No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Public Works Director or their designee.

Sec. 34-209. Connection fee.

- (a) The fee for connection of existing buildings or new buildings to the sewer shall be as adopted from time to time by resolution of the City Council.
- (b) As used in this section, the term "existing" means fully constructed and finished on or before July 22, 1976, and the term "new" means fully constructed and finished after July 22, 1976.
- (c) The fees set forth in this section shall accompany the application for sewer connection permits. The fees set forth in this section shall be in addition to costs each applicant shall pay for the installation and connection of such sewer as provided by the ordinances of the city.

Sec. 34-210. Connection standards.

The connection of the building sewer into the public sewer shall conform to the requirements of applicable building and plumbing codes or other applicable rules and regulations of the city, or the procedures set forth in appropriate specifications of the ASTM and the WPCF Manual of Practice No. 9. All such, connections shall be made gas tight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the Public Works Director or their designee before installation.

Sec. 34-211. Connection to be inspected by city.

The applicant for the building sewer permit shall notify the Public Works Director or their designee 72 hours in advance when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be inspected by the city.

Sec. 34-212. Excavations for sewer installation barricades and lights required.

All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city.

Sec. 34-213. Connection cost; owner responsibility.

All costs and expense incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

Sec. 34-214. Operation and maintenance of facilities; owner responsibility.

The owner shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no expense to the city.

Sec. 34-215. Private system allowed when.

Where a public sanitary or combined sewer is not available under the provisions of section 34-207, the building sewer shall be connected to a private sewage disposal system complying with the requirements of the Oregon State Department of Environmental Quality, the Oregon State Board of Health, the Plumbing Code of the State of Oregon, Polk County Plumbing Department, and all other applicable laws, rules and regulations. The provisions of this section shall be in addition to and not lieu of the requirements of other applicable laws, rules and regulations.

Sec. 34-216. Private system fee.

Before commencement of construction of a private wastewater disposal system the owner shall first obtain a written permit signed by the Building Official or their designee. The application for such permit shall be made on a form furnished by the city, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the Public Works Director or their designee. A permit and inspection fee as adopted from time to time by resolution of the City Council shall be paid to the city at the time the application is filed.

Sec. 34-217. Connection required when sewer available.

At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in section 34-215, and upon notification to the property owner from the City, a direct connection shall be made to the public sewer within 90 days in compliance with this article, and any septic tanks, cesspools and similar private wastewater disposal facilities shall be decommissioned, abandoned and filled with suitable material. All costs associated with decommissioning, abandonment and connection shall be the responsibility of the property owner. Proof of proper decommissioning shall be provided to the Public Works Director or their designee.

Sec. 34-218. Separate sewers required for each building.

A separate and independent building sewer shall be provided for every building; except where an alternate arrangement is approved by the Public Works Director or their designee.

Sec. 34-219. Old building sewers allowed when.

Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the Public Works Director or their designee, to meet all requirements of the Public Works Standards.

Sec. 34-220. Sewer construction standards.

The size, slope, alignment, materials of construction of all building sewers, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the city for private sewers. In the absence of suitable code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the ASTM and WPCF Manual of Practice No. 9 shall apply. The size, slope, alignment, materials of construction of all public sewers shall comply with the Public Works Standards.

Sec. 34-221. Sewer construction elevation.

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer at the property owners' expense.

Sec. 34-222. Prohibited connections.

No person shall make the connection of roof downspouts, foundation drains, areaway drains or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer. After receiving written notification by the city of preexisting private stormwater connections, the property owner will have 90 days, or a later date approved in writing by the Public Works Director, to disconnect stormwater connections from the sewer system. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

Sec. 34-223. Discharge of untreated sewage to natural outlet unlawful.

It is unlawful to discharge to any natural outlet within the city, or in any area under the jurisdiction of the city, sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this article. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

Sec. 34-224. Discharge of certain unpolluted waters to sewer not permitted.

No person shall discharge or cause to be discharged any unpolluted waters such as stormwater, surface water, groundwater, roof runoff, subsurface drainage or cooling water to any sewer. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

Sec. 34-225. Discharge of waters and wastes to sewer restrictions.

- (a) No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

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- (1) Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas;
 - (2) Any waters or wastes containing toxic or poisonous solids, liquids or gasses in any quantity, either singly or by interaction with other wastes to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant, including, but not limited to, cyanides in excess of two milligrams per liter or CN in the wastes as discharged to the public sewer;
 - (3) Any waters or wastes having a pH lower than 5.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works;
 - (4) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.
- (b) No person shall discharge or cause to be discharged the following described substances, materials, waters or wastes if it appears likely in the opinion of the Public Works Director or their designee that such wastes can harm either the sewers, sewage treatment process or equipment, having an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property or constitute a nuisance. In forming the person's opinion as to the acceptability of these wastes, the Public Works Director or their designee will give consideration to such factors as to quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage treatment process, capacity of the sewage treatment plant, and other pertinent factors. The substances prohibited are:
- (1) Any liquid or vapor having a temperature higher than 150 degrees Fahrenheit (65 degrees Celsius);
 - (2) Any waters or wastes containing fats, gas, grease or oils, whether emulsified or not, in excess of 100 milligrams per liter or containing substances which may solidify or become viscous at temperatures between 32 and 150 degrees (0 and 65 degrees Celsius);
 - (3) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower (0.76 horsepower metric) or greater shall be subject to the review and approval of the Public Works Director or their designee;
 - (4) Any waters or wastes containing strong acid iron pickling wastes or concentrated plating solutions whether neutralized or not;
 - (5) Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the Public Works Director or their designee for such materials;
 - (6) Any waters or wastes containing phenols or other taste- or odor-producing substances, in such concentrations exceeding limits which may be established by the Public Works Director or their designee as necessary, after treatment of the composite sewage, to meet the requirements of the state, federal or other public agencies of jurisdiction of such discharge to the receiving waters;
 - (7) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the applicable state or federal regulations;
 - (8) Any waters or wastes having a pH in excess of 9.5;
 - (9) Materials which exert or cause:
 - a. Unusual concentrations of inert suspended solids (such as, but not limited to, Fuller's earth, lime slurries and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate);

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- b. Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions);
 - c. Unusual BOD, chemical oxygen demand or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works;
 - d. Unusual volume of flow or concentration of wastes constituting "slugs" as defined in section 34-203;

(10) Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.

(c) The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

Sec. 34-226. Storm sewers.

Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the Public Works Director or their designee and other regulatory agencies. Unpolluted industrial cooling water or process waters may be discharged, on approval of the Public Works Director or their designee and the Oregon Department of Environmental Quality under a 100-J permit, to a storm sewer, combined sewer, or natural outlet.

Sec. 34-227. Decision of Director of Public Works regarding harmful wastes.

(a) If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in section 34-225, and which in the judgment of the Public Works Director or their designee, may have a deleterious effect upon the wastewater facilities, processes, equipment or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the Public Works Director or their designee may:

- (1) Reject the wastes;
- (2) Require pretreatment to an acceptable condition for discharge to the public sewers;
- (3) Require control over the quantities and rates of discharges; and/or
- (4) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges.

(b) When considering the alternatives in subsection (a) of this section the Public Works Director or their designee shall give consideration to the economic impact of each alternative on the discharger. If the Public Works Director or their designee permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Public Works Director or their designee.

Sec. 34-228. Grease, oil and sand interceptors requirement, location and maintenance.

Grease, oil and sand interceptors shall be provided when, in the opinion of the Public Works Director or their designee, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts, or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Public Works Director or their designee, and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors the owner shall be responsible for the proper removal and disposal by appropriate means of the captivated material and shall maintain records of the dates, and means of disposal which are subject to review by the Public Works Director or their designee.

Sec. 34-229. Pretreatment.

Where pretreatment or flow-equalizing facilities are provided or required for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at the person's expense.

Sec. 34-230. Industrial cost recovery system.

- (a) All industrial users shall be required to pay that portion of the federal assistance grant under PL 92-500 allocable to the treatment of waste from such users.
- (b) The system for industrial cost recovery shall be implemented and maintained according to the following requirements:
 - (1) Each year during the industrial cost recovery period, each industrial user of the treatment works shall pay its share of the total federal grant amount divided by the recovery period.
 - (2) The industrial cost recovery period shall be equal to 30 years or the useful life of the treatment works, whichever is less.
 - (3) Payments shall be made by industrial users no less often than annually. The first payment by an industrial user shall be made not later than one year after such user begins use of the treatment works.
 - (4) An industrial user's share shall be based on all factors which significantly influence the cost of the treatment works, such as strength, volume and flow rate characteristics. As a minimum, an industry's share shall be based on its flow versus treatment works capacity except in unusual cases.
 - (5) An industrial user's share shall be adjusted when there is a substantial change in the strength, volume or flow rate characteristics of the user's wastes, or if there is an expansion or upgrading of the treatment works.
 - (6) An industrial user's share shall not include any portion of the federal grant amount allocable to unused or unreserved capacity.
 - (7) An industrial user's share shall include any firm commitment to the city (sanitary district or county) of increased use by such user.
 - (8) An industrial user's share shall not include an interest component.
- (c) This requirement applies only to those features of wastewater treatment and transportation facilities which have been constructed with federal assistance administered by the U.S. Environmental Protection Agency under PL 92-500.

Sec. 34-231. Observation and testing.

When required by the Public Works Director or their designee, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such structures, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the Public Works Director or their designee. The structure shall be installed by the owner at the person's expense, and shall be maintained by the owner so as to be safe and accessible at all times.

Sec. 34-232. Information required for determination of compliance.

The Public Works Director or their designee may require a user of sewer services to provide information needed to determine compliance with this chapter. These requirements may include:

- (a) Wastewaters discharge peak rate and volume over a specified time period;

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- (b) Chemical analyses of wastewaters;
 - (c) Information on raw materials, processes and products affecting wastewater volume and quality;
 - (d) Quantity and disposition of specific liquid, sludge, oil, solvent or other materials important to sewer use control;
 - (e) A plot plan of sewers of the user's property showing sewer and pretreatment facility location;
 - (f) Details of wastewater pretreatment facilities;
 - (g) Details of systems to prevent and control the losses of materials through spills to the municipal sewer.

Sec. 34-233. Tests and measurements.

All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this chapter shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at the control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. (The particular analyses involved will determine whether a 24-hour composite of all outfalls of a premises is appropriate or whether a grab sample or samples should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from 24-hour composites of all outfalls whereas pHs are determined from periodic grab samples.)

Sec. 34-234. Special agreement allowed.

No statement contained in this chapter shall be construed as preventing any special agreement or arrangement between the city and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the city for treatment, subject to payment, therefor, by the industrial concern.

Sec. 34-235. Damage to wastewater facilities prohibited.

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the wastewater facilities.

Sec. 34-236. Entry for inspection authorized.

The Public Works Director and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this chapter. The Public Works Director or representative shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for wastes treatment. While performing the necessary work on private properties, the Public Works Director or duly authorized employees of the City shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the City employees and the City shall indemnify the company against loss or damage to its property by City employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required.

Sec. 34-237. Information to be confidential.

The Public Works Director or their designee are authorized to obtain information concerning industrial processes which have a direct bearing on the kind and source of discharge to the wastewater collection system.

The industry must establish that the revelation to the public of the information in question might result in an advantage to competitors.

Sec. 34-238. Lien on property.

The cost of the connection of a building sewer under section 24-213 is delinquent 30 days after the completion of the connection in accordance with section 34-211 and thereafter shall be a charge upon and a lien upon the lot or parcel of land served by the building sewer, and shall be collected as other liens of the city are enforced.

Sec. 34-239 Reporting of harmful discharges.

Businesses are required to accurately report chemical discharges to the sewerage system and other discharges that may affect the sewerage system as directed by the Public Works Director via survey or other means as required by the Oregon Department of Environmental Quality and the US Environmental Protection Agency.

Sec. 34-240 Entry and work on easements.

The Public Works Director and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewage works lying within the easement. All entry and subsequent work, if any, on the easement shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

Sec. 34-241 Violation notice.

Any person found to be violating any provision of this chapter, except Section 34-225, shall be served by the City with written notice stating the nature of the violation and providing a 14-day time limit for the satisfactory correction thereof.

Sec. 34-242 Violation penalty.

Any person who continues any violation beyond the time limit provided for in Section 34-241 shall be guilty of a violation and, on conviction thereof, shall be fined in the amount set by Council resolution or subject to fines established per code Section 1-22 , general provisions for each violation. Each day in which any such violation continues shall be deemed a separate offense. Failure to comply with a written directive or timeline of the City Manager made under the authority of this chapter is a punishable offense and may result in a temporary loss of City water and sewer services.

Sec. 34-243 Violators liable to City.

Any person violating any of the provisions of this chapter shall become liable to the City for any expense, loss, or damage occasioned by the City of Independence by reason of such violation including but not limited to fines and penalties assessed by the Department of Environmental Quality or other state or federal agencies.

Sec. 34-244 Notice to repair improper connection and inspection.

- (a) Where the City finds that any private service lateral piping is leaking or not legally connected, the property owner will be notified in writing by the City to make necessary repairs. The notification shall include the type of repairs to be made and the date, no less than 30 days from the date of the notice, by which the repairs shall be completed.

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- (b) The property owner shall notify the Public Works Director or their designee when repairs have been made, but before any piping is buried, and the City shall inspect and retest the private service lateral for leaks. The lateral will be considered repaired when it passes the retest by the City.

Sec. 34-245 Correction of improper connection by City.

The property owner may elect to have the City repair or replace private service laterals by notifying the Public Works Director in writing.

- (a) The property owner may then contract with the City for such repairs.
- (b) The City shall charge for labor and materials so furnished.
- (c) Upon completion of repairs, the City shall provide a written accounting to the property owner prepared by the Public Works Director.
- (d) The property owner shall pay the City for the repairs once invoiced or set up a payment plan approved by the Finance Director. Full payment of costs shall be completed within six months of the agreement.

Sec. 34-246 Liability for correction by City.

The City does not assume any obligation for reasonably necessary damage to landscaping, vegetation and walkways caused by repair work, and the property owner shall be solely responsible for repairing or replacing such damages.

Secs. 34-247—34-308. Reserved.

DIVISION 2. SEWER SERVICE RATES AND CHARGES

Sec. 34-309. Definitions.

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

BOD (biochemical oxygen demand) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees Centigrade, expressed in milligrams per liter.

Collection system means the system of public sewer facilities operated by the city and designed for the collection of sanitary sewage.

Commercial user means any premises used for commercial or business purposes which is not an industry as defined in this chapter.

Domestic waste means any wastewater emanating from dwellings or from domestic activities which are performed outside the home in lieu of a home activity directly by or for private citizens, including but not limited to floor drains in an accessory building, RV cleanouts.

Equivalent residential unit (ERU) means a volume of wastewater for which the city incurs the same costs for operations and maintenance of the public sewer system as it would for the average volume of domestic waste discharged from an average residential dwelling unit in the treatment works service area. For the purpose of making this determination the city shall utilize available records or accurate indicators of water use. The city shall have the right to require, as a condition of using the public sewer system, the submission of any and all records or other information necessary to determine the rate of water consumption by the user. Where a user believes the person's wastewater discharge to the sewer system is substantially different than the person's water consumption, an appropriate adjustment shall be made providing the user demonstrates the user's actual wastewater discharge to the satisfaction of the city. The volume attributed to an ERU where the BOD, suspended solids or other

characteristic of the wastewater discharged by a user is significantly greater than a domestic waste shall be adjusted to account for the difference in the costs of treatment.

Industrial user means any nongovernmental, nonresidential user of the public treatment works discharging more than the equivalent of 25,000 gallons per day of wastewater and identified in the North American Industry Classification System (NAICS), under the following sectors:

- (1) 11 Agriculture, Forestry, Fishing and Hunting;
- (2) 21 Mining, Quarrying and Oil and Gas Extraction;
- (3) 22 Utilities;
- (4) 31-33 Manufacturing;
- (5) 48-49 Transportation and Warehousing;
- (6) 56 Administrative and Support and Waste Management and Remediation Services;
- (7) 62 Health Care and Social Assistance;
- (8) 81 Other Services (Except Public Administration).

A user in these divisions may be excluded from the industrial category if it is determined that the user will only introduce domestic wastes and wastes from sanitary conveniences into the sewer system.

Industrial waste means that portion of the wastewater emanating from an industrial user which is not domestic waste or waste from sanitary conveniences, including but not limited to toilets, lavatories, or showers.

Operation and maintenance means all activities, goods and services which are necessary to maintain the proper capacity and performance of the treatment works. The term "operation and maintenance" includes replacement as defined in this section.

Person means any individual, firm, company, association, society, corporation or group.

Premises means a tract of land, including its buildings.

Public treatment works means a treatment works owned and operated by the city.

Replacement means acquisition and installation of equipment, accessories or appurtenances which are necessary during the service life of the treatment works to maintain the capacity and performance for which such works are designed and constructed.

Service area means all the area served by the treatment works and for which there is one uniform user charge system.

Sewage treatment plant means an arrangement of devices and structures used for treating sewage.

Suspended solids means solids that either float on the surface or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering.

Treatment works means all facilities for collecting, pumping, treating and disposing of sewage. The terms "treatment system" and "sewer system" shall be equivalent terms for "treatment works."

User means the owner, occupant or other person authorized to request services or responsible for the payment therefor for any property or facility inside or outside the city using any part of the public treatment works of the city.

User charge means the monthly charge levied on all users of the public treatment works, and shall, at a minimum, cover each user's proportionate share of the cost of operation and maintenance (including replacement).

Wastewater means water-carried human, animal or industrial waste, together with such groundwaters, surface waters and stormwaters as may be present. The term "sewage" means wastewater.

Sec. 34-310. Use of city sewer system outside city limits; surcharge.

Connection to the city sewage disposal system by properties outside of the city limits is prohibited. Any person authorized by the City Council for health or other environmental reasons to connect to and use the city sewage disposal system while outside the city limits shall pay a 100 percent surcharge, based on the rate of sewer charge set by resolution for the use of the city sewage disposal system.

Sec. 34-311. Sewer fund created.

A special fund is created to be known as the sewer fund and the Finance Director shall deposit in this fund all proceeds of the sewer charges imposed under this chapter. The sewer fund shall be used solely and exclusively for paying all or part or any part of the cost of operation, maintenance and repair of the sewer system; administration costs; planning and construction; and payments of the principal and interest on any debts of the city sewer system. Sewer funds shall not be used for other purposes without a resolution approved by the City Council specifying the terms of repayment within the timelines allowed by state law.

Sec. 34-312. Sewer user charges.

- (a) User charges shall be levied on all users of the public treatment works. The user charges shall, at a minimum, cover the cost of operation and maintenance, replacement, system planning and construction and other administrative costs of such treatment works. The user charge system shall distribute these costs in proportion to each user's contribution to the wastewater loading of the treatment works. The minimum charge shall be that cost equivalent to treatment of the wastewater from an average residential dwelling unit.
- (b) There shall be assigned to each user an appropriate number of ERUs and this number shall represent the ratio of the wastewater produced by the user to the wastewater produced by the average residential dwelling unit; provided, however, that each residential user discharging only domestic waste into the sewer system shall be levied a user charge calculated on the basis of the use of one ERU per dwelling unit.
- (c) The user charge shall be calculated by multiplying the total number of ERUs for each user by a constant cost factor. This cost factor shall be established from time to time by resolution of the City Council as provided in section 34-313.
- (d) Should any user believe that the user has been assigned an incorrect number of ERUs, that user may apply for review of the user charge as provided in section 34-316.
- (e) If it has been determined by the city that a user is assigned an incorrect number of ERUs, the city shall reassign a more appropriate number of ERUs to that user and shall notify that user of such reassignment.
- (f) Records of all rates and the number of ERUs assigned to each user, as well as the wastewater characteristics forming the basis of the ERU, shall be kept on file with the City Recorder and shall be open for public inspection.
- (g) The city shall commence charging the sewer user charge for all property the day that connection is made to the public sewer system. Once the sewer user charge has commenced, no credit shall be given for vacancy or service abandonment under section 34.405.2.

Sec. 34-313. Review and revision of rates.

The sewer user charges established in section 34-312 shall, at a minimum, be reviewed as part of the annual budget process and revised periodically to reflect actual costs of operation, maintenance and replacement of the treatment works and to maintain the equitability of the user charges with respect to proportional distribution of the costs of operation and maintenance. The user charges for residential, commercial and industrial sewer service shall be adopted by resolution of the City Council.

Sec. 34-314. Notification.

Each user will be notified, at least annually, in conjunction with a regular bill, of the sewer user charge and that portion of the user charges which are attributable to wastewater treatment services.

Sec. 34-315. Handling of funds.

- (a) Bills for sewer user charges shall be mailed to the address specified in the application for permit to connect to the sewer system, unless or until a different owner or user of the property is reported to the Finance Department.
- (b) All collections of sewer user charges shall be made by the Finance Director by and through the Department of Public Works. Sewer user charges shall be computed as provided in section 34-312 and shall be payable as provided in Article VI of this chapter.
- (c) The Finance Director is directed to deposit in the sewer fund all of the gross revenues received from charges, rates and penalties collected for the use of the sewerage system as herein provided.
- (d) The revenues thus deposited in the sewer fund shall be used exclusively for the operation, maintenance and repair of the sewerage system; administration costs; expenses of collection of charges imposed by this division and payments of the principal and interest on any debts of the sewerage system of the city.

Sec. 34-316. Appeals.

Appeal of amount of charges and/or the number of ERUs assigned to a user shall be made in writing to the City Manager within 90 days of receipt of the user fee. The Manager shall respond in writing within 90 days of receipt of the appeal. If the user wishes to appeal further, they shall request in writing that the City Manager place their specific appeal on the next scheduled regular City Council session. The decision of the City Council shall be final.

Sec. 34-317. Entering property.

Employees of the city shall have the right to enter upon the private premises of any property served by the city sewer system for the purpose of inspection and for the enforcement of the provisions of this division.

Secs. 34-318—34-337. Reserved.

ARTICLE V. STORMWATER UTILITIES

DIVISION 1. GENERALLY

Sec. 34-338 Definitions

Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as set forth as follows:

"Building drain" means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building, and conveys it to the building storm sewers, beginning five feet outside the inner face of the building walls.

"Business day" or "working day" means Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding any City-recognized holidays.

"Customer." See "User."

"DEQ" means the Oregon Department of Environmental Quality.

"Developed" means any property which has been altered by grading, filling of the ground surface, or by construction of any improvement or impervious surface area, which could affect the hydraulic or hydrologic properties of the property.

"Developer" means any person, company or corporation who purchases or holds an interest in real property with the intent to increase the value thereof by the installation of utilities, construction of a building or buildings, grading, ditching, improving or enhancing the ground or structures for the purpose of resale.

"Domestic stormwater" means surface or subsurface drainage of the type commonly introduced into a drainageway or storm sewer system by residential users.

"Equivalent dwelling unit (EDU)" means a unit of measurement of impervious surface. One EDU is equal to the estimated amount of impervious surface that would contribute the same amount of runoff to the City's storm and surface water drainage system as the impervious surface on the average single-family residential use in the City of Independence. One EDU is therefore equal to square feet of impervious surface area or any portion thereof.

"Erosion prevention and sediment control (ESC)" means any temporary or permanent measures taken to reduce erosion, control siltation and sedimentation, and ensure that sediment laden water does not leave a site.

"Erosion prevention and sediment control plan (ESC plan)" means plan approved by the Oregon Department of Environmental Quality through a 1200-C permit or other state agency permit for construction activities within the City of Independence.

"Impervious surface" means a developed hard surface area which prevents or retards the entry of water into the soil mantle and/or causes water to run off the surface in greater quantities or at an increased rate of flow than would occur under natural or undeveloped conditions. Impervious surface includes, but is not limited to, rooftops, concrete or asphalt paving, compacted gravel, walkways, patios, driveways, parking lots or storage areas, and oiled, macadam or other surfaces which similarly impede the natural infiltration or runoff of surface water.

"Industrial user" means any user engaged in the introduction of pollutants into a Publicly Owned Treatment Works (POTW) from any non-domestic source regulated under Section 307(b), (c) or (d) of the Federal Water Pollution Control Act, Title 33 U.S.C. 1251.

"Industrial wastes" means the liquid wastes from any industrial user. A user in the divisions listed in industrial user may be excluded if it is determined that it will introduce primarily segregated domestic wastes or wastes from sanitary conveniences.

"Mains" means collection pipelines that are part of the City stormwater system.

"Maintenance" means preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment as needed.

"Multi-user" means a customer supplied with water service to more than one dwelling unit, commercial business or industrial facility, or combination thereof, from one water service connection.

"Natural outlet" means any outlet into a watercourse, pond, ditch, lake or other body of surface water or groundwater.

"NPDES" means National Pollutant Discharge Elimination System.

"Operation" means control of the unit processes and equipment which make up the treatment works. This includes financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.

"Operation and maintenance" means activities required to assure the dependable and economical function of the treatment works.

"Person" means any individual, firm, company, association, society, group or corporation.

"pH" means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

"Premises" means the integral property or area, including improvements thereon, to which water service is or will be provided.

"Property owner" means the owner of the premises who is also the ultimate responsible party for all customer charges and fees. The property owner may also be the customer for any given premises.

"Replacement" means expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the useful life of the treatment works to maintain the capacity and performance for which such works were designed and constructed. The term "operation and maintenance" includes replacement.

"Service connection" means a storm sewer connection as the context indicates.

"Service connection charge" means the fee levied to pay for the cost of labor, materials and any inspection required during the construction of a utility service line from the storm sewer main to the property that is to be served, with the charges to be itemized on a standard City billing form.

"Sewage" means a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such groundwater, surface water, and stormwater as may be present.

"Sewer" means a pipe or conduit for carrying sewage.

