City of Newport
Municipal Code

Index

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TITLE I GENERAL PROVISIONS

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 Adoption of Emergency Operations Plan

The City Council shall adopt an Emergency Operations Plan by resolution. The Emergency Operations Plan shall be reviewed and reaffirmed, by the City Council, every two years. The Emergency Operations Plan will be revised and adopted by City Council resolution every five years, or as determined necessary by the City Council.

1.70.020 Emergency Situation and Declaration

An emergency situation exists when the healthy, 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.

1.70.030 Emergency Declaration

A. The City Manager, or the Acting City Manager, may declare a temporary emergency when faced with a sudden event that results in an emergency under Section 1.70.020. At the time of declaring a temporary emergency, the City Manager, or Acting City Manager, shall schedule a meeting of the City Council to be held as soon as possible. The temporary emergency declaration shall remain in effect only through the end of the City Council meeting.

B. The Emergency Operations Plan shall specify a line of succession for purposes of emergency response in the event that the City Manager, or a designated acting manager, is unavailable to act in that capacity.

C. In the event that a quorum of the City 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 City Council when a quorum can be assembled.

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

1.70.040 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 City Manager, or Acting City Manager. The City Council will remain the governing body of the city, and the City Manager, or Acting City Manager, 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.

1.70.050 Limited Emergencies

A. A limited emergency is defined, but not limited to, an emergency that is limited in effect, such as a landslide that affects only one area, or a water shortage that affects only water supply and usage.

B. The City Manager, or Acting City Manager, has the authority to declare a limited emergency. It is the obligation of the City

Manager, or Acting City Manager, to notify the City Council of the declaration of a limited emergency.

C. If the anticipated cost for addressing the limited emergency is no greater than $250,000, the limited emergency shall be effective until the next regularly scheduled City Council meeting. In the event that the anticipated cost will likely exceed $250,000, the City Manager, or Acting City Manager, will schedule a meeting of the City Council to be held as soon as possible. The City Council may extend or terminate the emergency at that time.

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

(Chapter 1.70 was repealed and re-enacted by Ordinance No. 2111 on March 20, 2017; effective March 20, 2017.)

TITLE II ADMINISTRATION

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 the member has an actual conflict of interest, as provided by applicable state law. Any actual or potential conflict of interest shall be disclosed at the meeting of the board, committee, or commission where the action is being taken, as required by applicable state law.

(Section 2.05.002(F) was enacted by Ordinance No. 2129, adopted on February 20, 2018: effective March 24, 2018.)

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. **Establishment of Permanent Board, Commissions, and Committees**. 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 seven 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. Two members may be non-residents. Only full members shall be counted for quorum purposes

(Adopted by Ord. No. 2064 on May 5, 2014; effective June 4, 2014.)

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 was deleted by Ordinance No. 2012 adopted on March 21, 2011; effective on April 20, 2011.)

2.05.040 Parks and Recreation Committee

A. The Parks and Recreation Committee shall consist of eleven members and shall serve two year terms. Seven members must be residents of the City of Newport. The Parks and Recreation Director shall serve ex officio and shall act as secretary for the Committee.

(2.05.040(A) was enacted by Ordinance No. 2052. Adopted on April 1, 2013; effective on May 1, 2013.)

B. Five subcommittees will be established as follows:

1. Parks;

2. Tree City USA;

3. Recreation Programs;

4. Recreation Center;

5. Swimming Pool.

C. Subcommittees shall not include more than one non-resident of the city.

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

1. To make recommendations to the City Council concerning parks, recreation center, recreation programs, and swimming pool. Recommendations may include the acquisition, development, use, operation, and disposition of parks, facilities, rules, regulations, and programming.

2. To serve as the City's "Tree Board," with authority to approve or deny requests for public tree removal pursuant to Chapter 9.10 (Right-of-Way-Permits) and with the responsibility to study, investigate, develop

and periodically update a written manual for the care, preservation, pruning, planting, replanting, removal and disposition of trees and plantings in parks, along public streets, and in other public places.

a. As part of this manual, a list of acceptable species shall be developed and maintained for planting trees along public streets. The list shall provide spacing and planting details for each species, and divide trees into three classes based upon mature height: small (under 30 feet); medium (30 to 50 feet) and large (over 50 feet);

b. The manual may include criteria for determining, and standards for protecting, heritage trees within the city. The purpose of the heritage tree designation is to recognize, foster appreciation of, and protect trees having significance to the community. Criteria may include such things as species rarity, age, size, quality, association with historical events or persons, or scenic enhancement;

c. A draft of the manual and any amendments thereof shall be presented to the City Council and, upon Council acceptance and approval, will constitute the official Tree Manual for the city. Adoption by the City Council shall be by resolution; and

d. The plan manual shall be reviewed at least once in every three-year period after initial approval.

e. To obtain the annual Tree City USA designation by the National Arbor Day Foundation, including coordination of an Arbor Day observance and proclamation.

(Chapter 2.05.040(D)(2) was amended by Ordinance No. 2154 on September 3, 2019; effective on October 3, 2019. Chapter 2.05.040 was adopted by Ordinance No. 2034 on April 16, 2012; effective on May 16, 2012.)

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 60+ Advisory Committee

A. The 60+ Advisory Committee shall consist of seven members who serve two-year terms.

B. The city manager shall designate a staff member to attend all 60+ 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 60+ 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 60+ Activity Center.

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

(Ordinance No. 2096, adopted on April 4, 2016; effective on May 4, 2016, changed the name of the Committee.)

2.05.055 Bicycle and Pedestrian Advisory Committee

A. The Bicycle and Pedestrian Advisory Committee shall consist of seven regular members, and up to three alternate members.

B. Regular and alternate members shall serve three-year terms. All members must be residents, or business owners, of the City of Newport.

C. An alternate member shall only vote in the absence of a regular member.

D. The City Manager shall designate a staff member to attend all Bicycle and Pedestrian Advisory Committee meetings.

The staff member may participate in discussions and shall act as secretary for the committee, but shall have no vote.

E. The Bicycle and Pedestrian Advisory Committee may have the responsibility to:

1. Advise the City Council regarding issues relating to bicycle and pedestrian transportation, safety, recreation, and education.

2. Act as a resource to the City Council to provide additional information related to the unique problems associated with non-motorized transportation.

3. Act as a source of current information to the City Council in matters relating to the use of the bicycle or pedestrian routes as a means of transportation in the City of Newport.

4. Review, at the request of the City Council, the goals and objectives of the existing state and city Bicycle and Pedestrian Master Plans, and recommend changes.

5. Advise the City Council of potential funding for bicycle and pedestrian enhancements.

6. Explore and recommend, to the City Council, methods to efficiently and safely move bicyclists and pedestrians through Newport.

7. Support the City Council in creating a greater awareness of non-motorized travel as viable transportation options.

8. Recommend to the City Council locations for safe and convenient bicycle parking at all city-owned facilities.

9. At the request of Council, review bicycle and pedestrian involved motor vehicle accidents to identify safety priorities and remedial measures.

(Chapter 2.05.055 was enacted by Ordinance No. 2118, adopted on August 22, 2017; effective on September 21, 2017.)

2.05.060 Public Arts Committee

A. The Public Arts Committee shall consist of seven members serving four-year terms.

B. The Public Arts Committee shall make recommendations to the Council regarding public art and related issues, as set out in a city public arts policy adopted by resolution.

(Chapter 2.05.060 adopted by Ordinance No. 2036 on May 7, 2012, effective June 6, 2012.)

2.05.070 Wayfinding Committee

A. The Wayfinding Committee shall consist of five voting members, and may include one ex-officio/non-voting staff member from the Greater Newport Chamber of Commerce. Committee members shall serve two-year terms. All Committee members must be residents, or business owners, of the City of Newport.

(Chapter 2.05.070(A) adopted by Ordinance No. 2102 on September 6, 2016; effective October 6, 2016.)

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

C. The Wayfinding Committee shall have the responsibility to:

1. Collaborate with staff to recommend, create, oversee, and review a directional sign system for residents and visitors to major public areas, destinations, and places in the city or other nearby destinations.

2. Work with staff to promote the use of banners and other decorations to identify districts, places of interest, and arts, sports, and other public events.

3. Coordinate with staff on the implementation of wayfinding plans and goals adopted by the City Council.

4. Recommend policies governing the wayfinding signage.

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

(Chapter 2.05.070 adopted by Ordinance No. 2048 on March 18, 2013, effective April 17, 2013.)

2.05.075 Vision 2040 Advisory Committee

A. Visioning Advisory Committee Established. There is hereby established a Vision 2040 Advisory Committee. The Committee shall consist of 16 members. Members shall be appointed by the Mayor and confirmed by the City Council. To be eligible for appointment, members shall reside within the greater Newport area, own property in the city limits, own a business in the city limits, or work in the city limits of the City of Newport. The Vision 2040 Advisory Committee membership shall be comprised of:

1. Five citizens at-large with at least one representative from the Latino community;

2. Five members of existing City of Newport standing committees with one representative from the Planning Commission; and

3. Six members from stakeholder/partner organizations with one representative from the health community, one member from the education community, one member from Lincoln County, and other stakeholder/partner organizations as identified through the appointment process.

B. Term of Office. Appointments will be made for a term of five years or until successors are appointed. Initial appointments will serve staggered terms. Terms of office shall begin the first day of the calendar year. Any vacancy shall be filled for the remainder of the unexpired term in the same manner provided in A. above.

C. Committee Leadership and Meetings. A Chair and Vice-Chair shall be elected by the Committee members at the first meeting of each calendar year. The Committee will hold quarterly meetings with additional special meetings as needed.

D. General Powers and Duties. The purpose of the Vision 2040 Advisory Committee shall be to promote the city's citizen-based visioning process. The Committee is responsible to promote continued citizen involvement in the visioning process; establish, review, and update a vision action plan for review and approval by the City Council; and provide regular updates on the visioning process to the City Council and the

community at-large. Committee shall be advisory and shall have powers, duties, and functions as follows:

1. Informing the annual City Council goalsetting and budgetary processes by linking planned projects with Vision Statements and Strategies;

2. Tracking implementation of key Strategies, developing metrics for measuring progress, and preparing annual progress reports;

3. Engaging city committees, staff, and partner organizations to facilitate implementation of Strategies;

4. Recommending periodic updates to the Vision and Strategic Plan to reflect changes in the community; and

5. Promoting the Vision and Strategic Plan, increasing public awareness of the Vision Statements and Strategies, and supporting community engagement efforts to achieve desired outcomes.

(Chapter 2.05.075 was enacted by Ordinance No. 2124, adopted on November 20, 2017, effective December 20, 2017.)

2.05.080 Audit Committee

A. Membership

The Audit Committee shall consist of three members; two City Council members and one qualified voter in the city limits with a preference toward selection of a Budget Committee member. There shall also be one alternate City Council member, and one alternate public member who is a qualified voter in the city limits. A quorum of the Audit Committee shall be a minimum of two members, at least one shall be a City Council member, and in no case would a quorum be comprised of two public members. Committee members, including alternates, shall be appointed for two-year terms. The city's Finance Director and his/her designee shall staff the Audit Committee.

B. Committee Responsibilities

1. The Committee shall meet with the auditor at the conclusion of the audit firm's field audit in the spring.

2. The Committee shall meet with the auditor at the conclusion of the annual audit.

3. The Committee shall prepare a report to the City Council on the audit findings, and present this report to the City Council at a regular City Council meeting.

4. The Committee shall meet with the auditor and staff at the request of the Committee or the audit firm or staff.

(Chapter 2.05.080 adopted by Ordinance No. 2107 on February 6, 2017; effective March 8, 2017.)

2.05.085 Parking Advisory Committee

A. Parking Advisory Committee Established. There is hereby established a Parking Advisory Committee. The Committee shall consist of eleven (11) members. Members shall be appointed by the Mayor and confirmed by the City Council, and shall include:

   1. Three members each from the Bayfront, Nye Beach, and City Center special parking areas as defined in Section 14.14.100; and

   2. Two at-large members that live or work within the Newport City limits.

B. Committee Appointment Guidelines. When making appointments the City Council shall seek to ensure that a broad range of stakeholder interests are represented, including persons that reside, own property, own a business, or work within special parking areas; are affiliated with commercial fishing, fish processing, or tourist industries; have special parking/mobility needs (e.g. disabled persons); or are often underrepresented on city committees (e.g. members of the Latino community).

C. Term of Office. Appointments will be made in a manner consistent with Section 2.05.002 for a term of three years. Initial appointments will serve staggered terms. Terms of office shall begin the first day of the calendar year.

D. Committee Leadership and Meetings. A Chair and Vice-Chair shall be elected by the Committee members at the first meeting of each calendar year. The Committee will hold quarterly meetings with additional special meetings as needed.

E. General Powers and Duties. The Parking Advisory Committee shall have the following powers, duties, and functions as it relates to special parking areas:

1. Engage policy makers, city committees, staff, and partner organizations to plan for, and facilitate the implementation of parking and other transportation related improvements;

2. Provide recommendations regarding city parking policies and programs, including maintenance of parking and related infrastructure, fees, wayfinding, transit, sidewalk connectivity, and parking enforcement; and

3. Advocate and promote public awareness of parking and related initiatives, community engagement, and other efforts to achieve desired policy outcomes.

F. Administrative Support. The City Manager shall designate staff to attend meetings and perform administrative functions for the Parking Advisory Committee.

(Chapter 2.05.085 adopted by Ordinance No. 2164 on March 16, 2020; effective April 15, 2020.)

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 the 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. Other Methods of Service. 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. Response Options. 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. Written Answer. 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 Sale of Standard Undeveloped Property and Developed Property

(Title of 2.25.040 amended by Ordinance No. 2053A, adopted April 13, 2013; effective May 13, 2013.)

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 at least 14 days prior to the hearing.

