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CHAPTER 1.04 REQUEST TO ADOPT ORDINANCES

1.04.010 Request to Adopt Ordinances

A. Any person may request that the city manager place a proposed ordinance on the City Council agenda for Council consideration. The city manager shall have total and absolute discretion whether to place the proposed ordinance on the Council agenda.

B. Any person may request of any one or more Council members that the Council member(s) move that the Council initiate a proposed ordinance. The Council member(s) shall have total and absolute discretion whether to move that the Council initiate a proposed ordinance.

C. Any person may request that the Council as a whole initiate a proposed ordinance. The request may be by written request or by an oral request during the citizen participation portion of a Council agenda. The Council shall have total and absolute discretion whether to initiate a proposed ordinance.

D. If a citizen requests adoption of an ordinance, the city shall follow all applicable procedural and format requirements. Under most circumstances, ordinances are not considered for immediate adoption if they have not been placed on the agenda. If staff or the Council decides to proceed with an ordinance proposed by a citizen, the proposed ordinance will be placed on the agenda of a future meeting to give the public an opportunity to comment before adoption.

(Chapter 1.04 was adopted by Ordinance 1929 on July 2, 2007; effective August 1, 2007.)

CHAPTER 1.10 CODE

1.10.010 Title of Code

This code shall be cited as the Newport Municipal Code, and is the official city code of the City of Newport. Provisions of this code apply to acts performed within the City of Newport and outside the city where state or other law grants the city the authority to act or regulate acts outside the city limits.

1.10.020 Interpretation

Any ambiguities in this code regarding authority of the city to act shall be interpreted as authorizing the broadest possible scope of the authority to the city, city officials, and city staff. Unless otherwise specified to the contrary, the grant of authority or responsibility to any city official shall include the named official and any designee. No formal designation of authority is required. Words and phrases shall be taken in their plain, ordinary, and usual sense. However, technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import. A general term following specific enumeration of terms is not to be limited to the class enumerated unless expressly so limited.

1.10.040 Caption

Headings and captions in this code are part of the code and shall be considered in interpreting the scope and meaning of the text.

1.10.050 Definitions

As used in this code, the following words are defined as follows, unless the context clearly indicates or requires a different meaning or otherwise specified.

City. The City of Newport, Oregon.

County. Lincoln County, Oregon.

Person. An individual, corporation, partnership, company, trustee, or any other legal entity. In the event that a title, chapter, or section has a different definition of “person,” the other definition will control over this general definition.

State. The State of Oregon.

Year. A calendar year unless otherwise expressed.

1.10.060 Severability

If any provision, section, phrase, or word of this code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions that can be given effect without the invalid provision or application.

1.10.090 Reference to Offices

Reference to a public office or officer shall be deemed to apply to any office, officer, or employee of the city exercising the powers, duties, or functions contemplated in the provision, irrespective of any transfer of functions or change in the official title of the functionary.

1.10.100 Errors and Omissions

In preparing adopted ordinances for codification and distribution, the city recorder shall not alter the sense, meaning, effect, or substance of any ordinance, but may correct manifest clerical or typographical errors, either before or after codification.

CHAPTER 1.20 EFFECT OF CODE ON ORDINANCES

1.20.010 Codification of Ordinances

Future ordinances that impose generally applicable rules are to be adopted as amendments to this code and the title of the ordinance is to indicate that the ordinance amends the code. In the event that an ordinance does not specify that it is amending the code, the city recorder shall determine whether the ordinance should be incorporated into the code. Failure to comply with this section does not invalidate any ordinance.

1.20.020 Effect on Existing Ordinances

A. Adoption of this code does not repeal any previously adopted ordinance. The provisions of this code prevail over any inconsistent materials in previously adopted ordinances. In the event that a previously adopted ordinance and a portion of this code cover the same subject matter, the code provisions shall prevail and the previous ordinance shall cease to be effective as of the adoption of the code provisions.

B. The city will use the civil infraction procedure or nuisance procedure of this code only for violations of relevant provisions of this code, the Comprehensive Plan (Ordinance No. 1621, as amended), the Subdivision Ordinance (Ordinance No. 1285 as amended), and the Zoning Ordinance (Ordinance No. 1308 as amended). The city will not use any enforcement procedures for violations of any ordinance that has not been incorporated into this code, the Comprehensive Plan, the Subdivision Ordinance, or the Zoning Ordinance. Violations of orders, permits, conditions of approvals, and similar mandatory decisions of the city will continue to be enforced as civil infractions, regardless of the source of authority of the original order, permit, condition of approval, or other decision.

(1.20.020 adopted by Ordinance No. 1953 on March 17, 2008; effective April 16, 2008)

CHAPTER 1.30 TIME

1.30.010 Reasonable Time

When this code or any ordinance requires that an act be performed within a reasonable time, reasonable time means the time that is necessary for a prompt performance of the act.

1.30.020 Computation of Time

The time within which an act is to be done shall be computed by excluding the first day and including the last day. If the last day would fall on a Saturday, Sunday, or legal holiday, the time to complete the act shall be extended to the next working day. If the act requires delivery to or filing with the city, if city hall is not open for business on the day that delivery is due, the deadline shall be extended until the next day the city is open for business.

CHAPTER 1.40 ORDINANCES

1.40.010 Repeal or Modification of Ordinances

A. When any ordinance or part of an ordinance is repealed, the repealed ordinance remains in effect and applicable until the new ordinance takes effect. No obligation, restriction, right, fine, forfeiture or penalty instituted, created, given, secured, or accrued under any ordinance previous to its repeal shall in any way be affected, released or discharged by the repeal.

B. When any ordinance repealing a former ordinance, clause or provision shall be itself repealed, the repeal shall not be construed to revive the former ordinance, clause or provision unless it is expressly provided.

1.40.020 Request to Adopt Ordinances

A. Any person may request that the city manager place a proposed ordinance on the City Council agenda for Council consideration. The city manager shall have total and absolute discretion whether to place the proposed ordinance on the Council agenda.

B. Any person may request of any one or more Council members that the Council member(s) move that the Council initiate a proposed ordinance. The Council member(s) shall have total and absolute discretion whether to move that the Council initiate a proposed ordinance.

C. Any person may request that the Council as a whole initiate a proposed ordinance. The request may be by written request or by an oral request during the citizen participation portion of a Council agenda. The Council shall have total and absolute discretion whether to initiate a proposed ordinance.

D. If a citizen requests adoption of an ordinance, the city shall follow all applicable procedural and format requirements. Under most circumstances, ordinances are not considered for immediate adoption if they have not been placed on the agenda. If staff or the Council decides to proceed with an ordinance proposed by a citizen, the proposed ordinance will be placed on the agenda of a

future meeting to give the public an opportunity to comment before adoption.

CHAPTER 1.50 PENALTY

1.50.010 Default Penalty

Except as otherwise specified, the penalty for violation of any provision of this code or other ordinance shall be a civil penalty of $500. If the violation is of a code provision or ordinance that is identical to a state statute, the city may elect to proceed on the basis of the state violation or the city violation. Each calendar day on which violation occurs or remains uncorrected constitutes a separate violation.

1.50.020 Traffic Citation Assessment and Vehicle Impound Fee

A. Except as provided in Subsection B. of this section, all persons who are issued a traffic citation to appear in the Newport Municipal Court shall pay a traffic citation assessment fee of $10.00 per citation. All persons who recover a vehicle from a vehicle impoundment shall pay a vehicle impound assessment fee of $10.00 per impoundment. These amounts shall be in addition to any other penalty, assessments, or payment.

B. If the municipal court determines that the person issued the citation did not commit the offense or has established an affirmative defense, no traffic citation assessment fee or vehicle impound assessment fee shall be imposed.

C. The amount of the traffic citation assessment fee and vehicle impound assessment fee shall be added to any bail amount for those who do not contest the citation and shall be included as part of the judgment for all those who contest the citation and are determined to have committed the offense.

D. Proceeds from payment of the traffic citation assessment and vehicle impound assessment fee shall be used for the police department's cost associated with maintaining traffic safety.

(Chapter 1.50.020 adopted by Ordinance No. 1934 on September 4, 2007; effective October 4, 2007)

CHAPTER 1.60 ELECTIONS

1.60.005 Applicability of State Law

State law, including statutes and regulations, shall govern city elections, except to the extent that the charter, this code, and ordinance provide otherwise, as permitted by state law.

1.60.010 Newspaper Publication of Charter Revisions

If any ballot measure would result in an amendment of the charter, the city shall cause the full text of the amendment to be published in a newspaper of general circulation in the city at least 30 days before the date of the election.

1.60.015 Explanatory Statements

The City Attorney is authorized to prepare explanatory statements for inclusion in County Voters' Pamphlets for matters relating to municipal legislation referred or initiated by petition. The explanatory statements shall be subject to approval by the City Council before submission for including in the Voters' Pamphlets.

(Chapter 1.60.015 was adopted by Ordinance No. 1976 on March 16, 2009; effective April 15, 2009)

(Chapter 1.60 adopted by Ordinance No. 1938 on October 15, 2007; effective November 14, 2007)

CHAPTER 1.70 EMERGENCIES

1.70.010 Emergency Situation and Declaration

An emergency situation exists when the health, safety or welfare of the city or a portion of the city is threatened by a potential or actual natural disaster, accident, act of war or terrorism, disease, or other event or ongoing occurrence that results in an immediate and substantial threat to life, health or property. The city may declare an emergency following the procedures of Section 1.70.030 when an emergency situation exists.

1.70.020 Effect of Emergency Declaration

A. On declaration of an emergency, the city shall have all powers not prohibited by federal and state constitutions and laws, including any powers authorized in emergency situations. The powers of the city shall be exercised by the emergency response coordinator. The emergency response coordinator shall be the city manager or other person designated in the emergency declaration. Notwithstanding the delegation of powers to the emergency response coordinator under this section, the City Council will remain the governing body of the city and the emergency response coordinator shall remain subject to Council direction and control.

B. Notwithstanding any other provision of law, the city may take the following actions during an emergency:

1. Procure goods and services without compliance with normal procurement procedures.

2. Use any available city funds for emergency purposes.

3. Close or limit the use of streets and other public places.

4. Order and assist the evacuation of people to protect safety or health.

5. Turn off water, gas, or electricity.

6. Control, restrict, and/or regulate the sale of goods and services, including the imposition of price controls.

C. In the event of an emergency, the city will continue to provide government services to the extent reasonably practical under the circumstances. City employees are expected to report to work if possible and may be re-assigned to other than their normal job responsibilities in order to provide essential services.

1.70.030 Emergency Declaration

A. The city manager may declare a temporary emergency when faced with a sudden event that results in an emergency under Section 1.70.010. At the time of declaring a temporary emergency, the city manager shall schedule a meeting of the Council to be held as soon as possible. The temporary emergency declaration shall remain in effect only through the end of the Council meeting.

B. In the event that a quorum of the Council cannot meet because of an emergency, a majority of Council members who are able to participate in a meeting in person or electronically may declare an emergency. Any declaration under these circumstances shall be reconsidered by a quorum of the Council when a quorum can be assembled.

C. The City Council may by motion or resolution declare an emergency in an emergency, special, or regular Council meeting.

1.70.040 Limited Emergencies

A. The city may include an emergency clause in an ordinance to allow the ordinance to take effect immediately. An emergency clause in an ordinance does not have the effect of an emergency declaration under Section 1.70.020.

B. Some emergencies may be limited in effect. Examples of limited emergencies include a landslide that affects only one area or a water shortage that affects only water supply and usage. The emergency declaration for a limited emergency shall give the emergency response coordinator only the powers that are necessary to deal with the limited emergency.

(Chapter 1.70 adopted by Ordinance No. 1944 on January 7, 2008; effective February 6, 2008)

TITLE II
ADMINISTRATION

TITLE II ADMINISTRATION

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CHAPTER 2.05 BOARDS AND COMMISSIONS

2.05.001 Applicability and Authority

A. Applicability. Sections 2.05.001 through 2.05.003 apply to all city boards, commissions and committees, including temporary or ad hoc committees unless mandated otherwise by state statute or city ordinance. Provisions applicable to specific boards, commissions, or committees shall prevail over inconsistent provisions in these general provisions.

B. Unless explicitly authorized by statute, ordinance, or other formal action of the City Council, the authority of boards, committees, and commissions is limited to making recommendations to the City Council. No board, committee, or commission, as a whole, or any member or members individually or collectively, may bind the city, its officers, or agents to financial commitments or obligations. The decision-making authority of boards, committees, and commissions is limited to the authority expressly granted by state law or city ordinance.

2.05.002 Board, Committee, and Commission Appointments and Service

A. Any individual or group is encouraged to submit names for consideration for appointments to city boards, commissions, and committees to the city.

B. Appointments must comply with any ordinances, bylaws, Charter provisions, or state or federal laws concerning the board or commission.

C. In order to become more familiar with the applicants' qualifications, the Council may interview applicants for a vacancy.

D. Reappointments to a board, committee, or commission shall be considered in accordance with the guidelines listed in this section, together with the type of service the individual has already given to the board, committee, or commission and his/her stated willingness to continue. To avoid unfair burdens on some citizens, service of more than eight consecutive years on the same board, committee, or commission without an interval of one term is not encouraged, but may occur if mutually agreed.

E. Consideration should be given to non-city residents when the board, committee, or commission serves persons outside city boundaries.

F. No individual should be considered for appointment to a position on any board, committee, or commission where a conflict of interest is likely to interfere with the individual's participation. Board, committee, or commission members shall not participate in any proceeding or action in which any of the following has a direct or substantial financial interest: the spouse, brother, sister, child, parent, father-in-law, mother-in-law of the member; any business in which the member is serving or has served within the previous two years; or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential conflict of interest shall be disclosed at the meeting of the board or commission where the action is being taken.

G. Board, committee, or commission vacancies are filled by appointment of the Mayor with confirmation by the Council. Council confirmation shall be by approval of a motion. Appointments are made for terms not to exceed four years and will expire the last day of the calendar year if a replacement appointment has been made unless mandated otherwise by state statute. All board, commission, and committee members shall serve without compensation, but shall be reimbursed for expenses incurred. If no replacement is appointed to replace a member whose term is expiring, the member shall remain in office until a replacement is appointed. When the provisions governing membership or terms are amended, the term of existing members shall not be affected unless expressly stated in the ordinance.

H. To avoid imposition on certain citizens, persons are not expected to participate in more than one permanent commission, board, or committee at a time, although board, commission and committee members may serve as members of ad hoc or temporary committees.

I. Members of a board, committee, or commission serve at the pleasure of the Council and may be replaced at any time.

J. Vacancies shall be filled in the same manner as an initial

appointment, but the appointment shall be for the unexpired term.

2.05.003 Organization and Operation

A. Bylaws. Unless the Council determines that bylaws are not needed for a particular permanent board, committee, or commission, the Council shall adopt bylaws for permanent boards, committees, and commissions to govern their meetings process and the performance of their duties. The board, commission, or committee may propose, review, and make recommendations regarding their bylaws. No bylaw adoption or amendment shall be effective without Council approval. In the absence of bylaws, each committee shall elect a chair and vice-chair by motion annually at the first meeting in each calendar year.

B. Staff Support. The city will provide necessary staff support for boards, commissions and committees, including postage, meeting place, secretarial service, and new member orientation and training.

C. Meetings. All meetings shall be subject to the requirements of Oregon public meeting law. A majority of the voting members shall constitute a quorum for the conduct of business and the concurrence of a majority of those members present and voting shall be required to decide any matter. These meetings shall be an opportunity for public involvement in the discussion of issues relating to that particular board, committee, or commission.

D. Annual Reports and Minutes. Each board or commission shall report on its activities at least annually. The written minutes for each board or commission shall be submitted to Council for information.

E. State Law. Boards, commissions, and committees of the City are subject to state public meeting and public records statutes. Board, committee, and commission members appointed by the city are considered “public officials.” As such, they are expected to abide by state statutes governing conflicts of interest and other applicable provisions of state law.

F. Comments. Boards, committees, and commissions may

be asked to provide comments to other advisory bodies and staff when matters under consideration relate to their functional area of expertise.

G. <u>Establishment of Permanent Board, Commissions, and Committees</u>. Permanent boards, commissions, and committees shall be established by ordinance, except that boards, commissions, and committees may be established by other means if required or expressly authorized by state law.

2.05.004 Task Forces

The Council may establish task forces by resolution to address specific issues or to engage in specific tasks. The scope of the authority and responsibilities of the task force shall be established in the resolution creating the task force. By-laws are not required for task forces.

2.05.005 Planning Commission

A. The Newport Planning Commission is established, and shall have the authority and responsibility provided by this chapter, city ordinances, and state law.

B. The planning commission consists of seven members who are not officials or employees of the city. All voting members shall be residents of the city. The mayor, city manager, the city attorney, and city planning director shall be entitled to sit with the commission and take part in its discussions, but shall not have the right to vote. No more than two members may be engaged in the same occupation, profession, trade, or business.

C. Appointments shall be for a term of three years, commencing on January 1 of the first year and normally ending on December 31 of the third year of appointment. However a term scheduled to expire will not expire until a successor has been appointed and takes office. The successor shall serve the remainder of the three-year term when appointed.

D. The Mayor, with approval by the Council, shall fill vacancies resulting from death, resignation, or other cause by appointment for the unexpired term. The Mayor, with approval of the Council, may remove any member for cause, which may include misconduct or non-

performance of duty. Non-performance of duty includes two unexcused absences out of eight meetings.

E. The Commission shall elect a Chair and Vice-Chair to serve one-year terms. Election of the officers shall be held at the first meeting of the Commission in each calendar year, but failure to hold the election at the first meeting in a calendar year shall not invalidate any action by the Commission.

F. City planning staff shall perform administrative functions for the Planning Commission.

G. Four members of the Commission shall constitute a quorum. The Commission may act by a majority of those voting while a quorum is present. The Commission shall meet at least once a month. The Commission may adopt and amend rules and regulations to govern the conduct of its business, subject to Council approval.

2.05.010 Budget Committees

A. The city and the Urban Renewal Agency shall each have a budget committee formed in accordance with state law.

B. Budget committees shall have the rights, responsibilities, and authority provided by state law.

C. A city Budget Committee member may also serve on the Urban Renewal Budget Committee.

2.05.020 Retirement Trustee

A. The Retirement Trustee is responsible for investment of the retirement funds for the City of Newport Employee Retirement Plan, according to the trust document adopted by the Council. The Retirement Trustee has authority to make decisions relating to the investment of funds held in trust and to invest retirement funds.

B. The Retirement Trustee shall be comprised of five members. One member of the Retirement Trustee shall be a city employee in a position below department head.

C. The Retirement Trustee shall have all authority, rights, responsibilities, and authorities provided by the trust document or the retirement plan.

D. The Retirement Trustee may adopt investment strategies or similar policies to govern its investments.

E. The Retirement Trustee may recommend changes to the retirement plan or the trust document to the City Council.

F. The Retirement Trustee shall meet at least quarterly.

2.05.025 Airport Committee

A. The Airport Committee shall include five full members. The mayor, the city manager and the airport director shall serve as non-voting ex officio members of the Airport Committee, but are not required to attend all meetings. One member may be a non-resident. Only full members shall be counted for quorum purposes.

B. The Airport Committee shall have the authority and responsibility to:

   1. Recommend rules and regulations for the Newport Municipal Airport.

   2. Recommend policies governing the use of airport property.

   3. Review and report to the Council on matters referred to it by the Council.

   4. Make studies or reports relating to the Newport Municipal Airport.

   5. Promote the Newport Municipal Airport.

2.05.030 Library Board

A. The Library Board shall consist of five members. The Library Director shall serve ex officio and may participate in all discussions but shall have no vote.

B. The Library Board shall have the following duties and functions:

   1. Prepare policies on library operation and service, including general library operation; acquisition, use and disposition of library property; and coordination of library service with other local governments.

2. Make recommendations to the City Council regarding the appointment of the library director, the library budget, and library facilities.

2.05.035 Urban Renewal Advisory Committee

A. The Urban Renewal Advisory Committee shall consist of five members.

B. The Urban Renewal Advisory Committee shall advise the Council regarding major policy issues relating to urban renewal and administration of the urban renewal plans.

2.05.040 Parks and Recreation Committee

A. The Parks and Recreation Committee shall consist of five members and shall serve two-year terms. The parks director shall serve ex officio and shall act as secretary for the committee.

B. The Parks and Recreation Committee shall have the following rights, responsibilities, and authority:

1. To make recommendations to the Council concerning city parks and recreation facilities, including the authority to make studies as necessary to assist their recommendations. Recommendations may include recommendations relating to acquisition, development, use, operation, and disposition of parks and recreation facilities.

2. To make recommendations concerning playground recreational facilities.

3. To make recommendations concerning financial and budgetary matters relating to parks and recreation.

4. To recommend rules and regulations relating to parks and recreation.

2.05.045 Destination Newport Committee

A. The Destination Newport Committee shall have seven members serving one-year terms. Of the seven members, three shall be owners or managers of hotels or motels, and two shall be owners or operators of retail establishments.

B. The Destination Newport Committee shall advise the City Council regarding the preparation of the advertising budget funded by the city's room tax.

C. The Destination Newport Committee may make recommendations regarding the placement of advertising, the hiring of advertising consultants, and all other matters relating to advertising the city as a tourist destination.

2.05.050 Senior Citizen Advisory Committee

A. The Senior Citizen Advisory Committee shall consist of seven members who serve two-year terms.

B. The city manager shall designate a staff member to attend all Senior Citizen Advisory Committee meetings. The staff member may participate in discussions and shall act as secretary for the committee, but shall have no vote.

C. The Senior Citizen Advisory Committee shall have the following rights, responsibilities, and authority:

   1. To study and make recommendations to Council regarding the economics, physical condition, operation, maintenance, development, use, regulation, and expansion of the senior citizen center.

   2. To acquire and promote programs for seniors in the city.

2.05.055 Bicycle and Pedestrian Committee

A. The Bicycle and Pedestrian Committee shall consist of five members serving three-year terms.

B. The Bicycle and Pedestrian Committee shall make recommendations to Council regarding bicycles and pedestrian transportation in the city, and promote bicycle and pedestrian transportation.

(Chapter 2.05 adopted by Ordinance No. 1951 on March 3, 2008; effective April 2, 2008)

CHAPTER 2.10 POLICE RESERVE

2.10.005 Creation of Police Reserve

The Newport Police Reserve is created and shall be composed of a voluntary membership of not to exceed 10 reserve officers who shall be under the jurisdiction of and subject to duty assigned by the police chief. All training of and standards applicable to reserve officers shall be in accord with state Department of Public Safety Standards and Training standards.

2.10.010 Qualifications

A. Persons not less than 21 years of age may become reserve officers on approval of the chief of police, based on standards to be determined by the chief of police. Each member shall take the oath of office and serve at the pleasure of the chief of police.

B. No official of the city, whether appointed or elected, may be a reserve officer.

2.10.015 Functions and Responsibilities

A. Except when on duty as assigned by the chief of police, reserve officers shall perform no police functions other than those granted to all citizens. Reserve officers may be assigned police duties and shall report for duty as assigned by the chief of police. Reserve officers are subject to the regulations and policies of the Newport Police Department and to direction of officers of the police department.

B. Each member of the police reserve shall return all uniforms and city property to the city on termination of membership.

C. Reserve officers serve voluntarily and without compensation, unless the city is providing police services under a paid contract, in which case qualified reserve officers may be paid at the level of base patrol officers pay if other regular police officers are not available.

D. When serving on active duty, reserve officers have all powers and privileges of a regular police officer. Citizens’

responsibility to assist police officers includes the responsibility to assist reserve officers on active duty.

CHAPTER 2.15 CIVIL INFRACTIONS

2.15.005 Definitions

The following definitions apply to this chapter:

A. Code Enforcement Officer. All police officers, the community service officer, the building official, the planning director, the city engineer, the fire marshal, and all persons designated by those officials to serve as code enforcement officers.

B. Civil Penalty. The monetary payment imposed for violation of a city ordinance.

C. Infraction. An action or failure to act in violation of any provision of the city code, any city ordinance, or any order, permit, license, approval, or condition authorized by code or ordinance.

D. Responsible Party. The person responsible for curing or remedying an infraction. Responsible party includes:

   1. The person alleged to have committed or authorized the infraction.

   2. If an infraction involves a condition of or on real property, the property owner, any agent of the property owner, and any person occupying or having possession of the property.

E. Respondent. The person to whom a citation is issued.

2.15.010 Purpose

The purpose of this chapter is to establish a civil infraction procedure for enforcement of city ordinances. The city may use the civil infraction procedure for any infraction. The civil infraction procedure is not a criminal procedure. The civil infraction procedure is not exclusive, and the city may use any other procedure for enforcement authorized by law, including the city's nuisance procedure, any procedure established by state law, or enforcement through appropriate actions in circuit court. The civil infraction procedure may be used in conjunction with other enforcement actions or procedures.

2.15.015 No Mental State Required

A culpable mental state is not required to establish an infraction unless the mental state is part of the code provision, ordinance, or other requirement alleged to have been violated.

2.15.020 Pre-Citation Procedures

A. Reporting. All reports or complaints of infractions shall be referred to the appropriate code enforcement officer.

B. Review of Facts. The appropriate code enforcement officer shall investigate the facts and circumstances surrounding any infraction reported or otherwise made known to the code enforcement officer.

C. Prior Contact. Before a citation is issued, the code enforcement officer may contact a responsible party and give the responsible party a reasonable opportunity to cure or remedy the alleged infraction. Contact prior to issuance of a citation is solely within the discretion of the code enforcement officer. If prior contact is made, the following information shall be communicated to the responsible party:

   1. Description or identification of the activity constituting the alleged infraction and identification of the recipient as being the reputed responsible party for the infraction;

   2. A statement that the code enforcement officer has determined the activity to be an infraction;

   3. A statement of the action required to remedy or cure the infraction and the time and/or date by which the remedy must be completed;

   4. A statement advising that if the required remedy or cure is not completed within the time specified, a citation will be issued and that a civil penalty in the maximum amount provided for the particular infraction may be imposed.

2.15.025 Voluntary Compliance Agreement

The city and a responsible party may enter into a written

voluntary compliance agreement to attempt to resolve the alleged infraction. The fact that a person alleged to have committed a civil infraction enters into such an agreement shall not be considered an admission of having committed an infraction for any purpose. The city will not serve or file a citation while a voluntary compliance agreement is in effect. If the terms of the voluntary compliance agreement are satisfied, the city shall take no further action concerning the alleged infraction other than those steps necessary to terminate the matter. The failure to comply with any term of the voluntary compliance agreement constitutes a separate civil infraction. If the voluntary compliance agreement is not complied with, the code enforcement officer shall issue a citation for the infraction that is the subject of the voluntary compliance agreement. The maximum penalty for willfully failing to comply with the voluntary compliance agreement shall be double the maximum penalty on the underlying infraction. Nothing in this section precludes informal resolution without a written agreement.

2.15.030 Citation Issuance and Form

A. Issuance. A civil infraction citation may be issued:

1. Immediately upon discovery of an infraction; or

2. When a voluntary compliance agreement has expired without the infraction being cured or when the person signing the voluntary compliance agreement has violated the agreement.

B. Form of Citation. The city may use any form sufficient to inform the respondent of the nature of the alleged infraction and the options to respond to the citation. The citation should include:

1. A summons to appear, either personally in court or by submitting a written answer to the court prior to the scheduled court appearance date;

2. The name and location of the court, including the mailing address where written answers may be sent;

3. The name of the person cited;

4. The date, time, and place the infraction occurred, or, if the infraction is of a continuing nature, the date, time,

and place the infraction was observed;

5. The date on which the citation was issued;

6. A readily understandable statement of the nature of t he alleged infraction;

7. The civil penalty amount for the alleged infraction;

8. The date and time for the court appearance.

C. Certification. The citation shall contain a certification that the person signing the citation has reasonable grounds to believe and does believe that the person cited committed the civil infraction.

D. Filing. A copy of the citation shall be filed in the municipal court.

2.15.035 Service

Service on individuals may be made by any of the following means:

A. Service by Mail. Service may be made by mailing the citation by certified mail, return receipt requested, to the individual's last known mailing address. Service by mail shall be deemed to occur three days after mailing within the state, and seven days after mailing outside the state. No default shall be entered against a person served by mail without evidence of receipt or rejection of the certified mail by that person.

B. Service by Posting. If the alleged infraction relates to real property, the citation may be served by posting the citation at the main entry to an occupied residence or office on the property if the person to whom the citation is issued is not present. A true copy of the citation shall be mailed by certified mail, return receipt requested, restricted delivery to the responsible person at the mailing address of the property no later than the end of the business day following posting. For purpose of this section, Saturdays, Sundays, and federal or city holidays shall not be considered business days. If service is made in accordance with this subsection, service shall be not less than five days before the court appearance date contained in the summons. Service shall be completed

upon mailing.

C. <u>Other Methods of Service</u>. Service may be made by any means authorized by Oregon Rules of Civil Procedure (ORCP) 7, and service on entities, minors, and incapacitated persons shall be as provided in ORCP 7.

2.15.040 Filing of Citation

The code enforcement officer shall file the citation and a return of service showing service as authorized in Section 2.15.030 with the municipal court.

2.15.045 Response, Answer and Appearance

A. <u>Response Options</u>. The respondent shall respond to the citation either by appearing in court as specified in the citation or by submitting a written answer that must be received by the municipal court prior to the scheduled appearance. Answers and appearances may be through legal counsel. A respondent who submits a written answer received by the city prior to the scheduled appearance is not required to appear at the scheduled appearance. It is the respondent's responsibility to assure that any written answer is received by the court prior to the hearing date.

B. <u>Written Answer</u>. The respondent's answer may take three forms:

1. A written explanation, with payment of the amount stated in the citation. The statement shall constitute a waiver of hearing and consent to judgment. The written information may contain evidence that the violation has been corrected. The court shall review the written statement, the citation and any other evidence that may be available, including any written submission of the code enforcement officer. The court shall issue a judgment based on the record and shall notify the code enforcement officer and the responsible party of the decision. The court may refund some or all of the amount submitted.

2. An admission of the infraction, accompanied by payment of the amount stated in the citation. On receipt of an answer admitting the civil infraction, the court shall enter judgment in the amount stated in the citation. The city and the respondent may agree to a

payment schedule, either before or after submission of the answer.

3. A denial and a request for a hearing. Correction of the violation is not a defense.

C. Appearance. If the respondent does not file an answer by the scheduled appearance, the respondent must appear in court as scheduled. At the in-court appearance, the respondent may admit the infraction, not contest the infraction, or deny the infraction. If the respondent admits or does not contest the infraction, the respondent will be allowed to provide an explanation, including evidence that the violation has been cured, and request that the penalty be reduced. If the respondent denies the infraction, the matter will be scheduled for a hearing at least one week after the date of the appearance. The court will mail confirmation of the hearing date and time. Appearances may be rescheduled for good cause by agreement of the court and respondent prior to the date scheduled for the hearing. If the respondent does not deny the infraction, the municipal judge shall determine the amount of the penalty to be imposed and shall enter a judgment.

2.15.050 Hearing

A. If the respondent requests a hearing in an answer received by the court prior to the scheduled appearance, a hearing date will be set by the municipal court. The municipal court shall notify the respondent by mail of the date and time of the hearing.

B. The respondent may be represented by a lawyer at respondent's expense. Respondent or respondent's lawyer shall provide written notice that respondent will be represented.

C. The city attorney may appear at any hearing where the respondent is represented by a lawyer, and may assist the code enforcement officer in all cases.

D. Each party shall have the right to present evidence and witnesses, to cross-examine the other party's witnesses, and to submit rebuttal evidence.

E. If the respondent wishes to compel the attendance of witnesses, the respondent must submit a written request

to the court at least 10 days prior to the scheduled hearing. A deposit of $35.00 for each witness shall accompany the request. The deposit shall be refunded only if the court determines that the respondent did not commit an infraction. The code enforcement officer or the city attorney may also request that the court subpoena witnesses. Signed subpoenas shall be given to the party seeking the subpoena, who shall be responsible for serving the subpoena. If the court finds that respondent committed a civil infraction, the court shall order the responsible party to pay all witness fees in connection with the hearing.

F. Only evidence relevant to the infraction alleged in the citation will be considered or admitted.

2.15.055 Evidence At Hearings

A. Oral evidence shall be taken on oath or affirmation.

B. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a decision unless it would be admissible under the Oregon Rules of Evidence.

C. Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

D. Irrelevant and unduly repetitious evidence shall be excluded.

E. The city shall have the burden of proving the alleged infraction by a preponderance of the evidence.

F. The city shall not call the respondent as a witness, but if the respondent chooses to be a witness, the city may examine the respondent and shall not be limited to cross-examination.

2.15.060 Decision, Record, Appeal

A. The court shall determine whether the infraction alleged in the citation was committed and shall enter judgment accordingly, including the amount of any penalty imposed. A copy of the judgment shall be delivered to the respondent personally or by mail. The judgment shall

include findings of fact if requested by a party. The judgment may provide that payment be suspended if the violation is cured within a specified time.

B. The court shall maintain a record of its proceedings. An audio recording of the hearing accompanied by any written documents, correspondence, or physical evidence shall be sufficient to meet the requirement of this subsection.

C. The decision of the municipal court shall be final. Judicial review of the municipal court decision shall be by writ of review under ORS Chapter 34.

2.15.065 Enforcement

A. Failure to Appear or Answer. If a cited person fails to respond to a citation as required by this chapter, a default judgment shall be entered in the amount of the scheduled penalty.

B. Payment of Penalty and Fees. Any penalty or fee is to be paid no later than 10 days after entry of the judgment or such later time as authorized by the municipal judge or by agreement with the city.

2.15.070 Lien Filing and Docketing

A. Filing. A copy of a judgment imposing a penalty may be filed with the city recorder at any time while the judgment is enforceable and unpaid. The city recorder shall enter the amount of the judgment in the city lien docket.

B. Judgment as Lien. A judgment amount entered in the city lien docket shall be a lien for an initial period of 10 years upon all real property in the city owned by the person against whom judgment was entered.

C. Renewal of Lien. If a judgment is renewed by the municipal court, the lien created by Subsection B. is automatically extended ten years from the renewal date.

D. Recording Lien in County Records. The city recorder may take file the municipal court judgment and a declaration of lien with the county clerk of any county in the state where the person against whom the judgment was entered owns property.

E. **Licenses and Permits**. The city may deny or revoke any city license or permit held or applied for by a person who has not paid a judgment imposing a civil penalty.

2.15.075 Civil Penalty

The amount required to be paid as a civil penalty shall be established by the Council by ordinance or resolution. The Council may establish the maximum civil penalty by ordinance and may establish the amount to be paid on issuance of a citation by resolution, which may be less than the maximum civil penalty established by ordinance.

2.15.080 Severability

Invalidity of a section or part of a section of this chapter shall not affect the validity of the remaining sections or parts of sections.

CHAPTER 2.20 CITY POLICIES

2.20.010 Disposition of Personal Property

A. Except as provided in Subsection H, personal property taken into the custody of the city after seizure, abandonment or for any other reason shall be held by the police department at the expense and risk of the owner of the property.

B. Except when the property is forfeited or held as evidence, the owner or other person with right of possession may reclaim personal property held by the police department. The police department shall require satisfactory proof of ownership or right to possession and payment of any costs.

C. Prior to any disposition of found or abandoned property, the police department shall cause a notice in substantially the following form to be posted at three locations in the city and published in a newspaper of general circulation in the city:

The Newport Police Department has in its physical possession the unclaimed personal property described below. If you have any ownership interest in any of that unclaimed property, you must file a claim with the Newport Police Department within 30 days from the date of publication of this notice, or you will lose your interest in that property.

(Inventory of found and abandoned property)

D. If the property remains unclaimed 30 days after the publication of the notice, the police department, may use, sell, donate, transfer, destroy, or dispose of the unclaimed found or abandoned personal property. The police department will use its professional judgment in determining whether a person claiming ownership has provided sufficient proof of ownership.

E. The city may dispose of dangerous or perishable items immediately without notice in any manner determined by the city to be in the public interest. Any fireworks that are confiscated as being unauthorized for private use may be set off by duly licensed persons as part of a public

fireworks display.

F. Forfeited property may be destroyed, donated to charity, or appropriated by the police department at the discretion of the chief of police.

G. Property not subject to forfeiture held as evidence may be returned on presentation of satisfactory proof of ownership or right to possession after final disposition of the case, including any appeals, subject to approval of the district attorney.

H. Other procedures and standards may apply to specific types of property, including motor vehicles and signs. This section is not applicable if the city follows another procedure or standard authorized by state law or any other ordinance of the city.

2.20.020 Dishonored Checks

A. The city shall charge $25.00 to any person making any payment to the city by check or other instrument if the check or other instrument is not paid.

B. The amount charged under subsection A. is in addition to any other amounts recoverable by the city for non-payment and any other fees or charges imposed for non-payment or late payment, including any charges or costs and attorney fees authorized by state law for dishonored checks.

C. Any charge pursuant to this section shall be added to and become a part of the amount originally due to the city, and shall be secured by any lien and shall be subject to interest and penalties in the same manner as the original amount. Failure to pay the charge in addition to the original amount shall subject the obligor to the same charges, sanctions, or penalties as failure to pay the original amount.

(Chapter 2.05 – 2.20 was adopted by Ordinance 1928 on August 6, 2007; effective September 5, 2007.)

CHAPTER 2.25 REAL PROPERTY

2.25.010 Purpose and Application

This chapter provides procedures and standards for the acquisition and transfer of real property by the city.

2.25.020 Classification

Real property owned by the city is classified as follows:

A. Substandard Undeveloped Property. Lots or parcels without structures that are not of minimum buildable size for the zone in which they are located or that cannot be developed for other reasons;

B. Standard Undeveloped Property. Lots or parcels without structures that are of minimum or greater buildable size for the zone in which they are located and that can be developed;

C. Developed Property. Lots or parcels of any size with structures;

D. Special-Case Property. Any real property that, notwithstanding subsections A., B., and C. of this section, were acquired by the city subject to an agreement restricting the use, transfer or disposition of the property. At the time of a proposed sale of real property by the city, the city manager shall determine the classification of the property.

2.25.030 Sale of Substandard Undeveloped Property

A. A proposed sale of substandard undeveloped property may be authorized by the Council. Notice of the Council meeting to consider the sale of the property shall be mailed at least 10 days before the Council meeting to owners of real property within three hundred feet of the parcel and to any parties who have inquired about purchase within one year prior to the date of the Council meeting. The Council shall consider written comments and oral testimony and decide whether to offer the property for sale. The Council may direct the sale of the property only if it determines that the property is surplus to the city’s needs.

B. If the Council decides to sell the property, it shall direct the city manager to proceed with the sale, with directions as to how the sale should proceed. The directions should include the extent to which the sale should be publicized. The city manager, consistent with the direction of Council, shall determine the existence of interested prospective purchasers and negotiate for the sale of the property to achieve the best results for the city, taking into account the sale price and the anticipated use of the property.

C. After the details of the sale have been negotiated, the negotiated agreement for the sale of the property shall be submitted for Council action at a regularly scheduled Council meeting.

2.25.040 Disposal of Standard Undeveloped Property and Developed Property

A. Any proposed sale of standard undeveloped property or developed property shall be set for a hearing before the Council.

B. Notice of the hearing shall be published once in a newspaper of general circulation in the city at least five days prior to the hearing and shall describe the property proposed for sale. Notice shall also be mailed to property owners within three hundred feet of the subject property.

C. Public testimony shall be solicited at the hearing to determine if a sale of the property or any portion of it is in the public interest.

D. After the hearing, the Council shall decide whether to offer the property for sale and shall establish minimum acceptable terms. The Council may decide to offer the property for sale only if it determines that the property is surplus to the city’s needs.

E. Prior to the sale of real property under this section, an appraisal of the property shall be conducted. The appraisal may be ordered prior to or after the hearing. The appraisal may be made available to the public at the hearing if it has been prepared by that time.

F. If an offer to sell is authorized by the Council, a notice soliciting sealed bids shall be published at least once in a newspaper of general circulation in the city at least two

weeks prior to the bid deadline date. The notice shall describe the property to be sold, the minimum acceptable terms of sale, the person designated to receive bids, the last date bids will be received, and the date, time and place that bids will be opened.

G. If one or more bids are received at or above the minimum acceptable terms, the highest bid shall be accepted and the city manager or designee shall complete the sale.

H. If no acceptable bids are received, the Council may:

   1. Accept the highest bid among those received;

   2. Direct staff to hold another sale, with the same or amended minimum terms;

   3. Direct the property to be listed for six months with a local real estate broker on a multiple listing basis. Brokers shall be selected in accordance with the criteria found at Section 2.25.050. A listing may be renewed for one additional six-month period.

   4. Decide to keep the property.

2.25.050 Broker selection

The selection of a real estate broker shall be in accordance with the following procedures:

A. The city shall publish notice in a newspaper of general circulation inviting proposals for the sale of the real property. The notice shall be published at least one week prior to the date on which proposals are due.

B. The broker's proposal shall be in writing and it shall address the selection criteria set forth in subsection C. of this section.

C. The following factors shall be considered in the selection of a broker:

   1. The broker's record in selling the type of real property being offered by the city for sale and the broker's familiarity with Newport market values;

   2. The broker's proposed marketing plan and timelines,

including consideration of signs, advertising, direct mail and/or other methods;

3. The amount of the broker's commission; and

4. Other factors which were stated in the notice of the invitation to submit a proposal.

2.25.060 Acquisition of Real Property

The city manager may approve the acquisition by the city of an interest in real property if that interest is valued at less than $25,000.00 or if the property is valued at more than $25,000.00 but is donated to the city. All other acquisitions of an interest in real property shall be approved by the City Council. An appraisal shall be required for all property acquired by the city for more than $25,000.00. Dedications of property for rights-of-way shall not be considered acquisitions of property by the city for purposes of this section and dedications of property for rights-of-way may be accepted by the city manager, community development director, or public works director.

2.25.070 Transfer of an Interest other than Fee Title

The transfer of an interest in real property by the city is not a sale of surplus real property if the city retains title to the property. The city manager may transfer an easement or other interest in real property less than fee title if the value of the interest transferred is less than $25,000.00 and the city manager determines that the transfer is not contrary to the public interest. If the value of the interest transferred exceeds $25,000.00, the city shall follow the procedure for the sale of substandard undeveloped property.

2.25.080 Sale of Previously Leased Property

The city may sell real property pursuant to a right of first refusal included in a lease directly to the lessee if the lease period is 10 years or more and the lessee has invested at least $1 million in improvements to the property, and the lease was approved by the Council. Any sale under this section shall be according to terms included in the lease.

2.25.090 Transfer to another Governmental Entity

The city may transfer real property of any type to another

governmental entity or to a non-profit entity, with or without consideration, for so long as the property is used for public purposes by the entity to which it is transferred. The agreement shall provide for return of the property to the city if the property is no longer used by the transferee for public purposes.

2.25.100 Special Case Property

The city shall comply with all agreements and restrictions applicable to special case property. The city may transfer special case property following any of the applicable procedures provided by this chapter, subject to the restrictions imposed by deed or agreement. If the deed or agreement provides a procedure for transfer by the city, the city may transfer the property as provided by the deed or agreement.

2.25.110 Exchange of Real Property

A. The city may trade or exchange real property with other governmental entities or with private parties.

B. The city shall exchange real property with private entities only if the city receives at least equivalent value for the property it transfers. Payments may be made to compensate for any imbalance in the value of the property exchanged.

C. For exchanges with private entities, the city shall require or obtain an appraisal if the value of the property transferred by the city or received by the city exceeds $25,000.00.

D. In determining the relative value of the properties exchanged, in addition to the factors normally considered in determining the value of property, the city may consider the following factors:

   1. Whether the property is adjacent to or otherwise enhances the value of other property the city owns.

   2. The suitability of the property for city use.

   3. Whether the transfer of the property being transferred by the city to a private party will result in a benefit to the city or community. Potential benefits

may include allowing more cohesive development of an area, providing needed housing or employment opportunities, or increasing the city's tax base.

(Chapter 2.25 adopted by Ordinance No. 1949 on February 19, 2008; effective March 20, 2008)

CHAPTER 2.30 PUBLIC CONTRACTS

2.30.010 Local Contract Review Board

A. The City Council shall act as the City of Newport local contract review board and shall have all powers authorized by state law and the city charter.

B. The board may adopt rules relating to public contracts and the public contracting process, including exemptions from formal competitive bidding or formal competitive proposal requirements.

2.30.020 Definitions

The following definitions apply in this chapter.

A. Board means the City of Newport local contract review board.

B. Public Contract means any purchase, lease, or sale by the city of personal property, public improvements or services, but does not include collective bargaining agreements or other employment agreements between the city and its employees.

2.30.030 Competitive Process

The purposes of state public contracting law and this chapter are:

A. To obtain public improvements, goods and services of the best quality at the lowest cost to the city.

B. To avoid favoritism in the award of contracts.

C. To use a process appropriate to the type and amount of the contract.

D. To encourage competitiveness among contractors.

E. To use a fair process for the sale of surplus private property.

2.30.040 Organization of the Board

A. The mayor shall act as the chair of the board. The president of the Council shall act as the vice-chair.

B. The chair or vice-chair shall preside over the meetings, and in the absence or ineligibility of both, the members present shall elect one of the members to serve as chairperson during the absence or ineligibility.

C. Meetings of the board may be scheduled at any time, including before, after or during a regularly scheduled City Council meeting and may be noticed as part of the notice of the Council meeting.

D. The meeting agenda may be combined with the Council agenda.

E. Quorum requirements for the board shall be the same as those of the City Council.

2.30.050 Authority to Obligate the City

The board shall approve all public contracts except as otherwise provided in Section 2.30.060.

2.30.060 Delegation of Authority

A. The city manager may enter into a public contract that does not exceed $50,000.00 without specific Council approval, provided the obligation is part of an adopted budget, the rules of the board are satisfied by written findings and a record is made of the transaction that shows compliance with the rules. The city manager shall advise the Council of all contracts in excess of $5,000.00. This delegation of authority is subject to the limitations of Section 2.30.070

B. The board may by regulation delegate authority to the city manager and others relating to the disposal of surplus property.

(Chapter 2.30.060 adopted by Ordinance No. 1980 on May 18, 2009; effective June 17, 2009)

2.30.070 Limitation on Expenditures

The delegated authority to obligate the city shall be subject to

the following limitations when making a purchase:

A. The expenditure shall be for a single complete item or contract; and

B. The item or contract shall not be a component of a project except in the case of a project that involves a personal services contract and a public contract. In this situation, the personal services contract portion shall be considered a single complete project and the public contract portion shall be considered a single complete project.

2.30.080 Purchasing from City Employees

A. The purchase of any supplies, materials, equipment, labor or services, including personal, professional, technical and expert services from any city employee, or any business with which a city employee is associated shall be subject to prior written approval by the city manager and approval shall be based upon findings that:

    1. The purchase will be at the least cost to the city;

    2. The purchase will result in the most efficient method to accomplish the city's purpose;

    3. The purchase could not lead to any alleged violations of the personnel rules;

    4. The approval of the purchase could not lead to an adverse employer-employee relationship should the contract be unsatisfactorily performed; and

    5. All rules adopted by the board have been satisfied.

B. For purposes of this section "any business with which a city employee is associated" means any business of which the employee is a director, officer, owner or employee, or any business association in which the employee owns or has owned more than ten percent of the business within the preceding calendar year.

(Chapter 2.30 adopted by Ordinance No. 1949 on February 19, 2008; effective March 20, 2008)

TITLE III
REVENUE AND TAXATION

TITLE III REVENUE AND FINANCE

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3.05.020 Tax Imposed
3.05.030 Collection of Tax by Operator
3.05.040 Operator Record Keeping and Expenses
3.05.050 Exemptions
3.05.060 Registration of Operator
3.05.070 Remittance and Returns
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CHAPTER 3.10 MOTOR VEHICLE FUEL TAX

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CHAPTER 3.05 ROOM TAX

3.05.010 Definitions

The following definitions apply to this chapter.

A. Hotel means any structure or any portion of any structure that is occupied or intended or designed for occupancy for thirty days or less for dwelling, lodging, or sleeping purposes, and includes any hotel, motel, inn, condominium, tourist home or house, studio hotel, bachelor hotel, lodging house, rooming house, apartment house, public or private dormitory, fraternity, sorority, public or private club. "Hotel" also means space in mobile home or recreational vehicle parks, or similar structure or space occupied for less than thirty days.

B. Monthly Rental Plan means any rental agreement for a period of one month or greater, including month-to-month tenancies.

C. Occupant means any individual who has the right to use all or part of a room in a hotel or a space in a mobile home or residential vehicle park for lodging or sleeping purposes for a period of thirty consecutive calendar days or less, counting portions of calendar days as full days, but not including the check-out day if not charged for that day. Any individual occupying space in a hotel shall be deemed to be an occupant until thirty days has expired unless there is an agreement in writing providing for a longer period of occupancy, or the occupant has paid for more than 30 consecutive days. A person who pays for lodging on a monthly basis is not an occupant regardless of the number of days in the month.

D. Operator includes the owner and any manager of a hotel. Compliance by either the principal or the manager shall be considered to be compliance by both.

E. Person means any individual, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, governmental entity or agency or any other group or combination acting as a unit.

F. Rent means the consideration charged for the occupancy of space in a hotel, valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction, but shall not include charges to a condominium unit owner which are solely for cleaning or maintenance of such unit or personal use or occupancy by such owner so long as the charges are made in connection therewith for space occupancy. Rent does not include any charges for additional services, goods or commodities.

G. Rent Package Plan means the consideration charged for both food and rent for lodging where a single combined charge is made for both food and lodging, or where food and lodging are offered as a package. The entire amount charged for the "rent package plan" shall be considered rent unless the lodging is also offered independently of any food at a lower price, in which case the rent shall be the charge which would be made for the lodging if purchased separately from any food.

H. Tax Administrator means the city manager or designee

3.05.020 Tax Imposed

Each occupant shall pay a tax in the amount of nine and one half percent of the rent charged by the operator. The occupant shall pay the tax to the operator of the hotel at the time the rent is paid. The operator shall maintain records of all tax payments by occupants as soon as they are made. If rent is paid in installments, a proportionate share of the tax shall be paid by the occupant to the operator with each installment.

3.05.030 Collection of Tax by Operator

A. Every operator shall collect the room tax from all occupants at the time of payment unless an exemption applies. If payment is by credit card, payment is made at the time the occupant provides credit card information to the operator, not when the operator ultimately receives credit.

B. Tax amounts shall be rounded down to the nearest cent.

C. In credit card and similar transactions, the amount of rent shall include only the amount ultimately paid to the operator, excluding any credit charge transaction charges.

3.05.040 Operator Record Keeping and Expenses

A. The operator shall maintain records showing the amount of tax separately from rent charged, and any receipt shall show the tax separately. No operator of a hotel shall advertise that the tax or any part of the tax will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, when added, any part will be refunded, except in the manner provided by this ordinance.

B. Operators may withhold five percent of room tax collected to cover the operator's collection and remittance expenses.

3.05.050 Exemptions

No tax imposed under this ordinance shall be imposed upon:

A. Any person who occupies the same room for more than thirty successive calendar days. Any person who has paid a room tax and occupies a room for more than 30 successive days may obtain a refund under Section 3.05.130.

B. Any occupant whose rent is less than $2.00 per day.

C. Any occupancy of a room in a hospital, medical clinic, convalescent home or home for the aged.

D. Occupancy of any public institution owned and operated by a governmental body in its governmental capacity.

E. The United States of America or any federal agency or body, to the extent exempt under the United States Constitution. This exemption applies only if the exempt agency pays the operator directly for the room or space.

F. A person occupying a room on a monthly rental plan.

(Chapter 3.05.050 amended by Ordinance No. 2006; adopted on July 19, 2010; and effective on August 18, 2010.)

3.05.060 Registration of Operator

A. Every person engaging or about to engage in business as an operator of a hotel shall provide a completed registration form

to the tax administrator within fifteen days after commencing business. The registration form shall require the operator to provide the name of the business, the hotel name, if different, the location of the hotel and any separate business address, and other information as the tax administrator may require. The registration shall be signed by the operator. The tax administrator shall, within ten days after registration issue without charge certificates of authority to collect the room tax for each hotel operated by the registrant. Certificates shall be non-assignable and non-transferable and shall be surrendered immediately to the tax administrator upon the cessation of business at the location named or upon its sale or transfer. Each certificate shall be prominently displayed at the business location and include:

1. The name of the operator;

2. The address of the hotel;

3. The date upon which the certificate was issued;

4. The following language: “This Room Tax Registration Certificate signified that the person named on the face hereof has fulfilled the requirements of the Room Tax Ordinance of the City of Newport by registration with the tax administrator for the purpose of collecting from occupants the lodging tax imposed by said city and remitting said tax to the tax administrator. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner, or to operate a hotel without strictly complying with all local applicable laws, including but not limited to those requiring a permit from any board, commission, department, or office of the City of Newport. This certificate does not constitute a permit.”

A. The obligation to collect the tax is imposed once an operator rents a room, and not when the registration form is filed or the certificate issued.

B. Owners and managers of hotels are exempt from the registration requirement if they offer occupancy only by monthly rental plan and file an affidavit with the tax administrator including:

    1. The name of the operator.

2. The name and address of the hotel.

3. The name and address of the owner of the hotel, and if not an individual, the nature of the entity.

4. The facts upon which the operator relies for exemption.

5. That the operator will collect and remit the room tax and comply with reporting requirements if and when any portion of the hotel is occupied or made available for occupancy other than a Monthly Rental Plan

3.05.070 Remittance and Returns

A. All taxes, after deduction of the 5% collection and remittance credit, collected by any operator shall be remitted to the tax administrator monthly. Remittance is due within 15 days of the end of the monthly reporting period and is delinquent if remittance is not received within 30 days of the end of the monthly reporting period. The tax administrator may establish monthly reporting periods other than calendar months, but must advise each operator of the reporting periods, due dates, and delinquency dates for the operator.

B. A return for the preceding month’s tax collections shall be filed with the tax administrator on or before the due date in a form prescribed by the tax collector. If the return is mailed, the postmark shall be considered the date of delivery.

For good cause, the tax administrator may extend the time for making any return or payment of tax by up to one month. No further extension shall be granted, except by the Room Tax Committee. Any operator to whom an extension is granted shall pay interest at the rate of one-half of one percent per month or portion of a month on the amount of tax due. If a return is not filed, and the tax and interest due is not paid by the end of the extension granted, then the interest shall become a part of the tax for computation of penalties.

3.05.080 Late Charges and Interest

A. Original delinquency. Any operator who has not been granted an extension of time for remittance of tax due and

who fails to remit any tax imposed by this ordinance prior to delinquency shall pay ten percent of the amount of the tax due in addition to the amount of the tax.

B. Continued delinquency. Any operator who has not been granted an extension of time for remittance of tax due, and who failed to pay any delinquent remittance on or before a period of thirty days following the date on which the remittance first became delinquent shall pay an additional fifteen percent of the amount of the tax due plus the amount of the tax and the ten percent penalty first imposed.

C. Fraud. If the tax administrator determines that the nonpayment of any remittance due under this ordinance is due to fraud or intent to evade payment of the tax, an additional charge of twenty-five percent of the amount of the tax shall be imposed in addition to the penalties stated in paragraphs (a) and (b) of this section.

D. Interest. In addition to the other charges imposed by this section, any operator who fails to remit any tax imposed by this ordinance shall pay interest at the rate of one percent per month or fraction thereof , on the amount of the tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

E. Additional amounts with tax. Every additional amount and interest imposed by this section shall be merged with and become a part of the tax payable

F. Petition for waiver. An operator who has paid all tax, additional charges and interest may petition the tax administrator for waiver and refund all or part of the additional charges and the tax administrator may, if a good and sufficient reason is shown, waive and direct a refund of all or part of the additional charges.

3.05.090 Deficiency Determinations, Evasion, Operator Delay

A. Deficiency determinations. The tax administrator may review tax returns and adjust the amount payable based on the information in the return, on information obtained during a review or audit of records, or on the basis of other evidence. In the event of a deficiency, the tax administrator shall provide notice of the deficiency to the

operator, who shall pay any deficiencies within 15 days of the deficiency notice. Notice may be by personal delivery or certified or registered mail.