"Sewer connection" means a public sewer that has been constructed to the property line or right-of-way line from a public main for the sole purpose of providing a connection for the building sewer.

"Shall" is mandatory; "may" is permissive.

"Single-family residential" means any service location which is improved with a dwelling unit for occupancy by a single family or a similar group of persons.

"Slug" means any discharge of water, sewage or industrial waste which, in concentration of any given constituent or in quantity of flow, exceeds for any period of duration longer than 15 minutes, more than five times the average 24-hour concentration of flows during normal operation.

"Storm drain" (sometimes termed "storm sewer") means a sewer designed to carry stormwater and surface water and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

"Stormwater" means surface runoff and street wash waters, and drainage.

"Surface water" means all naturally occurring water whose surface is exposed to the atmosphere, including natural drainage ways, stream corridors, rivers, ponds, wetlands, and impoundments.

"Surface water management system" means all facilities, both natural and constructed, used by the City to regulate the quantity and quality of surface water, including drainage easements, culverts, storm drains, catch basins, stream corridors, rivers, ponds, wetlands and impoundments.

"Suspended solids" means solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering.

"System development charge" means the fee or charge assessed to each commercial business, industry or dwelling unit for the right to connect to the City's sewer or water system, and which is used for expansion of those systems.

"TSS (total suspended solids)" means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering. (EPA Standard Methods 2540(D) shall be used for any tests for TSS.)

"Undeveloped" means any location which has not been altered by grading or filling of the ground surface, or by construction of any improvements or other impervious area, which could affect the hydraulic or hydrologic properties of the property.

"Untreated stormwater" means any runoff from a site or property, whether by storm, washdown, or any other form, that either violates the basin approved Independence-Pudding River Subbasin TMDL standards for

Temperature, Bacteria, Pesticides, Nitrate, Metals, the conditions of any NPDES permit that applies, or that in the opinion of the Public Works Director constitutes a harmful discharge to the ecology or use of the receiving body within the City.

"Useful life" means the period during which a treatment works is planned and designed to be operated.

"User" means the owner, agent, tenant or other authorized representative responsible for occupancy of the premises that is served by a City utility system. A person, corporation, association or agency which rents, or leases premises shall be considered an agent of the property owner.

"User service charge" means a charge levied on customers that may be a combination of a base fee, a usage fee and a fixed fee as set by resolution and/or ordinance.

"Utility" or "utility system" means sewer, water and stormwater management services provided by the City of Independence.

"Utility rate" is the rate established by City Council to cover the cost of providing utility system services.

"Utility service" means services provided for water, sewer, and stormwater.

"Wastewater" means a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such incidental groundwater, surface water and stormwater as may be present.

"Watercourse" means a channel in which a flow of water occurs, either continuously or intermittently.

Sec. 34-339. Unsanitary deposit of waste.

It is unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the City, or in any area under the jurisdiction of the City, any human or animal excrement, garbage, or other unsanitary waste that can drain into or impact a storm sewer or drainageway. This includes ranging livestock, poultry, or pet-runs near or within storm facilities such as bioswales.

Sec. 34-340. Treatment of storm sewer required.

It is unlawful to discharge to any natural outlet within the City, or in any area under the jurisdiction of the City, any untreated stormwater or other polluted substances. All discharges shall comply with the Independence Public Works Standards and its NPDES permit issued by the DEQ. Stormwater shall be protected from soap, wax or other pollution runoff from vehicle wash facilities.

Sec. 34-341. Storm sewer connections required.

Unless otherwise determined by the Public Works Director or their designee, the owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the City and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public storm sewer of the City, is required at the owner's expense to install storm facilities therein, and to connect such facilities directly with the proper public storm sewer in accordance with the provisions of this chapter, within 90 calendar days after date of official notice to do so, provided that the public storm sewer is within 100 feet of the property line or property corner.

Sec. 34-342. Private storm sewer disposal—When permitted.

Where a public storm sewer is not available the building storm sewer shall be connected to a private storm system that meets all federal and state rules, and does not impact groundwater, drainageways, or downstream properties. The provisions of this section shall be in addition to and not in lieu of the requirements of other applicable laws, rules and regulations.

Sec. 34-343. Private storm sewer disposal—Operation and maintenance.

The owner of property with a private storm sewer disposal system shall always operate and maintain the system in a sanitary manner, at no expense to the City.

Sec. 34-344. Upon availability of public storm sewer—Abandonment of private systems.

At such times as a public storm sewer becomes available to a property served by a private sewage disposal system, and upon notification to the property owner from the City, a direct connection shall be made to the public storm sewer in compliance with this chapter, and any drywell and similar private storm sewer disposal facilities shall be decommissioned, abandoned and filled with suitable material. All costs associated with decommissioning, abandonment and connection shall be the responsibility of the property owner.

Sec. 34-345. Unauthorized connections and disturbances.

No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public storm sewer or appurtenance thereof without first obtaining a written permit from the Public Works Director or their designee.

Sec. 34-346. Costs of building storm sewer borne by owner.

All costs and expense incident to the installation and connection of the building storm sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building storm sewer.

Sec 34-347. Building storm sewer for each lot or parcel.

- (a) Every single-ownership property which cannot legally be further subdivided must have a separate storm sewer connection. These properties include, but are not limited to, multiple-family apartments, condominiums, mobile home parks and commercial or industrial establishments. Only one storm sewer lateral shall be provided to a residential property.
- (b) Multi-users with more than one unit located in common ownership on a single parcel of property shall also comply with the Oregon State Plumbing Specialty Code.
- (c) Any property which is located so as to require the storm sewer lateral to cross any other property or parcel shall provide evidence of a duly recorded perpetual easement for such lateral, appurtenant to the property to which such lateral will provide service, before any storm sewer connection is made.
- (d) Property other than residential shall utilize a common storm sewer main to provide services to individual buildings. Exceptions to this requirement must be in the interest of the public as determined and approved by the Public Works Director.

Sec. 34-348. Materials and connections—Private side.

The size, slope, alignment, materials of construction of a building storm sewer, and the methods to be used in connecting, excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the uniform building and plumbing code and all other applicable rules and regulations. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9 shall apply, or the most current version thereof. All connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the Public Works Director before installation. Storm sewer laterals on private property that are not part of the public system or within a public right-of-way or public storm sewer easement, the size, slope, alignment, materials of construction of a building storm sewer, and the methods to be used in connecting, excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the uniform building and plumbing code and all other applicable rules and regulations.

Sec. 34-349. Elevation.

Whenever possible, the building storm sewer shall be brought to the building at an elevation to drain directly to the street through a weep hole in the curb. In all buildings in which any building drain is too low to permit gravity flow to the public storm sewer, storm sewer carried by a building drain shall be lifted by an approved means and discharged to the public storm sewer at the property owner's expense.

Sec. 34-350. Connection of sources of surface runoff.

- (a) No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sanitary sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.
- (b) Where the City finds that any private service lateral piping is leaking or not legally connected, the property owner will be notified in writing by the City to make necessary repairs. The notification shall include the type of repairs to be made and the date, no less than 90 calendar days from the date of the notice, by which the repairs shall be completed.
- (c) The property owner shall notify the Public Works Director or their designee when repairs have been made, but before any piping is buried, and the City shall inspect and retest the private service lateral for leaks. The lateral will be considered repaired when it passes the retest by the City.

Sec. 34-351. Inspection—Connection to public storm sewer.

The applicant for the building storm sewer permit shall notify the Public Works Director when the building storm sewer is ready for inspection and connection to the public storm sewer. The connection shall be made under the supervision of the Public Works Director or their designee.

Sec. 34-352. Protection of excavations—Restoration of public property.

All excavations for building storm sewer installation shall be adequately guarded with barricades and lights to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.

Sec. 34-353. Unlawful discharge of storm and other waters.

No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer.

Sec. 34-354. Entry of Property.

The Public Works Director and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties, upon prior written notice, for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this chapter. The Public Works Director or representative shall also have the authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the storm sewers or waterways or facilities for wastes treatment.

Sec. 34-355. Observance of safety rules—Liability of City.

While performing the necessary work on private properties, the Public Works Director or their designee shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the City employees and the City shall indemnify the company against loss or damage to its property by City employees and against liability claims and demands for personal injury or property

damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions.

Sec. 34-356. Improper connection and notice to repair.

- (a) Where the City finds that any private service lateral piping is leaking or not legally connected, the property owner will be notified in writing by the City to make necessary repairs. The notification shall include the type of repairs to be made and the date, no less than 30 calendar days from the date of the notice, by which the repairs shall be completed.
- (b) The property owner may elect to have the City repair or replace private service laterals by notifying the Public Works Director in writing. The property owner may then contract with the City for such repairs.
- (c) The City shall contract out the work and charge for any in-house labor and materials so furnished.
- (d) Upon completion of repairs, the City shall provide a written accounting to the property owner prepared by the Public Works Director.
- (e) The property owner shall pay the City for the repairs by paying no less than one-twelfth the cost of the improvements as a surcharge on the storm sewer bill until the outstanding amount has been paid in full. The City shall charge no interest on the unpaid balance.
- (f) The City does not assume any obligation for reasonably necessary damage to landscaping, vegetation and walkways caused by repair work, and the property owner shall be solely responsible for repairing or replacing such damages.

Sec. 34-357. Entry and work on easements.

The Public Works Director and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewage works lying within the easement. All entry and subsequent work, if any, on the easement shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

Sec. 34-358. Certain discharges subject to approval.

No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the Public Works Director that such wastes can harm the storm sewer system or public drainageways. The substances prohibited are including any untreated stormwater as follows;

- (a) Stormwater discharges a temperature higher than 150°F (65°C);
- (b) Stormwater discharges containing fats, gas, grease, or oils, whether emulsified or not;
- (c) Stormwater discharges containing acid, plating solutions whether neutralized or not;
- (d) Stormwater discharges containing iron, chromium, copper, zinc, and similar objectionable or toxic substances, or chlorine;
- (e) Stormwater discharges containing phenols or other taste or odor producing substances;
- (f) Stormwater discharges containing any radioactive wastes or isotopes;
- (g) Stormwater discharges containing having a pH in excess of 8.0 or less than 6.0;
- (h) Stormwater discharges containing unusual concentrations of inert suspended solids or discoloration;
- (i) Stormwater discharges containing paint, stains, or other coatings;

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- (j) Stormwater discharges containing substances which are not amenable to treatment or reduction by the water quality facilities;
 - (k) Stormwater discharges or runoff containing fluids or materials from a defective or improperly maintained septic system.

Sec. 34-359. Decision of Public Works Director regarding harmful wastes.

If any waters or wastes are discharged, or are proposed to be discharged to the public storm sewers, which waters contain the substances, or possess the characteristics enumerated in this Chapter and which, in the judgment of the Public Works Director, may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, nuisance, the Public Works Director shall require pretreatment prior to discharge to water quality or detention facilities to an acceptable condition for discharge to the public storm sewers. Stormwater pretreatment shall be permitted and monitored through the DEQ.

Sec. 34-360. Notification of spills.

- (a) As soon as any person in charge of a facility or responsible for emergency response for a facility becomes aware of any suspected, confirmed, or unconfirmed release of material, pollutants, or waste creating a risk of discharge to the public stormwater system, such persons shall:
 - (1) Begin containment procedures;
 - (2) Notify proper emergency personnel in case of an emergency;
 - (3) Notify appropriate City and/or State officials regarding the nature of the spill; and
 - (4) Follow-up with the City regarding compliance and modified practices to minimize future spills, as appropriate.
- (b) The notification requirements of this section are in addition to any other notification requirements set forth in local, State, or Federal regulations and laws. The notification requirements do not relieve the person of necessary remediation.

Sec. 34-361. Illicit discharges and connections.

- (a) The Public Works Director may require by written notice that any user who makes an illicit connection to the public stormwater system complies with the requirements of this chapter to eliminate the illicit connection or secure approval for the connection by a specified date.
- (b) If subsequent to eliminating a connection found to be in violation of this chapter, the responsible party can demonstrate that an illicit discharge will no longer occur, that user may request approval to reconnect. The reconnection or reinstallation of the connection shall be at the user's expense.
- (c) Whenever the City finds that a discharge of pollutants is taking place or has taken place which will result in or has resulted in pollution of stormwater or the stormwater system, the Public Works Director may require by written notice to the responsible party that the pollution is remediated and the affected property restored, to the requirements of this chapter.
- (d) Whenever the Public Works Director determines that any person engaged in any activity which may cause or contribute to stormwater pollution or illicit discharges to the stormwater system, the Public Works Director may, by written notice, order that the responsible party undertake such monitoring activities and/or analyses and furnish such reports as the Public Works Director may deem necessary to demonstrate compliance with this chapter. The written notice shall be served either by personal delivery or by certified or registered mail, return receipt requested, and shall set forth the basis for such order and shall particularly describe the monitoring activities and/or analyses and reports required including but not limited to, that which may be undertaken by a third party independent monitor, sampler and/or tester. The recipient of such order shall undertake and provide the monitoring, analyses and reports within the time frames set forth in the order. If

the City cannot locate the responsible party and the responsible party is a person other than the owner of the property, the City will notify the owner of the property in writing via personal delivery or certified mail requiring the owner to monitor the property and furnish such reports as the Public Works Director may deem necessary to demonstrate compliance with this chapter.

Sec. 34-362. Reporting of harmful discharges.

Businesses are required to accurately report any chemical discharges to the storm sewer system to the Public Works Director and the DEQ.

Sec. 34-363. Construction—Public works design standards.

Storm sewers shall be designed in compliance Public Works Standards for all public improvements, water quality and detention facilities, and the Oregon Plumbing Specialty Code for all private plumbing services.

Sec. 34-364. Construction—Permit required for storm sewer work.

No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public storm sewer or appurtenance thereof without first obtaining a written permit from the Public Works Director or their designee.

Sec. 34-365. Construction—Erosion prevention and sediment control.

- (a) Purpose. These regulations contained herein, together with the current version of the Independence Public Works Standards will be referred to herein as "these Standards." The purpose of these Standards is to establish uniform requirements for land development and construction-related activities in order to control the occurrence of erosion and to prevent the creation, migration and/or transport of erosion at the source during construction and land development.
- (b) Standards. These Standards shall be administered and enforced by the Public Works Director or designee. The Public Works Director shall have the authority to develop and implement procedures, forms, policies, and interpretations for administering the provisions of these Standards.
- (c) ESC Permit Required. An ESC applicant must obtain an ESC permit from the DEQ and a City of Independence Public Works permit before commencing any ground disturbing activity affecting 500 square feet or greater, cumulatively, throughout the duration of development, redevelopment, or other construction related activity of a parcel or parcels. A copy of the approved DEQ 1200-C permit shall be submitted to the Public Works Director before issuance of any Public Works permit and before any clearing or grading shall be allowed to proceed.
- (d) ESC Plan Required. The ESC applicant shall submit a copy of the approved DEQ ESC plan with and incorporate into all construction plans.
- (e) ESC Implementation. An approved ESC permit shall be implemented and maintained in accordance with DEQ requirements and as follows:
 - (1) It shall be the duty of the ESC applicant to inspect the property in conformance with the permit issued to ensure ESC measures are effective.
 - (2) The ESC Applicant is responsible to ensure that no visible and measurable erosion and sediment leaves the permitted site.
 - (3) The ESC Applicant shall keep a record of inspections with a brief explanation as to any signs of erosion or sediment release and measures taken to prevent future releases as well as any measures taken to clean up the sediment that has left the site. Records must be made available to the City and DEQ upon request and must be submitted to the City upon final completion of work if requested by the City.

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- (4) During periods of wet weather, disturbed areas of the site and/or stockpiled soil shall be covered by the ESC applicant by tarps or straws at the end of each day's operations; all disturbed, unworked areas of the site shall be protected from erosion.
 - (5) The ESC applicant shall remove ESC measures, establish permanent groundcover on all exposed soils; clean and remove trash, construction waste and sediment deposits before receiving a final ESC inspection approval.
 - (f) Ineffective Measures and ESC Plan Amendment. If the facilities and techniques in the approved ESC Plan are not effective or sufficient to meet the purposes of this chapter, based on an on-site inspection, the Public Works Director or designee may require the ESC applicant to revise the ESC Plan. Such requirement shall be in writing and shall explain the problem. The written requirement shall be presented to the ESC applicant and any other related parties.
 - (1) The revised ESC Plan shall be submitted by the ESC applicant not later than three business days of when written notification by the Public Works Director is received. Receipt of such notice shall be deemed complete three days after simultaneous regular mail and certified mail is deposited in the mail or completed the same day as personal delivery.
 - (2) The ESC applicant shall implement fully the revised ESC Plan not later than three business days after mailing the revised ESC Plan to the City, or within such other time frame as the Public Works Director may specify.
 - (3) In cases where significant erosion is occurring, the Public Works Director or designee may require the ESC Applicant to immediately install interim control measures before submittal of a revised ESC Plan.
 - (4) If there is a confirmed or imminent threat of significant off-site erosion, the Public Works Director or designee shall issue a stop work order, upon issuance of which all work on the development site shall halt. The stop work order shall not be lifted until mitigation measures are implemented that comply with the City of Independence and DEQ's performance standards for ESC and are approved by the Public Works Director or designee.
 - (g) Duty of ESC Responsibilities are With Applicant. It is the duty of the ESC applicant to maintain ESC measures and to comply with the requirements of the DEQ 1200-C permit. The City of Independence is not responsible for ensuring ESC applicants compliance with DEQ's permit.

Sec. 34-366. Construction—Cost of installation and connection.

All costs and expenses incident to the installation and connection of the building storm sewer shall be borne by the owner. It shall be the responsibility of the owner, lessee or occupant of a building to maintain the building storm sewer or private collection system in a free-flowing and watertight condition, from the structure served to the public storm sewer. All existing private storm sewers shall be maintained in a safe and sanitary condition.

Sec. 34-367. Construction—Capping and inspection prior to abandonment.

- (a) Before a moving or demolition permit is allowed to be issued, evidence must be presented showing the storm sewer has been properly capped and inspected. No exceptions will be allowed. All building storm sewer shall be capped at the public main in an approved manner by the applicant or the applicant's contractor and inspected by City forces prior to closure of the excavation.
- (b) Exception. If adequate proof can be given showing a storm sewer service is in usable condition and is to be reused, the inspector may allow the service to be capped at the property line. It is the applicant's responsibility to ensure that no other structure is connected to the storm sewer service being abandoned. If the line abandoned is serving more than one structure, a service connection for the structure(s) still using the service must be provided. If the Public Works Director determines that capping at the main will cause undue hazard to the public, or if a street has been recently resurfaced, a variance to this section may be granted to require that the storm sewer be capped as close to the main as practical.

Sec. 34-368. Construction—Storm sewer main extensions.

Whenever a public improvement is to construct or extend a storm sewer main, the following shall apply:

- (a) Extension of all lines will be to the farthest edge of the property requesting service, unless otherwise authorized by the Public Works Director.
- (b) Minimum pipe sizes shall be in compliance with the Public Works Standards unless otherwise approved by the Public Works Director.
- (c) When required by the City, the City will share in the cost of storm sewer lines larger than the minimum size provided by paying the difference in cost between a minimum size pipe and the larger size, except:
 - (1) When a new development requires a larger line to provide adequate service, as determined by the Public Works Director;
 - (2) Only pipe and fitting materials will be paid by the City unless the line size is greater than 12 inches in diameter.
- (d) The property owner requesting the extension must pay the cost for extending new storm sewer lines. If a property owner requests service from a portion of the storm sewer line provided by the original developer, then the City shall collect a proportionate share of the storm sewer line cost, and reimburse the original developer or assignee that amount, less administrative costs. This reimbursement policy shall continue for a maximum of 10 years from the date of line construction.

Sec. 34-369. Violation—Notice.

Unless otherwise stated in section of this chapter, any person found to be violating any provision of this chapter shall be served by the City with written notice stating the nature of the violation and providing a 14-day time limit for the satisfactory correction thereof.

Sec. 34-370. Violation—Penalty.

Any person who continues any violation beyond the time limit provided for in this Chapter shall be guilty of a violation and, on conviction thereof, shall be fined in the amount set by Council resolution or subject to fines established per code Section 1-22, general provisions for each violation. Each day in which any such violation continues shall be deemed a separate offense. Failure to comply with a written directive or timeline of the City Manager made under the authority of this chapter is a punishable offense and may result in a temporary loss of City water and storm sewer services.

Sec. 34-371. Violators liable to City.

Any person violating any of the provisions of this chapter shall become liable to the City for any expense, loss, or damage occasioned by the City of Independence by reason of such violation.

DIVISION 2. STORMWATER UTILITY FEES

Sec. 34-372. Storm drain fund created.

A special fund is created to be known as the Storm Drain fund and the Finance Director shall deposit in this fund all proceeds of the stormwater charges imposed under this chapter. The storm drain fund shall be used solely and exclusively for paying all or part or any part of the cost of operation, maintenance and repair of the storm drain system; administration costs; planning and construction; and payments of the principal and interest on any debts of the city storm drain system. Storm drain funds shall not be used for other purposes without a resolution approved by the City Council specifying the terms of repayment within the timelines allowed by state law.

Sec. 34-373. Stormwater utility fee—Establishment and use.

- (a) A stormwater utility fee shall be paid by each residential and nonresidential customer and shall be established by resolution of the City Council for equivalent dwelling units. Funds from the stormwater utility shall be used for planning, design, construction, operation, maintenance and administration of storm drainage facilities, including repayment of indebtedness, and for all expenses for the operation and management of the stormwater utility. Rates shall be based on generally accepted rate-making principles, including the City's true costs in upgrading the system to accommodate regulatory requirements and to provide adequate collection and treatment capacity for system users
- (b) The City Council may, on an annual basis by resolution, change the fees based upon revised estimates of the cost of properly managing, maintaining, extending and constructing public stormwater facilities.

Sec. 34-374. Rates Generally.

- (a) All users of the City's stormwater system shall pay to the City the rates for storm sewer service as provided by this chapter. A surface water utility user charge, which shall be set by the City Council by resolution, is established. The rate shall be in an amount reasonable and necessary to fund the administration, planning, design, construction, operation, maintenance and repair of the surface water management system. t.
- (b) The surface water utility user charge shall be based upon the amount of developed impervious surface used by a customer. Owners or occupants of undeveloped property shall not be charged. Each customer using a location for one single-family residential use shall be charged a uniform rate based upon one equivalent development unit (EDU). The charge for all other uses shall be based upon the total amount of measured impervious surface used, divided by one EDU and rounded to the nearest whole number. The actual service charge shall be computed by multiplying the total amount of EDUs measured for each use by the rate established for each EDU.
- (c) No services will be provided outside of City limits.

Sec. 34-375. Service connection charges

- (a) A connection charge levied and imposed upon the owner of any property connecting to the storm sewer system of the City of Independence, which shall be paid prior to such connection. The charge shall be established by the City Council by resolution.
- (b) The connection charge is levied upon a property based upon the existing or intended use of the property at the time of application for connection. If the property is improved, expanded, subdivided or otherwise modified so as to increase the connection charge due from that property, a connection charge shall be levied for the modified portion of the property based upon connection charges in effect at the time of the modification.

Sec. 34-376. Billings and collection.

- (a) Request for water or sewer service will automatically initiate appropriate billing for storm drainage services. If development of a parcel does not require initiating water or sewer service, the creation of an impervious surface from which stormwater may be discharged into public drainage facilities shall initiate the obligation to pay the fees and charges established by the stormwater utility.
- (b) The stormwater utility fee shall be billed and collected with the monthly city utility bill. The fee shall become due and payable at the same time as other city utility fees. Stormwater billing and collection procedures shall be performed as provided in article VI of this chapter.

Sec. 34-377. Recovery of unpaid fees.

Any fee due which is not paid when due may be recovered in an action at law by the city. In addition to any other remedies or penalties provided by city ordinance. Fees not paid promptly when due shall be collectable

pursuant to collection efforts or other lawful remedies of the city. The city may discontinue any utility services provided by the city until the customer's stormwater utility fees are paid in full. The City Manager is empowered and directed to enforce this provision against delinquent customers.

Sec. 34-378. Well and septic tank users.

- (a) Developed properties that are served by wells and/or septic tanks shall also be required to participate in the stormwater utility. If these properties are not served by other city utilities, then billing for stormwater service shall occur upon creation of an impervious surface from which stormwater may be discharged into public drainage facilities.
- (b) If a well or septic tank user is delinquent on stormwater utility fee payments in an amount equal or greater than \$250.00, the city may pursue collection efforts and place a lien on the property in the amount of the unpaid fees.

Sec. 34-379. Appeal policy.

- (a) Upon application and submittal of an application fee established from time to time by resolution of the City Council, a customer may seek a reduction of the monthly charge for stormwater service. The Public Works Director or his designee shall consider the application. The customer must show to the city's satisfaction the amount of permanent reduction to the amount of impervious surface for the property.
- (b) Charges will be adjusted (increased or decreased) for the property if the change to the measured impervious area results in a change to the calculated number of ERUs for the subject property. If the number of ERUs remains the same or increases, the \$250.00 application fee will be retained by the city as an administrative fee for reviewing the application. If the number of ERUs decreases, the \$250.00 application fee will be refunded to the customer as a \$250.00 credit to his utility account.
- (c) Any adjustment made shall continue until the property is further developed. Upon further development of the property, another application may be made by the customer.

Sec. 34-380. Administration.

- (a) The Public Works Director shall be responsible for the administration of the stormwater utility (except for the billing and collection of funds), including the development and/or modification of administrative procedures, maintenance programs, capital improvements, operations and maintenance standards and related activities.
- (b) The Finance Director or his designee shall be responsible for the billing and collection of funds.

Secs. 34-381—34-398. Reserved.