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 is closed, the Council shall decide whether or not to authorize the sale of the property. . The Council may offer a 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 the Council authorizes the sale of real property then it shall, at that same hearing, select one of the following methods for completing the sale:

1. Direct Sale to Interested Party.

   a. A public hearing shall be held to consider the proposed terms of the sale.

   b. Notice of the proposed sale shall be published in a newspaper of general circulation in the city at least five days prior to the hearing. The notice shall state the time and place of the public hearing, describe the property interest to be sold, identify proposed uses for the property, and state reasons why the City Council considers it necessary and convenient to sell the property. Notice shall further indicate that any resident of the city shall be given an opportunity to present written or oral testimony at the hearing.

   c. A copy of a purchase and sale agreement or any other documentation setting out the nature and general terms of the proposed sale, including an appraisal or other evidence of the market value of the property, shall be fully disclosed at the public hearing.

2. Sealed Bid Solicitation.

   a. 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.

   b. 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.

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

      i. Accept the highest bid among those received;

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

iii. 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.

iv. 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 in Real Property Other than Fee Title or a Lease

The transfer of an interest in real property, other than fee title or a lease, by the city is not a sale of surplus real property if the city retains title to the property. The city manager may authorize an easement or other interest in real property, other than fee title or a lease, if the value of the interest transferred is less than $25,000, and the city manager determines that the transfer is not contrary to the public interest. If the value of the transferred interest exceeds $25,000, the city shall follow the procedure for the sale of substandard undeveloped property.

2.25.090 Transfer to another Governmental Body or to a Qualifying Nonprofit Corporation

Notwithstanding procedures applicable to the sale of city real property set forth above in 2.25.030 and 2.25.040, the city may transfer real property of any type to another governmental body, municipal corporation, or to a qualifying nonprofit corporation, as that term is defined in ORS 271.330(2)(a)(A), with or without consideration, per ORS 271.330, upon a determination that the property is not needed for public use and provided that such property is used for not less than 20 years for a public purpose following transfer.

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.

2.25.120 Lease of Real Property

A. The City Council may authorize a lease of city-owned real property for a period not exceeding 99 years.

B. The City Council is required to determine that the property is not needed for public use, and that the public interest would be furthered by leasing the property.

B. The consideration for the lease may be cash or real property, or both.

C. Every lease shall be authorized by order of the City Council, executing the same and providing terms and

conditions as may be fixed and determined by the City Council.

D. The lease may provide that the lessee shall pay ad valorem taxes assessable against the leased property, or that the city shall pay these taxes, in which case, the anticipated amount of taxes shall be taken into consideration in determining the rental charge.

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

(Chapter 2.25.120 was added by Ordinance No. 2029, adopted on February 21, 2012; effective March 19, 2012.)

(Section 2.25 was repealed and re-enacted by Ordinance No. 2110; adopted on March 20, 2017; effective April 19, 2017.)

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)

CHAPTER 2.35 RENAMING PUBLIC PLACES (OTHER THAN STREETS)

2.35.010 Purpose

To provide criteria and processes for the naming and renaming of public places other than streets. The renaming of streets is addressed in Chapter 9.85 of this Code.

2.35.015 Scope

The provisions of this Chapter shall apply to public places, other than streets, within the corporate limits of the City of Newport and to property owned by the City of Newport.

2.35.020 Criteria for the Naming and Renaming of Public Places Other than Streets

A. Factors of historical significance related to persons, circumstances or events;

B. Factors of geographical significance;

C. In the case of a proposal to name or rename a public place in honor of an individual, the following conditions shall be met:

1. The individual made significant contributions to the betterment of the city and its citizens;

2. The proposed change is in the best interest of the city and will not cause undue adverse impact or hardship; and

3. The cost of the proposed change can either be reasonably borne by the city or assigned to the petitioner(s) as a condition of approval.

D. Other circumstances that warrant consideration.

2.35.030 Process for the Naming and Renaming of Recognition Items

This process shall be utilized for the naming or renaming of recognition items, including such items as benches, picnic tables, trees, small rooms in facilities such as restrooms, bricks, seats, and similar small recognition

items.

A. An application to name or rename recognition items shall be submitted to the City Manager, on an application provided by the city.

1. The application shall include:

a. Name of requestor;

b. Recognition item being requested;

c. Location where the recognition item is requested to be installed;

d. Significance of recognition;

e. Appropriate fee for installation of recognition item, if any.

2. On receipt of an application, the application will be forwarded to the appropriate city staff for review and recommendation to the City Manager or his designee.

3. After approval by the City Manager, and payment of any fee, the recognition item shall be installed by the city.

2.35.040 Process for the Naming and Renaming of Small Buildings and Components of Real Property or Buildings

This process shall be used for naming or renaming requests for buildings with an occupancy of less than 50 persons, and components of buildings, such as rooms, or components of real property.

A. An action to name or rename a small building, or components of a larger building or larger parcel of real property, other than a street, shall be initiated by:

1. Resolution of the City Council; or

2. A petition signed by no fewer than 100 eligible voters residing in the City of Newport.

B. Following adoption of a Council resolution or the filing of a petition under 2.35.040(A)(2), the City Council shall conduct a public hearing on the naming or renaming proposal.

1. Notice of the hearing shall be published in a newspaper of general circulation in the city at least once within the week prior to the week within which the hearing is to be held.

C. At the next regular City Council meeting following the public hearing, the City Council, by resolution, may either name or rename the public place.

2.35.050 Process for the Naming and Renaming of Key City Features

The process for the naming or renaming of a key city features, other than a street, shall be utilized on receipt of a request for the naming or renaming of a building, with an occupancy in excess of 50 people, or real property.

A. An action to name or rename a public place, other than a street shall be initiated by:

1. Resolution of the City Council; or

2. A petition signed by no fewer than 100 eligible voters residing in the City of Newport.

B. A resolution or petition initiating the naming or renaming of a public place other than a street shall include a clear description of the public place that is to be named or renamed.

C. If the resolution or petition to name or rename a public place, other than a street is in honor of an individual, then a written statement must be included describing why the individual is deserving of the honor.

D. Following adoption of a Council resolution or the filing of a petition under 2.35.050(A)(2), the Planning Commission shall conduct a public hearing on the naming or renaming proposal.

1. Notice of the hearing shall be published in a newspaper of general circulation in the city at least once within the week prior to the week within which the hearing is to be

held.

E. Following the public hearing, the Planning Commission shall forward a recommendation on the naming or renaming proposal to the City Council.

F. Upon receiving a recommendation from the Planning Commission, the City Council shall hold a public hearing to take testimony on the proposal. Notice of the hearing shall be provided as outlined in 2.35.050(D).

G. After conducting a hearing, the City Council may, by resolution, either name or rename the public place.

(Chapter 2.35 adopted by Ord. No. 2019 on October 3, 2011; effective November 2, 2011.)

(Section 2.35., repealed and re-enacted by Ordinance No. 2138; adopted on September 4, 2018; effective on October 4, 2018.)

CHAPTER 2.40 MUNICIPAL COURT FEES

2.40.010 Payment Plan Fee

A. The Municipal Court may add a payment plan fee to any judgment that includes a monetary obligation that the court is charged with collecting where the court establishes a payment schedule that allows a debtor to pay the judgment over a period that exceeds 30 days. The Payment Plan Fee may be added to the judgment without further notice to the debtor or further order of the court. The fee is assessed to alleviate the administrative costs of establishing and administering an account for the debtor. Fees prescribed by this section shall be deposited in the General Fund.

B. The Payment Plan Fee shall not apply to any monetary obligation paid in full within 30 days of the date of entry of judgment.

C. The Payment Plan Fee shall be set by resolution of the City Council.

2.40.020 Collection Referral Fee

The Municipal Court may add a fee for the cost of collection to the outstanding balance of any account turned over to a collections agency. The Collection Referral Fee shall be set by resolution of the City Council.

(Chapter 2.40 enacted by Ord. No. 2040 adopted August 6, 2012; effective September 5, 2012.)

TITLE III REVENUE AND TAXATION

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:

1. The owner and manager of a hotel as defined herein; and

2. A transient lodging intermediary as defined in ORS 320.300(12).

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

(Section 3.05.010(D) and (E) amended by Ordinance No. 2139; adopted on September 4, 2018; effective October 4, 2018.)

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."

B. 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.

C. 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 return. No person required to make, render, sign or verify any report shall make any false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this ordinance.

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

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

2. 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 Section 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.)

CHAPTER 3.15 IMPOSING A THREE PERCENT TAX ON THE SALE OF MARIJUANA ITEMS BY A MARIJUANA RETAILER

3.15.010 Definitions

A. Marijuana item has the meaning given that term in Oregon Laws 2015, chapter 614, section 1.

B. Marijuana retailer means a person who sells marijuana items to a consumer in this state.

C. Retail sale price means the price paid for a marijuana item, excluding tax, to a marijuana retailer by or on behalf of a consumer of the marijuana item.

3.15.020 Tax Imposed

As described in section 34a of House Bill 3400 (2015), the City of Newport hereby imposes a tax of three percent on the retail sale price of marijuana items by a marijuana retailer in the area subject to the jurisdiction of the city.

3.15.030 Collection

The tax shall be collected at the point of sale of a marijuana item by a marijuana retailer at the time at which the retail sale occurs and remitted by each marijuana retailer that engages in the retail sale of marijuana items.

3.15.035 Interest and Penalty

A. Interest shall be added to the overall tax amount due at the same rate established under ORS 305.220 for each month, or fraction of a month, from the time the return to the Oregon Department of Revenue was originally required to be filed by the marijuana retailer to the time of payment.

B. If a marijuana retailer fails to file a return with the Oregon Department of Revenue or pay the tax as required, a penalty shall be imposed upon the marijuana retailer in the same manner and amount provided under ORS 314.400.

C. Every penalty imposed, and any interest that accrues, becomes a part of the financial obligation required to be

paid by the marijuana retailer and remitted to the Oregon Department of Revenue.

D. Taxes, interest and penalties transferred to City of Newport by the Oregon Department of Revenue will be distributed to the City's general fund.

E. If at any time a marijuana retailer fails to remit any amount owed in taxes, interest or penalties, the Oregon Department of Revenue is authorized to enforce collection on behalf of the City of the owed amount in accordance with ORS 475B.700 to 475B.755, any agreement between the Oregon Department of Revenue and City of Newport under ORS 305.620 and any applicable administrative rule adopted by the Oregon Department of Revenue.

(Section 3.15.035 was enacted by Ordinance No. 2108, adopted by the City Council on January 4, 2017; effective February 3, 2017.)

3.15.040 Referral

This ordinance shall be referred to the electors of the City of Newport at the next statewide general election on Tuesday, November 8, 2016.

(This Chapter was enacted by Ordinance No. 2097, adopted by the City Council on May 16, 2016, and referred to the voters at the November 8, 2016 election (Measure 21-169) which was approved by a vote of 3,406 yes, and 1,535 no, and became effective on December 5, 2016 when the election results were certified by the Newport City Council.)

CHAPTER 3.20 AFFORDABLE HOUSING CONSTRUCTION EXCISE TAX

3.20.005 Purpose

This chapter establishes a construction excise tax on commercial and residential improvements to provide funding for affordable housing in the city.

3.20.015 Definitions

The following definitions apply in this chapter.

A. Area Median Income means the Lincoln County median household income by household size as defined by the United State Department of Housing and Urban Development and published periodically.

B. Commercial means designed or intended to be used, or actually used, for other than residential purposes.

C. Construct or Construction means erecting, constructing, enlarging, altering, repairing, improving, or converting any building or structure for which the issuance of a building permit is required by Oregon law.

D. Improvement means a permanent addition to, or modification of, real property resulting in a new structure, additional square footage to an existing structure, or addition of living space to an existing structure.

E. Net Revenue means revenues remaining after the administrative fees described in section 3.15.055 are deducted from the total construction excise tax collected.

F. Structure means something constructed or built and having a fixed base on, or fixed to, the ground or to another structure.

G. Value of Improvement means the total value of the improvement as determined in the process of issuance of the building permit.

3.20.020 Imposition of Tax

A. Each person who applies to construct a commercial or industrial improvement in the City shall pay a commercial construction excise tax in an amount based on a percentage of the full value of the improvement, as set annually by City Council resolution.

B. Each person who applies to construct a residential improvement in the City shall pay a residential construction excise tax in an amount based on a percentage of the full value of the improvement, as set annually by City Council resolution.

C. The construction excise tax shall be due and payable, and must be paid, prior to the issuance of any building permit as required by ORS 320.189, as amended by SB 1533 Section 8(4) [2016].

D. The percentage rate of the construction excise tax shall not exceed that permitted by state law.

3.20.025 Exemptions

A. The construction excise tax shall not apply to the following improvements:

1. Private school improvements.

2. Public improvements as defined in ORS 279A.010.

3. Public or private hospital improvements.

4. Improvements to religious facilities primarily used for worship or education associated with worship.

5. Agricultural buildings, as defined in ORS 455.315(2)(1).

6. Facilities operated by a non-profit corporation and that are:

    a. Long term care facilities, as defined in ORS 442.015.

    b. Residential care facilities, as defined in ORS 443.400

    c. Continuing care retirement communities, as

defined in ORS 101.020.

7. Any other exemption required by Oregon statute.

8. Any improvement funded by Construction Excise Tax proceeds, or other dedicated affordable housing funding through the City of Newport. Such exemption is limited to the amount of the city's investment in the improvement.

B. The city manager may require any person seeking an exemption to demonstrate that the improvements are eligible for an exemption and to establish all facts necessary to support the exemption.

3.20.030 Collection of Tax

A. The construction excise tax is payable on issuance of a building permit for the construction of improvements. A building permit may not be issued until the construction excise tax is paid or an agreement is entered to pay in installments as allowed by this chapter.

3.20.035 Statement of Full Value of Improvement Required

A. It is a violation of this Chapter for any person or legal entity to fail to state, or to understate, the full value of improvements to be constructed in the City in connection with an application for a building permit.