1. In reviewing and adjusting tax returns, the tax administrator shall offset any known overpayments against any underpayments.

2. Except in the case of fraud or intent to evade the room tax, notice of deficiency determinations shall be issued within three years of the period for which the deficiency determination is made.

B. Fraud, refusal to collect, evasion. If any operator fails to collect, report or remit the room tax as required, submits a fraudulent return, or otherwise willfully violates or attempts to violate this chapter, the tax administrator shall estimate the tax due, and assess the tax, interest and penalties provided for by this chapter ordinance against the operator and provide notice to the operator of the assessment. The determination and notice shall be made and mailed within three years of the discovery by the tax administrator of the violation. The determination is due and payable upon receipt of notice and shall become final twenty days after the date notice was delivered if no petition for redetermination is filed.

3.05.100 Redeterminations

A. Any person affected by a determination under Section 20.09 may petition for a redetermination within the time required in Section 20.09.

B. If a petition for redetermination is filed within the allowable period, the tax administrator shall reconsider the determination, and grant an oral hearing, if requested. The petitioner shall be allowed at least 20 days to prepare for the hearing.

C. After considering the petition and all available information, the tax administrator shall issue a redetermination decision and serve notice of the decision on the petitioner.

D. The decision of the tax administrator on a petition for redetermination becomes final twenty days after service of notice, unless the petitioner files an appeal within that time.

E. No petition for redetermination shall be effective for any purpose unless the operator has first paid the amounts set forth in the tax administrator's determination, and no appeal may be filed unless accompanied by any additional payment that may be required by the decision on redetermination.

3.05.110 Security for Collection of Tax

The tax administrator may require an operator to deposit security in the form of cash, bond or other security acceptable to the tax administrator. The amount of the security shall be fixed by the tax administrator but shall not be greater than twice the operator's estimated average monthly liability for the period, or $5,000.00, whichever is less. The amount of security may be increased or decreased by the tax administrator so long at the minimum security remains in place. The operator may appeal any decision of the tax administrator requiring security under Section 3.05.170(b). At any time within three years after any tax or any amount of tax required to be collected becomes due and payable or at any time within three years after any determination becomes final, the tax administrator may bring any action in the courts of this state, or any other state, or of the United States in the name of the city to collect the any tax, penalties, or interest owing.

3.05.115 Secured Interest in Personal Property

As a privilege for conducting a business providing lodging within the City of Newport and to secure payment of the tax collected by the operator to the City of Newport, the operator, by act of filing a registration to engage in business as an operator of a hotel in the City of Newport irrevocably grants to the City of Newport a security interest in all tangible personal property of the operator, which security interest shall be effective at the time when any tax, penalty or interest become delinquent. The city may foreclosure its security interest as provided by ORS Chapter 79. By filing of a registration to conduct a business engaged as a hotel in the City of Newport, the operator grants a special power of attorney-in-fact to the city manager for purposes of executing a financing statement to give evidence of the granted security interest at the time of delinquency and authorizes the city manager to execute the UCC financing statement on behalf of the debtor, listing as collateral all tangible personal property of the operator and to file the financing statement with the Oregon

Secretary of State and with the Lincoln County Clerk, if appropriate.

The tax administrator shall give notice of the delinquency to the operator . The notice shall include the effective date of the security interest against all tangible personal property of the operator, and the date of recordation of the UCC financing statement if filed, or if not, the city's intent to file a UCC financing statement.

3.05.130 Refunds

A. Refunds by the City to the Operator. If any overpayment of tax, penalty or interest is made, the operator may file a claim in writing on the city claim form, stating the facts relating to the claim within one year from the date of payment. If the claim is approved by the tax administrator, the excess amount collected or paid shall be either refunded or credited on any amount then due and payable from the operator.

B. Refunds by City to Occupant. An occupant may file a claim for refund by filing a claim on the city claim form within one year of payment providing the facts relating to the claim for refund. If the tax administrator determines that the tax was collected and remitted to the city and the occupant was not required to pay the tax or overpaid, the city shall issue a refund.

C. Refunds by operator to tenant. If an occupant has paid tax to an operator, but then stays a total or more than 30 consecutive days, the operator shall refund to the occupant any tax collected for any portion of the continuous stay. The operator shall account for the collection and refund to the tax administrator. If the operator has remitted the tax prior to the refund or credit to the tenant, the operator shall be entitled to a corresponding refund or offset if the claim for refund is filed within one year from the date of collection.

3.05.140 Rules, Regulations and Forms

The tax administrator may promulgate rules and regulations and adopt forms as the tax administrator determines appropriate for administration and enforcement of this chapter.

3.05.150 Administration

A. **Disposition and use of room tax funds**.

1. At least 46% of the room tax revenue shall be used for tourism promotion and tourism related facilities. The city may accumulate funds dedicated to tourism promotion and tourism related facilities and such funds will be considered to be used for tourism promotion and tourism related facilities. The City Council shall have the authority to determine which facilities are tourism related. The City Council may determine that some facilities are in part tourism related facilities, and funds reserved for tourism related facilities may be used to cover an equivalent proportion of the cost of such facilities. *(Chapter 3.05.150(A.)(1.) was amended by Ordinance No. 1971 on January 21, 2009; effective February 21, 2009.)*

2. The finance director shall account for the room tax revenues and expenditures and may establish funds and sub-funds in the budget as needed to administer the provisions of this chapter and the allocation of funds provided in this section.

B. **Records required from operators**. Every operator shall keep records to account for all proceeds from room rentals and collection of room tax for at least three years and one half years.

C. **Examination of records; investigations**. The tax administrator or designee may examine the records during normal business hours and may obtain copies of the records to audit the returns.

D. **Confidential character of information obtained; disclosure unlawful**. The tax administrator and all designees shall maintain the confidentiality of information provided by operators. Nothing in this sub-section shall be construed to prevent:

The disclosure to, or the examination of records and equipment by another City of Newport official, employee or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this chapter or collecting city business license fees.

Disclosure of information to the operator and the operator's agents.

The disclosure of the names and addresses of any persons to whom Room Tax Registration Certificates have been issued.

The disclosure of general statistics regarding taxes collected or business done in the city.

3.05.170 Appeal to City Council

Any person aggrieved by any decision or action of the tax administrator may appeal to the City Council by filing a written appeal with the tax administrator within twenty days of the serving or mailing of the tax notice or decision of the tax administrator. The tax administrator shall fix a time and place for the hearing the appellant twenty days written notice of the time and place of hearing.

3.05.180 Severability

If any section, subsection paragraph, sentence, clause or phrase of this ordinance, or any part thereof, is for any reason held to be unconstitutional or otherwise invalid, the remaining portions of this ordinance shall remain valid and enforceable. The Council would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or otherwise invalid.

3.05.190 Violations

It is unlawful for any person required to register to fail or refuse to register, or to furnish any return required to be made, or fail or refuse to furnish a supplemental return or other data required by the tax administrator or to render a false or fraudulent re turn. No person required to make, render, sign or verify any report shall make any false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this ordinance.

3.05.200 Penalty

A. A violation of any provision of this chapter is a civil infraction, with a maximum civil penalty of $500.00. If a person commits a further violation within 24 months of a

judgment that the person has violated this chapter, the maximum civil penalty shall be $1000.00. The penalty is in addition to all other remedies, including but not limited to late charges and the requirement to pay interest on late payments.

B. Each day during which a violation shall continue shall constitute a separate infraction. If more than one provision of this chapter is violated, each violation of each separate provision shall constitute a separate infraction.

(Chapter 3.05 was adopted by Ordinance No. 1916 on May 21, 2007; effective on June 15, 2007)

CHAPTER 3.10 MOTOR VEHICLE FUEL TAX

3.10.010 Definitions

The following definitions apply to this chapter.

A. City. The City of Newport, Oregon.

B. Dealer. Any person who:

1. Imports or causes to be imported motor vehicle fuel for sale, use or distribution in the city, but "dealer" does not include any person who imports into the city motor vehicle fuel in quantities of 500 gallons or less purchased from a supplier who is licensed as a dealer hereunder if that dealer assumes liability for the payment of the applicable license tax to the city; or

2. Produces, refines, manufactures or compounds motor vehicle fuels in the city for use, distribution or sale in the city; or

3. Acquires in the city for sale, use or distribution in the city motor vehicle fuels with respect to which there has been no license tax previously incurred.

C. Distribution. In addition to its ordinary meaning, the delivery of motor vehicle fuel by a dealer to any service station or into any tank, storage facility or series of tanks or storage facilities connected by pipelines, from which motor vehicle fuel is withdrawn directly for sale or for delivery into the fuel tanks of motor vehicles whether or not the service station, tank or storage facility is owned, operated or controlled by the dealer.

D. Highway. Every way, thoroughfare and place of whatever nature, open for use of the public for the purpose of vehicular travel.

E. Motor Vehicle. All vehicles, engines or machines, movable or immovable, operated or propelled by the use of motor vehicle fuel that operates on highways, roadways and streets.

F. Motor Vehicle Fuel. Includes gasoline, diesel, mogas, methanol and any other flammable or combustible gas or liquid, by whatever name such gasoline, diesel, mogas,

methanol, gas or liquid is known or sold, usable as fuel for the operation of motor vehicles, except gas, diesel, mogas, methanol or liquid, the chief use of which, as determined by the tax administrator, is for purposes other than the propulsion of motor vehicles upon the highways roadways and streets.

G. Person. Includes every natural person, association, firm, partnership, corporation, joint venture or other business entity.

H. Service Station. Any place operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.

I. Tax Administrator. The city manager, the city manager's designee, or any person or entity with whom the city manager contracts to perform those duties.

J. Weight Receipt. A receipt issued by the Oregon Department of Transportation, stating the combined weight of each self-propelled or motor-driven vehicle.

3.10.020 Tax Imposed

The following applies to taxes imposed.

A. A business license tax is hereby imposed on every dealer. The tax imposed shall be paid monthly to the tax administrator. The tax administrator is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection and administration of the business license tax, including all powers specified in ORS 319.010 to 319.430.

3.10.030 Amount and Payment

In addition to any fees or taxes otherwise provided for by law, every dealer engaging in the city in the sale, use or distribution of motor vehicle fuel, shall:

A. Not later than the 25th day of each calendar month, render a statement to the tax administrator on forms prescribed, prepared and furnished by the tax administrator of all motor vehicle fuel sold, used or distributed by him/her in the city as well as all such fuel sold, used or distributed in the city by a purchaser thereof

upon which sale, use or distribution the dealer has assumed liability for the applicable license tax during the preceding calendar month.

B. Pay a license tax computed on the basis of:

   1. $.01 (one cent) per gallon of such motor vehicle fuel so sold, used or distributed as shown by such statement in the manner and within the time provided in this code, plus

   2. Beginning June 1st and ending October 31st of each year, an additional $.02 (two cents) per gallon of such motor vehicle fuel so sold, used or distributed as shown by such statement in the manner and within the time provided in this code.

C. On or before May 1st of each year, the license tax computed pursuant to 3.10.030 (B) (1) or 3.10.030 (B) (2) may be increased or decreased after a public hearing and a vote of approval by the City Council, but in no case shall any increase or decrease to 3.10.030 (B) (1) or 3.10.030 (B) (2) exceed $.02 (two cents) per gallon per year.

3.10.040 License Requirements

No dealer shall sell, use or distribute any motor vehicle fuel until he/she has secured a dealer's business license as required herein.

3.10.050 License Applications and Issuance

A. Every person, before becoming a dealer in motor vehicle fuel in this city, shall make application to the tax administrator for a license authorizing such person to engage in business as a dealer.

B. Applications for the business license shall be made on forms prescribed, prepared and furnished by the tax administrator.

C. Applications shall be accompanied by a duly acknowledged certificate containing:

   1. The business name under which the applicant transacts business.

2. The address of applicant's principal place of business and location of distributing stations in and within three miles of the city.

3. The name and address of the managing agent, the names and addresses of the several persons constituting the firm or partnership or, if a corporation, the name under which the corporation is authorized to transact business and the names and addresses of its principal officers and registered agent, as well as primary transport carrier.

D. If an application for a dealer for a business license is complete and accepted for filing, the tax administrator shall issue to the dealer a license in such form as the tax administrator may prescribe to transact business in the city. A license issued hereunder is not assignable, and is valid only for the dealer in whose name it is issued.

E. The tax administrator shall retain all completed applications with an alphabetical index thereof, together with a record of all licensed dealers.

3.10.060 Failure to Secure License

A. If a dealer sells, distributes or uses any motor vehicle fuel without first filing the certificate and obtaining the license required by Section 3.10.050 of this ordinance, the license tax on all motor vehicle fuel sold, distributed or used by that dealer shall be immediately due and payable.

B. The tax administrator shall proceed forthwith to determine, from as many available sources as the tax administrator determines reasonable, the amount of tax due, shall assess the dealer for the tax in the amount found due, together with a penalty of 100 percent of the tax, and shall make its certificate of such assessment and penalty. In any suit or proceeding to collect the tax or penalty or both, the certificate shall be prima facie evidence that the dealer therein named is indebted to the city in the amount of the tax and penalty stated.

C. Any tax or penalty assessed pursuant to this section may be collected in the manner prescribed in this ordinance with reference to delinquency in payment of the fee or by an action at law.

D. In the event any suit or action is instituted to enforce this section, if the city is the prevailing party, the city shall be entitled to recover from the person sued reasonable attorney's fees at trial or upon appeal of such suit or action, in addition to all other sums provided by law.

3.10.070 Revocation of License

The city or its authorized agent shall revoke the license of any dealer refusing or neglecting to comply with any provision of this ordinance. The city or its authorized agent shall mail by certified mail addressed to such dealer or at his last known address appearing on the files, a notice of intention to cancel. The notice shall give the reason for the cancellation. The cancellation shall become effective without further notice if within 10 days from the mailing of the notice the dealer or fuel-handler has not made good its default or delinquency.

3.10.080 Cancellation of License

A. The tax administrator may, upon written request of a dealer, cancel a license issued to that dealer. The tax administrator shall, upon approving the dealer's request for cancellation, set a date not later than 30 days after receipt of the written request, after which the license shall no longer be effective.

B. The tax administrator may, after 30 days' notice has been mailed to the last known address of the dealer, cancel the license of dealer upon finding that the dealer is no longer engaged in the business of a dealer.

3.10.090 Remedies Cumulative

The remedies provided in this ordinance are cumulative. No action taken pursuant to those sections shall relieve any person from the penalty provisions of this code.

3.10.100 Payment of Tax and Delinquency

A. The business license tax imposed by Sections 3.10.020 to 3.10.050 of this chapter shall be paid to the tax administrator on or before the 25th day of each month.

B. Except as provided in subsections (C) and (E) of this section, if payment of the license tax is not paid as

required by subsection (A) of this section, a penalty of 1 percent of such license tax shall be assessed and be immediately due and payable.

C. Except as provided in subsection (E) of this section, if the payment of the tax and penalty, if any, is not made on or before the 1st day of the next month following that month in which payment is due, a further penalty of 10 percent of the tax shall be assessed. Said penalty shall be in addition to the penalty provided for in subsection (B) of this section and shall be immediately due and payable.

D. If the license tax imposed by Sections 3.10.020 to 3.10.050 of this code is not paid as required by subsection (A) of this section, interest shall be charged at the rate of .0329 percent per day until the tax, interest and penalties have been paid in full.

E. Penalties imposed by this section shall not apply if a penalty has been assessed and paid pursuant to Section 3.10.060. The tax administrator may for good cause shown waive any penalties assessed under this section.

F. If any person fails to pay the license tax, interest, or any penalty provided for by this section, the tax, interest, and/or penalty shall be collected from that person for the use of the city. The tax administrator shall commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same.

G. In the event any suit or action is instituted to collect the business license tax, interest, or any penalty provided for by this section, if the city is the prevailing party, the city shall be entitled to recover from the person sued reasonable attorney's fees at trial or upon appeal of such suit or action, in addition to all other sums provided by law.

3.10.110 Monthly Statement of Dealer

Every dealer in motor vehicle fuel shall provide to the tax administrator on or before the 25th day of each month, on forms prescribed, prepared and furnished by the tax administrator, a statement of the number of gallons of motor vehicle fuel sold, distributed or used by the dealer during the preceding calendar month. The statement shall be signed by the dealer or the dealer's agent.

3.10.120 Failure to File Monthly Statement

If a dealer fails to file any statement required by Section 3.10.110, the tax administrator shall proceed forthwith to determine from as many available sources as the tax administrator determines reasonable the amount of motor vehicle fuel sold distributed or used by such dealer for the period unreported, and such determination shall in any proceeding be prima facie evidence of the amount of fuel sold, distributed or used. The tax administrator shall immediately assess the dealer for the license tax upon the amount determined, adding thereto a penalty of 10 percent of the tax. The penalty shall be cumulative to other penalties provided in this code.

3.10.130 Billing Purchasers

Dealers in motor vehicle fuel shall render bills to all purchasers of motor vehicle fuel. The bills shall separately state and describe the different products sold or shipped there under and shall be serially numbered except where other sales invoice controls acceptable to the tax administrator are maintained.

3.10.140 Failure to Provide Invoice or Delivery Tag

No person shall receive and accept motor vehicle fuel from any dealer, or pay for the same, or sell or offer the motor vehicle fuel for sale, unless the motor vehicle fuel is accompanied by an invoice or delivery tag showing the date upon which motor vehicle fuel was delivered, purchased or sold and the name of the dealer in motor vehicle fuel.

3.10.150 Transporting Motor Vehicle Fuel in Bulk

Every person operating any conveyance for the purpose of hauling, transporting or delivering motor vehicle fuel in bulk shall, before entering upon the public highways of the city with such conveyance, have and possess during the entire time of the hauling or transporting of such motor vehicle fuel, an invoice, bill of sale or other written statement showing the number of gallons, the true name and address of the seller or consignor, and the true name and address of the buyer or consignee, if any, of the same. The person hauling such motor vehicle fuel shall, at the request of any officer authorized by law to inquire into or investigate such matters, produce and offer for inspection the invoice, bill of sale or

other statement.

3.10.160 Exemption of Export Fuel

A. The license tax imposed by Section 3.10.020 shall not be imposed on motor vehicle fuel:

1. Exported from the city by a dealer; or

2. Sold by a dealer for export by the purchaser to an area or areas outside the city in containers other than the fuel tank of a motor vehicle, but every dealer shall be required to report such exports and sales to the city in such detail as may be required.

B. In support of any exemption from business license taxes claimed under this section other than in the case of stock transfers or deliveries in the dealer's own equipment, every dealer must execute and file with the tax administrator an export certificate in such form as shall be prescribed, prepared and furnished by the tax administrator, containing a statement, made by some person having actual knowledge of the fact of such exportation, that the motor vehicle fuel has been exported from the city, and giving such details with reference to such shipment as the tax administrator may require. The tax administrator may demand of any dealer such additional data as is deemed necessary in support of any such certificate, and failure to supply such data will constitute a waiver of all right to exemption claimed by virtue of such certificate. The tax administrator may, in a case where the tax administrator believes no useful purpose would be served by filing of an export certificate, waive the filing of the certificate.

C. Any motor vehicle fuel carried from the city in the fuel tank of a motor vehicle shall not be considered as exported from the city.

D. No person shall, through false statement, trick or device, or otherwise, obtain motor vehicle fuel for export as to which the city tax has not been paid and fail to export the same, or any portion thereof, or cause the motor vehicle fuel or any portion thereof not to be exported, or divert or cause to be diverted the motor vehicle fuel or any portion thereof to be used, distributed or sold in the city and fail to notify the tax administrator and the dealer from whom the

motor vehicle fuel was originally purchased of his/her act.

E. No dealer or other person shall conspire with any person to withhold from export, or divert from export or to return motor vehicle fuel to the city for sale or use so as to avoid any of the fees imposed herein.

F. In support of any exemption from taxes on account of sales of motor vehicle fuel for export by the purchaser, the dealer shall retain in his/her files for at least three years, an export certificate executed by the purchaser in such form and containing such information as is prescribed by the tax administrator. This certificate shall be prima facie evidence of the exportation of the motor vehicle fuel to which it applies only if accepted by the dealer in good faith.

3.10.170 Sales to Armed Forces Exempted

The license tax imposed by Section 3.10.020 shall not be imposed on any motor vehicle fuel sold to the Armed Forces of the United States, including the U. S. Coast Guard and the Oregon National Guard, for use in ships, aircraft or for export from the city; but every dealer shall be required to report such sales to the tax administrator in such detail as may be required. A certificate by an authorized officer of such armed forces shall be accepted by the dealer as sufficient proof that the sale is for the purpose specified in the certificate.

3.10.180 Fuel in Vehicles Coming Into City Not Taxed

Any person coming into the city in a motor vehicle may transport in the fuel tank of such vehicle, motor vehicle fuel for his/her own use only and for the purpose of operating such motor vehicle without securing a license or paying the tax provided in Section 3.10.020 or complying with any of the provisions imposed upon dealers herein, but if the motor vehicle fuel so brought into the city is removed from the fuel tank of the vehicle or used for any purpose other than the propulsion of the vehicle, the person so importing the fuel into the city shall be subject to all the provisions herein applying to dealers.

3.10.190 Refunds

A. Refunds of tax on motor vehicle fuel will be made pursuant to any refund provisions of Chapter 319 of the

Oregon Revised Statutes, including but not limited to ORS 319.280 and 319.831. Claim forms for refunds may be obtained from the tax administrator's office.

B. A holder of a weight receipt that certifies to the city that the motor vehicle fuel upon which the tax was imposed will be used only for fueling vehicles subject to the State of Oregon's weight-mile tax, may apply for a refund of 80 percent of the tax imposed by Section 3.10.020 on motor vehicle fuel purchased in bulk for distribution at the weight receipt holder's facility located within the city. This subsection applies only to motor vehicle fuel purchased by the weight receipt holder on or after February 23, 2005.

C. All claims for refund under subsection (B) of this section shall be filed within 15 months of the date that the fuel was purchased and may not be filed more frequently than quarterly. The minimum claim for refund filed under subsection (B) of this section shall be not less than $25.00.

3.10.200 Examinations and Investigations

The tax administrator, or duly authorized agents, may make any examination of accounts, records, stocks, facilities and equipment of dealers, service stations and other persons engaged in storing, selling or distributing motor vehicle fuel or other petroleum product or products within this city, and such other investigations as it considers necessary in carrying out the provisions of Sections 3.10.020 through 3.10.050. If the examinations or investigations disclose that any reports of dealers or other persons theretofore filed with the tax administrator pursuant to the requirements herein, have shown incorrectly the amount of gallonage of motor vehicle fuel distributed or the tax accruing thereon, the tax administrator may make such changes in subsequent reports and payments of such dealers or other persons, or may make such refunds, as may be necessary to correct the errors disclosed by its examinations or investigation. The dealer shall reimburse the city for the reasonable costs of the examination or investigation if the action discloses that the dealer paid 95 percent or less of the tax owing for the period of the examination or investigation. In the event that such an examination or investigation results in an assessment by and an additional payment due to the city, such additional payment shall be subject to interest at the rate of .0329 percent per day from the date the original tax payment was

due.

3.10.210 Limitation on Credit for or Refund of Overpayment and on Assessment of Additional Tax

A. Except as otherwise provided in this code, any credit for erroneous overpayment of tax made by a dealer taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a dealer must be so taken or filed within three years after the date on which the overpayment was made to the city.

B. Except in the case of a fraudulent report or neglect to make a report, every notice of additional tax proposed to be assessed under this code shall be served on dealers within three years from the date upon which such additional taxes become due, and shall be subject to penalty as provided in Section 3.10.100.

3.10.220 Examining Books and Accounts of Carrier of Motor Vehicle Fuel

The tax administrator or duly authorized agents of the tax administrator may at any time during normal business hours examine the books and accounts of any carrier of motor vehicle fuel operating within the city for the purpose of enforcing the provisions of this code.

3.10.230 Records to be Kept by Dealers

Every dealer in motor vehicle fuel shall keep a record in such form as may be prescribed by the tax administrator of all purchases, receipts, sales and distribution of motor vehicle fuel. The records shall include copies of all invoices or bills of all such sales and shall at all times during the business hours of the day be subject to inspection by the tax administrator or authorized officers or agents of the tax administrator.

3.10.240 Records to be Kept Three Years

Every dealer shall maintain and keep, for a period of three years, all records of motor vehicle fuel used, sold and distributed within the city by such dealer, together with stock records, invoices, bills of lading and other pertinent papers as may be required by the tax administrator. In the event such records are not kept within the state of Oregon, the dealer

shall reimburse the tax administrator for all travel, lodging, and related expenses incurred by the tax administrator in examining such records. The amount of such expenses shall be assessed in addition to the tax imposed by Section 3.10.020.

3.10.250 Use of Tax Revenues

A. For the purpose of this section, net revenue shall mean the revenue from the tax and penalties imposed under this chapter remaining after providing for the cost of administration and any refunds and credits authorized herein.

B. The net revenue shall be used exclusively for services and materials associated with the design, construction, reconstruction, improvement and repair of roads, streets, bike and pedestrian pathways and other multi-model transportation systems for which the city owns, operates and maintains, desires to own, operate or maintain, is contractually or legally obligated to operate and maintain, or for which the city has accepted responsibility under intergovernmental agreement. Net revenues shall be not used for city administration costs, city fuel tax administration costs or city personnel costs. Specific projects that are fully or partially funded with revenues received under this Chapter shall be identified and approved by the City Council as a part of the city's annual budget process.

3.10.260 When Tax Shall Take Effect

The tax imposed pursuant to Section 3.10.020 shall take effect October 1, 2009 and only after the tax administrator has developed the necessary forms and documents to administer the tax. The tax administrator shall declare when the tax shall take effect, and give not less than 15 days notice of the date before the tax may take effect. The tax administrator's decision as to the effective date of the tax and the type of notice to provide shall be final and not subject to preview.

3.10.270 Severability

If any portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent

provision and such holding shall not affect the validity of the remaining portions of this ordinance.

(Chapter 3.10 was adopted by Ordinance No. 1984, adopted on August 3, 2009, and effective September 3, 2009.)

TITLE IV
BUSINESSES

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CHAPTER 4.05 Business Licenses

4.05.005 Business License Taxes and Application Fee

A. Persons obtaining business licenses shall pay the taxes set out in the following table:

Rate Type	*Tax*
Base Rates	
Standard Rate (business with more than 20 employees)	$300 per year
Small business (20 or fewer employees)	$150 per year
Very small business (fewer than 5 employees)	$75 per year
Multiple-business/single location, occasional	$300 per year
Multiple-business/single location, ongoing	$600 per year
Temporary business	$75 per calendar month or fraction thereof, not to exceed the standard or small or very small business rate, whichever is applicable.
The following businesses shall pay the greater of the base rate or the rate set forth below.	
Motels and hotels, and similar businesses that are required to collect the Room Tax	$4 per unit
Businesses renting four or more rental units on a monthly or longer basis	$8 per unit
Any business with gaming tables shall pay the following rates in addition to the base rate.	
Businesses with gaming tables	$1,250 per table, per year

(4.05.005(A.) amended by Ordinance No. 1961, adopted August 4, 2008; effective September 3, 2008.)

B. In addition to the business license taxes, applicants for a business license shall pay a non-refundable application fee in an amount set by Council resolution.

C. Businesses that operate their business at more than one fixed location shall pay the tax separately for each location, and employees who work at multiple fixed locations shall be deemed to work at the location where they perform most of their work.

D. Employees who work at locations other than their employers' place of business, such as construction workers or repair persons, shall be deemed to work at one location, and their employer shall pay the business license tax based on their work within the city, whether or not the employer has a place of business in the city. If the employer does have a place of business in the city, the employer shall treat the mobile workers as if they were located at the employer's place of business.

4.05.010 Purpose

The purpose of this chapter is to provide revenue for municipal purposes and to provide for the health, safety, and welfare of the citizens of the city through the licensing of businesses, occupations, trades, and callings.

4.05.015 Definitions

The following definitions apply to this chapter:

Business. Any activity, profession, calling, trade, occupation, enterprise or shop that receives payment for goods, materials, services or rental of real or personal property.

Employee. A person who works for or at a business, including any owner, manager, or agent. The number of employees is based on the number employed on an average throughout the year. If a business has part time employees, each part time employee shall be counted as a fraction of an employee, based on the number of hours worked, assuming a 40-hour work week.

Multiple Business/Single Location. A group of separately owned businesses operating out of a single location without separate lockable premises for each business, such as a flea-market, farmer's market, or antique mall, but not

including a shopping center or mall.

<u>Occasional</u>. Operating one or two days per week or for no more than one month a year.

<u>Ongoing</u>. Any multiple business/single location operation that does not qualify as occasional.

<u>Person</u>. Any public or private corporation, including domestic and foreign corporations, firms, partnerships of every kind, associations, organizations, syndicates, joint ventures, societies, any other group or entity acting as a unit and individuals.

4.05.020 License Required

Unless exempt under this chapter or state or federal law, no person shall conduct, engage in, carry on or practice any business within the city without securing a business license from the city recorder and paying the business license tax established by this chapter. A single multiple business/single location license covers all businesses operating as part of the multiple business/single location operation, but does not cover any participant business when not operating as part of the multiple business/single location operation.

4.05.025 Business License Application

A. Application for a business license shall be made on city forms and include an affirmation that all information contained in the application is true. The applicant shall pay a non-refundable fee for processing the application, in addition to the business license tax.

B. The application shall, at a minimum, state:

   1. The name of the proposed business;

   2. A description of the trade, shop, business, profession, occupation, or calling to be carried on;

   3 The name and address of the applicant, manager (if different) and all parties having any ownership or proprietary interest the business;

   4. The address at which the business will be conducted, or if the business will not be conducted out of a fixed

address, a description of how the business is operated;

5. The amount of the business license tax tendered with the application and the basis for its calculation;

6. The signature of the applicant;

7. The date of the application;

8. Evidence of satisfaction of state registration and bonding or insurance where required by state law, including registration number and expiration date;

9. The fiscal year for which application is made;

10. If a vending or other endorsement of the business license is sought, any additional information required to obtain the endorsement.

C. The city may require that the applicant supply any additional information necessary to determine the applicant's compliance with the requirements of this subchapter and other provisions of law. Review of an application shall not begin until all requested information has been provided.

D. The application shall be reviewed by the building department, the planning department, the public works department, the fire department and/or the police department before a license may be issued. The license may be issued only if the application is complete and the application complies with all applicable federal, state and city laws. An applicant will be offered the opportunity to complete the application or correct any violations.

4.05.030 Tax Year and Permit Validity and Expiration

A. The business license taxes shall be assessed on a fiscal year basis, commencing July 1 and ending June 30 of the following year. All licenses except temporary licenses shall expire on June 30. Persons first required to obtain an annual license after January 1 shall pay a license tax equal to one half the annual tax otherwise payable. No rebate will be made if a licensee does not remain in business. Temporary licenses shall be by calendar month.

B. All license taxes for continuing businesses shall be due July 1 and shall be delinquent after August 31. Delinquent license taxes paid between September 1 and September 15 shall have a 10% surcharge added. Delinquent license taxes paid after September 15 shall have a further 15% surcharge imposed.

4.05.035 Approval, Denial and Revocation

A. The city shall approve or deny an application within 30 days of the submission of a complete application form, all requested additional information and fees. If a business will operate only if the city grants a land use approval, building permit or similar approval, the effective date of the business license shall be the date all necessary approval are issued, unless the applicant requests immediate issuance. The amount of tax payable shall be adjusted if necessary based on the effective date of the business license. Any restrictions or limitations shall be noted on the license.

B. The city may deny or revoke a business license if it determines that:

   1. The licensee fails to meet the requirements of or is doing business in violation of this or any other applicable city ordinance, including failure to pay any fee or penalty; and/or

   2. The applicant has provided false or misleading material information or has omitted disclosure of a material fact on the application, related materials, or license.

C. The city shall provide written notice to the applicant or licensee of a denial or revocation. The notice shall state the reason for the action taken and shall inform the applicant of the right to appeal. The notice shall be given at least 15 days before any revocation becomes effective. If the violation or other basis for revocation is discontinued or resolved within the 15 days, the city may terminate the revocation proceedings.

D. A person whose application for a business license has been denied or whose license has been revoked may, after 90 days from the date of denial or revocation, apply for another license upon payment of the application fee

and submission of an application form and related documents. A person may apply immediately after a denial if the application is amended to address the reasons for denial.

E. A person whose application for any business license has been denied or whose license has been revoked for a total of two times within one year or who has a total of four denials or revocations shall be disqualified from obtaining a business license from the date of the last revocation or denial.

4.05.040 Transfers and Relocations

Notice shall be provided to the city if the business is sold, moved to a different location in the city, or if the business ceases to do business in the city.

4.05.045 Appeal

If an application is denied or a license is revoked, the license holder may appeal by filing a written appeal with the city manager within 15 days after the denial or revocation. The Council shall hear and decide the appeal at its next regular meeting held not less than 20 days after the filing of the appeal. The decision of the Council shall be final.

4.05.050 Disclaimers, Exceptions, and General Requirements

A. The grant of a business license or payment of the license tax does not excuse compliance with any applicable law or regulation or vest any right or create any contractual obligation.

B. Each licensee shall:

1. Comply with all applicable federal, state, and local laws and regulations.

2. Notify the city within ten days of any change in material information contained in the application, related materials, or license.

3. Display a business license upon request to any person dealing with the licensee as part of the licensed activity or to an officer or employee of the city.

4.05.055 Tax Exempt Organizations

Tax exempt organizations are required to obtain a business license but are exempt from payment of the business license tax. A tax exempt organization that operates a multiple-business/single location operation may pay the tax to cover all the individual businesses. If the tax for the multiple-business/single location operation is not paid, each participant business that is subject to taxation shall pay the applicable business tax for its business. An organization seeking exemption from tax payment shall provide proof of federal recognition of tax exempt status.

4.05.060 Exemptions

The following are exempt from the requirements of this chapter:

A. Any person whose income is based solely on a wage or salary paid by an employer.

B. Any person who operates a business on a part-time basis, which business has annual gross receipts of less than $500.00.

C. Any person conducting judicial sales under court order.

D. Any person whose only business in the city is the delivery of goods produced outside the city.

E. Any person whose business activities, including the activities of all employees, total less than 20 hours per year. This exemption is intended to apply to businesses based outside the city that may do minimal work inside the city, and to persons who engage only in minimal business.

F. A person who sends goods to a customer in the city is not considered to be doing business in the city based solely on the sending or delivering of the goods into the city. However, a company in the business of delivering goods is subject to the requirements of this chapter if the company is engaged in business (picking up or delivering goods) within the city in excess of 20 hours per year.

4.05.065 Violation

A violation of this chapter is a civil infraction.

(Chapter 4.05.005 - 4.05.065 adopted by Ordinance No. 1932 on September 4, 2007; effective October 4, 2007)

CHAPTER 4.10 VENDING ON PUBLIC PROPERTY

4.10.005 Findings and Purpose

A. The primary purpose of the public streets and sidewalks is for use by vehicular and pedestrian traffic.

B. Unrestricted vending on public streets, sidewalks and other public places would interfere with the primary use of those public areas. However, vending on the public streets and sidewalks and upon certain public property that is limited to times and locations that minimize interference with public use promotes the public interest by contributing to an active and attractive pedestrian environment.

C. The purpose of this chapter is to preserve the ability to use streets, sidewalks and other public places for their primary purposes while allowing limited vending in those areas to protect the public health, safety, and welfare.

4.10.010 Definitions

The following definitions apply within this chapter.

Business Vending Area. Public property determined by the City Council by resolution to be areas where vendors may sell or offer to sell food, beverages, merchandise or services from a stand.

Stand*.* Any table, showcase, bench, rack, pushcart, or wagon or other vehicle used for the displaying, storing or transporting of articles offered for sale by a vendor, or otherwise used in connection with any activities of a vendor. Stand does not include any item carried by a vendor and not placed on the ground or pavement for use or display.

Mobile Stand. A stand that is moved from place to place and that is engaged in vending from a single location in the public right of way for no more than 15 minutes at a time.

Fixed stand*.* A stand at which vending occurs for more than 15 minutes at a time in a single location. Even if a stand is easily movable, it is a fixed stand if it remains in place for more than 15 minutes in the course of a vending activity. For purposes of the definitions of “mixed stand” and “fixed stand,” single location include 100 feet in all directions.

Vending. The activity of selling or offering for sale any food, beverage, merchandise or service on public property, streets or sidewalks from a stand, from the person or otherwise.

Vendor. Any person engaged in the activity of vending, whether directly or indirectly.

4.10.015 Vending On Public Property

A. It shall be unlawful to engage in any vending activity upon any street, sidewalk, or other public property of the city except as specifically allowed by a vending endorsement on a business license or an exemption allowed by Subsections B. or C. of this section.

B. Vending on any city-owned or city-administered property other than rights of way or business vending areas is prohibited without a written agreement with the city. Any vending by written agreement with the city is exempt from the prohibition on vending stated in Subsection A. of this section.

C. Vending on sidewalks by persons under 13 years of age with the permission of the adjacent property owner is exempt from the provisions of this chapter, provided that the vending activity cannot block the sidewalk. The sole remedy under this section shall be the relocation of the activity so that the sidewalk is not blocked.

4.10.020 Application

An application for a business license with a vending endorsement shall contain the following additional information:

A. The names, residence and business addresses and residence and business telephone numbers of each person who may be engaged in operating such business or stand.

B. A description of the type of food, beverage, merchandise or service to be sold or offered for sale as part of the vending operation.

C. The location(s) where any stand(s) will be located.

D. A description and photograph or drawing of any stand to

be used in the operation of the business. The requirement for a drawing or photograph may be waived for stands operated on sidewalks adjacent to the place of business of the license holder.

E. Proof of liability insurance covering personal injury and property damage, with coverage limits of at least $500,000, naming the city as an additional insured.

4.10.025 Vending Locations

A. Fixed stands are permitted only within:

   1. Business vending area locations, or

   2. The sidewalk area immediately adjacent to the applicant's place of business and the standards of Section 4.10.035 are met. Stands authorized under this agreement must be operated by the operator of the adjacent business.

B. The vending endorsement for a fixed stand shall specify the location where the fixed stand may be located and is valid only for that location.

C. The Council may, by resolution, limit the number of fixed stands at each business vending area. If the applications for a vending endorsement for fixed stands in a business vending area exceed the maximum number of fixed stands, endorsements shall be awarded by lot from the applications received by May 31 for the period beginning July 1.

D. Vending other than from fixed stands are not specific to a location but are subject to the restrictions in Section 4.10.035A.

E. Vending endorsements for stands at business vending area locations are limited to one stand. Vending endorsements for areas adjacent to a permanent place of business may include more than one stand.

4.10.030 Fees

A. An endorsement application surcharge of $10.00 or such other amount as may be established by Council resolution shall be added to the business license application fee if a

vendor's endorsement is applied for. An entity exempt from payment of the business license fee is exempt from payment of the endorsement application surcharge.

B. An additional fee of $50.00 per calendar month of operation shall be charged for each fixed stand in a business vending areas and for each mobile stand. The endorsement shall list the months that the stand may operate. Endorsements may be amended to add months, but no refunds shall be given if the licensee does not exercise all rights under the endorsement.

C. An additional fee of $50.00 per calendar month, not to exceed a total of $250.00 per calendar year, shall be charged to holders of endorsements to operate stands adjacent to the business, as permitted by Section 4.10.025(A.)(2.).The endorsement shall list the months that the stands may operate. Endorsements may be amended to add months, but no refund shall be given if the licensee does not exercise all rights under the endorsement.

4.10.035 Restrictions

A. No vendor shall:

1. Vend within 500 feet of the grounds of any elementary or secondary school during the period commencing one-half hour prior to the start of the school day and ending one-half hour after dismissal at the end of the school day;

2. Vend between the hours of 9:00 P.M. and 6:00 A.M.

3. Leave any stand unattended.

4. Sell food or beverages for immediate consumption if litter receptacles are not available within 25 feet of the vendor.

5. Leave any location without first picking up, removing and lawfully dispersing of all trash or refuse remaining from sales made by the vendor or otherwise resulting from the vendor's activities.

6. If vending is from a stand, allow any items relating to the operation of the vending business to be placed

anywhere other than in, on, or under the stand.

7. If the license includes a stand, expand the stand beyond what is described in the application and allowed in the permit.

8. Vend anything other than that which the vendor is licensed to vend;

9. Violate any city ordinance regulating sound or noise.

10. Vend within any portion of any vehicle travel lane portion of any street other than at times when the street is closed to allow vending. This prohibition does not prohibit the use of mobile stands legally parked and selling to persons not within the vehicle use portion of a street.

11. Operate a stand without displaying a copy of the business license with the vending endorsement on the stand or engage in other vending activity without having the business license with vending endorsement immediately available for inspection.

B. No vendor selling other than at a fixed stand shall vend at any location where the sidewalk is not at least eight feet in width, or within 10 feet of an entrance way to any building or within 20 feet of any crosswalk or intersection. No vendor shall block or allow customers to block a sidewalk.

C. No vender shall allow his or her stand or any other item relating to the operation of the vending business to lean against or hang from any building or other structure without the owner's permission.

D. Vending activities, whether from a stand or otherwise, shall be conducted in such a way as to not block pedestrian use of a sidewalk. Pedestrian use is considered blocked if two persons cannot pass each other walking in opposite directions.

4.10.040 Vending Stands

A. Vending stands licensed for business vending areas shall not exceed five feet in length and five feet in height, excluding canopies and umbrellas.

B. Umbrellas and canopies shall be a minimum of seven feet above the sidewalk. Umbrellas or canopies may not exceed 100 square feet in area.

C. Vending stands on sidewalks adjacent to the licensee's place of business are permitted only in the following areas:

    1. On SW Coast Highway between SW Angle Street and SW Fall Street.

    2. On SW Bay Boulevard between SW Bay Street and SE Eads Street.

    3. On Hurbert Street between SW 7th Street and SW 9th Street.

    4. In the area bounded by Olive Street on the south, NW 6th Street on the north, NW High Street and NW Coast Street on the east and the Pacific Ocean on the west, including both sides of each named street. For purposes of this section, "Olive Street" means both Olive Street and the area that Olive Street would occupy if it continued straight to the Pacific Ocean west of SW Coast Street.

    5. Any other location designated by the Council by resolution.

4.10.045 Denial and Revocation

A. A vendor's endorsement may be denied or revoked for any of the following causes:

    1. Fraud or misrepresentation contained in the application for the business license with vending endorsement.

    2. Fraud or misrepresentation made in the course of carrying on the vending business.

    3. Conduct of the vending business in such manner as to create a public nuisance or constitute a danger or hazard to the public health, safety, or welfare.

    4. Violation of any provision of this subchapter or of any other law or regulation relating to the vending

business.

5. Felony convictions or misdemeanor convictions involving moral turpitude. In deciding whether to deny an application for a past conviction, the city may consider the length of time since the conviction, whether the applicant appears to have been successfully rehabilitated, and the risk to the public.

6. Failure to obtain or maintain liability insurance covering personal injury and property damage, with policy limits of at least $500,000.00 and naming the city as an additional insured.

4.10.050 Appeal

If an application is denied or a license is revoked, the license holder may appeal by filing a written appeal with the city manager. The deadline for an appeal of a denial is 15 days after a denial is mailed, and the deadline for an appeal of a revocation is two days after the revocation is delivered. A revocation sent by mail shall be deemed delivered two business days after the date of mailing. The Council shall hear and decide the appeal at its next regular meeting held at least 10 days after the filing of the appeal. The decision of the Council shall be final.

4.10.055 Violation

Violation of any provision of this chapter is a civil infraction, with a maximum penalty of $500.00. Each day during which a violation shall continue is a separate offense. Violations of separate provisions are separate infractions.

(Chapter 4.10 adopted by Ordinance No. 1935 on September 4, 2007; effective October 4, 2007)

CHAPTER 4.15 TAXICABS

4.15.010 Definitions

The following definitions apply in this chapter.

Driver. Any person driving a taxicab for hire.

Operate. To own a taxicab business.

Person. An individual, corporation, partnership, company association or any other entity.

Taxicab. A vehicle hired with driver to transport passengers to a location specified by the passenger(s). Taxicab does not include a rental car with chauffeur that is rented for a specified period of time of at least two hours or a hotel courtesy vehicle that is used solely to transport guests or customers to or from the hotel.

4.15.020 Endorsed Business License and Permit Required

Except as otherwise set forth in this Chapter, no person shall operate any taxicab business nor solicit any rider for compensation including but not limited to donations and tips, within the city without a valid business license with taxicab endorsement. No person may drive a taxicab without a city taxicab driver's permit and a valid Oregon driver's license.

(Chapter 4.15.020 was revised by Ordinance No. 1997, adopted on January 19, 2010; effective January 19, 2010.)

4.15.025 Temporary Driver Permit

A. Persons soliciting any rider for compensation including but not limited to donations and tips during an annual Seafood and Wine Festival will apply for a temporary permit under this Chapter. Applicants for a temporary permit shall be 21 years of age and provide the following information with an application:

    1. A completed Temporary Driver Permit Application;

    2. Copy of driver's license;

    3. Two (2) copies of recent photograph of applicant;

4. Copy of $25.00 fee receipt (paid to City of Newport);

5. Background check (criminal history; driving record, etc.);

6. The make, type, year of manufacturer, serial number, license plate number, and passenger seating capacity of the vehicle to be used;

7. A photograph of the sign which will appear on the applicant's vehicle used to solicit riders; and

8. Certificate of auto insurance with coverage limits of at least $500,000.

(Chapter 4.15.025(A.)(8.) was amended by Ordinance No. 1999, adopted on February 16, 2010; effective February 16, 2010.)

B. The Newport Police Department will complete an investigation of the applicant and return a recommendation for approval or denial of the temporary permit to the city manager within ten (10) days of receipt of a completed application. The city manager or his/her designee will approve or deny a temporary permit application and notify an individual of such decision within five (5) days of receipt from the Newport Police Department. The city manager or his/her designee has complete discretion to approve or deny a temporary permit. This decision is not subject to appeal.

C. If the city manager or his/her designee approves the temporary permit application, the successful applicant will:

1. Display a copy of the temporary permit in the vehicle included in the permit. The permit may not be used or displayed in any vehicle not included in the permit.

2. Maintain the vehicle included in the permit in clean and sanitary condition and in good repair.

3. Report to the Newport Police Department within 24 hours after discovery of any property of value left in the vehicle by any passenger if the driver has not been able to return the property to the passenger or received instructions from the passenger for the return of the item. Property of value includes but is not limited to personal identification, bank cards, and cash.

D. A temporary permit provided under this section will be effective only for the Seafood and Wine Festival for the particular year of the permit application from 12:00 P.M. on the first day of the Festival and ending at 12:00 A.M. immediately following the last day of the Festival.

(Chapter 4.15.025 added by Ordinance No. 1997, adopted January 19, 2010; effective January 19, 2010.)

4.15.030 Business License Taxicab Endorsement

A. Persons seeking to operate a taxicab business in the city shall apply for a business license with a taxicab endorsement. In addition to the information required for all business licenses, applicants for a taxicab endorsement shall provide the following additional information:

1. The application must list every person with an ownership interest in the taxicab business as an applicant. If the business has a manager who is not an owner, the manager must also be listed as an applicant.

2. The record of conviction of felonies, misdemeanors, and major traffic violations of all applicants, including any officer, partner, shareholder, manager or member of any applicant that is an entity.

3. The make, type, year of manufacturer, serial number, license plate number and passenger seating capacity of the taxicabs to be included in the certificate.

4. A description of the color scheme, insignia, or other identifying design which will appear on the applicant's taxicabs.

5. The name or names of all taxicab drivers who are expected to drive taxicabs for the taxicab business. The drivers must hold or must contemporaneously apply for a taxicab driver's permit. Nothing in this section prohibits the taxicab business operator from using other permitted taxicab drivers.

6. A list of proposed fares.

7. The applicant's website address or a statement that the applicant does not have a website and agrees to pay the city to post its rates on the city's website.

8. Proof of liability insurance covering personal injury and property damage, with coverage limits of at least $1,000,000.00, naming the city as an additional insured.

B . The Council by resolution will set the amount for an application fee for a taxicab endorsement or renewal, in addition to the amount of the business license tax. If no greater fee has been adopted by resolution, the application/renewal fee for a taxicab endorsement shall be $100.00. In addition, if the endorsement is approved, the endorsement holder shall pay an additional business license tax of $50.00 per fiscal year per taxicab, and shall pay a deposit with the application equal to the additional business license tax.

4.15.040 Action on Application

A. Within 30 days after the application is filed, the city manager shall complete an investigation of the applicant and shall submit to the Council a recommendation for the allowance or denial of the application for the taxicab endorsement. The Council shall conduct a public hearing to decide whether to grant the endorsement. The city shall provide written notice of the date, time, and place of the public hearing to the applicant and existing endorsement holders and shall publish notice of the hearing at the applicant's expense in a newspaper of general circulation within the city at least ten days prior to the public hearing.

B. The Council shall grant the endorsement if it determines that all of the following criteria are met:

1. The financial responsibility, experience, and ability of the applicant, including owners and managers, are such that the applicant can be trusted with the safe care and custody of passengers.

2. The proposed exterior color scheme, insignia or other identifying design does not imitate or conflict with any color scheme, insignia or other identifying design used on taxicabs already operating in the city in such a manner as to be misleading to the general public.

3. The applicant has available a place of business, including a dispatch office, at a location within an

appropriate land use zone.

4. The taxicabs proposed for use are suitable and safe for use as taxicabs. The endorsement may include fewer taxicabs than applied for if the Council determines that any of the proposed taxicabs are unsuitable or unsafe for use as taxicabs.

5. One or more licensed taxicab drivers are available to drive the taxicabs.

6. The applicant has property damage and personal injury insurance coverage in the amount of at least $1,000,000.00, naming the city as an additional insured.

In considering the experience of the applicant, the city shall consider any history of criminal or traffic offenses.

C. A taxicab endorsement is not transferable. Any change in ownership of an applicant that is an entity is a transfer in ownership. A new taxicab endorsement must be applied for if any ownership interest is changed. If an individual owner or part-owner dies or becomes incapacitated, the certificate shall remain in effect for up to 90 days to allow time for an application for an endorsement by a new person or entity.

4.15.050 Driver's Permits

A. A person desiring a permit to drive a taxicab shall submit an application for a permit on a city form that shall require the following information:

1. The name, address, phone number and driver's license number of the applicant.

2. A complete record of any criminal or traffic convictions and citations.

3. A recent photograph of the applicant.

4. Any work experience as a taxicab driver.

5. Applicant's fingerprints, plus payment of a fingerprinting fee to be set by Council resolution. If no greater fee has been established by Council

resolution, the fee shall be $75.00.

B. The application shall include the application fee set by Council by resolution. If no fee has been established by resolution, the fee shall be $25.00.

C. The license shall be issued unless the city determines:

   1. The applicant has been convicted of a felony;

   2. The applicant has been convicted of a misdemeanor involving moral turpitude or a major traffic violation within the five years immediately preceding the application;

   3. The applicant has had an unacceptable number of minor traffic violations within the preceding five years;

   4. The applicant is otherwise unfit to be entrusted with the safe care and custody of passengers.

D. A denial of an application for a taxicab driver's permit may be appealed by filing a written appeal within 10 days of the decision denying the decision. The Council shall hold a public hearing to consider whether the permit should be issued.

4.15.060 Revocation

If the city manager determines that grounds exist for revocation of a taxicab endorsement or a taxicab driver's permit, the manager shall schedule a public hearing before the City Council. The endorsement or permit holder shall be provided with written notice of the hearing at least 10 days before the hearing.

Grounds for revocation of endorsements and permits include:

A. The holder has knowingly submitted a false application or application for renewal.

B. The taxi meter, tires, odometer or any other part of the taxicab affecting the meter which determines the amount to be charged to the customer have been intentionally adjusted or tampered with, by or with the knowledge of the holder of the endorsement or permit, so that the amount payable is in excess of the published fare.

C. The holder of a taxicab endorsement has allowed a taxicab to be driven for hire by a driver not having a valid taxicab driver's permit or has used a taxicab that has not been approved by the city.

D. The holder has consistently failed to maintain standards in the operation of the taxicab business or as a taxicab driver as required under this chapter.

E. The holder has committed a material violation of the terms and provisions of this chapter.

F. The holder no longer meets the qualifications for approval of the endorsement or permit.

4.15.070 Renewal

A. For the fiscal year beginning July 1, 2008, taxicab endorsements and taxicab driver's permits shall be for a valid for the period from July 1 of any year through June 30 of the following year (the period between July 1 and June 30 is a "fiscal year"). Taxicab business certificates and taxicab drivers permits issued for the 2007 calendar year shall remain effective through June 30, 2008, unless revoked. An endorsement or permit issued during a fiscal year shall be valid for the remainder of the fiscal year. Endorsements and permits shall be renewed annually if requested unless the city schedules a Council hearing on the renewal. The hearing on the renewal shall be during the month of June. A hearing shall be scheduled if the city receives objections to the renewal at least 30 days prior to the renewal or if the city manager determines that the approval criteria are no longer satisfied. A hearing on renewal may be scheduled in other circumstances at the discretion of the city manager.

B. An endorsement or permit holder wishing to renew shall submit a renewal application on a city form at least 60 days prior to the expiration of the endorsement or permit, together with the annual fee.

4.15.080 Amendment of Endorsement

A taxicab endorsement may be amended at any time to delete or add one or more taxicabs from the business. Amendments to delete a taxicab shall be effective on filing of

notice of the deletion with the city. An amendment to add taxicabs shall be applied for on a city form, and the city manager shall approve or deny the amendment within 10 days of the application.

4.15.090 Display of Endorsement and Permit

A. A copy of the business license with taxicab endorsement shall be displayed in each vehicle included in the endorsement and may not be displayed in any vehicle not included in the endorsement.

B. A copy of the taxicab driver's permit of the driver of the taxicab shall be displayed in the taxicab.

4.15.100 Rates

A. The holder of a taxicab endorsement shall file a list of all rates with the city recorder, and shall maintain the list of rates in each taxicab operated by the holder, at the holder's main place of business, and on the holder's website. Any change of rates shall be filed with the city recorder and shall not be effective until seven days after filing or the date specified in the filing, whichever occurs later.

B. It is a violation to charge a customer or passenger a rate in excess of the rate on the rate list. In the event that different rates are listed on different rate sheets, the applicable rate shall be the lowest rate of the rates shown on the following:

    1. The rate list filed with the city recorder.

    2. The rate list in the taxicab providing the service.

    3. The rate list at the certificate holder's main place of business.

    4. The rate list on the holder's website.

C. If the taxicab business does not have a website, the taxicab business shall pay the city an amount to be set by Council resolution so that the rate list can be posted on the city website. Until the amount is set by resolution the amount shall be $25.00.

4.15.110 Reporting Lost Articles

The taxicab driver shall notify the Newport Police Department within 24 hours after discovery of any property of value left in the taxicab by any passenger if the driver has not been able to return the property to the passenger or received instructions from the passenger for the return of the item. Property of value includes but is not limited to personal identification, bank cards, and cash.

4.15.120 Taxicabs to Be Kept Clean and Maintained

All taxicabs shall be kept in a clean and sanitary condition and shall be maintained in good repair.

4.15.130 Fees

The fees authorized by this chapter are to be set in an amount to cover all of the city's costs of administering this chapter and an additional amount to compensate the city for the use of rights of way.

4.15.140 Violation

A. A violation of any provision of this chapter is a civil infraction subject to a maximum penalty of $1,000.00. Violations of separate provisions are separate offenses, and each day that a violation occurs or continues is a separate offense.

B. The remedy set forth in this section is in addition to any other remedy available to the city, and all remedies and penalties are cumulative.

(Chapter 4.15 adopted by Ordinance No. 1935 on September 4, 2007; effective October 4, 2007)

TITLE V
PUBLIC WORKS AND UTILITIES

TITLE V PUBLIC WORKS & UTILITIES

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Chapter 5.10 Water

5.10.010 Definitions

The following definitions apply in this chapter.