ARTICLE VI. UTILITY BILLING AND COLLECTION PROCEDURES

Sec. 34-399. Definitions.

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

Applicant means a person, 18 years of age or older, or emancipated, who:

- (1) Applies for utility service; or
- (2) Reapplies for utility service at a new or existing location after service has been discontinued.

Customer means a person who has applied for, been accepted and is currently receiving service.

Utility service means city water service, stormwater service and sewer services.

Sec. 34-400. Utility service billing.

Billings for water, stormwater and sewer utility services shall be combined into one bill and shall be made monthly on the basis of the amount of service used during the previous monthly period. If, for any reason, it is impossible or impractical to read a water meter, water consumption may be estimated, based on the previous history of use on that property, until the meter can be read. Bills are due and payable on demand and will become delinquent if not paid within 15 days after they become due and payable. The city will apply amounts received from customers first to stormwater charges, then sewer charges, then to late charges, if any, and then to water charges.

Sec. 34-401. Application for utility service.

- (a) A written application for utility service must be made where:
- (1) Service is requested to be supplied to a property;
 - (2) Service has been involuntarily discontinued in accordance with this article, and the applicant subsequently seeks to have service restored; or
 - (3) Service has been voluntarily discontinued and a request to restore service has not been made within 20 days.
- (b) An application is a request for utility service. An application for service shall not be accepted until the applicant:
- (1) Pays a deposit as established in section 34-403(a); or
 - (2) Satisfies the credit screening criteria set forth in section 34-403(b); and
 - (3) Supplies the following information on a form supplied by the city:
 - a. The date of the application;
 - b. Name and address of applicant applying for service;
 - c. The location of the property to be served;
 - d. The date on which the applicant will be ready for service;
 - e. Address to which utility bills shall be mailed;
 - f. The name, address and signature of the owner of the property;
 - g. Owner and occupant's:
 1. Agreement to abide by this Code and any written rules or regulations adopted for the utility system; and
 2. Consent to lien the property being served in the amount of past due amounts and charges, in the event of nonpayment; and
 - h. Such other information as the City Manager may require.
- (c) Two or more parties who join to make application for service shall be jointly and individually liable for charges incurred, and shall be sent a single billing.
- (d) Contracts, other than applications, may be required prior to service where, in the opinion of the city, special circumstances exist.

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- (e) If a premises is connected to the city utility system without application, the premises will be disconnected. Before a new connection is made, the applicant shall pay a tampering fee set by resolution of the City Council, plus amounts of all service used.
 - (f) In no case shall a utility service be turned on until the terms of this section have been complied with, and until all appropriate fees and charges established from time to time by resolution of the City Council have been paid.
 - (g) Applications for service shall be considered merely as a request for service, and they shall not bind the City or Council to provide service.

Sec. 34-402. Customer and owner responsible for bills.

Payment of utility bills shall be the responsibility of the utility customer.

- (1) The customer shall be responsible for utility charges incurred until service is voluntarily terminated in accordance with the provisions of section 34-405(a)(1).
- (2) In cases where the customer is not the same as the owner and customer is delinquent on their account, the owner of the property shall be liable for all past due amounts and charges. The owner's responsibility for payment of bills shall not be reduced or waived because of the city's attempts to collect from the customer, so long as the owner is sent notice of the delinquent billings.
- (3) If utility bills are paid and kept current, utility service will not be discontinued upon the order of any other person other than the customer to enforce vacation of the premises or for other reasons.

Sec. 34-403. Deposits.

- (a) All applicants shall be required to pay a deposit in an amount set by resolution of City Council, as a guarantee of the applicant's performance of the agreement for service, unless the applicant can provide proof of satisfactory credit in accordance with subsection (b) of this section, or can obtain a written co-obligor agreement from a person with satisfactory credit.
- (b) Satisfactory credit exists when the applicant or co-obligor has can demonstrate that the applicant or co-obligor has not been delinquent on payments to the city for utility services for more than 30 days on more than two occasions during a three-year period, the city has not discontinued utility service to the applicant or co-obligor, for nonpayment of bills during that three-year period, and the applicant or co-obligor is not currently delinquent in the payment of the applicant or co-obligor's utility bills.
- (c) Co-obligors shall be mailed copies of all service disconnection notices delivered to the applicant.
- (d) Co-obligors shall be responsible for all delinquent amounts accrued by their co-obligor.

Sec. 34-404. Deposit refunds and credits.

- (a) *Refunds.* Upon discontinuance of service pursuant to section 34.405.1(a)(1), the city will refund the balance of the customer's deposit to customer, after application of the deposit and any accrued interest to any unpaid bills for utility service furnished by the city.
- (b) *Owner occupied premise credits.* A customer may submit a written request to city for a credit of customer's deposit to their account if all of the following conditions are satisfied:
 - (1) The served premises are owner occupied;
 - (2) The customer has paid 12 consecutive service billings without failure to pay a utility bill on more than two occasions;
 - (3) The city has never discontinued customer's service for nonpayment of utility bills; and
 - (4) The customer is not currently delinquent in the payment of the customer's city utility bills.

Upon receipt of such a request, the city will first apply deposit amounts and any accrued interest to any unpaid bills for that customer's utility service furnished by the city, then credit the remaining deposit to customer's account.

Sec. 34-405.1. Discontinuance of utility service.

- (a) Utility service shall be discontinued:
 - (1) Where a customer requests the city to discontinue service or to close an account;
 - (2) Where dangerous or emergency conditions exist at the premises to which service is provided;
 - (3) For failure to pay for utility service within the time frames established in section 34-406. Failure to pay for one utility shall be caused for discontinuance of any or all city utilities;
 - (4) For failure to abide by the terms of a payment agreement, if authorized in writing in advance by the Finance Director or designate, as established in section 34-410(d);
 - (5) Where service is being obtained fraudulently;
 - (6) For unlawfully providing service to another property;
 - (7) For failure to abide by any of the conditions or agreements contained in the signed application for service.
 - (8) For failure to comply with Public Works conditions of approval connected to planning, building, or Public Works permits.
- (b) Voluntary discontinuance. Every customer who is about to vacate any premises supplied with service by the utility, or who for any reason wishes to have such service discontinued, shall give five days' notice in advance of specified date of discontinuance of service to the utility. Until the city has received such notice, the customer shall be held responsible for all service rendered to the premises.
- (c) Service shall be discontinued for nonpayment of bills as provided in section 34-406. Service may also be discontinued for violation of any other provisions of this article five days after the date written notice to the customer from the city that the violation must cease is sent to the customer by first class mail to the customer's last known address; provided, however, that where fraudulent use of services is detected, or where a dangerous condition is found to exist on the customer's premises, service may be discontinued without advance notice.
- (d) Once service has been discontinued, no person other than an authorized city employee may reconnect the service. The customer of any property where service has been unlawfully reconnected shall be assessed a tampering fee, adopted by resolution of the City Council. The customer shall also be charged any actual damage done to the property of the city.

Sec. 34-405.2. Abandonment of utility service.

- (a) Voluntary abandonment. Upon city's receipt of a property owner's written request to have property owner's water meter removed, city will cease charging owner monthly water service charges.
- (b) Abandonment by non-payment. After 12 months of non-payment, the city will provide a 30-day notice that the water meter will be removed, unless all utility fees are paid in full by the notice date.
- (c) City shall remove a water meter in the case of either voluntary abandonment or abandonment by non-payment as set forth in subsections (a) and (b) of this section.
- (d) Reinstatement of service either voluntarily abandoned or abandoned by non-payment, as set forth in subsections (a) and (b) of this section, is a service connection requiring payment of a service connection

charge pursuant to section 34-133. This service connection charge shall be paid in addition to the reinstatement of service fees set forth in section 34-407.

Sec. 34-406. Notice and termination of service for delinquent bills.

Utility charges not paid within 15 days after they become due and payable shall be deemed to be delinquent. When a utility account is delinquent, the customer, owner and/or other designated person will be notified by first class mail of such delinquency and given seven calendar days from the date of the notice in which to make payment or request a hearing as provided in section 34-410.

- (1) If payment is not received or hearing requested by the due date shown on the delinquent notice, the customer and/or occupant will be notified in writing by personal delivery or by posting a notice on the premises that service to the premises shall be discontinued if payment is not received within 48 hours. The notice shall also indicate that responsibility for payment of any unpaid balance shall be the responsibility of the property owner and may be placed as a lien against the premises as authorized by this Code and service application.
- (2) Utility services shall not be turned off after 2:00 p.m. in the afternoon nor shall utility services be turned off on Fridays, weekends, or the day before a regular holiday.
- (3) If the full payment of the delinquent amount is not made by the date designated on the turn-off notice, the utility may be immediately turned off. At the time utility service is turned off, a notice shall be posted on the premises indicating the utility service has been turned off, and that a posting fee will be imposed. The notice will also state that service may be restored by payment of the delinquent amounts, any outstanding fees or charges, and all interest that has accrued thereon, reestablishment of the deposit required by section 34-403 and payment of the reinstatement fee adopted by resolution of the City Council.
- (4) Prior to the restoration of service by the city, the fees and charges enumerated in section 34-407 shall be paid, unless a deferred payment schedule is approved by the Finance Director, or designee. A deferred payment schedule that is violated shall not be renewed by the city.
- (5) Utility charge. Utility service charges shall become a lien against the premises to which the services were provided from and after the date the charges are entered into the city's lien docket and the lien docket shall remain accessible for inspection by anyone interested to ascertain the amount of such charges against the property. Whenever a bill for utility service remains unpaid 90 days after it has been rendered, and the amount of such bill exceeds \$250.00, the lien thereby created may be foreclosed in a manner provided for in Oregon Revised Statutes 223.610 (ORS 223.610), or in any other manner provided for by law or by city ordinance.
- (6) Pre-termination notice charge. Any delinquent account that remains unpaid at the time that a pre-termination notice is posted on the premises in accordance with subsection (1) of this section shall be imposed a posting fee, which shall be added to the account. The posting fee shall be set by resolution of the City Council.
- (7) Delinquent utility accounts totaling less than \$25.00 shall not be turned off unless circumstances indicate the service has been abandoned.

Sec. 34-407. Reinstatement of service is as follows.

- (a) Where a utility service is disconnected for violation of laws, rules, or regulations for fraudulent use of service, or for nonpayment, reinstatement of service will not be made until all four of the following conditions are met:
 1. Either:

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- i) All past-due amounts, including all outstanding fees and charges have been paid in full; or
 - ii) a payment agreement in the City's approved form has been executed or other City-approved security or arrangements are in place to ensure collection of past-due amounts, at latest upon sale or transfer of the property;
2. Interest at the rate of two percent per month, accruing on all accounts from the date of delinquency must either be paid in full or included as a term of a payment agreement or other arrangement entered into under subsection a.1.ii, of this section;
 3. A reinstatement fee as established in subsection (b) of this section has been paid; and
 4. A tampering fee, if applicable, as established in section 34-405(d), has been paid.
- (b) A reinstatement fee shall be charged and collected from the customer prior to reconnection of service. The amount of the fee will be established by resolution of the City Council.

Sec. 34-408. Refusal of service.

Service may be denied to any person:

- (1) Who is responsible for unpaid bills for utility service provided to any premises within the city utility service area, until such bill and all related charges are paid in full;
- (2) Until restitution has been made for any damage or loss of revenue to the city resulting from the person's tampering with or bypassing water meters or locking devices;
- (3) Applying for service under a different name when the original applicant or customer still resides at premises for which services are requested and services to the premises have been disconnected for nonpayment of bills.

Sec. 34-409. Adjustment of water bills.

- (a) Unusually high water bills resulting from leakage occurring in the customer's plumbing system will be adjusted for a period not to exceed the previous two months, upon notification by the customer, so long as the leakage is corrected within 30 days after its discovery. The basis for the adjustment will be reduction of the water utility bill by one-half the excess over the customer's normal bill.
- (b) Billings which the city has made erroneously may be corrected retroactively for a period not to exceed one year upon acknowledgement by the city of the error.

Sec. 34-410. Hearings on disputed bills.

- (a) Any customer wishing to dispute their utility bill charges may submit to the City Manager a written request for a hearing on the disputed bill. The request must be filed within seven calendar days from the date of the utility bill. Upon filing of a request for hearing, all proceedings relative to collection of the disputed bill shall be stayed until the final decision is made.
- (b) The City Manager or designate shall schedule a hearing on the disputed charges and shall notify the complaining party in writing of the time, place and date of such hearing. Upon conclusion of the hearing, the City Manager or designate shall make a final determination as to the amount due and owing on the disputed bill and shall notify the customer in writing of the decision.
- (c) If the decision is that there are charges due and owing, the customer shall have seven calendar days from the date of service of the notice to make full payment. Failure to make the payment within seven days shall result in a 48-hour termination of service notice provided in section 34-406.
- (d) If, in the judgment of the City Manager or designate, the public's interest can be protected and at the same time the burden on the customer reduced, a written agreement arranging for partial payment or a payment schedule can be accepted.

Sec. 34-411. Not Used.

Sec. 34-412. Utility charges considered a debt.

Utility service charges levied in accordance with this chapter shall be a debt due to the city, which, if not paid within 15 days after it shall be due and payable, shall be deemed delinquent and may be recovered by civil action, in addition to other lawful remedies, in the name of the city against the applicant, co-applicant, or both. Discontinuance of service shall be a remedy in addition to the remedies provided herein for nonpayment of delinquent accounts.

Secs. 34-413—34-437. Reserved.

ARTICLE VII. UTILITY SYSTEM DEVELOPMENT CHARGES

Sec. 34-438. Definitions.

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

Capital improvements means public facilities or assets used for any of the following:

- (1) Water supply, treatment and distribution;
- (2) Sanitary sewers, including collection, transmission, treatment and disposal;
- (3) Storm sewers, including drainage and flood control;
- (4) Transportation, including but not limited to streets, sidewalks, bike lanes and paths, street lights, traffic signs and signals, street trees, public transportation, vehicle parking and bridges; or
- (5) Parks and recreation, including but not limited to mini-neighborhood parks, neighborhood parks, community parks, public open space and trail systems, buildings, courts, fields and other like facilities.
- (6) Any other systems for which system development charges are allowable under Oregon law.

Development means conducting a building or mining operation, making a physical change in the use or appearance of a structure or land, which increases the usage of any capital improvements or which creates the need for additional or enlarged capital improvements.

Improvement fee means a fee for costs associated with capital improvements to be constructed after July 1, 1991.

Land area means the area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane with the exception of a portion of the parcel within a recorded right-of-way or easement subject to a servitude for a public street or scenic or preservation purpose.

Parcel of land means a lot, parcel, block or other tract of land that is occupied or may be occupied by a structure or structure or other use, and that includes the yards and other open spaces required under the zoning, subdivision or other development ordinances.

Qualified public improvements means a capital improvement that is:

- (1) Required as a condition of development approval;
- (2) Identified in the plan adopted pursuant to section 34-445; and
- (3) Not located on or contiguous to property that is the subject of the development approval; or

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- (4) Located in whole or in part on or contiguous to property that is the subject of 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 means a fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to section 34-441.

System development charge. The term "system development charge":

- (1) Means a reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a capital improvement, at the time of issuance of a development permit or building permit, or at the time of connection to the capital improvement.
- (2) Includes that portion of a sewer or water system connection charge that is greater than the amount necessary to reimburse the city for its average cost of inspecting and installing connections with water and sewer facilities.
- (3) Does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, the cost of connection or hook-up fees for sanitary sewers or water lines, or the cost of complying with requirements or conditions imposed by a land use decision.

Sec. 34-439. Purpose.

The purpose of the system development charge is to impose an equitable share of the public cost of capital improvements upon those developments that create the need for or increase the demands on capital improvements. This charge shall be collected at the time of the development of properties which contribute to increases in the need for those facilities.

Sec. 34-440. Provisions not exclusive.

The system development charge imposed by this Code is separate from and in addition to any applicable tax, assessment, charge, fee in lieu of assessment or fee otherwise provided by law or imposed as a condition of development. A systems development charge is to be considered in the nature of a charge for service rendered or facilities made available, or a charge for future services to be rendered or facilities to be made available in the future.

Sec. 34-441. System development charge established.

- (a) Unless otherwise exempted by the provisions of this article or other local or state law, effective July 1, 1991, a systems development charge is imposed upon all new development within the city, and all new development outside the boundary of the city that connects to or otherwise uses the sanitary sewer system or water system of the city.
- (b) System development charges for each type of capital improvement may be created through application of the methodologies described in section 34-442. The amounts of each system development charge shall be adopted initially by Council resolution. Changes in the amounts shall also be adopted by resolution, except changes resulting solely from inflationary cost impacts. Inflationary cost impacts shall be measured and calculated each January by the City Manager or Manager's designee and charged accordingly. Such calculations will be based upon changes in the Engineering News Record Construction Index (ENR Index) for Seattle, Washington.

Sec. 34-442. Fees and charges; methodology.

- (a) The methodology used to establish the reimbursement fee shall consider the cost of then-existing facilities, prior contributions by then-existing users, the value of unused capacity, rate-making principals employed to finance publicly owned capital improvements and other relevant factors identified by the Council. The

methodology shall promote the objective that future systems users shall contribute an equitable share of the cost of then-existing facilities.

- (b) The methodology used to establish the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related and shall provide for a credit against the improvement fee for the construction of any qualified public improvement.
- (c) The methodologies used to establish systems development charges shall be adopted by resolution of Council. The specific systems development charge may be adopted and amended concurrent with the establishment or revision of the systems development charge methodology. The City Manager shall review the methodologies established under this section periodically and shall recommend amendments, if and as needed, to the Council for its action.
- (d) Except when authorized in the methodology adopted under subsection (a) of this section, the fees required by this Code which are 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 by a land use decision are separate from and in addition to the systems development charge and shall not be used as a credit against such charge.
- (e) The methodology may also provide for a credit as authorized in section 34-448.

Sec. 34-443. Compliance with state law.

The revenues received from the systems development charges shall be budgeted and expended as provided by state law. Such revenues and expenditures shall be accounted for as required by state law. Their reporting shall be included in the city's comprehensive annual financial report required by ORS chapter 294.

- (a) Reimbursement fees shall be applied only to capital improvements associated with the systems 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, including expenditures relating to repayment of debt for such improvements.
 - (1) 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 current or projected development.
 - (2) A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the plan adopted by the City pursuant to Section 13.14.080.
- (c) 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 charge expenditures.

Sec. 34-444. Expenditure restrictions.

- (a) System development charges shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.
- (b) System development charges shall not be expended for costs of the operation or routine maintenance of capital improvements.

Sec. 34-445. Capital improvement plan.

The plan for capital improvements required by state law as the basis for expending public improvement charge component of systems development charge revenues shall be the adopted facilities plans and the Capital Improvements Plan (CIP) of the city, or the capital improvement plan of any other governmental entity with which the city has cooperative agreement for the financing of commonly-used public improvements by the collection of

system charges, provided such plans conform with state law and are consistent with the city's CIP and the city's comprehensive plan.

Sec. 34-446. System development charge; collection.

- (a) The system development charge is payable upon issuance of:
 - (1) A building permit;
 - (2) A development permit, including a manufactured home placement permit;
 - (3) A development permit for development not requiring the issuance of a building permit; or
 - (4) A permit to connect to the water or sewer system.
- (b) If no building, development or connection permit is required, the system development charge is payable at the time the usage of the capital improvement is increased.
- (c) If development is commenced or connection is made to the water or sewer systems without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required, and it will be unlawful for anyone to continue with the construction or use constituting a development until the charge has been paid or payment secured to the satisfaction of the City Manager.
- (d) Any and all persons causing, constructing, conducting, occupying or using the development or making application for the needed permit, or otherwise responsible for the development, are jointly and severally obligated to pay the charge, and the City Manager may collect the charge from any of them. The City Manager or the Manager's designee shall not issue any permit or allow connection described in subsection (a) of this section until the charge has been paid in full or until an adequate security arrangement for its payment has been made, within the limits prescribed in this section.
- (e) A systems development charge shall be paid in cash when due, or in lieu thereof, the applicant may exercise the person's right under ORS 223.208 to pay the systems development charge in installments. Should the applicant make such an election and file an application as provided in ORS 223.215 the charge shall thereupon become a first lien on the property occupied by the development and shall have the same effect as an assessment lien for a public improvement and shall be duly recorded in the docket of city liens.
- (f) The City Manager may only accept the delivery of a written application to pay in installments if the written agreement is secured by collateral satisfactory to the City Manager or the Manager's designee. The collateral may consist of mortgage or trust deeds of real property, or an agreement secured by surety bond issued by a corporation licensed by state law to give such undertakings, or by cash deposit, letter of credit or other like security acceptable to the City Manager.

Sec. 34-447. Exemptions.

- (a) Structures and uses established and existing on or before July 1, 1991, are exempt from a system development charge to the extent of the structure or use then existing and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this subsection shall pay the water or sewer charges pursuant to the terms of this Code upon the receipt of a permit to connect to the water or sewer system.
- (b) Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the state uniform building code, are exempt from all portions of the system development charge.
- (c) An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of the public improvement facility are exempt from all portions of the system development charge.
- (d) A project financed by city revenues is exempt from all portions of the system development charge.

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- (e) A daycare facility located in an existing building under commercial use that does not require an expansion of the building or increased size of the water or sewer services or the water meter. The exemption shall sunset 10 years after adoption.

Sec. 34-448. Credits.

- (a) A system development charge shall be imposed when a change of use of a parcel or structure occurs, but credit shall be given for the computed system development charge to the extent that prior structures existed and services were established on or after the effective date of the ordinance codified in this chapter. The credit so computed shall not exceed the calculated system development charge. No refund shall be made on account of such credit.
- (b) A credit shall be given for the cost of a qualified public improvement associated with a development. If a qualified public improvement is located partially on and partially off the parcel that is the subject of the residential development approval, the credit shall be given only for the cost of the portion of the improvement not located on or wholly contiguous to the property. The credit provided for by this subsection shall be only for the improvement fee charged for the type of improvement being constructed and shall not exceed the improvement fee even if the cost of the capital improvement exceeds the applicable improvement fee.
- (c) Applying the methodology adopted by resolution, the City Manager may grant a credit against the public improvement charge, the reimbursement fee, or both, for a capital improvement constructed as part of the development that reduces the development's demand upon existing capital improvements or the need for future capital improvements or that would otherwise have to be constructed at city expense under existing Council policies.
- (d) In situations where the amount of credit exceeds the amount of the system development charge, the excess credit is not transferable to another development. It may be transferred to another phase of the original development. Credit shall not be transferable from one development to another.
- (e) Credit shall not be transferable from one type of capital improvement to another.

Sec. 34-449. Segregation and use of revenue.

- (a) All funds derived from a particular type of system development charge are to be segregated by accounting practices from all other funds of the city. That portion of the system development charge calculated and collected on account of a specific facility system shall be used for no purpose other than those set forth in this article.
- (b) The City Manager shall provide the City Council with an annual accounting, based on the city's fiscal year, for system development charges showing the total amount of system development charge revenues collected for each type of facility and the projects funded from each account.

Sec. 34-450. Appeal procedure.

- (a) A person aggrieved by a decision regarding the propriety of an expenditure of system development charge revenues may appeal the decision or the expenditure to the City Council by filing a written request with the City Manager describing with particularity the decision and the expenditure from which the person appeals.
- (b) An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure. Appeals of any other decision required or permitted to be made by the City Manager under this chapter must be filed within 15 days of the date of the decision.
- (c) All appeals shall state:
 - (1) The name and address of the appellant;

-
- (2) The nature of the determination being appealed;
 - (3) The reason the determination is incorrect; and
 - (4) What the correct determination of the appeal should be or how the correct determination should be derived. An appellant who fails to file such statement within the time permitted waives his/her objections, and the appeal shall be dismissed.
- (d) Unless the appellant and the city agree to a longer period, an appeal shall be heard within 30 days from the receipt of the written appeal. At least ten working days prior to the hearing, the city shall mail notice of the time and location thereof to the appellant.
 - (e) The City Council shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence he deems appropriate. At the hearing the appellant may present testimony and oral argument personally or by counsel. The city may present written or oral testimony at this same hearing. The rules of evidence as used by courts of law do not apply.
 - (f) The appellant shall carry the burden of proving that the determination being appealed is incorrect and what the correct determination should be.
 - (g) The Council shall determine whether the City Manager's decision or the expenditure is in accordance with this chapter and the provisions of ORS 223.297 and may affirm, modify or overrule the decisions. 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.
 - (h) The City Council shall render its decision within 30 days after the hearing date and the decision of the Council shall be final. The decision shall be in writing but written findings shall not be made or required unless the Council, in its discretion, elects to make findings for precedential purposes. Any legal action contesting the Council's decision on the appeal shall be filed within 60 days of the Council's decision.
 - (i) A legal action challenging the methodologies adopted by the Council shall be filed within 60 days from the Council's decision.

Sec. 34-451. Prohibited connection.

After July 1, 1991, no person may connect any premises for service, or cause the same to be connected, to any sanitary sewer, water system or storm sewer system of the city unless the appropriate systems development charge has been paid or payment has been secured as provided in this chapter.

Sec. 34-452. Penalty.

Violation of this chapter is punishable by a fine not to exceed \$500.00. Each day's violation of this chapter shall constitute a separate offense.

Sec. 34-453. Construction.

The rules of statutory construction contained in ORS Chapter 174 are adopted and by this reference made a part of this chapter.

Chapter 34 UTILITIES

ARTICLE I. IN GENERAL

Secs. 34-1—34-18. Reserved.

ARTICLE II. PUBLIC UTILITIES¹

Sec. 34-19. Public utility defined.

As used in this article, the term "public utility" means and includes all persons, firms and corporations serving customers within the city or running transmission lines in or through the city for the service or transmission of electricity, water, wastewater, stormwater, internet, gas, ~~or~~ telephone or other service provided to properties.