3.20.040 Installment Payments

A. The owner of the parcel of land subject to a construction excise tax 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.

3.20.045 Interest and Penalties

All amounts of construction excise tax not paid when due shall bear interest on the entire unpaid amount at the rate of .83 percent simple interest per month or fraction thereof (10 percent per anum), computed from the original date to the 15th day of the month following the date of the payment. Interest amounts may not be waived.

A penalty of five percent of the underpayment of construction excise tax shall apply to:

1. Any underpayment due to the improvements constructed initially failing, or later ceasing, to be exempt affordable housing under section 3.20.025(A)(8).

2. Any underpayment involving a failure to state or an understatement of the full value of improvements.

If not paid within ten days after billing all interest and penalties shall merge with and become part of the construction excise tax required to be paid under this Chapter. From the point of merger, the previously assessed interest and penalty become part of the tax due for calculation of interest and penalty for subsequent periods.

3.20.050 Refunds

A. The City shall issue a refund to any taxpayer who has paid a construction excise tax the amount of the tax actually paid.

   1. If the taxpayer establishes that the tax was paid for improvements that were otherwise eligible for an exemption under section 3.20.025.

   2. If the taxpayer establishes that construction of the improvements was not commenced and the

associated building permit has been cancelled by the Community Development Department.

3. Upon a determination by the city manager or the Council that the amount of any construction excise tax has been erroneously collected or paid to the City under this Chapter.

B. The city manager shall either refund all amounts due under this section within 30 days of the date a written request for refund is filed with the city or give written notice of the reasons why the refund request has been denied.

C. Any request for refund must be submitted within three years from the date of payment.

3.20.055 Segregation and Use of Revenue

A. The percentage of gross revenues from the construction excise tax reserved for program administration shall be established annually by Council resolution. Such amount shall be deposited in the General Fund and may not exceed four percent of the gross revenue.

B. Net revenues from the construction excise are to be segregated by accounting practices from all other funds of the city, then used or transferred in a manner required to meet the obligations set out for these revenues under state law.

C. The city manager shall provide the City Council with an annual accounting, based on the city's fiscal year, for construction excise taxes collected 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 construction excise tax revenues shall be included in the annual accounting.

3.20.060 Appeal Procedure

A. Any written determination issued by the Community Development Department applying the provisions of this Chapter, believed to be in error, may be reviewed by the city manager if the recipient requests review in writing within ten days after receipt of the written determination together with all documentation required to support the request.

B. Appeals of any other decision required or permitted to be made by the city manager under this Chapter 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 the provisions of this Chapter and state law. The Council may affirm, modify, or overrule the decision. The decision of the Council shall be reviewed only by writ or review.

D. The filing of any appeal shall not stay the effectiveness of the written determination unless the Council so directs.

3.20.065 Penalty

Violation of this chapter is a civil infraction.

(Chapter 3.20 was enacted by Ordinance No. 2114 adopted on August 7, 2017: effective September 6, 2018. The ordinance was misnumbered as 3.15 and should have been numbered 3.20)

Chapter 3.25 Multiple Unit Housing Property Tax Exemption (MUPTE)

3.25.010 Definitions

A. “Affordable” means: A rental rate which does not exceed 30% of the monthly maximum Median Family Income levels for each unit size, including allowances for utilities that are either directly paid by tenants or billed back to tenants by the owner for reimbursement. No utility allowance is required for utilities paid by the owner and not reimbursed by the tenant. Measurement of household income is to be determined using the U.S. Department of Housing and Urban Development’s, or its successor agency’s, annually published Median Family Income and Rent chart for Lincoln County for a family of one person (for a studio apartment), two persons (for a one-bedroom apartment), three persons (for a two-bedroom apartment), or four persons (for a three-bedroom apartment). Gross income from all sources must be considered for any adults living in the unit. For approval purposes, applicants must document and use the utility estimates available from the Housing Authority of Lincoln County (HALC) to calculate monthly affordable rents in the pro-forma. Actual project utility expenses may be averaged and submitted to the Community Development Department for approval to be used in place of the HALC estimates after the project has been in service for one or more years.

B. “Applicant” means the individual or entity who is either the owner or an authorized representative of the owner who is submitting an application for the tax exemption program.

C. “Director” means the Community Development Director or designee.

D. "Low income housing assistance contract" means an agreement between a public agency and a property owner that results in the production, rehabilitation, establishment or preservation of housing affordable to those with a defined level of household income.

E. "Multiple-unit housing" means:

1. Rental housing that is or becomes subject to a low income housing assistance contract with an agency or subdivision of this state or the United States; or

2. Newly constructed structures, stories or other additions to existing structures and structures converted in whole or in part from other use to housing that meet the following criteria:

   i. Three or more rental units if it is new construction or two or more added rental units if the project involves the remodel of an existing building(s).

   ii. The structure must not be designed or used as transient accommodations, including but not limited to hotels, motels, and short-term rentals.

(Section 3.25.010(E)(2)(ii) was amended by Ordinance No. 2144, adopted on May 6, 2019: effective May 7, 2019.)

F. "Owner" means the individual or entity holding title to the exempt project and is legally bound to the terms and conditions of an approved tax exemption, including but not limited to any Regulatory Agreement and any compliance requirements under this Chapter.

G. "Project" means property on which any multiple-unit housing is located, and all buildings, structures, fixtures, equipment and other improvements now or hereafter constructed or located upon the property.

H. "Transit oriented" means being located in an area defined in regional or local transportation plans to be within one-quarter mile of a fixed route transit service.

I. "Short-Term Rental" means a dwelling unit, or portion thereof, that is rented to any person for a period of less than thirty (30) consecutive nights.

(Section 3.25.010(I) was enacted by Ordinance No. 2144, adopted on May 6, 2019: effective May 7, 2019.)

3.25.020 Purpose

A. The City of Newport adopts the provisions of Oregon Revised Statutes 307.600 through 307.637 and administers a property tax exemption program for multiple-unit housing development authorized under those provisions.

B. Goals

In accordance with the legislative goals set forth in ORS 307.600, as well as the goals and policies of the City of Newport's Comprehensive Plan, the program seeks to satisfy the following objectives:

1. Provide for the housing needs of the citizens of Newport in adequate numbers, price ranges, and rent levels that are commensurate with the financial capabilities of Newport households consistent with Housing Goal 1 of the Newport Comprehensive Plan.

2. Promote private investment in transit oriented multiple-unit housing.

3. Attract new development of multiple-unit housing, and commercial and retail property, in transit-oriented areas.

4. Stimulate the construction of transit oriented multiple-unit housing in the city's core areas to improve the balance between the residential and commercial nature of those areas.

5. Cooperate with private developers, nonprofits, and federal, state, and local government agencies in the provision and improvement of government assisted and workforce housing consistent with Housing Policy 2 of the Newport Comprehensive Plan.

C. Scope of Exemption

1. The project will create three or more multiple-unit housing units if it is new construction or two or more added units if the project involves the remodel of an existing building(s).

2. The exemption may not include the land or any improvements not a part of the structural improvements of the project.

3. The exemption may include:

   i. Parking constructed as part of the multiple-unit housing construction, addition or conversion; and

   ii. Commercial property to the extent that the commercial property is a required design or public

benefit element of a multiple-unit housing construction, addition or conversion.

iii. Only the increase in value attributable to the addition or conversion in the case of a structure to which stories or other improvements are added or a structure that is converted in whole or in part from other use to dwelling units.

D. Duration of Exemption

The MUPTE Program provides a ten-year property tax exemption on the residential portion of the structural improvements as long as program requirements are met. During the exemption period, property owners are responsible for payment of the taxes on the assessed value of the land and any commercial portions of the project, except for those commercial improvements deemed a public benefit and approved for the exemption. The property is reassessed by the County when the exemption is either terminated for non-compliance, the owner requests to opt-out of the program, or the benefit expires after the ten years, at which point the owner begins paying full property taxes.

E. At any time, the City Council may, by motion or upon request by the Lincoln County Board of Commissioners, set a limit on the maximum amount of foregone tax revenue provided as a benefit of the exemption under this Chapter.

F. Extensions for low income housing

Extensions beyond the ten-year exemption period will be granted only for projects subject to a low income housing assistance contract with an agency or subdivision of Oregon or the United States. Extensions may be granted only for the portion of units which meet the affordability requirements through June 30 of the tax year during which the expiration date of the contract falls.

3.25.030 Program Requirements

In order to be considered for an exemption under this Chapter, an applicant must establish that the project meets the following program requirements:

A. Financial need for the exemption:

1. The project could not financially be built "but for" the tax exemption. The burden is on the applicant to demonstrate that absent of the exemption the project would not be financially viable. The project pro-forma must show that the property tax exemption is necessary for the project to be proceed.

2. The project pro-forma must include:

i. Ten-year pro-forma with MUPTE.

ii. Ten-year pro-forma without MUPTE.

iii. Analysis of the projected ten-year cash-on-cash rates of return on investment for the proposed project. This should be calculated as the ratio of net cash flow, after debt service, to initial equity investment (cash and land).

iv. List of assumptions made to create the pro-formas, including a description of how property taxes were estimated for the without MUPTE pro-forma and the affordable housing fee or rent levels.

v. Development budget.

vi. Sources and uses of financing, including a description and the monetary value of any other public assistance, including but not limited to grants, loans, loan guarantees, rent subsidies, fee waivers, or other tax incentives, which the property is receiving or which the applicant plans to seek.

B. Project eligibility.

1. Projects must be located within the taxing jurisdiction of the City of Newport and:

i. Within ¼ mile of fixed route transit service.

ii. Within an R-3 Zone or an R-4 Zone or a C-1 or C-3 Zone south of NE 4th St.

iii. Entirely outside of known hazard areas, including Active Erosion Hazard Zones, Active Landslide

Hazard Zones, High Risk Bluff Hazard Zones, High Risk Dune Hazard Zones, Other Landslide Hazard Zones, and the "XXL" tsunami inundation area boundary, as depicted on the maps titled "Local Source (Cascadia Subduction Zone) Tsunami Inundation Map Newport North, Oregon" and "Local Source (Cascadia Subduction Zone) Tsunami Inundation Map Newport South, Oregon" produced by the Oregon Department of Geology and Mineral Industries (DOGAMI), dated February 8, 2013.

2. The project will be housing which is completed on or before the date specified in ORS 307.637 (Deadlines for actions required for exemption).

C. The applicant must propose and agree to include in the proposed project one or more elements benefitting the general public, as detailed in NMC 3.25.040.

3.25.040 Public Benefit

A. Green Building

1. Green building requirements apply only to the residential occupancy areas and common areas such as hallways, stairwells, centralized HVAC or hot water heating, and laundry facilities. The requirements do not apply to the commercial areas or ancillary amenities such as parking garages and recreation facilities.

2. The project will conform to the 2011 Oregon Reach Code OR perform at least 10% more efficiently than the performance established in the Oregon Energy Efficiency Specialty Code (OEESC) or similar code adopted by the State of Oregon.

3. City review of the project demonstrates that the building is constructed to modeled plans and has Reach Code designation or that the OEESC Compliance Package (or similar) has been provided to the Building Official prior to issuance of certificate of occupancy.

B. Affordable Housing Requirement

1. A minimum of 20 percent of the number of units must be affordable to households earning 80 percent or less

of the area median family income (MFI), or a minimum of 10 percent of the number of units must be affordable to households earning 60 percent or less of the area median family income. Measurement of income is to be determined using the U.S. Department of Housing and Community Development's, or its successor agency's, annually published Median Family Income and Rent chart for Lincoln County. Gross income from all sources must be considered for any adults living in the unit. Tenants must income qualify at lease-up, but may exceed the affordability requirement by up to 20% during the exemption period (i.e. tenants who qualify for 60% of MFI restricted units at lease-up may earn up to 80% of MFI while living in the unit, or tenants who qualify for 80% of MFI restricted units at lease-up may earn up to 100% of MFI while living in the unit). If a tenant exceeds the income requirement, plus the additional 20% allowed, then the unit is no longer considered qualified as an affordable unit. Another unit in the project may replace the affordable unit, should it otherwise meet all program criteria. The units meeting the affordability requirements must match the unit mix in the project as a whole in terms of number of bedrooms.

2. In lieu of providing the affordable rental housing units referenced in Subsection (1) above, the owner of the project shall pay to the City an amount equal to 10% of the total property tax exemption. The city shall place such payments into an account dedicated to funding affordable housing.

C. If the proposed project does not provide the public benefits listed in Subsections (A) and (B), the applicant may request a hearing with the Planning Commission to show that the project will fulfill the purpose of the program in an alternative manner.

3.25.050 Application Procedure

A. The Community Development Department, in consultation with the County Assessor, shall establish a filing deadline in the calendar year immediately prior to the first assessment year for which the exemption is requested. Applications for exemptions are to be submitted in writing on forms furnished by the Community Development Department, and shall include:

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

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

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

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

5. A site plan and supporting materials, drawn to scale, which shows in detail the development plan of the entire project, including streets, driveways, sidewalks, pedestrian ways, off-street parking, and loading areas, location and dimension of structures, use of land and structures, major landscaping features, and design of structures.

6. A letter from the City Public Works Department identifying the:

   i. Water main sizes and locations, and pumps needed, if any, to serve the project.

   ii. Sewer mains sizes and locations, and pumping facilities needed, if any, to serve the project.

   iii. Storm drainage facilities needed, if any, to handle any increased flow or concentration of surface drainage from the project, or detention or retention facilities that could be used to eliminate need for additional conveyance capacity, without increasing erosion or flooding.

   iv. Street improvements outside of the proposed development that may be needed to adequately

handle traffic generated from the proposed development.

7. Evidence that the project could not financially be built "but for" the tax exemption. A project pro-forma and list of assumptions, as detailed in NMC Section 3.25.030, must be submitted in addition to the general application.

B. At the time the application is submitted, applicants shall pay an application processing fee, including costs of an independent outside professional consultant to review the project's financial pro-forma, as determined by resolution of the City Council.