A. Applicant. A person, corporation, association, or agency applying for water service.

B. City Service Line. The water line between a main and a water meter.

C. Customer. A person receiving water service from the city. Upon approval of an applicant's application, the applicant becomes a customer.

D. Fire Protection Service. Provision of water to premises for automatic fire protection.

E. Mains. Water distribution pipelines owned by the city used to serve the general public.

F. Premises. Buildings or other property operated as a separate unit from other property.

G. Private Service Line. The water line between the water meter and the premises. For unmetered lines for fire protection service, the private service line is the line between the connection with the main and the fire suppression sprinkler. *(Chapter 5.10.010(G.) amended by Ordinance No. 1975, adopted on March 2, 2009, and effective on April 1, 2009.)*

H. Service Connection. The pipe, valves, and other facilities by means of which the water utility conducts water from its distribution mains to and through the meter, but does not include the private service line.

5.10.020 Establishment of Water Service

A. New Water Service. Applicants requesting service in a location not previously served or a change in the size of an existing service shall submit a written application for water service on a city form and pay a fee and a deposit. The application shall include at least the following information:

   1. The date of application.

2. The location of premises to be served.

3. The date on which applicant will be ready for services.

4. Whether the property previously has had city water service.

5. The purpose for which the service is to be used.

6. The size of the service.

7. The address to which bills are to be mailed or delivered.

8. An agreement to comply with city regulations.

9. A guarantee by the property owner of payment for all charges for water service and an agreement that delinquent water bills shall become a lien against the property to which service will be provided.

10. The signature of the property owner or authorized agent.

The city may require amendments to the proposed service, including a different meter size to meet city standards.

A. <u>Change of Service</u>. Applicants requesting water service in a location where there is an existing connection to the city water system shall submit a written application and deposit before service is provided.

B. <u>Temporary Service</u>. Applicants requesting temporary water service for construction or other purposes shall submit a written applicant and deposit before water services is provided. All temporary water service will be metered.

5.10.030 Deposits

Upon the permanent discontinuance of water service by a customer, the deposit, less any unpaid fees, interest, or penalties, shall be refunded to the depositor. The city water utility, at its option, may refund a deposit at any time after a customer's credit has been established.

5.10.040 Type, Location, and Arrangement of Water Service

A. Location of Service Line and Meter. The location of the city service line and meter shall be at the discretion of the city. If a customer requests that a city service line and meter be installed at a location other than proposed by the city and there is an additional expense involved, the customer must pay the regular connection fee plus the additional expenses to have the city service line and meter installed at the preferred location. The meter will normally be placed at the edge of the public right-of-way or easement. If a meter is to be installed on private property, the owner will grant an easement for maintenance and repair of the line and for reading the meter. In such cases, access to the meter must remain unobstructed.

B. Number of Services to Separate Premises. Separate premises will normally each be supplied through individual meters. However, a single building with multiple residential units or separate businesses may be served by a single service connection and meter, provided that an applicant or customer assumes responsibility for payment of charges for all water furnished to combined units.

C. Fire Protection Service. Non-metered fire protection connections will be allowed inside and outside of buildings under the following conditions:

1. The owner submits an application and pays the required fee.

2. The owner provides and maintains an approved service meter. The city shall install the city service line and meter. The meter requirement may be waived if the fire protection service is constructed or monitored to prevent use other than for extinguishing a fire and the owner agrees in writing that the fire protection system will not be used for other purposes. The city may rescind the waiver if the system is used or altered so that it may be used other than for extinguishing fires.

3. An appropriate backflow prevention device is installed to separate the fire protection system.

4. No charge will be made for water used in the extinguishing of fires if the owner or agent reports the use to the city water utility in writing within 10 days.

5. The city shall collect a standby fee for a separate connection for fire protection service. Combined systems will pay the regular fees.

D. Water for Fire Storage Tanks. Water may be obtained from a fire service for filling a tank connected with the fire service, but only if written permission is secured from the city and an approved means of measurement is available. The rates for general use will apply.

5.10.050 Damage to City Facilities

Permanent and temporary customers shall use all possible care to prevent damage to the meter or to any other facilities of the city. If the meter or other facilities are damaged by the customer or customer's contractor, the customer shall pay the cost of repairs.

5.10.060 Discontinuance of Water Service

A. A customer may discontinue water service at any time by notifying the city in writing, by phone, or in person. The customer remains responsible for all water service provided until the shut-off date or until the city initiates service to a new customer.

B. Water service may be reestablished after discontinuance under the provisions of Section 5.10.020B.

C. A property owner may, by standing order, arrange to have water service remain on, reverting to owner's account, after a tenant discontinues service until such time a new tenant enrolls for service.

5.10.070 Notice

A. Notices to Customers. Notice to a customer will normally be given in writing and may be either delivered or mailed to the address to which his service is rendered or at any other address provided by the customer.

B. Notices from Customers. Notice from the customer to the city water utility shall be in writing, by phone, or in person.

The city may require written confirmation of any oral notice.

5.10.080 Repair and Maintenance Responsibilities

A. Customer Responsibility. Every customer shall maintain the private service line and all other pipes, fittings, and fixtures from the customer side of the water meter to and in the premises in proper order and free from leakage or waste. The city may discontinue service if water is wastefully or negligently used to the extent that general service is affected. The city shall give four days notice before discontinuing service for waste. If a city employee notices an obvious water leak/pipe break, in order to prevent damage or water waste, he/she may shut the water off without notice. Nothing in this section precludes a temporary shut-off by mutual agreement of the city and customer.

B. Responsibility for Damage to City Facilities. The city shall maintain and repair all city-owned portions of the system. When a properly located city pipe or facility is damaged or destroyed by contractors or others, the person, contractor, or company responsible for such damage or destruction shall pay the city for the cost of repairing or replacing the facilities on the basis of the cost to the city in labor and in material plus 15 per cent for overhead expenses. A pipe or other facility will be deemed to be properly located if the person damaging the pipe or facility has not asked the city or the utilities notification center to locate facilities in the area.

5.10.090 Use of Water

A. Sale or Conveyance Beyond Property Served. Except where it forms part of a manufactured product, no water shall be sold or conveyed beyond the premises served without permission of the city.

B Shut-off. The customer shall install a suitable valve or other device on the customer side of the meter capable of shutting off all water to the premises.

C. Operation of City Valve by Customer Prohibited. The operation of the valve on the city service line by persons other than the city and its agents is not permitted.

D. Abatement of Noises and Pressure Surges.

1. No apparatus, fitting, or fixture shall be connected, allowed to remain connected, or operated in a manner that will cause noises, pressure surges, or other disturbances that may result in annoyance or damage to other customers or to the water works system.

2. The city may give notice to the customer to correct a fault described in subsection D.1.

3. If the customer fails to comply with the notice within the time specified in the notice, the city may shut off water service until the fault has been corrected.

5.10.100 Cross-Connections

A. No physical connection, direct or indirect, is permitted between the city water supply and a private or auxiliary water supply without the installation of an approved backflow prevention device.

B. No physical connection, direct or indirect, is permitted between the city water supply system and any facility or property containing any of the following unless an approved backflow prevention device is installed and functional:

1. Any farm or any property with stables for livestock.

2. Beverage bottling plant.

3. Any facility using significant amounts of chemicals or hazardous materials or that has piping for conveying liquid under pressure in close proximity to potable water piping, including car washes, chemical plants, commercial laundries and dry cleaners, film processors, medical centers, laboratories, metal plating industries, mortuaries with embalming facilities, petroleum processing or bulk storage, facilities where water is treated by the addition of chemicals (including irrigation systems that have chemicals added), radioactive material processing, nuclear reactors.

4. Property using reclaimed water.

5. Piers and docks.

6. Wastewater treatment plants, wastewater pumping stations.

7. Permanent lawn irrigation systems or any other location where water supply fixtures are connected without an air gap to a facility that contains standing water.

8. Any other property if the city engineer determines there is a risk of contamination of the city water system, or any portion of it.

An “approved backflow prevention device” is a device appropriate to the particular situation. The city engineer shall have discretion, using professional judgment and relying on published standards, to determine which types of backflow prevention devices may be approved for particular situations. The city engineer may adopt guidelines or regulations addressing technical requirements for backflow prevention devices.

C. The city shall shut off city water service if a functional backflow prevention device is required and not present. The city shall normally provide notice of the need for a backflow prevention device and provide a reasonable opportunity (not to exceed 30 days) to install an approved functioning backflow prevention device, but may disconnect water service when there is a substantial risk of contamination of any portion of the city’s water system. Discontinued service shall not be re-established until satisfactory proof is furnished that the cross-connection has been completely and permanently severed or that an approved backflow prevention device has been installed by a licensed plumber and is functional.

D. All backflow prevention devices shall be inspected by the city at the time of installation and before use. All backflow prevention devices shall be tested after installation, any repairs, relocation or replacement, and, at a minimum, annually. The city may require testing at other times if the city determines there is a higher than normal risk of contamination.

E. The city will establish a program for testing backflow devices for water services that have a lawn irrigation

system. The city shall charge a monthly fee in an amount to be set by council resolution for water services that have a lawn irrigation system. The city may, by council resolution, expand its backflow testing to include the testing of backflow devices in other situations, and shall charge a fee set by council resolution for any category of water service added to the testing program. The city is not responsible for the cost of testing backflow devices other than those for water services that have a lawn irrigation system or for other types of services added to the testing program by the city.

F. The water service customer and any property owner or other person in charge of property shall immediately advise the city of any known failure or problem with a backflow prevention device and of any known backflow into the city's water system.

G. Only backflow prevention devices approved by the city engineer may be installed, but existing backflow prevention devices may remain in place as long as they remain functional. Maintenance and repairs are allowed on existing devices, so long as the repaired device is functional.

H. Tampering with or bypassing a required backflow prevention device without the approval of the city engineer is a civil infraction. Failing to report a known backflow is a civil infraction.

(Chapter 5.10.100 was amended by Ordinance No. 1975, adopted on March 2, 2009; effective April 1, 2009.)

5.10.110 Water Use Restrictions

Restrictions on use of water authorized by this section may include prohibitions or limitations on watering lawns or gardens, prohibitions or limitations on washing vehicles other than at facilities that recycle water, or other restrictions or limitations the city determines to be appropriate. Restrictions may be geographically limited or citywide, and may involve cyclical restrictions.

A. <u>Council-Imposed Restrictions</u>. The City Council may impose or modify restrictions on the use of water obtained from the city.

B. <u>City Manager-Imposed Restrictions</u>. The city manager

may impose temporary restrictions on water use, for a period of up to 48 hours, pending Council action to adopt restrictions.

C. Notice. Notice of any water use restriction is deemed sufficient if announced on at least one local radio station or published in a local newspaper. The city shall endeavor to provide as much notice as possible through all local media, including publication at the earliest possible time in a local newspaper.

D. Violation. It shall be unlawful for any person to use water in contravention of the restrictions authorized by this section.

5.10.120 Tampering with City Water Facilities

A. Tampering with Water System. No person shall tamper or interfere with the city's water system; nor shall any person, except as authorized by the city manager, connect to or operate any pipe, valve, meter, hydrant, or other part of the city's water utility system.

B. Liability for Damage. The customer shall be liable for any damage to a meter or other equipment or city property caused by an act of the customer or the customer’s tenants or agents.

5.10.130 Water Supply and Facilities

A. No Liability Relating To Water Pressure, Supply or Quality. The city furnishes the quantities and pressures available. The service is subject to shutdowns and variations required by the operation of the system. The city is not responsible for loss or damage relating to the quantity, quality of the water supplied to its customers or for the amount of water pressure. The city may change operating water pressure, shut off water, interrupt water service or change the quality of water supplied at any time without notice.

B. Customer Storage and Filtering. Customers depending on a continuous and uninterrupted supply of water or having processes or equipment that require particularly clear or pure water shall provide storage, oversize piping, pumps, tanks, filters, pressure regulators, check valves, additional service pipes, or other means for a continuous and

adequate supply of water suitable to their requirements.

C. Removal and Relocation of Facilities. Property owners or others desiring the removal or relocation of city water utility-owned facilities, including service pipes, meters, valves, chambers, hydrants, or other fittings and appurtenances, shall bear all costs of the removal or relocation. The City Council may refuse to permit the removal or relocation of facilities if fire protection or the operation or control of any portion of the city water system or other public or private facilities would be adversely affected.

D. Work Done "At Cost." Any person having work done "at cost" by the city may select one of the following alternatives:

1. Cost. Cost includes the amount expended by the city for gross wages and salaries, employees' fringe benefits (including a pro-rata share of vacation, holiday, sick, break, clean-up, and training times), materials, equipment rentals at rates paid by the city or set by the city for its own equipment, or any other expenditures incurred in doing the work, plus 10 per cent to cover administrative expenses. The city will supply an estimate of cost and will require an advance payment prior to commencement of the work. Any additional cost shall be paid to the city, and any surplus shall be refunded.

2. Fixed Price. Installation of new services equal to or less than one inch in diameter, a fixed price will be charged. For larger services and other work done by the city, at the request of the owner or agent, the city will calculate a fixed price based on the estimated cost. The full amount of the fixed price must be paid in advance. Where a price has been fixed, no refund will be made by the city water utility, and no additional cost will be charged to the customer.

E. Changes in Customers' Equipment. If excessive flow or consumption overloads the capacity of a meter, the city may require the customer to install a larger capacity meter. The customer shall provide an estimate of his flow requirement and other pertinent data to the city, which shall determine the minimum meter size. The installation of an adequate meter and service line shall be at the cost

of the customer. If the customer fails to apply for a larger meter and connection within 30 days of notice from the city of the minimum meter size required, the city may either proceed with the work and charge the full cost to the owner or may discontinue service.

5.10.140 Discontinuance of Service

A. Unsafe Apparatus. The city may refuse to furnish water and may discontinue service to any premises where apparatus, appliances, or equipment using water is dangerous, unsafe, or is being used in violation of laws, ordinances, or legal regulations.

B. Service Detrimental to Others. The city may refuse to furnish water and may discontinue service to any premises where excessive demands by one customer will result in inadequate service to others

C. Connecting to the City Water System without Authority. No person may connect to the city water system except as authorized in this chapter. If a person other than a city employee or agent opens the valve on the city service line, the city shall impose a penalty on the customer and the city may shut off the water supply at the main, remove the meter, or both.

D. Restoration of Service. Service may be restored after being discontinued under this section only if the reason for the discontinuance has been resolved and any required fees paid.

5.10.150 Extension of Mains

Any property benefited by an extension of a main shall pay cost of installation of the main, including the cost of valves, fittings, and fire hydrants. An extension that benefits a single property shall be paid for by the owner of that property. An extension that benefits more than one property shall be paid through a local improvement district, a reimbursement district, or other means accepted by the city. The city may participate in the cost of extension of a main to the extent that the extension provides a benefit to the system and not just to a small number of properties. The city shall have the absolute right to determine the size and all other matters in relation to main extensions. Construction of mains shall be done by the city or under direct supervision of the city.

5.10.151 Oversized Mains

The city may require a main extension to be larger than the minimum pipe size required for the benefited property owner. In such case, the city shall pay or reimburse the owner for the increased cost of materials and labor for the oversized main and fittings.

5.10.160 Billing

A. Meter Reading. Meters will be read at regular intervals for the preparation of monthly bills and as required for the preparation of opening, closing, and special bills. The city reserves the right to estimate meter readings in cases where actual meter readings are not available and to adjust consumptions when actual readings are obtained.

B. Regular Billing. Bills for water service will ordinarily be issued monthly. The city may:

   1. Read meters and issue bills for periods other than one month.

   2. Issue bills on an estimated consumption basis.

   3. Include with the billing a bill for any obligation due the city.

   4. Require the customer to pay an amount sufficient to bring the customer's total deposit to the amount required.

C. Billing for a Fractional Month. The flat or base rate portion of any fractional month shall be prorated.

D. Time of Payment; Delinquency.

   1. All bills for water service are due and payable as of the date of mailing or delivery. An account is delinquent if any uncontested portion of a bill is not paid within 15 days of mailing or delivery of the bill.

   2. A customer may contest all or part of a bill by filing a written objection with the finance department. The objection must provide reasons why the amount billed is erroneous or should be adjusted. The finance department shall review the objection to determine

whether the bill should be adjusted and notify the customer of the decision and appeal rights and procedures by first class mail. If no written appeal detailing the reasons for the appeal is filed with the city manager within 10 days from the date of mailing of the decision, the decision will be final. The city manager shall consider any timely filed appeal provide a written decision to the customer and finance department. The decision of the city manager shall be final. A person responsible for payment has the rights of a customer under this section. An account is delinquent if the amount stated in a final decision is not paid within 10 days of mailing the final decision.

E. **Notice of Delinquency and Shutoff**

1. The city may send a past due notice to all customers who have not paid in full within 15 days of billing. The past due notice shall state the overdue amount and the amount of delinquent fees. The past due notice shall provide a deadline for payment or for making acceptable written payment arrangements.

2. If payment arrangements are not made, or full payment, including delinquent fees, is not received as required in the past due notice, the city shall shut off water service the next business day after the past due notice deadline for payment. If payment arrangements are not kept according to the written payment arrangements made in response to the past due notice, service may be terminated immediately without further notice.

   (E.(1.) and (2.) above were adopted by Ordinance No. 1967, on November 17, 2008; effective December 17, 2008.)

3. The City Council may by resolution establish delinquent fees to be charged on past due accounts.

4. Service shall be restored after a shut-off for nonpayment only after payment in full of all charges, fees and penalties owing by the customer. However, if the customer was a tenant and is no longer occupying the property, service may be restored after payment of the charges for service only, with the former customer remaining responsible for unpaid late fees and penalties.

5. The city may send combined bills for water and other city services. If the payment received is less than the total amount owing, the amounts received will be credited first towards the charges for all other services and credited last to payment for water service.

F. Final Bills. If an account has been closed, the final billing shall reflect any deposit remaining on the account. If there is a net amount due, it shall be paid as provided in subsection D. Any refund owing to the customer shall be paid by check included in the final bill.

5.10.170 Property Owner Responsibility

In the event that a non-property owner customer does not pay, the property owner shall be responsible for payment of water charges, provided however, that the property owner shall not be responsible for penalties, late fees, and delinquency charges incurred by the customer without the property owner's knowledge or approval. Property owners shall be responsible for requiring their tenants to inform them of the status of their accounts.

5.10.180 Meter Testing and Error

A. Testing 1.5 Inch and Larger Meters

1. For 1.5 inch and larger meters, the city shall test meters in service at the request of a customer, provided that the customer pays a deposit to cover the reasonable amount of the test. The customer will be notified not less than five days in advance of the time and place of the test. The customer representative shall have the right to be present in person or through a representative when the test is made. If the test reveals that the meter was inaccurate by more than 2%, the entire amount of the deposit will be refunded. If the test reveals that the meter was accurate, the city shall refund the difference between the deposit and the cost if the deposit exceeded the cost, or require payment of the difference if the cost exceeded the amount of the deposit.

   A written report giving the results of the test shall be available to the customer within 10 days after completion of the test.

2. If a 1.5-inch or larger meter is found to be registering more than 2 per cent fast under conditions of normal operation, the city will refund to the customer an amount calculated to reflect any overcharges for the previous three months.

B. Testing Meters Smaller Than 1.5 Inches. At the request of a customer, the city will field test a meter smaller than 1.5 inches. If the city determines that the meter is inaccurate, the city will replace the meter at the city's expense. If the city determines that the meter is accurate but the customer wishes a new meter, the city will install a new meter on payment by the customer of the cost of the meter.

C. Non-functional Meters. The city may bill the customer for water consumed while any meter was not registering. The bill will be at the minimum monthly meter rate, or will be computed upon an estimate of consumption based either upon the customer's prior use during the same season of the year or upon a reasonable comparison with the use of other customers receiving the same class of service during the same period and under similar circumstances and conditions.

D. Adjustments for Leaks. Where a leak exists underground between the meter and the building, and the same is repaired within 10 days after the owner, agent, or occupant of the premises has been notified or became aware of the leakage, the city may allow an adjustment of 50 per cent of the estimated excess consumption.

5.10.190 Billings of Separate Meters Not Combined

Each meter will be billed separately, and the readings of two or more meters will not be combined unless specifically provided for in the rate schedule or unless the city's operating convenience requires the use of more than one meter or of a battery of meters. The minimum monthly charge for such combined meters will be based on the diameter of the total combined discharge areas of the meters.

5.10.200 Fees and Charges

The City Council shall establish and may amend charges, fees, deposit amounts, and penalties related to water service by resolution.

5.10.210 Use of Payments Related to Water Service

All proceeds from charges, fees, and penalties relating to water service shall be used only for the establishment, operation, expansion, and maintenance of the city's water system. Nothing in this section prevents a loan from the city's water fund to other system funds, and the city may charge the water fund a reasonable amount for administrative services.

5.10.220 Penalty

The penalty for violation of any provision of this chapter is a civil penalty not to exceed $500.00. Each day on which a violation occurs or continues is a separate violation.

5.10.230 Severability

In the event that any section, subsection, clause, word or other portion of this chapter is determined to be unconstitutional or otherwise invalid or unenforceable, all other provisions of this chapter shall remain in effect.

(Chapter 5.10 adopted by Ordinance No. 1920 on June 4, 2007; effective July 4, 2007.)

CHAPTER 5.15 SEWER SYSTEM AND CHARGES

5.15.010 Definitions

As used in this chapter:

A. **Building Sewer** means the system that receives sewage inside the walls of the building and conveys it to the service lateral.

B. **Collection Sewer** means a sewer to which one or more service laterals are tributary and which serves a local neighborhood.

C. **Intercepting Sewer/Interceptor Sewer** means a sewer that receives sewage from a number of collection sewers or other sewage sources and conducts the sewage to a point for treatment or disposal. A "force main" is a type of intercepting sewer to which service laterals cannot be directly attached.

D. **Natural Outlet** means any outlet into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

E. **Sanitary Facility** means any drain from any sink, toilet, or other means of disposing of liquid waste by means of drains. A system of collecting liquid hazardous wastes for shipment to an appropriate disposal facility is not a sanitary facility.

F. **Sanitary Sewer** means a pipe or conduit that carries sewage.

G. **Service Lateral** means the extension from a building sewer to the collection sewer.

H. **Sewage** means water-carried wastes from residences, business buildings, institutions, and industrial establishments and any liquid wastes.

I. **Sewer System** means all city-owned facilities for collection, pumping, treating, and disposing of sewage.

J. **Storm Drain** means a pipe or conduit that carries stormwaters and surface waters and drainage, but is not

intended for sewage and polluted industrial wastes.

5.15.020 Connection Required

A. All structures containing sanitary facilities that are located within 250 feet of a collection sewer or intercepting sewer other than a force main must be connected to the sewer system. Connection to the public sewer system for new buildings or structures is required prior to the issuance of a certificate of occupancy. Any building served by a private sewage disposal system shall be connected to the city sewer system within 60 days of the date that a city sewer line is extended to within 250 feet of the property and is available for connection. At the request of the property owner of an existing structure, the City Council may allow deferral of the connection if connection would impose an undue hardship on the property owner. In determining what constitutes an undue hardship, the Council may consider the following factors:

   1. Whether the property owner is contributing to the cost of extending the main.

   2. The cost of connection.

   3. The condition and capacity of the private sewage disposal system.

   Deferral shall be allowed only if the existing structure is served by a private sewage disposal system in good condition and adequate to serve the sanitary facilities on the property. Council may require proof that the disposal system is properly and regularly maintained and pumped, and routinely inspected by the county. The Council's decision shall be by written order with findings. Any deferral allowed by the Council may be revoked by the Council at any time.

   If sewer connection is deferred, the deferral is automatically revoked and sewer connection must occur within 30 days of:

   1. Failure of the private sewage disposal system;

   2. Failure of the private sewage disposal system to comply with all applicable state and county standards and requirements;

3. Sale of the property; or

4. Any determination by the state or county that the private sewage disposal system presents a health or environmental risk.

(Section 5.15.020(A.) amended by Ordinance No. 1981, adopted 7/6/09, effective August 5, 2009.)

B. All private sewage disposal systems allowed by subsection A shall comply with all applicable state and county standards and requirements.

C. No person shall discharge any sewage into any storm drain or natural drainage outlet.

5.15.030 Permit and Construction Requirements

A. No person, firm, or corporation shall construct or reconstruct any sanitary or storm drains within the city on private property or in public ways without a city permit.

B. Applications for permits to construct or reconstruct sanitary sewers or storm drains shall be made in writing on a city form and include the location of the property, the name of the owner, the name of the person or firm engaged to construct or reconstruct the proposed sanitary sewer or storm drain and such other information and plans as may be required by the city.

C. The applicant upon approval of permit shall pay all applicable fees established by Council resolution. If excavation work in the public right-of-way is required, the applicant shall deposit a cash bond in the amount determined by the city.

D. All costs and expenses incidental to the installation of the building sewer connection shall be borne by the applicant.

E. A separate building sewer connection shall be provided for every building, unless otherwise authorized in writing by the city.

F. Existing building sewers may be used in connection with new buildings only when they are found, on examination and tests, to meet all requirements.

G. All design, construction and materials and repairs shall conform to the city's design and construction standards.

H. Emergency repairs may be made without first obtaining a permit providing that the owner or his representative shall obtain a permit at the earliest possible time, by the end of the next normal business day.

I. Sewer system users are responsible for all costs of service laterals and building sewers.

5.15.040 Power and Authority of Inspectors

A. Duly authorized city employees shall be permitted to enter upon all properties for the purposes of inspection, observation, measurement, samplings and testing.

B. It shall be the permittee or permittee's representative responsibility to request inspection of the work and to allow reasonable time for the city to schedule the inspection. Inspections shall be requested for and made during the normal business hours of the city. Should inspections be required during non-business hours, the permittee shall reimburse the city for all overtime costs incurred.

5.15.060 Discharge Regulations

A. No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, cooling water or unpolluted industrial process waters to any sanitary sewer. In the event the sewer system user fails to comply with any order requiring disconnection or it is impractical to require the disconnection of any storm drain from the sewer system, the sewer system user shall be required to pay a surcharge for the use of the system as established by Council resolution.

B. Storm water and all other unpolluted drainage shall be discharged to storm drains, ditches, or natural storm drainage facilities or into drywells as approved by the city.

C. Except as provided in this section, no person shall discharge or cause to be discharged any of the following waters or wastes to any public sewer:

   1. Any liquid or vapor having a temperature higher than one hundred fifty degrees Fahrenheit;

2. Any water or waste which may contain more than one hundred parts per million, by weight, of fat, oil, or grease;

3. Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid or gas;

4. Any garbage except organic wastes from a commercial source that have been shredded by a disposal system with a maximum 1.5 horsepower;

5. Any ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, paunch manure, or any other solid or viscous substance capable of causing obstruction to the flow in sewers or other interference with the proper operation of the sewer system;

6. Any waters or wastes having pH lower than 5.5 or higher than 9.0 or having any other corrosive property capable of causing damage or hazard to structures, equipment and personnel of the sewage works;

7. Any waters or wastes containing a toxic or poisonous substance in sufficient quantity to injure or interfere with any sewage treatment process or constitute a hazard in the receiving waters of the sewage treatment plant;

8. Any waters or wastes containing suspended solids of such character and quantity that unusual attention or expense is required to handle such materials at the sewage treatment plant;

9. Any noxious or malodorous gas or substance capable of creating a public nuisance;

10. Any material from septic tanks or recreational vehicle holding tanks except at dump stations for that purpose operated or authorized by the city.

D. Grease, oil, and sand interceptors shall be provided when necessary for the handling of those wastes; except that interceptors shall not be required for private living quarters. All interceptors shall be of a type and capacity approved by the city and shall be located so as to be easily cleaned and inspected. Where installed, all grease,

oil and sand interceptors shall be maintained by the sewer system users, at their expense, in continuously efficient operation. The city may inspect facilities at any time for proper operation and maintenance.

E. The admission into the sewer system of waters or wastes having:

   1. A five-day Biochemical Oxygen Demand greater than 300 parts per million by weight, or

   2. Containing more than 350 parts per million by weight of suspended solids, or

   3. Containing any quantity of the substances described in Subsection C., or

   4. Having an average daily flow greater than two percent of the average daily sewer flow of the city shall be subject to the review and approval of the city manager. The city may require pretreatment at the owner's expense and may establish a fee for acceptance of the wastes

E. No unauthorized person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any part of the sewer system.

F. The public works director may adopt specifications and additional regulations consistent with city ordinances to carry out the purpose of this chapter. A copy of such additional material shall be maintained in the public works department.

5.15.065 Industrial Pretreatment

All non-domestic users of the city sewer system shall comply with industrial pretreatment standards of 40 CFR Chapter 1 Part 403.

5.15.070 Sewer Service Charges

A. Users of sanitary sewer service shall be charged fees established by resolution of the City Council. The amounts may be based in whole or in part on the amount of water consumed at the property. The Council may establish fees for any service or impact on the system,

including, but not limited to:

1. Application fees.

2. Connection fees.

3. Usage fees.

4. Inspection fees.

5. Fees for improper connection.

6. Fees for misuse of the system.

7. Disconnection fees.

B. When an industrial or commercial sewer system user will discharge sewage of unusual strength or character, the city reserves the right to reject the application for service, to require pretreatment of such waste, and/or require the sewer system user to pay additional charges as provided in this chapter.

C. Sewer users are responsible for payment for sewer services as follows:

1. The city shall prepare and mail billings for sanitary sewer services monthly. Billing shall be in the same manner as billings for water services, and shall be combined with water bills, if applicable. Deadlines for payment shall be the same as for water bills.

2. A delinquent fee in an amount established by Council resolution shall be added to all delinquent accounts.

3. The city shall charge a fee of ten percent per year on all accounts that remain delinquent for more than three months to cover interest and collection costs.

4. The finance director is authorized to determine what constitutes a de minimis account balance and to waive the penalties in paragraphs two and three of this subsection in de minimis or extenuating circumstances.

5. The city may require deposits prior to providing

sanitary sewer service or in lieu of a deposit, obtain a signed agreement from the property owner, whether the user of the system or not, that the owner will be ultimately liable for the user charges.

6. In addition to other lawful remedies, the city may enforce the collection of charges authorized by this chapter by withholding delivery of water to any premises where the sanitary sewer service fees are delinquent or unpaid, following the procedures and standards for shutting off water service for non-payment of water bills. However, the city shall not deny or shut off water service to any subsequent tenant based upon an unpaid claim for services furnished to a previous tenant who has vacated the premises.

5.15.080 Violation — Penalty

A. A violation of any provision of this chapter is a civil infraction subject to a civil penalty of up to five hundred dollars. Each day a violation continues shall be considered a separate violation.

B. Violations that constitute a health hazard are nuisances and may be abated as nuisance or by any other legal means of eliminating the hazard.

(Chapter 5.15 adopted by Ordinance No. 1949 on February 19, 2008; effective March 20, 2008)

CHAPTER 5.20 STORMWATER DRAINAGE UTILITY

5.20.010 Purpose

The city finds that absent effective maintenance, operation, regulation, and control, existing stormwater drainage conditions in all drainage basins and subbasins within the city constitute a potential hazard to the health, safety and general welfare of the city. The City Council further finds that natural and man-made stormwater facilities and conveyances together constitute a stormwater system and that the effective regulation and control of stormwater can best be accomplished through formation, by the city, of a stormwater utility.

5.20.020 Definitions

A. Equivalent Service Unit (ESU) means a configuration of development or impervious surface estimated to contribute an amount of runoff to the city's stormwater system that is approximately equal to that created by the average developed single-family residence. One ESU is equal to 2,700 square feet of impervious surface area. All single family residences will be deemed to be one ESU, regardless of impervious surface area.

B. Impervious Surface means an artificially created hard-surfaced area that either 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 from that present under natural conditions. Impervious surfaces may include, but are not limited to, rooftops, concrete or asphalt paving, walkways, patios, driveways, parking lots or storage areas, trafficked gravel, and oiled, macadam or other surfaces which similarly impede the natural infiltration or runoff of stormwater. However, not all driveways or concrete are impervious, and the city will determine whether a particular surface is impervious.

C. Improved Premises means any area that the public works director determines has been altered such that the runoff from the site is greater than that which could historically have been expected. "Improved premises" do not include public roads under the jurisdiction of the city, county, state or federal government.

D. <u>On-Site Mitigation Control System</u> means a stormwater drainage facility that the public works director has determined prevents the discharge or substantially reduces or slows the discharge of stormwater into a receiving water or public stormwater system facility.

E. <u>Person Responsible</u> means the occupant, lessee, tenant, contract purchaser, owner, agent or other person having possession of property, or if no person is in possession, then the person in control of the use of the property, or in control of the supervision of development on the property.

F. <u>Stormwater</u> means water from precipitation, surface, or subterranean water from any source, drainage and nonseptic waste water.

G. <u>Stormwater System</u> means any structure or configuration of ground that is used 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, creeks, open drainageways, ditches and their appurtenances. "Stormwater system" does not include the Yaquina River, Yaquina Bay, or the Pacific Ocean.

   1. <u>City Stormwater System</u> means the portions of the stormwater system in public rights of way, within easements in favor of the city, or on city property.

   2. <u>Private Stormwater Facility</u> means any portion of the stormwater system on private property and not within an easement in favor of the city.

H. <u>Stormwater Service</u> means the operations of the city's stormwater utility in providing programs and facilities for maintaining, improving, regulating, collecting, and managing stormwater quantity and quality within the city's service area.

5.20.030 Provision of Service

Except as otherwise provided in this chapter, the city provides stormwater services to all properties within the city that have impervious surfaces that result in discharge or runoff into the city stormwater system.

5.20.040 Charges for Stormwater Service

A. Unless another person responsible has agreed in writing to pay for stormwater service and a copy of that writing is filed with the city, the person receiving the city's water bill shall pay the stormwater charges as set by City Council resolution. The fee shall be based on ESUs. If there is no water service to the property or if water service is discontinued and the property is an improved premises, the stormwater charges shall be paid by the person responsible for the property. The person required to pay the charge is hereafter referred to as the "customer."

B. The City Council may, by resolution, establish fees and charges necessary to provide and operate a stormwater system and service.

C. A customer may request a reduction of the stormwater service charge. The service charge will be reduced in relation to the customer's ability to demonstrate that an on-site mitigation control system limits stormwater discharges or improve the water quality of discharges. Any reduction given shall continue until the condition of the property is changed or until the public works director determines the property no longer qualifies for the credit given. Upon change in the condition of the property, another application may be made by a responsible person.

D. A customer may request waiver of the service charge. A waiver will be granted if the customer demonstrates that there will be no effective discharge to the city stormwater system beyond that which would occur in the property's natural state. The customer must demonstrate through hydrologic/hydraulic analysis that the site receives no stormwater service from the city stormwater system; and proof that any stormwater facilities are constructed and maintained to city standards.

E. For the purposes of this chapter, dry wells are not an on-site mitigation control system eligible for service charge reduction or service charge avoidance because of the potential water quality impact that dry wells may have on the city's ground water resources.

5.20.050 Stormwater Charges – Billing

A. Charges for stormwater service supplied by the city to any customer shall be charged for and billed to each such customer in accordance with rates established by Council resolution. The Council shall hold a public hearing before the initial adoption of a rate, and shall publish notice in a newspaper of general circulation in the city at least 30 days before the adoption.

B. The customer shall be responsible for all stormwater service fees and charges, except as allowed by Section 5.20.040.

C. Billings may be prorated. The proration shall be a daily rate determined by dividing the annual minimum billing by three hundred sixty-five days times the number of days of occupancy from last meter reading and/or billing date.

D. All money collected through stormwater fees and charges shall be used for the improvement, maintenance, and repair of the city's stormwater system

5.20.060 Stormwater Charges – When Delinquent

A. The city shall bill stormwater fees and charges in the same manner and at the same times as it bills for water service, and shall combine the stormwater bill with the water and/or sewer bill.

B. A delinquent fee, in an amount established by resolution of the City Council, shall be added to all delinquent accounts.

C. The finance director (or designee) is authorized to determine what constitutes a de minimis account balance and to waive the penalties in subsections B. and D. of this section in de minimis or extenuating circumstances.

D. In addition to other lawful remedies, the finance director may enforce the collection of charges authorized by this chapter by withholding delivery of water to any premises where the stormwater service fees and charges are delinquent or unpaid, following the procedures and standards for shutting off water service for non-payment of water bills as provided in Chapter 5.10. However, the finance director shall not deny or shut off water service to

any subsequent tenant based upon an unpaid claim for services furnished to a previous tenant who has vacated the premises.

5.20.080 Appeal

Any customer aggrieved by any decision made with regard to the customer's account or a decision on charge reduction or avoidance may appeal to the city manager by filing with the city a written request for review no later than ten days after receiving the decision. The city manager's decision shall be subject to review by the City Council upon filing of an appeal within fifteen days of the notice of decision.

5.20.090 Right of Access

Employees of the city shall be provided access during regular business hours to all parts of the premises which include portions of the city stormwater system for the purpose of inspecting the condition of the pipes and fixtures and the manner in which the system is used. Should there be no one available on the premises, notice will be provided to the owner, tenant, occupant, or their agent that arrangements must be made to allow the inspection.

5.20.100 Tampering with System/Prohibited Discharges

A. No unauthorized person shall damage, destroy, uncover, deface, or tamper with any conduit, structure, appurtenance, or equipment that is part of the city stormwater system. No person may alter any conduit, structure or equipment that is part of the city stormwater system except as authorized by the city. No person may fill or divert any open portion of the city stormwater drainage system except as authorized by the city.

B. No person shall discharge or cause to discharge directly or indirectly to the stormwater system anything that could not be discharged to the sewage system under Section 5.15.060C.

C. No person shall discharge any sewage into the stormwater system.

D. No person shall discharge any hazardous materials into the stormwater system. Application of normal amounts of garden and lawn fertilizer and pesticides to lawns and

gardens shall not be considered a discharge of a hazardous material under this section.

E. The city manager may adopt such rules and regulations as are necessary to protect the city stormwater system and the public health, safety and welfare. Violation of the rules or regulations are a violation of this chapter.

5.20.110 Responsibility for Private Stormwater Facilities

The owner of property where a private stormwater facility is located shall maintain the private stormwater facility in a properly functioning condition and shall operate the private stormwater facility to avoid flooding or erosion in excess of what would occur under natural conditions. An improperly maintained or operated private stormwater facility that results in flooding or erosion in excess of what would occur in natural conditions is a nuisance and may be abated as provided in Chapter 8.10.

5.20.120 Violation—Penalty

A violation of any provision of this chapter is a civil infraction with a maximum civil penalty of $1,000.00. Each day during or on which a violation occurs or continues is a separate civil infraction.

(Chapter 5.20 adopted by Ordinance No. 1951 on March 3, 2008; effective April 2, 2008)

TITLE VI
VEHICLES, TRAFFIC, AND PARKING

TITLE VI VEHICLES, TRAFFIC, AND PARKING

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CHAPTER 6.05 VEHICLES, STREETS AND TRAFFIC GENERALLY

6.05.005 Applicability of State Traffic Laws

All persons shall comply with the Oregon Vehicle Code (ORS Chapters 801 through 822). Violation of the Oregon Vehicle Code is an infraction and violation of this Code.

6.05.010 Definitions Applicable to Title VI

A. Alley. A narrow street through the middle of a block.

B. BIcycle. Every device propelled by human power upon which any person may ride, having two tandem wheels any of which is over 20 inches in diameter. Bicycle includes any trailer pulled by a bicycle and includes any three or four-wheeled vehicle propelled by human power designed for use by adults.

C. Bicycle Lane. A lane reserved for use by bicycles.

D. Block. A length of one side of a street between intersections on that side of the street.

E. Bus Stands. A fixed area in the roadway adjacent to the curb, to be occupied exclusively by buses for layover in operating schedules or while waiting for passengers.

F. Curb. The edge of a street.

G. Handicapped Parking Spot. A parking spot reserved for persons with physical handicaps. Handicapped parking spots may be marked by signs, blue curb pavement markings, a wheelchair logo, or any combination of signs and markings.

H. Loading Zone. A space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of materials or freight. A loading zone may be indicated by signs or by green curb markings.

I. Motor Vehicle. Every vehicle that is self-propelled, including tractors, fork-lift trucks, motorcycles, road-building equipment, street-cleaning equipment and any other vehicles capable of moving under their own power, whether on not the vehicle must be licensed under state

law.

J. Park. To leave a vehicle unoccupied, whether on not the engine is running, and to stop or to maintain a vehicle in one location with its engine off, even if the vehicle is occupied. Temporarily stopping a vehicle because of stopped traffic is not parking, so long as the vehicle is moved immediately when traffic permits.

K. Passenger Loading Zone. A loading zone reserved only for the loading or unloading of passengers. A passenger loading zone may be indicated by signs.

(Section 6.05.010(K) was amended by Ordinance No. 2027, on February 6, 2012; effective March 6, 2012.)

L. Pedestrian. A person on the public right-of-way and not in or on a vehicle, bicycle, or animal.

M. Person. An individual, firm, partnership, association, or corporation.

N. Stand. To stop a motor vehicle while occupied by its operator with the engine running, except stopping in obedience to the instructions of a traffic officer or traffic control device or for other traffic.

O. Stop. Complete cessation of movement.

P. Street. The area within a public right-of-way intended or developed for travel or parking by motor vehicles.

Q. Taxicab Stand. A fixed area in a street adjacent to the curb set aside for taxicabs to stand or wait for passengers.

R. Traffic Control Device. A device to direct vehicular or pedestrian traffic, including, but not limited to a sign, signaling mechanism, barricade, button or street or curb marking installed by the city or other authority.

S. Traffic Lane. The portion of the roadway used for the movement of a single line of vehicles.

T. Vehicle. Any mechanical device used for transportation. Examples include cars, trucks, buses, bicycles, scooters, golf carts, and any other device that has wheels treads or other mechanisms to assist movement.

6.05.015 Administration

A. The city manager is delegated the authority to:

1. Designate portions of rights of way where parking or standing is prohibited or restricted or which shall be used for bicycle lanes.

2. Designate parking spaces and the type of parking permitted, such as the angle of parking.

3. Designate through streets, one-way streets, truck routes, and streets where trucks and heavy machinery are prohibited, except as needed to perform work, or deliver, or pick up materials.

4. Designate and provide standards for traffic control signals.

5. Establish bus stops, bus stands, and taxicab stands.

6. Designate the location of loading zones and passenger loading zones, including combined loading zones and passenger loading zones.

7. Provide appropriate signs and marking relating traffic, traffic control, pedestrians, school zones, and parking.

8. Close or restrict the use of streets on a permanent or temporary basis.

B. The City Council delegates to the city manager the authority to make all initial decisions relating to the exercise of the powers of a road authority under state law. The city manager may further delegate the authority granted under this section.

C. The delegation of road authority to the city manager does not deprive the City Council of its power to act as the city's final road authority.

6.05.020 Review or Appeal of Decision or Action of City Manager

Any decision or action of the city manager or designee under Section 6.05.015 is subject to appeal to or review by the City

Council.

A. Any person affected by a decision or action of the city manager or designee under Section 6.05.015 may appeal the decision or action to the City Council by filing a written appeal with the city recorder within 10 days of the decision or action. In the event that the appellant had no reasonable basis for knowing of the decision or action, the appeal must be filed within 10 days of the date the person knew or should have known of the decision or action.

B. The city manager or any Council member may initiate a review of any decision or action by the city manager under Section 6.05.015 by placing the matter on the Council agenda.

C. The Council may but is not required to give deference to the city manager's decision in making its decision.

6.05.025 Retention of Authority by Council

A. The Council may on its own initiative or at the request of the city engineer or the city manager make an initial decision on a matter within the road authority of the city.

B. If the Council makes a decision either as an initial decision or on appeal or review, that decision shall be binding on the city manager and staff for a period of five years unless the Council decision is withdrawn.

C. The City Council retains all its authority relating to the vacation of rights of way.

6.05.030 Authority of Police and Fire Officers

Police officers have the authority to enforce this title, parking enforcement officers have the authority to enforce the parking restrictions in this title, and the city manager or police chief may designate additional persons to enforce this title. Police officers or members of the fire department may direct or restrict traffic as needed to deal with accidents, emergencies and unusual events.

6.05.035 Emergency Situations

Emergency vehicles, including police cars, fire trucks, ambulances and similar vehicles are exempt from the regulations of this title to the extent authorized by state law,

but shall comply with all provisions of this title when not responding to an emergency or call for immediate response. Police officers and firefighters may authorize others to take actions (park, stop, turn, proceed), as they deem appropriate in response to an accident or emergency.

CHAPTER 6.10 SIGNS AND SIGNALS

6.10.005 Existing Signs and Traffic Control Devices

All official traffic and parking signs and signals installed or authorized by the city are approved and shall be complied with as provided in this title.

6.10.010 Duty to Obey Traffic Signs and Signals

A. All persons shall obey all traffic control devices and parking sign and markings placed or authorized by the city. It shall be a defense to failure to obey that the failure to obey was necessary to avoid an accident, was directed by a police officer, or was unavoidable for reasons outside the control of the person failing to obey.

B. No unauthorized person may move, remove or alter the position of, or deface or tamper with, any authorized traffic control device or parking sign or marking.

C. No person may place an unauthorized traffic control device or parking sign or marking in a public right-of-way. Only the city, county, or ODOT may authorize the placement of traffic control devices or parking signs or markings in rights-of-way.

D. In addition to the signs authorized by the Manual on Uniform Traffic Control Devices, yellow curb markings indicate that no parking is permitted in the street immediately adjacent to the curb marking; red curb markings indicate that no parking or stopping is permitted in the street immediately adjacent to the curb marking; and green curb markings indicate the location and extent of other parking restrictions as established by nearby signs or other traffic control devices.

(Section 6.10.10(D) amended by Ordinance No. 2027, adopted on February 6, 2012; effective March 6, 2012.)

CHAPTER 6.15 PARKING IN RIGHTS OF WAY

6.15.005 Method of Parking

A. Parking is permitted only parallel with the edge of the street, headed in the direction of lawful traffic movement, except where the street is marked or signed for angle parking. Where parking spaces are marked, vehicles shall be parked within the marked spaces. Parking in angled spaces shall be with the front head-in to the curb, except that vehicles delivering or picking up goods may be backed in. Where curbs exist the wheels of a parallel-parked care shall be within 12 inches of the curb, and the front of an angle-parked car shall be within 6 inches of the curb.

B. If possible, parked cars shall be removed by their owners in the event of an emergency such as a fire.

6.15.010 Parking of Oversized Vehicles

Any vehicle which, because of its size or shape, cannot be parked as provided by Section 6.15.005 may be parked outside the restricted or limited parking area of the city in a manner which will not impede or interfere with vehicular traffic. No vehicle may be parked to impede or interfere with a vehicle travel lane.

6.15.015 Prohibited Parking

A. No person shall park a vehicle:

1. On a bridge, viaduct or other elevated structure used as a street, unless permitted by authorized signs.

2. Obstructing a street so as to prevent or interfere with orderly two-way traffic.

3. In any alley except to load or unload persons or materials not to exceed 30 minutes, and then only in such a manner as to leave available space for another vehicle to pass the parked vehicle;

4. On a street for the principal purpose of:

   a. Displaying the vehicle for sale.

b. Greasing or repairing the vehicle, except repairs necessitated by an emergency.

c. Displaying a sign from the vehicle.

d. Selling merchandise from the vehicle except in a duly established market place or when so authorized or licensed under the ordinances of the city.

e. Storage for more than 72 consecutive hours. Storage includes any parking in excess of 72 consecutive hours.

5. And leave the vehicle without stopping the engine and effectively setting the brake. Police officers are authorized to turn off any vehicles left running and unattended and remove the key. The officer shall leave information as to how to claim the key.

6. In a location or at times where parking is prohibited as indicated by authorized signs or curb markings.

B. No person shall park a truck other than a pick-up on a street at any time between the hours of 9:00 P.M. and 7:00 A.M. in front of or adjacent to a residence, motel, apartment house, hotel or other sleeping accommodation.

C. No person shall park a vehicle between 11:00 P.M. and 7:00 A.M. leaving any audible auxiliary motor or engine running. For purposes of this section, “audible” means audible to humans in any public right of way or on any private residential property other than private property where the vehicle is parked with the permission of the owner, and “running” means either continuously or intermittently running, whether controlled by a thermostat, timer, or other means.

D. Parking is prohibited in streets immediately adjacent to yellow-marked curbs. Parking or stopping is prohibited in streets or other public areas immediately adjacent to red-marked curbs. The above prohibitions apply unless parking or stopping is necessary to comply with traffic signs and signals, or if traffic does not permit continued movement. No other sign or wording is needed to make the prohibitions effective. The prohibitions established by this section apply if the yellow or red markings are visible,

even though faded or partially obliterated. Public areas include private property designated or required as a fire lane. Curbs may be painted red on public or private property only to indicate a fire lane or other area where parking and stopping is prohibited.

(Section 6.15.015(D) amended by Ordinance No. 2027, adopted on February 6, 2012; effective March 6, 2012.)

E. No person may park a vehicle in a handicapped parking space without a handicapped license or permit properly displayed on or in the vehicle.

6.15.020 Removal of Illegally Parked Vehicles

A. The city may remove any illegally parked vehicle that is unattended or that is not removed after a request is made to the owner or person in charge of the vehicle, in compliance with state and city law regulating towing of vehicles by the city.

B. The city shall not remove any vehicles that were originally legally parked unless the vehicle has remained illegally parked for a period three times longer than the time originally allowed for the vehicle to be parked, unless removal is needed in case of an emergency or to allow the orderly movement of traffic, or the vehicle has been parked for more than 72 hours.

6.15.025 Loading Zone

No person shall stop, stand, or park a vehicle in a loading zone other than to (i.) load or unload materials; or (ii.) service machinery or equipment.

A. Stopping, standing, or parking a vehicle in a loading zone for the purpose of loading and unloading shall be only for the amount of time reasonably necessary to load and unload the vehicle and perform tasks ancillary to the loading and unloading, and the total time parked shall not exceed 30 minutes.

B. Any person using a loading zone for parking while servicing machinery or equipment must first obtain a permit from the Newport Police Department authorizing the vehicle to park in a loading zone for a period greater than 30 minutes. The permit must be displayed in the windshield of the vehicle while parked in a loading zone.

Permits may be issued on a yearly, monthly, weekly, or daily basis. The fee for the permit shall be set by City Council resolution. Pending a fee resolution, the annual fee shall be $50.00.

(Chapter 6.15.025 amended by Ordinance 1982, adopted on July 6, 2009, effective August 5, 2009.)

6.15.030 Passenger Loading Zone

No person shall stop, stand, or park a vehicle in a passenger loading zone other than to load and unload passengers. The maximum time to be stopped or parked in a passenger loading zone is five minutes, unless actual loading and unloading requires additional time.

6.15.035 Buses and Taxis

No person may park or stand a bus or taxi on any street in any business district at any place other than at a bus stand or taxicab stand, respectively. This section does not prohibit the driver of any taxi from temporarily stopping for the purpose of loading or unloading of passengers.

6.15.040 Restricted Use of Bus and Taxicab Stands

No person shall stop, stand or park a vehicle other than a bus in a bus stand or other than a taxicab in a taxicab stand, except that the driver of a passenger vehicle may temporarily stop therein while actually engaged in loading or unloading passengers when the stopping does not interfere with any bus or taxi.

6.15.045 Parking Time Not Extended by Moving Within a Block

Movement of a vehicle within a block shall not extend any time limit for parking.

6.15.050 Exemptions

A. City and public utility vehicles are exempt from this chapter while in use for construction or repair work or other authorized use.

B. Mail delivery vehicles are exempt from this chapter while in use for the collection, transportation, or delivery of United States mail.

6.15.055 Owner Responsibility

The owner of a vehicle parked in violation of a parking restriction shall be responsible for the violation, except where the use of the vehicle was secured by the operator without the owner's consent. Nothing in this section prevents an owner from recovering the cost of any penalty from the driver or other person responsible for the illegal parking.

CHAPTER 6.20 CITY PARKING LOTS

6.20.005 Parking in City Parking Lots

Cars may park in marked spaces in city off-street parking lots, subject to compliance with authorized signs in the lot limiting the time and duration of parking and placing other restrictions on parking. The maximum amount of time for non-city vehicles in city parking lots is 16 hours. For purpose of this section, city vehicles include vehicles owned by city officials and employees if the parking is related to their work for the city. Vehicles parking in city lots contrary to posted time limits or violation of other posted regulations may be towed, subject to the same restrictions applicable to towing vehicles from private parking lots.

6.20.010 Parking Lots – Publicly Owned/Operated

No vehicle may be parking in a parking lot owned or operated by a governmental entity contrary to the regulations of the parking lot operator or contrary to any sign posted regulating parking in the parking lot. Vehicles parked in violation of this section may be towed, subject to the same restrictions applicable to towing vehicles from private parking lots.

(6.20.010 added by Ordinance No. 1964, adopted on September 15, 2008; effective October 15, 2008.)

CHAPTER 6.25 RECREATIONAL VEHICLE PARKING

6.25.005 Definitions

Public Or Private Parking Lot means a parking lot that is open to the general public for parking, whether for a fee or not. Parking lot does not include areas reserved for owners or tenants of a property.

Recreational Vehicle or RV means a vehicle that contains facilities for sleeping. Examples include motor homes, camping trailers, tent trailers, truck campers and camper vans.

Self-contained means including a functional sink and toilet with on-board storage of wastewater.

6.25.010 Parking of Recreational Vehicles

A. Recreational vehicles may not be parked and occupied in the right-of-way or on any public or private parking lot between the hours of 11:00 P.M. and 5:00 A.M., except as provided in subsections B. and C.

B. For special events, the owner of a paved or otherwise adequately surfaced parking area may allow self-contained RVs to park at no charge, providing that the owner has obtained a permit from the city. The city may impose conditions on the permit, and the permittee shall be responsible for compliance with all permit terms. The permittee shall allow parking only if all available RV parks, including state parks that allow RV camping, are full.

C. Marina owners or operators may allow up to 50% of the parking area for the marina to be used for overnight parking of RVs of marina customers during the period between July 1 and the end of the Labor Day weekend, providing the owner has obtained a permit from the city. The city may impose conditions on the permit, and the permittee shall be responsible for compliance with all permit terms. No permit may be issued to a marina that does not have an approved sanitary facility for the disposal of septic wastes. The owner or operator of the facility shall collect and remit the city's room tax.

D. The planning department shall be responsible for

issuance of the permits under this section and for the imposition of conditions. The planning department may create a set of standard permit conditions.

CHAPTER 6.30 PARADES AND PROCESSSIONS

6.30.005 Permits Required for Parades, Processions, and Events on Streets

A. No processions, parades, or events shall occupy, march or proceed along any street except in accordance with a permit issued by the city. The permit shall be granted if it will not unreasonably interfere with the public use of the streets or the peace and safety of the city, and does not conflict with a previously issued parade permit. In determining whether a parade will unreasonably interfere with public use of the streets, the city may consider the cumulative impacts of all parades for which permits have been issued. The city manager shall issue a decision on a parade permit application within one week of submission of a permit application, and the applicant may appeal any denial or conditions to the City Council by filing a written request within one week of the city manager's decision. The Council shall hear the appeal at its next scheduled meeting. If a permit is granted, the city may grant temporarily grant exclusive use of streets or otherwise restrict the use of city streets. Funeral processions are exempt from the permit requirement.

B. The applicant for a parade permit shall pay a fee or deposit in an amount set by Council resolution for the city's costs of permit administration and provision of services in connection with the parade. The amount or deposit may be set to cover some or all of the city's costs. The parade permit applicant shall obtain liability insurance to cover property damage, personal injury, and death in the amount of at least $1 million and shall provide the city with proof of insurance before the permit is issued.

C. Parades on state highways do not require a city parade permit, even if there is some incidental use or closure of city streets.

D. The city manager is authorized to adopt regulations and policies relating to parades.

6.30.010 Funeral Procession

A. Vehicles in a funeral procession may be escorted by one or more persons authorized by the chief of police to direct

traffic and shall follow routes established by the chief of police.

B. Except when approaching a left turn, each driver in a funeral procession shall drive along the right-hand traffic lane and shall follow the vehicle ahead as closely as is practical and safe.