Sec. 34-20. Alteration of services permit required.

No public utility operating within the city without a franchise from the city shall extend, alter or modify its services or facilities without having first obtained a permit therefor from the ~~City Recorder~~Public Works Department as provided in this article.

Sec. 34-21. Permit application fee.

Permits as herein provided shall be issued only upon a written application by the public utility upon forms to be prescribed by the ~~City Recorder~~Public Works Department with the approval of the ~~City Council~~City Engineer. Each application shall be accompanied by a fee as established by resolution of the City Council.

Sec. 34-22. Indemnification agreements.

Each application for a permit shall be accompanied by a written agreement by the public utility to indemnify the city for all damage to city property or facilities and to indemnify and save the city harmless from the claims and demands of all persons for personal injury and property damage caused directly or indirectly as a result of the applicant's work and activities under such permit.

Sec. 34-23. Application approval by City ~~Council~~Engineer.

Before approval of any such application and issuance of any permit the ~~City Recorder~~Public Works Department shall submit the application to the ~~City Council~~City Engineer which shall first determine that the work covered by the application will not interfere with any programs of the city or with the use by the city of streets and other facilities, and that the work will be carried out in such a manner as to afford maximum protection to the public.

¹State law reference(s)—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.

Sec. 34-24. Relocation of facilities.

Any public utility operating within the city without a franchise from the city shall relocate their facilities upon ten days' written notice given by the city pursuant to a determination by the ~~City Council~~City Engineer that such relocation is necessary in order to accommodate city improvements of any nature. In the event that public utility shall not comply with the notice within the prescribed time, the city may, at its discretion, remove or relocate such facilities and charge the cost of such removal or relocation to the public utility owning the same. The time allowed for relocating as prescribed herein may be extended upon a showing by the public utility of the necessity for such extension.

Sec. 34-25. Annual fee.

All public utilities operating within the city without a franchise shall pay to the city an annual fee, which shall be payable quarterly on or before March 15, June 15, September 15, and December 15 of each year for the periods ending February 28, May 31, August 31, and November 30 prior to the payable date, equal to seven percent of its gross annual receipts obtained from its subscribers and customers residing within the city. Gross annual receipts as used herein shall include all sums obtained from city subscribers and customers including service charges, late charges, connection fees, or other revenues obtained from said subscribers and customers.

Secs. 34-26—34-53. Reserved.

ARTICLE III. WATER SERVICE SYSTEM

DIVISION 1. GENERALLY

Sec. 34-54. Definitions.

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

City means the City of Independence

Commercial and industrial service means service available to commercial and industrial customers, including mercantile establishments, stores, offices, public buildings not otherwise classified, public and private hospitals, schools, churches, mercantile and industrial establishments combined with residences, and apartment houses except those in which service to each apartment is metered separately.

-Council means the Mayor and City Council of the City of Independence, Oregon.

Customer means any person granted water service after due application.

Customer line means the pipe, valves and fittings leading from the water meter into the premises served.

Director means the Director of Public Works of the City of Independence, employed by the City of Independence.

Dwelling unit means a facility designed for permanent or semi-permanent occupancy and provided with kitchen, sleeping and sanitary facilities.

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.

Main or water main means the pipe in the street, alley or right-of-way owned and maintained by the City for the purpose of distributing water to customers and servicing fire hydrants.

Person means and includes any natural person, firm, co partnership, association or corporation.

Residential service means service to single-family residences and to individual apartments or flats where service is furnished through a separate meter for each individual apartment or other such dwelling unit.

Service line or service connection means the pipe, valves, stops and fitting from a main to and including the meter and meter box. Service lines means the line or pipe connecting the water main to the water meter.

System means all or any part of the water system owned and operated by the City and includes all service lines to and including all meters

Temporary service means a line connecting the nearest water main to the premises, in lieu of a permanent main adjacent to the users' property.

Water main means a pipe or conduit two inches or larger in inside diameter laid in a public street, right of way or easement to which a service line is connected. Generally, water mains smaller than six inches in inside diameter will not be permitted.

Sec. 34-55. Ownership of system.

The water system is owned by the City of Independence and the people residing therein, and none of the properties may be disposed of except as by Charter or ordinance provided.

Sec. 34-56. Jurisdiction and operation.

- (a) The entire system including all mains, service lines, meters, reservoirs, pumping stations, treatment plants, and all facilities and appurtenances shall be operated only by regularly employed and authorized personnel of the City.
- (b) No person shall connect to any main or service of the system or interfere with the operation of any of the facilities whatsoever, or turn on any meter or service, or operate any valves or fire hydrants; provided, however, that members of regularly constituted fire departments shall be permitted to connect to and use fire hydrants for the express purpose of fighting fire, testing and use consistent therewith.

Sec. 34-57 Responsibility and liability of City.

- (a) The City shall maintain and repair its mains, service pipes, meters, structures, facilities and all appurtenances so as to keep them in repair and operative condition at all times insofar as practical and reasonable.
- (b) The City shall not be liable for damages or otherwise responsible because of interruptions or discontinuance of water service. The Council shall have the right in cases of inadequate supply or shortages of water to determine how water shall be used, and give preference to those uses determined to be in the best interest of the public health and public convenience or necessity.
- (c) The City shall not be liable for any damage or injury whatsoever for leakage or the running of water on the premises from the pipe lines, plumbing fixtures, open faucets, valves, fixtures and hoses beyond meters set at property lines.

Sec. 34-58 Use of water.

The City shall furnish water for ordinary domestic, business and community use and for such sprinkling, irrigation, industrial, commercial and firefighting purposes as the system may reasonably supply and as may be approved by the Council.

Sec. 34-59 Restricted use of water.

(a) The City Council may, by resolution, at such times as it deems appropriate, restrict the use of City water.

(b) It is unlawful for anyone to use water in violation of the terms of a water restriction resolution duly imposed by the City Council. Violation of such restrictions may be punishable by a fine not exceeding \$100.00 for each day of the violation.

Sec. 34-60 Furnishing water.

The City shall not be obligated to furnish and install at its expense system facilities for all property within the City. The City shall, so far as reasonable and practicable and within its financial means, however, provide adequate source of supply, necessary primary feeder mains, storage facilities and other improvements necessary to make water service generally available to all areas within the City. Extensions to furnish water to areas at present not now obtaining water from the system shall, at the expense of those persons requesting service, be made by the City or by those expressly authorized to do so.

Sec. 34-61 Spider connections prohibited.

Water service shall be provided only from pipes or mains located within streets, alleys, or rights-of-way controlled by the City, and to property or premises abutting such mains. So-called "spider connections" which would provide service from one street or road to property or premises abutting another street or road shall not be permitted, and requests for such service shall be disapproved.

Sec. 34-62 Location of meters – pipes and meters to be City property.

Meters shall be set at property lines or within City owned public utility easement next to City right of way, and the service pipe from the main to the meter as well as the meter and meter box shall be the property of the City and not the person owning the premises or paying for the installation.

Sec. 34-63 Service outside City.

New service connections to persons residing outside of the corporate limits of the City shall not be provided. The City shall require annexation as a condition of providing a new water service. Existing services outside of the City at the time of code adoption may continue and rates for service shall be set per Sec. 34-66.

Sec. 34-64 Establishment of rate schedules.

Rate schedules for water service within and without the City shall be established and may from time to time be revised by the Council by resolution.

Sec. 34-~~55~~65. Construction to conform to standards.

All public or private water distribution systems to be connected to the municipal water system, whether publicly or privately constructed, shall conform to standards of design, sizing, materials and workmanship prescribed by the ~~city~~City. Failure to meet standards shall be grounds for refusal to allow connection to the municipal water system or stoppage of service. Service connections will not be made until the system is approved and accepted.

Sec. 34-~~56~~66. Construction inspection and approval.

Reasonable notice shall be given to the city to inspect and test all work in connection with the construction of water mains by private contractors. Mains shall meet construction standards and standards for leakage tests and bacteriological tests prior to acceptance.

Sec. 34-~~57~~67. Tampering with pipes unlawful.

Connections to water distribution mains for the purpose of extending such lines or for providing water service shall be made only by employees of the city in the normal performance of their duties or by private contractor under a Public Works Department permit. It is unlawful for any person to attach to or to detach from any water main or connection through which water is supplied by the city from the municipal water system, or to interfere in any manner or tamper with such pipes or connections, without having first obtained the written consent of the city. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

Sec. 34-~~58~~68. Unlawful to operate valves and appurtenances.

It is unlawful for any person, other than an employee of the ~~public~~Public ~~works~~Works ~~department~~Department in the normal performance of that person's duties, to operate valves and appurtenances connected with the municipal water system. In addition, fire hydrants may be operated by personnel of ~~a~~the Fire Department or district in performance of their regular duties. Fire hydrants shall not be used for purposes other than firefighting, flushing mains and filling street cleaning and similar equipment, unless application for service has been made and the meter set to measure water use for private purposes, as provided in section 34-84. Operation of fire hydrants by use of any wrench other than the standard fire hydrant wrench designed for that purpose is prohibited. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

Sec. 34-~~59~~69. Public fire protection.

Consistent with its primary purpose of providing adequate potable water for residential, commercial and industrial use, the water distribution system shall be designed to provide public fire protection by means of fire hydrants located as directed by the Chief of Polk County Fire District #1 or a corresponding official in any fire district that may be authorized to serve the city. ~~Fire hydrants shall be installed and maintained at the expense of the Fire Department or fire district, except that hydrants in new subdivisions shall be paid for by the developer.~~ The main system shall be designed insofar as possible to provide fire flows recommended by the insurance services office. All mains, constructed or reconstructed, upon which fire protection depends, shall be a minimum of ~~six~~ eight inches in diameter and wherever possible, shall be looped to provide flow from two or more directions.

Sec. 34-~~60~~70. Contamination of water unlawful.

- (a) It is unlawful for any person to in any way contaminate or pollute the water in the reservoirs or pipes of the municipal water system or in any fountain, hydrant or source or place of storage of the water supply of the city or any of its inhabitants.
- (b) It is unlawful for any person to throw any rubbish, debris or any other thing into any water reservoir belonging to the city.
- (c) The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

Sec. 34-~~61~~71. Special contracts to sell water.

Notwithstanding the provisions of this article, the City Council may, at its discretion, enter into special contracts to sell water at other than the water rates established by this article in situations where special considerations exist justifying charges other than regular rates.

Sec 34-72. Connection required.

The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes, situated within the city and abutting on any street, alley or right-of-way in which there is located a public water system of the city, is required at the owner's expense to install suitable water facilities therein, and to

connect such facilities directly with the proper public water in accordance with the provisions of this article, within 90 days after date of official notice to do so, provided that the public water is within 100 feet of the property line or property corner. Properties with wells are required to install an approved reduced pressure backflow device to prevent contamination of the City's water system.

Secs. 34-~~6273~~—34-80. Reserved.

DIVISION 2. CONDITIONS OF SERVICE

Sec. 34-81. Application for connection to city water system.

Each person desiring to connect to the municipal water system shall make application in conformance with the requirements of section 34-401.

Sec. 34-82. Service lines and meters; sizing.

- (a) Unless otherwise requested, approved, and paid for, service connections shall be a minimum of one inch and meters shall be three-fourths inch meters, together with such corporations stop, fittings, connections, yoke or setter, meter box, shutoff cocks, etc., as the City shall require.
- (b) Services larger than one inch may be installed when requested in writing, provided the system is able to adequately service such larger connection without interfering with the meter service of others. The charges made for the installation of larger services shall be sufficient to cover all costs thereof, and the minimum of "ready to serve" charge may be higher than for standard one inch service connections. The size of the service line and meter shall generally be at the option of the user. The city shall ensure that the size of the connection requested is reasonable for the use intended and is within the capabilities of the distribution system without diminishing the quality of service to other users in the vicinity. Minimum size of connection shall be three-quarters of an inch inside diameter. The size of meter shall not exceed the size of service line.

Sec. 34-83. Meters and system to be owned by city.

All water meters, water mains, hydrants, and services shall be owned and maintained by the city. Systems on the property side of the meters shall be owned and maintained by the property owner. Meters and other system appurtenances may be tested, repaired, relocated and interchanged by the city as required without regard to who paid the initial cost of the meter and installation water system so long as the premises continues to be supplied through the meter adequate for its needs.

Sec. 34-84. Users to be individually metered.

- (a) Each dwelling or building, or building complex under the same ownership shall be provided with its own water service connection and meter. Multifamily dwellings and other multi-occupancy units under the same ownership shall be provided with one meter, unless the customer requests and pays for additional meters.
- (b) No person shall furnish water to either buildings or premises without making application for water service with the City, and then only under the specific terms of any such authorization which might be granted.
- (c) No City water customer may furnish City-supplied water to a non-customer or customer who has had service stopped by the City by means of a hose, pipe or similar conveyance. A de minimis temporary use of City water does not constitute a violation of this subsection. Each premises served by the municipal water system shall be individually metered. Service to more than one user, or multiple meters for the same user, shall not be combined for the purpose of obtaining a more favorable water rate. Multiple unit housing complexes,

~~condominiums, mobile home parks, and similar users may be served through master meters if all the dwelling units are under common ownership or under the control of a homeowner association.~~

~~(d) -The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22. (Prior Code, § 73.065; Code 2006, § 13.5.12; Ord. No. 1495, § 1(13.5.12), 1-25-2011)~~

Sec. 34-85. Meter accuracy.

~~Normal maintenance and repair of meters shall be carried on by the City at its expense. Should a customer wish to have his or her meter tested, the City will make such tests upon written request by the customer, but should the meter so tested be found accurate within two percent of true delivery, the customer requesting such testing shall pay the cost thereof; provided, however, that should such meter be found to under register in excess of two percent testing shall be at the cost of the City. The city will, upon written request, test any customer's meter without cost to such customer unless such tests are requested more than once every 12 months. City. No more than one test shall be conducted during any 12 month period and -The user may will be charged for making additional tests during an annual period. All meters used to measure quantities of water for determining charges shall be maintained in such condition as to register within an accuracy of plus or minus two percent the amount of water passing through the meter. Meters used and accuracy of measurements shall conform to standards set by the American Water Works Association. If a meter is found to register water use with an error greater than two percent, billings shall be adjusted to correct the error for a period not exceeding the six months prior to the test.~~

Sec. 34-86. Meter change in size.

Size of the meter serving a premises may be changed at the request of the user upon payment of the estimated cost of making the change. Increase in size will require increase in the size of the service line in most cases. Meter size will not be changed for any premises more frequently than once per year. Meter size shall determine the minimum charge.

Sec. 34-87. Connection of service.

- (a) The point of delivery shall be at a mutually acceptable location, from the city water main adjacent to the property line, or curblineline of the premises upon which the water service is to be utilized by the user.
- (b) The city shall not be required to install or maintain more than one service extension from its distribution mains to supply the same class of service to any one user on any particular premises. Each user shall furnish, own, install and maintain at the user's own expense, all piping, plumbing, equipment and faucets located beyond the point of delivery.
- (c) Where service is to be newly established at a point of delivery, requiring that the city install a service pipe, the user shall, at the time of application for service, pay the city a connection charge, as set forth in section 34-~~130~~133.
- (d) All plumbing and equipment located beyond the point of delivery, including outside hydrants and faucets, shall be connected to the service extension, at the expense of the user and in such a manner that all water used by the user shall pass through the meter.

Sec. 34-88. Access to premises.

Employees of the city shall have access, upon proper identification, to all premises at which city water is being used for the purpose of determining that no hazard exists to the public water system as a result of the manner in which the water is being used, and to allow the city employees to take readings from any water meter located on the premises. Such access shall be at reasonable hours and shall not interfere with the customer's normal use of the person's premises.

Sec. 34-89. Damage to facilities user responsible.

Each user of water shall protect the user's facilities so that hot water cannot be returned to the water mains. Users will be charged for the expense of repairs for meters and pipe lines damaged by hot water.

Sec. 34-90. Private booster pumps prohibited.

No booster pumps shall be installed by a user for the purpose of increasing water pressure or delivery without the express written permission of the city. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

Sec. 34-91. Interruption of service notification.

~~The City from time to time must interrupt service for repairing mains, making extensions, repairing valves, pumps, and control devices, etc., and for cleaning, maintaining and reconditioning reservoirs and storage tanks. The City shall not be responsible for any damages caused by such interruptions of service or fluctuations in pressure, but shall, whenever feasible to do so, give customers advance notice whenever it is known that service is to be interrupted for any appreciable length of time, but failure to give such notice shall in no manner cause the City to become liable for loss or damage caused by service interruption. Wherever practical, users will be notified in advance of any planned interruption of service or shut down of mains for repair or alterations. The city assumes no responsibility for providing uninterrupted water service and will not be liable for damages resulting from such interruptions~~

Sec. 34-92 Pressure regulation.

- ~~(a) Insofar as it is reasonably possible, feasible and economical for the City to do so, it will furnish water at desirable service pressures. In locations in which service pressures are higher than needed or desired by users, customers shall install and maintain within their premises any pressure regulators required.~~
- ~~(b) The City shall not be responsible for damages or difficulties experienced by reason of variations in pressure within the system.~~

Sec. 34-~~92~~93. Plumbing to be kept in repair.

- (a) It is the responsibility of the user to keep the user's piping and fixtures in good repair to prevent damage to premises and waste of water. The city shall not be responsible for damage to property resulting from turning on or continuing water service to premises with defective plumbing.
- (b) The user shall be responsible for the installation and maintenance of all piping, plumbing and equipment on the user's premises connected or to be connected to city's distribution system. The city shall not be liable for any loss or damage of any nature whatsoever caused by any defect in the user's piping or the user's equipment upon the premises of the user. The city does not assume the duty of inspecting the user's piping, plumbing and equipment and shall not be responsible therefor. This section shall not apply to any inspection responsibilities assumed by the city building inspector in conjunction with issuance of building permits.

Sec. 34-~~93~~94. Electrical grounding.

~~Property owners are prohibited from using the city's water system for grounding of electrical circuits. The city shall not be responsible for the use of its water distribution system for grounding of electrical circuits. Use of nonmetallic materials in mains and service lines precludes reliance on the water system for electrical grounding.~~

Sec. 34-~~94~~95. Temporary service agreement.

- (a) In certain instances where, in the judgment of the ~~City Manager~~Public Works Director, construction of a water main to serve a given piece of property is not advisable or feasible, water service may be provided by a temporary connection to some other main, pending construction of a permanent main to serve the property. Such temporary connection shall be acknowledged by the applicant, who shall execute a waiver of remonstrance applicable to assessment for a permanent water main in the future. Such acknowledgment and waiver shall be recorded in deed records of the county, and shall be binding upon subsequent owners.
- (b) When temporary service is desired, the applicant may be required to advance to the city a sum equal to the estimated cost of labor and material, including reasonable overhead charges, necessary to install and remove such service connection. At the termination of the service period, that portion of the advance which remains after deduction of the actual costs of labor and material necessary to connect and disconnect such service (less the salvage value of material removed), will be refunded to the applicant, after application of the advance to any unpaid fees or charges for water service.

Sec. 34-~~95~~96. Abandonment of service lines and water mains.

- (a) The ~~City Manager~~Public Works Director may cause the removal or abandonment of any unused service line when its further need is not apparent and when in the ~~City Manager~~Public Works Director's judgment removal is appropriate to reduce leakage or future maintenance responsibility. Subsequent service to the properties that would have been served by the unused line shall be treated as a new service.
- (b) Within 90 days of the date of written notice from the city, customers shall connect at their expense to the new meter location provided at the customer's property line where a new water main is constructed to serve the property and there is an abandonment of the existing water main.

Sec. 34-~~96~~97. Temporary water pump station installation.

- (a) In certain instances where, in the judgment of the ~~City Manager~~Public Works Director, it is not practicable to provide adequate water flows to any area through the use of traditional water service methods, the city may, at its option, elect to serve the area through the installation and operation of a temporary water pump station.
- (b) As used in this section and section 34-~~97~~98, unless the context otherwise requires, the term "temporary water pump station" or "temporary pump station" means any self-contained pump station designed, constructed and installed by the city with the intent of future relocation.

Sec. 34-~~97~~98. Temporary water pump station payment.

- (a) At such time that any person requests water service requiring a temporary pump station, the ~~City Manager~~Public Works Director shall review such request and if approved, shall cause the improvement to be installed.
- (b) The person requesting such service, and any person who shall make use of the pump system during future operation, shall pay for such service in a lump sum, before connection to the system, according to the following formula:
 - (1) Total payment equals the sum of fire flow plus domestic water use, calculated in gallons per minute, times \$10.00 per gallon per minute;
 - (2) Fire flow equals 1,000 gallons per minute unless otherwise specified by the Chief Local Fire Official;
 - (3) Domestic water use shall be calculated according to the water demand estimate method used in the Uniform Plumbing Code, where one housing unit shall be considered to be 30 fixture units.
- (c) All funds paid to the city pursuant to this section shall be submitted to the water fund.

Sec. 34-~~99~~99. Sprinkling and irrigation restricted.

The city may restrict the use of water for sprinkling and irrigation purposes at such times and in such manner as may be necessary to maintain adequate service for other purposes.

Secs. 34-~~99~~100—34-124. Reserved.

DIVISION 3. CHARGES, BILLINGS AND COLLECTIONS

Sec. 34-125. Water fund created.

A special fund is created known as the water fund, and the Finance Director shall deposit in this fund all proceeds of the charges imposed under this chapter. The water fund shall be used solely and exclusively for paying all or part or any part of the cost of operation, maintenance and repair of the water system; administration costs; planning and construction; and payments of the principal and interest on any debts of the city water system.

[Water funds shall not be used for other purposes without a resolution approved by the City Council specifying the terms of repayment within the timelines allowed by state law.](#)

Sec. 34-126. Fees, rates and charges; Council authority.

All fees, rates and charges for water services shall be established by resolution of the City Council.

Sec. 34-127. Water service billing.

- (a) All billings for water service shall be made monthly on the basis of the amount of water used during the previous monthly period, and the monthly base rate minimum (See subsection (c) of this section below). Amounts billed will not be reduced for loss of water due to waste caused by leakage of equipment of the customer, except as provided in section 34-409(a).
- (b) If, for any reason, it is impossible or impractical to read the meter, consumption may be estimated, based on the previous history of use, until the meter can be read.
- (c) The city shall commence charging the water base rate for all ~~occupied property properties either 60 days after the water service becomes available or the day that connection is made to the public water system, whichever occurs first. The water base rate for all unoccupied property shall begin within 30 days after the property is ready for occupancy or on the first day of occupancy, whichever occurs first. All unoccupied property which is ready for occupancy at the time the water service becomes available shall be treated as occupied property.~~ Once the water base rate has commenced, no credit shall be given for vacancy, unless a property owner gives written notice to disconnect from the water system per section 34.405.2.
- (d) Water billing and collection procedures shall be performed as provided in article VI of this chapter.

Sec. 34-128. Computation and collection of charges.

All collections for user service charges shall be made by the appropriate city department. User service charges shall be computed and payable as provided in this division.

Sec. 34-129. Billing mailing address.

Bills for water service charges shall be mailed to the address specified in the application for permit to make the connection, or the address in the application for water service submitted pursuant to article VI of this chapter

whichever was submitted most recently, unless or until a different owner or user of the property is reported in writing to the city not less than 25 days before the next billing.

Sec. 34-130. Fraud prevention devices.

The city reserves the right to install such meters or other devices as may be necessary for the detection and prevention of fraud or waste without notice to the customer. Whenever flat rate service is furnished for a special use and a demonstrated abuse of such service occurs, the city may, upon written notice to the customer, meter such service and bill, under an applicable schedule, for water supplied.

Sec. 34-131. Damage to meter equipment; user responsible.

Should damage result to metering equipment by reason of the customer's tampering or willful neglect of the equipment, the city will repair or replace such equipment and may require payment by the customer for all costs incurred.

Sec. 34-132. Rate schedule.

- (a) The monthly rates and charges for residential, commercial and industrial water service shall be adopted by resolution of the Council.
- (b) For all services outside the corporate limits of the city, a surcharge of 100 percent shall be added to the inside rate and charges, except as otherwise established by written agreement approved by the City Council.

Sec. 34-133. Service connection charges.

- (a) Where service is to be newly established or re-established at a point of delivery, requiring that the city install a service pipe or meter, the customer shall, at the time of application for service, pay the city a connection charge. The connection charge shall be established by resolution of the City Council.
- (b) Costs of the meter will be paid by the customer for all meters and they become property of the city.

Secs. 34-134—34-160. Reserved.

DIVISION 4. CROSS CONNECTION REQUIREMENTS

Sec. 34-161. Definitions.

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

Controlled cross-connections means a connection between a potable water system and a nonpotable water system, with an approved backflow-prevention device properly installed that will continuously afford the protection commensurate with the degree of hazard.

Cross-connection means any physical connection or arrangement of piping or fixtures between two otherwise separate piping systems, one of which contains potable water and the other nonpotable water or industrial fluids of questionable safety, through which, or because of which, backflow or back-siphonage may occur into the potable water system. Other types of cross-connections include, but are not limited to, connectors such as swing connections, removable sections, four-way plug valves, spools, dummy sections of pipe, swivel or changeover devices, sliding multi-port tube, and solid connections.

Customer means a utility consumer of the city, including residential, commercial, public, or industrial users.

State means any agency of the state charged with responsibility for establishing administrative regulations pertaining to cross connection requirements.

Sec. 34-162. Inspection of premises for compliance.

The customer's system ~~should~~ **shall** be open for inspection at all reasonable times to authorized representatives of the city to determine whether cross-connections or other structural or sanitary hazards, including violations of these regulations, exist. When such a condition becomes known, the ~~City Manager~~ **Public Works Director** or designee shall deny or immediately discontinue service to the premises by providing a physical break in the service line until the customer has corrected the condition in conformance with the state and city statutes relating to plumbing and water supplies, and the regulations adopted pursuant thereto.