3.25.060 Application Approval and Denial

A. The City Council shall approve or deny an application within 180 days after receipt of the application. An application not acted upon within 180 days shall be deemed approved.

1. The application shall contain the information required by, and be processed in accordance with, any adopted administrative rules and the criteria described in Sections 3.25.030 and 3.25.050 of this code.

2. Following receipt of a completed application, the City shall retain an independent outside professional consultant to review the project's financial pro-forma.

3. After receiving the review of the independent outside financial consultant, the Director shall furnish a report to the Planning Commission about whether the application meets the criteria in Section 3.25.030 and provide any other comments about the project's financial projections to the Planning Commission in addition to the review provided by the independent outside professional consultant. After the Planning Commission receives the Community Development Department's report and comments it shall hold a hearing to evaluate the application and provide the Council with a recommendation on the application.

4. Upon receipt of the Planning Commission's written recommendation on an application, the Council shall consider the application, the financial consultant's

review, the Planning Commission's written recommendation, and any written comments submitted on the application. At the hearing at which the Planning Commission's recommendation on an application is considered, or at a subsequent hearing, the Council shall adopt a resolution approving the application and granting the property tax exemption, or adopt a resolution disapproving the application and denying the property tax exemption.

5. The Council shall approve an application if the Council determines that the criteria described in Section 3.25.030 of this code have been met. The resolution approving the exemption shall set forth any specific conditions of approval necessary to ensure program criteria will be met.

6. If the Council determines that one or more of the criteria in Section 3.25.030 of this code are not met, the Council shall deny the application. The resolution denying an application shall set forth the specific reasons for denial.

B. Final action upon an application by the City shall be in the form of a resolution that shall contain the applicant's name and address, a description of the subject multiple-unit housing, either the legal description of the property or the assessor's property account number, and the specific conditions upon which the approval of the application is based. Following approval and on or before April 1 immediately preceding the first property tax year for which the exemption or special assessment is requested, the City shall file with the County Assessor and send to the applicant at the last-known address of the applicant a copy of the resolution approving or disapproving the application. In addition, the City shall file with the County Assessor a document listing the same information otherwise required to be in a resolution under this Subsection, as to each application deemed approved under Subsection (A) of this Section.

C. Applications for tax exemption must be submitted and approved prior to issuance of the project's building permit.

D. If the City Council finds that construction, addition or conversion of the multiple-unit housing was not completed by the deadlines for actions required for exemptions

specified in ORS 307.637, due to circumstances beyond the control of the applicant, and that the applicant had been acting and could reasonably be expected to act in good faith and with due diligence, the City may extend the deadline for completion of construction, addition or conversion for a period not to exceed 12 consecutive months.

E. If the application is denied, the City shall state in writing the reasons for denial and send notice of denial to the applicant at the last-known address of the applicant within 10 days after the denial.

3.25.070 Project Compliance

A. The owner of a project approved for exemption will be required to sign a Regulatory Agreement to be recorded against the title to the property.

B. During the exemption period, the owner or a representative shall submit annual documentation of tenant income and rents for the affordable units in the project to the Community Development Department through Tenant Income Certification Forms furnished by the Community Development Department.

C. Upon termination or expiration of the tax exemption or in the case that a tenant no longer income qualifies for an affordable unit, the owner or a representative must provide written notice meeting the requirements mandated by state law to the tenant before a tenant must begin paying market rate rent or need to vacate the unit, assuming the tenant has met all other terms of the rental agreement.

D. During the exemption period, the owner or a representative shall submit annual documentation, in the form of standard lease agreements or equivalent, showing that units are not being used as short-term rentals.

(Section 3.25.070(D) was amended by Ordinance No. 2144, adopted on May 6, 2019: effective May 7, 2019.)

E. Documentation referenced in subsections (B) and (D) shall be filed before March 1st of each year of the exemption.

F. If a project has not met the affordability requirements approved, the non-compliance must be cured by the next

reporting year, or the project will be considered non-compliant.

G. If the City determines that the number and unit mix of affordable units is less than the approved percentage or does not match the unit mix of the project, the next available units must be rented to households meeting the income requirements until non-compliance is cured.

H. Projects for which annual compliance documentation is not submitted in accordance with this Section will have the tax exemption terminated according to Section 3.25.090.

3.25.080 Transfer of the Exemption

A. The provisions of the MUPTE program may transfer with the property upon sale or other transfer of the project during the exemption period. The Community Development Department needs to receive updated contact information and information about the new entity, in addition to a Consent to Transfer and Assignment and Assumption Agreement to be executed and recorded against the title to the property, in a form acceptable to the City.

3.25.090 Termination of the Exemption

A. If, after an application has been approved, the Director finds that construction of multiple-unit housing was not completed on or before the deadlines for actions required for exemptions specified in ORS 307.637, or that any provision of NMC 3.25.010 to 3.25.100 is not being complied with, or any agreement made by the owner or requirement made by the City Council is not being or has not been complied with, the Director shall send a notice of termination of the exemption to the owner's last known address.

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

C. If the owner fails to appear and show cause why the exemption should not be terminated, the Director shall

further notify every known lender and shall allow the lender a period of not less than thirty days, beginning with the date that the notice of failure to appear and show cause is mailed to the lender, to cure any non-compliance or to provide assurance that is adequate, as determined by the Director to assure the City that the non-compliance will be remedied.

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

E. Upon the County Assessor's receipt of the governing body's termination findings:

1. The exemption granted to the housing unit or portion under this chapter shall terminate immediately, without right of notice or appeal;

2. The county officials having possession of the assessment and tax rolls shall correct the rolls in the manner provided for omitted property under ORS 311.216 to 311.232, to provide for the assessment and taxation of any property for which exemption was terminated by the city or county, or by a court, in accordance with the finding of the city, county or the court as to the tax year in which the exemption is first to be terminated. The County Assessor shall make such valuation of the property as shall be necessary to permit such correction of the rolls. The owner may appeal any such valuation in the same manner as provided for appeals under ORS 311.216 to 311.232. The property shall become taxable beginning January 1 of the assessment year following the assessment year in which the non-compliance first occurred. Any additional taxes becoming due shall be payable without interest if paid in the period prior to the 16th of the month next following the month of correction. If not paid within such period, the additional taxes shall be delinquent on the date they would normally have become delinquent if timely extended on

the roll or rolls in the year or years for which the correction was made.

F. The owner may request a termination of exemption at any time, and the City Council shall adopt a resolution terminating the exemption within 60 days of the request. The termination shall proceed in the manner specified in Subsection (E) of this Section.

3.25.100 Implementation

A. The Newport City Council may adopt, amend and/or repeal Administrative Rules, establish procedures, and prepare forms for the implementation, administration and compliance monitoring consistent with the provisions of this Chapter.

B. Annual Reporting. The Community Development Department will furnish an annual report on applications received, their approval status, and project details for approved projects for each fiscal year in which applications for the MUPTE program are received.

(Chapter 3.25 was enacted by Ordinance No. 2115 adopted on August 7, 2017; effective on September 6, 2017. The ordinance was misnumbered as 3.20 and should have been numbered 3.25.)

Chapter 3.30 Non-Profit Corporation Low-Income Housing Tax Exemption

3.30.010 Purpose

A. The City of Newport adopts the provisions of Oregon Revised Statutes ORS 307.540 to 307.548 and establishes a process for exemption from property tax for non-profit corporation low income housing.

3.30.020 Definitions

A. "Low-income" means:

1. For the initial year that persons occupy property for which an application for exemption is filed, income at or below 60 percent of the area median income as determined by the Oregon Housing Stability Council based on information from the United States Department of Housing and Urban Development; and

2. For every subsequent consecutive year that the persons occupy the property, income at or below 80 percent of the area median income as determined by the Oregon Housing Stability Council based on information from the United States Department of Housing and Urban Development.

B. "Eligible organization" means only charitable non-profit corporations certified by the Internal Revenue Service of the federal government as a 501 (c) (3) or (4) organization which also provides housing for occupancy by low-income persons as defined by Subsection (1) of this Section. No other types of non-profit or for-profit organizations are eligible.

C. "Community Development Director" means the Community Development Director or designee.

3.30.030 Eligibility Requirements

A. Properties that satisfy the following requirements are eligible for tax exemption:

1. The property is owned or being purchased by a corporation that qualifies as an "eligible organization," as described in 3.30.020 Subsection (2) of this Chapter, that is exempt from income taxation under 501(a) of the Internal Revenue Code.

2. The property is:

   i. Occupied by low-income persons; or

   ii. Held for the purpose of developing low-income housing for a period of not more than three years. If the corporation requires additional time to develop the property for low-income housing and still seeks an exemption under this chapter, the corporation shall seek approval from the Community Development Director for an extension of time in the manner described in 3.30.060.

3. The property or portion of the property receiving the exemption is actually and exclusively used in a manner authorized by Section 501(c)(3) or (4) of the Internal Revenue Code.

4. The corporation:

   i. Is not presently debarred, suspended, proposed for debarment, or declared ineligible by any Federal or State agency;

   ii. Has not, within the three-year period preceding the application, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction; or been convicted of any Federal or State statutes of embezzlement, theft, forgery, bribery, falsification, destruction of records, making false statements, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty; and

   iii. Is not presently indicted for or otherwise criminally or civilly charged by a Federal, State, or local government entity with commission of any of the

offenses enumerated in Subsection (A)(4)(II) of this Section.

B. For purposes of Subsection (A) of this Section, a corporation that only has a leasehold interest in property is deemed to be a purchaser of that property if:

1. The corporation is obligated under the terms of the lease to pay the ad valorem taxes on the real and personal property used in this activity on that property; or

2. The rent payable by the corporation has been established to reflect the savings resulting from the exemption from taxation.

C. A partnership shall be treated the same as a corporation to which this Section applies if the corporation is:

1. A general partner of the partnership; and

2. Responsible for the day to day operation of the property that is the subject of the exemption.

3.30.040 Application Procedure

A. To seek the exemption provided by NMC 3.30.030, the corporation shall file an application for exemption with the Community Development Director, acting on behalf of the City, for each assessment year the corporation wants the exemption through an application furnished by the Community Development Department.

B. The application shall be filed before March 1st of the assessment year for which the exemption is applied for, unless the property designated is acquired after March 1st but before July 1st. If the property designated is acquired after March 1st but before July 1st, the claim for that year shall be filed within 30 days after the date of acquisition.

C. The application shall include the following information as applicable:

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

2. The assessor's property account number for each site;

3. A description of the property for which the exemption is requested;

4. A description of the charitable purpose of the project and whether all or a portion of the property is being used for that purpose;

5. A certification of income levels of low-income occupants;

6. A description of how the tax exemption will benefit project residents;

7. A description of the development of the property if the property is being held for future low-income housing development;

8. A declaration that the corporation has been granted exemption from income taxation under Section 501(a) of the Internal Revenue Code as an organization described in Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code; and

9. A declaration that the corporation meets the criteria provided for in NMC 3.30.030(A)(4); and

10. A declaration that, upon liquidation of the property, the assets of the corporation will be applied first in payment of all outstanding obligations, and the balance remaining, in cash and in kind, will be distributed to corporations exempt from taxation and operated exclusively for religious, charitable, scientific, literary or educational purposes or to the State of Oregon.

D. Applicants seeking an exemption under this Chapter shall pay fees for an initial application and any renewals as set by resolution of the Newport City Council, in the amount necessary to offset City administrative costs as well as administrative costs incurred by the County Assessor to process the exemption.

3.30.050 Review of Application and Notice to County Assessor

A. Except as otherwise provided in Subsection (B) of this Section, within 30 days after the March 1 deadline for the application and payment of the application fee, the

Community Development Director shall approve or deny the application. The application shall be approved if the Community Development Director finds that the property is eligible for exemption under NMC 3.30.030. If the Community Development Director determines the applicant qualifies, then the City shall certify to the County Assessor that all or a portion of the property shall be exempt from taxation.

B. If the Community Development Director has previously determined that the applicant qualified for the exemption granted under this chapter, then the Community Development Director shall use the criteria that were in place when the applicant was first granted the exemption for the property each year the applicant reapplies for the exemption.

C. If the application is approved, the City shall send written notice of approval to the applicant.

D. If the application is denied, the City shall state in writing the reasons for denial and send the notice to the applicant at his or her last known address within 10 days after the denial.

E. Upon denial by the Community Development Director, an applicant may appeal the denial to the City Council within 30 days after receipt of the notice of denial. Appeal from the decision of the City Council may be taken as provided by law.

F. Upon receipt of certification of approval under Subsection (A) of this Section, the County Assessor shall exempt the property from taxation to the extent certified by the Community Development Director.

3.30.060 Community Development Director Approval for an Extension of Time

A. If a corporation requires additional time to develop the property for low-income housing and seeks to extend the property tax exemption previously approved by the Community Development Director, then it shall provide a written request to the Community Development Director and include supporting documentation with the request. The written request shall be on a form supplied by the Community Development Department.

B. If the corporation submits a written request with supporting documentation, the Community Development Director shall review the request. The Community Development Director may use any of the following factors to determine whether to grant or deny an extension to the corporation including, but not limited to:

1. Whether the corporation has created any designs for the proposed development of low-income housing on the property;

2. Whether the corporation has applied for, or received, any permits relating to development of low-income housing on the property;

3. Whether the corporation has applied for, or received, any private or public funding for development of low-income housing on the property, including any tax credits;

4. Whether the corporation has contracted with another party to begin development of low-income housing on the property;

5. Whether the corporation has made any site improvements towards development of low-income housing on the property; or

6. Whether there was any uncontrollable or unforeseeable act or circumstance beyond the corporation's reasonable control that caused or is causing the delay in developing the low-income housing on the property.

C. The Community Development Director shall determine whether to grant or deny an extension within 30 days of receiving the written request and supporting documentation from the corporation.