C. No driver of a vehicle shall cross through a funeral procession, except where traffic is controlled by traffic control signals or when so directed by a police officer. This provision shall not apply to authorized emergency vehicles.

D. For purposes of this section, “funeral procession” refers to a procession related to a funeral of a human.

CHAPTER 6.35 TRAFFIC REGULATIONS

6.35.005 Restrictions on Use of Heavy Vehicles

The Council may by resolution prohibit or restrict the use of large or heavy vehicles on specific city streets. Unless expressly provided to the contrary in the resolution, a restriction on streets shall not apply to the pickup and delivery of merchandise when use of the restricted area is unavoidable.

6.35.010 Oversize Vehicle Permits

A. As permitted by state law, the city manager may grant permits for the use of the streets by oversized or overweight vehicles. The permit may contain conditions to protect public safety and public and private property.

B. The city manager may cancel a permit issued under this section at any time for violation of permit terms or if the public interest requires cancellation.

C. The city manager’s decision to deny, issue, or cancel a permit under this section may appeal to the City Council in writing within five days of the city manager’s decision.

D. The City Council shall decide the appeal after a hearing at the next City Council meeting. The person filing the appeal may request that a special meeting be called.

6.35.015 Sidewalk and Curbs

A. Motor vehicle drivers shall not drive along sidewalks except to cross at a permanent or temporary driveway.

B. New or revised driveway accesses, whether permanent or temporary, may be established only with permission from the city, which may impose conditions on the access.

C. Any person who damages any public improvement within a right-of-way by driving outside the designate vehicle travel areas shall be liable for the damage.

6.35.020 Obstructing Streets

Except as expressly authorized by law, no person shall place

or leave anything in a right of way that obstructs or limits the free passage of pedestrian or vehicular traffic or obstructs a driver's view of traffic, control signs and signals.

6.35.025 Removing Glass and Debris

Any party to a vehicular accident or any person spilling glass or any substance that could cause injury or damage on a city street shall immediately clean up the glass or other substance, if feasible. The tow truck driver responding to a crash shall clean up glass and debris at the scene of the crash.

6.35.030 Crossing Private Property

A. No operator of a vehicle shall proceed from one street to an intersecting street by crossing private property.

B. This provision shall not apply if the person stops to procure or provide goods or services.

6.35.035 Covered and Secured Loads

No person shall haul sand, gravel, rock, wood, garbage, yard debris, or other substance over any right-of-way without containing the load to avoid any discharge onto the right-of-way of the material being transported.

CHAPTER 6.40 SKATEBOARDS, ROLLERSKATES

6.40.005 Definitions

A. Rollerskates. Shoes or attachments to shoes that have wheels.

B Skateboard. A vehicle propelled by gravity or human power, consisting of two or more wheels affixed to a riding surface, upon which the operator usually stands during movement. Skateboards include non-powered scooters.

C. Unmotorized Scooter. A vehicle similar to a skateboard, but with a vertical extension for handles.

D. Bicycle. A vehicle that is designed to be operated on the ground on wheels, propelled primarily by human power transmitted to the wheels by a crank, pedals, chain and gears, or similar mechanical system, including, but not limited to the devices commonly known as unicycles, bicycles, and tricycles.

(6.40.005(D) added by Ordinance No. 2016, adopted on July 18, 2011; effective July 18, 2011.)

6.40.010 Rollerskaters, Skateboarders and Scooter Riders Are Pedestrians

Persons riding on rollerskates, skateboards, and unmotorized scooters are pedestrians and subject to the restrictions imposed by this title and state law on pedestrians.

6.40.015 Restrictions on Rollerskates, Skateboards, Bicycles, and Unmotorized Scooters

Skateboards, rollerskates, bicycles, unmotorized scooters, and similar vehicles may not be used in any part of the right-of-way, including sidewalks, in the following locations or in any other location designated by Council resolution. Notwithstanding the above, bicycles shall be allowed on roadways in the following locations:

STREET	LOCATION
SW Bay Boulevard	From SW Hatfield Drive southwesterly to SW Bay Street
SW Coast Highway	From SW 2nd Street southwesterly to SW Neff Way
SW Hurbert Street	From SW 7th Street southeasterly to SW 9th Street
NW Beach Drive	From NW Coast Street westerly to the east driveway of the Nye Beach turnaround parking lot
SW Naterlin Drive	From SW Government Road to SW Bay Street
SW Bay Street	From SW Naterlin Drive to SW Bay Boulevard

(6.40.015 amended by Ordinance No. 2016 adopted July 18, 2011; effective July 18, 2011.)

CHAPTER 6.50 TEMPORARY IMMOBILIZATION OF VEHICLES

6.50.005 Definitions

Enforcement Officer. Any police officer, parking enforcement officer, or other person authorized by the chief of police or city manager to enforce this chapter.

Immobilization Device or Boot. A device that, when attached to a vehicle, prevents the movement of the vehicle.

Owner. Any individual or entity with any ownership or other interest in a vehicle.

Registered Owner. Any individual or entity listed as a registered owner or security interest holder of a vehicle in motor vehicle division records.

6.50.010 Regulations Authorized

The chief of police or city manager may adopt regulations to implement this chapter, but this chapter may be enforced whether or not regulations have been adopted.

6.50.015 Immobilization of Vehicle Authorized

A. An enforcement officer may immediately immobilize any vehicle without notice to the owner under any of the following circumstances:

   1. The vehicle is reported as stolen or involved in a crime.

   2. The vehicle has one unpaid parking citation outstanding for more than 45 days, and no hearing has been requested, or if there are four or more unpaid parking violations on the vehicle.

   3. The vehicle is parked and left standing upon city property or private property without express consent of the owner or person in control of the property.

   4. The immobilization is ordered by the municipal judge.

B. When immobilization is authorized, the enforcement

officer shall attach a boot to the vehicle to restrict its movement. At the time the vehicle is immobilized, the enforcement officer shall affix a readily visible notification sticker to the immobilized vehicle. The notification sticker shall contain the following information:

1. The date and time the sticker was affixed; and

2. A statement that the vehicle has been immobilized by the city as authorized by Newport Municipal Code Chapter 6.50; and

3. A warning that attempting to remove the boot or move the vehicle, before a release is obtained is unlawful, and may subject the offender to penalties; and

4. a. A statement that the vehicle may be released by paying the designated total of unpaid parking fines, plus immobilization fee, or

   b. A statement explaining the reason for the immobilization if other than for non-payment of citations; and

5. The address, telephone number, and office hours where additional information can be obtained.

6.50.020 Immobilization Fee

In addition to any other penalty or fine imposed for any parking violation, an immobilization fee in an amount set by Council resolution shall be imposed for every immobilization under this chapter.

6.50.025 Removal of Immobilization Device

No person other than a duly authorized agent of the city may remove, attempt to remove, tamper with an immobilization device or move, or attempt to move a vehicle which has been immobilized.

6.50.030 Release

No vehicle immobilized pursuant to Section 6.50.015A.2 shall be released from the boot until payment of all unpaid parking violation penalties and the immobilization fee or posting of a bond to cover the full amount.

6.50.035 Challenges

A. Any person desiring to contest an immobilization may request a hearing by filing a written request to the Municipal Court. No request will be accepted more than five calendar days after removal of the boot.

B. The purpose of the hearing shall not be to determine the merits of any prior parking violations, but solely to determine whether or not there was authority to immobilize the vehicle.

C. The person requesting the hearing shall bear the burden of proof, showing that there were no grounds for immobilization of the vehicle.

D. In the event that the challenge to the immobilization is upheld, the boot shall be removed if it is still in place, and the immobilization fee shall not be charged.

6.50.040 Towing of Immobilized Vehicles

A. If no one responds to the immobilization of the vehicle within 24 hours, the vehicle may be towed and stored at the expense of the registered owner.

B. Notice of towing shall be given to the registered owner and the vehicle shall not be released until all fines and penalties have been paid or bond sufficient to guarantee payment has been posted, accompanied by a request for a hearing.

6.50.045 Bond Forfeiture

Any bond required by this chapter shall be forfeited if the person on whose behalf the bond is posted fails to appear at the hearing or if the city prevails at the hearing.

6.50.050 Lien for Towed Immobilized Vehicles

Any person who tows a vehicle at the request of the city following immobilization shall have a lien on the vehicle and its contents for reasonable towing and storage charges. Unless a hearing is requested and bond posted, the towing company may retain possession of the vehicle until all charges and fines have been paid.

CHAPTER 6.60 VEHICLES TAKEN INTO CUSTODY

6.60.005 Compliance with State Law

The police department may take into custody abandoned vehicles, vehicles constituting obstructions or hazards, or vehicles illegally parked as provided by state law or city ordinance.

6.60.010 Transfer of Vehicle

If a vehicle taken into custody is not claimed after any applicable state law notice procedure is followed, the city may dispose of the vehicle:

A. By any means expressly authorized by state law; or

B. By transferring the vehicle to the towing company that has towed and stored the vehicle as whole or partial consideration for the towing and storage service or in satisfaction of the towing company's lien. No formal documentation of a transfer to the towing company is required.

6.60.015 Agreements with Towing Companies

The police department may hire a properly certified towing company to remove vehicles from rights-of-way as authorized by state law and may enter into an oral or written agreement with the towing company for the eventual transfer of towed vehicles to the towing company if the vehicle remains unclaimed after all procedures required by state law are followed.

6.60.020 Release of Vehicles

No vehicle that has been taken into custody as provided in this chapter may be released until the person claiming the vehicle has:

A. Paid a fee in an amount to be set by Council resolution, but not less than $100, to the Newport Police Department to cover its administrative costs; and

B. Has obtained a release from the Newport Police Department for the vehicle. The release may be issued only if the person seeking release of the vehicle provides

proof of ownership, proof of insurance, and proof that the person who will drive the vehicle from the impound lot has a valid driver's license.

(Chapter 6.60 was adopted by Ordinance No. 1970, on January 21, 2009, effective February 21, 2009.)

CHAPTER 6.65 IMPOUNDING VEHICLES, INVENTORY

6.65.010 Purpose and Scope

This chapter provides the procedures for towing a vehicle by or at the direction of the Newport Police Department and for conducting inventories of personal property in an impounded vehicle. This policy shall not be interpreted as limiting any legal authority that policy officers may have to search persons or to search or seize property. Failure to follow the policy does not give rise to a claim against the city, the police department, or any individual, but may be grounds for disciplinary action by the city.

6.65.020 Vehicle Impounds

Police officers impound vehicles in the following circumstances:

A. Abandoned vehicles.

B. Vehicles left in or partially in a vehicle travel lane that block or restrict traffic.

C. Vehicles that need to be moved from their current location when the owner is arrested, cannot be located, or is incapable of caring for the vehicle.

D. Recovered stolen vehicles.

E. Vehicles disabled in a collision.

F. Vehicles seized as evidence in a criminal investigation.

G. Vehicles seized as instrumentalities of a crime such as:

   1. Vehicular Assault

   2. Attempting to Elude

   3. Reckless Driving.

H. Under any statutory authority, including:

   1. Driving while suspended or revoked.

2. Operating a motor vehicle without driving privileges or in violation of license restrictions.

3. Driving under the influence of intoxicants.

4. Driving uninsured.

A police officer may order the towing of impounded vehicles.

6.65.030 Definitions

The following definitions apply in this chapter:

A. Valuables means:

   1. Cash money of an aggregate amount of $50 or more; or

   2. Individual items of personal property with a value of $500.00 or more.

B. Open Container means a container that is unsecured or incompletely secured in such a fashion that the container's contents are exposed to view.

C. Closed Container means a container whose contents are not exposed to view.

D. Police Officer means any police officer employed or acting at the direction of or in collaboration with the Newport Police Department.

6.65.040 Inventories of Impounded Vehicles

A. The contents of all vehicles impounded by a police officer will be inventoried. The inventory shall be conducted before constructive custody of the vehicle is released to a third-party towing company except under the following circumstances:

   1. If there is reasonable suspicion to believe that the safety of either the police officer(s) or any other person is at risk, a required inventory will be done as soon as safely practical; or

   2. If the vehicle is being impounded for evidentiary purposes in connection with the investigation of a

criminal offense, the inventory will be done after such investigation is completed.

B. The purpose for the inventory of an impounded vehicle will be to:

   1. Promptly identify property to establish accountability and avoid spurious claims to property;

   2. Assist in the prevention of theft of property;

   3. Locate toxic, flammable, or explosive substances;

   4. Reduce the danger to persons and property.

C. Inventories of impounded vehicles will be conducted according to the following procedure:

   1. An inventory of personal property and the contents of open containers will be conducted throughout the passenger and engine compartments of the vehicle including, but not limited to, accessible areas under or within the dashboard area, in any pockets in the doors or in the back of the front seat, in any console between the seats, under any floor mats and under the seats;

   2. In addition to the passenger and engine compartments as described above, an inventory of personal property and the contents of open containers will also be conducted in the following locations:

      a. Any other type of unlocked compartments that are a part of the vehicle including, but not limited to, unlocked vehicle trunks and unlocked car- top containers; and

      b. Any locked compartments including, but not limited to, locked vehicle trunks, locked hatchbacks and locked car-top containers, if either the keys are available to be released with the vehicle to the third-party towing company or an unlocking mechanism for such compartment is available within the vehicle.

   3. Unless otherwise provided in this chapter, closed containers located either within the vehicle or any of

the vehicle's compartments will not be opened for inventory purposes, except a closed container in the vehicle or vehicle compartment will have its contents inventoried when:

a. The closed container is to be placed in the immediate possession of such person at the time that person is placed in the secure portion of a custodial facility, police vehicle, or secure police holding room;

b. Such person requests that the closed container be with them in the secure portion of a police vehicle or a secure police holding room; or

c. The closed container is designed for carrying money and/or small valuables on or about the person including, but not limited to, closed purses, closed coin purses, closed wallets and closed fanny packs.

4. Upon completion of the inventory, the police officer will complete a report.

5. Any valuables located during the inventory process will be listed on a property receipt. A copy of the property receipt will either be left in the vehicle or tendered to the person in control of the vehicle if that person is present. The valuables will be maintained in a secure manner until they can be released to the owner or other authorized person, subject to any right of the city to seize or hold the valuables as evidence or to otherwise retain the valuables.

(Chapter 6.05 – 6.65 was adopted by Ordinance 1927 on July 2, 2007; effective August 1, 2007.)

CHAPTER 6.70 DUII FORFEITURES

6.70.010 Purpose

The purpose of this chapter is to allow the city to participate in Lincoln County's DUII Forfeiture Program to allow forfeiture of vehicles under certain circumstances related to the operation of those vehicles by persons under the influence of intoxicants, consistent with constitutional standards and state law.

6.70.020 Adoption of County Forfeiture Program

A. Lincoln County Code Sections 2.300 to 2.315, relating to forfeiture of vehicles as the result of repeated driving under the influence of intoxicants is applicable within the City of Newport.

B. City staff shall work with staff to allow the city to implement Lincoln County's DUII program within the city.

(Chapter 6.70 was adopted by Ordinance No. 1938 on October 15, 2007; effective November 14, 2007)

TITLE VII
HEALTH AND POLLUTION

TITLE VII HEALTH, POLLUTION

CHAPTER 7.05 SOLID WASTE

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7.05.025 Public Responsibility
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CHAPTER 7.10 WATERSHED PROTECTION

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CHAPTER 7.15 ANIMAL WASTE

7.15.010 Findings and Purpose
7.15.020 Clean Up of Dog Waste Required
7.15.030 Violation

CHAPTER 7.05 SOLID WASTE

7.05.005 Purpose and Policy

A. Purpose. The City of Newport regulates solid waste management:

1. To insure safe, economical and comprehensive solid waste service;

2. To insure rates that are just, fair, reasonable and adequate to provide necessary public service and to prohibit rate preferences and other discriminatory practices; and

3. To provide for technologically and economically feasible solid waste recovery by and through the franchise.

B. Policy and Priorities. The city's solid waste management priorities, in order, are:

1. Reduce the amount of solid waste generated;

2. Reuse materials for the purposes for which they were originally intended;

3. Recycle materials that cannot be reused;

4. Resource recover material where possible;

5. Assure that remaining wastes will be disposed of in a manner that fully meets all requirements of state statutes and regulations.

   The city recognizes that the priorities are subject to economic and technical considerations.

C. Recycling. The opportunity to recycle shall be an integral part of the overall solid waste collection system, taking advantage of coordinated area-wide service, promotion, education and marketing.

D. Research and Demonstration Projects. The city encourages and will cooperate in research and demonstration projects in recycling, reuse, resource

recovery and solid waste management generally by its franchisees, with technical assistance from other sources, as required.

E. Consistency with State Law. The city's solid waste management program is intended to carry out state solid waste requirements and shall be interpreted to be consistent with state law and regulations regulating solid waste.

7.05.010 Definitions

A. Collection Service. The collection and/or compaction of residential, commercial, drop box, and demolition solid waste together with the collection of curbside recyclable materials.

B. Customer. The person who generates solid waste to whom the franchisee provides collection services and who has not been refused service pursuant to this chapter.

C. Disposal. The disposition of solid waste at a permitted solid waste handling facility.

D. Fair Market Value. Fair market value is that price for which goods will sell as between one who wants to purchase and one who wants to sell after reasonable efforts have been made to find a purchaser who will give a good price. In determining whether fair market value has been paid, the value of services provided in removing and disposing of the materials shall be excluded if the disposal of such material is then available to the generator at no cost.

E. Franchisee. The person granted the franchise under Section 7.05.015, as well as authorized subcontractors and agents of the franchisee. .

F. Hazardous Waste. Any wastes regulated as hazardous wastes under state law.

G. Person. An individual, partnership, association, corporation, trust, firm, estate or other private or public legal entity or agency.

H. Recyclable Material. Any material or group of materials that can be recycled.

1. Curb-Side Recyclable Material. Recyclable material that the franchisee is required to collect from customers. The Council may modify which materials are curbside recyclable by resolution after consultation with the Franchisee. The following materials collected from a residential source are curbside recyclable materials: used motor oil, newspaper, aluminum, corrugated cardboard, and tin cans. The following materials collected from a commercial source are curbside recyclable materials: Ferrous metal, nonferrous metal, used motor oil, corrugated cardboard, tin cans.

2. Depot-Recyclable Material. All curbside recyclable material and container glass.

I. Recycling Service. The collection, handling, and disposition of recyclable materials. Recycling service includes collection of curbside recyclables.

J. Resource Recovery. The process of obtaining useful material or energy resources from solid waste, including energy recovery, materials recovery, recycling or reuse of solid waste.

K. Service. Collection service, recycling service and resource recovery.

L. Solid Waste. All putrescible waste and non-putrescible waste, including but not limited to, garbage, rubbish, refuse, ashes, swill; wastepaper (correlated or cardboard), grass clippings; compost; residential, commercial, industrial, demolition and construction wastes; discarded residential, commercial and industrial appliances, equipment and furniture; vehicle parts and vehicle tires; manure, vegetable or animal solid or semi-solid waste, dead animals and all other wastes not exempted by this subsection. Solid waste does not include:

1. Hazardous waste.

2. Sewer sludge and septic tank and cesspool pumping or chemical toilet waste.

3. Reusable beverage containers for which a deposit is required under state law.

4. Curb-side recyclable material and depot recyclable materials when collected by the franchisee or delivered to franchisee.

5. Source separated used materials that are sold for fair market value for recycling or reuse.

M. Source. The person last using recyclable or waste materials as, for example, a residential householder who buys and consumes the contents of a product container, making the container available to be disposed of as waste or recycled or the owner of a building that becomes construction debris.

N. Waste. Material that is no longer usable by or that is no longer wanted by the source, which material is to be disposed of or be resource-recovered by another person. However, the term "waste" shall not include any materials which are the subject of a sales transaction by the source of the material for actual monetary consideration and involving materials for which a recognized market exists and which requires, or involves, no processing prior to such sale by the source. A payment of a nominal consideration to the source of material shall not exempt such material from the definition of the term "waste" if in fact the true consideration is merely the collection, transportation, conveyance, or disposal of the waste materials.

7.05.015 Exclusive Franchise and Exceptions

A. The Council finds that the best way of achieving the purpose, policies and priorities of this chapter is to grant an exclusive franchise for service. The franchisee shall be required to enter into a franchise agreement with the city. Grants of franchises and approval of franchise agreements shall be by non-codified ordinances. The franchisee shall provide service throughout the city, and shall provide at least one depot for depot-recyclable materials and two additional depots for container glass only.

1. Unless as otherwise provided by this chapter, no person shall provide service without a franchise issued by the city.

2. Unless as otherwise provided by this chapter, no

person without a franchise issued by the city shall take, process, sort, transfer, compact or remove, whether for recycling, reuse, or otherwise, waste or solid waste materials placed out for collection.

3. Unless as otherwise provided by this chapter, no person without a franchise issued by the city, other than the person producing the materials contained therein, shall enter or interfere with any solid waste container, or remove any such container or its contents from the location where the same has been placed by the person producing the contents of such container without first obtaining written consent from the franchisee.

4. Any person with a franchise issued by the city, shall in addition to all other legal rights and remedies he or she might otherwise possess, have a cause of action for violations of this chapter or the franchise in any court of competent jurisdiction, including a claim for injunctive relief. Damages recovered in such a case shall be trebled if reasonably necessary to deter continuing violations of this chapter or the franchise. The prevailing party in any such action shall be entitled to recover his or her reasonable costs, including attorney's fees and expert witness fees at the trial court level and on appeal.

B. Nothing in this chapter or a franchise issued pursuant to this chapter shall:

1. Prohibit any property owner or tenant from personally transporting solid waste generated by the property owner or tenant to an authorized disposal site or resource recovery facility. Solid waste generated by a tenant is owned by the tenant, not the landlord or property owner.

(Chapter 7.05.015(B.)(1.) adopted by Ordinance No. 1945 on January 7, 2008; effective February 6, 2008)

2. Prohibit any person from contracting with a federal agency to provide service to such agency, provided, however, such person shall apply for a franchise for that service only and shall comply with all applicable requirements imposed on the franchisee under this chapter and a franchise issued pursuant to this chapter with the exception of rates or terms of service

set by written contract with such agency where they are in conflict.

3. Prohibit any non-profit charitable or civic organization having a recognized tax-exempt status, from receiving as a donation, source-separated recyclable materials at a designated location.

4. Prohibit a contractor licensed in the state of Oregon from transporting and disposing of waste as an incidental part of carrying on the business or service of the demolition, construction, or remodeling of a building or structure or in connection with land clearing and development. Such waste will be generated only by the contractor in connection with the contractor's construction site and hauled in equipment owned by the contractor. For purposes of this section, "incidental" is defined as a total of twelve (12) cubic yards or less of solid waste hauled at any time or in any one piece of equipment.

(7.05.015(B)(4) was added by the adoption of Ordinance No. 2015 on May 16, 2011; effective June 15, 2011.)

7.05.020 Supervision

Service provided under the franchise shall be under the supervision of the city manager. Franchisee shall, at reasonable times, permit inspection of its facilities, equipment, and personnel providing service.

7.05.025 Public Responsibility

A. To prevent recurring back and other injuries to collectors and to comply with safety instructions to collectors from the State Accident Insurance Fund:

1. No garbage container shall exceed 60 pounds gross loaded weight.

2. Sunken refuse cans or containers shall not be used.

3. All customers will be provided with a container by the franchisee that the franchisee shall own and maintain.

4. The customer shall provide safe access to the pickup point so as not to jeopardize safety of the driver of a collection vehicle or the motoring public or to create a

hazard or risk to the person providing service or that would cause a violation of state or federal laws or safety regulations. Where the franchisee finds that a private bridge, culvert, or other structure or road is incapable of safely carrying the weight of the collection vehicle, the collector shall not enter onto such structure or road. The customer shall provide a safe alternative access point or system.

5. The customer shall set out garbage containers for collection at the curb or fog line.

6. The customer shall set out garbage containers for collection no later than 6:00 A.M. the day of collection.

7. If the franchisee has provided the customer with a container for collection, then the user must use that vessel.

8. All containers, one cubic yard or larger, must be set upon a smooth, dry, hard surface, and be readily serviceable from a public right-of-way.

B. To protect the privacy, safety, pets and security of customers and to prevent unnecessary physical and legal risk to the collectors, a residential customer shall, unless otherwise provided by an agreement with the franchisee, place the container to be emptied outside of any locked or latched gate and outside of any garage or other building.

C. No stationary compactor or other container for commercial or industrial use shall exceed the safe loading design limit or operation limit of the collection vehicles provided by the franchisee providing service.

D. To prevent injuries to users and collectors, stationary compacting devices for handling solid wastes shall comply with applicable federal and state safety regulations.

E. Any vehicle used by any person to transport solid wastes shall be so loaded and operated as to prevent the wastes from dropping, sifting, leaking, blowing, or other escapement from the vehicle.

F. No person shall place hazardous waste out for collection by the franchisee or place hazardous waste in any

container, box or vehicle owned or operated by the franchisee or by the City of Newport without the prior permission of the office of the franchisee or of the city manager.

G. In the case of customers who violate the above conditions, the franchisee shall not be required to furnish service until the violation is corrected. The franchisee shall give violating users reasonable notice of the violations and an opportunity to cure prior to terminating services.

H. The franchisee shall charge the rates approved by the City Council as provided in the franchise by resolution after consultation with the franchisee, and customers shall pay the approved rates. Franchisees may provide services other than those that have published rates at any rate agreeable to the franchisee and customer.

7.05.030 Accumulation of Waste

No person shall accumulate or store waste that is unsightly, or in violation of the city's nuisance ordinance, or in violation of regulations of the Oregon Department of Environmental Quality.

7.05.035 Unauthorized Removal

No person shall remove solid waste placed out for collection, or resource recovery, or recycling except the person so placing the solid waste or the franchisee. This Section does not apply to the purchase of materials for fair market value as exempted by Section 7.05.015.

7.05.040 Exempt Activities

It is not the intention of this chapter to prohibit, restrict or control the bona fide sale or exchange of material not constituting recyclable material, when such material has a recognized market value or for which a recognized market exists and where such sale or exchange is for valuable consideration. A payment of a merely nominal consideration to the source of the material shall not exempt such material from the definition of the term waste or the restrictions of this chapter if in fact the true consideration is merely the collection, transportation, conveyance, or disposal of waste materials.

7.05.045 Construction/Severability

Any finding by any court of competent jurisdiction that any portion of this chapter is unconstitutional, invalid, or unenforceable shall not invalidate any other portion of this chapter.

7.05.050 Penalties

Violation by any person except franchisee of the provisions of this chapter is a civil infraction. The civil infraction remedy is not exclusive and is in addition to all other remedies. The city and/or the franchisee may seek any other remedy in any other forum authorized by law. Violations of this chapter by franchisee or its agents or subcontractors shall be enforced as provided in the franchise.

7.05.055 Customer Dispute Resolution

A. Any citizen of the city who is aggrieved or adversely affected by any application of the franchise or a policy of the franchisee shall first attempt to settle the dispute by notifying the franchisee of the nature of the dispute and affording the franchisee the opportunity to resolve the dispute.

B. If the dispute is unresolved, the citizen may petition the city in writing for a hearing on the complaint. At the conclusion of the hearing, the city shall have the authority to determine whether the complaint is unfounded or that the franchisee should be ordered to remedy the matter.

C If either party disagrees with the city's decision, either party may submit the matter to be decided by neutral, binding arbitration in accordance with the rules of the American Arbitration Association and the laws of the State of Oregon, and not by court action except as provided by Oregon law for judicial review of arbitration proceedings. Judgment upon any arbitration award rendered may be entered in any court having jurisdiction.

D. Any attorney fees or other costs incurred by a party in preparation for or participation in any arbitration shall be the responsibility of that party, except that the costs of arbitration shall be shared equally by the parties.

E. Actions brought against the city under this section shall be subject to the applicable tort limits in the Oregon Tort Claims Act and the Oregon Constitution.

(7.05.055(E) was adopted by Ordinance No. 2015 on May 16, 2011; effective June 15, 2011.)

(Chapter 7.05 was adopted by Ordinance No. 1913 on May 7, 2007; effective June 6, 2007)

CHAPTER 7.10 WATERSHED PROTECTION

7.10.005 Definitions

City Watershed means all property owned, operated, or controlled by the city adjacent to Big Creek upstream of and including the water treatment plant, including both dams, the reservoirs, water treatment and distribution facilities, and undeveloped areas.

Greater Watershed means all areas where natural surface drainage flows eventually into the city watershed. The greater watershed includes the city watershed. The greater watershed includes property both within and outside the city limits.

Hazardous Product means any product that could cause contamination of the city's water supply, including any chemical, any petroleum product, and any human or animal wastes.

7.10.010 Prohibitions

A. The following acts are prohibited within the city watershed, unless authorized in writing by the city:

1. Entering or remaining in any area where access is prohibited by a posted sign.

2. Allowing livestock to be within the watershed.

3. Depositing or leaving any garbage, except in containers specified for that purpose.

4. Shooting a firearm, or killing any animal or fowl.

5. Overnight camping.

6. Lighting fires.

7. Driving motor vehicles of any type other than on established roads.

8. Swimming or bathing in any stream, reservoir or other body of water.

9. Removing, destroying, defacing or altering any sign

posted by the city.

10. Gasoline or diesel powered boating.

B. The following acts are prohibited in the greater watershed:

1. Establishing or maintaining livestock pens or feeding yards.

2. Depositing any hazardous product in a location it could cause pollution of Big Creek or any tributary of Big Creek or could otherwise contaminate the city's water supply.

3. Leaving an animal carcass in a location where it could contaminate surface water or ground water.

7.10.015 Violation

Violation of any provision of this chapter is a civil infraction subject to a maximum civil penalty of $10,000. Penalties over $1,000 shall be imposed only for serious intentional violations. In the event it is judicially determined that the city lacks authority to impose a penalty for actions outside the city limits, the city shall have the right to maintain an action for damages in circuit court for violation of Section 7.10.010(B.) for actions outside the city limits.

(Chapter 7.10 adopted by Ordinance No. 1938 on October 15, 2007; effective November 14, 2007)

CHAPTER 7.15 ANIMAL WASTE

7.15.010 Findings and Purpose

Some surface waters within the city have been found to be contaminated with fecal coliform bacteria. Some of the contamination is the result of improper disposal of human waste, but some is the result of animal waste. The purpose of this chapter is to reduce one source of animal waste that can contribute to pollution of creeks and waterways.

7.15.020 Clean Up of Dog Waste Required

A. The owner or other person responsible for a dog shall remove all feces deposited by the dog in any right-of-way, park, or other public property within the city. The owner of the dog shall be responsible for any non-compliance with this section, whether or not the owner had immediate control of the dog at the relevant time.

B. Owners of property where dogs are maintained shall remove dog feces from their property at least once per week.

C. For purposes of this section, “remove” means to take the feces from the place where deposited and properly dispose of the feces as solid waste. Any feces shall be bagged before being placed in a trash receptacle or otherwise placed for collection.

7.15.030 Violation

Failure to comply with the requirements of this chapter is a civil infraction with a maximum civil penalty of $500. Failure to comply with Section 7.15.020(B.) is a nuisance and may be abated as provided in Chapter 8.10.

(Chapter 7.15 adopted by Ordinance No. 1949 on February 19, 2008; effective March 20, 2008)

TITLE VIII
NUISANCES AND OFFENSES

TITLE VIII NUISANCES AND OFFENSES

CHAPTER 8.10 NUISANCES

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CHAPTER 8.10 NUISANCES

8.10.005 Purpose and Process

The purpose of this chapter is to protect the public health and safety and to improve the aesthetics of the city by eliminating health and safety hazards and prohibiting or restricting conditions and actions that adversely impact the beauty and livability of the city. The nuisance process described in this chapter is intended to abate ongoing conditions, but some nuisances may be of short duration, and the civil infraction process may be used to impose sanctions on those responsible for the nuisance, whether or not the nuisance abatement process is also used.

8.10.010 Definitions

A. Fence means a barrier intended to prevent escape or intrusion or to mark a boundary. A fence may consist of wood, metal, masonry, plastic, or similar materials, or a hedge or other planting arranged to form a visual or physical barrier.

B. Inoperable Vehicle means any vehicle which has no current valid state vehicle license, or which cannot be moved without being repaired or dismantled, or which is no longer usable for the purposes for which it was manufactured, and which has been in that condition for at least 15 days.

C. Person means a natural person, firm, partnership, association, company, corporation, or other entity of any kind.

D. Person in Charge of Property means an agent, occupant, lessee, contract purchaser, or person, other than the title owner, having possession or control of the property.

E. Public Place means a building, place, or accommodation, whether publicly or privately owned, open and available to the general public.

F. Screened and Fenced means surrounded by a fence to prevent unauthorized entry into an area and effectively screened from view from public rights of way and adjacent properties.

G. **Street** means the area within the right-of-way improved for vehicular travel, including bike lanes and motor vehicle travel lanes.

H. **Vermin** means wild or feral animals normally considered to be pests such as rats, mice, feral cats, raccoons, and opossums.

8.10.020 Nuisances Declared

The following actions or omissions are declared to be nuisances.

A. Any act or omission that causes injury to or endangers the comfort, health, repose, or safety of citizens of the city generally.

B. Any act or omission that unlawfully interferes with, obstructs, or renders unsafe personal safety or property.

C The acts, conditions, or objects specifically enumerated in this chapter or designated a nuisance by city code or ordinance.

D. Violations of the zoning ordinance and any failure to comply with a condition of a land use approval.

E. Violation of any ordinance imposing health, safety, or sanitary standards for housing.

8.10.030 Animals

A. No person may permit an animal or bird owned or controlled by the person to be at large if the animal or bird is known to be afflicted with a communicable disease or is a dangerous animal.

B. No person may permit livestock or poultry to run at large within the city nor permit any barn, stable, chicken coop or other similar structure to cause an odor noticeable at the property line of the property.

C. Livestock or poultry or other domesticated animals or fowl running at large in the city may be taken up and impounded by a police, animal control, or code enforcement officer with reasonable efforts to preserve the animal's life. If the owner or other responsible person

cannot be located after reasonable efforts, the animal may be sold, transferred to a responsible agency, or disposed of.

D. No person may permit any fowl or animal carcass owned by him or under his control to remain upon the public streets or places, or to be exposed on private property, for a period of time longer than is reasonably necessary to remove or dispose of such carcass.

8.10.040 Nuisances Affecting Public Health and Safety

No person may permit or cause a nuisance affecting public health or safety. Nuisances affecting public health or safety include, but are not limited to:

A. Privies And Improperly Functioning Septic System. An open vault or privy, cesspool, or improperly maintained septic tank that causes odor or improper disposal of wastes. Portable privies placed on a temporary basis in connection with construction projects or temporary events in accordance with the State Board of Health regulations are not nuisances, and portable privies placed with city approval are not nuisances.

B. Debris.

1. Accumulations of debris, rubbish, manure, junk, and other refuse located on private property that is not removed within a reasonable time. A reasonable time for materials that can be disposed of through normal solid waste collection is one week. A reasonable time for other materials is 15 days.

2. Unprotected garbage or refuse. Garbage or refuse stored or allowed to remain outdoors other than in receptacle that provides protection from weather and animals, including garbage or refuse that overflows from dumpsters. A dumpster will be considered to be overflowing if the lid cannot be fully closed because the accumulation of garbage. For purpose of this section, construction waste is not considered to be garbage or refuse.

C. Junk Machinery, Junk Vehicles And Inoperable Vehicles. Junk machinery, junk vehicles, and inoperable vehicles that are not removed within 15 days. Junk machinery,

junk vehicles, and inoperable vehicles within an enclosed building and those that are screened and fenced on the premises of a business lawfully engaged in wrecking, junking, storage or repair of vehicles are exempt from this section.

D. Stagnant Water. Stagnant water which affords a breeding place or drinking source for mosquitoes, insects, and other insect pests.

E. Water Pollution. Pollution of a body of water, surface water, groundwater, well, spring, stream or drainage ditch by sewage, industrial wastes or other hazardous substances placed in or near such water without necessary permits in a manner that will cause harmful material to pollute the water.

F. Odor.

1. Premises that are not properly maintained so that they are in a state or condition that causes an offensive odor.

2. Offensive odors noticeable outside the property where the odor is created, including chemical odors, odors from coffee roasting, sewage odors, and other offensive odors, beyond the level of odors normally associated with this type of activity.

(Chapter 8.10.040(F.)(2.) amended by Ordinance No. 1930, adopted on July 16, 2007; effective August 15, 2007)

G. Surface Drainage. Drainage of liquid wastes from private premises without required permits.

H. Smoke, Fumes, Cinders And Dust. Dense smoke, noxious fumes, gas soot, cinders, or dust in unreasonable quantities. Reasonableness shall take into account the purpose of the action resulting in the smoke, fumes, soot or cinders and the availability of alternatives.

I. Harborage for Vermin. It is unlawful for any person who owns and/or is in charge of property to allow the accumulation of any litter, filth, garbage, decaying animal or vegetable matter, which may or does offer harborage or source of food for vermin.

J. Properties Declared "Unfit for Use." Property placed on

the Oregon Health Division “unfit for use list” because it has been used for the manufacture of illegal drugs and that has not been issued a “Certificate of Fitness” by the Oregon Health Division.

K. Appliances And Containers. No person may leave in a place accessible to children an abandoned, unattended or discarded appliance or similar container which has a door with a snap lock or lock or other mechanism which may not be released for opening from the inside, without first removing the lock or door.

L. Premises that are in an unsanitary condition that create a health risk.

M. Offensive Littering.

1. Discarding or depositing any rubbish, trash, garbage, debris, litter or other refuse upon the land of another without permission of the owner, or upon any right of way, park, beach or other public property, other than in a receptacle intended for refuse collection, and then only if the receptacle is intended for public use or with the permission of the person in charge of the receptacle.

2. Draining, or causing or permitting to be drained, sewage or the drainage from a cesspool, septic tank, recreational or camping vehicle waste holding tank or other contaminated source, upon the land of another without permission of the owner, or upon any public way.

3. Discarding any lighted tobacco product, matches, or other lighted material.

8.10.050 Attractive Nuisances

A. No owner or person in charge of property may permit:

1. Unguarded machinery, equipment or other devices on such property that are attractive, dangerous and accessible to children;

2. Lumber, logs, firewood, building materials or pilings placed or stored on such property in a manner so as to be attractive, dangerous and accessible to children;

3. An open pit, quarry, cistern, or other excavation without erecting adequate safeguards or barriers to prevent such places from being used by children.

4. Structures such as partially completed, partially demolished, or abandoned buildings that are attractive, dangerous and accessible to children.

5. Outdoor storage of inoperable vehicles and other vehicles not used for transportation without a sight-obscuring fence, wall, or other visual and physical barrier, regardless of whether vehicle storage is a permitted use in the zone.

B. This section shall not apply to authorized construction projects, if during the course of construction reasonable safeguards are maintained to prevent injury or death to playing children.

8.10.060 Vegetation and Vision Obstructions

The following things, practices, or conditions on any property are nuisances. For purpose of this section, “property” includes any portion of a right-of-way adjacent to the property.

A. Grass, thistles, cockleburs, weeds, or other noxious vegetation greater than eight inches in height or that are a fire hazard. The city shall have discretion to not enforce this section based on the totality of circumstances, including the type and location of the property, whether the property is appropriately left in a natural state, whether the property has even been cleared without appropriate measure to prevent invasive plant species, and other similar factors.

B. Dead, decaying, or unsafe trees or tree limbs that present a safety hazard to the public or adjacent property.

C. Brush, bushes, shrubbery, tree limbs, or other growth that projects over a sidewalk at less than 8 feet above the sidewalk level, or that projects over a street at less than 13 feet above the street level.

D. Any vegetation, wall, fence, or other vision-obstructing structure exceeding 36 inches in height measured from the roadway level that obstructs a driver’s view at an

intersection or driveway access. Vegetation, wall, fence, or structure obstructs vision if it is within 20 feet of a lot corner at the intersection or at the edge of a driveway and, in the determination of the city manager, constitutes a safety hazard.

8.10.070 Rubbish, Composting and Burning

A. No person may throw, dump, deposit or discard in any way upon public or private property any injurious or offensive substance or any kind of litter, rubbish, trash, debris or refuse which would mar the appearance, create a stench or detract from the cleanliness or safety of such property, or would be likely to injure an animal, vehicle or person traveling upon a public way.

B. No person may compost materials that either cause offensive odors, or create a health hazard, or are capable of attracting or providing food for potential disease carriers such as birds, rodents, flies or other vermin. A properly contained and maintained compost heap with no noticeable odor at the nearest property line is not a nuisance.

C. No person may burn materials that cause offensive odors or create a health hazard. Examples of materials that may not be burned include plastic, rubber, and wet or putrescible garbage.

8.10.080 Fences

A. No person may construct or maintain a barbed-wire fence or allow barbed wire to remain as a part of a fence along a sidewalk or public way. Fences that include barbed wire above a level at least six feet above ground level and placed and maintained by a governmental entity for the purpose of public safety or security are exempt from this section.

B. No person may install, maintain, or operate an electric fence along a street or sidewalk, or along the adjoining property line of another person.

C. Improperly maintained fences are nuisances. A fence is improperly maintained if components are missing or loose, or the fence is sagging, leaning or otherwise not in good repair.

8.10.090 Surface Water and Drainage

A. No owner or person in charge of any building or structure may direct or allow rainwater to fall from the building or structure directly onto a street or public sidewalk or to flow across a public sidewalk. Rainwater falling from a canopy, awning or similar structure is exempt from this section if the awning, canopy or other structure provides shelter from rain for at least two and a half feet of sidewalk width. Nothing in this section prohibits a person from directing a rain drain into a ditch or portion of the street that operates as part of the storm drainage system, provided that there is no surface flow across a sidewalk

B. The owner or person in charge of property shall install and maintain in a proper state of repair adequate drain pipes or a drainage system so that any overflow water accumulating on the roof or about such building is not carried across the surface of any sidewalk. Any flow from a property into a ditch or street portion of the storm drainage system that crosses a sidewalk shall be directed through a pipe or culvert under the sidewalk.

C. Any owner or person in charge of property shall keep open drainageways on property that they possess or control cleared of debris.

D. Nonpublic stormwater facilities that malfunction and result in flooding or damage to other property not possessed or controlled by the owner or person in charge of the stormwater facility are nuisances. The owner or person in charge of property served by an access drive is responsible for culverts under the access drive, even if the culvert is in the right of way. Nonpublic stormwater facilities include but are not limited to:

1. A stormwater facility not located on city-owned property, city right-of-way, or city easement;

2. A private parking lot storm drain or drywell;

3. A stormwater facility not designed and constructed for use by the general public;

4. Access-drive culverts in the public right-of-way or on private property;

5. A stormwater detention or retention system not constructed or otherwise acquired by the city.

E. No person may dispose of waste oil, paints, solvents, or other toxic chemicals into any stream, storm drain or other portion of the storm drainage system. “Dispose of” includes placing materials in locations where they will ultimately enter the storm drainage system.

8.10.100 Graffiti

A. It is every property owner’s duty to remove graffiti promptly from their property in a manner acceptable to the city.

B. Graffiti means any unauthorized painting, writing, drawing, carving or inscription which can be seen from any public right-of-way, sidewalk, alley or park and which damages, defaces or destroys any real or personal property through the use of paint, spray paint, indelible marker, ink, knives or any similar method, regardless of the content of the message delivered or nature of the material used in the commission of the act.

8.10.110 Notices and Advertisements

A. No person may affix or cause to be distributed any placard, bill, advertisement, poster or other thing upon real or personal property, public or private, without first securing permission from the owner or person in control of the property. This section shall not be construed as an amendment to or a repeal of any regulation now or hereafter adopted by the city regulating the use of and the location of signs and advertising or as a prohibition on distributing information to the owner or occupant of a property.

B. No person, either as principal or agent, may scatter or cause to be scattered on public or private property any placards, advertisements or any other materials.

C. This section does not prohibit any person from distributing information or other materials directly to a person, to leave information at a property directed to the owner or occupant of the property in such a way that the information will not become litter, or to make materials available from a table, display rack or similar structure

where the person has the right to place the table, display rack, or other structure. This section is to be interpreted so that it does not restrict any person's constitutional rights.

8.10.120 Buildings and Structures

A. An improperly maintained building or structure is a nuisance. An improperly maintained building is one that is an obviously dilapidated state, such as a building or structure that has:

1. A substantial amount of missing siding, roofing or other component. A building with a temporary covering such as a tarp or plywood for more than 30 days is considered to have missing siding or roofing.

2. Has missing windows or doors, or windows, doors or screens that are not properly attached or that do not properly close.

3. Has substantial visible damage or deterioration of any type, including smoke damage or peeling or flaking paint.

4. Has any component or attachment that is visibly broken or damaged.

B. In enforcing this section the city will normally attempt to resolve the nuisance by informal means prior to formally initiating the nuisance process, but is not required to do so.

8.10.125 Garage Sales

A. Garage Sale means an event in a residential zone at which personal belongings and other goods are displayed and offered for sale by one or more persons at the residential premises of one of the owners. Garage sales include events such as yard sales, patio sales, rummage sales, and other similar sales.

B. Garage sales have benefits for those holding the sales and their customers, but have a detrimental impact on neighboring property because of additional traffic and noise. Garage sales in excess of four per calendar year or in excess of 48 consecutive hours are a nuisance. Garage

sales in excess of two per calendar month are a nuisance.

(Chapter 8.10.125 was adopted by Ordinance No. 1973, on February 2, 2009; effective March 4, 2009)

8.10.130 Dangerous Excavations

No owner or person in charge of property shall allow an excavation to be unguarded in the absence of suitable barriers, with warning lights or area lighting to be provided during hours of darkness.

8.10.135 Outdoor Storage

Outdoor storage of machinery, equipment, parts, supplies, and other items shall be maintained so as to present a neat and orderly appearance or shall be screened from view from public rights-lf-way and adjacent properties. Failure to maintain outdoor storage in compliance with the section is a nuisance. Normal outdoor storage of fishing gear on boats or on dock or harbor areas is exempt from this section. No citation or notice of nuisance shall be issued for improper outdoor storage unless there has been prior contact as provided in Section 2.15.020(C.) at least 15 days before the citation or notice of nuisance.

(8.10.135 adopted by Ordinance No. 1950 on February 19, 2008; effective March 20, 2008)

8.10.140 Abatement

A. Notice of nuisance and abatement. After determining that a nuisance exists, the city manager may cause a notice of nuisance to be posted and/or served. The city manager may attempt to resolve a nuisance by informal means prior to issuing the notice.

B. Posting. If the nuisance involves a specific property, notice of the nuisance shall be posted on the premises where the nuisance exists, directing the owner or person in charge of the property to abate such nuisance.

C. Personal service and mailing. All notices of nuisance, whether posted or not, shall be personally served on or mailed by registered or certified mail to the owner to the last known address of the owner. The city may also provide notice in a similar fashion to any person known by the city to be in charge of the property or responsible for

the nuisance.

D. The notice of nuisance shall contain:

   1. If the nuisance involves a specific property, a description (street address or other) of the real property where the nuisance exists;

   2. A direction to abate the nuisance within ten days from the date of the notice;

   3. A description of the nuisance;

   4. A statement that unless such nuisance is removed the city may abate the nuisance and the cost of abatement shall be a lien against the property or against other property of the owner or person responsible for the nuisance;

   5. A statement that the owner or other person in charge of the property may protest the abatement by giving notice to the city manager within ten days from the date of the notice.

E. On completion of the posting and mailing the person posting and mailing the notice shall execute and file a certificate stating the time and place of the mailing and posting. A public file with the notice and other materials shall be maintained in the city recorder's office.

F. An error in the name or address of the owner, person in charge, or other person responsible for the nuisance or the use of a name other than that of the owner or other person or an error in maintaining the file shall not make the notice void. If notice is posted, posting of the notice is sufficient notice. Mailing to a person that the city reasonably believes to be the owner, person in charge, or otherwise responsible for the nuisance, shall constitute sufficient notice as to that person, regardless of delivery or receipt of the notice.

G. If a person complains in writing to the city manager alleging that a nuisance exists and the nuisance remains in place for 30 days without any action by the city to initiate the nuisance process, the person may petition to the City Council to initiate the nuisance process. On receipt of the petition, the city shall schedule the matter

for a public hearing before the City Council, and written notice of the hearing shall be mailed to or served on the complainant, the owner of the property where the nuisance is located (if applicable), and any person believed to be responsible for the alleged nuisance at least 7 calendar days prior to the hearing. After the hearing, the Council may:

1. Direct the city manager to initiate the nuisance process;

2. Direct the city manager to investigate further and either initiate the nuisance process or report back to the Council why the nuisance process has not been initiated.

3. Determine that a nuisance does not exist.

4. Take other action that the Council decides is appropriate under the specific circumstances.

8.10.150 Abatement or Protest

A. Within 10 days after the posting and/or mailing of the notice as provided in Section 140, the owner or person in charge of the property shall remove the nuisance or submit a written protest as provided in Subsection B. The time to remove the nuisance may be extended as provided in Section 8.10.160(A.)

B. An owner, person in charge, or other person responsible for the nuisance who wishes to protest the nuisance notice shall file with the city manager a written statement specifying the basis for the protest.

C. On receipt of the protest, the city manager may withdraw the notice if the manager concludes that no nuisance exists. If the manager does not withdraw the notice, the protest shall be referred to the Council for consideration at either of the next two Council meetings. At the time set for consideration of the protest, the owner or other person may appear and be heard by the Council and the Council shall thereupon determine whether or not a nuisance in fact exists.

D. If the Council determines that a nuisance does in fact exist, the owner or other person shall abate the nuisance

according to the Council determination. If no deadline is included in the Council decision, the nuisance shall be abated within days of the Council decision.

8.10.160 Abatement by City

A. If the nuisance has not been abated within 10 days of posting or as within the time specified in the Council decision, the city manager may cause the nuisance to be abated by the city. The city manager may decide not to proceed with the abatement if the city lacks the resources to abate the nuisance. The city manager may agree to extend the deadline for a reasonable period of time so long as the owner or other responsible person is making reasonable efforts to abate.

B. No abatement by the city on private property shall occur unless preceded by issuance of a judicial warrant authorizing entry and abatement, or in the alternative, written consent and release of liability by the property owner or person in charge of the property. The municipal judge shall have the authority to issue a warrant to enter and abate.

C. The city shall keep an accurate record of the actual cost incurred by the city in abating the nuisance, including any administrative expenses, and any costs incurred in posting notice or holding the hearing. Staff time in preparation for and participation at the hearing shall also be included as a cost of abatement.

8.10.190 Assessment of Costs

A. After the city has determined the total costs of abatement, the city, by personal services or by registered or certified mail shall provide to the owner and may provide to any other person in charge of the property or responsible for the nuisance a notice stating:

   1. The total costs of abatement.

   2. That the cost as indicated will be assessed to and become a lien against property unless paid within thirty days from the date of the notice;

   3. That any objection to the cost of the abatement as stated in the notice must be filed with the city manager

not more than ten days from the date of the notice of abatement costs.

B. If no timely objection is received and payment is not received within 30 days, the amount stated in the notice shall be entered into the city's lien docket and shall constitute a lien on the property where the nuisance abatement occurred and on any other property within the city of any person responsible for the nuisance to whom notice was sent as provided in this section.

C. If an objection is received, the objection shall be considered by the Council at its next meeting. After a hearing on the objection, the Council shall determine the amount of abatement costs payable to the city, and the amount shall be paid within 10 days of the Council determination. If unpaid after 10 days, the amount of abatement costs determined by the Council shall be entered into the city's lien docket and shall constitute a lien on the property where the nuisance abatement occurred.

D. The lien shall be enforced in the same manner as liens for street improvements are enforced, and shall bear interest at the rate of nine percent per annum from the date of entry of the lien in the lien docket.

D. An error in the name of the owner or person in charge of the property shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property.

8.10.200 Summary Abatement

The chief of the fire department and the chief of police may proceed summarily to abate a health or other nuisance from which there is immediate danger to human life, health, or safety or immediate danger of substantial damage to property.

8.10.210 Penalty

A. Violation by any person of any of the provisions of the ordinance is a civil infraction punishable by a penalty not to exceed $1,000.00.

B. Each day's violation of a provision of this chapter constitutes a separate violation.

C. The abatement of a nuisance is not a penalty for violating this chapter, but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate a nuisance, and abatement of the nuisance does not cure any violation that occurred prior to the abatement. The municipal judge may consider any abatement by the owner in considering the appropriate civil penalty. The remedies provided in this chapter are not exclusive and all remedies are cumulative. The city and private parties may seek other legal means, including actions in Circuit Court, to abate nuisances and recover damages from nuisances.

(Chapter 8.10 was adopted by Ordinance 1921 on June 4, 2007; effective July 4, 2007.)

CHAPTER 8.15 NOISE

8.15.005 Prohibition on Excessive Noises

No person shall make, assist in making, permit, continue, or permit the continuance of, any noise within the City of Newport in violation of this chapter. No person shall cause or permit any noise to emanate from property under that person's control in violation of this article.

8.15.007 Sound Measurement

A. While sound measurements are not required for the enforcement of this article, should measurements be made, they shall be made with a sound level meter using the A weighting network on a Type I or Type II meter.

B. If measurements are made, the person making those measurements shall have completed training in the use of the sound level meter, and shall use measurement procedures consistent with that training.

8.15.010 Definitions

As used in this chapter:

A. dBA means the sound pressure level in decibels measured using the A weighting network on a sound level meter.

B. Noise-Sensitive Unit shall include any building or portion of a building containing a residence, place of overnight accommodation, church, day care center, hospital, school, or nursing care center.

C. Plainly Audible means any sound for which the information content of that sound is unambiguously communicated to the listener, such as, but not limited to, understandable spoken speech, comprehensible musical rhythms or vocal sounds.

D. Unnecessarily Loud means any sound that interferes with normal spoken communication or that could reasonably disturb sleep.

E. Within A Noise Sensitive Unit means within a building with windows and doors closed.

8.15.015 Noise Limits

A. The following are maximum allowable noise limits anywhere when measured at the boundary of or within a property on which a noise sensitive unit, not the source of the sound, is located:

	Daytime Standard	Nighttime Standard
Residential	55 dBA	50 dBA
Commercial	60 dBA	55 dBA
Industrial	70 dBA	75 dBA

B. The following are maximum noise limits within noise sensitive units that are not the source of the sound:

1. Sound that is plainly audible at any time between 10:00 P.M. and 7:00 A.M. the following day.

2. Sound that is unnecessarily loud.

C. The following are maximum noise limits when measured at or within the boundary of or within a property on which no noise-sensitive unit is located, and the noise originates from outside the property:

1. Sixty dBA at any time between 10:00 P.M. and 7:00 A.M. of the following day; or

2. Seventy-five dBA at any other time.

D. If within a park, street or other public place, sound that is plainly audible outside a vehicle at a distance of 100 feet between the hours of 10:00 P.M. and 7:00 A.M. The city manager may designate areas of parks, streets or other public places as exempt from this restriction and may grant permits to exceed this restriction.

8.15.020 Prohibited Noises

A. The use of exhaust brakes (jake brakes), except in an emergency or except when used by a person operating an emergency services vehicle equipped with a muffled compression braking system, is prohibited at all times within the city, regardless of noise level.

B. Except as provided in Section 8.15.025, the following acts are violations of this chapter if they exceed the noise limits specified in Section 8.15.015:

1. The excessive sounding of any horn or signal device or any other device on any automobile, motorcycle, truck, bus or other vehicle while in motion, except as a danger signal.

2. The operation of sound-producing devices such as, but not limited to, musical instruments, loudspeakers, amplifying devices, public address systems, radios, tape recorders and/or tape players, compact disc players, phonographs, television sets and stereo systems, including those installed in or on vehicles.

3. The operation of any gong or siren upon any vehicle, other than police, fire or other emergency vehicle, except during sanctioned parades.

4. The use of any automobile, motorcycle or other vehicle so out of repair or in such a manner as to create loud or unnecessary sounds, grating, grinding, rattling or other noise.

5. The keeping of any animal or bird that creates noise for 10 consecutive minutes when unprovoked.

6. The operation of air conditioning or heating units, heat pumps, refrigeration units (including those mounted on vehicles), swimming pool or hot tub pumps, and similar machinery.