Sec. 34-163. Backflow-prevention device—Required when.

An approved backflow-prevention device shall also be installed on each service line to a customer's water system at or near the property line, or immediately inside the building served, but in all cases before the first branch line leading off the service line whenever the following conditions exist:

- (~~a~~) In case of premises having an auxiliary water supply which is not or may not be of safe bacteriological or chemical quality and which is not acceptable as an additional source by the ~~City Manager~~ **Public Works Director** or designee, the public water system shall be protected against backflow from the premises by installing a backflow prevention device in the service line appropriate to the degree of hazard.
- (~~b~~) In the case of premises on which any industrial fluid or any other objectionable substance is handled in such a fashion as to create an actual or potential hazard to the public water system, the public system shall be protected against backflow from the premises by installing a backflow-prevention device in the service line appropriate to the degree of hazard. This shall include the handling of process waters and waters originating from the utility system which have been subject to deterioration in quality.
- (~~c~~) In the case of premises having:
 - ~~a~~(1) Internal cross-connections that cannot be permanently controlled; or
 - ~~b~~(2) Intricate plumbing and piping arrangements, or where entry to all portions of the premises is not readily accessible for inspection purposes, making it impracticable or impossible to ascertain whether or not dangerous cross-connections exist;the public water system shall be protected against backflow from the premises by installing a backflow-prevention device in the service line.
- (~~d~~) Hard plumbed accessory components such as irrigation systems, are required to meet the standards of this division.

Sec. 34-164. Same—Types required.

The type of protection device required under section 34-163(1), (2) and (3) shall depend upon the degree of hazard which exists, as follows:

- (~~a~~) An approved air-gap or an approved RP device shall be installed where the substance which could backflow is hazardous to health (e.g., sewage treatment plants, sewage pumping stations, chemical manufacturing plants, plating plants, hospitals, mortuaries, carwashes, and medical clinics).
- (~~b~~) An approved double check valve assembly shall be installed where the substance which could backflow is objectionable but does not pose an unreasonable risk to health.
- (~~c~~) An approved pressure vacuum breaker shall be installed where the substance which could backflow is objectionable, but does not pose an unreasonable risk to health and where there is no possibility of back pressure in the downstream piping. A shutoff valve may be installed on the line downstream of a pressure vacuum breaker.

Sec. 34-165. Same—Specifications.

- (a) Any backflow-prevention device required herein shall be of a model and size approved by the ~~City Manager~~Public Works Director or designee.
- (b) ~~The term "approved backflow prevention device" is a device specifically designed to counteract back pressures or prevent back siphonage, and which must appear on the official list of approved devices issued by the Oregon Health Authority (OHA). The term "approved backflow prevention device" means a device that has been manufactured in full conformance with the standards established by the American Water Works Association, entitled: AWWA C506-78 Standards for Reduced Pressure Principle and Double Check Valve Backflow Prevention Devices and, have met completely the laboratory and field performance specifications of the Foundation for Cross-Connection Control and Hydraulic Research of the University of Southern California, established by: Specifications of Backflow Prevention Devices, No. 69-2, dated March 1969, or the most current issue. Said AWWA and FCCC&HR standards and specifications have been adopted by the city. Final approval shall be evidenced by a certificate of approval issued by an approved testing laboratory certifying full compliance with said AWWA standards and FCCC&HR specifications.~~
- (c) ~~Devices are approved based on testing and certification by recognized national organizations. Assemblies listed in the currently approved backflow prevention assemblies list developed by the University of Southern California (USC) Foundation for Cross-Connection Control and Hydraulic Research are considered approved by the OHA. The specific type of assembly required for a property depends on the potential degree of contamination or pollution hazard, as determined by local water suppliers following OHA regulations (OAR Chapter 333, Division 061). The following testing laboratory has been qualified by the City Manager or designee to test and certify backflow preventers:~~

~~Foundation for Cross-Connection Control and Hydraulic Research
University of Southern California
University Park
Los Angeles, California 90007~~

- (d) ~~State and City code requires all backflow prevention assemblies be tested each year by a certified backflow assembly tester, after any repair, replacement, or relocation, and after initial installation. Testing laboratories other than the laboratory listed in subsection (c) of this section will be added to an approved list as they are qualified by the City Manager or designee.~~
- (e) ~~Testers other than the testers listed on the city's approved tester list may request to be added to the list after providing a copy of their current backflow testing license by OHA. Testers must have current calibrated gauge with calibration certificate available for inspection upon request by the city. Backflow preventers which may be subjected to back pressure or back siphonage that have been fully tested and have been granted a certificate of approval by said qualified laboratory and are listed on the laboratory's current list of approved devices may be used without further test or qualification.~~

Sec. 34-166. Tests and certified inspections.

- (a) It shall be the duty of the customer/user at any premises where backflow prevention devices are installed to have certified inspections and operational tests made at least once per year. In those instances where the ~~City Manager~~Public Works Director or designee deems the hazard to be great enough, the ~~City Manager~~Public Works Director or designee may require certified inspections at more frequent intervals. These inspections and tests shall be at the expense of the water user, and shall be performed by the device manufacturer's representative, by City Public Works Department personnel, or by a certified tester approved by the State Health Division. All testers in the city shall have confined space entry training. The customer-user shall notify the ~~City Manager~~Public Works Director or designee in advance when the tests are to be undertaken so that the ~~City Manager~~Public Works Director or designee or the director's representative may witness the tests if so desired. Disposition of test results shall be as provided in state law.

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- (b) These devices shall be repaired, overhauled or replaced at the expense of the customer-user whenever the devices are found to be defective. Records of such ~~tests~~ tests, repairs and overhaul shall be kept, and an original copy shall be sent to the ~~City Manager~~Public Works Director or designee in a timely manner.

Sec. 34-167. Existing protection devices—Permitted when.

All presently installed backflow-prevention devices which do not meet the requirements of this division, but were approved devices for the purposes described herein at the time of installation, and which have been properly maintained, shall, except for the inspection and maintenance requirements under section 34-~~162~~166, be excluded from the requirements of these rules so long as the ~~City Manager~~Public Works Director or designee is assured that they will satisfactorily protect the utility system. Whenever the existing device is moved from the present location, or requires more than minimum maintenance, or when the ~~City Manager~~Public Works Director or designee finds that the maintenance constitutes a hazard to health, the unit shall be replaced by a backflow-prevention device meeting the requirements of this chapter.

Sec. 34-168. Same—Discontinuance when.

If an existing backflow device required by this division is not tested and maintained, or it is found that a backflow-prevention device has been removed or bypassed, service will be discontinued until such conditions or defects are corrected.

Sec. 34-169. Conflicting regulations.

In the event that a conflict exists or develops between any provision of this division and the Uniform Plumbing Code, then the codes shall be interpreted as mutually consistent, if possible. In the event that the interpretation and application cannot be reconciled, then this Code shall prevail.

Sec. 34-170. Mobile units.

Any mobile apparatus which uses the city system or water from any premises within the city must obtain a permit and shall either have an adequate air gap or backflow assembly.

Sec. 34-171. Fire systems.

- (a) An approved double check valve assembly shall be the minimum protection for fire systems using piping materials that is not approved for potable water use and/or which does not provide for periodic flow through during each 24-hour period.
- (b) If antifreeze is used to keep fire sprinkler system from freezing a RP device will be required.

Secs. 34-172—34-181. Reserved.

DIVISION 5. EXTENSION OF WATER MAINS

Sec. 34-182. Water main eExtensions – Responsibility for payment.

~~The City as a whole shall pay for the cost of supply, pumping stations, storage facilities and primary mains for the general distribution of water within the city, but it shall not pay the cost of main extensions to service additional customers, properties, tracts or subdivisions. Such extensions, when requested, shall be paid for by the person or persons requesting such extensions. (a) — Extension of mains will be made by the city, where grades of streets, avenues, etc., have been established by law, along streets dedicated to public use, county roads, highways or upon other satisfactory rights of way; provided, that pressure conditions permit service to the desired location,~~

that sanitary conditions do not render the extension inadvisable, and that the city has sufficient water supply developed to provide for the additional demands without serious detriment to those already being served.

(b) — An applicant for water service requiring an extension of eight inch diameter or smaller main shall advance to the city an amount determined by multiplying the footage of main to be installed by: \$9.50 for two inch and four inch diameter mains (mains of two and four inch diameter are of nonstandard size and are installed only where, in city's judgment, there is no possibility of further extensions or of future requirement for fire protection service); \$15.40 for six inch diameter mains; \$21.80 for eight inch diameter mains; and then reducing the product so obtained by the extension allowance determined in accordance with subsection (b)(1)a of this section. For mains larger than eight inch diameter, the applicant shall advance the estimated installed costs less the extension allowance. The size of mains will be determined by the city based on present service requirements and if there are expectations of the future expansion of the water system. Where projects require the extension of mains having diameters larger than eight inches, mains that cross over canyons, water courses or other obstacles on supports above the ground or that require boring under highways, railroad tracks or other obstacles, additional participation by applicant shall be required. The applicant will also be required to advance the costs of breaking and replacing pavements where mains must be installed in streets to supplement or to increase the capacity of existing mains; provided that such mains have been in existence for a period of not less than ten years. Such money advanced to the city will be regarded as a customer advance and all or part may be subject to refund to the applicant or to applicant's assignee when such assignment is on file with the city, in accordance with the following:

(1) — *General extension.* During the first five years following completion of the extensions, customer advances will be subject to partial refunds in the event that the service pipes of applicant's permanent service, other than for fire protection services are connected directly to the mains for which an advance was paid. The city shall determine the amount of the partial refund which shall be based on the length and feet and the number of customers being served by that part of the extension to be used to serve the applicant. The cash advance, if any, to be made by the applicant and refunds of cash advances, if any, to be made to existing customers shall be determined as if the applicant had been among those for whom the extension was originally constructed and shall be reduced by 1/60 part for each full month the extension has been in service. In no event will the total refund to any customer exceed the customer's advance and no refunds will be made after the extension has been in service for five years.

(2) — *Extensions to service tracts or subdivisions.* For a period not exceeding five years from the date of the completion of the extension, refunds will be made to the applicant or to the person's assignees when such assignment is on file with the city, for each bona fide and permanent service pipe, other than for fire protection services, connected directly to the extension for which an advance has been made. The amount of the refund will be the amount of the extension allowance for each customer less 1/60 of such amount of each full month from the date of completion of the extension to the date of the connection of service to the new customer; provided, however, that the total payments thus made by the city shall not exceed the amount of the original advance without interest, and that no refunds will be made unless the number of actual active services exceeds the number for which refunds have already been made. Refunds will be made once each year for a period of five years for each permanent connection during the preceding 12 months.

(3) — *Provisions applicable to all extensions.*

a. — For each permanent, full time, residential customer the extension allowance shall be \$266.00. The extension allowance for other than residential service, except for fire protection service, shall be equal to the estimated annual revenue, as determined by the city immediately available from the customer or the customers to be served divided by the average annual residential revenue at currently effective rates times the residential extension allowance of \$266.00.

b. — No interest will be paid by the city on customer advances on or refunds thereof.

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- ~~c. The term "footage of mains to be installed," as used to determine the amount of customer advance, includes the mains, if any, that are installed to increase capacity where existing mains are of insufficient size.~~
 - ~~d. Extensions may be made across private property only on delivery to the city of rights-of-way acceptable to the city.~~
 - ~~e. The size, type and quality of materials and location of the lines and facilities shall be specified by the city and the actual construction will be done by the city or by a contractor acceptable to it.~~
 - ~~f. The sole and exclusive title to any extension constructed under these rules shall be vested in the city.~~
 - ~~g. All facilities beyond the point of delivery shall be furnished, installed, owned and maintained by the customer.~~
 - ~~h. Point of delivery shall be from a city main that is adjacent to the property line, or curblin, of the premises to be served.~~
 - ~~i. Any extension of water mains (other than a service connection) shall be considered as a new and separate extension.~~

(Prior Code, § 73.215; Code 2006, § 13.5.47)

Sec. 34-183 Water main extensions – To be made by City.

Unless part of an approved development or subdivision, all water main extensions shall be made by the City or by a contractor approved by the City. Water main extensions shall be constructed to such design standards as the City may designate.

Sec. 34-184 Water main extensions – Size.

The City shall determine the size of mains required, and in general they shall not be less than eight inches in diameter fittings, valves, valve boxes, and fire hydrants required shall be included in the cost of extensions. Extensions shall be made in the street to the furthestmost point of the property to be served, or to the end of the block if the property to be served extends to an intersection.

Sec. 34-185 Water main extensions—Advance payment by property owner—Cost assessment by City.

Advance payment for extensions shall be made by the owner or owners of the property for which service is desired. After receipt of a written request for a main extension, the Director of Public Works shall prepare an estimate of cost and furnish the applicant with a copy thereof. The City shall not proceed with the work until payments have been made for the full amount of the proposed work including 10% for overhead. After completion of the work and tabulation of costs of the installation, any excess monies deposited prior to the work shall be refunded and any deficiency shall forthwith be paid to the City by the owner.

Sec. 34-186 Water main extensions—Maintenance and operation by City.

The facilities after installation shall be the sole property of the City and shall be maintained and operated by the City's personnel exclusively, and all connections for services thereto shall be made in the manner elsewhere set forth in these regulations, and the charges made for service connections and meters shall be as therein set forth.

Sec. 34-187 Water main extensions—Reimbursement to persons paying for extensions.

After completion of the work, a tabulation of costs shall be prepared by the City and any excess money deposited prior to the work shall be refunded to the depositor, and any deficiencies shall be forthwith paid to the City of Independence by the depositor or owner as the case may be.

Sec. 34-188 Violations.

Any offense described in this Article 3 of Section 34 is an Independence Municipal Code Class A violation, per section 1-22.

Secs. 34-~~183~~189—34-202. Reserved.

ARTICLE IV. SEWER SERVICE USE REGULATIONS²

DIVISION 1. GENERALLY

Sec. 34-203. Definitions.

Unless the context specifically indicates otherwise, the meaning of terms used in this article shall be as follows:

Biochemical oxygen demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees Centigrade, expressed in milligrams per liter.

Building drain means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet outside the inner face of the building wall.

Building sewer means the extension from the building drain to the public sewer or other place of disposal, also called house connection.

Combined sewer means a sewer intended to serve as a sanitary sewer and a storm sewer, or as an industrial sewer and a storm sewer.

Easement means an acquired legal right for the specific use of land owned by others.

Floatable oil means oil, fat or grease in a physical state such that it will deplete by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable fat if it is properly pretreated and the wastewater does not interfere with the collection system.

Garbage means solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

Industrial user means any nongovernmental, nonresidential user discharging industrial wastes.

Industrial ~~user-wastes~~ means the liquid wastes from any nongovernmental, nonresidential ~~user of a~~ publicly owned treatment work ~~which discharges more than the equivalent of 25,000 gallons per day (gpd) of sanitary wastes and~~ which is identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented under one of the following divisions:

- (1) Division A: Agriculture, Forestry and Fishing.

²State law reference(s)—Sewage treatment and disposal systems, ORS 454.010 et seq.

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- (2) Division B: Mining.
 - (3) Division D: Manufacturing.
 - (4) Division E: Transportation, Communication, Electric, Gas, and Sanitary Services.
 - (5) Division I: Services.

~~A user in the divisions listed may be excluded if it is determined that it will introduce primarily segregated domestic wastes or wastes from sanitary conveniences. In determining the amount of a user's discharge for purposes of industrial cost recovery, the grantee may exclude domestic wastes or discharges from sanitary conveniences.~~

~~Industrial waste means that portion of the wastewater emanating from an industrial user which is not domestic waste or waste from sanitary conveniences.~~

Natural outlet means any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake or other body of surface water or groundwater.

Person means any individual, firm, company, association, society, corporation, or group.

pH means the logarithm of the reciprocal of the hydrogen-ion concentration. The concentration is the weight of hydrogen ions, in grams, per liter of solution. Neutral water, for example, has a pH value of 7 and a hydrogen-ion concentration of 10^{-7} .

Properly shredded garbage means the wastes from the preparation, cooking and dispensing of foods that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch in any dimension.

Public sewer means a common sewer controlled by a governmental agency or public utility.

Public Works Director means the responsible person of the wastewater treatment works of the city or the person's authorized representative.

Sanitary sewer means a sewer intended to carry only sanitary or sanitary and industrial wastewaters from residences, commercial buildings, industrial plants and institutions.

Sewage means the spent water of a community.

Sewer means a pipe or conduit that carries wastewater or drainage water.

Slug means any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration or flows during normal operation and shall adversely affect the collection system and/or performance of the wastewater treatment works.

Storm drain, sometimes termed "storm sewer," means a sewer intended to carry only stormwater, surface runoff, street wash waters and drainage.

~~*Superintendent* means the Superintendent of the wastewater treatment works of the city or the person's authorized representative.~~

Suspended solids means total suspended matter that either floats on the surface of, or is in suspension in water, wastewater or other liquids, and that is removable by laboratory filtering as prescribed in Standard Methods for the Examination of Water and Wastewater and referred to as non-filterable residue.

Unpolluted water means water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.

Wastewater means the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with any groundwater, surface water and stormwater that may be present. The term "wastewater" means sewage.

Wastewater facilities means the structures, equipment and processes required to collect, carry away and treat domestic and industrial wastes and dispose of the effluent.

Wastewater treatment works means an arrangement of devices and structures for treating wastewater, industrial wastes and sludge. The term "wastewater treatment works" sometimes used as synonymous with "waste treatment plant" or "wastewater treatment plant" or "water pollution control plant" or "sewage treatment plant."

Watercourse means a natural or artificial channel for the passage of water either continuously or intermittently.

Sec. 34-204. Chapter provisions not exclusive.

No statement contained in this chapter shall be construed to interfere with any additional requirements that may be imposed by the state or county.

Sec. 34-205. Waste deposited on public or private property unlawful.

It is unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the city or in any area under the jurisdiction of the city, any human or animal excrement, garbage or other objectionable waste. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

Sec. 34-206. Privy, septic tank and cesspool not allowed for disposal of wastewater.

Except as provided in this article, it is unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of wastewater. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

Sec. 34-207. Connection required.

The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes, situated within the city and abutting on any street, alley or right-of-way in which there is located a public sanitary or combined sewer of the city, is required at the owner's expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this article, within ~~60-90~~ days after date of official notice to do so, provided that the public sewer is within 300 feet of the property line or property corner.

(Prior Code, § 70.050; Code 2006, § 13.10.5)

Commented [GF1]: Oregon legislature updated OAR 340-071-0160 effective Jan 1 to set distance at 300

Sec. 34-208. Connection permit required.

No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the ~~Superintendent~~Public Works Director or their designee.

Sec. 34-209. Connection fee.

- (a) The fee for connection of existing buildings or new buildings to the sewer shall be as adopted from time to time by resolution of the City ~~Council~~Council except that, if an existing building contains several distinct

~~units as, for example, a multiunit residential building containing several distinct dwelling units, the fee for the first unit and for each additional unit shall be as adopted from time to time by resolution of the City Council.~~

~~(b) The fee for connection of new single family residences to the sewer shall be as adopted from time to time by resolution of the City Council for each residence.~~

~~(c) For connection of new multiunit residential buildings to the sewer the fee for the first unit and for each additional unit shall be as adopted from time to time by resolution of the City Council.~~

~~(d) The fee for connection of new commercial or industrial buildings to the sewer shall be as adopted from time to time by resolution of the City Council per 100 square feet of floor space of the building.~~

~~(e) The fee for connection of new mobile home court spaces to the sewer shall be as adopted from time to time by resolution of the City Council for each space.~~

(fb) As used in this section, the term "existing" means fully constructed and finished on or before July 22, 1976, and the term "new" means fully constructed and finished after July 22, 1976.

(gc) The fees set forth in this section shall accompany the application for sewer connection permits. The fees set forth in this section shall be in addition to costs each applicant shall pay for the installation and connection of such sewer as provided by the ordinances of the city.

Sec. 34-210. Connection standards.

The connection of the building sewer into the public sewer shall conform to the requirements of applicable building and plumbing codes or other applicable rules and regulations of the city, or the procedures set forth in appropriate specifications of the ASTM and the WPCF Manual of Practice No. 9. All such connections shall be made gas tight and watertight and verified by proper testing. Any deviation from the prescribed procedures and materials must be approved by the ~~Superintendent~~Public Works Director or their designee before installation.

Sec. 34-211. Connection to be ~~made-inspected~~ by city.

The applicant for the building sewer permit shall notify the ~~Superintendent~~Public Works Director or their designee 72 hours in advance when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be ~~made-inspected~~ by the city.

Sec. 34-212. Excavations for sewer installation barricades and lights required.

All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city.

Sec. 34-213. Connection cost; owner responsibility.

All costs and expense incidental to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

Sec. 34-214. Operation and maintenance of facilities; owner responsibility.

The owner shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no expense to the city.

Sec. 34-215. Private system allowed when.

Where a public sanitary or combined sewer is not available under the provisions of section 34-207, ~~sewer shall be connected to a private wastewater disposal system complying with the regulations of the state and/or county~~ the building sewer shall be connected to a private sewage disposal system complying with the requirements of the Oregon State Department of Environmental Quality, the Oregon State Board of Health, the Plumbing Code of the State of Oregon, Polk County Plumbing Department, and all other applicable laws, rules and regulations. The provisions of this section shall be in addition to and not lieu of the requirements of other applicable laws, rules and regulations.

Sec. 34-216. Private system fee.

Before commencement of construction of a private wastewater disposal system the owner shall first obtain a written permit signed by the ~~Superintendent~~ Building Official or their designee. The application for such permit shall be made on a form furnished by the city, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the ~~Superintendent~~ Public Works Director or their designee. A permit and inspection fee as adopted from time to time by resolution of the City Council shall be paid to the city at the time the application is filed.

Sec. 34-217. Connection required when sewer available.

At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in section 34-~~207~~215, and upon notification to the property owner from the City, a direct connection shall be made to the public sewer within ~~60 days~~90 days in compliance with this article, and any septic tanks, cesspools and similar private wastewater disposal facilities shall be ~~cleaned of sludge and filled with suitable material~~ decommissioned, abandoned and filled with suitable material. All costs associated with decommissioning, abandonment and connection shall be the responsibility of the property owner. Proof of proper decommissioning shall be provided to the Public Works Director or their designee.

Sec. 34-218. Separate sewers required for each building.

A separate and independent building sewer shall be provided for every building; except where an alternate arrangement is approved by the ~~Superintendent~~ Public Works Director or their designee.

Sec. 34-219. Old building sewers allowed when.

Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the ~~Superintendent~~ Public Works Director or their designee, to meet all requirements of ~~this article~~ the Public Works Standards.

Sec. 34-220. Sewer construction standards.

The size, slope, alignment, materials of construction of all ~~sanitary sewers including~~ building sewers, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the city ~~for~~ private sewers. In the absence of suitable code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the ASTM and WPCF Manual of Practice No. 9 shall apply. The size, slope, alignment, materials of construction of all public sewers shall comply with the Public Works Standards.

Sec. 34-221. Sewer construction elevation.

Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary

sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer at the property owners' expense.

Sec. 34-222. Prohibited connections.

No person shall make the connection of roof downspouts, foundation drains, areaway drains or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer. After receiving written notification by the city of preexisting private stormwater connections, the property owner will have 90 days, or a later date approved in writing by the Public Works Director, to disconnect stormwater connections from the sewer system. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

Sec. 34-223. Discharge of untreated sewage to natural outlet unlawful.

It is unlawful to discharge to any natural outlet within the city, or in any area under the jurisdiction of the city, sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this article. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

Sec. 34-224. Discharge of certain unpolluted waters to sewer not permitted.

No person shall discharge or cause to be discharged any unpolluted waters such as stormwater, surface water, groundwater, roof runoff, subsurface drainage or cooling water to any sewer. The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

Sec. 34-225. Discharge of waters and wastes to sewer restrictions.

- (a) No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:
- (1) Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas;
 - (2) Any waters or wastes containing toxic or poisonous solids, liquids or gasses in sufficient-any quantity, either singly or by interaction with other wastes to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant, including, but not limited to, cyanides in excess of two milligrams per liter or CN in the wastes as discharged to the public sewer;
 - (3) Any waters or wastes having a pH lower than 5.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works;
 - (4) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either whole or ground by garbage grinders.
- (b) No person shall discharge or cause to be discharged the following described substances, materials, waters or wastes if it appears likely in the opinion of the SuperintendentPublic Works Director or their designee that such wastes can harm either the sewers, sewage treatment process or equipment, having an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property or constitute a nuisance. In forming the person's opinion as to the acceptability of these wastes, the SuperintendentPublic Works Director or their designee will give consideration to such factors as to quantities of subject wastes in relation to flows and velocities in the sewers, materials of construction of the sewers, nature of the sewage

treatment process, capacity of the sewage treatment plant, and other pertinent factors. The substances prohibited are:

- (1) Any liquid or vapor having a temperature higher than 150 degrees Fahrenheit (65 degrees Celsius);
 - (2) Any waters or wastes containing fats, gas, grease or oils, whether emulsified or not, in excess of 100 milligrams per liter or containing substances which may solidify or become viscous at temperatures between 32 and 150 degrees (0 and 65 degrees Celsius);
 - (3) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower (0.76 horsepower metric) or greater shall be subject to the review and approval of the SuperintendentPublic Works Director or their designee;
 - (4) Any waters or wastes containing strong acid iron pickling wastes or concentrated plating solutions whether neutralized or not;
 - (5) Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the SuperintendentPublic Works Director or their designee for such materials;
 - (6) Any waters or wastes containing phenols or other taste- or odor-producing substances, in such concentrations exceeding limits which may be established by the SuperintendentPublic Works Director or their designee as necessary, after treatment of the composite sewage, to meet the requirements of the state, federal or other public agencies of jurisdiction of such discharge to the receiving waters;
 - (7) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the applicable state or federal regulations;
 - (8) Any waters or wastes having a pH in excess of 9.5;
 - (9) Materials which exert or cause:
 - a. Unusual concentrations of inert suspended solids (such as, but not limited to, Fuller's earth, lime slurries and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate);
 - b. Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions);
 - c. Unusual BOD, chemical oxygen demand or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works;
 - d. Unusual volume of flow or concentration of wastes constituting "slugs" as defined in section 34-203;
 - (10) Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters.
- (c) The offense described in this section is an Independence Municipal Code Class A violation, per section 1-22.