3.30.070 Assessment Exemption

A. Property for which an application for a property tax exemption has been approved under the provisions of this Chapter shall be exempt from ad valorem taxation for 1 year beginning July 1 of the tax year immediately following approval of the exemption, or when, pursuant to ORS 307.330, the property would have gone on the tax rolls in

the absence of the exemption provided for in this Chapter. The exemption provided in this Section shall be in addition to any other exemption provided by law.

B. Applications for property tax exemption under this Chapter shall apply to and may be approved for assessment years specified as eligible for exemption in ORS 307.540 through 307.548.

C. At any time, the City Council may, by motion or upon request by the Lincoln County Board of Commissioners, set a limit on the maximum amount of foregone tax revenue provided as a benefit of the exemption under this Chapter for new projects.

D. The exemption as provided by this Chapter shall apply to the tax levy of all taxing districts in the City of Newport in which property certified for exemption is located as long as the City of Newport has achieved the approval from such taxing districts whose governing boards agree to the policy of exemption, equal to 51 percent or more of the total combined rate of taxation on the property certified for exemption.

3.30.080 Termination of Exemption

A. If, after a property has received exemption under this Chapter, the City finds that non-compliance has occurred or that any provision of this Chapter is not being complied with, the City shall give notice in writing to the owner, mailed to the owner's last-known address and to every known lender, by mailing the notice to the last-known address of every known lender, of the proposed termination of the exemption. The notice shall state the reasons for the proposed termination of the exemption and require the owner to appear before the Community Development Director to show cause at a specified time, not less than 20 days after mailing of the notice, why the exemption should not be terminated.

B. If the owner fails to appear and show cause why the exemption should not be terminated, the City shall notify every known lender, and shall allow any lender not less than 30 days after the date the notice of failure to appear and show cause is mailed to cure any noncompliance or to provide adequate assurance to the Community

Development Director that all noncompliance shall be remedied.

C. If the owner fails to appear and show cause why the exemption should not be terminated, and the lender fails to cure or give adequate assurance of the cure of noncompliance, the Community Development Director shall make a recommendation to the City Council to adopt a resolution stating its findings that terminate the exemption. A copy of the resolution shall be filed within 10 days after its adoption with the County Assessor, and a copy shall be sent to the owner at the owner's last known address and to the lender at the last known address of the lender within 10 days of its adoption.

D. Upon the County Assessor's receipt of the City's termination findings in the form of a resolution, the County officials having possession of the assessment and tax rolls shall correct the rolls in the manner provided for omitted property under ORS 311.216 to 311.232, to provide for the assessment and taxation of any value not included in the valuation of the property during the period of exemption prior to termination by City Council or by a court, in accordance with the findings of City Council or the court as the assessment year in which the exemption is to terminate. The County Assessor shall make the valuation of the property necessary to permit correction of the rolls, and the owner may appeal the valuation in the manner provided under ORS 311.216 to 311.232. Where there has been a failure to comply, as provided in Subsection (A) of this Section, the property shall be revalued beginning July 1 of the calendar year in which the non-compliance first occurred. Any additional taxes becoming due shall be payable without interest if paid in the period prior to the 16th day of the months next following the month of correction. If not paid within such period, the additional taxes shall thereafter be considered delinquent on the date they would normally have become delinquent if the time extended on the roll or rolls in the year or years for which the correction was made.

3.30.090 Delegation of Administrative Authority

The Newport City Council hereby delegates to the Community Development Director all authority necessary to make all determinations and otherwise administer the provisions of this

chapter, excepting determinations and actions required to be made or taken by the City Council as specified herein.

(Chapter 3.30 was enacted by Ordinance No. 2116 adopted on August 7, 2017; effective on September 6, 2017. The ordinance was misnumbered as 3.25 and should have been numbered 3.30.)

TITLE IV BUSINESSES

CHAPTER 4.05 BUSINESSES - GENERAL

4.05.010 Purpose and Scope

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 Newport through the regulation of businesses, occupations, and trades. A business need not be located within the city in order to be subject to the provisions of this Chapter. This Chapter serves the public interest by mandating that business will be carried on in compliance with applicable laws and in a manner that protects the public's health, safety, and welfare. The licensing provisions of this Chapter are enacted pursuant to the City Charter, Section 4, and the city's home rule authority as provided in the Oregon Constitution, Article XI, Section 2.

The business license fee shall be in addition to, and not in lieu of, any other license or permit fee, charge, or tax required under any other Municipal Code section or city ordinance. The business license required by this Chapter shall not be construed to constitute a permit to engage in any activity prohibited by law nor as a waiver of any other regulatory or license requirement imposed by the city or state law.

4.05.015 Definitions

Business - Any for-profit or not-for-profit enterprise, establishment, store, shop, activity, profession, or undertaking of any nature operating within the city, whether conducted directly, indirectly, or cooperatively, including the rental of real property as defined in this ordinance, carried on for the purpose of generating income. As used in this Chapter, the phrase "doing business" means an act or series of acts performed in the course or pursuit of a business activity for more than twenty (20) hours in one calendar year.

City Manager - The City Manager of the City of Newport or the City Manager's designee.

Consignment Store Merchants - Persons who own goods and enter into an agreement with a consignee/seller to sell or market those goods. Consignment store merchants occupy space within a fixed facility or building which is owned or operated by consignee/seller for the purpose of displaying and selling such goods.

Employee - Any person who works within the city in the service of another person (the employer) and whose work performance details are controlled by the employer. This definition includes contractors and persons volunteering their time to an employer. Employees may be part-time or full-time and the number of employees will be measured using a full-time equivalent computation, in accordance with any applicable city rules.

Endorsement - Standards established by the city which a business license applicant must satisfy prior to the city issuing a business license. Any city-approved endorsements will be clearly noted on the business license.

Not-for-Profit Entity - Any entity organized and operated exclusively for a religious, charitable, humanitarian, or educational purpose and for whom the United States or the State of Oregon has granted an exemption from the payment of income tax on that basis.

Person - Any and all natural and legal persons, including individuals or public or private corporations, firms, partnerships, associations, organizations, syndicates, joint ventures, societies, or any other group or entity acting as a unit of individuals.

Rental of Real Property - The rental or offering for rent of real property. Rental of real property includes, but is not limited to, the following types of properties rented or offered for rent: hotel or motel rooms, automobile or tourist courts, boarding houses, bed and breakfast rooms, mobile homes or trailer parks, residential or vacation homes, multi-family dwelling units, moorage units, and commercial properties.

Special Event Vendors - A person engaged in selling or offering for sale any food, beverage, merchandise, or service within the city during a special event for which the event organizer has obtained a valid business license. Special event vendors must possess all other necessary city, county, and state permits and authorizations.

4.05.020 Business License Required

No person shall do business within the city without a current, valid city business license, unless exempt under Section 4.05.025. To continue to lawfully conduct business in the city, every licensed business must submit an application for a

business license renewal by July 1st of every year. After that date, the business license expires.

4.05.025 Exemptions

Persons engaged in the following activities are exempt from the business licensing requirements of this Chapter:

On-premises sale of used household goods by a person who resides on the premises (a yard or garage sale), so long as the sale is conducted no more than six days in any calendar year.

An act or series of acts performed in the course or pursuit of a single business activity for not more than twenty (20) hours in one calendar year.

Special Event Vendor and Consignment Store Merchants, as long as the following requirements are met:

1. The organizer of the special event or the owner/operator of the consignment store obtains a valid business license and provides the city with a list of all special event vendors or consignment store merchants. Such list must be updated by the organizer of the special event or the owner/operator of the consignment store upon any significant change in the number or type of special event vendors or consignment store merchants;

2. The special event vendor or consignment store owner/operator obtains all other necessary city, county, or state permits or licenses and complies with all applicable city, county, or state laws and regulations.

   Persons engaged in delivery of goods inside the city from points outside the city (e.g. logging trucks, freight vehicles, and commercial fishing vessels).

   Any city, county, state agency, special district, school district, or other government entity.

   A person's rental of no more than one residential dwelling unit for thirty (30) consecutive days or more.

   A person's rental of a dwelling unit within a condominium or townhouse development, where rental of the unit is required to be managed by a single entity pursuant to a

covenant or other binding legal instrument. In such cases, the owners of each dwelling unit shall be viewed as having an ownership interest in a common business and only the business (i.e. the entity managing the units) is required to obtain a business license.

Any unincorporated business activity carried on by individuals under the age of 18.

Any business operating under a city franchise.

Any person transacting and carrying on any business within the city which is exempt from such regulation by virtue of the Constitution or laws of the United States of America or the Constitution or laws of the State of Oregon.

4.05.030 Fees

A. This ordinance hereby establishes a business license application fee and a business license annual fee.

B. The business license application fee amount shall be charged when a new or expired business license application is accepted by the city. The business license application fee is non-refundable. The amount of the business license fee shall be set from time to time by resolution of the City Council and shall be sufficient to recover the Finance Department's administrative cost of processing the applications. Persons holding expired business licenses will be charged a new business license application fee to re-apply.

C. The business license annual fee shall be charged when a business license application is accepted by the city or when a business license renewal application is accepted by the city for the renewal of an existing, non-expired business license. The amount of the business license annual fee shall be determined by resolution of the City Council.

D. Not-for-Profit Entities shall not be charged a business license annual fee. Such entities must still obtain a business license, pay the business license application fee, and annually renew the license at no cost.

E. Persons expressly exempted from paying a city business license application fee or business license annual fee

under any other lawful provision of state or city law shall not be subject to such fees. City shall document claimed exemptions, and may require that the person claiming the exemption provide proof of such exemption satisfactory to the City Manager.

4.05.035 Multiple Locations or Businesses

A. A person who does business from more than one physical location, and under a different business name or as a different business entity at the separate location, shall obtain a separate business license for each such location, name and entity.

B. An owner of real property for rent who rents or offers for rent more than one dwelling unit of real property need only obtain one business license.

C. In determining whether different business entities or activities should be categorized as only one business or as multiple businesses for the purposes of this ordinance, the City Manager shall consider the normal and ordinary customs and usages of business, including but not limited to: consideration of how the businesses are registered with other governmental agencies, such as the Oregon Secretary of State and the Internal Revenue Services.

4.05.040 Application

A. All persons desiring to do business within the city shall, on a form provided by the city, apply for and maintain a business license unless exempt under this ordinance.

B. An application for a new business license or annual renewal of an existing business license shall show: the corporate, trade, or registered name of the business; the complete address(es), email address(es), and telephone number(s) of the principal office of the business and any other locations or addresses within the city; the location or address of any real property offered for rent, including the number of dwelling units; the name(s), email address(es), and telephone number(s) of the owner(s) or principal(s); the number of employees; the state of incorporation if the business is a corporation; and completed application materials for any applicable endorsements. On the basis of that application, the city shall compute the business license annual fee for that license according to the

schedule of fees that the City Council shall establish from time to time by resolution. The applicant shall warrant by his/her signature that all representations made on the application form are the truth to the best of his/her knowledge. Any misrepresentations on the application shall constitute a violation of this ordinance.

C. All applications shall be submitted before the person first does business in the city. A license shall be valid from the date of issuance until June 30th of the next calendar year. Applications received after December 31 will be charged one-half of the business license annual fee, as determined by City Council resolution.

D. Upon receipt of a signed and completed application for a business license or renewal, the city shall inform the applicant of any business license application fees and business license annual fees due. Such fees shall be due and payable on the date the application is submitted.

E. The city will endeavor to process all applications within 30 days of the date they are received or to notify the applicant in writing as to why the application cannot be processed within this timeframe and any steps that the applicant must take before the city will approve the application.

4.05.045 Issuance, Display, Transfer

A. Upon acceptance of a business license application, together with full payment of the applicable application fee and annual fee, the city shall issue a written receipt for same. The receipt shall serve as a temporary business license for an application that does not require an endorsement and shall be effective until the date of the city's approval or denial of the business license or renewal of same. The temporary business license shall be public notice that the person named therein is licensed to do business in the city.

B. A business license will be issued by the city to replace the temporary business license once the business license application has been reviewed by the Community Development, Public Works, Fire, and Police Departments, and approved by the City Manager.

C. Upon receipt of a business license, a person who is required by this ordinance to have a business license shall

cause the license to be prominently posted in a place available to the public at the principal location or office of the business for which the license is issued. If the principal location or office of the business is not located within the city, the business' employee, agent or representative must possess a copy of the license when doing business within the city. For business licenses issued to persons who offer real property for rent, the license need not be posted, but shall be made available upon city's request.

D. Issuance of a business license, temporary or otherwise, shall not preclude enforcement against the licensee of any city ordinance or state statute.

E. A business license may be transferred to another party if: 1) the other party becomes the owner of the business; 2) no other significant change in the nature of the business has occurred; 3) if the existing business license contains no endorsements; and 4) if the new owner contacts the city to amend the business license application to accurately reflect the new ownership and any other new information. No other transfer or assignment of any license issued under this chapter shall be valid or permitted. Upon a significant change of the nature of the business, a new business license is required.

F. A duplicate license shall be issued upon application and payment of a fee to replace the license previously issued which was lost or destroyed. The fee for a duplicate license shall be set by Council resolution.

4.05.050 Disclosure, Delinquency

A. Persons required to possess a business license shall, upon the city's request, make available all records, accounts and documents of every nature and in whatever media format which may tend to prove or disprove the applicant's statements on the business license application.

B. A business license fee not paid in full within 30 days after it is due is delinquent and the city may avail itself of any and all remedies available to collect the fee, including but not limited to termination of the license and/or referring the delinquency to a collection agency and citing the person for a violation of the Newport Municipal Code. In addition, a delinquency charge may be imposed in an amount established by Council resolution.

4.05.055 Administration

A. The City Manager is responsible for the administration of this Chapter and may adopt reasonable policies, procedures, administrative rules, or regulations to carry out the purpose and intent of this Chapter and to ensure that any health or safety issues related to the applicant's business are identified prior to the city issuing a business license. The City Manager shall provide the City Council with a report of any administrative rule adoptions or amendments regarding this ordinance. The city may initiate the process for remediating any health or safety issues at any time, whether before or after the issuance of the business license.