7. The erection (including excavation), demolition, alteration or repair of any building, except as allowed under Sections 8.15.025.E. and F.

8. The use or creation of amplified sound in any outdoor facility.

9. Yelling, shouting, hooting whistling, singing or other human-produced noise.

10. The operation of a motor vehicle without a proper exhaust system including a muffler.

11. Any other action that creates or allows sound in

excess of the level allowed by Section 8.15.015.

8.15.025 Exceptions

The following shall not be considered violations of this chapter, even if the sound limit specified in Section 8.15.015 is exceeded:

A. Non-amplified sounds created by organized athletic or other group activities, when such activities are conducted on property generally used for such purposes, such as stadiums, parks, schools, and athletic fields, during normal hours for such events.

B. Sounds caused by emergency work, or by the ordinary and accepted use of emergency equipment, formed by a public or private agency, or upon public or private property.

C. Sounds caused by bona fide use of emergency warning devices and alarm systems for no more than 15 minutes or while the emergency remains in effect.

D. Sounds regulated by federal law, including, but not limited to, sounds caused by railroads, interstate motor carriers or aircraft.

E. Sounds caused by demolition activities when performed under a permit issued by appropriate governmental authorities and only between the hours of 7:00 A.M. and 10:00 P.M. seven days a week.

F. Sounds caused by industrial, agricultural or construction activities during the hours of 7:00 A.M. to 10:00 P.M. seven days a week.

G. Sounds caused by regular vehicular traffic upon premises open to the public in compliance with state law. Regular vehicle traffic does not include a single vehicle that creates noise in excess of the standard set forth in Section 8.15.015.

H. Sounds caused by air-, electrical- or gas-driven domestic tools, including, but not limited to, lawn mowers, lawn edgers, radial arm, circular and table saws, drills, and/or other similar lawn or construction tools, but not including tools used for vehicle repair, during the hours of 7:00 A.M.

to 10:00 P.M. seven days a week.

I. Sounds caused by chainsaws, when used for pruning, trimming or cutting of live trees between the hours of 7:00 A.M. and 10:00 P.M., and not exceeding two hours in any twenty-four hour period seven days a week.

J. Sounds created by community events, such as parades, public fireworks displays, street fairs, and festivals that the city manager or designee has determined in writing to be community events for the purposes of this section, and any sounds created at a school sporting event, including amplified sounds. The city manager's decision shall be based on the anticipated number of participants or spectators, the location of the event and other factors the city manager determines to be appropriate under the circumstances.

K. Sounds made by legal fireworks on the third of July, Fourth of July, and the Friday and Saturday during the weekend closest to the Fourth of July of each year, between the hours of 7:00 A.M. and 11:00 P.M.

L. Sounds made between midnight and 12:30 A.M. on January 1 of each year.

M. Sounds originating from construction projects for public facilities within rights of way pursuant to a noise mitigation plan approved by the city manager. The noise mitigation plan must:

1. Map the project noise impacts and explain how the impacts will be mitigated.

2. Provide special consideration and mitigation efforts for noise sensitive units;

3. Outline public notification plans;

4. Provide a 24-hour telephone contact number for information and complaints about a project.

The city manager may approve a noise mitigation plan only if the city manager determines that the noise mitigation plan will prevent unreasonable noise impacts.

N. Sounds made by or ancillary to the ordinary operation of

boats and other watercraft.

O. Sounds generated that are based on the sound level within a private property if a written enforceable agreement exists between an owner or other person in possession of that property and the person responsible for the sound that allows the sound. Agreements allowing sound levels in excess of the maximum noise limits established by this chapter may be in the form of easements which, if recorded, are binding on all subsequent owners or occupants of the property. Owners of property may record easements binding their tenants.

8.15.030 Maximum Limit for Certain Activities

Notwithstanding Sections 8.15.025.E., F., H., or I., noise in excess of 85 dB measured on property on which a noise sensitive use is located for more than five minutes in any calendar day shall be a violation.

8.15.040 Evidence

In any civil infraction action based on a violation of the limits set forth in Sections 8.15.015B., C., or E., the evidence of at least two persons from different households shall be required to establish a violation. Any police or code enforcement officer or other city employee who witnessed the violation shall be counted as a witness for purposes of the two witness requirement. The city may ask an alleged violator to enter into a voluntary compliance agreement based on a single complaint or single witness.

(Chapter 8.15 was adopted by Ordinance 1921 on July 2, 2007; effective August 1, 2007.)

CHAPTER 8.20 OFFENSES

8.20.005 Weapons

A. Loaded firearms and other weapons prohibited. No person may carry a loaded firearm, spring or air-actuated gun or rifle, or any other weapon that propels a projective by use of gunpowder or other explosive, jet, or rocket propulsion in any place open to the public, except for:

1. Law enforcement officers.

2. Members of the military in performance of official duties.

3. A person licensed to carry a concealed handgun.

4. Persons authorized under state law to have loaded weapons in court facilities, while they are in or traveling to court facilities.

B. Except when authorized by permit issued under Subsection C., no person other than a peace officer shall fire or discharge a firearm or other weapon, including spring or air-actuated pellet guns, air guns, BB guns, bow and arrow, or any weapon which propels a projectile by use of gunpowder or other explosive, jet or rocket propulsion except at firing ranges or other areas designed and built or otherwise arranged for target shooting.

C. The policy chief may issue a firearms discharge permit only to a person who holds both a valid State of Oregon Wildlife Control Operator Permit and a valid concealed weapons permit. Discharges authorized under the city permit shall be limited to situations authorized by the Wildlife Control Operator Permit. Discharges authorized by the city permit shall be further limited to situations when the discharge is necessary to protect health or safety. The police chief shall have authority to establish application forms and permit conditions. The fee for the firearms discharge permit shall be established by Council resolution. In the absence of a resolution establishing a different fee, the firearms discharge permit fee shall be $50 per year.

(Section 8.20.005 was amended by Ordinance No. 1960, adopted on August 4, 2008; effective September 3, 2008.)

8.20.010 Urination and Defecation

No person shall knowingly urinate or defecate in any public place or in view of the public or in any portion of any right of way. For the purposes of this section, a public restroom is not a public place.

8.20.015 Animals

A. Livestock. Livestock may not be kept in any barn, stable, or other building within 75 feet of any residence. For purposes of this section, livestock includes any horse, cow, sheep, goat, pig, llama, alpaca, chicken, goose, duck or any other animal that could be raised for meat or to produce milk or wool. Livestock also includes more than two rabbits. For purposes of this section, "kept" means kept on a long-term basis, and does not include short-term maintenance of an animal in a location for veterinary treatment or in connection with an event.

B. Dangerous Animals. No person may maintain an animal that is dangerous to humans or other animals.

C. Exotic Animals. No person may maintain an exotic animal, as that term is defined by state statute.

D. Vehicles Injuring Animals. Any person operating a vehicle that runs over or otherwise injures or kills any domestic animal shall:

1. Immediately stop and arrange for aid of any injured animal or disposition of the carcass of any animal that is killed.

2. Attempt to contact the owner of the animal if possible.

E. Animals Running At Large Prohibited. No animals, including domestic pets, shall be allowed or permitted to run at large. All animals shall be confined within the owner's premises or property, or be under voice command, or be on a leash or chain no longer than six feet when accompanying their owner; provided, that, animals which are inherently dangerous shall be confined on their owner's premises and shall not be exposed in public. Any animal found running at large in any park or right of way may be impounded. Animals that are vicious or otherwise present a risk to human health may be

destroyed if they cannot be safely impounded.

F. **Impoundment**. Normally, a county animal control officer will be contacted to take possession of any animal found unlicensed and/or at large within the city limits. If the animal control officer is not available, a peace officer or other city employee may collect the animal and take it to the county animal shelter. If a city employee or volunteer takes possession of an animal running at large, the employee's or volunteer's only obligation shall be to deliver the animal to the animal shelter.

G. The prohibitions in Subsections B. and C. do not apply to animals kept in appropriate facilities.

(Chapter 8.20 was adopted by Ordinance No. 1938 on October 15, 2007; effective November 14, 2007)

CHAPTER 8.25 GAMBLING

8.25.005 Off-Course Betting

A. Except as allowed under Subsection B., off-race course mutual wagering is prohibited within the city.

B. Off-course mutual wagering is authorized on premises at which a race meet licensee has been authorized by the State of Oregon to conduct off-race course mutual wagering. Social gaming and off-course mutual wagering are not permitted on the same premises at the same time.

C. As used in Subsection B., “premises” means the immediate location of authorized off-race course mutual wagering, any part of the same or any connected structure, and the area around and about the structure, including patios, porches, balconies, lawns, parking lots and other areas in the vicinity of the premises that are in the possession or under the control of the race meet licensee.

8.25.010 Social Gaming

A. Social gaming, as authorized by state law, is permitted on premises that have paid a social gaming registration fee in an amount to be established by Council resolution, subject to the following restrictions:

   1. No person may participate in social gaming other than a player as defined by ORS 167.117(16).

   2. No person may act as "house player” or “house bank.”

   3. All games shall be conducted without house odds.

   4. No house income may be generated from the operation of the social game.

   5. The person responsible for the premises where social gaming occurs shall not permit any individual who is visibly intoxicated to participate in social gaming.

B. The social gaming registration fee may be based on the amount of tables or on any other basis the Council deems

appropriate. The social gaming registration fee may be combined with the business license tax. The city may inspect each location where social gaming has been permitted to ensure compliance with the provisions of this chapter. The inspections may include an annual inspection in connection with the payment of the social gaming registration fee, and inspections of the public portions of the premises during hours that the premises are open for business. The annual inspection may include a meeting to discuss the requirements of this chapter.

(Chapter 8.25 was adopted by Ordinance No. 1938 on October 15, 2007; effective November 14, 2007)

CHAPTER 8.30 UNATTENDED PERSONS AND ANIMALS IN VEHICLES

8.30.010 Purpose

The purpose of this section is to protect certain people and animals from potential harm from being left in vehicles in situations that creates a risk to the persons or animals left in a vehicle.

8.30.011 Definition

For purposes of this chapter, “unattended” means that the person leaving the child, other person, or animal in a vehicle is unable to clearly see the person or animal in the vehicle, is more than 50 feet from the vehicle, or is inside a building. For purposes of this definition, “building” does not include a parking structure where the vehicle is parked.

8.30.015 Unattended Child

A person responsible for a child who is eight years of age or younger shall not leave the child in a vehicle without being supervised in the motor vehicle by a person who is at least 14 years of age if:

A. the conditions present a risk to the child’s health or safety, or

B. the engine of the motor vehicle is running or the keys to the motor vehicle are anywhere in the passenger compartment of the vehicle.

8.30.016 Prohibition on Leaving Persons in Vehicles without Means of Exit

No person may leave any person in a vehicle under conditions that do not allow the person to leave the vehicle and that result in a risk to the health or safety of the person. For purposes of this section, “conditions” includes both the physical conditions of and inside the vehicle and the physical and mental abilities of the person left in the vehicle.

8.30.017 Prohibition on Leaving Animals in Vehicles

No person may leave a pet or other animal in a vehicle under circumstances and for a length of time that result in a risk of substantial damage to the health of the animal.

8.30.020 Authority of Police Officers

A. Police officers may take whatever steps are necessary to remove an unattended child from a vehicle to prevent harm to the child or to take other actions to safeguard the child when the child is left in a vehicle in violation of Section 8.30.015.

B. Police officers may take whatever steps are necessary to allow or assist a person to leave a vehicle if a person is left in a vehicle in violation of Section 8.30.016.

C. Police officers may take whatever steps are necessary to alleviate the risk to the health of an animal left unattended in a car in violation of Section 8.30.017.

8.30.025 Duty to Report

Any person who is a mandatory child abuse reporter under state law shall comply with state law in the reporting of violations of this chapter that constitute child abuse.

8.30.030 Violation

Violation of Section 8.30.015, 8.30.016 or 8.30.017 is a civil infraction with a maximum civil penalty of $1,000. Any person violating any of those sections shall be responsible for any damage to the vehicle resulting from the violation, including any damage resulting from an action of a police officer under Section 8.30.020.

(Chapter 8.30 was adopted by Ordinance No. 1938 on October 15, 2007; effective November 14, 2007; and revised by Ordinance No. 1949 on February 19, 2008; effective March 20, 2008)

TITLE IX
STREETS, SIDEWALKS, AND PUBLIC PLACES

TITLE IX STREETS, SIDEWALKS, AND PUBLIC PLACES

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CHAPTER 9.05 UTILITIES

9.05.020 Definitions.

The following definitions apply to this chapter.

A. Emergency means a circumstance in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.

B. Franchise means the privilege conferred on a person by the city to place and operate portions of a utility system in, over or under rights-of-way. Franchises shall be conferred by ordinance or resolution and confirmed by a franchise agreement.

C. Gross Revenues means revenues earned within the city, less net uncollectibles, from the sale of electrical energy, gas, telecommunications, cable or other utility non-municipal service and for the use, rental, or lease of utility facilities in rights of way of the utility engaged in such business. Gross revenues shall not include proceeds from the sale of bonds, mortgage, or other evidence of indebtedness, securities, or stocks. To the extent that the city's authority to tax gross revenues of an entity is limited by ORS 221.410 through 221.655, the city shall apply the statutory limitations to the definition of "gross revenues." To the extent that the city's authority to tax or impose a fee on gross revenues of an entity is limited by any other provision of federal or state law, the city shall collect only the amounts authorized by law. "Gross revenues" does not include any revenues received as a result of the use, rental or lease of utility facilities to a third party if the lessee pays a franchise fee or right-of-way usage fee.

D. Person means every individual, firm, partnership, association, corporation, or entity.

E. Right-of-Way includes all areas dedicated to the public and administered by the city for use for transportation purposes, including any city street, road, bridge, alley, sidewalk, trail, or path, and all other public ways and areas managed by the city.

F. Right-of-Way also includes public utility easements to the extent that the easement allows use by the utility operator

planning to use or using the public utility easement. “Right-of-way” includes the subsurface under and airspace over these areas. “Right-of-way” does not include the airwaves for purposes of CMRS, broadcast television, DBS and other wireless providers, or easements or other property interests owned by a single utility or entity.

G. <u>Utility Facility</u> means any physical component of a utility system located within or attached to the rights-of-way.

H. <u>Utility Operator</u> means any person that places or maintains any portion of a utility system within the rights-of-way.

I. <u>Utility System</u> means a system owned and operated by a person to deliver or transmit electricity, natural gas, telecommunications, cable services, water, sewer, storm sewer or other goods or services by means of pipes, wires, transmitters, or other facilities permanently located within or attached to the rights-of-way to or from customers within the corporate boundaries of the City of Newport. “Utility system” also includes transmission of these products or services through the City of Newport whether or not customers within the city are served by those transmissions. “Utility system” does not include any agency of the federal government.

9.05.030 Purpose

The purpose and intent of this chapter is to:

A. Permit and manage reasonable access to the rights-of-way of the city for utility purposes on a competitively neutral basis and conserve the limited physical capacity of those rights-of-way held in trust by the city.

B. Assure that the city’s current and ongoing costs of granting and regulating private access to and the use of the rights-of-way are fully compensated by the persons seeking such access and causing such costs.

C. Secure fair and reasonable compensation to the city and its residents for permitting private use of the rights-of-way.

D. Comply with federal law applicable to local governments franchising and regulation of rights-of-way.

9.05.040 Jurisdiction

The requirements of this chapter shall apply to all rights-of-way under the jurisdiction of or controlled by the City of Newport, whether dedicated by plat or deed, created by user, or by agreement with Lincoln County or the Oregon Department of Transportation.

9.05.050 Franchise Required.

A. No person may place a utility facility or any portion of a utility facility in any right-of-way without a franchise issued by the city. Any person that places or maintains a utility system in any portion of the right-of-way without a franchise is subject to all other provisions of this chapter, including the payment of the right-of-way usage fee pursuant to Section 9.05.100.

B. The city may grant a franchise allowing use of any right-of-way for any portion of a utility system.

C. To the extent the terms of a franchise agreement are inconsistent with the provisions of this chapter, the terms of the franchise agreement shall prevail.

9.05.060 Grant of Franchise

A. The City Council shall grant by resolution a utility franchise to any person operating or seeking to operate a utility system or portion of a utility in any right-of-way if the person has submitted an application that meets the requirements of this chapter the person agrees to sign the city's standard franchise agreement without modification. The franchise shall not be effective until the applicant signs the city's standard franchise agreement substantially in the form approved by the City Council. The City Council shall approve the form of the standard franchise agreement by resolution.

B. The City Council may grant utility franchises in any other circumstance by ordinance. Any franchise ordinance shall not be effective until a franchise agreement is entered into by the city and the franchisee. The City Council shall grant the franchise if the application and proposed franchise agreement is consistent with the standards of this chapter or if granting the franchise is required by state or federal law, and may agree to grant a franchise even if

the franchise agreement is not consistent with the standards of this chapter if the Council determines that any changes do not render the agreement inconsistent with the purposes of this chapter and that granting the agreement would not result in a competitive advantage to the prospective franchisee.

C. All franchises shall be nonexclusive.

9.05.070 Privilege Granted

The franchise shall grant a privilege to use rights-of-way consistent with the requirements of this chapter. The franchise does not convey any right, title, or interest in the right-of-way.

9.05.080 Term

Unless otherwise specified in the franchise agreement and resolution or ordinance, franchises shall be in effect for ten years but in no case shall exceed 15 years.

9.05.090 Franchise Fee

A. Unless prohibited, or pre-empted by federal or state law, any person applying for a franchise (including an application for renewal) shall pay an application fee to cover the cost of processing the application. The City Council shall establish the fee by resolution.

B. The franchise agreement may provide for payment of a franchise fee as compensation for use of rights-of-way and reimbursement of the city's cost of administering the program created in this chapter. The franchise fee is separate and distinct from any other legally authorized federal, state, or local taxes or fees, except to the extent that payment of a franchise fee shall count as a credit to the right-of-way usage fee.

C. The franchise fee shall be payable semiannually on or before March 15 for the six month period ended December 31, and September 15 for the six month period ended June 30, unless otherwise stated in the resolution or ordinance authorizing the franchise. The franchisee shall pay interest at the rate of nine percent per year for any payment made after the due date.

9.05.100 Right-of-Way Usage Fee

A. All persons operating or using a utility system or facility in the right-of-way to provide service to customers within the City of Newport shall annually pay a right-of-way usage fee of 5% of gross revenues, subject to any applicable limitations imposed by federal and state statutes, including the privilege tax limitations set forth in ORS 221.410 through 221.655.

B. Right-of-way usage fee payments shall be net of any franchise fee payments received by the city, but in no case will a refund be provided if the franchise fee exceeds the right-of-way usage fee. A franchise agreement may waive the right-of-way usage fee even if the franchise fee is less than 5% of gross revenues.

C. Unless otherwise agreed to in a franchise agreement or otherwise stated in the resolution or ordinance granting the franchise, the right-of-way usage fee shall be payable semiannually on or before March 15 for the six month period ended December 31, and September 15 for the six month period ended June 30. The utility shall pay interest at the rate of nine percent per year for any payment made after the due date.

9.05.120 Application

Any person seeking an initial franchise shall submit an application to the city manager that includes the following:

A. Information identifying the applicant and describing the utility system the applicant proposes to operate in the rights-of-way. The initial application shall include engineering plans, specifications, and a network map showing the anticipated location and route of proposed facilities in the right-of-way, including both existing and proposed facilities. If any of the facilities are owned by others, that information should be provided. Nothing in this section shall require a utility operator to reveal proprietary information. A utility operator shall signify any property information as such, and the city will protect designated proprietary information from disclosure unless the district attorney or a court determines that the information is not exempt from disclosure under Oregon public records law.

B. Information establishing that the applicant has obtained or is in the process of obtaining all other required governmental approvals to construct and operate the system and to offer or provide the services proposed, including, if applicable, any PUC filings or approvals.

C. The application fee.

9.05.130 Denials

Any denial of a franchise application shall be in writing and state the reasons for the denial. Any denials shall be in compliance with applicable federal or state The city may deny an application for a franchise:

A.. If the applicant has not complied with all application requirements and standards; or

B. If the applicant has a record of noncompliance.

9.05.140 Renewal

A franchisee that desires to renew a franchise shall submit a letter requesting renewal including the information set forth in Section 9.10.120 to the city manager no less than 180 days before expiration of the franchise. If applicable federal or state law provides for a different method of renewal, the franchisee may use the federally- or state-authorized renewal method.

9.05.150 Assignment or Transfer of Franchise

A. A franchise may not be transferred or assigned to another person unless such person is authorized under all applicable laws to own or operate the utility system and the transfer or assignment is approved by all agencies or organizations required or authorized under federal or state laws to approve such transfer or assignment. The franchisee shall provide the city with written notice of any transfer or assignment within 20 days of requesting approval from any state or federal agency.

B. If a franchise is assigned or transferred, the assignee or transferee shall become responsible for all facilities of the existing transferee at the time of transfer. A transfer or assignment of a franchise does not extend the term of the franchise.

9.05.160 Leased Capacity

A utility operator may lease capacity on or in its systems to others, provided that the utility operator provides the city with the name and business address of any lessee. A utility operator is not required to report leases to subsidiaries or affiliates of the utility operator if applicable gross revenues of the subsidiary or affiliate are included in the gross revenues reported to the city. All persons leasing capacity on or in a utility system, other than subsidiaries or affiliates of the owner of the system whose revenues are included in the gross revenue of the franchisee, are subject to the provisions of this chapter.

9.05.170 Duty to Provide Information, Audit Responsibility

Within 30 days of a written request from the city, a utility operator shall furnish the city:

A. Information sufficient to demonstrate that the utility operator is in compliance with this chapter or its franchise agreement.

B. Access to all books, records, maps, and other documents, maintained by the utility operator with respect to its facilities in rights-of-way that are reasonably necessary for the city to perform a financial review.

   Access shall be provided within the city unless prior arrangement for access elsewhere has been made with the city. If the city desires a full audit, the utility operator shall have 45 days to make all needed information available.

C. If the city's audit of the books, records and other documents maintained by the utility operator demonstrate that the utility operator has underpaid the franchise fee or right-of-way usage fee by five percent or more in any one year, the utility operator shall reimburse the city for the cost of the audit and shall pay interest as specified in sections 9.05.090 and 9.05.100 from the original due date.

9.05.180 Insurance

All utility operators shall maintain in full force and effect

commercial general liability insurance covering bodily injury and property damage on an "occurrence" form (1996 ISO or equivalent) acceptable to the city. Such insurance shall cover all risks arising directly or indirectly out of the utility operator's activities or work under this chapter, including all subcontractors to any tier. The policy or policies of insurance maintained by the utility operator shall provide at least a general aggregate limit of $5 million with a per occurrence limit of $3 million, insuring the utility operator and naming the city as an additional insured with respect to this chapter on the policy. The utility operator shall cause a certificate of insurance to be provided to the city recorder. As an alternative, a utility operator may provide and keep in force self-insurance, or self-insured retention plus insurance, in an equal amount to the insurance required to be obtained from a third-party insurer. The utility operator shall provide proof of self-insurance acceptable to the city if it chooses to self-insure. The procuring of required insurance or self-insurance shall not be construed to limit utility operator's liability. Notwithstanding said insurance or self-insurance, the utility operator shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this chapter. There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the city. Any failure to comply with this provision will not affect the insurance coverage provided to the city. A 30 days notice of cancellation provision shall be set forth on the certificate of insurance. The utility operator's coverage shall be primary to the extent permitted by law and insurance maintained by the city is excess and not contributory insurance as to the insurance required by this chapter.

9.05.190 Indemnification

Each utility operator shall defend, indemnify and hold the city and its officers, employees, agents and representatives harmless from and against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity in any way arising out of, resulting from, during or in connection with, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failure to act, or other misconduct of the utility operator or its affiliates, officers, employees, agents,

contractors, subcontractors, or lessees in the construction, operation, maintenance, repair, or removal of its facilities, and in providing or offering services over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this chapter or by a franchise agreement. Upon notification of any such claim the city shall notify the utility operator and provide the utility operator with an opportunity to provide defense regarding any such claim.

9.05.200 Construction Permits.

Except in the event of an emergency, no person shall construct or install any utility facilities within a right-of-way without first obtaining a construction permit pursuant to Chapter 9.10.

In the event of an emergency, a utility operator may conduct work in the rights-of-way after providing notice to the city. The utility operator shall apply for a permit for such work as soon as reasonably practicable, but not more than 48 hours after commencing work, and shall furnish any required maps and materials within 30 days of commencing work.

9.05.210 Facilities

All utility facilities in the right-of-way shall be constructed, installed, and maintained in accordance with all applicable federal, state, and local statutes, codes, ordinances, rules and regulations. All facilities shall comply with applicable design standards imposed by regulation or construction permit. No facility may be placed on any city facility without the express written consent of the city. The city may require separate payment for rental of space on city facilities. For purpose of this section, a right-of-way, street or sidewalk is not a facility, but structures, including poles, conduit, boxes, and equipment, are facilities.

9.05.220 Location of Facilities

All facilities located within the right-of-way shall be constructed, installed, and located in accordance with the following terms and conditions, unless otherwise specified in a franchise agreement.

A. Whenever all existing utility facilities are located underground within a right-of-way of the city, the city may require a utility operator with permission to occupy the

same right-of-way to locate its facilities underground. If funds are available from governmental sources other than the city to defray the cost of undergrounding, the city will apply for such funds at the request of a utility operator.

B. Whenever all new or existing electric utilities, cable facilities and telecommunications facilities are located or relocated underground within a right-of-way of the city, the city may require a utility operator that currently occupies the same right-of-way to relocate its facilities underground concurrently with the other affected utilities to minimize disruption of the right-of-way.

9.05.230 Interference with Rights-of-Way

No utility operator may locate or maintain its utility facilities so as to unreasonably interfere with the use of the rights-of-way by the city, by the general public or by other persons authorized to use or be present in or upon the rights-of-way. All use of rights-of-way shall be consistent with city codes, ordinances, and regulations.

9.05.240 As-Built Drawings

The utility operator shall provide the city with two complete sets of engineered plans in a form acceptable to the city showing the location of all its utility facilities within rights-of-way after initial construction of its system and, to the extent available, shall provide the city two updated complete sets of as-built plans annually, upon request by the city. The city shall not unreasonably withhold acceptance of the utility operator's standard form of maintaining drawings. Nothing in this section requires a utility to reveal proprietary information. A utility shall identify all proprietary information provided to the city and the city will not disclose that information unless the district attorney or court determines that the information is not exempt from disclosure under Oregon public records law.

9.05.250 Coordination of Construction

All utility operators shall make a good faith effort to coordinate their construction schedules with those of the city and other users of the rights-of-way.

A. Prior to January 1 of each year, utility operators shall provide the city with a schedule of known construction work for that year in the city's rights-of-way or that may

affect the rights-of-way.

B. Utility operators shall meet with the city at least once each calendar year, at the request of the city, to schedule and coordinate work in rights-of-way. The city shall share information on plans for other construction projects within rights-of-way.

C. All construction projects within right-of-way shall be coordinated as ordered by the city engineer or designee, to minimize public inconvenience, disruption, or damages.

9.05.260 Relocation or Removal of Facilities

A. The utility operator shall temporarily or permanently remove, relocate, change, or alter the position of any utility facility within a right-of-way when requested to do so in writing by the city. The removal, relocation, change or alteration shall be at the utility operator's expense when the removal, relocation, change or alteration is needed because of construction, repair, maintenance, or installation of public improvements or other operations of the city within the right-of-way or is otherwise in the public interest. In the event that the removal, relocation, change or alteration is needed to accommodate private development or other private use of the right-of-way, the developer or other private party requiring the action shall be responsible for the cost of removal, relocation, change or alteration. The utility operator shall be under no obligation to remove, relocate, change or alter its facilities to benefit a private party unless and until the private party pays a deposit for costs to the utility operator. The city shall specify in the written notice the amount of time for removal, relocation, change, or alteration. In the event of emergency, the utility operator shall take action as needed to resolve the emergency, and the city may use any form of communication to direct the utility operator to take actions in an emergency to protect the public safety, health, and welfare.

B. When the owner of a pole to which wires and utility facilities of other utility operators are attached installs a new pole, all utility operators shall move their wires and other facilities to the new pole, and the old pole shall be removed within a reasonable time after all wires and other facilities are moved to the new pole.

9.05.270 Plan for Discontinuance or Removal

Whenever a utility operator plans to discontinue any utility facility, the utility operator shall submit a plan for discontinuance to the city. The plan may provide for removal of discontinued facilities or for abandonment in place. The city engineer shall review the plan and issue an order to the utility operator specifying which facilities are to be removed and which may be abandoned in place. The order shall establish a schedule for removal. The utility operator shall remain responsible for all facilities until they are removed.

9.05.280 Removal of Abandoned Facilities

Unless otherwise agreed to in writing by the city engineer, within 30 days following written notice from the city, a utility operator and any other person that owns, controls, or maintains any unauthorized utility system or facility within a right-of-way shall, at its own expense, remove the system or facility and restore the right-of-way. A utility facility that is operating under a franchise or that the city engineer has approved to be abandoned in place is not an unauthorized utility facility. A utility system or facility is unauthorized under the following circumstances:

A. The utility system or facility is outside the scope of authority granted by an existing franchise. This includes systems or facilities that were never franchised and systems or facilities that were once franchised but for which the franchise has expired or been terminated, unless the utility operator reinstates the franchise or pays the right-of-way usage fee and complies with the provisions of this chapter. This does not include any facility for which the city engineer has authorized abandonment in place.

B. The utility facility has been abandoned and the city engineer has not authorized abandonment in place. A utility facility is abandoned if it is not in use and is not planned for further use. A utility facility will be presumed abandoned if it is not used for a period of one year. A utility operator may overcome this presumption by presenting plans for future use of the utility facility, or demonstrating that the utility operator is capable of using the utility facility in the future.

C. The utility facility is not constructed or installed in

accordance with the applicable franchise agreement or this chapter or other applicable federal, state, and local code, rules and regulations.

9.05.290 Removal by City

If the utility operator fails to remove any utility facility when required to do so under this chapter, the city may remove the utility facility and the utility operator shall be responsible for paying the full cost of the removal and any administrative costs incurred by the city in removing the facility and obtaining reimbursement.

9.05.300 Appeals

Unless another procedure is set forth in this chapter, any decision by the city engineer or city manager pursuant to this chapter may be appealed to the City Council by submitting to the city recorder, within 15 days after notice of the decision, a written statement setting forth the bases for appeal of the decision. The City Council’s decision shall be subject to judicial review under the writ of review process.

9.05.310 Revocation or Termination

The City Council may terminate a franchise or revoke other authority to use the rights-of-way for any of the following reasons:

A. Material violation of this chapter.

B. Material violation of a franchise agreement.

C. Willful misrepresentation in a franchise application, including a renewal application.

D. Abandonment of facilities without approval to abandon in place.

E. Failure to pay taxes, compensation, fees, or costs due the city after final determination of the taxes, compensation, fees or costs.

F. Material failure to restore rights-of-way after construction as required by this chapter or chapter 9.10.

G. Material failure to comply with technical, safety and

engineering standards related to work in the rights-of-way.

9.05.320 Standards for Revocation or Termination

In determining whether termination, revocation or some other sanction is appropriate, the following factors shall be considered:

A. The egregiousness of the misconduct;

B. The harm that resulted;

C. Whether the violation was intentional;

D. The utility operator's history of compliance;

E. The utility operator's cooperation in discovering, admitting and/or curing the violation.

Termination or revocation shall occur only if the franchisee has exhibited a repeated pattern of serious intentional violations of this chapter and/or franchise agreements demonstrating a flagrant continued disregard for applicable law.

9.05.330 Notice and Cure

The city shall give the utility operator written notice of any apparent violations before terminating a franchise or revoking authority to use the rights-of-way. The notice shall include a short and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time (no less than 20 and no more than 40 days) for the utility operator to demonstrate that the utility operator has remained in compliance, that the utility operator has cured or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination or revocation. If the utility operator is in the process of curing a violation or noncompliance, the utility operator must demonstrate that it acted promptly and continues to actively work on compliance. If the utility operator does not respond or if the city manager determines that the utility operator's response is inadequate, the city manager shall refer the matter to the City Council, which shall provide a duly noticed public hearing and determine whether the franchise or other authority to use the rights-of-way shall be terminated or revoked.

9.05.340 Penalties

Intentional failure to comply with a provision of this chapter is a civil infraction and a civil penalty may be imposed as provided in this code.

9.05.350 Other Remedies

Nothing in this chapter shall be construed as limiting any judicial or other remedies the city may have for enforcement of this chapter.

9.05.360 Severability and Preemption

A. The provisions of this chapter shall be interpreted to be consistent with applicable federal and state law, and shall be interpreted, to the extent possible, to cover only matters not preempted by federal or state law. Specifically, the city does not seek to impose a franchise fee or right of way usage fee on any activity that is exempt from that type of fee or tax, and the provisions of this chapter shall be interpreted as not imposing any fee or tax that is preempted by state or federal law.

B. If any provision of this chapter is for any reason declared or held to be invalid or unenforceable by any court of competent jurisdiction or superseded by state or federal legislation, rules, regulations or decision, the remainder of this chapter shall not be affected and all remaining portions shall be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted or limited by federal or state law, the provision shall be preempted or limited only to the extent required by law and any portion not preempted shall survive. If any federal or state law resulting in preemption is later repealed, rescinded or amended to end the preemption, the preempted provision shall return to full force and effect without further action by the city.

C. The provisions of this chapter shall not be applied or construed to unlawfully abridge contractual or property rights of a utility operator to occupy private property or the area of a private utility easement.

9.05.370 Application to Existing Agreements

This chapter shall be applied to all persons and activities,

including existing franchisees, except that it shall not affect contract rights of existing franchisees. This chapter shall fully apply to existing franchisees on termination of existing franchises.

(Chapter 9.05 was adopted by Ordinance No. 1949 on February 19, 2008; effective March 20, 2008)

CHAPTER 9.10 RIGHT-OF-WAY PERMITS

9.10.010 Definitions

The following definitions apply in this chapter.

A. <u>**Emergency**</u> means a circumstance in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.

B. <u>**Person**</u> means natural person, corporation, company, partnership, association, or district of any type, but does not include the City of Newport.

C. <u>**Right-of-Way**</u> includes all property dedicated to the public for transportation purposes and administered by the city, including streets, roads, bridges, alleys, sidewalks, trails, paths, and all other public ways and areas managed by the city. "Right-of-way" also includes public utility easements to the extent that the easement allows use by the permittee planning to use or using the public utility easement. "Right-of-way" includes the subsurface under and airspace over these areas. "Right-of-way" does not include the airwaves for purposes of CMRS, broadcast television, DBS and other wireless providers, or easements or other property interests owned by a single utility or entity.

D. <u>**Tunnel**</u> means an excavation requiring the removal of dirt or like material and does not include driving or forcing of pipe through the ground if all surfaces within the right of way remain undisturbed.

9.10.020 Applicability

The requirements of this chapter shall apply to all rights-of-way controlled or administered by the City of Newport, whether as a result of a dedication by plat or deed or agreement with Lincoln County or the State of Oregon.

9.10.030 Permit Required

A. No person may cut, break, dig up, damage in any manner, undermine or tunnel for any purpose in any developed portion of a right-of-way, or obstruct any developed portion of right-of-way, without obtaining a right-of-way

permit under this chapter. Developed portions of rights of way include all streets, sidewalks and any other paved or improved area. No person may cut, break, dig up, damage in any manner, undermine or tunnel within any portion of a right of way to place, modify, repair or maintain any utility facility without obtaining a right-of-way permit. No person may construct any street, sidewalk, trail or path within any right-of-way without a right-of-way permit. Application for permits shall be in the form prescribed by the city. Permits shall be issued for a limited time and shall specify the extent of the authority granted by the permit. No permit shall be issued unless the applicant has complied with or is not subject to Chapter 9.05.

B. Any person who cuts, breaks, digs up, damages in any manner, undermines or tunnels under any unimproved portion of a right of way for non-utility purposes must obtain an encroachment permit pursuant to Chapter 9.15.

9.10.040 Permit Applications

A. Applications for right-of-way permits shall be submitted on forms provided by the city and shall be accompanied by drawings, plans, and specifications in sufficient detail to demonstrate:

1. That all work will be performed and any facilities will be constructed in accordance with all applicable codes, rules, and regulations.

2. That all work will be performed and any facilities will be constructed by or for a franchisee in accordance with the franchise agreement

3. The location, route, and description of all of applicant's new facilities to be installed as well as all of applicant's existing facilities in the construction area, including a cross-section to show the facilities in relation to the existing street, curb, sidewalk, and right-of-way.

4. The construction methods to be employed for protection of existing structures, fixtures and facilities and a description of any improvements that the applicant proposes to temporarily or permanently remove or relocate.

B. Applications for right-of-way permits shall be accompanied by the following:

1. A verification that the drawings, plans, and specifications submitted with the application comply with all applicable technical codes, rules and regulations. The city may require that the verification be by a registered professional engineer.

2. A written construction schedule, which shall include a deadline for completion of construction. The construction schedule is subject to approval by the city engineer.

3. The permit fee in an amount to be determined by resolution of the City Council, unless otherwise provided in a franchise agreement or applicable state law. The fee shall be designed to defray the costs of city administration of the construction permit program. Permit fees shall not be charged to any franchisee operating under a currently valid franchise or to any other person using city rights of way under an agreement with the city that requires payment of a franchise fee.

9.10.050 Review By City Engineer

The city engineer, after reviewing the materials submitted with the application, shall notify the applicant if changes in the construction plans are needed and what city requirements must be met.

9.10.060 Permit Issuance

Upon a determination that the application and supporting information complies with the requirements of this chapter, the city engineer shall issue a permit authorizing construction in the rights-of-way, subject to conditions that the city engineer deems appropriate to ensure compliance with this chapter. In order to minimize disruption to transportation and to coordinate work to be performed in the right-of-way, the permit may specify a time period within which all work must be performed and require coordination of construction activities. The city engineer may impose conditions regulating the time, place, and manner of performing the work as the city engineer may deem reasonably necessary.

9.10.070 Compliance with Permit

All construction shall be in accordance with the permit and approved plans and specifications. The city engineer shall be provided access to the work site and the opportunity to inspect any work in the right-of-way. The permittee shall provide, upon request, any information needed by the city engineer to determine compliance with applicable requirements. All work that does not comply with all permit requirements shall either be corrected or removed at the sole expense of the permittee. The city is authorized to issue stop work orders to assure compliance with this chapter or other generally applicable ordinance.

9.10.080 Notice of Construction

Except in an emergency, the permittee shall notify the city engineer not less than two working days prior to any excavation or construction in the right-of-way.

9.10.090 Construction in Right-of-Way

The permittee shall complete all construction within the right-of-way so as to minimize disruption of the right-of-way and utility service and without interfering with other public and private property within the rights-of-way. All construction work within rights-of-way, including restoration, must be completed within 120 days of issuance of the construction permit unless an extension or alternate schedule has been approved by the city engineer. The permittee shall comply with traffic control procedures and standards.

9.10.105 Coordination of Construction

A. All permittees shall make a good faith effort to coordinate their construction schedules with those of the city and other users of the rights-of-way.

B. Unless otherwise agreed to in writing by the city, or needed to provide service to customers, or in the case of an emergency, at least 60 days prior to the installation or upgrading of utility facilities or a utility system (as defined in Chapter 9.05) that requires a cut or opening in the street of 400 linear feet or greater, the person intending to perform such work shall provide notice to the city and all other utilities identified by the city as utilities that are franchised or permitted to place facilities within the project

area.

1. The notice must be provided in a manner that documents receipt of notice by utilities.

2. The notice shall state the anticipated location, project schedule and general description of the proposed work.

3. No permits for work shall be issued until notice has been given to all other utilities, unless otherwise agreed to as part of the permit process.

C. All utilities performing work in the rights-of-way subject to the notice requirement set forth in paragraph 2 of this section shall cooperate with other utilities with permits to do work in the same location at or near the same time to coordinate construction and co-locate facilities.

D. Nothing in this section shall require a utility to reveal proprietary information. A utility shall signify any proprietary information as such and the city will protect such information from disclosure to the extent allowed by law.

E. The notification requirement set forth in paragraph 2 of this section shall not be required for the installation of facilities in new developments that are being processed through the private development review process.

9.10.110 As-Built Drawings

Upon request by the city, a permittee shall provide city with two complete sets of engineered plans in a form acceptable to the city showing the location of the facilities the permittee installed or constructed within the rights-of-way pursuant to the permit. Nothing in this section requires a utility to reveal proprietary information. A utility shall identify all proprietary information provided to the city and the city will not disclose that information unless the district attorney or court determines that the information is not exempt from disclosure under Oregon public records law.

9.10.120 Restoration of Rights-of-Way and City Property

A. When a permittee does any work in, or affecting any rights-of-way or city property, it shall, at its own expense,

promptly remove any obstructions when no longer needed and restore such the right-of-ways or city property to good order and condition as existed prior to the work being undertaken, unless otherwise directed by the city.

B. If weather or other conditions do not permit the complete restoration required by this section, the permittee shall temporarily restore the affected rights-of-way or property. The temporary restoration shall be at the permittee's sole expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule may be subject to approval by the city.

C. If the permittee fails to restore rights-of-way or property to good order and condition, the city shall give the permittee written notice and provide the permittee a reasonable period of time not exceeding thirty (30) days to restore the rights-of-way or property. If, after notice, the permittee fails to restore the rights-of-way or property to as good a condition as existed before the work was undertaken, the city shall cause such restoration to be made at the expense of the permittee. The city may either charge the permittee for the cost of the improvement or deduct the cost from the security provided under section 9.10.140.

D. A permittee shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property from the work.

E. The permittee shall restore all streets, alleys, roads and other public ways or places that it disturbs to essentially the same condition the area was in prior to permittee's work. The permittee shall perform all work in compliance with applicable rules, regulations, ordinances, or orders. The city engineer may issue orders to ensure compliance with this chapter and proper protection of public and private property. If the permittee fails to make repairs or provide restoration in response to any order within the time allowed under the order, city may make those repairs at the expense of the permittee.

9.10.135 Right-of-Way Preservation and Restoration Policy

A. Except as provided in Subsection C., after any street has been constructed, reconstructed, paved or overlaid by any person, the driving surface of the pavement shall not thereafter be cut or opened for a period of four years.

   1. The city engineer shall make the final determination on what construction or improvement will result in a limitation and shall create, maintain, and make available to the public a list of the streets and street segments subject to the limitation. Only streets named on the list shall be subject to the limitation.

   2. The limitation period shall begin upon the city's acceptance of the completed street or street improvements.

B. Except as provided in Section C., after the installation or upgrading of utilities that require a cut or opening in the street of 400 linear feet or greater, the pavement surface within that cut or opening shall not be cut or opened for a period of 12 months, provided that the person requesting to cut or open such a surface received notice of the prior street cut or opening pursuant to Section 9.10.105. The 12-month limitation period shall begin upon the utility's completion of the restoration of the street.

C. The city engineer shall grant exceptions to the prohibitions set forth in Subsections A. and B.:

   1. In emergency situations (as defined in Subsection D.).

   2. When cutting or opening the street is required to locate existing facilities when tunneling, boring, or pushing under the street (e.g., "potholing").

   3. To provide or maintain utility services to a property when no other reasonably practicable alternative exists within the right-of-way or existing utility easement. The city engineer may grant exceptions to the limitations imposed by Subsections A. and B. when, in the sole discretion of the city engineer, compelling circumstances warrant the cutting or opening of the street.

a. In granting an exception, the city engineer may impose conditions determined to be appropriate to completely restore the street and provide equivalent surface quality, durability, and rideability. Conditions may include surface grinding, base and sub-base repairs, or similar work, and may include up to a full-width surface paving of the roadway.

b. The city engineer may develop and maintain guidelines for use in determining the appropriate restoration conditions that may be imposed under subsection (a), and may consider the guidelines and any other relevant circumstances in imposing restoration conditions.

c. In the event that the city engineer requires the partial or full repaving of a street segment, the city engineer may require that a financial security in a form acceptable to the city be provided to the city in the amount of the estimated cost of the repaving prior to performing any work in the city's rights-of-way.

d. The denial of a request for an exemption, or the conditional approval of an exemption, under this section may be appealed to the city manager, who shall have 15 business days to determine if the denial or conditional approval complies with the terms of this chapter. Appeals must be in writing and received by the city manager not more than 15 business days after notice of the denial or conditional approval of the request.

D. Notwithstanding the provisions of this section, in emergency situations or in circumstances where action is needed to restore or provide utility service, any person cutting or opening a street subject to the limitations of this section shall, when reasonably feasible, seek verbal authorization from the city engineer for an exception. Emergency situations are those in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property. Whether or not verbal authorization was given, the utility operator shall apply for a permit for such work as soon as reasonably practicable, but not more than 48 hours after commencing work, and the owner of

the facility shall be subject to any restoration conditions imposed by the city engineer pursuant to paragraph 3.

9.10.140 Financial Security

When the city, in its sole discretion, determines that financial security is needed to assure street or sidewalk restoration, the permittee shall provide a financial security in a form acceptable to the city in an amount equal to at least 110% of the estimated costs of restoration of the right-of-way. The financial security shall remain in force until 60 days after substantial completion, including restoration of rights-of-way and other property, as determined by the city. The financial security shall guaranty timely completion, construction in compliance with applicable plans, permits, codes and standards, proper location, restoration of rights-of-way and other property, and timely payment and satisfaction of all claims, demands, or liens for labor, material or services. The city may provide for different financial security requirements or waive financial security requirements in a franchise agreement.

9.10.150 Unusual Conditions

The city engineer may grant the permit even if all standards of this chapter are not met if the city engineer determines that each of the following conditions is present:

A. There are peculiar physical conditions not ordinarily existing in similar districts in the city or the nature of the business or operation makes compliance with all standards impossible or impractical;

B. The public interest, particularly safety, health, and general welfare is not adversely affected;

C. The granting of the permit will not adversely affect the rights of adjacent property owners or residents; and

D. The application of the standards of this chapter would work unnecessary hardship upon the applicant, property owner, tenants, or residents.

9.10.160 Repairs

The permittee shall, at its own expense, repair and restore the area in which the work was performed to as good or

better condition than before such work was undertaken.

9.10.170 Inspection and Approval

The permittee must notify the city engineer upon completion for inspection of the work to determine compliance with the requirements of this chapter, prior to final approval of the work. Approval by the city does not relieve the permittee of its obligation to maintain, repair, ore reconstruct the site of the excavation so as to maintain a condition acceptable to the city engineer.

9.10.180 Barricades and Safety Measures

Whenever any person, under authority of this chapter or otherwise, places any obstruction or makes any excavation in a right-of-way, the person shall keep the obstructions or excavation properly safeguarded by substantial barricades and display lighted red lanterns or other lights or flares from dusk until daylight. Whenever, in the opinion of the city engineer, the public safety is endangered by such obstructions or excavations so as to require constant supervision from dusk to daylight to insure that all barricades are in proper condition and location, all warning lights are burning and all traffic is properly routed around such barricades, the permittee shall be responsible for furnishing such supervision.

9.10.190 Liability for Accidents

Every person placing any obstruction or making any excavation or improvement in the right-of-way shall be responsible to anyone for any injury by reason of the presence of the obstructions, excavation, or improvement, when the obstruction, excavation, or improvement is the cause of the injury and shall also be liable to the city, in the event that the city is held responsible for any action or claims or otherwise arising out of the presence of the obstruction, excavation, or improvement in the right-of-way. The city will endeavor to provide notice to the responsible person of any claim arising out of the placement of an obstruction or arising from any excavation or improvement in the right-of-way.

9.10.210 Violation - Penalties

Failure to comply with a provision of this chapter is a civil infraction.

Chapter 9.10, Right-of-Way Permits, was amended by was adopted by Ordinance No. 1949 on February 19, 2008; effective March 20, 2008; and revised by Ordinance 1959, adopted on June 2, 2008; effective July 2, 2008.)

CHAPTER 9.15 ENCROACHMENT PERMITS

9.15.010 Permit Requirement

A. The following actions are prohibited within rights-of-way or on city property except as authorized by the city by a temporary encroachment permit:

1. Placing or maintaining a structure.

2. Excavation or fill, including placing of rocks or other landscaping materials.

3. Planting a tree.

4. Landscaping activities, other than in the portion of the right-of-way immediately adjacent to property owned, controlled or possessed by the person.

B. Encroachment into improved right of way is only allowed if specifically authorized by the city pursuant to Chapter 9.10.

C. The person in control of any encroachment of a structure in or over any right of way existing prior to the effective date of this chapter shall apply for an encroachment permit within 10 days of being requested to do so by the city. No action charging a violation of this section may be initiated for an encroachment existing prior to the effective date of this ordinance or while a timely filed application for an encroachment permit is under consideration by the city.

D. This chapter does not apply to signs, which may be placed in rights of way only as authorized by a permit issued under Chapter 10.10.

9.15.015 Application and Fee

A. Any person desiring to locate or maintain an encroachment within any public right of way, easement, or public property shall submit an application to the city. The application shall include a description of the proposed encroachment; a scale drawing illustrating the nature and extent of the proposed encroachment and its relationship to adjoining properties. If the applicant is not the owner of

the property that will be benefited by the encroachment, the owner of that property shall also sign the application as a co-applicant. The city may require an actual survey to determine the exact location of any public or private improvements or significant vegetation.

B. A fee in the amount established by resolution of the City Council shall be paid at the time of the application.

C. The city manager shall conduct a review of the application for an encroachment permit to determine its compliance with this chapter and shall request comments from affected city departments regarding the impact of the proposed encroachment.

9.15.020 Exemptions

A. Certain encroachments are exempt from the encroachment permit requirement. Exempt encroachments are those which would have a minor impact on the present or planned use of the unimproved public right of way, easement or public property and those which are expressly permitted by ordinance. Exempt encroachments are:

   1. Mailboxes and their enclosing structures.

   2. Guard/handrails along edges of driveway approaches, walks, stairs, etc. encroaching in unimproved public right of way.

   3. Lawns and plants encroaching in unimproved public right-of-way that do not obstruct visibility for pedestrians, bicyclists and motorists, and that are placed or maintained by the owner or person in possession of the adjacent property.

   4. Bicycle lockers and racks authorized in an approved parking district parking plan.

   5. Work authorized by a right-of-way permit.

B. The encroachments allowed by subsection A must be located so as to not to create a line of sight traffic hazard.

9.15.030 Permit Issuance

The city manager may approve, modify and approve or deny the application for an encroachment permit. Notice of the decision shall be sent to the applicant and owners/occupants of property within 200 linear feet in any direction of the boundary of the proposed encroachment.

9.15.040 Appeals

A. An applicant or affected owner/occupant of property within 200 linear feet of the boundary of the proposed encroachment may appeal the decision of the city manager to the City Council.

B. An appeal must be filed with the city recorder within 15 days of the date of the decision stating the basis for the appeal and shall be accompanied by a fee in an amount established by resolution of the City Council.

C. The City Council shall conduct a public hearing on the appeal providing the appellant and any other affected party a reasonable opportunity to be heard on the question of why the decision of the city manager or designee should be reversed or modified. Notice of the public hearing shall be sent to the applicant, appellant, and owners/occupants of property within 200 linear feet of the boundary of the proposed encroachment. At the conclusion of the public hearing, the City Council shall make a final determination in the matter, applying the standards contained in section 9.15.050.

9.15.050 Standards and Conditions

The city manager may approve the issuance of a permit for encroachment within the unimproved public right of way, easement, or public property where compliance with the following standards can be demonstrated or specific findings are made that the standard is not applicable. The city manager or designee may attach any conditions to the issuance of the permit that are reasonably related to ensuring compliance with this section, other applicable city codes and ordinances, and to protect the public interest.

A. The following standards must be met for a permit to be granted:

1. A minimum of three feet of clearance shall be maintained on all sides of fire hydrants.

2. Clearances to water meters shall be two feet from all sides measured from the outside edges of the box. The applicant shall pay for meter relocation if this standard cannot be met.

3. Clearances from manholes and underground pipelines such as city sewer lines, water lines, and storm drain lines shall be a minimum of 7 feet.

4. Clearances between underground utilities such as power, telephone, cable TV and natural landscape materials, or structures placed over those facilities shall be the distance required by the affected utilities. Conditions requested by the utility providers shall be considered for inclusion into the permit.

5. Proposed encroachments shall not prevent access to, cover, or block the flow of water to or into catch basins, ditches, or swales, and shall not otherwise alter the natural drainage patterns in a manner that adversely affects other property. Where drainage is involved, the city manager may set specific requirements.

6. Where the adjacent right of way has been fully improved to its planned dimension with associated curbs, sidewalks, utilities and street trees, an encroachment may be permitted between the property line and the back edge of sidewalk provided there is a one foot minimum clearance between the proposed encroachment and the back edge of the sidewalk and all other standards have been met.

7. Sufficient room for off-street parking and pedestrian travel shall be maintained and the encroachment shall not result in a loss of area needed for parking, vehicular maneuvering, or pedestrian travel.

8. It is determined that the requested encroachment is consistent with the current use of the unimproved public right of way, easement, or public property.

B. The city may impose conditions as follows:

1. That the applicant maintain insurance to protect the city and others from claims and damages that might result from the placing and/or maintenance of the permitted encroachment. The amount of the insurance policy shall be at least the limits of public body liability under the Oregon Tort Claims Act. Failure to maintain the insurance shall result in automatic revocation of the permit.

2. Limiting the time the proposed encroachment may be located in or on the unimproved right of way, easement, or public property.

3. To ensure that unimproved right of way, easement, or public property encroachments do not contribute to visual blight or create a safety hazard, conditions of permit approval may include a requirement that the encroachment be appropriately maintained.

4. Requiring payment for the use of the unimproved public right of way, easement, or public property.

9.15.060 Recording of Permits

Approved encroachment permits shall be recorded against the title of the benefiting property and the costs of such recording shall be paid by the applicant.

9.15.070 Revocation of Permits

All encroachment permits shall be revocable by the city at any time. No grant of any permit, expenditure of money, or lapse of time shall give the permittee any right to the continued existence of an encroachment or to any damages or claims against the city arising from a revocation. Any permit issued under this section shall be automatically revoked if the permittee fails to begin installation of the allowed encroachment within sixty (60) days after issuance of the permit unless an extension is requested prior to the expiration of the sixty (60) day period, or if the permittee fails to comply with any conditions of the permit.

9.15.080 Removal of Encroachment

Upon revocation, the permittee or any successor permittee, shall at the permittee's own cost remove the permitted encroachment within 30 days after written notice has been

provided by the city unless a shorter period is specified in the notice of revocation. If the permittee does not remove the encroachment and return the unimproved right of way, easement or public property area to a condition satisfactory to the city, the city shall do so and the permittee shall be personally liable to the city for any and all costs of returning the right of way, easement or public property to a satisfactory condition, including the removal of structures and reconstruction of streets and/or pathways which costs shall be imposed as a lien upon the property on the city lien docket.

9.15.090 Liability

The permittee, and owner of the benefited property if different than the permittee, shall be liable to any person who is injured or otherwise suffers damage by reason of any encroachment allowed in accordance with the provisions of this section. Furthermore, the permittee shall be liable to the city, its officers, agents and employees, for any judgment or expense incurred or paid by the city, its officers, agents and employees, by reason of the existence of an approved unimproved right of way, easement or public property encroachment.

9.15.100 Enforcement

A. Installation or maintenance of an encroachment in violation of this chapter or failure to obtain an encroachment permit if required, and failure to comply with the terms and conditions of an encroachment permit are civil infractions.

B. Installation or maintenance of an encroachment in violation of this chapter is a nuisance.

(Chapter 9.15, Encroachment Permits, was adopted by Ordinance No. 1949 on February 19,l 2008; effective March 20, 2008; and amended by Ordinance 1959, adopted on June 2, 2008; effective July 2, 2008.)

CHAPTER 9.20 SMOKING AND DRUG USE

9.20.005 Definitions

The following definitions apply to this chapter.