Sec. 34-226. Storm sewers.

Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the SuperintendentPublic Works Director or their designee and other regulatory agencies. Unpolluted industrial cooling water or process waters may be discharged, on approval of the SuperintendentPublic Works Director or their designee and the Oregon Department of Environmental Quality under a 100-J permit, to a storm sewer, combined sewer, or natural outlet.

Sec. 34-227. Decision of Director of Public Works regarding harmful wastes ~~Superintendent~~ authority.

- (a) If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in section 34-225, and which in the judgment of the ~~Superintendent~~ Public Works Director or their designee, may have a deleterious effect upon the wastewater facilities, processes, equipment or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the ~~Superintendent~~ Public Works Director or their designee may:
- (1) Reject the wastes;
 - (2) Require pretreatment to an acceptable condition for discharge to the public sewers;
 - (3) Require control over the quantities and rates of discharges; and/or
 - (4) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges.
- (b) When considering the alternatives in subsection (a) of this section the ~~Superintendent~~ Public Works Director or their designee shall give consideration to the economic impact of each alternative on the discharger. If the ~~Superintendent~~ Public Works Director or their designee permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the ~~Superintendent~~ Public Works Director or their designee.

Sec. 34-228. Grease, oil and sand ~~interceptors~~ requirement, location and maintenance.

Grease, oil and sand interceptors shall be provided when, in the opinion of the ~~Superintendent~~ Public Works Director or their designee, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts, or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the ~~Superintendent~~ Public Works Director or their designee, and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors the owner shall be responsible for the proper removal and disposal by appropriate means of the captivated material and shall maintain records of the dates, and means of disposal which are subject to review by the ~~Superintendent~~ Public Works Director or their designee.

Sec. 34-229. Pretreatment.

Where pretreatment or flow-equalizing facilities are provided or required for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner at the person's expense.

Sec. 34-230. Industrial cost recovery system.

- (a) All industrial users shall be required to pay that portion of the federal assistance grant under PL 92-500 allocable to the treatment of waste from such users.
- (b) The system for industrial cost recovery shall be implemented and maintained according to the following requirements:
- (1) Each year during the industrial cost recovery period, each industrial user of the treatment works shall pay its share of the total federal grant amount divided by the recovery period.
 - (2) The industrial cost recovery period shall be equal to 30 years or the useful life of the treatment works, whichever is less.
 - (3) Payments shall be made by industrial users no less often than annually. The first payment by an industrial user shall be made not later than one year after such user begins use of the treatment works.

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- (4) An industrial user's share shall be based on all factors which significantly influence the cost of the treatment works, such as strength, volume and flow rate characteristics. As a minimum, an industry's share shall be based on its flow versus treatment works capacity except in unusual cases.
 - (5) An industrial user's share shall be adjusted when there is a substantial change in the strength, volume or flow rate characteristics of the user's wastes, or if there is an expansion or upgrading of the treatment works.
 - (6) An industrial user's share shall not include any portion of the federal grant amount allocable to unused or unreserved capacity.
 - (7) An industrial user's share shall include any firm commitment to the city (sanitary district or county) of increased use by such user.
 - (8) An industrial user's share shall not include an interest component.
- (c) This requirement applies only to those features of wastewater treatment and transportation facilities which have been constructed with federal assistance administered by the U.S. Environmental Protection Agency under PL 92-500.

Sec. 34-231. Observation and testing.

When required by the ~~Superintendent~~Public Works Director or their designee, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such structures, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the ~~Superintendent~~Public Works Director or their designee. The structure shall be installed by the owner at the person's expense, and shall be maintained by the owner so as to be safe and accessible at all times.

Sec. 34-232. Information required for determination of compliance.

The ~~Superintendent~~Public Works Director or their designee may require a user of sewer services to provide information needed to determine compliance with this chapter. These requirements may include:

- ~~(a)~~ Wastewaters discharge peak rate and volume over a specified time period;
- ~~(b)~~ Chemical analyses of wastewaters;
- ~~(c)~~ Information on raw materials, processes and products affecting wastewater volume and quality;
- ~~(d)~~ Quantity and disposition of specific liquid, sludge, oil, solvent or other materials important to sewer use control;
- ~~(e)~~ A plot plan of sewers of the user's property showing sewer and pretreatment facility location;
- ~~(f)~~ Details of wastewater pretreatment facilities;
- ~~(g)~~ Details of systems to prevent and control the losses of materials through spills to the municipal sewer.

Sec. 34-233. Tests and measurements.

All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this chapter shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at the control manhole. In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. (The particular analyses involved will determine whether a 24-hour composite of all outfalls of a premises is appropriate or whether a grab

~~sample or samples should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from 24-hour composites of all outfalls whereas pHs are determined from periodic grab samples. All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this chapter shall be determined in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association. Sampling methods, location, times, durations and frequencies are to be determined on an individual basis subject to approval by the Superintendent.~~

Sec. 34-234. Special agreement allowed.

No statement contained in this chapter shall be construed as preventing any special agreement or arrangement between the city and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the city for treatment, subject to payment, therefor, by the industrial concern.

Sec. 34-235. Damage to wastewater facilities prohibited.

No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the wastewater facilities.

Sec. 34-236. Entry for inspection authorized.

~~The Public Works Director and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this chapter. The Public Works Director or representative shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for wastes treatment. While performing the necessary work on private properties, the Public Works Director or duly authorized employees of the City shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the City employees and the City shall indemnify the company against loss or damage to its property by City employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required. The Superintendent and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing pertinent to discharge to the community system in accordance with the provisions of this article~~

Sec. 34-237. Information to be confidential.

The ~~Superintendent~~Public Works Director or their designee ~~or other duly authorized employees~~ are authorized to obtain information concerning industrial processes which have a direct bearing on the kind and source of discharge to the wastewater collection system. The industry must establish that the revelation to the public of the information in question might result in an advantage to competitors.

Sec. 34-238. Lien on property.

The cost of the connection of a building sewer under section 24-213 is delinquent 30 days after the completion of the connection in accordance with section 34-211 and thereafter shall be a charge upon and a lien upon the lot or parcel of land served by the building sewer, and shall be collected as other liens of the city are enforced.

Sec. 34-239 Reporting of harmful discharges.

Businesses are required to accurately report chemical discharges to the sewerage system and other discharges that may affect the sewerage system as directed by the Public Works Director via survey or other means as required by the Oregon Department of Environmental Quality and the US Environmental Protection Agency.

Sec. 34-240 Entry and work on easements.

The Public Works Director and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewage works lying within the easement. All entry and subsequent work, if any, on the easement shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

Sec. 34-241 Violation notice.

Any person found to be violating any provision of this chapter, except Section 34-225, shall be served by the City with written notice stating the nature of the violation and providing a 14-day time limit for the satisfactory correction thereof.

Sec. 34-242 Violation penalty.

Any person who continues any violation beyond the time limit provided for in Section 34-241 shall be guilty of a violation and, on conviction thereof, shall be fined in the amount set by Council resolution or subject to fines established per code Section 1-22, general provisions for each violation. Each day in which any such violation continues shall be deemed a separate offense. Failure to comply with a written directive or timeline of the City Manager made under the authority of this chapter is a punishable offense and may result in a temporary loss of City water and sewer services.

Sec. 34-243 Violators liable to City.

Any person violating any of the provisions of this chapter shall become liable to the City for any expense, loss, or damage occasioned by the City of Independence by reason of such violation including but not limited to fines and penalties assessed by the Department of Environmental Quality or other state or federal agencies.

Sec. 34-244 Notice to repair improper connection and inspection.

- (a) Where the City finds that any private service lateral piping is leaking or not legally connected, the property owner will be notified in writing by the City to make necessary repairs. The notification shall include the type of repairs to be made and the date, no less than 30 days from the date of the notice, by which the repairs shall be completed.
- (b) The property owner shall notify the Public Works Director or their designee when repairs have been made, but before any piping is buried, and the City shall inspect and retest the private service lateral for leaks. The lateral will be considered repaired when it passes the retest by the City.

Sec. 34-245 Correction of improper connection by City.

The property owner may elect to have the City repair or replace private service laterals by notifying the Public Works Director in writing.

- (a) The property owner may then contract with the City for such repairs.
- (b) The City shall charge for labor and materials so furnished.

(c) Upon completion of repairs, the City shall provide a written accounting to the property owner prepared by the Public Works Director.

(d) The property owner shall pay the City for the repairs once invoiced or set up a payment plan approved by the Finance Director. Full payment of costs shall be completed within six months of the agreement.

Sec. 34-246 Liability for correction by City.

The City does not assume any obligation for reasonably necessary damage to landscaping, vegetation and walkways caused by repair work, and the property owner shall be solely responsible for repairing or replacing such damages.

Secs. 34-~~239~~247—34-308. Reserved.

DIVISION 2. SEWER SERVICE RATES AND CHARGES

Sec. 34-309. Definitions.

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

BOD (biochemical oxygen demand) means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20 degrees Centigrade, expressed in milligrams per liter.

Collection system means the system of public sewer facilities operated by the city and designed for the collection of sanitary sewage.

Commercial user means any premises used for commercial or business purposes which is not an industry as defined in this chapter.

Domestic waste means any wastewater emanating from dwellings or from domestic activities which are performed outside the home in lieu of a home activity directly by or for private citizens, including but not limited to floor drains in an accessory building, RV cleanouts.

Equivalent residential unit (ERU) means a volume of wastewater for which the city incurs the same costs for operations and maintenance of the public sewer system as it would for the average volume of domestic waste discharged from an average residential dwelling unit in the treatment works service area. For the purpose of making this determination the city shall utilize available records or accurate indicators of water use. The city shall have the right to require, as a condition of using the public sewer system, the submission of any and all records or other information necessary to determine the rate of water consumption by the user. Where a user believes the person's wastewater discharge to the sewer system is substantially different than the person's water consumption, an appropriate adjustment shall be made providing the user demonstrates the user's actual wastewater discharge to the satisfaction of the city. The volume attributed to an ERU where the BOD, suspended solids or other characteristic of the wastewater discharged by a user is significantly greater than a domestic waste shall be adjusted to account for the difference in the costs of treatment.

Industrial user means any nongovernmental, nonresidential user of the public treatment works discharging more than the equivalent of 25,000 gallons per day of wastewater and identified in the North American Industry Classification System (NAICS), under the following sectors:

- (1) 11 Agriculture, Forestry, Fishing and Hunting;
- (2) 21 Mining, Quarrying and Oil and Gas Extraction;
- (3) 22 Utilities;
- (4) 31-33 Manufacturing;

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- (5) 48-49 Transportation and Warehousing;
 - (6) 56 Administrative and Support and Waste Management and Remediation Services;
 - (7) 62 Health Care and Social Assistance;
 - (8) 81 Other Services (Except Public Administration).

A user in these divisions may be excluded from the industrial category if it is determined that the user will only introduce domestic wastes and wastes from sanitary conveniences into the sewer system.

Industrial waste means that portion of the wastewater emanating from an industrial user which is not domestic waste or waste from sanitary conveniences, including but not limited to toilets, lavatories, or showers.

Operation and maintenance means all activities, goods and services which are necessary to maintain the proper capacity and performance of the treatment works. The term "operation and maintenance" includes replacement as defined in this section.

Person means any individual, firm, company, association, society, corporation or group.

Premises means a tract of land, including its buildings.

Public treatment works means a treatment works owned and operated by the city.

Replacement means acquisition and installation of equipment, accessories or appurtenances which are necessary during the service life of the treatment works to maintain the capacity and performance for which such works are designed and constructed.

Service area means all the area served by the treatment works and for which there is one uniform user charge system.

Sewage treatment plant means an arrangement of devices and structures used for treating sewage.

Suspended solids means solids that either float on the surface or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering.

Treatment works means all facilities for collecting, pumping, treating and disposing of sewage. The terms "treatment system" and "sewer system" shall be equivalent terms for "treatment works."

User means the owner, occupant or other person authorized to request services or responsible for the payment therefor for any property or facility inside or outside the city using any part of the public treatment works of the city.

User charge means the monthly charge levied on all users of the public treatment works, and shall, at a minimum, cover each user's proportionate share of the cost of operation and maintenance (including replacement).

Wastewater means water-carried human, animal or industrial waste, together with such groundwaters, surface waters and stormwaters as may be present. The term "sewage" means wastewater.

Sec. 34-310. Use of city sewer system outside city limits; surcharge.

Connection to the city sewage disposal system by properties outside of the city limits is prohibited. Any person authorized by the City Council for health or other environmental reasons to connected to and using the city sewage disposal system while outside the city limits shall pay a 100 percent surcharge, based on the rate of sewer charge set by resolution for the use of the city sewage disposal system.

Sec. 34-311. Sewer fund created.

A special fund is created to be known as the sewer fund and the Finance Director shall deposit in this fund all proceeds of the sewer charges imposed under this chapter. The sewer fund shall be used solely and exclusively for paying all or part or any part of the cost of operation, maintenance and repair of the sewer system; administration

costs; planning and construction; and payments of the principal and interest on any debts of the city sewer system planning, construction or operation and maintenance of the city sewer system. Sewer funds shall not be used for other purposes without a resolution approved by the City Council specifying the terms of repayment within the timelines allowed by state law.

Sec. 34-312. Sewer user charges.

- (a) User charges shall be levied on all users of the public treatment works. The user charges shall, at a minimum, cover the cost of operation and maintenance, replacement, system planning and construction and other administrative costs of such treatment works. The user charge system shall distribute these costs in proportion to each user's contribution to the wastewater loading of the treatment works. The minimum charge shall be that cost equivalent to treatment of the wastewater from an average residential dwelling unit.
- (b) There shall be assigned to each user an appropriate number of ERUs and this number shall represent the ratio of the wastewater produced by the user to the wastewater produced by the average residential dwelling unit; provided, however, that each residential user discharging only domestic waste into the sewer system shall be levied a user charge calculated on the basis of the use of one ERU per dwelling unit.
- (c) The user charge shall be calculated by multiplying the total number of ERUs for each user by a constant cost factor. This cost factor shall be established from time to time by resolution of the City Council as provided in section 34-313.
- (d) Should any user believe that the user has been assigned an incorrect number of ERUs, that user may apply for review of the user charge as provided in section 34-316.
- (e) If it has been determined by the city that a user is assigned an incorrect number of ERUs, the city shall reassign a more appropriate number of ERUs to that user and shall notify that user of such reassignment.
- (f) Records of all rates and the number of ERUs assigned to each user, as well as the wastewater characteristics forming the basis of the ERU, shall be kept on file with the City Recorder and shall be open for public inspection.
- (g) The city shall commence charging the sewer user charge for all ~~occupied property either 60 days after the sewer service becomes available or the day that connection is made to the public sewer system, whichever occurs first. The sewer user charge for all unoccupied property shall begin within 30 days after the property is ready for occupancy or on the first day of occupancy, whichever occurs first. All unoccupied property which is ready for occupancy at the time the sewer service becomes available shall be treated as occupied property.~~ Once the sewer user charge has commenced, no credit shall be given for vacancy or service abandonment under section 34.405.2.

Sec. 34-313. Review and revision of rates.

The sewer user charges established in section 34-312 shall, at a minimum, be reviewed as part of the annual budget process and revised periodically to reflect actual costs of operation, maintenance and replacement of the treatment works and to maintain the equitability of the user charges with respect to proportional distribution of the costs of operation and maintenance. The user charges for residential, commercial and industrial sewer service shall be adopted by resolution of the City Council.

Sec. 34-314. Notification.

Each user will be notified, at least annually, in conjunction with a regular bill, of the sewer user charge and that portion of the user charges which are attributable to wastewater treatment services.

Sec. 34-315. Handling of funds.

- (a) Bills for sewer user charges shall be mailed to the address specified in the application for permit to connect to the sewer system, unless or until a different owner or user of the property is reported to the ~~Department of Public Works~~ Finance Department.
- (b) All collections of sewer user charges shall be made by the Finance Director by and through the Department of Public Works. Sewer user charges shall be computed as provided in section 34-312 and shall be payable as provided in ~~article~~ Article VI of this chapter.
- (c) The Finance Director is directed to deposit in the sewer fund all of the gross revenues received from charges, rates and penalties collected for the use of the sewerage system as herein provided.
- (d) The revenues thus deposited in the sewer fund shall be used exclusively for the operation, maintenance and repair of the sewerage system; administration costs; expenses of collection of charges imposed by this division and payments of the principal and interest on any debts of the sewerage system of the city.

Sec. 34-316. Appeals.

Appeal of amount of charges and/or the number of ERUs assigned to a user shall be made in writing to the City Manager within 90 days of receipt of the user fee. The Manager shall respond in writing within 90 days of receipt of the appeal. If the user wishes to appeal further, they shall request in writing that the City Manager place their specific appeal on the next scheduled regular City Council session. The decision of the City Council shall be final.

Sec. 34-317. Entering property.

Employees of the city shall have the right to enter upon the private premises of any property served by the city sewer system for the purpose of inspection and for the enforcement of the provisions of this division.

Secs. 34-318—34-337. Reserved.

ARTICLE V. STORMWATER UTILITIES

DIVISION 1. GENERALLY

Sec. 34-338 Definitions

Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as set forth as follows:

"Building drain" means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building, and conveys it to the building storm sewers, beginning five feet outside the inner face of the building walls.

"Business day" or "working day" means Monday through Friday from 8:00 a.m. to 5:00 p.m., excluding any City-recognized holidays.

"Customer." See "User."

"DEQ" means the Oregon Department of Environmental Quality.

"Developed" means any property which has been altered by grading, filling of the ground surface, or by construction of any improvement or impervious surface area, which could affect the hydraulic or hydrologic properties of the property.

"Developer" means any person, company or corporation who purchases or holds an interest in real property with the intent to increase the value thereof by the installation of utilities, construction of a building or buildings, grading, ditching, improving or enhancing the ground or structures for the purpose of resale.

"Domestic stormwater" means surface or subsurface drainage of the type commonly introduced into a drainageway or storm sewer system by residential users.

"Equivalent dwelling unit (EDU)" means a unit of measurement of impervious surface. One EDU is equal to the estimated amount of impervious surface that would contribute the same amount of runoff to the City's storm and surface water drainage system as the impervious surface on the average single-family residential use in the City of Independence. One EDU is therefore equal to square feet of impervious surface area or any portion thereof.

"Erosion prevention and sediment control (ESC)" means any temporary or permanent measures taken to reduce erosion, control siltation and sedimentation, and ensure that sediment laden water does not leave a site.

"Erosion prevention and sediment control plan (ESC plan)" means plan approved by the Oregon Department of Environmental Quality through a 1200-C permit or other state agency permit for construction activities within the City of Independence.

"Impervious surface" means a developed hard surface area which prevents or retards the entry of water into the soil mantle and/or causes water to run off the surface in greater quantities or at an increased rate of flow than would occur under natural or undeveloped conditions. Impervious surface includes, but is not limited to, rooftops, concrete or asphalt paving, compacted gravel, walkways, patios, driveways, parking lots or storage areas, and oiled, macadam or other surfaces which similarly impede the natural infiltration or runoff of surface water.

"Industrial user" means any user engaged in the introduction of pollutants into a Publicly Owned Treatment Works (POTW) from any non-domestic source regulated under Section 307(b), (c) or (d) of the Federal Water Pollution Control Act, Title 33 U.S.C. 1251.

"Industrial wastes" means the liquid wastes from any industrial user. A user in the divisions listed in industrial user may be excluded if it is determined that it will introduce primarily segregated domestic wastes or wastes from sanitary conveniences.

"Mains" means collection pipelines that are part of the City stormwater system.

"Maintenance" means preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance and replacement of equipment as needed.

"Multi-user" means a customer supplied with water service to more than one dwelling unit, commercial business or industrial facility, or combination thereof, from one water service connection.

"Natural outlet" means any outlet into a watercourse, pond, ditch, lake or other body of surface water or groundwater.

"NPDES" means National Pollutant Discharge Elimination System.

"Operation" means control of the unit processes and equipment which make up the treatment works. This includes financial and personnel management, records, laboratory control, process control, safety and emergency operation planning.

"Operation and maintenance" means activities required to assure the dependable and economical function of the treatment works.

"Person" means any individual, firm, company, association, society, group or corporation.

"pH" means the logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

"Premises" means the integral property or area, including improvements thereon, to which water service is or will be provided.

"Property owner" means the owner of the premises who is also the ultimate responsible party for all customer charges and fees. The property owner may also be the customer for any given premises.

"Replacement" means expenditures for obtaining and installing equipment, accessories or appurtenances which are necessary during the useful life of the treatment works to maintain the capacity and performance for which such works were designed and constructed. The term "operation and maintenance" includes replacement.

"Service connection" means a storm sewer connection as the context indicates.

"Service connection charge" means the fee levied to pay for the cost of labor, materials and any inspection required during the construction of a utility service line from the storm sewer main to the property that is to be served, with the charges to be itemized on a standard City billing form.

"Sewage" means a combination of the water-carried wastes from residences, business buildings, institutions, and industrial establishments, together with such groundwater, surface water, and stormwater as may be present.

"Sewer" means a pipe or conduit for carrying sewage.

"Sewer connection" means a public sewer that has been constructed to the property line or right-of-way line from a public main for the sole purpose of providing a connection for the building sewer.

"Shall" is mandatory; "may" is permissive.

"Single-family residential" means any service location which is improved with a dwelling unit for occupancy by a single family or a similar group of persons.

"Slug" means any discharge of water, sewage or industrial waste which, in concentration of any given constituent or in quantity of flow, exceeds for any period of duration longer than 15 minutes, more than five times the average 24-hour concentration of flows during normal operation.

"Storm drain" (sometimes termed "storm sewer") means a sewer designed to carry stormwater and surface water and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling water.

"Stormwater" means surface runoff and street wash waters, and drainage.

"Surface water" means all naturally occurring water whose surface is exposed to the atmosphere, including natural drainage ways, stream corridors, rivers, ponds, wetlands, and impoundments.

"Surface water management system" means all facilities, both natural and constructed, used by the City to regulate the quantity and quality of surface water, including drainage easements, culverts, storm drains, catch basins, stream corridors, rivers, ponds, wetlands and impoundments.

"Suspended solids" means solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering.

"System development charge" means the fee or charge assessed to each commercial business, industry or dwelling unit for the right to connect to the City's sewer or water system, and which is used for expansion of those systems.

"TSS (total suspended solids)" means the total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid, and that is removable by laboratory filtering. (EPA Standard Methods 2540(D) shall be used for any tests for TSS.)

"Undeveloped" means any location which has not been altered by grading or filling of the ground surface, or by construction of any improvements or other impervious area, which could affect the hydraulic or hydrologic properties of the property.

"Untreated stormwater" means any runoff from a site or property, whether by storm, washdown, or any other form, that either violates the basin approved Independence-Pudding River Subbasin TMDL standards for Temperature, Bacteria, Pesticides, Nitrate, Metals, the conditions of any NPDES permit that applies, or that in the

opinion of the Public Works Director constitutes a harmful discharge to the ecology or use of the receiving body within the City.

"Useful life" means the period during which a treatment works is planned and designed to be operated.

"User" means the owner, agent, tenant or other authorized representative responsible for occupancy of the premises that is served by a City utility system. A person, corporation, association or agency which rents, or leases premises shall be considered an agent of the property owner.

"User service charge" means a charge levied on customers that may be a combination of a base fee, a usage fee and a fixed fee as set by resolution and/or ordinance.

"Utility" or "utility system" means sewer, water and stormwater management services provided by the City of Independence.

"Utility rate" is the rate established by City Council to cover the cost of providing utility system services.

"Utility service" means services provided for water, sewer, and stormwater.

"Wastewater" means a combination of the water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such incidental groundwater, surface water and stormwater as may be present.

"Watercourse" means a channel in which a flow of water occurs, either continuously or intermittently.

Sec. 34-339. Unsanitary deposit of waste.

It is unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the City, or in any area under the jurisdiction of the City, any human or animal excrement, garbage, or other unsanitary waste that can drain into or impact a storm sewer or drainageway. This includes ranging livestock, poultry, or pet-runs near or within storm facilities such as bioswales.

Sec. 34-340. Treatment of storm sewer required.

It is unlawful to discharge to any natural outlet within the City, or in any area under the jurisdiction of the City, any untreated stormwater or other polluted substances. All discharges shall comply with the Independence Public Works Standards and its NPDES permit issued by the DEQ. Stormwater shall be protected from soap, wax or other pollution runoff from vehicle wash facilities.

Sec. 34-341. Storm sewer connections required.

Unless otherwise determined by the Public Works Director or their designee, the owner of all houses, buildings, or properties used for human occupancy, employment, recreation, or other purposes, situated within the City and abutting on any street, alley, or right-of-way in which there is now located or may in the future be located a public storm sewer of the City, is required at the owner's expense to install storm facilities therein, and to connect such facilities directly with the proper public storm sewer in accordance with the provisions of this chapter, within 90 calendar days after date of official notice to do so, provided that the public storm sewer is within 100 feet of the property line or property corner.