4.05.060 Denial or Revocation

A. The City Manager may deny a business license or a license renewal application, or revoke a business license issued under the provisions of this chapter after notice as provided below, for any of the following causes:

   1. Fraud, misrepresentation or false statement contained in the application for a license or failure to supply the requested application information;

   2. A violation of this Chapter or of any city, county, or state law or regulation;

   3. Conducting the licensed activity in an unlawful manner, inconsistent with the requirements of this Chapter, or in such a manner so as to constitute a breach of the peace, or to endanger or risk the health, safety, or general welfare of the public.

B. Notice of denial or revocation of a license under subsection A., above, shall be given in writing to the applicant or licensee, setting forth specifically the grounds of denial or revocation. A notice of denial may be given to the applicant at any time during the application review process. A notice of revocation shall be mailed to the licensee at the licensee's last known address at least ten (10) calendar days before the date of the revocation. The last known address is deemed to be the address provided to the city by the applicant on the business license application unless the applicant thereafter gives the city written notice of a different address.

C. An applicant shall be entitled to a refund of the business license annual fee in the event that their business license application or annual renewal is denied.

4.05.065 Violations

A. A violation of this Chapter shall constitute a civil violation of the laws of Newport and shall be prosecuted at the city's discretion by the filing of a complaint in municipal court or in an Oregon state court of proper jurisdiction. Any person found to have violated this Chapter shall be subject to a civil penalty as provided in Chapter 1.50.010 of the Newport Municipal Code.

B. The conviction of any person for violation of this Chapter shall not act or relieve such person from the requirement to register a business or obtain a business license. The penalties imposed by this section are in addition to and not in lieu of any other remedies available to the city.

C. In the event any provision of this chapter is violated by a firm or corporation, the officer, officers or individuals responsible for the violation shall be personally subject to the penalties imposed by this section.

4.05.070 Evidence of Doing Business

In the trial or hearing on any alleged violation of this Chapter, evidence of advertisements by newspaper, radio, television, internet or other medium or by signs displayed for public view, that a business activity was being conducted by the alleged violator within the city, including expressly or implied offering to sell goods, services, or lodging to the public or any segment thereof, shall constitute prima facie evidence that the alleged violator was conducting a business activity within the city on the day or date during which such representations were made.

4.05.075 Appeal

A. Any person aggrieved by the City Manager's (i) denial of a business license application; (ii) revocation of a business license; (iii) assessment of business license application fee or business license annual fees; or (iv) application of any rules or regulations pertaining to this Chapter; shall have the right to appeal to the City Council. The applicant or licensee shall file with the City Council a written

statement setting forth fully the grounds for the appeal within twenty (20) calendar days after either: (i) the day the notice of denial is issued or the day the of revocation is mailed; (ii) the day the disputed fees are assessed; or (iii) the day that the rules or regulations were misapplied according to the applicant's or licensee's allegation.

B. The City Council shall set a time and place for a hearing on the appeal within thirty (30) calendar days after receiving the appeal. Notice of the appeal hearing shall be mailed to the applicant or licensee's last known address at least ten (10) calendar days prior to the hearing. During the hearing, the applicant or licensee shall have an opportunity to present in writing or orally the grounds for the appeal. The decision and order of the City Council on such appeal shall be final and conclusive.

(Chapter 4.05 adopted by Ordinance No. 2030 on March 19, 2012; effective July 1, 2012.)

(Chapter 4.05 was repealed and re-enacted by Ordinance No. 2073; adopted on January 20, 2015; effective February 19, 2015.)

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 words shall mean:

1. "**City Manager**" means the City of Newport City Manager or his/her designee.

2. "**Driver**" means every person who is, or acts under or at the direction of, the owner, agent, or employee, and is in charge of operating any taxicab.

3. "**Endorsement**" means a taxicab endorsement to a business license to allow the business to operate a taxicab business in the city.

4. "**Flat rate**" is a fare which remains constant regardless of the distance traveled or time involved.

5. "**Limousine**" is a vehicle that is used in a limousine service operation in which the destination and route traveled may be controlled by the passenger and the fare is calculated on the basis of any combination of initial fee, distance traveled and waiting time if the vehicle:

   a. Is a passenger vehicle with a passenger seating capacity that does not exceed eight;

   b. Carries passengers for hire between points in Oregon; and

   c. Operates on an irregular route basis.

6. "**Non-emergency medical transport vehicle**" means a vehicle that carries a person for hire and such person requires nonemergency medical treatment or supervision by an emergency medical technician or first responder certified by the Oregon State Health Division while in the vehicle.

7. "Operate" means to drive a vehicle, to use a vehicle in the conduct of business, to receive money from the use of a vehicle, or cause or allow another person to do the same.

8. "Owner" means every person having use or control of any taxicab whether as owner, lessee, or otherwise.

9. "Permit" means Police Chief's authorization of a driver to operate a taxicab listed in an endorsement to the business license.

10. "Police Chief" means the City of Newport Police Chief or his/her designee.

11. "Street" means any street, alley, avenue, road, lane, highway, or public place in the city used for the purpose of public travel.

12. "Taxicab" means any vehicle that carries passengers for hire whose journey has originated in the city, where the destination and route may be controlled by a passenger, and the fare is calculated on the basis of any combination of an initial fee, distance traveled, and delay, or the fare is a flat rate. Any vehicle that has an appearance similar to a taxicab is a taxicab for the purposes of this Chapter. As used in this Chapter, "taxicab" does not include licensed ambulances, nonemergency medical transport vehicles, regular-route scheduled buses, state-approved buses engaged in charter service, limousines, courtesy vehicles operated by hotels and motels as a convenience for registered guests where no charges are made, vehicles operated for the exclusive use of senior citizens or persons with disabilities, or vehicles contracted for special events by non-profit organizations.

13. "Taxicab Driver Permit" means a permit issued to an individual to operate a taxicab in conjunction with a business possessing a taxicab endorsement to its business license.

14. "Temporary Taxicab Driver Permit" means a permit issued to an operator for a special

community event, such as the annual Seafood and Wine Festival. A temporary permit will be effective only for the special event for the particular year of the permit application from 12:01 A.M. on the first day of the event and ending at 11:59 P.M. the last day of the event.

4.15.020 Taxicab Endorsement and Taxicab Driver Permit Required

A. No person shall operate any taxicab business in the city without possessing a valid taxicab endorsement to the business license for that business and its vehicles issued pursuant to this Chapter, as well as any other license required by the city.

B. No person shall operate a taxicab during a special event without having first obtained a taxicab driver permit or temporary taxicab driver permit.

4.15.030 Taxicab Endorsement Application Required

A. An application for a taxicab endorsement to a business license shall be filed with the Police Chief. The application shall be verified under penalty of perjury and contain the following information and documentation:

1. The name, business address, and residence address of the owner or person applying.

2. The make, type, year of manufacture, and seating capacity of the vehicle(s) for which application for taxicab endorsement is made.

3. A description of the proposed color scheme, insignia, trade style, or any other distinguishing characteristics of the proposed vehicle design.

4. A statement whether the applicant or any officers of the applicant have been convicted of any felony, misdemeanor or violation of any municipal ordinance or state law, including non-moving traffic violations and parking offenses, the nature of the offense and the punishment or penalty assessed.

5. A policy of insurance in the manner and form required under Section 4.15.150.

B. Upon receipt of an application for a taxicab endorsement to a business license, the Police Chief shall be responsible for conducting an investigation of the owner or applicant within 30 days from the date the application is filed. The following information is required:

1. Copy of driver license;

2. Two (2) passport-sized copies of a recent photograph of the applicant;

3. FBI "Applicant" fingerprint card which can be obtained from the Lincoln County Sheriff's Office, and a check payable to the Oregon State Police, at current rate, for fingerprint processing;

4. Copy of receipt for payment of fees issued by the city's Finance Department.

5. Satisfactory proof that the applicant does not owe the city any monies due to unpaid traffic fines, parking fines, or any other fee.

C. All taxicab endorsements expire on June 30 of each calendar year, and may be renewed from year to year upon application to the Police Chief.

4.15.035 Denial, Revocation, or Suspension of Taxicab Endorsement; Appeal

A. If the Police Chief denies an application for a taxicab endorsement to a business license, or the taxicab endorsement is revoked or suspended by the Police Chief, such action may be appealed to the City Manager or his/her designee. The decision of the City Manager is subject to further appeal to the City Council.

B. Notice of denial, revocation, or suspension shall be given to the applicant or licensee as provided in Section 4.05.060 of the Newport Municipal Code.

C. An appeal to the City Manager and further appeal to the City Council, if any, shall be as provided in Section 4.05.075 of the Newport Municipal Code

4.15.040 Issuance of Taxicab Endorsement

The Police Chief shall issue a taxicab endorsement to operate a taxicab if the applicant has met the requirements of this Chapter.

4.15.050 Taxicab Driver Permit and/or Temporary Taxicab Driver Permit Required

It is unlawful for any person to operate a taxicab in the city without a taxicab driver permit, or a temporary taxicab driver permit which was issued by the Police Chief in accordance with the terms of this Chapter.

A. A person may apply for a taxicab driver permit or temporary taxicab driver permit by submitting a completed application to the Police Chief. The application shall include:

   1. Copy of driver license;

   2. Two (2) passport-sized copies of a recent photograph of the applicant;

   3. FBI "Applicant" fingerprint card (not required for renewal or Temporary Taxicab Driver Permit application) which can be obtained from the Lincoln County Sheriff's Office;

   4. Check payable to the Oregon State Police, at current rate (not required for renewal or Temporary Taxicab Driver Permit application) for fingerprint processing;

   5. Copy of receipt for payment of fees issued by the city's Finance Department.

B. Upon receipt of an application for a taxicab driver permit or temporary taxicab driver permit, the Police Chief shall be responsible for conducting an investigation of the applicant's background as necessary to verify compliance with subsection C. of

this section, including initiating a criminal background check.

C. The Police Chief shall not issue a taxicab driver permit or a temporary taxicab driver permit until and unless the following applicant information regarding the applicant has been verified:

1. The applicant is 21 or more years of age;

2. The applicant possesses a valid Oregon driver's license;

3. The applicant has not had a driver's license revoked or suspended by any state within the last five years;

4. The applicant has made no material false statement in the application;

5. The applicant does not owe the city any monies due to unpaid traffic fines, parking fines, or any other fee.

6. The applicant has been investigated by the Police Chief and the Police Chief has found that the applicant has not been convicted of any felony or misdemeanor involving a crime against persons as defined in ORS Chapter 163, including but not limited to homicide, manslaughter, assault, kidnapping, sexual offenses, harassment and stalking; or any violation of the Oregon Vehicle Code, ORS Chapter 811, defined as a felony or misdemeanor, including driving under the influence of intoxicants as defined in ORS Chapter 813; or any misdemeanor involving theft or fraud.

   a. Where the investigation discloses a conviction for violation of ORS Chapter 811, the Police Chief shall investigate the violation and determine whether the nature of the violation, when viewed in light of the circumstances of the violation and the city's duty to protect the public, is such that a reasonable person would believe the driver so convicted is an unacceptable risk to public safety. Where the

Police Chief finds an unacceptable risk to public safety exists, the Police Chief shall not issue a taxicab driver permit or temporary taxicab driver permit to the applicant.

D. If the Police Chief determines that the applicant meets the requirements of this Chapter, the Police Chief shall issue the taxicab driver permit or the temporary taxicab driver permit.

E. All taxicab driver permits expire on June 30 of each calendar year, and may be renewed from year to year upon application to the Police Chief.

F. As a condition of licensing, a taxicab driver permit holder and temporary taxicab driver permit holder shall agree in writing to notify the Police Chief within ten days of conviction of any crime included in subsection (C)(6) of this section.

4.15.055 Denial, Revocation or Suspension of Taxicab Driver Permit, Appeal

A. If the Police Chief denies an application for a taxicab driver permit or temporary taxicab driver permit, or the taxicab driver permit or temporary taxicab driver permit is revoked or suspended by the Police Chief, such action may be appealed to the City Manager or his/her designee. The decision of the City Manager is subject to further appeal to the City Council.

B. Notice of denial, revocation or suspension shall be given to the applicant or licensee as provided in Section 4.05.060 of the Newport Municipal Code.

C. An appeal to the City Manager and further appeal to the City Council, if any, shall be as provided in Section 4.05.075 of the Newport Municipal Code.

4.15.060 Reissuance, Transfer, Cancellation, Denial, Suspension, or Revocation of Taxicab Endorsement, Taxicab Driver Permit, or Temporary Taxicab Driver Permit

A. No taxicab endorsement, taxicab driver permit, or temporary taxicab driver permit may be sold, assigned, mortgaged, or otherwise transferred.

B. Any application for a taxicab endorsement, taxicab driver permit, or temporary taxicab driver permit may be denied, suspended, or revoked by the Police Chief if any one or more of the following conditions exist:

1. The taxicab endorsement holder ceases to operate any taxicab for a period of 15 consecutive days without obtaining permission to cease such operation from the Police Chief.

2. The taxicab endorsement holder, taxicab driver permit holder, or temporary taxicab driver permit holder fails to operate the taxicab in accordance with the applicable provisions of this Chapter.

3. The taxicab endorsement holder, taxicab driver permit holder, or temporary taxicab driver permit holder fails to pay any of the fees or payments required to be paid by the provisions of this Chapter.

5. The taxicab endorsement holder, taxicab driver permit holder, or temporary taxicab driver permit holder no longer qualifies for a taxicab endorsement, taxicab driver permit, or temporary taxicab driver permit under the provisions of this Chapter.