A. Smoking means any inhaling, exhaling, burning, or carrying of any lighted pipe, cigar, cigarette, or similar product containing tobacco, cannabis or other illegal drug, or any similar substance. "Smoking" also includes discarding of any tobacco, or cannabis or other illegal drug product or residue, such as cigarette or cigar butts, ashes, spit containing tobacco or drug residue, or other similar discarded product or residue.

B. Drug Use means any illegal use of any drug and any intentional inhaling of any glue, adhesive, aerosol propellant, or similar substance.

9.20.010 Prohibition on Smoking and Drug Use In or Near Certain City Buildings

In addition to the prohibitions on smoking provided by state law, smoking and drug use is prohibited in the following locations:

A. Anywhere on the following properties, including both indoor and outdoor areas:

1. The City of Newport Library.

2. City Hall.

3. The Recreation Center.

4. The property on which any city-owned swimming pool or aquatic center is located.

5. Literacy Park.

B. On sidewalks adjacent to:

1. The City of Newport Library.

2. The Recreation Center.

3. Literacy Park.

For purposes of this section, the area immediately surrounding the senior center and the bus shelter and sidewalk adjacent to Highway 101 in front of city hall shall not be considered part of the city hall property.

9.20.015 Exceptions

A. The prohibition on smoking does not apply to smoking within a vehicle in a driveway or parking lot, but does apply to discarding smoking materials such as cigarette butts onto the listed properties.

B. The prohibition on smoking does not apply to smoking of stage cigarettes as part of a scheduled dramatic or similar performance in the Literacy Park performance area.

9.20.020 Enforcement

Violation of this chapter is a civil infraction. Each separate action is a separate infraction. In addition to any other authorized code enforcement officers, all library employees are authorized to act as code enforcement officers to enforce this chapter as to violations on or adjacent to library property and Literacy Park and all parks and recreation department employees are authorized to act as code enforcement officers as to violations at the recreation center and Literacy Park.

9.20.025 Affirmative Defense

It shall be an affirmative defense that a person accused of a violation of this chapter was unaware of the prohibition on smoking and the location where the person was smoking was not marked with a sign prohibiting smoking. The defense is not available if the person continued smoking after being advised of the prohibition.

(Chapter 9.20 was adopted by Ordinance 1917 on May 21, 2007; effective June 20, 2007.)

CHAPTER 9.25 INTERSECTION SAFETY

9.25.10 Purpose

The purpose of this chapter is to promote safety at intersections and drive access points by reducing obstructions to clear vision at intersections.

9.25.20 Definitions

As used in this chapter:

A. Fence means a barrier intended to prevent escape or intrusion or to mark a boundary. A fence may consist of wood, metal, masonry, or similar materials, or a hedge or other planting arranged to form a visual or physical barrier.

B. Street means the entire width between right-of-way lines of every way for vehicular and pedestrian traffic and includes the terms “road,” “highway,” “lane,” “place,” “avenue,” “alley,” and other similar designations.

C. Clear vision area means that area, as computed by Section 9.25.040, which allows the public using the city streets an unobstructed view of an intersection approach.

D. Person means and includes a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or the manager, lessee, agent, officer, or employee of any of them.

E. Driveway or accessway means the point at which a motor vehicle gains ingress or egress to a property from a street.

9.25.30 Requirements

A. No person shall maintain, or allow to exist on property which they own or which is in their possession or control, trees, shrubs, hedges, or other vegetation or projecting overhanging limbs that obstruct the view necessary for safe operation of motor vehicles or otherwise cause danger to the public in the use of city streets. It shall be the duty of the person who owns, possesses, or controls the property to remove or trim, and keep trimmed, any

obstructions to the view necessary for safe operation of motor vehicles.

B. A clear vision area shall be maintained on the corners of all property adjacent to an intersection as provided by Section 9.25.040.

C. A clear vision area shall contain no planting, fence, wall, structure, or temporary or permanent obstruction, except for an occasional utility pole or tree, exceeding thirty inches in height, measured from the top of the curb, or where no curb exists, from the street centerline grade. Trees exceeding this height may be located in this area; provided, all branches and foliage are removed to the height of eight feet above the grade. Open wire fencing that does not obscure sight more than ten percent is allowed to a maximum height of six feet.

D. Structures erected in compliance with zoning ordinance setbacks are exempt from this chapter.

9.25.40 Computation

A. The clear vision area for street intersections and driveway or accessway intersections shall be that area within a twenty-foot radius of the lot corner nearest the intersection, or within a twenty-foot radius of the intersection of the lot line and the edge of a driveway. Any building that meets the applicable setback requirement in effect at the time of construction is exempt from the clear vision requirement.

B. Modification of this computation may be made by the city engineer after considering traffic engineering and safety principles, taking into consideration the location of the actual edge of the roadway, type of intersection, site characteristics, traffic controls, vehicle speed, traffic volumes, and other similar factors. Aesthetics and length of time fences or vegetation have existed are not relevant factors.

9.25.50 Enforcement

Violation of this chapter is a civil infraction and a nuisance. Enforcement procedures shall be suspended while an application for a modification is being considered.

9.25.60 Liability

The person owning, in possession of, occupying or having control of any property within the city shall be liable to any person who is injured or otherwise suffers damage by reason of the failure to remove or trim obstructions and vegetation as required by Section 9.25.030. Furthermore, the person shall be liable to the city for any judgment or expense incurred or paid by the city, by reason of the person's failure to satisfy the obligations imposed by this chapter.

(Chapter 9.25 adopted by Ordinance No. 1949 on February 19, 2008; effective March 20, 2008)

CHAPTER 9.30 USE OF CITY FACILITIES BY CONVICTED OFFENDERS

9.30.005 Definitions

A. <u>Convicted Offender</u>. A person who has been convicted of any degree of any of the crimes listed below if the victim or a witness was a person under the age of 18:

1. Rape
2. Sodomy
3. Unlawful penetration
4. Sexual abuse
5. Contributing to the sexual delinquency of a minor
6. Sexual misconduct
7. Custodial sexual misconduct
8. Public indecency
9 Private indecency
10. Unlawful conduct with a child
11. Incest
12. Using a child in a display of sexually explicit conduct
13. Encouraging child sexual abuse
14. Transporting child pornography into the state
15. Paying for a child's sexually explicit conduct
16. Compelling prostitution
17. Kidnapping
18. Possession of materials depicting sexually explicit conduct of a child
19. Unlawfully being in a location where children regularly

congregate

20. Attempt or conspiracy to commit any of the crimes listed above

21. Equivalent or similar crimes committed elsewhere than Oregon.

B City facility. A city-owned or city-operated facility used for recreational purposes or at which large numbers of children may be present. city facilities include, but are not limited to, the recreation center, any city facility with a swimming pool, the city library, and city parks.

C. Knowing violation. A violation of this chapter that occurs at a time when the convicted offender is aware of this chapter or is aware that restrictions have been placed on the convicted offender's use of city facilities. Action that constitutes unlawfully being in a location where children regularly congregate is a knowing violation.

D. Unknowing violation. A violation of this chapter by a convicted offender who is unaware of this chapter and unaware of any restrictions on the use of city facilities placed on the convicted offender at the time the violation occurs.

E. Victim. Victim has its usual meaning of being the person against whom the crime is committed. In addition, the crimes listed in Subsections 5., 10., 12., 13., 14., 15., and 18. of Section A. shall be conclusively presumed to have a victim under 18 years of age.

9.30.010 Limitation on Use of City Facilities

A convicted offender may use a city facility only on the following terms:

A. The convicted offender must identify himself or herself as a convicted offender when purchasing any pass or admission to a city facility.

B. The convicted offender must identify himself or herself as a convicted sex offender in person to a staff person of the facility each time the convicted offender enters a city facility and each time the person leaves a city facility. In the event the facility is a park or other facility at which no

staff person is present, the convicted offender must contact the city's parks and recreation department prior to entry to the park and when the person is leaving the park. If the city's park and recreation department is closed at the time, the convicted offender must contact the police department prior to entry to the park and when the person is leaving the park.

C. The convicted person may not initiate contact with a minor while at the city facility. Initiating contact with a minor does not include talking with any staff person who is a minor.

9.30.015 Violation

A. The civil penalty for violation for a knowing violation of this chapter shall be $10,000.00.

B. The civil penalty for an unknowing violation of chapter shall be up to $500.00.

C. A person determined by the municipal court to have committed a knowing violation of this chapter shall be permanently barred from entering any city facility. A person determined by the municipal court to have entered a city facility after being barred under this section shall be required to pay a civil penalty of $100,000.00.

D. The penalties and consequences imposed by Subsections A. and C. of this section are mandatory.

9.30.020 Severability

In the event that any word, section, provision or other portion of this chapter is held by a court of competent jurisdiction to be unconstitutional or otherwise invalid, all portions not unconstitutional or invalid shall remain shall remain in effect.

(Chapter 9.30 was adopted by Ordinance No. 1938 on October 15, 2007; effective November 14, 2007)

CHAPTER 9.35 RIGHT OF WAY OBSTRUCTIONS

9.35.005 Obstructions in Rights of Way

A. No person shall obstruct any public street, alley, sidewalk, or trail with any lumber, wood, inoperable vehicle, engine, pile of dirt, or any other material or thing.

B. The following actions are exempt from the prohibition in Subsection A.:

1. Temporary placement of boxes, containers or other things incidental to loading or unloading of a vehicle.

2. Placement of solid waste and recyclables containers for collection within 24 hours of the scheduled collection time.

3. Legal parking or stopping of motor vehicles.

4. Obstructions placed or authorized by the city.

5. Placement of newspaper racks or similar receptacles in portions of rights of way not occupied by vehicle travel lanes or parking spaces, provided that they are placed so as to not interfere with pedestrian circulation on sidewalks and leave at least 3 feet of sidewalk width unobstructed and leave areas for wheelchair access totally unobstructed.

6. Placement for crab pots and items associated with fish processing on the sidewalk on the south side of Bay Boulevard, provided that room for pedestrian passage on the sidewalk is maintained.

9.35.010 Obstruction Building Entrance

No person may intentionally obstruct the entrance to a building.

9.35.015 Unobstructed Access to Fire Hydrants

Owners of property shall maintain an unobstructed access area within eight feet of any fire hydrant. No vegetation over six inches in height, fence, wall or other obstruction is permitted in the unobstructed access area.

9.35.020 Projections into Rights-of-Way

A. Except as authorized by a permit issued under Chapter 9.10 Work in Right-of-Way, Chapter 9.15 Encroachment Permit, or Chapter 10.10 Signs, no portion of any building or structure shall be allowed to project over or into any portion of any right of way.

B. Section A does not apply to:

1. Bases or antennae of columns projecting six inches or less beyond the property line.

2. Cornices, awning, canopies, or other projections placed at least ten feet above the top of the sidewalk, where the projections or cornices do not extend more than three feet over the sidewalk or property line and do not extend over any portion of a vehicle travel lane.

(Chapter 9.35 adopted by Ordinance No. 1949 on February 19, 2008; effective March 20, 2008)

CHAPTER 9.40 AIRPORT OPERATIONS

9.40.005 Purpose

The purpose of this chapter is to establish regulations governing the use of the Newport Municipal Airport, to promote aviation activity at the Newport Municipal Airport, and to provide minimum insurance requirements for the protection of the city.

9.40.010 Fees

The city council may, by resolution, establish fees for use of airport facilities or services, including but not limited to landing fees, airplane overnight fees, parking fees, or other fees.

9.40.015 Lease of Airport Property

A. The city may lease property at the airport for hanger, aviation, and non-aviation purposes. Preference shall be given to aviation-related uses.

B. The city's current policy is that it will own all structures on airport property. The city may provide for ground leases and privately owned structures in exceptional circumstances. The structural and architectural design of all privately owned structures shall be subject to approval of the City Council or designee.

C. Some privately owned structures erected before city adoption of the policy stated in Subsection B. exist on airport property. Those structures shall be maintained in good condition and appearance. The city may inspect and require repairs and maintenance as needed for the protection of aircraft, airport property, and the general appearance of the airport.

9.40.020 Use of Airport Facilities

Aircraft owners and pilots, licensees, and lessees have the following rights at the Newport Municipal Airport:

A. The non-exclusive use of runways, taxiways, and navigational aids and related facilities for the purpose of commercial and non-commercial aircraft landings,

takeoffs and taxiing. This right is subject to the requirement to pay the landing fee, when applicable.

B. The right of ingress to and egress to any leased area, consistent with federal, state, and airport regulations.

9.40.025 Compliance

A. The airport director may adopt regulations governing the use of the airport. The regulations shall be posted at the airport office. Protests of the regulations may be filed with the city manager's office within 30 days of the initial posting. On receipt of a protest, the city manager may amend the regulation or set it for a council hearing.

B. All persons entering airport property shall comply with all of the following:

   1. All federal laws and regulations (including, but not limited to F.A.A. regulations).

   2. State statutes (including, but not limited to O.R.S. Chapters 836 and 837).

   3. The Newport Municipal Code.

   4. The airport regulations adopted under Subsection A.

C. Licensees and lessees are responsible for the actions of their officers, agents, employees, and invitees. Licensees shall not engage in any activity requiring a federal or state license, certification, or other approval without the required license, certification, or other approval.

9.40.030 Restrictions

A. Major aircraft repair activities may not be conducted on ramp, aircraft parking or taxiway areas. All major aircraft repair activities shall be conducted in hangars. Exceptions to this rule may be authorized by the city in case of emergencies. Examples of major activities are dismantling engines or fuselage; examples of non-major activities include the removal and/or repair of avionics, propellers, or upholstery.

B. No parts or tools shall be left overnight upon the airport premises other than inside a vehicle, aircraft or hangar;

C. Aircraft shall not be repaired outside of a hangar so as to interfere with the movement of aircraft or vehicles.

D. Repair activities shall be conducted so as to avoid damage or injury to persons or property.

E. Aircraft shall not be "run-up" on taxiways in the general aviation/private hangar area.

(Chapter 9.40 adopted by Ordinance No. 1952 on March 17, 2008; effective April 16, 2008)

CHAPTER 9.45 FUEL FLOW FEE

9.45.010 Fuel Flow Fee Imposed

A. A fuel flow fee is imposed on every aircraft owner or operator for the privilege of transferring fuel into an aircraft at the Newport Municipal Airport.

B. The amount of the fuel flow fee shall be established by Council resolution.

C. Fueling operations by the fixed-base operator owned and operated by the city are exempt from the fuel flow fee and from all other requirements of this chapter.

9.45.020 Reporting and Payment

A. Prior to any fueling of any aircraft at the Newport Municipal Airport, the person conducting the fueling operation shall submit to the city a completed form to report the fueling, and on completion of the fueling shall submit a report listing amount delivered and pay the fee at that time.

B. If the airport offices are closed at the time of fueling, the report and payment shall be made at the earliest possible time, but no later than one week after the fueling.

9.45.030 Regulations

The airport director may include regulations to enforce this chapter in the airport regulations.

9.45.040 Violation

Violation of this chapter is a civil infraction subject to a maximum civil penalty of $500.00.

(Chapter 9.45 adopted by Ordinance No. 1952 on March 17, 2008; effective April 16, 2008)

CHAPTER 9.50 CAMPING PROHIBITED IN CERTAIN PLACES

9.50.010 Definitions

The following definitions apply in this chapter.

A. To camp means to set up, or to remain in or at, a campsite.

B. Campsite means any place where any bedding, sleeping bag, or other sleeping matter, or any stove or fire, is placed, established, or maintained, whether or not such place incorporates the use of any tent, lean-to, shack, or any other structure, or any vehicle or part thereof.

C. Personal property means items which are reasonably recognizable as belonging to individual persons and which have apparent utility.

D. Junk means items that have no apparent utility or are in an unsanitary condition.

9.50.020 Camping Prohibited in Certain Places

It is unlawful for any person to camp in or upon any sidewalk, street, alley, lane, public right of way, transit facility or bus shelter, or any other place to which the general public has access, or under any bridgeway or viaduct, unless otherwise specifically authorized by this city or by declaration by the mayor or city manager in emergency circumstances. Nothing in this chapter shall prohibit the use of designated picnic areas of public property for cooking, or prohibit camping by permit authorized by the city manager or designee.

9.50.030 Scheduling and Notice of Campsite Cleanup

A. Cleanup of illegal campsites will be scheduled on an as-needed basis by the chief of police or designee.

B. Permanent signs may be posted advising that camping is prohibited. Whether or not a permanent sign is posted, a specific dated and timed notice will be posted and distributed in the area of a scheduled cleanup at least 24 hours before the cleanup.

C. Notwithstanding subsections A. and B., cleanup of campsites may occur immediately and without notice if the chief of police or designee determine that either of the following conditions exist:

   1. An exceptional emergency such as possible site contamination by hazardous materials or where there is an immediate danger to human life or safety;

   2. Illegal activity other than camping.

D. At the time of the cleanup, written notice will be posted and distributed announcing the telephone number where information on picking up the stored property can be obtained during normal business hours.

E. Written notices, including permanent signs, will be in both English and Spanish.

F. Copies of all notices shall be provided to the State of Oregon Department of Human Services and/or to the Lincoln County Human Services Department.

9.50.040 Removal, Storage and Retrieval of Personal Property

A. Personal property will be separated during cleanups from junk. Junk will be immediately discarded. Items of personal property will be turned over to the police department and stored. The personal property shall be stored for no less than 30 days, during which time it will be reasonably available to persons claiming ownership of the personal property.

B. The police department shall arrange in advance for a location to store personal property. The storage facility should be reasonably secure. The location should be reasonably accessible to the cleanup area and preferably served by public transportation.

C. Any personal property that remains unclaimed for 30 days after the cleanup may be disposed of, sold, donated, used, or transferred as abandoned personal property, but no waiting period beyond the 30 days is required prior to the disposal, sale, donation, use or transfer.

D. Weapons, drug paraphernalia, and items which

reasonably appear to be either stolen or evidence of a crime may be retained by the police department.

9.50.060 Violation

Violation of this chapter is a nuisance and is also a civil infraction.

9.50.070 Nonexclusive Remedy

The remedies described in this chapter shall not be the exclusive remedies of the city for violations of this chapter.

9.50.080 Interpretation

This chapter is to be interpreted to be consistent with applicable state statutes and providing the protections required by state statutes.

(Chapter 9.50 adopted October 1, 2007 by Ordinance 1937; effective October 31, 2007)

CHAPTER 9.55 CONSUMPTION OF ALCOHOL IN CERTAIN PUBLIC PLACES

9.55.010 Consumption of Alcohol in Certain Public Places Prohibited

The consumption of alcoholic beverages is prohibited in the following locations:

A. On any street or sidewalk, except as expressly permitted by a state liquor license and/or city permit.

B. On any city-owned property if the Council by resolution has designated the area as an area where alcohol consumption is not permitted.

9.55.020 Definition of Alcoholic Beverage

For purposes of this chapter, "alcoholic beverage" means any liquid containing more than one-half of one percent alcohol by volume and capable of being consumed by a human being.

9.55.030 Violation

Violation of this chapter is a civil infraction with a maximum penalty of $500.00.

(Chapter 9.55 was adopted by Ordinance No. 1938 on October 15, 2007; effective November 14, 2007)

CHAPTER 9.60 PLANTER BOXES ON SIDEWALKS

9.60.005 Definitions

A. Planter box means a container with soil for growing decorative plants. Planter box includes both stand-alone planter boxes and window boxes.

1. Stand-alone planter box means a planter box placed on the surface of the sidewalk or walkway.

2. Window box means a planter box attached to the side of a building, usually below a window.

B. Designated area means an area established by Council resolution where planter boxes are permitted on sidewalks in the right-of-way without obtaining a separate license or permission from the city. “Designated area” also includes Bay Boulevard between John Moore Road and Bay Street.

9.60.010 License to Place Planters in Right-of-Way

A. Owners of real property in designated areas may place planter boxes in sidewalks immediately adjacent to their property, subject to the conditions and standards of this chapter.

B. Planter boxes authorized by this chapter shall comply with the following standards:

1. Planter boxes shall be immediately adjacent and attached to the building improvement on the adjacent private property.

2. Planter boxes shall be erected and attached to be firm, secure and stable.

3. Stand-alone planter boxes and the plants in the boxes shall be of sufficient height to be clearly visible so that the risk that a pedestrian would trip over or run into the planter box is minimized.

4. Planter boxes shall not extend more than 20 inches into the sidewalk or right or way and may only be placed in locations where the passable sidewalk width,

after installation of the planter box, is at least five feet.

5. Planter boxes shall be maintained in a neat, clean, safe and attractive condition and constructed so that no soil or other materials escapes onto the sidewalk.

6. Planter boxes will contain flowers and other vegetation that must be kept properly trimmed, weeded and pruned so as to not reduce the passable sidewalk width to less than five feet.

C. The city may at any time revoke the license to place planter boxes for failure to comply with this chapter. Revocation shall be by written notice to the adjacent property owner informing the owner of the revocation and the requirement to remove the planter box. In the event of revocation, the adjacent property owner shall remove the planter box and restore the sidewalk to as good or better condition than it was in before the planter box was installed.

D. If the adjacent property owner fails to remove the planter box within seven days if notice is mailed, or five days if notice is personally served, the city may remove or relocate the planter box at the expense of the adjacent owner.

9.60.015 Remedies

A. Violation of any provision of this chapter is a civil infraction subject to a maximum civil penalty of $500.

B. Placing a planter box so that it obstructs pedestrian traffic is a nuisance and may be abated as a nuisance.

C. The city may enforce violation of this chapter by any other legal means, and all remedies and procedures are cumulative. In the event of litigation, the city, if the prevailing party, shall be entitled to an award of attorney fees, including fees incurred on appeal.

(Chapter 9.60 was adopted by Ordinance No. 1938 on October 15, 2007; effective November 14, 2007)

CHAPTER 9.65 ANIMALS IN CITY BUILDINGS

9.65.005 Definitions

A. <u>Animal</u> means any living non-human member of the Animalia kingdom.

B. <u>Service animal</u> means any specially trained animal used for law enforcement purposes or to assist people with disabilities.

C. <u>City buildings</u> means buildings owned or controlled by the City of Newport, including its urban renewal agency, including but not limited to city hall, fire stations, the library, the recreation center, the Performing Arts Center, the visual arts center, and public works shops, facilities, and treatment plants.

9.65.010 Prohibitions on Animals in City Buildings

A. No person may intentionally bring any animal other than a service animal actually being used for service purposes into any city building or intentionally permit any animal to remain in any city building without permission of the city.

B. On order of any city official or employee, a person in charge of an animal shall remove the animal from a city building.

9.65.015 Violation

A. Violation of this chapter is a civil infraction with a maximum civil penalty of $500.00.

B. Violation of Section 9.45.010B is a separate and distinct infraction from violation of Section 9.45.010(A.).

(Chapter 9.65 was adopted by Ordinance No. 1938 on October 15, 2007; effective November 14, 2007)

CHAPTER 9.70 SIDEWALKS

9.70.010 Duty of Property Owners

A. Owners of land adjoining any street in the city shall maintain in good repair and safe condition the sidewalks in front of their land.

B. For purposes of this section, a sidewalk shall be deemed not in good repair, if among other things:

Panels of pieces of sidewalk are displaced more than ¾" from adjacent panels or pieces and displaced area is not filled; or

1. Panels or pieces of sidewalk are displaced more than ¾" from adjacent panels or pieces and displaced area is not filled; or

2. Entire pieces or panels are absent, or pieces or panels are broken into parts smaller than one square foot; or

3. The grade from one piece or panel to the adjacent piece changes by more than ½"; or

4. Handicap access ramps or driveways deviate from the slopes and dimensions included in the standards and specifications set by the city; or

5. A portion of the surface of the sidewalk is covered with dirt and/or vegetation so that the effective width of the sidewalk is limited.

This list is not exclusive.

C. This city engineer shall determine the specifications for the repair of any sidewalks in need of repair.

D. To be in safe condition, a sidewalk must be free of ice, snow, litter, debris, or any other condition that creates risk of harm to person or property.

9.70.020 Notice of Defective Sidewalks

If the owner of any property fails to maintain the sidewalk along the property, the city engineer shall mail to the property owner a notice entitled "Notice to Repair Sidewalk." The

notice may also be posted on the property adjacent to the sidewalk. The notice shall direct the owner, agent, or occupant of the property to immediately repair the sidewalk according to specifications prescribed by the city. The notice shall be sent to the last known address of the owner or agent, as shown on city or county records, and to the attention of the occupant at the property's street address. A mistake in the name of the owner or agent, or a notice sent in the name of other than the true owner or agent of such property, or any mistake in address, shall not invalidate the notice. The owner, agent, or occupant of the premises shall cause the repairs to be made within the time specified by the notice.

9.70.030 Permit for Repairs

The owner, agent, or occupant shall obtain a right-of-way permit from the city before making the repairs.

9.70.040 Repair by City

If the repairs are not made within the time designated, the city manager may, for safety purposes, cause the repairs to be made and keep an accurate account of the cost of the labor and materials used in making the repairs, including legal, administrative, and engineering costs, for each property.

9.70.050 Charges for Repairs by City

A. On completion of the repairs by the city, the city manager shall determine the cost as defined in Section 9.70.040. The city manager shall send a bill for the costs, by regular mail, to the owner of the property or the owner's agent, to the same address as the notice to repair, or to any later known address. The bill shall advise the property owner or owner's agent that within thirty days, the owner or owner's agent must pay the bill in full. Upon approval by the city manager, the owner or owner's agent may sign an agreement to pay the bill in installments. The installment program will allow applicants to make installment payments with interest for a period not to exceed five years. The city finance director shall administer the installment program and may adopt any rules, regulations, or forms necessary to administer the program. Beginning thirty days from the date of mailing of the bill, any unpaid bill will accrue interest at the current local government investment pool rate plus a two percent administrative fee until paid.

B. Thirty days from the date of mailing of the bill, the city manager is authorized to place a lien on the property.

C. Foreclosure proceedings may be initiated to collect any lien due for more than sixty days.

D. The city may also use any other remedies available to it to recover any unpaid bills, the interest thereon, and any costs or penalties.

E. In addition to the procedures set out above, the Council may establish local improvement districts for the purpose of repairing or reconstructing sidewalks and assessing and collecting the costs in accordance with the city's local improvement procedures.

9.70.060 Liability of Property Owner

The owners of land adjoining any street in the city shall be liable to any person suffering injury by reason of failure to maintain in good repair or safe condition the sidewalk in front of the land. The city disclaims any liability to any person suffering personal injury or property damage by reason of the owner's negligence in failing to maintain a sidewalk abutting the owner's property in good repair and safe condition. The property owner(s) shall be liable to the city for any amounts which may be paid or incurred by the city by reason of all claims, judgment or settlement, and for all reasonable costs of defense, including investigation costs and attorney fees, by reason of a property owner's failure to satisfy the obligations imposed by this chapter to maintain in good repair and safe condition the sidewalks in front of the land.

9.70.070 Penalties

Violation of Section 9.70.010 is punishable as a civil infraction with a maximum civil penalty of $500. When the violation is a continuous one, each day the violation continues to exist shall be deemed a separate violation.

(Chapter 9.70 adopted April 7, 2008; effective May 7, 2008; by Ordinance No. 1958.)

CHAPTER 9.80 SPECIAL EVENT PERMITS

9.80.010 Special Event Definitions

“Fee Waiver” is a waiver of city fees for providing a service or facility use.

“Special Event” is any private activity conducted wholly or partly on public property that requires the use of city services, such as closure of a street or park, or provision of traffic control, or other services. Special Event includes, but is not limited to, a parade, festival, exposition, show, sale, party, or other similar activity. Special Event also includes events on private or other public property for which the city provides additional services. Special Events does not include:

A. Events held in the Performing Arts Center or the Visual Arts Center unless special services are requested of the city;

B. Events conducted at city facilities including the swimming pool and recreation center unless a Fee Waiver is requested;

C. The use of meeting rooms at any city facility unless a Fee Waiver is requested or the fee has otherwise been waived by city policy.

“Special Event Permit Fees” are based on the actual costs of the city providing the service requested, and may include personnel, benefit costs, equipment costs, and published room rental costs.

9.80.015 Special Event Fees and Waivers

A. Applicants may request a full or partial Fee Waiver of Special Event Permit Fees. A request for a Fee Waiver must be submitted with a Special Event permit application. The city may, in its discretion, approve all, part, or none of a Fee Waiver request. The following will be considered in the city’s review of a request for a Fee Waiver:

   1. Whether the event is a benefit to the community.

   2. Whether the event creates positive publicity for the city.

3. The city's cost of providing services for/to the event.

4. Whether there are revenues that can be used to offset the impact of a Fee Waiver on the general fund.

5. Whether the event promotes education, public health, or public safety.

6. Whether the event is operated by a non-profit organization.

7. Whether the event has in the past or is likely in the future to take action that, if taken by a governmental entity, would be unconstitutional. The city will not provide a Fee Waiver for any Special Event or entity that takes action in regard to the Special Event that, if taken by the city, would be unconstitutional.

B. Unless waived, all fees required for the Special Event must be paid prior to the issuance of a permit. In no event, will the Fee Waiver be more than the city's cost of providing service to the event.

9.80.020 Special Event Applications

A. All persons who wish to conduct a Special Event must submit an application form to the city recorder. Special Event application forms are available on the city's website at www.thecityofnewport.net. Special Event permit applications shall be reviewed and approved or denied administratively by the city manager following the procedures and standards of this chapter, unless the amount of the requested Fee Waiver is in excess of $2,000, in which case the application shall be forwarded to the City Council for action.

B. Applications will be deemed incomplete and will be denied if details about the Special Event are insufficient for staff to properly analyze and determine the impacts on city services, or if submitted with insufficient time to allow for city staff to evaluate the impacts and coordinate any city services required to allow the event to proceed.

C. Temporary structures may be erected in conjunction with a Special Event provided the following are met:

1. The time limit for such structures is no longer than 30 days prior to and five (5) days after the Special Event.

2. Permission for the structure is granted by the property owner.

3. A city business license is obtained.

4. The person or persons responsible for the temporary structure shall appropriately maintain the grounds and provide trash receptacles.

5. Sanitary facilities are made available to the site during the Special Event.

6. The structure does not interfere with the provision of parking for the permanent use on the site, or a traffic management plan is provided that is acceptable to the city.

7. The structure satisfies the vision clearance requirements of the Zoning Code.

8. Written approval for the temporary structure is obtained from the city's building official.

9. The person or persons responsible for the temporary structure have signed the city agreement relating to the temporary structure.

D. Applications must include evidence of compliance with any required permits from other governmental agencies (e.g., health department, liquor license, etc.), as may be requested by the city.

E. Special Event organizers may be required to maintain liability insurance for the event in an amount deemed acceptable by the city manager, with the city named as an additional insured.

F. Recipients of tourism promotion grants are ineligible for Special Event Fee Waivers.

G. The city manager is delegated the authority to establish rules, procedures, and policies to implement and supplement this chapter and to develop application forms and other standard materials to be used in the application

process.

9.80.022 Approval/Denial of Special Event Permit

A. The completed application will be reviewed by the department heads. The applicant may be required to provide additional information. Denied applications may be amended and resubmitted.

B. Reasons for denial of a Special Event permit include, but are not limited to:

   1. The city lacks the resources to provide the services that are required for the event.

   2. A requested facility or site is not available at the time requested.

   3. The event requests use of city streets at a time, or for a duration, that would create too great an impact on the public transportation system.

   4. The applicant submitted false information in connection with the application.

   5. The applicant has failed to complete all aspects of the application.

C. If the Special Event application is approved and no Fee Waiver has been approved, the city recorder will collect the appropriate fee and issue the permit. If the Special Event application is approved and a Fee Waiver has been approved in full, the city recorder will issue the permit.

D. If denied, the city recorder will notify the applicant in writing and give the reason for denial. If time permits, the applicant may correct the reasons for denial and resubmit the application for approval. If an applicant is again denied a permit, the applicant may appeal the denial, within 14 days of the date of the written denial by filing a written notice of appeal with the city recorder. The appeal shall be heard at a regular City Council meeting at least seven days after the date the appeal is filed. The appeal shall be decided by the City Council and is final.

9.80.032 Effectiveness of Special Event Permit

Special Events shall be approved for only the specified dates, times, and locations stated in the permit.

9.80.035 Violation of a Special Event Permit

A. Any event subject to the provisions of this chapter that is staged without complying with all conditions of this chapter shall be subject to closure by the police department.

B. The city may revoke a permit if it is determined by the city manager that the event is being operated in violation of the Newport Municipal Code.

C. The city may revoke a permit and/or apply a fine of up to $500 per day if it determines an applicant has violated this chapter.

(Ordinance No. 2000 repealed Ordinance No. 1948 and was adopted on March 15, 2010; effective April 14, 2010.)

TITLE X
SIGNS

TITLE X SIGNS

CHAPTER 10.10 SIGNS

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CHAPTER 10.10 SIGNS

10.10.005 Short Title

This chapter may be referred to as the Newport Sign Code.

10.10.010 Purpose

The purposes of the Newport Sign Code are:

A. To protect and promote the health, safety, property, and welfare of the public, including but not limited to promotion and improvement of traffic and pedestrian safety.

B. To improve the neat, clean, and orderly appearance of the city for aesthetic purposes.

C. To allow the erection and maintenance of signs consistent with the restrictions of the Newport Sign Code.

D. To prevent distraction of motorists, bicyclists and pedestrians.

E. To allow clear visibility of traffic signs and signal devices, pedestrians, driveways, intersections, and other necessary clear vision areas.

F To provide for safety to the general public and especially for firemen who must have clear and unobstructed access near and on roof areas of buildings.

G. To preserve and protect the unique scenic beauty and the recreational and tourist character of Newport.

H. To regulate the construction, erection, maintenance, electrification, illumination, type, size, number, and location of signs.

10.10.015 Scope

All signs shall comply with this chapter. Provided however, that any signs in the Agate Beach area annexed in 1998 shall comply also comply with Chapter 10.15, and in the event of an inconsistency between the two chapters, Chapter 10.15 shall prevail as to any property within the Agate Beach area.

10.10.020 Prohibited Signs

No sign may be erected, maintained, or displayed except as expressly authorized by this chapter.

10.10.025 Conflicting Provisions

If any provisions of this chapter conflict with any law or regulation requiring a sign or notice, the law or regulation requiring the sign or notice shall prevail.

10.10.030 Definitions

The definitions in this section apply in this chapter.

A. Adjacent means immediately next to and on the same side of the street.

B. Awning includes any structure made of cloth, metal, or similar material with a frame attached to a building that may project outwards but can be adjusted to be flat against the building when not in use.

C. Building shall include all structures other than sign structures.

D. Bulletin Boards. A bulletin board is a surface for posting posters, cards, or notices, usually of paper, and not illuminated or electrical.

E. Business means the premises where a duly licensed business is conducted. Multiple businesses conducted within the same premises shall be subject to the same limits as would a single business on the same premises.

F. Canopy includes any structure made of cloth, metal, or similar material projecting out from a building that is fixed and not retractable.

G. Clearance is the distance between the highest point of the street, sidewalk, or other grade below the sign to the lowest point of the sign. (See Exhibit A.)

H. Display Area means the area of a regular geometric figure that encloses all parts of the display surface of the sign. Structural supports that do not include a display or message are not part of the display area.

I. Erect means to build, attach, hang, place, suspend, paint, affix, or otherwise bring into being.

J. Externally Illuminated Sign is a sign illuminated by an exterior light source that is primarily designed to illuminate the sign.

K. Face means any part of a sign arranged as a display surface substantially in a single plane.

L. Grade means the surface of the ground at the point of measurement. Height shall be measured from the lowest point of the grade immediately below the sign or any sidewalk or street within 5 feet of the sign and the top of the sign.

M. Internally Illuminated Sign shall mean a sign illuminated by an interior light source, which is primarily designed to illuminate only the sign.

N. Multiple Business Property means a property used for business or commercial purposes under a single ownership or control and containing less than 40,000 square feet of land area and on which three or more separate businesses or commercial enterprises are located.

O. Painted includes the application of colors directly on a wall surface by any means.

P. Person means individuals, corporations, firms, partnerships, associations, and joint stock companies.

Q. Premise means a lot, parcel, or tract of land.

R. Reader Board is a sign designed so that the contents of the sign may be changed.

S. Shopping Center means any property used for business or commercial purposes under a single ownership or control having at least 40,000 square feet of land area and on which are located business or commercial improvements containing at least 20,000 square feet of floor space.

T. Sign means any medium, including structure and component parts, which is used or intended to be used to

display a message or to attract attention to a message or to the property upon which such sign is located.

1. Freestanding Sign means any sign not attached to any structure other than the sign structure.

   a. Pole Sign means a freestanding sign that is mounted on a pole or other support that is not as wide as the sign.

   b. Monument Sign means a freestanding sign in which the sign structure is at least as wide as the sign.

2. Mural Sign means a sign that is painted directly on the wall of a building or retaining wall, without any sign structure or additional surface.

3. Portable Sign means a sign that is not attached to the ground or any structure and is movable from place to place. "Portable sign" does not include any sign carried or held by an individual.

4. Projecting Sign means a sign attached to the wall or roof of a building with a sign face that is not parallel to the wall or roof.

5. Roof Sign means a sign attached to a roof of a building, or a sign attached to a wall of a building but extending above the top edge of the wall where the sign is located.

6. Temporary Sign means any sign, regardless of construction materials, that is not permanently mounted and is intended to be displayed on an irregular basis for a limited period of time

7. Wall Sign means any sign attached to a wall of a building that does not extend above the wall of the building and is parallel to and within one foot of the wall.

8. Window Sign shall mean any sign placed inside or upon a window facing the outside and which is visible from the exterior.

U. Sign Business means the business of constructing,

erecting, operating, maintaining, leasing, or selling signs.

V. <u>**Sign Structure**</u> means the supports, upright braces, and framework of the sign.

10.10.035 Application, Permits, and Compliance

A. Except as exempted by this chapter, no person shall erect, replace, reconstruct, move, or remove any permanent sign without a sign permit, or place a temporary or portable sign without a sign permit. All signs shall comply with this chapter and any other applicable law. Any sign permit may be withdrawn for violation of this chapter or any other applicable law.

B. Written applications on city forms are required. The applicant shall provide the following information:

   1. Name, address, and telephone number of the applicant.

   2. Proposed sign location, identifying the property and any building to which the sign will be attached.

   3. A sketch, plan, or design showing the method of attachment, structure, design, and such other information necessary to allow a determination of compliance. Nothing in this section requires the applicant to provide any information regarding the content of any message displayed on the sign.

   4. Grade, height, dimensions, construction materials, and specifications.

   5. Underwriter Laboratories certification in the case of an electrical sign.

   6. Name and address of the person, firm, corporation, or other business association erecting the structure.

C. The city shall issue a sign permit based on a determination that the proposed sign complies with this chapter and other applicable law. Construction of the sign must be completed within 90 days after issuance of the sign permit. An extension of the 90-day period may be granted. If a sign was partially constructed and not completed within the 90-day period or any extension, the

partially completed work shall be removed. Permits shall specify the location, size, and type of sign, and any conditions applicable to the sign. Permits for temporary signs and portable signs in rights of way shall specify the duration of the permit and/or the times when the signs may be in place.

D. When electrical permits are required, they shall be obtained and the installation approved prior to making connection to the electrical power source.

E. Permit fees shall be paid with submission of the sign permit application, as follows:

   1. For the erection, placement, replacement, reconstruction, or relocation of a sign, a fee of $100. A supplemental fee of $100.00 shall be charged for the initial permit for a mural sign that exceeds the maximum permissible size for a wall sign in the same location. Non-profit organizations are exempt from the requirement to pay the supplemental fee for a mural sign.

   2. For the repair, demolition, or removal of an existing sign and/or its supporting structure, no fee.

   3. For temporary signs placed in the right of way, a fee of $25.00 per sign for the first sign and $10.00 per sign for each additional sign Non-profit organizations are exempt from the requirement to pay this fee.

   4. For portable signs placed in the right of way, a fee of $25.00 per sign per application for the first sign and a fee of $10.00 per sign for each additional sign. A fee for use of the right of way of $25.00 per month per sign with a maximum of $100.00 per year shall also be charged for use of the public right-of-way. Non-profit organizations are exempt from the requirement to pay either fee required by this section.

10.10.040 Signs in Public Rights-of-Way

A. Except as provided in this section, permanent signs wholly located within rights-of-way are prohibited. A sign permit does not allow a sign to project into any part of any public right-of-way unless expressly stated in the permit. Each applicant shall determine the location of the public

right-of-way and whether any proposed permanent sign will project into any public right-of-way. Any sign permit that allows a sign projecting into any public right-of-way shall be revocable at any time by the city with or without cause.

B. Permits are required for temporary or portable signs within rights-of-way and may be issued only if authorized in this section.

   1. Permits for temporary and/or portable signs in rights-of-way may be granted if the sign is to be in place for no more than five consecutive days and no more than 10 total days in a calendar year.

   2. Permits for portable signs within rights-of-way for more than five consecutive days and more than 10 total calendar days in a year may be granted if the portable sign is placed adjacent to a business location operated by the permittee, the sign is removed at all times when the business is not open, and the sign is within the following areas:

      a. On SW Coast Highway between SW Angle Street and SW Fall Street.

      b. On SW Bay Boulevard between SW Naterlin Drive and SW Bay Boulevard. On Bay Boulevard between SW Bay Street and SE Moore Drive.

      c. On Hurbert Street between SW 7th Street and SW 9th Street.

      d. In the area bounded by Olive Street on the south, NW 6th Street on the north, SW High Street and NW Coast Street on the east and the Pacific Ocean on the west, including both sides of each named street. For purposes of this section, “Olive Street” means both Olive Street and the area that Olive Street would occupy if it continued straight to the Pacific Ocean west of SW Coast Street.

      e. On SE Marine Science Drive/SE OSU Drive between SE Pacific Way and Yaquina Bay.

      f. In that portion of the South Beach area of Newport, east of Highway 101, west of Kings Slough, south

of the intersection of Highway 101 and 40th Street and north of the intersection of Highway 101 and 50th Street.

(Chapter 10.10.040(B.)(2.)(f.) was added by the adoption of Ordinance No. 2001, adopted on March 16, 2010; effective April 15, 2010.)

3. Permits may be granted under Subsections B.1 and B.2 of this section only if:
   a. The sign is not within any vehicle travel lane;

   b. The sign does not restrict clear vision areas at intersections and driveway access points; and

   c. The sign does not prohibit pedestrian movement on a sidewalk.

C. The following signs are exempt from the prohibitions and requirements of this section:

1. Sign placed by the city or other governmental entity with responsibility for the right-of-way.

2. Permanent signs placed in a location where allowed by a license or easement from the city to an adjacent property owner to occupy the right-of-way. Signs allowed by this exemption must comply with all other requirements of this chapter, and the display area of the signs will be included in the calculation of the maximum display area of the adjacent property.

3. Signs not exceeding one square foot on a pole in the right-of-way placed on the pole by its owner.

D. Signs placed in ODOT right-of-way may also require approval from ODOT.

E. No permit may be issued for a sign in the right-of-way unless the applicant provides proof of liability insurance in an amount determined to be sufficient by the city manager.

(Section 10.10.045 amended by Ordinance No. 1986, adopted on September 8, 2009; effective October 8, 2009.)

10.10.045 Prohibited Signs

No sign shall be constructed, erected, or maintained:

A. That uses lights unless effectively screened, shielded, or utilized so as not to direct light directly into the eyes of motorists traveling on any street or highway.

B. That includes any single light bulb that creates more light than a 60 watt incandescent bulb.

C. That uses neon tubing on the exterior surface of a sign for sign illumination where the capacity of such tubing exceeds 300 milliamperes rating for white tubing or 100 milliamperes rating for any other color of tubing.

D. That uses flashing or intermittent light.

E. That uses any type of rotating beacon light, zip light, or strobe light, or any light not directed to or part of the illumination of the sign.

F. That uses wind-activated devices or devices which flutter in the wind, such as propellers, but excluding flags, banners, and pennants.

G. That is flashing, blinking, fluctuating, or animated, that has parts that are flashing, blinking, fluctuating, or animated; or that includes similar effects.

H. That uses a guy wire for support of a sign, except where there exists no other means of support for a sign otherwise conforming to the requirements of this chapter.

I. That has any visible moving parts, visible revolving parts, visible mechanical movement of any description, or any other apparent visible movement achieved by electrical, electronic, or kinetic means, including intermittent electrical pulsations or movement or action by wind currents.

J. That is erected at the intersection of any street that substantially obstructs free and clear vision of motorists, pedestrians and cyclists, or at any location where it may interfere with, obstruct, or be confused with any authorized traffic sign.

10.10.050 Height and Dimensional Requirements

A. The maximum height of all signs other than mural signs shall be no greater than 30 feet above grade.

B. The maximum horizontal or vertical dimension of the display surface of any sign other than mural signs shall not exceed:

   1. Thirty feet for freestanding and roof signs on properties adjacent to Highways 101 or 20 that are located at least 125 feet from the center line of the highway and at least 76 feet from the center line of any other street.

   2. Fifty feet or the width of the wall for wall sign horizontal dimension.

   3. Except as otherwise provided by the chapter, the maximum horizontal or vertical dimension of any display surface shall not exceed 20 feet.

10.10.055 Projection and Clearance

A. Signs shall not project more than 3 feet over any public right-of-way, and in no case shall be within 2 feet of a traveled roadway.

B. The minimum clearance of any sign over driveways, parking lots, or public right-of-ways is 16 feet, excepting that the minimum clearance of any sign over a sidewalk is 8 feet, unless the sidewalk is used as a driveway.

10.10.060 Number and Area of Signs

A. Each right-of-way frontage of a business shall be limited to only one projecting or freestanding sign unless the frontage exceeds 200 lineal feet, in which case one additional freestanding or projected sign is permitted. Other signs are not limited in number unless specifically limited or restricted elsewhere in this chapter.

B. Each street frontage of a business shall be limited to no more than 200 square feet of display area for all non-exempt signs other than mural signs. Freestanding and projecting signs having two sides facing in opposite directions shall be counted as having only one face, which shall be the larger of the two faces if not of equal size. Only the larger face of back-to-back signs within two feet of each other and signs on opposite parallel ends of awnings shall be counted towards total maximum size.

1. The maximum total area of wall signs is two square feet of sign area for each lineal foot of street frontage.

2. The maximum total area for freestanding and projecting signs is one square foot of display area for each lineal foot of street frontage.

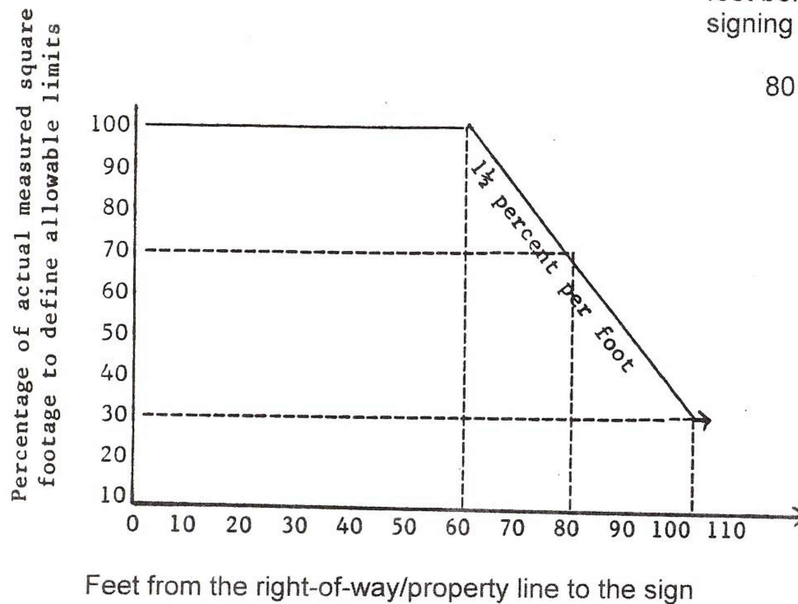
C. Notwithstanding any limitation on total sign area, each separate business is allowed at least 50 square feet of display area.

D. The maximum display area allowed shall be adjusted based on distance from the nearest property line, using the graph below:

E.g., 60 foot setback of a measured 100 square foot sign results in 100 square feet being charged to the allowable signing area.

80 foot setback of a measured 100 square foot sign results in 70 square feet being charged to the allowable signing area.

105 foot setback of a measured 100 square foot sign results in 32.5 square feet being charged to the allowable signing area.



e.g., 60-foot setback of a measured 100 square foot sign results in 100 square feet being charged to the allowable sign area.

80 foot setback of a measured 100 square foot sign results in 70 square feet being charged to the allowable sign area.

105 foot setback of a measured 100 square foot sign results in 32.5 square feet being charged to the allowable sign area.

10.10.065 Exempt Signs

The following signs are exempt from regulation under this chapter:

A. Signs erected or maintained by or on behalf of a federal, state, or local governmental body. This exemption shall not apply to signs that are otherwise prohibited under Section 10.10.045 except when the sign is placed in a public right-of-way by the entity responsible for managing the public right right-of-way as allowed under Section 10.10.040 (C)(1).

B. Signs not visible from a public right-of-way or from property other than the property where the sign is located. For purposes of this section, "property where the sign is located" includes all property under common ownership," and "visible" means that the sign face is visible.

10.10.070 Partially Exempt Signs

A. The following signs are exempt from the permit requirement and, except as expressly provided to the contrary, do not count towards maximum display area:

   1. One sign not exceeding two square feet on each property with a separate street address, placed flat against the building.

   2. In a residential zone on a property where a home occupation is legally conducted, a non-illuminated sign not exceeding two square feet in area, placed flat against the building.

   3. Signs placed on post boxes.

   4. Non-illuminated signs on private property oriented towards internal driveways and parking areas, not to exceed 3 square feet in area.

   5. Signs that are an integral part a building, including those cut into any masonry surface, as well as signs integrated into the structure of a building constructed of bronze or other non-combustible materials.

   6. Signs placed within a public right of way place by the

public entity with responsibility for administering the right of way.

7. Flags.

B. Each religious institution is allowed to have, in addition to signage otherwise allowed, additional signage not to exceed 48 square feet in area, including each face of any multiple faced sign. No single sign face may exceed 24 square feet, except reader boards, which may not exceed 32 square feet and bulletin boards, which may not exceed 16 square feet. The sign(s) allowed by this subsection are exempt from the maximum total display area standard.

C. Each community center and educational institution is allowed one reader board not exceeding 32 square feet in area in addition to other allowed signs. The sign allowed by this subsection is exempt from the maximum total display area standard.

D. Temporary signs complying with all of the following are permitted in all zones without a permit, in addition to any other permitted signs:

1. The signs must be entirely on private property and outside of any vision clearance areas.

2. The signs do not exceed 20 square feet of display area or any horizontal or vertical dimension of 8 feet.

3. The signs are not erected more than 90 days prior to the date of an election and they are removed within 30 days after the election.

4. They are erected or maintained with the consent of the person or entity lawfully in possession of the premises and any structure to which they are attached.

E. One temporary portable sign per business placed on private property is permitted. Temporary portable signs shall be made of permanent, durable materials and shall be maintained in a good condition. Temporary signs (portable and attached) in the aggregate may not exceed 24 square feet for all display area surfaces on a single property. Temporary signs shall not be included in the calculation of total maximum display area. All portable signs shall be weighted, anchored, or constructed so that

they will not move or collapse in the event of wind, or otherwise create a hazard.

(Chapter 10.10.070(E.) was added by the adoption of Ordinance No. 2001 on March 16, 2010; effective April 15, 2010.)

10.10.075 Roof Signs

One roof sign per business property is permitted.

10.10.080 Signs at Subdivision Entrances

One permanent sign per subdivision entrance not to exceed 16 square feet in area is permitted. Signs at subdivision entrances may be illuminated but which shall not obstruct any required vision clearance area.

10.10.085 Vehicle Signs

Any sign attached to or imprinted upon a validly licensed motor vehicle operating legally upon the streets and highways of the State of Oregon is exempt from this chapter while the vehicle is traveling upon any street or highway, or while such vehicle is parked to carry out an activity incidental to interstate commerce, but is otherwise not exempt unless:

A. The sign is painted or otherwise imprinted upon, or solidly affixed to, the surface of the vehicle, with no projection at any point in excess of 6 inches from the surface of the vehicle.

B. The vehicle, with the sign attached, complies with all applicable requirements of the Motor Vehicle Code required for the lawful operation thereof.

10.10.090 R-1, R-2, and R-3 Residential Districts

In all R-1, R-2, and R-3 residential districts, the following signs are allowed:

A. One non-illuminated sign not exceeding 2 square feet.

B. One non-illuminated temporary sign not exceeding 8 square feet in area.

C. One non-internally illuminated sign not exceeding 20 square feet in area placed flat against the building for each apartment complex.

10.10.095 R-4 Residential District

In an R-4 residential district, the following signs are allowed:

A. For residential uses, signs allowed in the R-1, R-2 and R-3 districts.

B. For hotels, motels, recreational vehicle parks, and movie theaters, no more than two illuminated signs that do not exceed 100 square feet in total area. The signs may be internally or externally illuminated.

C. For all other uses, a maximum of 20 square feet of sign area per street frontage. The maximum area shall be a combination of wall and freestanding signs. Freestanding signs shall be set back a minimum of 10 feet from all property lines and shall not exceed 8 feet in height. No sign may be internally illuminated.

10.10.100 Commercial, Industrial, and Marine Districts

In commercial, industrial, and marine zoning districts, the following signs are allowed:

A. The total area for wall signs shall not exceed two square feet of display area for each lineal foot of street frontage of the street.

B. The total area for projecting and freestanding signs shall not exceed one square foot of display area for each lineal foot of street frontage. One projecting or freestanding sign is allowed for each 100 feet of street frontage.

C. Each frontage of a business shall be limited to not more than 2 signs, only one of which may be other than a wall sign unless there is more than 100 lineal feet of street frontage.

D. Window signs shall not exceed 16 square feet in area. Window signs are not included in the calculation of total display area.

E. Mural signs are permitted.

10.10.105 Signs in Shopping Centers

For shopping centers and multiple business properties, the

number and size of signs are governed by this section, notwithstanding the provisions of the underlying zone.

A. The maximum number of freestanding signs on shopping center properties is two and the maximum number of freestanding signs on multiple business properties is one.

B. The maximum number of wall signs for shopping centers and multiple business properties is one per street frontage.

C. For both shopping centers and multiple business properties, the maximum total area display area of all freestanding and wall signs and is one square foot for each lineal foot of street frontage, with a maximum of 200 square feet per sign. Only one side of a double-faced freestanding sign shall be including in the calculation of display area, provided that the sign faces are 180 degrees opposed and separated by two feet or less.

D. In addition to the signs allowed by subsections A through C, each individual business may erect wall signs on the premises controlled by the individual business of up to two square feet of display area for each lineal foot of frontage. For the purposes of this subsection, the term frontage means the distance, measured in a straight line, along any one wall of the business premises facing and providing public access to the separate premises of the business. Where a business has entrances allowing public access on more than one frontage, wall signs may be erected for each frontage, but the display area maximum shall be calculated separately for each frontage.

E. The permit, size, area, and number restrictions do not apply to any signs in shopping centers and multiple business properties that are not visible from the public right of way or adjacent property.

10.10.110 Construction and Safety Requirements

All signs shall be well constructed in accordance with all applicable codes and requirements of law and shall be maintained in a safe, neat, and clean condition. Signs that are not in good repair or condition through deterioration or other reasons are prohibited and shall be either repaired or removed. If not repaired or removed by the owner, signs that

are not in good repair or condition may be abated as authorized by this code.

10.10.115 Dangerous and Abandoned Signs

A. Any sign or structure that is a nuisance or a dangerous structure may be abated as provided by city ordinances governing nuisances and dangerous structures. If the city manager or building official determines that any sign or sign structure constitutes an immediate threat, danger, or hazard to life, health, or property, the city manager or building official take any action necessary to immediately abate the risk, pursuant to the police power of the City of Newport and without prior notice.

B. Any sign that has been abandoned or reasonably appears to be abandoned constitutes a hazard and may be abated as provided in Subsection A.