Sec. 34-342. Private storm sewer disposal—When permitted.

Where a public storm sewer is not available the building storm sewer shall be connected to a private storm system that meets all federal and state rules, and does not impact groundwater, drainageways, or downstream properties. The provisions of this section shall be in addition to and not in lieu of the requirements of other applicable laws, rules and regulations.

Sec. 34-343. Private storm sewer disposal—Operation and maintenance.

The owner of property with a private storm sewer disposal system shall always operate and maintain the system in a sanitary manner, at no expense to the City.

Sec. 34-344. Upon availability of public storm sewer—Abandonment of private systems.

At such times as a public storm sewer becomes available to a property served by a private sewage disposal system, and upon notification to the property owner from the City, a direct connection shall be made to the public storm sewer in compliance with this chapter, and any drywell and similar private storm sewer disposal facilities shall be decommissioned, abandoned and filled with suitable material. All costs associated with decommissioning, abandonment and connection shall be the responsibility of the property owner.

Sec. 34-345. Unauthorized connections and disturbances.

No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public storm sewer or appurtenance thereof without first obtaining a written permit from the Public Works Director or their designee.

Sec. 34-346. Costs of building storm sewer borne by owner.

All costs and expense incident to the installation and connection of the building storm sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage that may directly or indirectly be occasioned by the installation of the building storm sewer.

Sec 34-347. Building storm sewer for each lot or parcel.

- (a) Every single-ownership property which cannot legally be further subdivided must have a separate storm sewer connection. These properties include, but are not limited to, multiple-family apartments, condominiums, mobile home parks and commercial or industrial establishments. Only one storm sewer lateral shall be provided to a residential property.
- (b) Multi-users with more than one unit located in common ownership on a single parcel of property shall also comply with the Oregon State Plumbing Specialty Code.
- (c) Any property which is located so as to require the storm sewer lateral to cross any other property or parcel shall provide evidence of a duly recorded perpetual easement for such lateral, appurtenant to the property to which such lateral will provide service, before any storm sewer connection is made.
- (d) Property other than residential shall utilize a common storm sewer main to provide services to individual buildings. Exceptions to this requirement must be in the interest of the public as determined and approved by the Public Works Director.

Sec. 34-348. Materials and connections—Private side.

The size, slope, alignment, materials of construction of a building storm sewer, and the methods to be used in connecting, excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the uniform building and plumbing code and all other applicable rules and regulations. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9 shall apply, or the most current version thereof. All connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the Public Works Director before installation. Storm sewer laterals on private property that are not part of the public system or within a public right-of-way or public storm sewer easement, the size, slope, alignment, materials of construction of a building storm sewer, and the methods to be used in connecting, excavating, placing of the pipe, jointing, testing, and backfilling the trench, shall all conform to the requirements of the uniform building and plumbing code and all other applicable rules and regulations.

Sec. 34-349. Elevation.

Whenever possible, the building storm sewer shall be brought to the building at an elevation to drain directly to the street through a weep hole in the curb. In all buildings in which any building drain is too low to permit gravity flow to the public storm sewer, storm sewer carried by a building drain shall be lifted by an approved means and discharged to the public storm sewer at the property owner's expense.

Sec. 34-350. Connection of sources of surface runoff.

- (a) No person shall make connection of roof downspouts, exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sanitary sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.
- (b) Where the City finds that any private service lateral piping is leaking or not legally connected, the property owner will be notified in writing by the City to make necessary repairs. The notification shall include the type of repairs to be made and the date, no less than 90 calendar days from the date of the notice, by which the repairs shall be completed.
- (c) The property owner shall notify the Public Works Director or their designee when repairs have been made, but before any piping is buried, and the City shall inspect and retest the private service lateral for leaks. The lateral will be considered repaired when it passes the retest by the City.

Sec. 34-351. Inspection—Connection to public storm sewer.

The applicant for the building storm sewer permit shall notify the Public Works Director when the building storm sewer is ready for inspection and connection to the public storm sewer. The connection shall be made under the supervision of the Public Works Director or their designee.

Sec. 34-352. Protection of excavations—Restoration of public property.

All excavations for building storm sewer installation shall be adequately guarded with barricades and lights to protect the public from hazard. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the City.

Sec. 34-353. Unlawful discharge of storm and other waters.

No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer.

Sec. 34-354. Entry of Property.

The Public Works Director and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties, upon prior written notice, for the purposes of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this chapter. The Public Works Director or representative shall also have the authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the storm sewers or waterways or facilities for wastes treatment.

Sec. 34-355. Observance of safety rules—Liability of City.

While performing the necessary work on private properties, the Public Works Director or their designee shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the City employees and the City shall indemnify the company against loss or damage to its property by City employees and against liability claims and demands for personal injury or property

damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions.

Sec. 34-356. Improper connection and notice to repair.

- (a) Where the City finds that any private service lateral piping is leaking or not legally connected, the property owner will be notified in writing by the City to make necessary repairs. The notification shall include the type of repairs to be made and the date, no less than 30 calendar days from the date of the notice, by which the repairs shall be completed.
- (b) The property owner may elect to have the City repair or replace private service laterals by notifying the Public Works Director in writing. The property owner may then contract with the City for such repairs.
- (c) The City shall contract out the work and charge for any in-house labor and materials so furnished.
- (d) Upon completion of repairs, the City shall provide a written accounting to the property owner prepared by the Public Works Director.
- (e) The property owner shall pay the City for the repairs by paying no less than one-twelfth the cost of the improvements as a surcharge on the storm sewer bill until the outstanding amount has been paid in full. The City shall charge no interest on the unpaid balance.
- (f) The City does not assume any obligation for reasonably necessary damage to landscaping, vegetation and walkways caused by repair work, and the property owner shall be solely responsible for repairing or replacing such damages.

Sec. 34-357. Entry and work on easements.

The Public Works Director and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewage works lying within the easement. All entry and subsequent work, if any, on the easement shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

Sec. 34-358. Certain discharges subject to approval.

No person shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the Public Works Director that such wastes can harm the storm sewer system or public drainageways. The substances prohibited are including any untreated stormwater as follows:

- (a) Stormwater discharges a temperature higher than 150°F (65°C);
- (b) Stormwater discharges containing fats, gas, grease, or oils, whether emulsified or not;
- (c) Stormwater discharges containing acid, plating solutions whether neutralized or not;
- (d) Stormwater discharges containing iron, chromium, copper, zinc, and similar objectionable or toxic substances, or chlorine;
- (e) Stormwater discharges containing phenols or other taste or odor producing substances;
- (f) Stormwater discharges containing any radioactive wastes or isotopes;
- (g) Stormwater discharges containing having a pH in excess of 8.0 or less than 6.0;
- (h) Stormwater discharges containing unusual concentrations of inert suspended solids or discoloration;
- (i) Stormwater discharges containing paint, stains, or other coatings;

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- (j) Stormwater discharges containing substances which are not amenable to treatment or reduction by the water quality facilities;
 - (k) Stormwater discharges or runoff containing fluids or materials from a defective or improperly maintained septic system.

Sec. 34-359. Decision of Public Works Director regarding harmful wastes.

If any waters or wastes are discharged, or are proposed to be discharged to the public storm sewers, which waters contain the substances, or possess the characteristics enumerated in this Chapter and which, in the judgment of the Public Works Director, may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, nuisance, the Public Works Director shall require pretreatment prior to discharge to water quality or detention facilities to an acceptable condition for discharge to the public storm sewers. Stormwater pretreatment shall be permitted and monitored through the DEQ.

Sec. 34-360. Notification of spills.

- (a) As soon as any person in charge of a facility or responsible for emergency response for a facility becomes aware of any suspected, confirmed, or unconfirmed release of material, pollutants, or waste creating a risk of discharge to the public stormwater system, such persons shall:
 - (1) Begin containment procedures;
 - (2) Notify proper emergency personnel in case of an emergency;
 - (3) Notify appropriate City and/or State officials regarding the nature of the spill; and
 - (4) Follow-up with the City regarding compliance and modified practices to minimize future spills, as appropriate.
- (b) The notification requirements of this section are in addition to any other notification requirements set forth in local, State, or Federal regulations and laws. The notification requirements do not relieve the person of necessary remediation.

Sec. 34-361. Illicit discharges and connections.

- (a) The Public Works Director may require by written notice that any user who makes an illicit connection to the public stormwater system complies with the requirements of this chapter to eliminate the illicit connection or secure approval for the connection by a specified date.
- (b) If subsequent to eliminating a connection found to be in violation of this chapter, the responsible party can demonstrate that an illicit discharge will no longer occur, that user may request approval to reconnect. The reconnection or reinstallation of the connection shall be at the user's expense.
- (c) Whenever the City finds that a discharge of pollutants is taking place or has taken place which will result in or has resulted in pollution of stormwater or the stormwater system, the Public Works Director may require by written notice to the responsible party that the pollution is remediated and the affected property restored, to the requirements of this chapter.
- (d) Whenever the Public Works Director determines that any person engaged in any activity which may cause or contribute to stormwater pollution or illicit discharges to the stormwater system, the Public Works Director may, by written notice, order that the responsible party undertake such monitoring activities and/or analyses and furnish such reports as the Public Works Director may deem necessary to demonstrate compliance with this chapter. The written notice shall be served either by personal delivery or by certified or registered mail, return receipt requested, and shall set forth the basis for such order and shall particularly describe the monitoring activities and/or analyses and reports required including but not limited to, that which may be undertaken by a third party independent monitor, sampler and/or tester. The recipient of such order shall undertake and provide the monitoring, analyses and reports within the time frames set forth in the order. If

the City cannot locate the responsible party and the responsible party is a person other than the owner of the property, the City will notify the owner of the property in writing via personal delivery or certified mail requiring the owner to monitor the property and furnish such reports as the Public Works Director may deem necessary to demonstrate compliance with this chapter.

Sec. 34-362. Reporting of harmful discharges.

Businesses are required to accurately report any chemical discharges to the storm sewer system to the Public Works Director and the DEQ.

Sec. 34-363. Construction—Public works design standards.

Storm sewers shall be designed in compliance Public Works Standards for all public improvements, water quality and detention facilities, and the Oregon Plumbing Specialty Code for all private plumbing services.

Sec. 34-364. Construction—Permit required for storm sewer work.

No unauthorized person shall uncover, make any connections with or opening into, use, alter or disturb any public storm sewer or appurtenance thereof without first obtaining a written permit from the Public Works Director or their designee.

Sec. 34-365. Construction—Erosion prevention and sediment control.

- (a) Purpose. These regulations contained herein, together with the current version of the Independence Public Works Standards will be referred to herein as "these Standards." The purpose of these Standards is to establish uniform requirements for land development and construction-related activities in order to control the occurrence of erosion and to prevent the creation, migration and/or transport of erosion at the source during construction and land development.
- (b) Standards. These Standards shall be administered and enforced by the Public Works Director or designee. The Public Works Director shall have the authority to develop and implement procedures, forms, policies, and interpretations for administering the provisions of these Standards.
- (c) ESC Permit Required. An ESC applicant must obtain an ESC permit from the DEQ and a City of Independence Public Works permit before commencing any ground disturbing activity affecting 500 square feet or greater, cumulatively, throughout the duration of development, redevelopment, or other construction related activity of a parcel or parcels. A copy of the approved DEQ 1200-C permit shall be submitted to the Public Works Director before issuance of any Public Works permit and before any clearing or grading shall be allowed to proceed.
- (d) ESC Plan Required. The ESC applicant shall submit a copy of the approved DEQ ESC plan with and incorporate into all construction plans.
- (e) ESC Implementation. An approved ESC permit shall be implemented and maintained in accordance with DEQ requirements and as follows:

 - (1) It shall be the duty of the ESC applicant to inspect the property in conformance with the permit issued to ensure ESC measures are effective.
 - (2) The ESC Applicant is responsible to ensure that no visible and measurable erosion and sediment leaves the permitted site.
 - (3) The ESC Applicant shall keep a record of inspections with a brief explanation as to any signs of erosion or sediment release and measures taken to prevent future releases as well as any measures taken to clean up the sediment that has left the site. Records must be made available to the City and DEQ upon request and must be submitted to the City upon final completion of work if requested by the City.

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- (4) During periods of wet weather, disturbed areas of the site and/or stockpiled soil shall be covered by the ESC applicant by tarps or straws at the end of each day's operations; all disturbed, unworked areas of the site shall be protected from erosion.
- (5) The ESC applicant shall remove ESC measures, establish permanent groundcover on all exposed soils; clean and remove trash, construction waste and sediment deposits before receiving a final ESC inspection approval.
- (f) Ineffective Measures and ESC Plan Amendment. If the facilities and techniques in the approved ESC Plan are not effective or sufficient to meet the purposes of this chapter, based on an on-site inspection, the Public Works Director or designee may require the ESC applicant to revise the ESC Plan. Such requirement shall be in writing and shall explain the problem. The written requirement shall be presented to the ESC applicant and any other related parties.
- (1) The revised ESC Plan shall be submitted by the ESC applicant not later than three business days of when written notification by the Public Works Director is received. Receipt of such notice shall be deemed complete three days after simultaneous regular mail and certified mail is deposited in the mail or completed the same day as personal delivery.
- (2) The ESC applicant shall implement fully the revised ESC Plan not later than three business days after mailing the revised ESC Plan to the City, or within such other time frame as the Public Works Director may specify.
- (3) In cases where significant erosion is occurring, the Public Works Director or designee may require the ESC Applicant to immediately install interim control measures before submittal of a revised ESC Plan.
- (4) If there is a confirmed or imminent threat of significant off-site erosion, the Public Works Director or designee shall issue a stop work order, upon issuance of which all work on the development site shall halt. The stop work order shall not be lifted until mitigation measures are implemented that comply with the City of Independence and DEQ's performance standards for ESC and are approved by the Public Works Director or designee.
- (g) Duty of ESC Responsibilities are With Applicant. It is the duty of the ESC applicant to maintain ESC measures and to comply with the requirements of the DEQ 1200-C permit. The City of Independence is not responsible for ensuring ESC applicants compliance with DEQ's permit.

Sec. 34-366. Construction—Cost of installation and connection.

All costs and expenses incident to the installation and connection of the building storm sewer shall be borne by the owner. It shall be the responsibility of the owner, lessee or occupant of a building to maintain the building storm sewer or private collection system in a free-flowing and watertight condition, from the structure served to the public storm sewer. All existing private storm sewers shall be maintained in a safe and sanitary condition.

Sec. 34-367. Construction—Capping and inspection prior to abandonment.

- (a) Before a moving or demolition permit is allowed to be issued, evidence must be presented showing the storm sewer has been properly capped and inspected. No exceptions will be allowed. All building storm sewer shall be capped at the public main in an approved manner by the applicant or the applicant's contractor and inspected by City forces prior to closure of the excavation.
- (b) Exception. If adequate proof can be given showing a storm sewer service is in usable condition and is to be reused, the inspector may allow the service to be capped at the property line. It is the applicant's responsibility to ensure that no other structure is connected to the storm sewer service being abandoned. If the line abandoned is serving more than one structure, a service connection for the structure(s) still using the service must be provided. If the Public Works Director determines that capping at the main will cause undue hazard to the public, or if a street has been recently resurfaced, a variance to this section may be granted to require that the storm sewer be capped as close to the main as practical.

Sec. 34-368. Construction—Storm sewer main extensions.

Whenever a public improvement is to construct or extend a storm sewer main, the following shall apply:

- (a) Extension of all lines will be to the farthest edge of the property requesting service, unless otherwise authorized by the Public Works Director.
- (b) Minimum pipe sizes shall be in compliance with the Public Works Standards unless otherwise approved by the Public Works Director.
- (c) When required by the City, the City will share in the cost of storm sewer lines larger than the minimum size provided by paying the difference in cost between a minimum size pipe and the larger size, except:
 - (1) When a new development requires a larger line to provide adequate service, as determined by the Public Works Director;
 - (2) Only pipe and fitting materials will be paid by the City unless the line size is greater than 12 inches in diameter.
- (d) The property owner requesting the extension must pay the cost for extending new storm sewer lines. If a property owner requests service from a portion of the storm sewer line provided by the original developer, then the City shall collect a proportionate share of the storm sewer line cost, and reimburse the original developer or assignee that amount, less administrative costs. This reimbursement policy shall continue for a maximum of 10 years from the date of line construction.

Sec. 34-369. Violation—Notice.

Unless otherwise stated in section of this chapter, any person found to be violating any provision of this chapter shall be served by the City with written notice stating the nature of the violation and providing a 14-day time limit for the satisfactory correction thereof.

Sec. 34-370. Violation—Penalty.

Any person who continues any violation beyond the time limit provided for in this Chapter shall be guilty of a violation and, on conviction thereof, shall be fined in the amount set by Council resolution or subject to fines established per code Section 1-22, general provisions for each violation. Each day in which any such violation continues shall be deemed a separate offense. Failure to comply with a written directive or timeline of the City Manager made under the authority of this chapter is a punishable offense and may result in a temporary loss of City water and storm sewer services.

Sec. 34-371. Violators liable to City.

Any person violating any of the provisions of this chapter shall become liable to the City for any expense, loss, or damage occasioned by the City of Independence by reason of such violation.

Secs. 34-338—34-362. Reserved.

DIVISION 2. STORMWATER UTILITY FEES

Sec. 34-372.63. Definitions. Storm drain fund created.

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

Customer means a person in whose name service is rendered as evidenced by the signature on the application/contract for stormwater, sanitary sewer or water service, or in the absence of a signed instrument, by the receipt and payment of bills regularly issued in his name.

Developed means an area which has been altered by grading or filling of the ground surface, or by construction of any improvement or other impervious surface area, which affects the hydraulic properties of the location.

Duplex means a single building which contains two single family units and shall be calculated as one ERU per unit.

Equivalent Residential Unit (ERU) means an area which is estimated to place approximately equal demand on the city's storm drainage system as a single family unit. One ERU shall be equal to 3,250 square feet of impervious surface.

High intensity residential means residential properties that have an ERU value established based on measured impervious surface area. High intensity residential properties are designated as multifamily housing and include four or more units.

Impervious surface means any surface area which either prevents or retards saturation of water into the land surface, or a surface which causes water to run off the land surface in greater quantities or at an increased rate of flow from that present under natural conditions pre-existent to development. Common impervious surfaces include, but are not limited to, rooftops, concrete or asphalt sidewalks, walkways, patio areas, driveways, parking lots or storage areas, graveled, oiled or macadam surfaces or other surfaces which similarly impede the natural saturation or runoff patterns which existed prior to development.

Light intensity residential means properties that are equivalent to one ERU per unit and are classified as a single family unit, duplex or triplex.

Single Family Unit (SFU) means that part of a building or structure which contains one or more rooms with bathroom and kitchen facilities designed for occupancy by one family and where the units are sold and deeded as individual units. A SFU is presumed to have 3,250 square feet of impervious surface area for the purposes of this chapter.

Stormwater means water from precipitation, surface or subterranean water from any source.

Stormwater system means any structure or configuration of ground that is used to accumulate or direct the flow of stormwater, or by its location becomes a place where stormwater flows or is accumulated, including but not limited to pipes, sewers, curbs, gutters, manholes, catchbasins, ponds, open drainageways and their appurtenances.

Triplex means a single building which contains three single family units and shall be calculated as one ERU per unit.

(Code 2006, § 13.13.1; Ord. No. 1495, § 3(13.13.1), 1-25-2011)

A special fund is created to be known as the Storm Drain fund and the Finance Director shall deposit in this fund all proceeds of the stormwater charges imposed under this chapter. The storm drain fund shall be used solely and exclusively for paying all or part or any part of the cost of operation, maintenance and repair of the storm drain system; administration costs; planning and construction; and payments of the principal and interest on any debts of the city storm drain system. Storm drain funds shall not be used for other purposes without a resolution approved by the City Council specifying the terms of repayment within the timelines allowed by state law.

Sec. 34-37364. Stormwater utility fee—Establishment and use.

- (a) A stormwater utility fee shall be paid by each residential and nonresidential customer and shall be established by resolution of the City Council for ~~single family units and~~ equivalent ~~residential dwelling~~ units. Funds from the stormwater utility shall be used for planning, design, construction, operation, maintenance

and administration of storm drainage facilities, including repayment of indebtedness, and for all expenses for the operation and management of the stormwater utility.- Rates shall be based on generally accepted rate-making principles, including the City's true costs in upgrading the system to accommodate regulatory requirements and to provide adequate collection and treatment capacity for system users

- (b) The City Council may, on an annual basis by resolution, change the fees based upon revised estimates of the cost of properly managing, maintaining, extending and constructing public stormwater facilities.-(Code 2006, § 13.13.2; Ord. No. 1495, § 3(13.13.2), 1-25-2011)

Sec. 34-37465. Same—Calculation Rates Generally.

- (a) All users of the City's stormwater system shall pay to the City the rates for storm sewer service as provided by this chapter. A surface water utility user charge, which shall be set by the City Council by resolution, is established. The rate shall be in an amount reasonable and necessary to fund the administration, planning, design, construction, operation, maintenance and repair of the surface water management system. Property not used for single-family dwelling purposes shall be considered to be furnished service in proportion to the amount of the property's impervious surface. Each 3,250 square feet of impervious surface on the property shall be considered an ERU, and the minimum service charge for each ERU shall be that established for a single-family unit.
- (b) The surface water utility user charge shall be based upon the amount of developed impervious surface used by a customer. Owners or occupants of undeveloped property shall not be charged. Each customer using a location for one single-family residential use shall be charged a uniform rate based upon one equivalent development unit (EDU). The charge for all other uses shall be based upon the total amount of measured impervious surface used, divided by one EDU and rounded to the nearest whole number. The actual service charge shall be computed by multiplying the total amount of EDUs measured for each use by the rate established for each EDU. The number of ERUs for properties shall be as established by the Stormwater Utility Formation report prepared by PacWest Engineering in March, 2005, or as recalculated following a formal appeal process. The number of ERUs for each property shall be rounded to the nearest whole number of ERUs.

(c) No services will be provided outside of City limits.

Sec. 34-375. Service connection charges

- (a) A connection charge levied and imposed upon the owner of any property connecting to the storm sewer system of the City of Independence, which shall be paid prior to such connection. The charge shall be established by the City Council by resolution.
- (b) The connection charge is levied upon a property based upon the existing or intended use of the property at the time of application for connection. If the property is improved, expanded, subdivided or otherwise modified so as to increase the connection charge due from that property, a connection charge shall be levied for the modified portion of the property based upon connection charges in effect at the time of the modification.

Sec. 34-37666. Billings and collection.

- (a) Request for water or sewer service will automatically initiate appropriate billing for storm drainage services. If development of a parcel does not require initiating water or sewer service, the creation of an impervious surface from which stormwater may be discharged into public drainage facilities shall initiate the obligation to pay the fees and charges established by the stormwater utility.
- (b) The stormwater utility fee shall be billed and collected with the monthly city utility bill. The fee shall become due and payable at the same time as other city utility fees. Stormwater billing and collection procedures shall be performed as provided in article VI of this chapter.

Sec. 34-~~37767~~. Recovery of unpaid fees.

Any fee due which is not paid when due may be recovered in an action at law by the city. In addition to any other remedies or penalties provided by city ordinance. Fees not paid promptly when due shall be collectable pursuant to collection efforts or other lawful remedies of the city. The city may discontinue any utility services provided by the city until the customer's stormwater utility fees are paid in full. The City Manager is empowered and directed to enforce this provision against delinquent customers.

Sec. 34-~~37868~~. Well and septic tank users.

- (a) Developed properties that are served by wells and/or septic tanks shall also be required to participate in the stormwater utility. If these properties are not served by other city utilities, then billing for stormwater service shall occur upon creation of an impervious surface from which stormwater may be discharged into public drainage facilities.
- (b) If a well or septic tank user is delinquent on stormwater utility fee payments in an amount equal or greater than \$250.00, the city may pursue collection efforts and place a lien on the property in the amount of the unpaid fees.

Sec. 34-~~37969~~. Appeal policy.

- (a) Upon application and submittal of an application fee established from time to time by resolution of the City Council, a customer may seek a reduction of the monthly charge for stormwater service. The ~~Community Development~~Public Works Director or his designee shall consider the application. The customer must show to the city's satisfaction the amount of permanent reduction to the amount of impervious surface for the property.
- (b) Charges will be adjusted (increased or decreased) for the property if the change to the measured impervious area results in a change to the calculated number of ERUs for the subject property. If the number of ERUs remains the same or increases, the \$250.00 application fee will be retained by the city as an administrative fee for reviewing the application. If the number of ERUs decreases, the \$250.00 application fee will be refunded to the customer as a \$250.00 credit to his utility account.
- (c) Any adjustment made shall continue until the property is further developed. Upon further development of the property, another application may be made by the customer.

Sec. 34-~~38070~~. Administration.

- (a) The ~~Community Development~~Public Works Director shall be responsible for the administration of the stormwater utility (except for the billing and collection of funds), including the development and/or modification of administrative procedures, maintenance programs, capital improvements, operations and maintenance standards and related activities.
- (b) The Finance Director or his designee shall be responsible for the billing and collection of funds.

Secs. 34-~~371381~~—34-398. Reserved.

ARTICLE VI. UTILITY BILLING AND COLLECTION PROCEDURES

Sec. 34-399. Definitions.

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

Applicant means a person, 18 years of age or older, or emancipated, who:

- (1) Applies for utility service; or
- (2) Reapplies for utility service at a new or existing location after service has been discontinued.

Customer means a person who has applied for, been accepted and is currently receiving service.

Utility service means city water service, stormwater service and sewer services.

Sec. 34-400. Utility service billing.