6. The arrest or conviction for any criminal offense of any officer or principal managing employee of the taxicab endorsement holder, taxicab driver permit holder, or temporary taxicab driver permit holder involving the operation of the taxicab business;

7. Any taxicab accident required to be reported to the state involving a vehicle driven by the taxicab endorsement holder, taxicab driver permit holder, or temporary taxicab driver permit holder;

8. The filing of a lawsuit against or on behalf of the taxicab endorsement holder related to the operation of the taxicab business;

9. The filing of a lawsuit against or on behalf of a taxicab driver permit holder or temporary taxicab driver permit holder related to the operation of the taxicab business;

10. The initiation of bankruptcy proceedings or corporate or partnership dissolution by the taxicab business;

11. Lapse, cancellation, or reduction of coverage of any insurance policy the Police Chief relied on in issuing a taxicab endorsement, taxicab driver permit, temporary taxicab driver permit, or renewal of the taxicab endorsement, taxicab driver permit, or temporary taxicab driver permit.

12. Any arrest, charge, or conviction of the taxicab drive, permit holder, or temporary taxicab driver permit holder for any criminal offense, or any traffic violation, that occurs during, or arises out of, the taxicab driver's or temporary taxicab driver's operation of a taxicab;

13. Any arrest, charge, or conviction of the taxicab driver permit holder or temporary taxicab driver permit holder for any criminal offense involving theft, robbery, burglary, assault, sex crimes, drugs, prostitution, traffic crimes, or any related offense;

14. Any vehicle accident required to be reported to the state involving any taxicab operated by the taxicab driver permit holder or temporary taxicab driver permit holder;

15. Any restriction, suspension, or revocation of the taxicab drivers, or temporary taxicab drivers, motor vehicle driver's license.

C. After the city has issued a taxicab endorsement, any change in the driver name or vehicle list requires the applicant to notify the Police Chief within 30 days of the change. The expiration date of the taxicab endorsement will remain the same.

4.15.070 Surrender of Taxicab Endorsement, Driver Permit, or Temporary Driver Permit

Any taxicab endorsement, taxicab driver permit, or temporary taxicab driver permit that is suspended or revoked by the Police Chief shall be surrendered to the

Police Chief and the operations of any taxicab shall cease.

4.15.080 Fees for Taxicab Endorsement, Taxicab Driver Permit, and Temporary Taxicab Driver Permit

No taxicab endorsement, taxicab driver permit, or temporary taxicab driver permit may be issued, or a taxicab business continue in operation, until the applicant has paid all city fees required by this Chapter. All fees required herein shall be established by City Council resolution. Fees provided under this Chapter are nonrefundable, unless otherwise provided.

4.15.090 Inspection of Vehicles

A. Prior to the operation of any vehicle, with the exception of temporary taxicab driver permit holders, under the provisions of this Chapter and at least annually thereafter, the vehicle shall be inspected by an automobile mechanic and shall be certified to be in safe operating condition. An inspection for safe operating conditions shall include, but is not limited to, inspection of brakes including parking brake; all lights, signals and reflectors; exhaust system; steering system; wipers including washers; suspension components; mirrors; horn and other warning devices; tires and restraint system. Record of such inspections, clearly identifying the vehicle by license plate number and vehicle identification number, shall be made available to the city upon initial application and annual renewal.

B. In addition to the required initial and annual inspections, inspection or testing of all parts vital to the safe operation of the vehicle such as brakes, steering gear, tires, lights, and signaling devices shall be made at the beginning of each shift or each day by the driver. Any condition found then or at any other time that will prevent the safe operation of the vehicle shall be corrected before the vehicle is used.

C. In the event a record of vehicle inspection is not produced within 48 hours of request, or if the record produced indicates the inspection occurred more than 12 months prior to the current date, the city shall notify the holder of a taxicab endorsement to

complete an inspection showing compliance with the standards of this Chapter and deliver the record to the city within 48 hours of the written request.

D. Failure to timely produce a satisfactory record of inspection shall be grounds to deny, suspend, or revoke a taxicab endorsement and also constitutes a violation of this Chapter subject to enforcement under Section 4.15.170.

E. A taxicab endorsement holder who permanently retires any taxicab from service shall notify the Police Chief within 15 days from the date the taxicab is retired from service.

4.15.100 Operating Regulations

A. Unless otherwise directed by the passenger, any taxicab driver permit holder, or temporary taxicab driver permit holder, hired to transport passengers to a definite point shall use the most direct route possible that will carry the passenger to that destination safely and expeditiously.

B. Every taxicab driver permit holder or temporary taxicab driver permit holder, if requested, shall give a correct receipt upon payment of the correct fare.

C. No person may refuse to pay a lawful taxicab fare after hiring a taxicab.

D. Whenever a passenger occupies a taxicab, the taxicab driver permit holder shall not permit any other person to occupy the taxicab without the consent of the original passenger.

E. Every vehicle operating under this Chapter is to be kept in a clean, sanitary, and satisfactory operational condition.

4.15.110 Equipment

Every taxicab is to be equipped with the following:

A. Except for taxicabs charging flat rates, a taximeter in accurate operating condition with a lighted face which can be read at all times by the customer. Taxicabs

charging flat rates shall be equipped with a sign complying with Section 4.15.120 stating "Flat Rate" conspicuous to a passenger upon entering the taxicab, and outlining the flat rates to be charged.

B. A top light identifying it as a taxicab, except for temporary taxicabs.

C. The company name and telephone number where service can be requested displayed on the exterior of the vehicle, except for temporary taxicabs.

D. A mobile communication device with a hands-free accessory or state of the art taxi radio on a clear coordinated taxicab radio frequency for customer comfort and rapid dispatching of calls for service, except for temporary taxicabs.

E. The taxicab driver permit or temporary taxicab driver permit shall be conspicuously displayed inside the vehicle where it can be easily viewed by a passenger.

4.15.120 Rates

A. Except for taxicabs charging flat rates, a taximeter in accurate operating condition with a lighted face which can be read at all times by the customer. Taxicabs charging flat rates shall be equipped with a sign conspicuous to a passenger upon entering the taxicab, and outlining the flat rates to be charged.

B. The rate schedule shall be posted in each taxicab in a conspicuous place where passengers may readily see the schedule. No taxicab may charge more than the posted rate.

4.15.130 Complaints

Taxicab endorsement holders, taxicab driver permit holders, and temporary taxicab driver permit holders shall maintain a record of all complaints received in writing or by telephone and shall keep posted in a conspicuous place in the passenger compartment of each taxicab a statement setting forth the address and telephone number of the owners to which complaints should be directed, and a notice that a record of all

complaints shall be open to inspection and review by the city at any time on its request.

4.15.140 Reports to the Police Chief

A. Every taxicab endorsement holder, taxicab driver permit holder, or temporary taxicab driver permit holder shall report to the Police Chief, within 48 hours, the occurrence of the following events:

1. The arrest or conviction for any criminal offense of any officer or principal managing employee of the taxicab endorsement holder, taxicab driver permit holder, or temporary taxicab driver permit holder involving the operation of the taxicab business;

2. Any taxicab accident required to be reported to the state involving a vehicle driven by the taxicab driver permit holder or the temporary taxicab driver permit holder;

3. The filing of a lawsuit against or on behalf of the taxicab endorsement holder related to the operation of the taxicab business;

4. The filing of a lawsuit against or on behalf of a taxicab driver permit holder or temporary taxicab driver permit holder related to the operation of the taxicab business;

5. The initiation of bankruptcy proceedings or corporate or partnership dissolution by the taxicab business;

6. Lapse, cancellation, or reduction of coverage of any insurance policy the Police Chief relied on in issuing a taxicab endorsement, taxicab driver permit, temporary taxicab driver permit, or renewal of the taxicab endorsement, taxicab driver permit, or temporary taxicab driver permit

7. Any information required to be disclosed by subsection (B) of this section.

B. Every taxicab driver permit holder and temporary taxicab driver permit holder shall report to the Police Chief, and in the case of a taxicab driver permit

holder, for the taxicab endorsement holder for which he or she drives, the occurrence of the following:

1. Any arrest, charge, or conviction of the taxicab driver permit holder or temporary taxicab driver permit holder for any criminal offense, or any traffic violation, that occurs during, or arises out of, the taxicab driver's or temporary taxicab driver's operation of a taxicab;

2. Any arrest, charge, or conviction of the taxicab driver permit holder or temporary taxicab driver permit holder for any criminal offense involving theft, robbery, burglary, assault, sex crimes, drugs, prostitution, traffic crimes, or any related offense;

3. Any vehicle accident required to be reported to the state involving any taxicab operated by the taxicab driver permit holder or temporary taxicab driver permit holder;

4. Any restriction, suspension, or revocation of the taxicab driver's, or temporary taxicab driver's motor vehicle driver's license;

4.15.150 Insurance Requirements

A. No person may drive or operate, or cause to be driven or operated, any taxicab in the city unless the taxicab endorsement holder or temporary taxicab driver permit holder has on file with the Police Chief a certificate of insurance written by a responsible and solvent insurance carrier authorized to write insurance policies in Oregon. The certificate of insurance shall be issued to, or for the benefit of, the taxicab endorsement holder or temporary taxicab driver permit holder, and be a commercial automobile liability policy which is in full force and effect, and designating in such policy, the taxicab(s) which may be driven or operated under this Chapter. These requirements are intended to insure the vehicle and its operation by the driver.

B. The commercial automobile liability policy shall insure the taxicab endorsement holder, taxicab driver permit holder, and temporary taxicab driver permit

holder, and any other person using or responsible for the use of any such taxicab against loss from the liability imposed upon such operation of such taxicab by law for injury to, or death of, any person, or damage to property growing out of the maintenance, operation or ownership of any taxicab, in the amount of $1,000,000 combined single limit for bodily injury and property damage.

C. The city requires notice of cancellation of the required insurance policies. The taxicab endorsements, taxicab driver permits, or temporary taxicab driver permits will be terminated immediately upon the City's receipt of a cancellation of insurance.

D. The taxicab endorsement holder, taxicab driver permit holder, and temporary taxicab driver permit holder shall provide the city with a certificate of insurance naming the city as an additional insured.

E. The insurance required by subsection (B) of this section shall apply when the city issues a new license, reissues, or renews a license or permit.

4.15.160 Indemnification

A. Any recipient of a taxicab endorsement shall agree to pay all damages and penalties that the city may legally be required to pay as a result of granting a taxicab endorsement and shall agree to defend and indemnify the city against all claims resulting from the granting of such an endorsement. These damages or penalties shall include, but not be limited to, damage arising out of the maintenance, operation or ownership of a taxicab as authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by this Chapter.

B. The taxicab endorsement holder shall pay and, by its application and the granting of a taxicab endorsement to the business license, specifically agrees that it will pay all necessary and reasonable expenses incurred by the city in defending itself against all damages and penalties mentioned in subsection (A) of this section, including, but not limited to, reasonable attorney fees.

4.15.170 Violation – Enforcement

A. A violation of any provision of this Chapter, including but not limited to operating a taxicab from points originating within the city without holding a valid, approved taxicab endorsement, or operating a vehicle without a valid, approved taxicab driver permit, or temporary taxicab driver permit shall be enforced under Section 1.50.010 of the Newport Municipal Code.

B. Operating a taxicab in violation of this Chapter is declared detrimental to the public health and safety and a nuisance as authorized by Chapter 8.10 of the Newport Municipal Code. As an alternative to any remedy provided for enforcement, the city may use the abatement procedures of Chapter 8.10 or institute injunctive or other appropriate proceedings to temporarily or permanently enjoin the operation of a taxicab

C. Each day's violation of a provision of this Chapter constitutes a separate offense. Violations of separate provisions in this Chapter are separate offenses.

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

(Chapter 4.15 repealed and re-enacted by Ordinance No. 2058; adopted on January 20, 2015; effective February 19, 2015)

CHAPTER 4.20 RECREATIONAL AND MEDICAL MARIJUANA FACILITIES

4.20.010 Definitions

The following definitions apply within this chapter:

Child Care Facility: means any facility that provides child care to children, including a child care center, certified family child care home, and registered family child care home. It includes those known under a descriptive name, such as nursery school, preschool, kindergarten, child play school, before or after school care, or child development center, except care provided:

1. In the home of the child;

2. By the child's parent, or legal guardian;

3. By a person related to the child by blood or marriage;

4. On an occasional basis by a person not ordinarily engaged in providing child care;

5. By providers of medical services;

6. By a babysitter;

7. By a person who cares for children from only one family other than the person's own family;

8. By a person who cares for no more than three children other than the person's own children; or

9. By a person who is a member of the child's extended family, as determined by the State of Oregon, Office of Child Care.

Medical Marijuana Facility: a facility licensed by the Oregon Health Authority to:

1. Accept the transfer of usable marijuana and immature marijuana plants from a registry identification cardholder, the designated primary caregiver of a registry identification cardholder, or a

person responsible for a marijuana grow site to the medical marijuana facility; or

2. Transfer usable marijuana and immature marijuana plants to a registry identification cardholder or the designated primary caregiver of a registry identification cardholder; or

3. Sell limited marijuana retail product(s) consistent with state law and under rules promulgated by the Oregon Health Authority.

Medical Marijuana Facility Endorsement: a business license endorsement issued by the City of Newport to a Medical Marijuana Facility pursuant to the terms and conditions of this chapter.

Person Responsible for a Medical or Recreational Marijuana Facility: an individual who owns, operates, or otherwise has legal responsibility for a Medical or Recreational Marijuana Facility.

Recreational Marijuana Facility: a facility licensed by the Oregon Liquor Control Commission to produce, process, transport, sell, test or deliver marijuana for commercial recreational purposes.

Recreational Marijuana Facility Endorsement: a business license endorsement issued by the City of Newport to a Recreational Marijuana Facility pursuant to the terms and conditions of this chapter.

Registry Identification Card: a document issued by the Oregon Health Authority that identifies an individual authorized to engage in the medical use of marijuana and, if the individual has a designated primary caregiver under ORS 475.312, the individual's designated primary caregiver.

Registry Identification Cardholder: an individual who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the individual's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.