10.10.120 Removal of Signs in Rights-of-Way

Any unauthorized sign in a public right-of-way may be removed immediately without notice by the city and removed to a place of storage. A notice of removal shall be sent to any owner of the sign known to the city, notifying the owner that the sign will be destroyed unless the owner claims the sign within 20 days of the notice. If the owner is unknown to the city, no notice is required and the sign may be destroyed if unclaimed after 20 days from the date of removal. No sign removed from the right-of-way shall be returned to the owner unless the owner pays a removal fee to the city in an amount set by Council resolution. If the city reasonably estimates the value of the sign materials to be less than $10.00, the city may immediately dispose of any sign left in the right-of-way without notice.

10.10.125 Remedies

A sign erected or maintained in violation of this chapter is a nuisance and a civil infraction. The city may pursue any one or more of the legal, equitable administrative and self-help remedies legally available to it. All remedies of the city, both as a governmental body and otherwise are cumulative.

10.10.130 Nonconforming Signs

A. The purpose of this section is to discourage

nonconforming signs and to work toward eliminating or removing nonconforming signs or bringing them into conformity with this chapter. Nonconforming signs shall not be enlarged, expanded or extended, nor used as grounds for adding other structures or signs otherwise prohibited.

B. A nonconforming sign may not be altered as to size, message, or construction, except that common and ordinary maintenance to maintain the sign in a good and safe condition is allowed, including incidental structural repair or replacement.

C. If a nonconforming sign is damaged or destroyed by any cause including normal deterioration to the extent that the cost of repair shall exceed 50% of the replacement value of the sign, the sign may not be repaired or restored, and may be replaced only by a sign conforming to the provisions of this chapter.

10.10.135 Content and Interpretation

This chapter and Chapter 10.15 do not regulate the content of signs and shall be interpreted as not regulating content. These chapters shall be interpreted if at all possible to be consistent with constitutional protection of expression, and any provision that unconstitutionally restricts expression shall not be enforced, and the remainder of the provisions shall continue to be applicable and shall be applied constitutionally.

10.10.140 Variance Requirements

Any person may seek a variance to the numerical provisions of this chapter or of Chapter 10.15 by filing a written application. The procedure and process applicable to zoning variances (including but not limited to the notification process, public hearing process, conditions of approval, time limitations, and revocation of permits as applicable for the type of variance requested) shall be followed. The fee for a variance shall be the same as for a zoning variance. The criteria for the sign variance shall be as specified below. In addition to the requirements for submitting a zoning variance, a sign inventory including the location, type, and size of each sign on the property shall be submitted with the variance application.

A. All sign variance applications that propose to increase the number or size of signs or propose a variance from any other numerical standard shall be determined by the Planning Commission using the zoning Type I Variance procedure, based on a determination that the proposed variance is the minimum necessary to alleviate special hardships or practical difficulties faced by the applicant and that are beyond the control of the applicant.

B. All sign variance applications based on a change in a sign or signs that decreases but does not eliminate an existing nonconformity shall be determined by the community development (planning) director using a Type II Variance procedure, based on a determination that the proposed variance will result in a reduction of the nonconformity without increasing any aspect of nonconformity.

10.10.145 Violations

A violation of this chapter or of Chapter 10.15 is a civil infraction, with a civil penalty not to exceed $500. The penalty for a second or subsequent violation within two years may be up to $1,000. A violation occurs on the date of the occurrence of the act constituting the violation. Each violation is a separate infraction, and each day in which a violation occurs or continues is a separate infraction.

CHAPTER 10.15 AGATE BEACH SIGN REGULATIONS

10.15.005 Purpose and Applicability

A. This chapter has the same purposes as Chapter 10.10 as well as the following:

   1. To maintain and enhance the aesthetic environment and the neighborhood's ability to attract sources of economic development and growth;

   2. To minimize the possible adverse effect of signs on nearby public and private property; and

   3. To enable the fair and consistent enforcement of these sign restrictions.

B. This chapter applies within the Agate Beach Neighborhood as defined in the Agate Beach Neighborhood Plan adopted on July 6, 1998, by Ordinance No. 1792 to include that area within the area bounded by the Pacific Ocean on the west, the Urban Growth Boundary (UGB) on the north and east and the Agate Beach Golf Course and N.W. 43rd Street on the south.

10.15.010 Definitions

The definitions in this section apply to this chapter. Any term not defined in this chapter but defined in Chapter 10.10 shall have the meaning defined in Chapter 10.10.

A. **Business frontage**. The lineal footage of a building or portion thereof devoted to a specific business.

B. **Frontage, primary**. The side(s) of the building facing a street.

C. **Frontage, secondary**. Any side of a building not facing a street.

D. **Indirect illumination**. A source of illumination directed toward a sign so that the beam of light falls upon the exterior surface of the sign.

E. **Shopping center or business complex**. A group of five or

more commercial establishments having common parking facilities.

F. Sign, abandoned. Any sign which is located on property that becomes vacant and unoccupied for a period of 90 days or more, or, a sign that pertains to a time, event, or purpose which no longer applies.

G. Sign, alteration. Any change in the size, shape, method of illumination, position, location, material, construction, or supporting structure of a sign.

H. Sign, flashing. A sign incorporating intermittent electrical impulses to a source of illumination or revolving in a manner which creates the illusion of flashing, or which changes colors or intensity of illumination.

I. Sign, freestanding. A sign erected on a frame, mast, pole, or other structure and not attached to any building. See Figure 1.

J. Sign, height. The distance measured from the average elevation of the ground adjacent to the structure that the sign is mounted on or nearest public sidewalk or street curb, when such are adjoining the site, to the maximum height of the face of the sign.

K. Sign, nonconforming. A sign that was lawfully erected but that could no longer be legally erected because of a change in regulations.

L. Sign, portable. Any sign not permanently attached to the ground, a structure, or a building.

M. Sign, projecting. A sign that is wholly or partly dependent upon a building for support and which projects more than 18 inches from such building. See Figure 1.

N. Sign, roof. A sign that is mounted on the roof of a building or which is wholly dependent upon a building for support and which projects above the point of a building with a flat roof, the eave line of a building with a gambrel, gable, or hip roof, or the deck line of a building with a mansard roof. See Figure 1.

O. Sign, structure. The supports, uprights, braces, framework, and other structural components of the sign

which does not contain any part of the sign message.

P. Sign, temporary. A sign constructed of cloth, canvas, fabric, plywood, or other light material and designed or intended to be displayed on a temporary basis. See Figure 1.

Q. Sign, wall. A sign fastened to or painted on the wall of a building or structure in such a manner that the wall becomes the supporting structure for, or forms the background surface of, the sign and which does not project more than 18 inches from the building or structure. See Figure 1.

R. Sign, window. A sign that is applied or attached to the exterior or interior of an exterior window or located in such a manner within a building. See Figure 1.

10.15.015 Permit Required

Except as otherwise provided in this chapter, it shall be unlawful for any person to erect, alter, or relocate a sign without first obtaining a permit for each separate sign from the planning department as required by this chapter.

10.15.020 Exempt Signs

The following signs and devices shall not be subject to the provisions of this chapter.

A. Signs erected or maintained by the City of Newport in any location or by the State of Oregon or the United States of America in the public right-of-way.

B. Flags.

C. In a residential zone, a permanent non-illuminated sign not exceeding two square feet.

D. Temporary signs not exceeding four square feet of display area per side per sign provided the signs are erected no more than 90 days prior to the date of an election and are removed within 10 days after the election.

E. Temporary signs not exceeding six square feet in residential zones and 32 square feet in area in commercial and industrial zones.

F. Non-illuminated window signs.

G. Non-illuminated signs on private property directed to interior driveways and parking areas. Such signs shall be limited to four square feet.

H. Any sign which is not visible from a public right-of-way or from any property other than the property on which the sign is located.

10.15.025 General Sign Regulations

The following general provisions shall govern all signs in addition to all other applicable provisions of this chapter.

A. Obstruction by Signs. No sign or portion thereof shall be placed so that it obstructs any fire escape, stairway, or standpipe; interferes with human exit through any window of any room located above the first floor of any building; obstructs any door or required exit from the first floor of any building; or obstructs any required light or ventilation.

B. Vision Clearance Areas. No signs in excess of two and one-half feet in height shall be placed in the vision clearance areas required by any applicable ordinance, plan or regulation.

C. Bulletin or Reader Boards. Twenty percent of permitted sign area may be allowed as a bulletin board or reader board.

10.15.030 Signs in Residential Zones

Signs in residential zones shall conform to the following regulations:

A. R-1, R-2, and R-3 zoning districts.

1. No portion of a sign may extend beyond any property line of the premises on which the sign is located.

2. Internally illuminated signs are prohibited.

3. One freestanding or wall sign not exceeding 32 square feet and not exceeding five feet in height is allowed for an apartment complex of more than four units, a religious institution, or a school. Any illumination of the

sign shall not project onto adjacent properties.

B. R-4 zoning districts.

1. The same provisions as the R-1, R-2, and R-3 zone contained in Subsection A apply.

2. One freestanding sign and one wall sign per frontage are permitted for conditional uses as part of the conditional use approval. The freestanding sign shall not exceed a height of five feet and one square foot of area per foot of frontage not to exceed 50 square feet. The wall sign shall not exceed one square foot of sign area per foot of frontage not to exceed 50 square feet. For properties with frontage on Highway 101, the height of a freestanding sign may increase one foot for every foot from the center line of the highway to a maximum height of 20 feet, and the area may increase by one square foot for every foot from the center line of Highway 101 to a maximum size of 100 square feet.

10.15.035 Signs in Commercial and Industrial Zones

This section applies to signs in commercial and industrial zones.

A. The number, type, and size of signs allowed on the basis of business frontage shall be placed only on that business frontage, and no building shall be credited with more than two business frontages.

B. Two signs per primary frontage are permitted.

C. Except for mural signs, the total display area of all signs on a single street frontage shall not exceed one square foot for each lineal foot of street frontage, not to exceed 60 square feet. For property that has frontage on Highway 101, the total square footage may increase one square foot for every foot from the center line of the highway, with a maximum total area of 100 square feet.

D. Portable signs are prohibited.

E. Illuminated signs shall be shielded so as not to significantly shine onto residential properties.

F. The following types of signs are permitted:

1. Wall Signs

    a. Number. Two signs per building primary or secondary frontage shall be permitted for each business, or one sign per frontage per business for a shopping center or business complex.

    b. Area. Total sign area shall not be more than one square foot of sign area for each lineal foot of primary frontage. In no case shall a wall sign exceed 60 square feet.

    c. Projection. Except for marquee or awning signs, a projecting sign may project a maximum of eighteen inches from the face of the building to which they are attached, provided the lowest portion of the sign is at least eight feet above grade.

    d. Extension above roof line. Signs may not project above the roof or eave line of a building.

2. Freestanding Signs.

    a. Number. One sign shall be permitted per property.

    b. Area. Signs shall not exceed an area of one square foot for each two lineal feet of street frontage, with a maximum area of 60 square feet per sign. For property that has frontage on Highway 101, the total square footage may increase one square foot for every foot from the center line of said highway, the total area not to exceed 100 square feet.

    c. Placement. Signs shall be placed so that no sign or portion thereof shall extend beyond any property line of the premises on which the sign is located.

    d. Height. No freestanding sign shall exceed five feet above grade. For property that fronts Highway 101, the height of the sign may increase by one foot for every foot from the center line of said highway, but in no case shall the height exceed 20 feet.

3. Awning Signs.

    a. Number. Two signs shall be permitted for each business frontage in addition to the allowed wall

signs. Such signs may be attached to, painted on or suspended from the awning.

b. Area. Awning signs shall be counted toward the permitted aggregate sign area for wall signs. Signs on the ends of awnings shall be counted as one sign as long as the faces are parallel and opposed to each other.

c. Projection. Signs may not project beyond the face of the awning.

d. Clearance above grade. The lowest portion of a sign attached to an awning shall not be less than seven feet, six inches above grade.

4. Illuminated window signs, such as neon signs, are limited to two per primary building frontage. The sign must be placed inside the building and shall not be directed to residentially zoned property. The total area of such signs is limited to ten square feet per primary business frontage.

5. Mural signs.

10.15.040 Nuisance Signs

The following signs are public nuisances:

A. Flashing signs visible from a public street or highway right-of-way.

B. Illegal signs.

C. Temporary signs that have remained in place beyond a temporary basis.

D. Signs in a dangerous state of repair.

E. Abandoned signs.

10.15.045 Nonconforming Signs

The alteration of the size, shape, or location of any existing nonconforming sign is prohibited unless the alteration brings the sign into conformance with this chapter. Damage to or replacement of nonconforming signs may be repaired or

replaced if the cost of the repair or replacement is less that 50% of the value of the cost of replacing the sign with a conforming sign.

(Chapter 10.10 and 10.15 adopted January 7, 2008, by Ordinance No. 1943; effective February 7, 2008)

TITLE XI
BUILDINGS

TITLE XI BUILDINGS

CHAPTER 11.05 BUILDING CODES

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11.05.040 Maintenance
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CHAPTER 11.50 SECURITY ALARM SYSTEMS (Reserved for Future Use)

CHAPTER 11.05 BUILDING CODES

11.05.010 Authority of the Building Official

A. The building official is authorized to enforce all building and similar codes enforceable in the city as well as all city ordinances and intergovernmental agreements. The building official shall not allow occupancy of any building unless all conditions of land use and subdivision approval have been complied with and the building has been built consistent with approved plans. The building official shall have the power to interpret this chapter.

B. The building official may appoint technical officers, inspectors, and other employees to carry out the functions of this chapter, including enforcement.

11.05.020 Right of Entry

When necessary to inspect a building to enforce the provisions of this chapter, when the building official has reasonable cause to believe that a condition in violation of this chapter exists or if the building official has reason to believe that the building is unsafe, the building official may enter the building at reasonable times to inspect. If the building is occupied, credentials shall be presented to the occupant and entry requested. If the building is unoccupied, the building official shall first make a reasonable effort to locate the owner or other person having charge or control of the building and request entry. If entry is refused, the building official shall have recourse to any remedies provided by law to secure entry.

11.05.030 Stop Work Orders

Whenever any work is being done contrary to applicable code or ordinance, the building official may order the work stopped by notice in writing served on any person performing the work or who is otherwise responsible for the work. The work shall be stopped until the stop work order is rescinded.

11.05.040 Maintenance

All buildings and structures, both existing and new, and all parts thereof, shall be maintained so that they remain in compliance with the codes applicable at the time of construction, provided however, that the property owner may

choose to comply with later adopted codes applicable at the time of any work on the building, structure or component. All devices or safeguards which are required by any applicable building code shall be maintained in conformance with this chapter. The owner or the owner's designated agent shall be responsible for the maintenance of buildings and structures. To determine compliance with this section, the building official may cause a structure to be reinspected.

11.05.050 Occupancy Violations

Whenever any building is used contrary to the provisions of this chapter, the building official may order the use discontinued and the structure or portion of the structure vacated. All persons using the structure or portion of the structure shall discontinue the use within the time prescribed by the building official in the notice and make the structure comply with the requirements of this chapter. Use or occupancy of any structure, plumbing, mechanical equipment, or electrical system without approval of the building official is a violation of this chapter.

11.05.060 Suspension/Revocation

The building official may, in writing, suspend or revoke a permit issued under the provisions of this chapter whenever the permit is issued in error on the basis of incorrect information supplied, or if its issuance or activity under the permit is in violation of this chapter or any applicable ordinance of the city. All fees paid to the city shall remain property of the city and shall not be refunded unless the city determines that it erred in issuing the permit.

11.05.070 Inspections

It shall be the duty of the permit holder or authorized agent to request all required inspections in a timely manner, to provide safe access to the site and inspection area, and to provide all equipment as may be deemed necessary or appropriate by the building official. All corrections required by the building official shall be made within a reasonable time and before covering. The permit holder shall not proceed with construction activity until authorized to do so by the building official. It shall be the duty of the permit holder to cause the work to remain accessible and exposed for inspection purposes. Any expense incurred by the permit holder to remove or replace any material required for proper inspection

shall be the responsibility of the permit holder.

11.05.080 Codes and Standards Adopted

The codes adopted in this section may be referred to as building codes. The following specialty codes, rules, and standards are adopted and enforced under this chapter:

A. The Oregon Structural Specialty Code, including the following optional provisions:

   1. Appendix Chapter G Flood- Resistant Construction.

   2. Appendix Chapter J Grading.

   3. Appendix Chapter K Fire-Extinguishing Systems.

B. The Oregon Mechanical Specialty Code.

C. The Oregon Plumbing Specialty Code.

D. The Oregon Electrical Specialty Code.

E. The Oregon Residential Specialty Code.

F. The Manufactured Dwelling Park and Mobile Home Park Rules adopted by OAR 918-600-0005 through 918-600-0110.

G. The Manufactured Dwelling Rules adopted by OAR 918-500-0000 through 918-500-0500 and OAR 918-520-0010 through 918-520-0020.

H. The Recreational Park and Organizational Camp Rules adopted by OAR 918-650-0000 through 918-650-0085.

I. The latest edition of ICBO Uniform Code for the Abatement of Dangerous Buildings.

J. Appendix J of the Oregon Structural Specialty Code.

K. Any other code adopted by the state to be applicable throughout the state and administered by local building officials.

11.05.090 Dangerous or Unsafe Buildings

A. All buildings or structures that are structurally unsafe, that are not provided with adequate egress, that constitute a fire hazard, or that are otherwise dangerous to human life are "unsafe buildings." Any use of unsafe buildings or buildings or structures that are hazards to health by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage or abandonment is, for the purpose of this section, an unsafe use. Parapet walls, cornices, spires, towers, tanks, statuary and other appendages or structural members which are supported by, attached to, or a part of a building and which are in deteriorated condition or otherwise unable to sustain the design loads which are specified in the appropriate Oregon Specialty Code or appendices are unsafe.

B. All unsafe buildings, structures or appendages may be declared a public nuisance and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures set forth in the Dangerous Buildings Code or any alternate procedures adopted by the city.

(Chapter 11.05.090 amended by Ordinance No. 1998, adopted February 1, 2010, and effective February 1, 2010.)

11.05.100 Liability

The building official or other employee charged with the enforcement of this chapter, while acting for the jurisdiction in good faith and without malice in the discharge of the duties under this chapter, shall not be personally liable for any damage accruing to persons or property as a result of any act or omission in the discharge of official duties or for any costs incurred in defending such an action. The city shall defend the building official or other employee from any action or claim resulting from actions or omissions by the building official or other employee exercising their authority under this chapter.

11.05.110 Alternate Materials and Methods

A. The provisions of this chapter are not intended to prevent the use of any alternate materials, designs, or methods of construction not specifically proscribed by this chapter, provided such alternates have been approved and their use authorized by the building official.

B. The building official may approve alternate materials, designs or methods, provided the building official finds that the proposed material, design or method complies with the provisions of this chapter and that it is, for the purpose intended, at least the equivalent of that prescribed in this chapter in suitability, strength, effectiveness, fire resistance, durability, safety and sanitation, and is in conformance with all applicable city standards.

C. The building official may require that evidence or proof be submitted to substantiate any claims that may be made regarding an alternate use. The details of any approval of any alternate material, design, or method may be recorded and entered in the files of the jurisdiction.

   1. Modifications. When there are practical difficulties in carrying out the provisions of this chapter, the building official may grant modifications provided the building official finds that the modification is in conformance with the intent and purpose of this chapter, and that the modification does not lessen any fire-protection requirements nor the structural integrity of the building involved.

   2. Tests. Whenever there is insufficient evidence of compliance with the provisions of this chapter, or any material, method or design does not conform to the requirements of this chapter, the building official may require tests as proof of compliance to be made at no expense to the city.

      Test methods shall be as specified by the building official in accordance with the recognized test standards. If there are no recognized and accepted test methods for the proposed alternate, the building official shall determine test procedures. All tests shall be made by an approved testing agency. Reports of such tests may be retained by the building official.

11.05.120 Plans, Permits, and Conditions

A. **Issuance**. The application, plans, specifications, computations and other data filed by an applicant for a permit shall be reviewed by the building official. Such plans may be reviewed by other departments of this jurisdiction to verify compliance with any applicable laws

or chapters. If the building official finds that the work described in application for a permit and the plans, specifications and other data filed therewith conform to the requirements of this chapter and other pertinent laws and chapters, and that all required fees and charges have been paid, the building official shall issue a permit to the applicant.

When the building official issues the permit where plans are required, the building official shall endorse in writing or stamp the plans and specifications APPROVED. Such approved plans and specifications shall not be changed, modified and altered without authorizations from the building official, and all work regulated by the building official and this chapter shall be done in accordance with the approved plans.

The building official may issue a permit for the construction of part of a building or structure before the entire plans and specifications for the whole building or structure have been submitted or approved, provided adequate information and detailed statements have been filed complying with all pertinent requirements of this chapter. The issuance of a partial permit shall not constitute or be construed as an assurance that the permit for the entire building or structure will be granted. The holder of a partial permit proceeds with such work at the holder's own risk.

B. Conditions. The building official may impose conditions on permits to assure compliance with applicable codes and to avoid the creation of unsafe situations. If an excavation or other activity carried out as part of the building permit will result in a risk of erosion or landslide if the excavation or other activity if not completed, the building official shall require a bond to assure that the property will not be left in a dangerous condition. The bond shall be sufficient to cover the costs of fill, regrading, retaining wall, or other mitigation activity proposed or required as part of the building permit approval.

C. Retention of Plans. One set of approved plans, specifications and computations shall be retained by the building official for a period of not less than one hundred eighty days from date of completion of the work covered therein; and one set of approved plans and specifications shall be returned to the applicant, and shall be kept on the

site of the building or work at all times during which the authorized work is in progress.

D. Validity of Permit. The issuance or granting of a permit or approval of plans, specifications and computations shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this chapter or of any other chapter of the jurisdiction or any other federal, state, or local law, statute, rule, regulation, or Oregon specialty code.

The issuance of a permit based on plans, specifications and other data shall not prevent the building official from thereafter requiring the correction of errors in such plans, specifications and other data, or from preventing building operations in violation of this chapter or of any other ordinance.

The issuance of a permit based on plans, specifications, and other data shall not be a guarantee by the city or the building official of the soundness of such plans or specifications, and shall not be a basis for imposing liability upon the city or any of its agents or employees, specifically including the building official.

E. Not Transferable. Absent express approval of the building official, a permit issued to one person or firm is not transferable and shall not permit any other person or firm to perform any work.

F. Expiration of Plan Reviews. Applications for which no permit is issued within one hundred eighty days following the date of the application as a result of failure to provide sufficient information shall expire by limitation, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the building official. The building official may extend the time for action by the applicant for a period not exceeding an additional one hundred eighty days on request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. No application shall be extended more than once. In order to renew action on an application after expiration, the applicant shall resubmit plans and pay a new plan review fee.

G. **Permit Expiration, Extension and Reinstatement**. Every permit issued by the building official under the provisions of this chapter shall expire by limitation and become null and void if the building or work authorized is not commenced within the time limitations set forth in this section.

Every permit issued by the building official shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within one hundred eighty days from the date such permit is issued, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of one hundred eighty days. The work shall not be considered suspended or abandoned where the permittee has pursued activities deemed by the building official to indicate the intent to start and complete the project. The building official may require the permittee to document these activities.

Every permit issued by the building official shall expire by limitation and become null and void twenty-four months after the date of permit issuance. If the building or work authorized by such permit has not received final inspection approval prior to the permit expiration date, all work shall stop until a new permit is obtained for the value of the work remaining unfinished.

1. **Exception**. At the time of permit issuance the building official may approve a period exceeding twenty-four months for completion of work when the permittee can demonstrate that the complexity or size of the project makes completing the project within twenty-four months unreasonable.

   Any permittee holding an unexpired permit may apply for an extension of the time within which work is to be completed under that permit when the permittee is unable to complete work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not exceeding one hundred eighty days on written request by the permittee showing that circumstances beyond the control of the permittee have prevented work from being completed. No permit shall be extended more than once. Where a permit has expired, the permit can be reinstated and

the work authorized by the original permit can be recommenced, provided the following are met:

a. The specialty code under which the original permit was issued and other chapters which are enforced by the building official have not been amended in any manner which affects the work authorized by the original permit.

b. No changes have been made or will be made in the original plans and specifications for such work.

c. If the original permit expired less than one year from the request to reinstate the fee for a reinstated permit shall be one-half the amount required for a new permit. Where the request for reinstatement does not comply with the preceding criteria, a new permit, at full permit fees, shall be required.

11.05.130 Demolition

A. The demolition of any building that contains asbestos or other hazardous materials shall be conducted in accordance with all applicable state laws and regulations, including regulations relating to removal, transportation and disposal of asbestos or other hazardous materials.

B. The Building Official may require any or all of the following as conditions of issuing demolition permits:

1. Testing of suspected hazardous materials.

2. Use of appropriately licensed abatement contractors.

3. Use of appropriately licensed transporters for the transport of any asbestos or other hazardous materials.

4. Compliance with all applicable local, state and federal laws and regulations, including regulations relating to asbestos and hazardous materials and regulations relating to the protection of water and sewer systems.

C. The Building Official may issue stop work orders for violation of any regulation or permit condition or if any demolition results in or creates the risk of a release of asbestos or hazardous materials.

11.05.140 Fees

A. Fees charged under this chapter shall be established by resolution of the City Council.

B. The building official may authorize the refunding of fees paid.

C. The determination of value or valuation under any provisions of this chapter shall be made by the building official. The value to be used in computing the building permit and plan review fees shall be the total value of all construction work for which the permit is issued as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire-extinguishing systems and any other permanent equipment.

11.05.150 Appeal Procedure

A. Any person aggrieved by a decision of the building official shall first obtain the decision in writing from the building official. Upon receipt of a request, the Building Official shall prepare a written determination.

B. Any person aggrieved by a written decision under Subsection A may appeal that decision to the following:

1. Electrical Specialty Code. Appeals may be made to the state of Oregon, Building Codes Division, Chief Electrical Inspector.

2. Structural Specialty Code. Appeals may be made to the state of Oregon, Building Codes Structures Board.

3. Mechanical Specialty Code. Appeals may be made to the state of Oregon, Building Codes Structures Board.

4. Plumbing Specialty Code. Appeals may be made to the state of Oregon, Building Codes Division.

5. Residential Specialty Code. Appeals may be made to the state of Oregon, Building Codes Structures Board.

6. Manufactured Dwelling Code. Appeals may be made to the state of Oregon, Manufactured Structures and Parks Advisory Board as per ORS 455.690.

7. Recreational Park and Organizational Camp Regulations. Appeals may be made to the state of Oregon, Manufactured Structures and Parks Advisory Board as per ORS 455.690.

8. Other appeals may be made to the appropriate board or agency.

9. For civil penalties, appeals shall be to the City Manager as provided in Section 11.05.160.

C. For Subsections 1-8, an appeal shall be solely on the basis of an interpretation of the building code. Such appeals are not subject to the provisions of Section 11.05.160 unless the appellant is protesting a civil penalty, in which case the appropriateness of the penalty is the only issue to be determined by the city.

(Chapter 11.05.150 amended by Ordinance No. 1998, adopted on February 1, 2010, effective February 1, 2010.)

11.05.160 Violation, Penalties, and Remedies

A. A violation of any provision of this chapter or any code administered under this chapter is a civil infraction with a maximum civil penalty of $1,000 per violation. Each day that a violation exists is a separate infraction.

B. Prior to the imposition of a civil penalty under Subsection A, and upon a determination by the building official that any party has violated a provision of this chapter, the building official may issue a notice of civil penalty to the violator and/or property owner. The notice shall include the following:

1. A description of the alleged violation, including any relevant code provision numbers, ordinance numbers or other identifying references.

2. A statement that the city intends to assess a civil penalty for the violation, its effective date, and the amount of the civil penalty.

3. The date and time by which the violation must be corrected.

4. A statement that a party receiving the notice may protest the alleged violation and assessment of the civil penalty

within 15 days of the date the notice was issued, along with a description of the appeals process.

C. When imposing a civil penalty, the building official shall consider:

1. The party's past history in taking all feasible steps to correct the violation.

2. Any prior violations of statutes, rules, orders and permits.

3. The gravity and magnitude of the violation.

4. Whether the cause of the violation was an unavoidable accident, negligence, or intentional act.

5. The party's cooperativeness.

6. Any other relevant factors.

D. Notice of civil penalty shall be served by personal service or shall be sent by registered or certified mail.

E. A party interested in filing an appeal shall do so in writing within 15 days of the date the notice was issued. The appeal shall be accompanied by a fee equivalent to that which is required for an appeal of a land use action, and shall include:

1. The name and address of the appellant.

2. An explanation of the circumstances that led to the issuance of a civil penalty.

3. The reason(s) the civil penalty is inappropriate, and what the alternative remedy should be.

F. A civil penalty imposed hereunder shall become final upon expiration of the appeal date, unless an appeal is filed. In the event an appeal is filed, accrual of the civil penalty will stop until a final decision is rendered on the appeal.

G. Unless the appellant and city agree to a longer period, an appeal shall be heard by the city manager within 30 days of the date the appeal was filed.

H. The city manager shall determine the appeal on the basis

of the appellant's written statement and any additional evidence that the city manager deems appropriate. The city manager's decision shall be issued in writing, and serves as the city's final decision on the appeal.

I. Notwithstanding the above, the building official may seek to obtain compliance through voluntary means.

J. A violation of any provision of this chapter or any code administered under this chapter may be declared a public nuisance pursuant to Chapter 8.10.

(Chapter 11.05.160 amended by Ordinance No. 1998, adopted on February 1, 2010, effective February 1, 2010.)

11.05.170 Work Without a Permit/Investigation Fees/Penalties

A. Whenever any work for which a permit is required by this chapter has been commenced without first obtaining such permit, a special investigation shall be made before a permit may be issued for such work.

C. An investigation fee, in addition to the permit fee, may be collected whether or not a permit is then or subsequently issued. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this chapter nor from any penalty prescribed by law.

(Chapter 11.05 adopted by Ordinance No. 1944 on January 7, 2008; effective February 6, 2008)

11.05.180 Exemptions

Temporary Vending Carts that are permitted in accordance with the Newport Zoning Code and Ordinance section 2-2-29.030 are not permanently attached to a foundation, they are considered vehicles (not a building or structure), and the Oregon Structural Specialty Code does not apply.

(Chapter 11.05.180 adopted by Ordinance No. 2001 on March 16, 2010; effective April 15, 2010.)

CHAPTER 11.10 FIRE CODE

11.10.005 Adoption of Fire Code

The 2007 Oregon Fire Code is adopted as the City of Newport Fire Code.

11.10.010 Enforcement, Remedies and Procedures Cumulative

The city fire marshal shall have primary responsibility for enforcing the City of Newport Fire Code. Violation of any provision of the City of Newport Fire Code is a civil infraction and violation of this code. In addition to the civil infraction procedure and civil penalty, the city may enforce this code by any other legally available procedure, and the procedures and remedies provided by this section are in addition to and not instead of any other procedure or remedy legally available.

(Chapter 11.10 was adopted by Ordinance 1918 on May 21, 2007; effective June 20, 2007.)

11.50 Security Alarm Systems
(Reserved for Future Use)

TITLE XII

INFRASTRUCTURE FINANCING

TITLE XII INFRASTRUCTURE FINANCING

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CHAPTER 12.05 LOCAL IMPROVEMENT DISRICTS

12.05.005 Initiation of Local Improvement Districts

The Council by motion or on petition of the owners of half the property benefited by the proposed public improvement may direct that a preliminary engineering report be prepared to assist the Council in determining whether a local improvement district should be formed to pay all or part of proposed street, sewer, sidewalk, drain, and/or other public improvements.

12.05.010 Preliminary Engineer's Report

A. The preliminary engineer's report shall contain:

1. A full description of the project.

2. A description of each parcel of land specially benefited, including the name of the record owner of the parcel.

3. An estimate of the probable cost of the project, including property acquisition, design, construction and administrative costs.

4. A recommendation as to what portion of the total costs of the project should be paid by specifically benefited property.

5. A recommendation of a method of assessment, together with an estimate of the cost per unit to specially benefited property.

6. A recommendation whether to proceed with formation of the local improvement district.

12.05.015 Notice of Hearing on District Formation

A. Unless all owners of specially benefited property have petitioned for formation of the local improvement district and waived the right of remonstrance, the city shall mail notice to property owners of a Council hearing on the proposed district at least ten days prior to the hearing to the owner's address listed in the county tax records. The city may provide additional notice.

B. The notice shall contain:

1. A general description of the proposed local improvement(s) and the boundaries of the district, which shall include all specially benefited properties and no properties that are not specially benefited.

2. An estimate of the total cost of the improvement.

3. The date, time, and place of the public hearing.

4. A statement of the place where the preliminary engineer’s report and other Information on the project may be obtained.

5. A description of the proposed method of assessment and allocation of costs.

6. A statement that the purpose of the hearing is to hear comments and remonstrances and that all comments and remonstrances must be submitted prior to the close of the hearing.

7. A statement that the Council may modify the proposed improvement(s) and modify the proposed boundaries of the district.

8. A statement that the costs, proposed allocation of costs, and proposed method of assessment are estimates or proposals only and that the actual assessment will be based on actual costs and on a method of assessment to be determined only after the construction of the local improvement(s) is completed.

12.05.020 Hearing on District Formation

A. The Council shall hold a public hearing on the proposed improvement and formation of the district and consider oral and written testimony, as well as remonstrances.

B. If property owners owning two-thirds of the property area within the district to be specially assessed remonstrate against the improvement, the Council shall not proceed with forming the district and financing the improvement by special assessment. This provision shall not apply if the only improvements to be constructed are sidewalks or if the Council unanimously declares the improvement to be

needed because of an emergency. If a property has multiple owners, a remonstrance by an owner shall be considered a fraction of a remonstrance to the extent of the interest in the property of the person filing the remonstrance.

C. All remonstrances must be in writing and filed with the city recorder by the end of the public hearing. Remonstrances may be withdrawn any time prior to the close of the hearing.

D. If insufficient remonstrances are filed to prevent the formation of the local improvement district, the Council shall have discretion whether or not to form the district and proceed with the public improvement.

E. Based on testimony at the hearing, the Council may modify the scope of the improvements and/or the district boundary. The Council may use any reasonable method of determining the extent of the local improvement district based on the benefits of the proposed local improvement(s). If any modifications approved by Council include additional property or result in a likely increase in assessments on any property, the city shall hold another hearing and provide notice of the additional hearing in the same manner as it provided notice of the initial hearing.

F. A decision to accept the engineer's report, form the local improvement district and proceed with making the local improvements shall be by resolution.

12.05.030 Final Plan and Specifications

A. After a Council decision to form the district and proceed with the local improvement(s), the city engineer shall be responsible for acquisition of necessary rights-of-way and easements and for development of a final plan and specifications prior to publishing contract solicitation documents.

B. After developing the final plan and specifications, the city engineer shall prepare a new estimate of costs. If the new estimate significantly exceeds the estimate available to the Council at the time of its hearing or if there are significant changes in the project as a result of the additional work, a supplemental engineer's report shall be prepared and submitted to the Council which shall hold a

hearing on the revised engineer's report. The hearing shall be noticed in the same manner as the original hearing, and property owners shall have the right to submit a remonstrance based on the revised engineer's report. The Council shall follow the same procedure and standards applicable to the original hearing.

12.05.035 Construction

A. Construction work on the local improvement(s) may be by the city, by another government agency, by contract with a private contractor, or by any combination of those entities. Any contracting shall be in accordance with the city's public contracting rules.

B. Construction may proceed after the development of the final plan and specification if the final plan and specifications do not significantly differ from the improvements authorized by the Council after the initial hearing. If an additional hearing is held, construction may proceed after a Council decision accepting the revised engineer's report and directing that the local improvement(s) be constructed.

12.05.040 Costs Included in Assessment

The costs and expenses that may be assessed against specially benefited property include but are not limited to:

A. The costs of property, right-of-way or easement acquisition, including the cost of any condemnation proceedings.

B. Engineering and survey costs.

C. Costs of construction and installation of improvements.

D. Costs of preliminary studies.

E. Advertising, legal, administrative, survey, engineering, notice, supervision, materials, labor, contracts, equipment, inspection and assessment costs.

F. Financing costs, including interest charges.

G. Attorney fees.

H. Any other necessary expenses.

12.05.045 Method of Assessment

A. After final acceptance of the public improvements by the city, the city engineer shall prepare a final report that describes the completed improvement, lists the total costs with a breakdown of the components of the total cost, and proposes a method of assessment. The city engineer shall prepare the proposed assessments for each lot within the improvement district, file the assessments with the finance director, and submit a proposed assessment resolution to the City Council. The city engineer shall provide an explanation of any difference in the proposed cost allocation or method of assessment previously proposed.

B. The City Council shall hold a hearing on the final engineer's report and at that hearing shall establish by resolution the method of assessment and amount to be assessed against each specially benefited property.

C. The Council in adopting a method of assessment of the costs of the improvement(s) may use any method of apportioning the sum to be assessed that the Council determines to be just and reasonable among the properties in the local improvement district.

D. After the Council adopts the assessment resolution, the city will schedule a Council hearing and mail notice of the proposed assessments to each owner of assessed property within the district at least 10 days before the hearing. The notice shall contain:

    1. The name of the owner and a description of the property to be assessed.

    2. The amount of the assessment.

    3. The proposed allocation and method of assessment.

    4. The date, time and place of the Council hearing on objections to the assessment, and the deadline to submit written objections before the hearing.

    5. A statement that the assessment as stated in the notice or as modified by the Council after the hearing

will be levied by the Council, charged against the property, and be due and payable.

E. Any mistake, error, omission, or failure relating to the notice shall not invalidate the assessment proceedings, but there shall be no foreclosure or legal action to collect until notice has been provided to the property owner, or if owner cannot be located, notice is published once a week for two consecutive weeks in a newspaper of general circulation in the city.

F. The Council shall hold the public hearing and consider oral and written objections and comments. After the hearing, the Council shall determine the amount of assessment to be charged against each property within the district according to the special benefits to each property from the improvement(s). The final decision spreading the assessment shall be by resolution.

12.05.050 Notice of Assessment

Within 10 days after the effective date of the resolution levying the assessments, the finance director shall send by first-class mail to the owner of the assessed property a notice containing the following information:

A. The date of the resolution levying the assessment, the name of the owner of the property assessed, the amount of the specific assessment and a description of the property assessed.

B. A statement that application may be filed to pay the assessment in installments in accordance with the provisions of this chapter.

C. A statement that the entire amount of the assessment, less any part for which application to pay in installments is made, is due within 30 days of the date of the notice and, if unpaid on that date, will accrue interest and subject the property to foreclosure.

   Supplementary notice of assessment in form and content to be determined by the finance director may also be published or posted by the finance director.

12.05.055 Payment

A. Unless an application is made for payment in installments as provided by this section, assessments shall be due and payable in full within 30 days after the date the notice of assessment is mailed, and if not so paid, shall bear interest at the rate of 9 percent per year. The city may proceed to foreclose or enforce collection of the assessment lien if the amount is not paid in full within 90 days of the date the notice of assessment is mailed.

B. Any time within 10 days after the notice of assessment is mailed or within 10 days of resolution of any writ of review proceeding challenging the assessment, the owner of the property may apply to pay any assessment in excess of $500 in equal annual installments, with the first payment to be paid within 10 days of the determination by the finance director of the amount of the annual payment. The city shall allow payments to be made over 10 years, and may, in the city's discretion, allow payments to be made over a longer period of time, not to exceed 30 years. The application shall state that the applicant:

   1. Waives all irregularities or defects, jurisdictional, or otherwise, in any way relating to the assessment.

   2. Understands the terms and conditions of the city's payment policies including the penalties for nonpayment.

   (Section 12.05.055(B.)(1.) and (2.) was amended by Ordinance No. 1977, adopted on April 6, 2009; effective May 6, 2009.)

C. On receipt of an application for payment in installments, the finance director shall determine whether the city will finance the payments internally, or issue bonds, or obtain a loan for the amount financed. The interest rate will be set at the interest rate charged to the city, plus 2%. If the city finances the payments internally, the interest rate shall be at the interest rate payable to the city if it had invested the money in a local government pool account, plus 3%. The finance director shall then notify the property owner of the payment amounts and due dates.

D. If any installment payment is not paid within one year of the due date, the Council shall adopt a resolution declaring the entire amount of principal and interest due and payable at once.

E. The entire amount of principal and accrued interest shall be payable on any sale of the specially assessed property or change in its boundaries.

12.05.060 Lien and Foreclosure

A. The finance director shall enter in the city lien docket:

   1. A statement of the amounts assessed upon each particular lot, parcel of land or portion thereof;

   2. A description of the improvement;

   3. The names of the owners; and

   4. The date of the assessment resolution.

B. On entry in the lien docket, the amount entered shall become a lien and charge upon the properties that have been assessed for such improvement.

C. All assessments liens of the city shall be superior and prior to all other liens or encumbrances on property.

D. The city may collect any payment due and may foreclose the liens in any manner authorized by state law.

12.05.065 Errors in Assessment Calculations

Claimed errors in the calculation of assessments shall be called to the attention of the finance director who shall determine whether there has been an error. If the finance director determines that there has been an error, the matter shall be referred to the Council for an amendment of the assessment resolution. On amendment of the resolution, the finance director shall make necessary corrections in the city lien docket and send a correct notice of assessment by certified mail.

12.05.070 Abandonment of Proceedings

The Council may abandon and rescind proceedings for improvements at any time prior to the final completion of the improvements. No assessment shall be imposed if improvements are not completed.

12.05.075 Curative Provisions

No improvement assessment shall be rendered invalid by a failure of any incompleteness or other defect in any engineer's report, resolution, notice, or by any other error, mistake, delay, omission, irregularity, or other act, jurisdictional or otherwise, in any of the proceedings or steps required by this chapter, unless the assessment is unfair or unjust. The Council shall have the authority to remedy or correct any matter by suitable proceedings and action.

12.05.080 Reassessment

Whenever any assessment or reassessment is set aside or its enforcement restrained by any court with jurisdiction or when the Council is in doubt as to the validity of the assessment or reassessment, the Council may make a reassessment in the manner provided by the state law or may follow the procedure applicable to an original assessment, but shall not be required to repeat any portion of the procedure properly completed.

12.05.085 Remedies

Actions of the Council under this chapter are reviewable only by writ of review.

12.05.090 Interpretation and Coordination with State Law

The provisions of this chapter shall be interpreted consistent with state law relating to local improvement districts and Bancroft bonding. When state law authorizes local governments to adopt standards and procedures different from those specified in the statutes, the city may comply with either this chapter or state statutes. To the extent that any standard or procedure is not governed by this chapter, the city shall comply with state statutes.

(Chapter 12.05 adopted by Ordinance No. 1924, on June 18, 2007; effective July 18, 2007)

CHAPTER 12.10 REIMBURSEMENT DISTRICTS

12.10.010 Definitions

A. Applicant means a person who submits an application under Section 12.10.020.

B. Street Improvement means a street or street improvement conforming with city street improvement standards and included as part of the city's transportation system, including but not limited to streets, storm drains, curbs, gutters, sidewalks, bike paths, traffic control devices, street trees, lights and signs and public right-of-way.

C. Water Improvement means a water line or facility conforming with city standards and included as part of the city's water system.

D. Sewer Improvement means a sewer line or facility conforming with city standards and included as part of the city's sewer system.

E. Other Improvement means a public improvement other than a street, water or sewer improvement" conforming with city standards and made part of a city system.

F. Reimbursement District means the area determined by the City Council to have an opportunity to utilize the improvement paid for by the applicant.

G. Reimbursement Fee means the fee required to be paid by a resolution of the City Council and the reimbursement agreement.

12.10.020 Application for a Reimbursement District

A. Any person who is required to or chooses to pay for some or all of the cost of a street, water, sewer or other improvement in excess of what is needed to provide services to the person's property may, by written application filed with the city engineer, request that the city establish a reimbursement district. The street, water and sewer improvements must include improvements in addition to those that are required in connection with an application for permit approval and must be available to provide service to property other than property owned by the applicant. Examples include but are not limited to full

street improvements instead of half street improvements, off-site sidewalks, connection of street sections for continuity, and extension or over-sizing of water or sewer lines. The city may be an applicant. The application shall be accompanied by a fee or deposit in an amount set by Council resolution sufficient to cover the city's administrative costs. If the Council establishes a deposit system, the applicant shall be responsible for supplementing the deposit on demand by the city in an amount sufficient to cover all anticipated costs by the city, including the costs of engineer's reports.

B. The application shall include the following:

1. A description of the location, type, size, and cost of the public improvement to be eligible for reimbursement.

2. A map showing the properties to be included in the proposed reimbursement district; the zoning district for the properties; the front footage or square footage of said properties, or similar data necessary for calculating the apportionment of the cost; and the property or properties owned by the applicant.

3. The estimated cost of the improvements as evidenced by bids, projections of the cost of labor and materials, or other evidence satisfactory to the city engineer.

4. The estimated date of completion of the public improvements.

12.10.030 City Engineer's Report

The city engineer shall review the application for the establishment of a reimbursement district and evaluate whether a district should be established. The engineer may require the submittal of other relevant information from the applicant in order to assist in the evaluation. The engineer shall prepare a written report and recommendation for the City Council, addressing the following:

A. The extent to which the improvement for which reimbursement is sought will provide capacity beyond what is needed to serve the applicant's property.

B. The area to be included in the reimbursement district.

C. The estimated cost of the improvements within and the portion of the cost that eligible for reimbursement;

D. A methodology for spreading the cost among the properties within the reimbursement district. The methodology may define a "unit" for applying the reimbursement fee to property that may later be partitioned, altered or subdivided. The methodology should include consideration of the cost of the improvements, prior contributions by property owners, the value of the unused capacity, ratemaking principles employed to finance public improvements, and other factors deemed relevant by the city engineer. Prior contributions by property owners will only be considered if for the same type of improvement serving the same location.

E. The amount to be charged by the city for administration. The administration fee shall be fixed by the City Council and will be included in the resolution forming the reimbursement district. If the applicant is other than the city, the administration fee is due and payable to the city at the time the reimbursement agreement is signed. If the city is the applicant, the administration fee shall be included in the reimbursement fee and is due and payable at the time there is an obligation to pay the reimbursement fee.

F. The period of time that the right to reimbursement exists if the period is less than ten years.

12.10.040 Amount To Be Reimbursed

A. The amount to be reimbursed shall include the cost of construction, engineering, and acquisition of off-site right of way or easements, and the administrative costs paid by the applicant to the city. If the applicant is the city, the recoverable administrative costs shall be the actual costs incurred by the city and all costs associated with the acquisition of easements and rights of way. Engineering, including surveying and inspection, shall not exceed 10% of eligible construction cost. If the applicant is other than the city, the costs to be reimbursed for right of way shall be limited to the reasonable market value of land or easements purchased by the applicant from a third party necessary for off-site improvements.

B. No reimbursement shall be allowed for financing costs, permits or fees required for construction permits, land or easements dedicated by the applicant, costs which are eligible for traffic impact fee credits or systems development charge credits, or any costs which cannot be clearly documented.

C. No reimbursement shall be allowed for construction costs for any work or acquisition prior to the formation date of the reimbursement district.

D. The reimbursement fee payable shall be reduced by 10% of the original reimbursement fee amount each year after the reimbursement fee was imposed.

12.10.050 Public Hearing

Within a reasonable time after engineer's report has been completed, the City Council shall hold an informational public hearing in which any person may comment on the proposed reimbursement district. Because formation of the reimbursement district does not result in an assessment or lien against property, the public hearing is for informational purposes only and is not subject to termination because of remonstrances. The City Council has the sole discretion after the public hearing to decide whether a resolution forming the reimbursement district shall be adopted.

12.10.060 Notice Of Public Hearing

The city shall serve notice of the hearing to the applicant and all owners of property within the proposed district by regular mail or personal service. Notice shall be mailed at least 13 days before the hearing or personally served at least 10 days before the hearing. Any defects in notice shall not invalidate or otherwise affect any action by the City Council.

12.10.070 City Council Action

A. After the public hearing, the City Council shall decide whether to form the reimbursement district. Any decision to form a reimbursement district shall be by resolution, which shall include the engineer's report as approved or modified by the Council.

B. When the applicant is other than the city, the resolution shall instruct the city manager to enter into a

reimbursement agreement with the applicant. The agreement shall be contingent upon the improvements being accepted by the city. The agreement shall contain at least the following provisions:

1. The public improvement(s) shall meet all applicable city standards.

2. The estimated total amount of potential reimbursement to the applicant.

3. The applicant shall defend, indemnify, and hold harmless the city from any and all losses, claims, damage, judgments or other costs or expense arising as a result of or related to the city's establishment of the district.

4. The applicant shall acknowledge that the city is not obligated to collect the reimbursement fee from affected property owners.

C. If a reimbursement district is established by the City Council, the date of the formation of the district shall be the date that the City Council adopts the resolution forming the district.

D. The City Council resolution and reimbursement agreement shall determine the boundaries of the reimbursement district and shall determine the methodology for imposing a fee which considers the cost of reimbursing the applicant for financing the construction of a street, water or sewer improvement within the reimbursement district.

12.10.080 Notice of Adoption of Resolution

The city shall notify all property owners within the district and the applicant of the adoption of a reimbursement district resolution. The notice shall include a copy of the resolution, the date it was adopted and a short explanation of when the property owner is obligated to pay the reimbursement fee and the amount of the fee.

12.10.090 Recording the Resolution

The city recorder shall cause notice of the formation and nature of the reimbursement district to be filed in the office of

the county clerk so as to provide notice to potential purchasers of property within the district. The recording shall not create a lien. Failure to make such a recording shall not affect the legality of the resolution or the obligation to pay the reimbursement fee.

12.10.100 Contesting the Reimbursement District

No legal action intended to contest the formation of the district or the reimbursement fee, including the amount of the charge designated for each parcel, shall be filed after 60 days following adoption of a resolution establishing a reimbursement district.

12.10.105 Final Public Hearing

A. Within three months after completion and acceptance of the improvements, the applicant shall submit to the city engineer the actual cost of the improvements as evidenced by receipts, invoices or other similar documents. The city engineer shall review the actual costs and shall prepare a written report for the City Council recommending any necessary revisions to the engineer's report.

B. The final cost shall not exceed, by more than 10%, the cost estimated at the time of reimbursement district formation unless an exception is approved by the City Council. An exception may be approved only if the applicant can show legitimate circumstances beyond the control of the applicant caused the cost increase.

C. Within a reasonable time after the city engineer has completed the final costs and report amendment, the City Council shall hold an informational public hearing in which any person shall be given the opportunity to comment on the recommended revisions.

D. Failure of the applicant to provide the documentation required by this section shall result in the automatic lapse of the reimbursement district. Following the final public hearing, the City Council shall have the authority to approve, rescind, or modify the reimbursement district.

12.10.110 Obligation to Pay Reimbursement Fee

A. The applicant for a permit related to property within any

reimbursement district shall pay the, in addition to any other applicable fees and charges, the reimbursement fee established by the Council, if within the time specified in the resolution establishing the district, the person applies for and receives approval from the city for any of the following activities:

1. A building permit for a new building;

2. Building permit(s) for any addition(s), modification(s), repair(s) or alteration(s) of a building that exceed 25% of the value of the building within any 12-month period. The value of the building shall be the amount shown on the most current records of the County Department of Assessment and Taxation for the building's real market value. This paragraph shall not apply to repairs made necessary due to damage or destruction by fire or other natural disaster;

3. Any alteration, modification, or change in the use of real property, which increases the number of required parking spaces;

4. Connection to or new use of a water improvement, if the reimbursement district is based on the water improvement;

5. Connection to or new use of a sewer improvement, if the reimbursement district is based on the sewer improvement;

6. Connection to or new use of a street improvement, if the reimbursement district is based on the street improvement.

B. The city's determination of who shall pay the reimbursement fee is final.

C. A person who applies for a permit whose property is subject to payment of a reimbursement fee receives a benefit from the construction of street improvements, regardless of whether access is taken or provided directly onto such street at any time. Nothing in this ordinance is intended to modify or limit the authority of the city to provide or require access management.

D. No person shall be required to pay the reimbursement fee

for property for which the reimbursement fee has been previously paid. No permit shall be issued for any of the activities listed in Subsection 12.10.110.1 unless the reimbursement fee has been paid in full. Where approval is given as specified in Subsection 12.10.110.1, but no permit is requested or issued, then the requirement to pay the reimbursement fee lapses if the underlying approval lapses.

E. The date when the right of reimbursement ends shall not extend beyond ten years from the district formation date.

12.10.120 Administration

A. The right of reimbursement is assignable and transferable after written notice is delivered to the city, advising the city to whom future payments are to be made.

B. The city shall establish separate accounts for each reimbursement district. On receipt of a reimbursement fee, the city shall cause a record to be made of that property's payment and remit the fee to the person who requested establishment of the reimbursement district or their assignee.

C. The reimbursement fee is in lieu of a local improvement district charge for the improvements installed pursuant to the reimbursement district agreement. The reimbursement fee is not intended to replace or limit any other fee or charge collected by the city.

(Chapter 12.10 adopted by Ordinance No. 1926 on July 2, 2007; effective August 1, 2007)

CHAPTER 12.15 SYSTEM DEVELOPMENT CHARGES

12.15.005 Purpose

This chapter is intended to authorize system development charges (“SDCs”) to impose a portion of the cost of capital improvements for water, wastewater, storm drainage, transportation, and parks on developments and redevelopments that create the need for or increase the demands on capital improvements, consistent with state law. The provisions of this chapter are to be interpreted consistent with state law.

12.15.010 Scope and Interpretation

The SDCs authorized by this ordinance are separate from and in addition to any applicable tax, assessment, charge, or fee. SDCs are not taxes on property or on a property owner as a direct consequence of ownership of property within the meaning of Article XI Section 11B, of the Oregon Constitution or the legislation implementing that section and are not subject to the limitations imposed by that section.

12.15.015 Definitions

The following definitions apply in this chapter.

A. Applicant means the person who applies for a residential, commercial, industrial, or other connection to the city’s water supply system or sanitary sewer system and/or who develops property within the city or within the city’s Urban Growth Boundary.

B. Building means any structure, either temporary or permanent, built for the support, shelter, or enclosure of persons or property of any kind and for any public, commercial, industrial, or other use. This term shall not include temporary construction sheds or trailers erected to assist in construction and maintenance during the term of a building permit.

C. Capital Improvements means public facilities or assets used for:

   1. Wastewater collection, transmission, treatment and disposal, or any combination.

2. Water supply, treatment, distribution, storage, metering, fire protection, or any combination.

3. Drainage and flood control.

4. Transportation facilities including vehicle and pedestrian.

5. Parks and recreation.

D. Development means any construction of improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and water and sewer fixtures. Development includes redevelopment of property requiring a building permit. Development includes improved open areas such as plazas and walkways.

E. Equivalent Dwelling Unit or EDU means the base element of the formula by which systems development charge rates are determined for various buildings or developments.

F. Owner means the owner or owners of record title or the purchaser(s) under a recorded land sales agreement, and other persons having an interest of record in the described real property.

G. Permittee means the person to whom a building permit, development permit, a permit or plan approval to connect to the sewer system, or right-of-way access permit is issued.

H. Qualified Public Improvement means a capital improvement that is:

1. Required as a condition of development approval;

2. Included in an adopted SDC project list and:

   a. Not located on or contiguous to a parcel of land this is the subject of the development approval; or

   b. 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.

For the purposes of this definition, "contiguous" includes improvements within a right of way that abuts the parcel.

12.15.020 System Development Charged Imposed; Method for Establishment

A. The amount of system development charges may be set and revised by resolution of the City Council. Any resolutions setting or amending the amount of any SDC shall state the amount of the charge and the methodology used to set the amount of the charge.

B. Unless otherwise exempted, SDCs for water, wastewater, storm water, transportation and parks are imposed on all development within the city, on all development outside the city that connects to the water and/or sewer facilities of the city, and on all other development which increases the usage of the water and/or sewer system or that contributes to the need for additional or enlarged capital improvements. This shall include new construction and the alteration, expansion or replacement of a building or development if such alteration, expansion or replacement results in a change in any of the components of the formula for determining the amount of SDCs to be paid. For redevelopment, the amount of the SDC to be paid shall be the difference between the rate for the proposed redevelopment and the rate that would be applicable to the existing development.