Billings for water, stormwater and sewer utility services shall be combined into one bill and shall be made monthly on the basis of the amount of service used during the previous monthly period. If, for any reason, it is impossible or impractical to read a water meter, water consumption may be estimated, based on the previous history of use on that property, until the meter can be read. Bills are due and payable on demand and will become delinquent if not paid within 15 days after they become due and payable. The city will apply amounts received from customers first to stormwater charges, then sewer charges, then to late charges, if any, and then to water charges.

Sec. 34-401. Application for utility service.

- (a) A written application for utility service must be made where:
 - (1) Service is requested to be supplied to a property;
 - (2) Service has been involuntarily discontinued in accordance with this article, and the applicant subsequently seeks to have service restored; or
 - (3) Service has been voluntarily discontinued and a request to restore service has not been made within 20 days.
- (b) An application is a request for utility service. An application for service shall not be accepted until the applicant:
 - (1) Pays a deposit as established in section 34-403(a); or
 - (2) Satisfies the credit screening criteria set forth in section 34-403(b); and
 - (3) Supplies the following information on a form supplied by the city:
 - a. The date of the application;
 - b. Name and address of applicant applying for service;
 - c. The location of the property to be served;
 - d. The date on which the applicant will be ready for service;
 - e. Address to which utility bills shall be mailed;
 - f. The name, address and signature of the owner of the property;
 - g. Owner and occupant's:
 1. Agreement to abide by this Code and any written rules or regulations adopted for the utility system; and
 2. Consent to lien the property being served in the amount of past due amounts and charges, in the event of nonpayment; and
 - h. Such other information as the City Manager may require.
- (c) Two or more parties who join to make application for service shall be jointly and individually liable for charges incurred, and shall be sent a single billing.

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- (d) Contracts, other than applications, may be required prior to service where, in the opinion of the city, special circumstances exist.
 - (e) If a premises is connected to the city utility system without application, the premises will be disconnected. Before a new connection is made, the applicant shall pay a tampering fee set by resolution of the City Council, plus amounts of all service used.
 - (f) In no case shall a utility service be turned on until the terms of this section have been complied with, and until all appropriate fees and charges established from time to time by resolution of the City Council have been paid.

(g) Applications for service shall be considered merely as a request for service, and they shall not bind the City or Council to provide service.

Sec. 34-402. Customer and owner responsible for bills.

Payment of utility bills shall be the responsibility of the utility customer.

- (1) The customer shall be responsible for utility charges incurred until service is voluntarily terminated in accordance with the provisions of section 34-405(a)(1).
- (2) In cases where the customer is not the same as the owner and customer is delinquent on their account, the owner of the property shall be liable for all past due amounts and charges. The owner's responsibility for payment of bills shall not be reduced or waived because of the city's attempts to collect from the customer, so long as the owner is sent notice of the delinquent billings.
- (3) If utility bills are paid and kept current, utility service will not be discontinued upon the order of any other person other than the customer to enforce vacation of the premises or for other reasons.

Sec. 34-403. Deposits.

- (a) All applicants shall be required to pay a deposit in an amount set by resolution of City Council, as a guarantee of the applicant's performance of the agreement for service, unless the applicant can provide proof of satisfactory credit in accordance with subsection (b) of this section, or can obtain a written co-obligor agreement from a person with satisfactory credit.
- (b) Satisfactory credit exists when the applicant or co-obligor has can demonstrate that the applicant or co-obligor has not been delinquent on payments to the city for utility services for more than 30 days on more than two occasions during a three-year period, the city has not discontinued utility service to the applicant or co-obligor, for nonpayment of bills during that three-year period, and the applicant or co-obligor is not currently delinquent in the payment of the applicant or co-obligor's utility bills.
- (c) Co-obligors shall be mailed copies of all service disconnection notices delivered to the applicant.
- (d) Co-obligors shall be responsible for all delinquent amounts accrued by their co-obligor.

Sec. 34-404. Deposit refunds and credits.

- (a) *Refunds.* Upon discontinuance of service pursuant to section 34.405.1(a)(1), the city will refund the balance of the customer's deposit to customer, after application of the deposit and any accrued interest to any unpaid bills for utility service furnished by the city.
- (b) *Owner occupied premise credits.* A customer may submit a written request to city for a credit of customer's deposit to their account if all of the following conditions are satisfied:
 - (1) The served premises are owner occupied;
 - (2) The customer has paid 12 consecutive service billings without failure to pay a utility bill on more than two occasions;

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- (3) The city has never discontinued customer's service for nonpayment of utility bills; and
 - (4) The customer is not currently delinquent in the payment of the customer's city utility bills.

Upon receipt of such a request, the city will first apply deposit amounts and any accrued interest to any unpaid bills for that customer's utility service furnished by the city, then credit the remaining deposit to customer's account.

Sec. 34-405.1. Discontinuance of utility service.

- (a) Utility service shall be discontinued:
 - (1) Where a customer requests the city to discontinue service or to close an account;
 - (2) Where dangerous or emergency conditions exist at the premises to which service is provided;
 - (3) For failure to pay for utility service within the time frames established in section 34-406. Failure to pay for one utility shall be caused for discontinuance of any or all city utilities;
 - (4) For failure to abide by the terms of a payment agreement, if authorized in writing in advance by the Finance Director or designate, as established in section 34-410(d);
 - (5) Where service is being obtained fraudulently;
 - (6) For unlawfully providing service to another property;
 - (7) For failure to abide by any of the conditions or agreements contained in the signed application for service.
 - (8) For failure to comply with Public Works conditions of approval connected to planning, building, or Public Works permits.
- (b) Voluntary discontinuance. Every customer who is about to vacate any premises supplied with service by the utility, or who for any reason wishes to have such service discontinued, shall give five days' notice in advance of specified date of discontinuance of service to the utility. Until the city has received such notice, the customer shall be held responsible for all service rendered to the premises.
- (c) Service shall be discontinued for nonpayment of bills as provided in section 34-406. Service may also be discontinued for violation of any other provisions of this article five days after the date written notice to the customer from the city that the violation must cease is sent to the customer by first class mail to the customer's last known address; provided, however, that where fraudulent use of services is detected, or where a dangerous condition is found to exist on the customer's premises, service may be discontinued without advance notice.
- (d) Once service has been discontinued, no person other than an authorized city employee may reconnect the service. The customer of any property where service has been unlawfully reconnected shall be assessed a tampering fee, adopted by resolution of the City Council. The customer shall also be charged any actual damage done to the property of the city.

Sec. 34-405.2. Abandonment of utility service.

- (a) Voluntary abandonment. Upon city's receipt of a property owner's written request to have property owner's water meter removed, city will cease charging owner monthly water service charges.
- (b) Abandonment by non-payment. After 12 months of non-payment, the city will provide a 30-day notice that the water meter will be removed, unless all utility fees are paid in full by the notice date.
- (c) City shall remove a water meter in the case of either voluntary abandonment or abandonment by non-payment as set forth in subsections (a) and (b) of this section.

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- (d) Reinstatement of service either voluntarily abandoned or abandoned by non-payment, as set forth in subsections (a) and (b) of this section, is a service connection requiring payment of a service connection charge pursuant to section 34-133. This service connection charge shall be paid in addition to the reinstatement of service fees set forth in section 34-407.

Sec. 34-406. Notice and termination of service for delinquent bills.

Utility charges not paid within 15 days after they become due and payable shall be deemed to be delinquent. When a utility account is delinquent, the customer, owner and/or other designated person will be notified by first class mail of such delinquency and given seven calendar days from the date of the notice in which to make payment or request a hearing as provided in section 34-410.

- (1) If payment is not received or hearing requested by the due date shown on the delinquent notice, the customer and/or occupant will be notified in writing by personal delivery or by posting a notice on the premises that service to the premises shall be discontinued if payment is not received within 48 hours. The notice shall also indicate that responsibility for payment of any unpaid balance shall be the responsibility of the property owner and may be placed as a lien against the premises as authorized by this Code and service application.
- (2) Utility services shall not be turned off after 2:00 p.m. in the afternoon nor shall utility services be turned off on Fridays, weekends, or the day before a regular holiday.
- (3) If the full payment of the delinquent amount is not made by the date designated on the turn-off notice, the utility may be immediately turned off. At the time utility service is turned off, a notice shall be posted on the premises indicating the utility service has been turned off, and that a posting fee will be imposed. The notice will also state that service may be restored by payment of the delinquent amounts, any outstanding fees or charges, and all interest that has accrued thereon, reestablishment of the deposit required by section 34-403 and payment of the reinstatement fee adopted by resolution of the City Council.
- (4) Prior to the restoration of service by the city, the fees and charges enumerated in section 34-407 shall be paid, unless a deferred payment schedule is approved by the Finance Director, or designee. A deferred payment schedule that is violated shall not be renewed by the city.
- (5) Utility charge. Utility service charges shall become a lien against the premises to which the services were provided from and after the date the charges are entered into the city's lien docket and the lien docket shall remain accessible for inspection by anyone interested to ascertain the amount of such charges against the property. Whenever a bill for utility service remains unpaid 90 days after it has been rendered, and the amount of such bill exceeds \$250.00, the lien thereby created may be foreclosed in a manner provided for in Oregon Revised Statutes 223.610 (ORS 223.610), or in any other manner provided for by law or by city ordinance.
- (6) Pre-termination notice charge. Any delinquent account that remains unpaid at the time that a pre-termination notice is posted on the premises in accordance with subsection (1) of this section shall be imposed a posting fee, which shall be added to the account. The posting fee shall be set by resolution of the City Council.
- (7) Delinquent utility accounts totaling less than \$25.00 shall not be turned off unless circumstances indicate the service has been abandoned.

Sec. 34-407. Reinstatement of service is as follows.

- (a) Where a utility service is disconnected for violation of laws, rules, or regulations for fraudulent use of service, or for nonpayment, reinstatement of service will not be made until all four of the following conditions are met:

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1. Either:
 - i) All past-due amounts, including all outstanding fees and charges have been paid in full; or
 - ii) a payment agreement in the City's approved form has been executed or other City-approved security or arrangements are in place to ensure collection of past-due amounts, at latest upon sale or transfer of the property;
 2. Interest at the rate of two percent per month, accruing on all accounts from the date of delinquency must either be paid in full or included as a term of a payment agreement or other arrangement entered into under subsection a.1.ii, of this section;
 3. A reinstatement fee as established in subsection (b) of this section has been paid; and
 4. A tampering fee, if applicable, as established in section 34-405(d), has been paid.
- (b) A reinstatement fee shall be charged and collected from the customer prior to reconnection of service. The amount of the fee will be established by resolution of the City Council.

Sec. 34-408. Refusal of service.

Service may be denied to any person:

- (1) Who is responsible for unpaid bills for utility service provided to any premises within the city utility service area, until such bill and all related charges are paid in full;
- (2) Until restitution has been made for any damage or loss of revenue to the city resulting from the person's tampering with or bypassing water meters or locking devices;
- (3) Applying for service under a different name when the original applicant or customer still resides at premises for which services are requested and services to the premises have been disconnected for nonpayment of bills.

Sec. 34-409. Adjustment of water bills.

- (a) Unusually high water bills resulting from leakage occurring in the customer's plumbing system will be adjusted for a period not to exceed the previous two months, upon notification by the customer, so long as the leakage is corrected within 30 days after its discovery. The basis for the adjustment will be reduction of the water utility bill by one-half the excess over the customer's normal bill.
- (b) Billings which the city has made erroneously may be corrected retroactively for a period not to exceed one year upon acknowledgement by the city of the error.

Sec. 34-410. Hearings on disputed bills.

- (a) Any customer wishing to dispute their utility bill charges may submit to the City Manager a written request for a hearing on the disputed bill. The request must be filed within seven calendar days from the date of the utility bill. Upon filing of a request for hearing, all proceedings relative to collection of the disputed bill shall be stayed until the final decision is made.
- (b) The City Manager or designate shall schedule a hearing on the disputed charges and shall notify the complaining party in writing of the time, place and date of such hearing. Upon conclusion of the hearing, the City Manager or designate shall make a final determination as to the amount due and owing on the disputed bill and shall notify the customer in writing of the decision.
- (c) If the decision is that there are charges due and owing, the customer shall have seven calendar days from the date of service of the notice to make full payment. Failure to make the payment within seven days shall result in a 48-hour termination of service notice provided in section 34-406.

(d) If, in the judgment of the City Manager or designate, the public's interest can be protected and at the same time the burden on the customer reduced, a written agreement arranging for partial payment or a payment schedule can be accepted.

Sec. 34-411. ~~Nonrefundable cleaning fee~~Not Used. ~~Applicants requesting service in order to clean unoccupied rental properties may, in lieu of paying a deposit as required in section 34-403, pay a nonrefundable fee which shall entitle the applicant to water for a period not to exceed 30 days in an amount not to exceed eight units. The fee will be determined by resolution of the City Council. Water usage exceeding eight units shall result in termination of service and the requirement of an application for renewed service in accordance with the requirements contained in sections 34-401 through 34-403.~~

~~(Prior Code, § 75.060; Code 2006, § 13.20.13; Ord. No. 1238, § 1(part), 1991; Ord. No. 1495, § 4(13.20.13), 1-25-2011)~~

Sec. 34-412. Utility charges considered a debt.

Utility service charges levied in accordance with this chapter shall be a debt due to the city, which, if not paid within 15 days after it shall be due and payable, shall be deemed delinquent and may be recovered by civil action, in addition to other lawful remedies, in the name of the city against the applicant, co-applicant, or both. Discontinuance of service shall be a remedy in addition to the remedies provided herein for nonpayment of delinquent accounts.

Secs. 34-413—34-437. Reserved.

ARTICLE VII. UTILITY SYSTEM DEVELOPMENT CHARGES

Sec. 34-438. Definitions.

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

Capital improvements means public facilities or assets used for any of the following:

- (1) Water supply, treatment and distribution;
- (2) Sanitary sewers, including collection, transmission, treatment and disposal;
- (3) Storm sewers, including drainage and flood control;
- (4) Transportation, including but not limited to streets, sidewalks, bike lanes and paths, street lights, traffic signs and signals, street trees, public transportation, vehicle parking and bridges; or
- (5) Parks and recreation, including but not limited to mini-neighborhood parks, neighborhood parks, community parks, public open space and trail systems, buildings, courts, fields and other like facilities.

(6) -Any other systems for which system development charges are allowable under Oregon law.

Development means conducting a building or mining operation, making a physical change in the use or appearance of a structure or land, which increases the usage of any capital improvements or which creates the need for additional or enlarged capital improvements.

Commented [GF2]: This section is not necessary since the charges for service continue until disconnected from the system.

Improvement fee means a fee for costs associated with capital improvements to be constructed after July 1, 1991.

Land area means the area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane with the exception of a portion of the parcel within a recorded right-of-way or easement subject to a servitude for a public street or scenic or preservation purpose.

Parcel of land means a lot, parcel, block or other tract of land that is occupied or may be occupied by a structure or structure or other use, and that includes the yards and other open spaces required under the zoning, subdivision or other development ordinances.

Qualified public improvements means a capital improvement that is:

- (1) Required as a condition of development approval;
- (2) Identified in the plan adopted pursuant to section 34-445; and
- (3) ~~Not located on or contiguous to property that is the subject of the development approval; or Not located on or contiguous to a parcel of land that is the subject of the residential development approval.~~
- ~~(4) Located in whole or in part on or contiguous to property that is the subject of 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 means a fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to section 34-441.

System development charge. The term "system development charge":

- (1) Means a reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a capital improvement, at the time of issuance of a development permit or building permit, or at the time of connection to the capital improvement.
- (2) Includes that portion of a sewer or water system connection charge that is greater than the amount necessary to reimburse the city for its average cost of inspecting and installing connections with water and sewer facilities.
- (3) Does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, the cost of connection or hook-up fees for sanitary sewers or water lines, or the cost of complying with requirements or conditions imposed by a land use decision.

Sec. 34-439. Purpose.

The purpose of the system development charge is to impose an equitable share of the public cost of capital improvements upon those developments that create the need for or increase the demands on capital improvements. This charge shall be collected at the time of the development of properties which contribute to increases in the need for those facilities.

Sec. 34-440. Provisions not exclusive.

The system development charge imposed by this Code is separate from and in addition to any applicable tax, assessment, charge, fee in lieu of assessment or fee otherwise provided by law or imposed as a condition of development. A systems development charge is to be considered in the nature of a charge for service rendered or facilities made available, or a charge for future services to be rendered or facilities to be made available in the future.

Sec. 34-441. System development charge established.

- (a) Unless otherwise exempted by the provisions of this article or other local or state law, effective July 1, 1991, a systems development charge is imposed upon all new development within the city, and all new

development outside the boundary of the city that connects to or otherwise uses the sanitary sewer system or water system of the city.

- (b) System development charges for each type of capital improvement may be created through application of the methodologies described in section 34-442. The amounts of each system development charge shall be adopted initially by Council resolution. Changes in the amounts shall also be adopted by resolution, except changes resulting solely from inflationary cost impacts. Inflationary cost impacts shall be measured and calculated each January by the City Manager or Manager's designee and charged accordingly. Such calculations will be based upon changes in the Engineering News Record Construction Index (ENR Index) for Seattle, Washington.

Sec. 34-442. Fees and charges; methodology.

- (a) The methodology used to establish the reimbursement fee shall consider the cost of then-existing facilities, prior contributions by then-existing users, the value of unused capacity, rate-making principals employed to finance publicly owned capital improvements and other relevant factors identified by the Council. The methodology shall promote the objective that future systems users shall contribute an equitable share of the cost of then-existing facilities.
- (b) The methodology used to establish the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related and shall provide for a credit against the improvement fee for the construction of any qualified public improvement.
- (c) The methodologies used to establish systems development charges shall be adopted by resolution of Council. The specific systems development charge may be adopted and amended concurrent with the establishment or revision of the systems development charge methodology. The City Manager shall review the methodologies established under this section periodically and shall recommend amendments, if and as needed, to the Council for its action.
- (d) Except when authorized in the methodology adopted under subsection (a) of this section, the fees required by this Code which are 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 by a land use decision are separate from and in addition to the systems development charge and shall not be used as a credit against such charge.
- (e) The methodology may also provide for a credit as authorized in section 34-448.

Sec. 34-443. Compliance with state law.

The revenues received from the systems development charges shall be budgeted and expended as provided by state law. Such revenues and expenditures shall be accounted for as required by state law. Their reporting shall be included in the city's comprehensive annual financial report required by ORS chapter 294.

- (a) -Reimbursement fees shall be applied only to capital improvements associated with the systems 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, including expenditures relating to repayment of debt for such improvements.
 - (1) 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 current or projected development.
 - (2) A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the plan adopted by the City pursuant to Section 13.14.080.
- (c) 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 charge expenditures.

Sec. 34-444. Expenditure restrictions.

- (a) System development charges shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.
- (b) System development charges shall not be expended for costs of the operation or routine maintenance of capital improvements.

Sec. 34-445. Capital improvement plan.

The plan for capital improvements required by state law as the basis for expending public improvement charge component of systems development charge revenues shall be the adopted facilities plans and the Capital Improvements Plan (CIP) of the city, or the capital improvement plan of any other governmental entity with which the city has cooperative agreement for the financing of commonly-used public improvements by the collection of system charges, provided such plans conform with state law and are consistent with the city's CIP and the city's comprehensive plan.

Sec. 34-446. System development charge; collection.

- (a) The system development charge is payable upon issuance of:
 - (1) A building permit;
 - (2) A development permit, including a manufactured home placement permit;
 - (3) A development permit for development not requiring the issuance of a building permit; or
 - (4) A permit to connect to the water or sewer system.
- (b) If no building, development or connection permit is required, the system development charge is payable at the time the usage of the capital improvement is increased.
- (c) If development is commenced or connection is made to the water or sewer systems without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required, and it will be unlawful for anyone to continue with the construction or use constituting a development until the charge has been paid or payment secured to the satisfaction of the City Manager.
- (d) Any and all persons causing, constructing, conducting, occupying or using the development or making application for the needed permit, or otherwise responsible for the development, are jointly and severally obligated to pay the charge, and the City Manager may collect the charge from any of them. The City Manager or the Manager's designee shall not issue any permit or allow connection described in subsection (a) of this section until the charge has been paid in full or until an adequate security arrangement for its payment has been made, within the limits prescribed in this section.
- (e) ~~(4)~~ A systems development charge shall be paid in cash when due, or in lieu thereof, the applicant may exercise the person's right under ORS 223.208 to pay the systems development charge in installments. Should the applicant make such an election and file an application as provided in ORS 223.215 the charge shall thereupon become a first lien on the property occupied by the development and shall have the same effect as an assessment lien for a public improvement and shall be duly recorded in the docket of city liens.
- (2f) The City Manager may only accept the delivery of a written application to pay in installments if the written agreement is secured by collateral satisfactory to the City Manager or the Manager's designee. The collateral may consist of mortgage or trust deeds of real property, or an agreement secured by surety bond issued by a corporation licensed by state law to give such undertakings, or by cash deposit, letter of credit or other like security acceptable to the City Manager.

Sec. 34-447. Exemptions.

- (a) Structures and uses established and existing on or before July 1, 1991, are exempt from a system development charge to the extent of the structure or use then existing and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this subsection shall pay the water or sewer charges pursuant to the terms of this Code upon the receipt of a permit to connect to the water or sewer system.
- (b) Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the state uniform building code, are exempt from all portions of the system development charge.
- (c) An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of the public improvement facility are exempt from all portions of the system development charge.
- (d) A project financed by city revenues is exempt from all portions of the system development charge.
- (e) A daycare facility located in an existing building under commercial use that does not require an expansion of the building or increased size of the water or sewer services or the water meter. The exemption shall sunset 10 years after adoption.

Sec. 34-448. Credits.

- (a) A system development charge shall be imposed when a change of use of a parcel or structure occurs, but credit shall be given for the computed system development charge to the extent that prior structures existed and services were established on or after the effective date of the ordinance codified in this chapter. The credit so computed shall not exceed the calculated system development charge. No refund shall be made on account of such credit.
- (b) A credit shall be given for the cost of a qualified public improvement associated with a development. If a qualified public improvement is located partially on and partially off the parcel that is the subject of the residential development approval, the credit shall be given only for the cost of the portion of the improvement not located on or wholly contiguous to the property. The credit provided for by this subsection shall be only for the improvement fee charged for the type of improvement being constructed and shall not exceed the improvement fee even if the cost of the capital improvement exceeds the applicable improvement fee.
- (c) Applying the methodology adopted by resolution, the City Manager may grant a credit against the public improvement charge, the reimbursement fee, or both, for a capital improvement constructed as part of the development that reduces the development's demand upon existing capital improvements or the need for future capital improvements or that would otherwise have to be constructed at city expense under existing Council policies.
- (d) In situations where the amount of credit exceeds the amount of the system development charge, the excess credit is not transferable to another development. It may be transferred to another phase of the original development. Credit shall not be transferable from one development to another.
- (e) -Credit shall not be transferable from one type of capital improvement to another.

Sec. 34-449. Segregation and use of revenue.

- (a) All funds derived from a particular type of system development charge are to be segregated by accounting practices from all other funds of the city. That portion of the system development charge calculated and collected on account of a specific facility system shall be used for no purpose other than those set forth in this article.

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- (b) The City Manager shall provide the City Council with an annual accounting, based on the city's fiscal year, for system development charges showing the total amount of system development charge revenues collected for each type of facility and the projects funded from each account.

Sec. 34-450. Appeal procedure.

- (a) A person aggrieved by a decision regarding the propriety of an expenditure of system development charge revenues may appeal the decision or the expenditure to the City Council by filing a written request with the City Manager describing with particularity the decision and the expenditure from which the person appeals.
- (b) An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure. Appeals of any other decision required or permitted to be made by the City Manager under this chapter must be filed within 15 days of the date of the decision.
- (c) All appeals shall state:
- (1) The name and address of the appellant;
 - (2) The nature of the determination being appealed;
 - (3) The reason the determination is incorrect; and
 - (4) What the correct determination of the appeal should be or how the correct determination should be derived. An appellant who fails to file such statement within the time permitted waives his/her objections, and the appeal shall be dismissed.
- (d) Unless the appellant and the city agree to a longer period, an appeal shall be heard within 30 days from the receipt of the written appeal. At least ten working days prior to the hearing, the city shall mail notice of the time and location thereof to the appellant.
- (e) The City Council shall hear and determine the appeal on the basis of the appellant's written statement and any additional evidence he deems appropriate. At the hearing the appellant may present testimony and oral argument personally or by counsel. The city may present written or oral testimony at this same hearing. The rules of evidence as used by courts of law do not apply.
- (f) The appellant shall carry the burden of proving that the determination being appealed is incorrect and what the correct determination should be.
- (g) The Council shall determine whether the City Manager's decision or the expenditure is in accordance with this chapter and the provisions of ORS 223.297 and may affirm, modify or overrule the decisions. 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.
- (h) The City Council shall render its decision within 30 days after the hearing date and the decision of the Council shall be final. The decision shall be in writing but written findings shall not be made or required unless the Council, in its discretion, elects to make findings for precedential purposes. Any legal action contesting the Council's decision on the appeal shall be filed within 60 days of the Council's decision.
- (i) A legal action challenging the methodologies adopted by the Council shall be filed within 60 days from the Council's decision.

Sec. 34-451. Prohibited connection.

After July 1, 1991, no person may connect any premises for service, or cause the same to be connected, to any sanitary sewer, water system or storm sewer system of the city unless the appropriate systems development charge has been paid or payment has been secured as provided in this chapter.

Sec. 34-452. Penalty.

Violation of this chapter is punishable by a fine not to exceed \$500.00. Each day's violation of this chapter shall constitute a separate offense.

Sec. 34-453. Construction.

The rules of statutory construction contained in ORS Chapter 174 are adopted and by this reference made a part of this chapter.