12.05.025 Methodology

A. The methodology used to establish or modify a reimbursement fee shall be based on the cost of then-existing facilities including without limitation, design, financing and construction costs; prior contributions by then-existing users; gifts or grants; the value of unused capacity available to future system users, rate-making principles employed to finance publicly owned capital improvements; and other relevant factors identified by the City 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 or modify 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 other relevant factors identified by the Council. The methodology shall be calculated to obtain the cost of capital improvements for the projected need for available system capacity for future users.

C. The methodology used to establish or modify improvement fees or reimbursement fees, or both, shall be adopted and may be amended by Council resolution.

12.15.030 Authorized Expenditures

A. Reimbursement fees shall be applied only to capital improvements associated with the system for which the fees are assessed, including expenditures relating to repayment of debt for such improvements.

B. Improvement fees shall be spent only on capacity increasing capital improvements associated with the system for which the fees are assessed, including expenditures relating to repayment of indebtedness. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or providing new facilities. The portion of the capital improvements funded by improvement fees must be related to demands created by current or projected development.

C. SDC proceeds may be expended only on projects identified in the SDC capital improvement project list or on the direct costs of complying with the provisions of this chapter, including the costs of developing SDC methodologies, system planning, providing an annual accounting of SDC expenditures and other costs directly related to or required for the administration and operation of this SDC program.

12.15.035 Expenditure Restrictions

A. SDCs 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. SDCs shall not be expended for costs of the operation or

routine maintenance of capital improvements.

12.15.040 SDC Projects Plan

A. The Council shall adopt and may amend by resolution an SDC Projects Plan for each type of SDC that lists:

1. The capital improvements that the city intends to fund in whole or in part with the improvement fee revenues; and

2. The estimated cost of each improvement and the percentage of that cost eligible to be funded with improvement fee revenues.

B. In adopting the SDC Projects Plan, the city may incorporate by reference all or a portion of any public facilities plan, master plan, capital improvements plan or similar plan that contains the information required by this section.

C. If the amount of SDC charges will be increased by a proposed modification to the SDC Projects Plan, the city shall:

1. Provide at least 30 days' notice prior to adopting the modification to those who have requested notice; and

2. Hold a public hearing if a written request for a hearing is received at least seven days prior to the date scheduled for adoption of the proposed modification.

12.15.045 Adoption or Amendment of Methodology

A. The Council shall hold a public hearing prior to adopting or amending the methodology on which any SDC is based.

B. The Council shall provide written notice to persons who have requested notice of any adoption or modification of SDC methodology at least 90 days before the hearing. If no one has requested notice, the city shall publish notice in a newspaper of general circulation in the city at least 90 days before the hearing.

C. The revised methodology shall be available to the public at least 60 days before the first public hearing of the

adoption or amendment of the methodology. The failure of a person on the list to receive a notice that was mailed does not invalidate the action of the city. If the city fails to provide sufficient notice, it can cure the defect by issuing a new notice and holding a new hearing. The city may consider comments submitted at improperly noticed hearings.

D. A change in the amount of a reimbursement fee or an improvement fee is not a modification of the SDC methodology if the change is based on a change in project costs, including cost of materials, labor and real property, or on a provision for a periodic adjustment included in the methodology or adopted by separate ordinance or resolution, consistent with state law.

E. A change in the amount of an improvement fee is not a modification of the SDC methodology if the change is the result of a change in the SDC Projects List adopted in accord with this chapter.

12.15.050 Collection of Charge

A. The SDC is payable on:

   1. Issuance of a building permit or any construction activity for which a building permit is required but not obtained.

   2. Issuance of a development permit or approval for development not requiring the issuance of a building permit. A permit or approval to connect to the water and/or sewer system;

   3. Issuance of a permit to connect to the water system or actual connection to the water system if a permit is not obtained.

   4. Issuance of a permit to connect to the sewer system or actual connection to the sewer system if a permit is not obtained.

B. SDCs are payable only for those types of improvements affected by the development, permit or connection. For example, a permit to connect an existing structure to the sewer system does not necessarily trigger an obligation to pay Parks, Transportation, Water or Stormwater SDCs.

C. The amount of SDC payable shall be established by resolution relying on an approved methodology and SDC project plan. The SDC project plan, methodology and amount of charge may be adopted in a single resolution, and more than one type of SDC (water, sewer, storm, transportation and park) can be included in a single resolution.

D. No permit listed in Subsection A. may be issued unless applicable SDCs have been paid or an agreement entered to pay over time as allowed by this chapter.

12.15.055 Installment Payments

A. The owner of the parcel of land subject to a systems development charge may apply for payment in twenty 20 semi-annual installments, to include interest on the unpaid balance, in accordance with state law. A shorter payment plan is acceptable if approved by the city. The parcel of land shall be subject to a lien for the unpaid balance.

B. The city manager shall provide application forms for installment payments which shall include a waiver of all rights to contest the validity of the lien, except for the correction of computational errors.

C. An applicant for installment payment shall have the burden of demonstrating the applicant's authority to assent to the imposition of a lien on the parcel and that the property interest of the applicant is adequate to secure payment of the lien.

D. The city manager shall docket the lien in the city's lien docket. From that time the city shall have a lien upon the described parcel for the unpaid balance, together with interest on the unpaid balance. The lien shall be enforceable in any manner authorized or permitted by state law.

12.15.060 Exemptions

A. The following actions are exempt from payment of SDCs:

    1. Additions to single-family dwelling that do not constitute the addition of a dwelling unit.

2. An alteration, addition, replacement, change in use or permit or connection that does not increase the parcel's or structure's use of a public improvement system is exempt from payment for the SDC payment applicable to that type of improvement. Some redevelopment may be subject to some types of SDCs and not to others.

3. The issuance of a permit for a manufactured housing unit on which applicable systems development charges have previously been paid.

4. Temporary Vending Carts that are permitted in accordance with the Newport Zoning Code and Ordinance section 2-2-29.030.

(Chapter 12.15.060(A.)(4.) was added by the adoption of Ordinance No. 2001 on March 16, 2010; effective April 15, 2010.)

B. If all SDCs were paid at the time of the first action that triggered the obligation to pay, no additional payment is required at the time of other actions that would trigger the obligation to pay, even if the amount payable has increased, unless there has been a change in the design or use that would affect the amount payable.

12.15.065 Credits

A. When redevelopment occurs, the amount of SDCs payable shall be determined by the following rules:

1. If SDCs had been previously paid for the property, a credit in the amount of the SDCs that would be payable for the existing structure and use under the current fee schedule shall be provided. For purpose of this section, "existing structure and use" means the structure and use for which SDCs have been paid. At the time of redevelopment, if the SDCs payable for the new structure and/or use exceed the amount of the credit, the difference shall be paid to the city. This rule applies regardless of the length of time between the end of the prior use and the redevelopment. Redevelopment to a use that results in a lower SDC amount does not reduce the amount of credit to be provided at the time of any future redevelopments.

Examples:

SDCs had been paid for three dwelling units on a property and the property is redeveloped with five dwelling units. A credit for three dwelling units' worth of SDCs will be provided, so the amount payable would be the amount for two dwelling units.

SDCs had been paid for two dwelling units and the property is redeveloped with a large retail use, with both residential units eliminated. The SDCs would be the difference between the SDCs payable for the new commercial structure and use and the SDCs that would be charged for two dwelling units.

SDCs were paid based on restaurant use, but then the property was converted to another retail use with lower SDCs. The property is then reconverted back to restaurant use, using exactly the same configuration as the original restaurant. At the time of the conversion to retail use, no SDCs are payable, because the amount payable is less than the credit. The credit for restaurant use remains with the property, so at the time of reconversion to restaurant use, no additional SDCs are payable, because the credit remained in effect and the credit for the original use is exactly the same as the amount that is owed, so no payment is required, even if the SDC rates have increased in the interim.

2. If no SDCs have been previously paid for the property, a credit in the amount of the SDC charges under the current fee schedule for any structure and use of the property in the previous 30 years shall be provided. No credit shall be provided if there has been no use of the property for 30 years, regardless of any structures that may exist on the property. No refund or credit shall be given if the redevelopment results in a lower SDC.

B. On termination of a use for which SDCs have been paid, a credit certificate shall be issued on written request of the property owner.

1. The credit shall be for water, sewer and transportation SDC improvement fees only.

2. The credit shall be based on a "unit" basis, not on a "dollar" basis. The credit shall be for a specific number of EDUs, trips, or other units on which the SDC amount is calculated.

3. The amount of the credit issued in the certificate shall be deducted from the credit authorized by Subsection A.1 of this section for the property where the use was terminated.

4. If all structures are removed from the property, the amount of the credit may equal the full amount of the credit the property is entitled to under Subsection A.1 of this section. If structures remain on the property, the issuance of the certificate may not cause the amount of credit remaining on the property to be less than the amount of SDCs to allow use of the property without payment of additional SDCs, assuming the structure is used for the type of use with the lowest SDC rates consistent with the type of structure.

5. The credit certificate may be transferred and used anywhere in the city within five years of the date of issuance. If the credit is not used within five years, it shall be automatically applied to the property where the use was terminated.

C. A credit of the improvement fee portion of the SDC only shall be given to the permittee against the cost of the SDC charged, for the cost of a qualified public improvement incurred by the permittee, upon acceptance by the city of the public improvement. The credit shall not exceed the amount of the improvement fee even if the cost of the capital improvement exceeds the improvement fee.

1. If a qualified public improvement is located in whole or in part on or contiguous to the property that is the subject of the development approval and is required to be built larger or with greater capacity than is necessary for the particular development project, a credit shall be given for the cost of the portion of the improvement that exceeds the city's minimum standard facility size or capacity needed to serve the particular development project or property. The applicant shall have the burden of demonstrating that a particular improvement qualifies for credit under this subsection. The request shall be filed in writing no later than 60 days after acceptance of the improvement by the city. The city may deny the credit provided for in this section if the city demonstrates that the application does not meet the requirements of this

section or if the improvement for which credit is sought is not included in the SDC Project List.

2. When construction of a qualified public improvement located in whole or in part or contiguous to the property that is the subject of development approval gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project, the credit in excess of the improvement fee for the original development project may be applied against improvement fees that accrue in subsequent phases of the original development project or otherwise imposed on the same property.

3. Credits for qualified public improvements shall not be transferable from one property to another but may be used for future phases of development, redevelopment or change in use of the property.

4. Credit for qualified public improvements shall not be transferable from one type of capital improvement to another.

5. Credits for qualified public improvements shall be used within 10 years from the date the credit was given.

6. If the public improvement for which a credit is sought is not on the SDC Project List, the applicant may submit an application for both the credit and for the placement of the improvement on the SDC project list. If the city manager determines that the project is of a type and location that is appropriate for inclusion, the project shall be added to the SDC Project List and a credit may be given, but the additional of the project shall not change the SDC amount payable by others.

D. The extent of the property to be considered in computing and allocating credits shall be stated by the applicant, and the applicant must have written authorization from the property owner(s). If properties under different ownership are developed together, the city may require the applicants to specify where any credits for the provision of capital improvements may be used and under which circumstances. Two or more contiguous properties may pool existing SDC credit rights as part of a common scheme for redevelopment of the contiguous properties.

E. For all credits under any portion of this section, the property owner is responsible for providing the facts justifying a credit.

12.15.070 Notice

A. The city shall maintain a list of persons who have made a written request for notification prior to adoption or modification of a methodology for any SDC. Written notice shall be mailed to persons as provided in this chapter. The failure of a person on the list to receive notice that was mailed does not invalidate the action of the city.

B. The city may periodically delete names from the list, but at least 30 days prior to removing a name from the list, the city must notify the person whose name is to be deleted that a new written request for notification is required if the person wishes to remain on the notification list.

12.15.075 Segregation and Use of Revenue

A. All funds derived from an SDC are to be segregated by accounting practices from all other funds of the city. That portion of the SDC calculated and collected on account of a specific facility system shall be used for no purpose other than those set forth allowed in this chapter.

B. The city manager shall provide the City Council with an annual accounting, based on the city's fiscal year, for SDCs showing the total amount of SDC revenues collected for each type of facility and the projects funded from each account in the previous fiscal year. A list of the amounts spent on each project funded in whole or in part with SDC revenues shall be included in the annual accounting.

C. The moneys deposited into the SDC account shall be used solely as allowed by this chapter and state law, including, but not limited to:

    1. Design and construction plan preparation;

    2. Permitting and fees;

    3. Land and materials acquisition, including any cost of

acquisition or condemnation, including financing, legal and other costs;

4. Construction of capital improvements;

5. Design and construction of new water facilities required by the construction of capital improvements and structures;

6. Relocating utilities required by the construction of improvements;

7. Landscaping;

8. Construction management and inspection;

9. Surveys, soils, and material testing;

10. Acquisition of capital equipment;

11. Repayment of moneys transferred or borrowed from any budgetary fund of the city which were used to fund any of the capital improvements as herein provided;

12. Payment of principal and interest, necessary reserves and cost of issuance under bonds or other indebtedness issued by the city to fund capital improvements.

12.15.080 Refunds

A. Refunds may be given by the city upon finding that there was a clerical error in the calculation of the SDC.

B. Refunds shall not be allowed if the applicant fails to timely claim a credit or fails to timely seek an alternative SDC rate calculation.

C. Refunds may be given on application of a permittee if the development did not occur and the all permits for the development have been withdrawn.

12.15.085 Appeal Procedure

A. A person challenging the propriety of an expenditure of SDC revenues may appeal the decision of 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. An appeal of the expenditure must be filed within two years of the date of the alleged improper expenditure.

B. Appeals of any other decision required or permitted to be made by the city manager under this ordinance must be filed in writing with the city manager within 10 days of the decision.

C. After providing notice to the appellant, the City Council shall determine whether the city manager's decision or the expenditure is in accordance with this ordinance and state law. The Council may affirm, modify, or overrule the decision. If the Council determines that there has been an improper expenditure of SDC revenues, the Council shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent. The decision of the Council shall be reviewed only by writ or review.

D. A legal action challenging the methodology adopted by the City Council shall not be filed later than 60 days after adoption and shall use the writ of review process.

12.15.090 Prohibited Connection

No person may connect to the water or sewer system of the city or obtain a building permit unless the appropriate SDCs have been paid, or the installment payment method has been applied for and approved.

12.15.095 Severability

The provisions of this ordinance are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any clause, section, or provision of this ordinance shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of this ordinance shall be in full force and effect and be valid as is such invalid portion thereof had not been included. It is the City Council's intent that this chapter would have been adopted if the unconstitutional provision not been included.

12.15.100 Penalty

Violation of this chapter is a civil infraction.

(Chapter 12.15 was adopted by Ordinance No. 1940, on October 15, 2007; effective November 14, 2007)

CHAPTER XIII
LAND DIVISION

TITLE XIII LAND DIVISION

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CHAPTER 13.05 SUBDIVISION AND PARTITION

13.05.001 Purpose

This chapter provides uniform standards for the division of land and the installation of related improvements within the corporate limits of the city for the purposes of protecting property values, and furthering the health, safety and general welfare of the citizens of Newport. The provisions of this chapter implement Statewide Planning Goals as addressed in the Newport Comprehensive Plan along with the applicable portions of Chapters 92 and 227 of the Oregon Revised Statutes.

13.05.005 Definitions

The following definitions apply in this chapter:

A. Land Division. A subdivision or partition.

B. Lot. A unit of land that is created by a subdivision of land.

1. Corner Lot. A lot with at least two adjacent sides that abut streets other than alleys, provided the intersection angle does not exceed 135 degrees.

2. Through Lot. A lot having frontage on two parallel, or approximately parallel, streets other than alleys.

C. Parcel. A unit of land that is created by a partitioning of land.

D. Partition. To divide land into not more than three parcels of land within a calendar year, but does not include:

1. A division of land resulting from a lien foreclosure, foreclosure of a recorded contract for the sale of real property, or the creation of cemetery lots;

2. An adjustment of a property line by the relocation of a common boundary where an additional unit of land is not created and where the existing unit of land reduced in size by the adjustment complies with any applicable ordinance; or

3. A sale or grant by a person to a public agency or public body for state highway, county road, city street, or other right-of-way purposes, provided that such road or right-of-way complies with the applicable comprehensive plan and state law. However, any property divided by the sale or grant of property for state highway, county road, city street, or other right-of-way purposes shall continue to be considered a single unit of land until such time as the property is further subdivided or partitioned.

E. Person. Any individual or entity.

F. Plat. The final map or other writing containing all the descriptions, locations, specifications, dedications, provisions, and information concerning a subdivision or partition.

G. Replat. The act of platting the lots, parcels, and easements in a recorded subdivision or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots in the subdivision. A replat shall not serve to vacate any public street or road.

H. Replat. Minor. A replat that involves five or fewer lots or any number of lots or parcels totally contained within a city block in the original configuration and that does not involve any public street rights-of-way. A minor replat shall not serve to vacate any public street or road.

I. Roadway. The portion of a street right-of-way developed for vehicular traffic.

J. Street. A public or private way other than a driveway that is created to provide ingress or egress for persons to one or more lots, parcels, areas, or tracts of land. For the purposes of this section, a "driveway" is a private way that begins at a public right-of-way that is proposed to serve not more than four individual lots/parcels cumulative as the primary vehicular access to those individual lots/parcels.

   1. Alley. A narrow street through a block primarily for vehicular service access to the back or side of properties otherwise abutting on another street.

2. **Arterial**. A street of considerable continuity which is primarily a traffic artery among large areas.

3. **Half-street**. A portion of the width of a right of way, usually along the edge of a subdivision or partition, where the remaining portion of the street could be provided in another subdivision or partition, and consisting of at least a sidewalk and curb on one side and at least two travel lanes.

4. **Marginal Access Street**. A minor street parallel and adjacent to a major arterial street providing access to abutting properties, but protected from through traffic.

5. **Minor Street**. A street intended primarily for access to abutting properties.

K. **Subdivide Land**. To divide an area or tract of land into four or more lots within a calendar year.

L. **Subdivision**. Either an act of subdividing land or an area or tract of land subdivided as defined in this section.

13.05.010 Standards

Land divisions shall comply with the requirements of this chapter as applicable to the land division.

13.05.015 Streets

A. Criteria for Consideration of Modifications to Street Design. As identified throughout the street standard requirements, modifications may be allowed to the standards by the approving authority. In allowing for modifications, the approving authority shall consider modifications of location, width, and grade of streets in relation to existing and planned streets, to topographical or other geological/environmental conditions, to public convenience and safety, and to the proposed use of land to be served by the streets. The street system as modified shall assure an adequate traffic circulation system with intersection angles, grades, tangents, and curves appropriate for the traffic to be carried considering the terrain. Where location is not shown in the Transportation System Plan, the arrangement of streets shall either:

1. Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or

2. Conform to a plan for the neighborhood approved or adopted by the Planning Commission to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical.

B. Minimum Right-of-Way and Roadway Width. Unless otherwise indicated in the Transportation System Plan, the street right-of-way and roadway widths shall not be less than the minimum width in feet shown in the following table:

Type of Street	Minimum Right-of-Way Width	Minimum Roadway Width
Arterial, Commercial, and Industrial	80 feet	44 feet
Collector	60 feet	44 feet
Minor Street	50 feet	36 feet
Radius for turn-around At end of cul-de-sac	50 feet	45 feet
Alleys	25 feet	20 feet

Modifications to this requirement may be made by the approving authority where conditions, particularly topography, geology, and/or environmental constraints, or the size and shape of the area of the subdivision or partition, make it impractical to otherwise provide buildable sites, narrower right-of-way and roadway width may be accepted. If necessary, slope easements may be required.

C. Reserve Strips. Reserve strips giving a private property owner control of access to streets are not allowed.

D. Alignment. Streets other than minor streets shall be in alignment with existing streets by continuations of their center lines. Staggered street alignment resulting in "T" intersections shall leave a minimum distance of 200 feet between the center lines of streets having approximately the same direction and, in no case, shall be less than 100 feet. If not practical to do so because of topography or other conditions, this requirement may be modified by the approving authority.

E. Future Extensions of Streets. Proposed streets within a land division shall be extended to the boundary of the land division. A turnaround if required by the Uniform Fire Code will be required to be provided. If the approval authority determines that it is not necessary to extend the streets to allow the future division of adjoining land in accordance with this chapter, then this requirement may be modified such that a proposed street does not have to be extended to the boundary of the land division.

F. Intersection Angles.

1. Streets shall be laid out to intersect at right angles.

2. An arterial intersecting with another street shall have at least 100 feet of tangent adjacent to the intersection.

3. Other streets, except alleys, shall have at least 50 feet of tangent adjacent to the intersection.

4. Intersections which contain an acute angle of less than 80 degrees or which include an arterial street shall have a minimum corner radius sufficient to allow for a roadway radius of 20 feet and maintain a uniform width between the roadway and the right-of-way line.

5. No more than two streets may intersect at any one point.

6. If it is impractical due to topography or other conditions that require a lesser angle, the requirements of this section may be modified by the approval authority. In no case shall the acute angle in Subsection F.(1.) be less than 80 degrees unless there is a special intersection design.

G. Half Street. Half streets are not allowed. Modifications to this requirement may be made by the approving authority to allow half streets only where essential to the reasonable development of the land division, when in conformity with the other requirements of these regulations and when the city finds it will be practical to require the dedication of the other half when the adjoining property is divided. Whenever a half street is adjacent to a tract property to be divided, the other half of the street shall be provided.

H. Sidewalks. Sidewalks in conformance with the city's adopted sidewalk design standards are required on both sides of all

streets within the proposed land division and are required along any street that abuts the land division that does not have sidewalk abutting the property within the land division. The city may exempt or modify the requirement for sidewalks only upon the issuance of a variance as defined in the Zoning Ordinance.

I. Cul-de-sac. A cul-de-sac shall have a maximum length of 400 feet and serve building sites for not more than 18 dwelling units. A cul-de-sac shall terminate with a circular turn-around meeting minimum Uniform Fire Code requirements. Modifications to this requirement may be made by the approving authority. A pedestrian or bicycle way may be required by easement or dedication by the approving authority to connect from a cul-de-sac to a nearby or abutting street, park, school, or trail system to allow for efficient pedestrian and bicycle connectivity between areas if a modification is approved and the requested easement or dedication has a rational nexus to the proposed development and is roughly proportional to the impacts created by the proposed land division.

J. Street Names. Except for extensions of existing streets, no street name shall be used which will duplicate or be confused with the name of an existing street. Street names and numbers shall conform to the established pattern in the city, as evident in the physical landscape and described in City of Newport Ordinance No. 665, as amended.

K. Marginal Access Streets. Where a land division abuts or contains an existing or proposed arterial street, the Planning Commission may require marginal access streets, reverse frontage lots with suitable depth, screen planting contained in a non-access reservation along the rear or side property line, or other treatment necessary for adequate protection of residential properties and to afford separation of through and local traffic.

L. Alleys. Alleys shall be provided in commercial and industrial districts. If other permanent provisions for access to off-street parking and loading facilities are provided, the approving authority is authorized to modify this provision if a determination is made that the other permanent provisions for access to off-street parking and loading facilities are adequate to assure such access. The corners of alley intersections shall have a radius of not less than 12 feet.

13.05.020 Blocks

A. General. The length, width, and shape of blocks for non-residential subdivisions shall take into account the need for adequate building site size and street width, and shall recognize the limitations of the topography.

B. Size. No block shall be more than 1,000 feet in length between street corners. Modifications to this requirement may be made by the approving authority if the street is adjacent to an arterial street or the topography or the location of adjoining streets justifies the modification. A pedestrian or bicycle way may be required by easement or dedication by the approving authority to allow connectivity to a nearby or abutting street, park, school, or trail system to allow for efficient pedestrian and bicycle connectivity between areas if a block of greater than 1,000 feet if a modification is approved and the requested easement or dedication has a rational nexus to the proposed development and is roughly proportional to the impacts created by the proposed land division.

13.05.025 Easements

A. Utility Lines. Easements for sewers and water mains shall be dedicated to the city wherever a utility is proposed outside of a public right-of-way. Such easements must be in a form acceptable to the city. Easements for electrical lines, or other public utilities outside of the public right-of-way shall be dedicated when requested by the utility provider. The easements shall be at least 12 feet wide and centered on lot or parcel lines, except for utility pole tieback easements, which may be reduced to six (6) feet in width.

B. Utility Infrastructure. Utilities may not be placed within one foot of a survey monument location noted on a subdivision or partition plat.

C. Water Course. If a tract is traversed by a water course such as a drainage way, channel, or stream, there shall be provided a storm water easement or drainage right-of-way conforming substantially to the lines of the water course, and such further width as will be adequate for the purpose. Streets or parkways parallel to the major water courses may be required.

13.05.030 Lots and Parcels

A. Size. The size (including minimum area and width) of lots and parcels shall be consistent with the applicable lot size provisions of the Zoning Ordinance, with the following exception:

   Where property is zoned and planned for business or industrial use, other widths and areas may be permitted at the discretion of the Planning Commission. Depth and width of properties reserved or laid out for commercial and industrial purposes shall be adequate to provide for the off-street service and parking facilities required by the type of use and development contemplated.

B. Street Frontage. Each lot and parcel shall possess at least 25 feet of frontage along a street other than an alley.

C. Through Lots and Parcels. Through lots and parcels are not allowed. Modifications may be made by the approving authority where they are essential to provide separation of residential development from major traffic arteries or adjacent nonresidential activities or to overcome specific disadvantages of topography and orientation. The approving authority may require a planting screen easement at least 10 feet wide and across which there shall be no right of access. Such easement may be required along the line of building sites abutting a traffic artery or other incompatible use.

D. Lot and Parcel Side Lines. The side lines of lots and parcels shall run at right angles to the street upon which they face, except that on curved streets they shall be radial to the curve. Modifications to this requirement may be made by the approving authority where it is impractical to do so due to topography or other conditions or when the efficient layout of the land division has the lines running as close to right angles (or radial) as practical.

E. Special Setback Lines. All special building setback lines, such as those proposed by the applicant or that are required by a geological report, which are to be established in a land division, shall be shown on the plat, or if temporary in nature, shall be included in the deed restrictions.

F. Maximum lot and parcel size. Proposed lots and parcels shall not contain square footage of more than 175% of the required minimum lot size for the applicable zone. Modifications to this

requirement may be made by the approving authority to allow greater square footage where topography or other conditions restrict further development potential or where the layout of the land division is designed and includes restrictions to provide for extension and opening of streets at intervals which will permit a subsequent division into lots or parcels of appropriate size for the applicable zone designation.

G. Development Constraints. No lot or parcel shall be created with more than 50 % of its land area containing wetlands or lands where the city restricts development to protect significant Statewide Land Use Planning Goal 5 or Goal 17 resources, except that areas designated as open space within a land division may contain up to 100% of a protected resource. Modifications to this requirement may be made by the approval authority if the approval authority determines that the proposed lot or parcel contains sufficient land area to allow for construction on the lot or parcel without impacting the resource or that a variance or other permit has been obtained to allow for impacts on the identified resource.

H. Lots and Parcels within Geologic Hazard Areas. Each new undeveloped lot or parcel shall include a minimum 1000 square foot building footprint within which a structure could be constructed and which is located outside of active and high hazard zones and active landslide areas (See Section 2-4-7 of the Zoning Ordinance for an explanation of hazard zones). New public infrastructure serving a lot or parcel shall similarly be located outside of active and high hazard zones and active landslide areas.

(13.05.030(H) added by Ordinance No. 2017 on July 18, 2011; effective August 17, 2011)

13.05.035 Public Improvements

Public Improvement Procedures. In addition to other requirements, public improvements installed by a developer that is dividing land, whether required or voluntarily provided, shall comply with this chapter, and with any public improvement standards or specifications adopted by the city. The following procedure shall be followed:

A. Improvement work, including excavation in the excess of 100 cubic yards, shall not be commenced until plans have been checked for adequacy and approved by the city. To the extent necessary for evaluation of the proposal, the plans

shall be required before approval of the tentative plan of a subdivision or partition.

B. Improvement work shall not commence until after the city is notified, and, if work is discontinued for any reason, it shall not be resumed until after the city is notified.

C. Public improvements shall be constructed under the inspection and to the satisfaction of the city engineer. The city may require change in typical sections and details in the public interest if unusual conditions arise during construction to warrant the change.

D. Underground utilities, sanitary sewers, and storm drains installed in streets shall be constructed prior to the surfacing of the streets. Stubs for service connection for underground utilities and sanitary sewers shall be placed to allow future connections without disturbing the street improvements.

E. A map showing public improvements as built shall be filed with the city upon completion of the improvements.

F. Public improvements shall not be commenced until any appeals of the subdivision approval are resolved.

13.05.040 Public Improvement Requirements

A. The following public improvements are required for all land divisions:

   1. Streets. All streets, including alleys, within the land division, streets adjacent but only partially within the land divisions, and the extension of land division streets to the intersecting paving line of existing streets with which the land division streets intersect, shall be graded for the full right-of-way width. The roadway shall be improved to a width of 36 feet or other width as approved by the approval authority by excavating to the street grade, construction of concrete curbs and drainage structures, placing a minimum of six inches of compacted gravel base, placement of asphaltic pavement 36 feet in width or other width as approved by the approval authority and approximately two inches in depth, and doing such other improvements as may be necessary to make an appropriate and completed improvement. Street width standards may be adjusted as part of the tentative plan approval to protect natural features and to take into account topographic constraints and geologic risks.

2. Surface Drainage and Storm Sewer System. Drainage facilities shall be provided within the land division and to connect the land division drainage to drainage ways or storm sewers outside the land division. Design of drainage within the land division shall take into account the capacity and grade necessary to maintain unrestricted flow from areas draining through the land division and to allow extension of the system to serve such areas.

3. Sanitary Sewers. Sanitary sewers shall be installed to serve each lot or parcel in accordance with standards adopted by the city, and sewer mains shall be installed in streets as necessary to connect each lot or parcel to the city's sewer system.

4. Water. Water mains shall be installed to allow service to each lot or parcel and to allow for connection to the city system, and service lines or stubs to each lot shall be provided. Fire hydrants shall be installed as required by the Uniform Fire Code. The city may require that mains be extended to the boundary of the land division to provide for future extension or looping.

5. Sidewalks. Required sidewalks shall be constructed in conjunction with the street improvements except as specified below:

    a. Delayed Sidewalk Construction. If sidewalks are designed contiguous with the curb, the subdivider may delay the placement of concrete for the sidewalks by depositing with the city a cash bond equal to 115 percent of the estimated cost of the sidewalk. In such areas, sections of sidewalk shall be constructed by the owner of each lot as building permits are issued. Upon installation and acceptance by the city engineer, the lot owner shall be reimbursed for the construction of the sidewalk from the bond. The amount of reimbursement shall be in proportion to the footage of sidewalk installed compared with the cash bond deposited and any interest earned on the deposit.

    b. Commencing three (3) years after filing of the final plat, or a date otherwise specified by the city, the city engineer shall cause all remaining sections of sidewalk to be constructed, using the remaining funds from the aforementioned cash bond. Any surplus

funds shall be deposited in the city's general fund to cover administrative costs. Any shortfall will be paid from the general fund.

B. All public improvements shall be designed and built to standards adopted by the city. Until such time as a formal set of public works standards is adopted, public works shall be built to standards in any existing published set of standards designated by the city engineer for the type of improvement. The city engineer may approve designs that differ from the applicable standard if the city engineer determines that the design is adequate.

C. Public improvements are subject to inspection and acceptance by the city. The city may condition building or occupancy within the land division on completion and acceptance of required public improvements.

13.05.045 Adequacy of Public Facilities and Utilities (Electric and Phone)

A. Tentative plans for land divisions shall be approved only if public facilities and utilities (electric and phone) can be provided to adequately service the land division as demonstrated by a written letter from the public facility provider or utility provider stating the requirements for the provision of public facilities or utilities (electric and phone) to the proposed land division:

B. For public facilities of sewer, water, storm water, and streets, the letter must identify the:

1. Water main sizes and locations, and pumps needed, if any, to serve the land division.

2. Sewer mains sizes and locations, and pumping facilities needed, if any, to serve the land division.

3. Storm drainage facilities needed, if any, to handle any increased flow or concentration of surface drainage from the land division, or detention or retention facilities that could be used to eliminate need for additional conveyance capacity, without increasing erosion or flooding.

4. Street improvements outside of the proposed development that may be needed to adequately handle traffic generated from the proposed development.

13.05.050 Underground Utilities and Service Facilities

A. Undergrounding. All utility lines within the boundary of the proposed land divisions, including, but not limited to, those required for electric, telephone, lighting, and cable television services and related facilities shall be placed underground, except surface-mounted transformers, surface-mounted connection boxes and meter cabinets which may be placed above ground, temporary utility service facilities during construction, high capacity electric and communication feeder lines, and utility transmission lines operating at 50,000 volts or above. The subdivider shall make all necessary arrangements with the serving utility to provide the underground service.

B. Non-City-Owned Utilities. As part of the application for tentative land division approval, the applicant shall submit a copy of the preliminary plat to all non-city-owned utilities that will serve the proposed subdivision. The subdivider shall secure from the non-city-owned utilities, including but not limited to electrical, telephone, cable television, and natural gas utilities, a written statement that will set forth their extension policy to serve the proposed land division with underground facilities. The written statements from each utility shall be submitted to the city prior to the final approval of the plat for recording.

13.05.055 Street Lights

Street lights are required in all land divisions where a street is proposed. The city may adopt street light standards. In the absence of adopted standards, street lights shall be place in new land divisions to assure adequate lighting of streets and sidewalks within and adjacent to the land division.

13.05.060 Street Signs

Street name signs, traffic control signs and parking control signs shall be furnished and installed by the city.

13.05.065 Monuments

Upon completion of street improvements, monuments shall be reestablished and protected in monument boxes at every street intersection and all points of curvature and points of tangency of street center lines.

13.05.070 Land Division Application

A. A person seeking approval of a land division shall submit the following to the Community Development Department:

1. A completed city application form signed by the owner of the property or an authorized agent. If the application form is signed by an authorized agent, it must be accompanied by a document signed by the property owner authorizing the agent to act for the owner in the land division process.

2. An original tentative plan and 14 copies (3 copies if a minor replat or a partition).

3. A narrative listing each applicable approval criterion or standard and an explanation as to how the criterion or standard is met.

4. A vicinity map showing existing subdivisions and unsubdivided land ownerships adjacent to the proposed subdivision and showing how proposed streets and utilities will be extended to connect to existing streets and utilities and may be connected to future streets and utilities.

5. Proposed deed restrictions, if any, in outline form.

6. Approximate center line profiles with extensions for a reasonable distance beyond the limits of the proposed subdivision showing the finished grade of streets and the nature and extent of street construction.

7. A plan for domestic water supply lines and related water service facilities.

8. Proposals for sewage disposal, storm water drainage, and flood control, including profiles of proposed drainage ways.

9. If lot areas are to be graded, a plan showing the nature of cuts and fills and information on the character of the soil.

10. Where geologic hazards are known to exist on part or all of the property in question based on adopted maps of the City of Newport, a geologic hazard report is required and shall be provided in accordance with the requirements of

Section 2-4-7 of the Zoning Ordinance. The report must clearly state what measures will be taken to safeguard against existing hazards.

(13.05.070(A)(10) was adopted by Ordinance No. 2017 on July 18, 2011; effective August 17, 2011)

11. Written letters from public facilities (water, sewer, storm water, and streets) and utilities (electric and phone) identifying requirements for providing service to the land division.

12. An application fee in an amount set by City Council resolution.

13. Other materials that the applicant believes relevant or that may be required by the city.

C. The tentative plan of a land division shall be drawn on a sheet 18 by 24 inches in size or a multiple thereof at a scale of one inch equals 100 feet or, for areas over 100 acres, one inch equals 200 feet.

D. The following general information shall be shown on the tentative plan of the land division:

1. If a subdivision, the proposed name of the subdivision. This name shall not duplicate or resemble the name of another subdivision in the county and shall be approved by the Planning Commission.

2. Date, northpoint, and scale of the drawing.

3. Appropriate identification of the drawing as a tentative plan.

4. Location of the property being divided sufficient to define its location and boundaries, and a legal description of the entire property being divided.

5. Names and addresses of the owner, the applicant if different from the owner, and the engineer and/or surveyor.

6. The following existing conditions shall be shown on the tentative plan:

a. The location, widths, and names of existing streets

and undeveloped rights of way within or adjacent to the tract, any existing easements, and other important features such as section lines, section corners, city boundary lines, and monuments.

b. Contour lines related to some established bench mark or other datum approved by the city and having minimum intervals as follows:

   i. For slopes of less than 5 percent: show the direction of slope by means of arrows or other suitable symbols, together with not less than four (4) spot elevations per acre, evenly distributed.

   ii. For slopes of 5 percent to 15 percent: five (5) feet.

   iii. For slopes of 15 percent to 20 percent: 10 feet.

   iv. For slopes of over 20 percent: 20 feet.

c. The location and direction of water courses and the location of areas subject to flooding.

d. Natural features such as wetlands, tidelands, marshes, or any natural resource identified as a protected Statewide Land Use Planning Goal 5 or Goal 17 resource on maps adopted by the city shall be identified. Other features, such as rock outcroppings, wooded areas, and isolated trees that serve as the basis of any requested modifications to the land division standards shall also be identified.

e. Existing uses of the property and location of existing structures to remain on the property after platting.

f. The location within the land division and in the adjoining streets and property of existing sewers, water mains, culverts, drain pipes, and utility lines.

7. The following information shall be included on the tentative plan of a subdivision.

   a. The location, width, names, approximate grades, and radii of curves of proposed streets and the relationship of proposed streets to streets shown in the Transportation System Plan. Streets in existing adjacent developments and approved subdivisions

and partitions shall also be shown, as well as potential street connections to adjoining undeveloped property.

b. The location, width, and purpose of proposed easements.

c. The location and approximate dimensions of proposed lots and the proposed lot and block numbers.

d. Proposed sites, if any, allocated for purposes other than single-family dwellings.

E. If the land division proposal pertains to only part of the property owned or controlled by the owner or applicant, the city may require a sketch of a tentative layout for streets in the undivided portion.

13.05.075 Preliminary Review and Notice of Hearing

A. On receipt of a complete land division application, the community development director shall provide notice to other agencies known to be affected or to have an interest.

B. Notice of a hearing before the Planning Commission shall be given in accordance with Section 2-6-1 of the zoning ordinance, except that the distance the city shall use for identifying properties entitled to notice shall be 150 feet rather than 300 feet.

13.05.080 Hearing and Approval for Land Divisions Other Than a Minor Replat or Partition.

A. The Planning Commission shall hold a public hearing on a land division application other than a minor replat or partition and shall be the initial decision maker, subject to appeal to the City Council. The Planning Commission may approve, approve with conditions or deny the application, based on the standards and criteria of this chapter. The Planning Commission may tentatively approve the application, subject to submission of additional information. Any tentative approval must be followed by a final decision. The decision shall be in writing and supported by findings.

B. The city shall take final action within 120 days from the time the application is complete. The time period may be extended at the request or with the consent of the applicant.

C. The action of the Planning Commission shall be by final order. A copy of the final order shall be sent to the applicant.

D. Notice of the decision shall be provided to all persons entitled to notice, including all persons who have asked to be notified of the decision.

13.05.085 Approval Criteria and Conditions for Land Divisions Other than Minor Replats or Partitions.

A. The proposed land division will comply with the requirements of this chapter or can be made to comply by the attachment of reasonable conditions of approval. For the purposes of this section, a land division complies with this chapter if it meets the standard provided herein or if a modification or variance is approved by the approving agency to the standard.

B. Any required submitted geological hazard report must conclude that the property can be developed in the manner proposed by the land division. The land division must comply with any recommendations contained in the report. Approval of the land division by the Planning Commission pursuant to a submitted geological hazard report includes approval of the geological report recommendations. Based on the geological hazard report, the Planning Commission shall establish when compliance with the geological report recommendations must be demonstrated. The geological hazard report shall be in the form of a written certification prepared by an engineering geologist or other equivalent certified professional, establishing that the report requirements have been satisfied, and should be noted as a condition of approval.

13.05.090 Final Plat Requirements for Land Divisions Other than Minor Replats or Partitions

A. Submission of Final Plat. Within two years after tentative plan approval, such other time established at the time of tentative plan approval, or extensions granted under this chapter, the owner and/or applicant (collectively referred to as the "developer") shall cause the land division to be surveyed and a final plat prepared. If the developer elects to develop the land division in phases, final plats for each phase shall be completed within the time required (e.g. Phase I completed within two years, Phase II completed within the next two years, etc.). The final plat shall be in conformance with the approved tentative plan, this chapter, ORS Chapter 92, and standards of the Lincoln County Surveyor.

B. Provision of Improvements. It shall be the responsibility of the developer to install all required improvements and to repair any existing improvements damaged in the development of the property. The installation of improvements and repair of damage shall be completed prior to final plat approval. Except as provided in Subsection C., the final plat will not be approved until improvements are installed to the specifications of the city and "as constructed" drawings are given to the city and approved by the city engineer. The developer shall warrant the materials and workmanship of all required public improvements for a period of one year from the date the city accepts the public improvements.

C. Improvement Agreements. If all the required improvements have not been satisfactorily completed before the final plat is submitted for approval, the city may, at its discretion, allow final approval of the plat if the developer enters into a written agreement with the city to provide the required improvements secured by a bond or letter of credit. The agreement must provide for completion within one year of the approval of the final plat. The agreement shall be acceptable to the city attorney and include provisions that:

1. Authorize the city to complete the required improvements and recover their full cost and expense from the developer if the developer fails to complete the improvements as required.

2. Authorize the inspection of all improvements by the city engineer and provide for reimbursement to the city of all costs of inspection.

3. Indemnify of the city, its officials, employees and agents, from and against all claims of any nature arising or resulting from the failure of the developer to comply with any requirement of such agreement.

4. Ensure compliance with conditions required by the city in approving the final plat prior to completion of all required improvements.

D. Financial Assurances. A developer that enters into an improvement agreement shall provide financial assurances in the form of one or both of the following:

1. A surety bond executed by a surety company authorized

to transact business in the State of Oregon and in a form satisfactory to the city attorney, or

2. An irrevocable letter of credit in a form satisfactory to the city attorney.

E. Amount of Security. The financial assurances shall be in an amount equal to 150% of the amount determined by the city engineer as sufficient to cover the cost of the improvements, engineering, inspection, and incidental expenses. The financial assurances may provide for reduction of the amount in increments as improvements are completed and approved by the city engineer. However, the number of reductions or disbursements and the amount of retainage required shall be at the discretion of the city engineer.

F. Post Completion Financial Assurances. On acceptance of all improvements by the city, the amount of the security shall be reduced to 20% of the original sum and shall remain in effect until the expiration of the one year warranty period. All deficiencies in construction and maintenance discovered and brought to the attention of the developer and surety within one year of acceptance must be corrected to the satisfaction of the city engineer. The developer may substitute a new warranty bond rather than amending the original performance bond or letter of credit.

G. Acceptance of Improvements by City, Guarantee. The city will accept public improvements only if they have received final inspection approval by the city engineer and "as constructed" engineering plans have been received and accepted by the city engineer. The developer shall warrant all public improvements and repairs for a period of one year after acceptance by the city.

H. Time Limit Between Tentative Plan and Final Plat (Extensions). Requests for extension of the one year time limit for submission of final plat shall be in writing. On receipt of the written request, the community development director may grant an extension of up to one year. The Planning Commission may grant an additional one year extension after public hearing. Notice shall be the same as the original tentative plan. The criteria for an extension are:

1. An unforeseen change in the economic condition has affected the real estate market for the project; or

2. The weather has prevented the physical work; or

3. Other unanticipated hardship, such as change or turnover in engineering firms, contractors, or significant delays in obtaining required state or federal permits requires additional time to complete the project.

An extension may only be granted if the comprehensive plan, zoning ordinance, and subdivision ordinance have not changed in a way that would substantially affect the original tentative plan.

I. Phased Developments. For a phased development, final plats may be submitted consistent with any phasing plan approved at the time of tentative plan approval. Extensions may be granted by the Planning Commission under the standards of Subsection E.

J. Procedure and Standard for Approval of a Final Plat. On receipt of the final plat application, the community development director shall have up to 30 days to review and determine if the application is complete. If the application is not complete, it shall be returned to the applicant with a written explanation of why the application is being returned. If complete, the application shall be accepted.

The community development director shall forward the final plat to the city engineer for comment. The city engineer shall have 20 days to comment on the final plat. Comments shall be in writing. After the 20-day comment period, the community development director shall decide whether the final plat complies with the following criteria:

1. The final plat is in substantial compliance with the tentative plan.

2. The required improvements have been completed.

3. The final plat complies with all conditions attached to the tentative plan.

4. Planned public facilities that were relied on to comply with Section 13.05.045 at the time of tentative plan approval have been completed and are available for use.

If the final plat is approved, the plat shall be forwarded to the Planning Commission chair for signature. If the final plat is

denied, the applicant shall be notified in writing why the final plat was denied and what items need to be corrected before the final plat can be approved.

K. Recording of Final Plat. After final approval, the final plat shall be forwarded to Lincoln County for review and recording as required by law. Within 90 days of approval, the developer shall submit to the city a mylar copy and two paper copies of the recorded final plat.

13.05.095 Minor Replats and Partitions

A. Procedure for Review. After an application for minor replat or partition is deemed complete, the community development director shall send notice to persons within 100 feet of the subject property and, if there are existing public easements, affected utilities, that the tentative plan has been filed. Notified parties shall be given 14 days to provide written comments. After the 14 day period, the community development director shall decide whether the application complies with the criteria and provide a written decision. The criteria for approval are:

1. The tentative plan complies with the definition of a replat or partition, as appropriate.

2. All lots or parcels within the tentative plan meet the requirements of Section 13.05.030. Alternatively, if the original lots or parcels were nonconforming, the resultant lots or parcels may be allowed without a variance if they are less nonconforming.

3. Approval of the tentative plan does not interfere with the provision of key public facilities.

4. The applicant has agreed to sign a consent to participate in sewer, water, or street local improvement districts that the subject lots or parcels would be part of once those districts are formed. The consent shall be a separate document recorded upon the lots or parcels subject to the partition. The document shall be recorded prior to final plat approval.

5. Public facilities serving the minor replat or partition are adequate under Section 13.05.045. Proposed streets within the minor replat or partition comply with the standards under Section 13.05.015, including any allowed

modification, or a variance has been obtained.

6. All required public improvements will be provided.

7. Any required submitted geological hazard report concludes that the property can be developed in the manner proposed, in accordance with any recommendations contained in the report.

B. Compliance with Criteria. If the tentative plan complies with the criteria, the plan shall be approved. Conditions of approval, including requirements to provide public improvements necessary to allow development, may be imposed. If the tentative plan does not comply with the criteria or cannot be made to comply through reasonable conditions of approval, the plan shall be denied and the applicant shall be notified in writing why the tentative plan was denied and what items need to be corrected before the tentative plan can be approved.

C. Geological Hazards Reports. Approval of the minor replat or partition pursuant to a submitted geological hazard report includes approval of the geological report recommendations. Based on the report, the community development director shall establish when compliance with the geological report recommendations must be demonstrated. This shall be in the form of a written certification prepared by an engineering geologist or other equivalent certified professional, establishing that the report requirements have been satisfied, and should be noted as a condition of approval.

D. Appeal. Persons who make written comment during the comment period shall be notified of the final decision. Any person with standing may file an appeal of the planning director's approval or denial of a tentative plan. Notice and the hearing procedure shall be the same as for a subdivision tentative plat approval.

E. Final Plat Approval. Within two years of the tentative plan approval, the applicant shall submit to the city a final plat for the replat or partition that is consistent with the tentative plan and state law. A signature block for the Community Development Director, the Lincoln County Surveyor, the Lincoln County Tax Collector, and the Lincoln County Tax Assessor shall be on the final plat. The community development director shall approve the final plat if it is consistent with the tentative plan and all conditions have

been satisfied, including the provision and acceptance of any required public improvements. The city shall forward approved plats to Lincoln County for review and recordation. The applicant shall submit one paper copy of the recorded final plat within 90 days to the community development department.

F. Procedure for Approval of Replat Other than a Minor Replat. The procedure and criteria for tentative and final approval of replats other than minor replats shall be the same as for subdivisions or partitions, depending on whether the replat is of a subdivision or partition.

13.05.100 Cemeteries

A. Minimum Requirements for the Platting and Subdivision of Land for Cemetery Purposes. The following are the minimum requirements for lot sizes, walkways, streets, and street improvement widths applicable to cemeteries:

1. Lot Sizes:

    a. Width - not less than four feet.

    b. Length - not less than 10 feet.

2. Walkways:

    a. Width - not less than six (6) feet.

    b. Location - each individual grave to be served.

3. Street Right-of-Way Widths:

    a. Within the plat - not less than 32 feet.

    b. Entrance roads - to conform to present city subdivision regulations.

4. Street Improvement Widths:

    a. Within the plat - not less than 24 feet.

    b. Entrance roads - to conform to present city subdivision regulations.

5. Deadend Roads (Within the Plat):

    a. Right-of-way - not less than 42 feet.

    b. Improvement width - not less than 36 feet.

    c. Cul-de-sac - not less than a 45 foot radius.

B. Buffer Strips. Buffer strips shall be established that are at least 100 feet in width when a cemetery development is adjacent to a residentially zoned property; 75 feet when a cemetery development is adjacent to tourist-commercial zoned property; and 50 feet in width when a cemetery development is adjacent to all other commercially zoned property. No lots shall be allowed within the buffer strips.

C. Buffer Strip Planting and Maintenance. All required buffer strips shall be planted at the time the adjacent land planted for cemetery lots is being offered for sale. The buffer strip shall have evergreen trees planted to such a density that they are an effective screen to adjoining property. The evergreen trees shall have an initial minimum planting height of four (4) feet and shall be of such species that they will reach a height of at least 20 feet at maturity. All remaining ground areas in the buffer strip shall be maintained as lawn area, shrubs, or flower beds, as are maintained by the management of the cemetery in all other areas of the cemetery plat that are presently being used.

D. Location of Cemeteries. No cemeteries shall be allowed to be placed within one mile of the high-water line of the Pacific Ocean and within one-half mile of the high-water line of the Yaquina Bay.

13.05.105 Miscellaneous

A. Exceptions for Planned Developments. The standards and requirements of this chapter may be modified without a variance for planned developments.

B. Variances. Variances to this chapter not otherwise allowed by modification within this chapter are subject to the standards and procedures for variances in the zoning ordinance. Notice of the variance request may be included in the legal notice for the hearing on the tentative plan for a subdivision or may be provided separately.

C. Violations. Violations of this chapter are civil infractions with a maximum civil penalty of $500. A separate violation exists for each day the violation continues. Violations of separate provisions of this chapter are separate civil infractions. If a developer or owner repeatedly violates this chapter, the city may elect to place and enforce a lien on any land division in violation of this chapter.

(Chapter 13.05 adopted by Ordinance No. 1990, on October 19, 2009, effective November 18, 2009.)

CHAPTER 13.50 STANDARDS AFTER SUBDIVISION APPROVAL

13.50.010 Purpose

The purpose of this chapter is to ensure that current land use and other building standards are complied with to ensure, while allowing developers a reasonable time after obtaining a subdivision approval to develop structures within the subdivision according to the standards in effect at the time of subdivision approval.

13.50.020 Standards in Effect after Subdivision Approval

The land use standards in effect at the time of a subdivision approval apply to all applications for land use approval within the subdivision filed within 180 days of the subdivision approval. After that time, the land use standards in effect at the time the land use application is deemed complete shall apply to the land use application.

Chapter 13.50 was adopted by Ordinance No. 1938, on October 15, 2007; effective November 14, 2007)

CHAPTER 13.99 PROPERTY LINE ADJUSTMENTS

13.99.010 Property Line Adjustment

The City of Newport hereby establishes a procedure for the adjustment of property lines. A procedure carried out pursuant to this ordinance shall be known and referred to as a "property line adjustment."

13.99.020 Applicability

This procedure may be utilized, as an alternative to partition or replatting procedures, under the following circumstances:

A. The size, shape or configuration of two existing units (lots or parcels) of land, each of which is a legal lot or parcel, is to be modified by the relocation of a common boundary between the parcels; and

B. An additional unit of land is not created; and

C. If an existing unit of land is reduced in size by the adjustment, that unit of land will comply with the requirements of any applicable ordinance, and none of the units of land existing after the adjustment will be in nonconformity with any applicable zoning or other requirement of the City of Newport to a greater extent than prior to the adjustment.

13.99.030 City Approval Required

No lot line adjustment shall be undertaken without the prior approval of the City of Newport. Any person desiring to carry out such a property line adjustment shall submit to the Planning Director of the City of Newport an application, together with such fee as the Common Council of the City of Newport may from time-to-time by resolution determine. The lot line adjustment application shall be upon such form as shall be approved by the planning director, and shall include at least the following information:

A. A legal description (by lot and block or by metes and bounds) of the units of land as they exist prior to the proposed boundary line adjustment.

B. A map (a tax map, survey, or equivalent) depicting the configuration of the units of land as they exist prior to the

adjustment.

C. A similar map showing the configuration of the lots, as they would exist after the proposed adjustment.

D. Legal description of the parcels as they would exist after the proposed adjustment.

13.99.040 Decision Process

Upon receipt the application for property line adjustment and the required fee, the planning director shall give notice, review the application and any objections, and determine whether or not the proposed adjustment appears to comply with the provisions of this ordinance, and thereupon the said planning director shall notify the applicant and any person filing objections in writing of such decision. Prior to such decision, notice of the application shall be given to such persons and in such manner as would be required for a minor partition. Interested persons may submit written objections prior to the date stated in the notice.

13.99.050 Appeal

Any party aggrieved by such decision shall have the right to appeal such decision to the planning commission of the City of Newport in the time and manner provided for appeals of decisions for minor partitions. If notice of appeal, together with the required filing fee, is not filed with the City of Newport within such period of time, the decision of the planning director shall become final. If such decision is appealed to the Planning Commission, the decision of the Planning Commission may be appealed to the Common Council of the City of Newport in the time and manner as provided for appeals from decisions for minor partitions.

13.99.060 Conveyance and Security

Following such approval, the property line adjustment may be carried out in the following manner.

A. The owners of the property involved in the lot line adjustment shall prepare a conveyance or conveyances in accordance with ORS 92.190(4), containing the names of the parties, the description of the adjusted line, references to original recorded documents and signatures of all parties with proper acknowledgement. The parties shall

thereupon attach a certificate of the City of Newport setting forth its approval of the property line adjustment, in accordance with the provisions of this ordinance, and record the property line adjustment deed and such certificate and the survey, if any, required by ORS 92.060(7) with the Lincoln County Clerk, in the manner provided in ORS 92.190(3).

B. The parties shall obtain a survey of the adjusted property line, and the same shall be monumented, and the survey shall be filed with the county surveyor, as required by ORS 92.060(7), except as follows:

   1. Such survey and monumentation shall not be required when both parcels affected are greater than 10 acres in size.

   2. The requirements of such survey and monumentation shall not apply to the relocation of a common boundary of a lot in a subdivision or a parcel in a partition when the adjusted property line is a distance of even width along the common boundary.

13.99.070 Responsibility

No property line adjustment shall be effective except upon compliance with the terms, provisions and requirements of this ordinance. The City of Newport does not hereby assume any responsibility to verify or ascertain the ownership of any property or the accuracy of any map, survey or legal description or other information or material submitted to it in connection with this procedure, or to ascertain the adequacy of the form of any property line adjustment deed or other document utilized by party pursuant to this procedure. Any approval granted under the terms and provisions of this ordinance shall be no greater than permitted under the provisions of ORS 92.190 and other applicable statutes, and all actions pursuant to this ordinance shall be subject to the authority and provisions of the laws of the State of Oregon.

13.99.080 Violation

Any person violating any of the terms or provisions of this ordinance shall be guilty of a civil infraction.

(Chapter 13.99 was adopted by Ordinance No. 1939 on October 15, 2007; effective November 14, 2007)

TITLE XIV
ZONING (Reserved for Future Use)