4.20.015 Business License Endorsement Requirement

No person shall establish, conduct, maintain, manage, or operate a Medical or Recreational Marijuana Facility in the City of Newport without a valid business license issued by the City of Newport pursuant to chapter 4.05 of this Title and a Medical or Recreational Marijuana Facility Endorsement issued by the City of Newport pursuant to this chapter.

4.20.020 Application Requirements

The Person Responsible for a Medical or Recreational Marijuana Facility must apply for a Medical or Recreational Marijuana Facility Endorsement on a form provided by the city. In addition to the information required by Section 4.05.040 of this Title, an applicant for a Medical or Recreational Marijuana Facility Endorsement must provide the city with the following information:

A. The name and contact information (including at least a telephone number) of the Person Responsible for the Medical or Recreational Marijuana Facility;

B. The address or location of the Medical or Recreational Marijuana Facility;

C. Proof of registration with the State of Oregon.

   1. For a Medical Marijuana Facility, proof of registration shall be obtained from the Oregon Health Authority at the location indicated on the application, including the Medical Marijuana Facility's registration number.

   2. For a Recreational Marijuana Facility, proof of registration shall be a copy of a license issued by the Oregon Liquor Control Commission at the location indicated on the application, including the Recreational Marijuana Facility license number;

D. Criminal background check requests, on a form provided by the city, from the Person Responsible for the Medical or Recreational Marijuana Facility and any employees of the Medical or Recreational Marijuana Facility; and

E. The executed agreement required by Section 4.20.025 of this Chapter.

4.20.025 Agreement

The city will not issue a Medical or Recreational Marijuana Facility Endorsement unless and until the Person Responsible for the Medical or Recreational Marijuana Facility submits an executed agreement, on a form required by the city, agreeing to the following conditions:

A. The Person Responsible for the Medical or Recreational Marijuana Facility and any employees working at the Medical or Recreational Marijuana Facility will cooperate with the city during an inspection authorized by Section 4.20.050 of this Title;

B. The city will have the same access to any and all video surveillance records and recordings of a Medical Marijuana Facility as the Oregon Health Authority does pursuant to OAR 333-008-1180(2)(e) or of a Recreational Marijuana Facility that the Oregon Liquor Control Commission does pursuant to OAR 845–025-1430;

C. The city will have the same access to any and all documentation required to be maintained under rules adopted by the Oregon Health Authority as the Oregon Health Authority does pursuant to OAR 333-008-1210(5) or rules adopted by the Oregon Liquor Control Commission as the Oregon Liquor Control Commission does pursuant to OAR 845-025-1200;

D. The Person Responsible for a Medical or Recreational Marijuana Facility will direct the security company required by OAR 333-008-1150(4)(b) or OAR 845-025-1420(2)(b) to notify the City of Newport Police Department any time the alarm system required by OAR 333-008-1150 or OAR 845-025-1420 is triggered at the Medical or Recreational Marijuana Facility;

E. The Person Responsible for the Medical or Recreational Marijuana Facility understands and

agrees that neither the issuance of a business license nor the issuance of a Medical or Recreational Marijuana Facility Endorsement constitute a permit to engage in any activity prohibited by law or as a waiver of any other regulatory or license requirement imposed by the city or by any federal, state, or local law; and

F. The Person Responsible for the Medical or Recreational Marijuana Facility agrees to notify the city of any employees hired by the Medical or Recreational Marijuana Facility after issuance of the Medical or Recreational Marijuana Facility Endorsement and prior to their first day of employment, will provide the city with criminal background check requests, on a form provided by the city, from the new employees.

4.20.030 Background Checks

The City of Newport Police Department will conduct background checks pursuant to this chapter to determine whether an individual has been convicted in any state of the manufacture or delivery of a controlled substance designated in Schedule I or Schedule II of Title 21, Chapter II, Part 1308 of the Code of Federal Regulations:

A. Once or more within the last five years; or

B. Twice or more in the individual's lifetime.

The City of Newport Police Department may accept a background check performed by the Oregon Health Authority or the Oregon Liquor Control Commission in lieu of conducting its own background check.

4.20.035 Fees

An applicant for a Medical or Recreational Marijuana Facility Endorsement must pay a surcharge in an amount established by resolution of the City Council in addition to the business license application fee established under Section 4.05.020 of this Title.

4.20.040 Issuance

A. A Medical or Recreational Marijuana Facility Endorsement will only be issued if:

1. The application is complete and accurate;

2. The agreement required by Section 4.20.025 is fully executed;

3. The Medical or Recreational Marijuana Facility has been registered and/or licensed by the responsible state agency at the location indicated in the application;

4. The applicant is otherwise eligible for a City of Newport business license issued under Chapter 4.05 of this Title;

5. The applicant has paid all the required fees;

6. Neither the Person Responsible for the Medical or Recreational Marijuana Facility nor any employee of the Medical or Recreational Marijuana Facility has been convicted in any state of the manufacture or delivery of a controlled substance designated in Schedule I or Schedule II of Title 21, Chapter II, Part 1308 of the Code of Federal Regulations:

   a. Once or more within the last five years; or

   b. Twice or more in the individual's lifetime; and

7. In cases where a Recreational Marijuana Facility is involved in retail sales of marijuana items, such facility is located at least 1,000 feet from another Recreational Marijuana Facility that is engaged in retail sales of marijuana items. A Medical Marijuana Facility licensed by the Oregon Health Authority to sell limited marijuana retail products shall be considered a Recreational Marijuana Facility for the purposes of this requirement.

8. In cases where a Recreational Marijuana Facility is involved in retail sales of marijuana items, such facility is located at least 1,000 feet from an established child care facility identified and depicted on a map prepared by the City of

Newport titled "Child Care Facilities in the City of Newport.

B. For the purpose of determining the distance between marijuana retailers or a marijuana retailer and child care facility, to establish compliance with the requirements of section 4.20.040(A) of this Title, "within a 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property of an established marijuana retailer or child care facility and the closest point of the licensed premises.

C. In the event that a child care facility is established within 1,000 feet of a marijuana retailer for which a business license endorsement has been issued, the marijuana retailer located at that premises may remain at that location unless the City of Newport revokes the endorsement pursuant to section 4.20.055 of this Title.

D. A Medical Marijuana Facility licensed by the Oregon Health Authority to sell limited marijuana retail products as of January 7, 2016 that later becomes a marijuana retailer regulated by the Oregon Liquor Control Commission may be located within 1,000 feet of a child care facility.

E. The endorsement issued by the city must include at least the address or other location of the Medical or Recreational Marijuana Facility and the name of the Person Responsible for the Medical or Recreational Marijuana Facility.

F. If an application for a Medical or Recreational Marijuana Facility Endorsement is denied, the city will notify the applicant in writing of the denial and the reasons for the denial as provided in section 4.05.050B of this Title.

4.20.045 Endorsement Non-Transferable; Notification of Change in Person Responsible

A. A Medical or Recreational Marijuana Facility Endorsement is not assignable or transferable.

B. A Medical or Recreational Marijuana Facility Endorsement authorizes the operation of the Medical or Recreational Marijuana Facility only at the location displayed on the endorsement.

C. If the Medical or Recreational Marijuana Facility notifies a state agency of a change in the Person Responsible for the Medical or Recreational Marijuana Facility the Medical or Recreational Marijuana Facility shall concurrently notify the city of the change and shall apply for a new Medical Marijuana Facility Endorsement.

4.20.050 Inspection

A. The city may conduct a complaint inspection at any time following the receipt of a complaint that alleges that a Medical or Recreational Marijuana Facility is in violation of any of the terms of this chapter;

B. The city may conduct an inspection at any time city staff have reason to believe that a Medical or Recreational Marijuana Facility is in violation of any of the terms of this chapter; and

C. If an individual at a Medical or Recreational Marijuana Facility fails to permit city staff to conduct an inspection, the city may seek an administrative warrant authorizing the inspection.

4.20.055 Revocation

A. The City Manager may revoke a Medical Marijuana Facility Endorsement if:

1. The Person Responsible for the Medical Marijuana Facility knowingly makes a material false statement or omission in connection with the issuance of the endorsement; or

2. The Oregon Health Authority revokes the registration of the Medical Marijuana Facility to which the endorsement has been issued; or

3. The Medical Marijuana Facility transfers usable marijuana or immature plants to an individual who is not a patient or a designated primary caregiver

unless specifically authorized to do so by the Oregon Health Authority; or

4. The Medical Marijuana Facility accepts a transfer of usable marijuana or immature plants without a valid authorization from the patient; or

5. The Medical Marijuana Facility possesses a mature marijuana plant at the Medical Marijuana Facility; or

6. The Medical Marijuana Facility fails to notify the City Manager of a change in the Person Responsible for the Medical Marijuana Facility and to apply for a new Medical Marijuana Facility Endorsement; or

7. The Medical Marijuana Facility is in violation of any of the terms of the agreement required by section 4.20.025 of this chapter; or

8. City staff discover that the Person Responsible for the Medical Marijuana Facility or any employee of the Medical Marijuana Facility has been convicted in any state of the manufacture or delivery of a controlled substance designated in Schedule I or Schedule II of Title 21, Chapter II, Part 1308 of the Code of Federal Regulations:

   a. Once or more within the last five years; or

   b. Twice or more in the individual's lifetime.

B. The City Manager may revoke a Recreational Marijuana Facility Endorsement if:

1. The Person Responsible for the Medical Marijuana Facility knowingly makes a material false statement or omission in connection with the issuance of the endorsement; or

2. The Oregon Liquor Control Commission revokes the license of the Recreational Marijuana Facility to which the endorsement has been issued; or

3. The Recreational Marijuana Facility imports into this state or exports from this state any marijuana items (i.e. marijuana, cannabinoid products, cannabinoid concentrates, or cannabinoid extracts); or

4. The Recreational Marijuana Facility gives marijuana items as a prize, premium or consideration for lottery, contest, game of chance or game of skill, or competition of any kind; or

5. The Recreational Marijuana Facility sells, gives, or otherwise makes available any marijuana items to any person who is visibly intoxicated; or
6. The Recreational Marijuana Facility misrepresents any marijuana item to a customer or to the public; or

7. The Recreational Marijuana Facility is operated in a noisy, disorderly or insanitary manner or supplies adulterated marijuana items; or

8. The Recreational Marijuana Facility fails to notify the City Manager of a change in the Person Responsible for the Recreational Marijuana Facility and to apply for a new Recreational Marijuana Facility Endorsement; or

9. The Recreational Marijuana Facility sells any marijuana item through a drive up window; or

10. The Recreational Marijuana Facility is engaged in the delivery of marijuana to a consumer off the licensed premises except as permitted by OAR 845-025-2880; or

11. The Recreational Marijuana Facility is in violation of any of the terms of the agreement required by section 4.20.025 of this chapter; or

12. The Recreational Marijuana Facility sells or offers to sell a marijuana item that does not comply with the minimum standards prescribed by the stator laws of the State of Oregon; or

13. City staff discover that the Person Responsible for the Recreational Marijuana Facility or any

employee of the Recreational Marijuana Facility, whether paid or unpaid, is under the influence of intoxicants while on duty; or

14. City staff discover that the Person Responsible for the Recreational Marijuana Facility or any employee of the Recreational Marijuana Facility has been convicted in any state of the manufacture or delivery of a controlled substance designated in Schedule I or Schedule II of Title 21, Chapter II, Part 1308 of the Code of Federal Regulations:

    a. Once or more within the last five years; or

    b. Twice or more in the individual's lifetime.

C. If a Medical or Recreational Marijuana Facility Endorsement is revoked, the city will notify the licensee in writing of the revocation and the reasons for the revocation as provided in sections 4.05.060B of this Title, except that revocation of a Medical or Recreational Marijuana Facility Endorsement will take effect immediately upon revocation of the Medical Marijuana Facility's registration by the Oregon Health Authority or Recreational Marijuana Facility license by the Oregon Liquor Control Commission.

D. Notwithstanding section 4.05.060 of this Title, a business license with a Medical or Recreational Marijuana Facility Endorsement will not be revoked solely for violation of federal laws regarding the manufacture, delivery, or possession of marijuana if the conduct that violates federal law is allowed under state law.

4.20.060 Appeal

The decision by the City Manager to deny or revoke a Medical or Recreational Marijuana Facility Endorsement may be appealed to the City Council as provided in Section 4.05.075 of this Title. Appeal of the City Council's denial or revocation of a Medical or Recreational Marijuana Facility Endorsement shall be by writ of review filed in the Circuit Court of Lincoln County.

4.20.065 Violation

Violation of any of the provisions of this chapter is a civil infraction with a maximum penalty of $500.00. Each day during which a violation occurs constitutes a separate offense. Violations of separate provisions of this chapter constitute separate infractions. The penalties imposed by this section are in addition to and not in lieu of any other remedies available to the city.

(Chapter 4.20 was amended by Ordinance No. 2089 adopted on December 7, 2015; effective January 6, 2016.)

(Chapter 4.20 was added on the adoption of Ordinance No. 2069 on July 21, 2014; effective August 20, 2014.)

CHAPTER 4.25 SHORT-TERM RENTAL BUSINESS LICENSE ENDORSEMENTS

4.25.005 Purpose

A short-term rental business license endorsement is a permission to operate a short-term rental on property within the City of Newport. This chapter provides an administrative framework for licensing the annual operation of a short-term rental, in order to ensure the safety and convenience of renters, owners, and neighboring property owners; protect the character of residential neighborhoods; protect the City's supply of needed housing; and address potential negative effects such as excessive noise, overcrowding, illegal parking, and nuisances (e.g. accumulation of refuse, light pollution, etc.).

It is the intent of these regulations to strike a reasonable balance between the need to limit short-term rental options within neighborhoods to ensure compatibility, while also recognizing the benefits of short-term rentals in providing recreation and employment opportunities, as well as transitional housing for tourists, employees of businesses, and others who are in need of housing for a limited duration.

4.25.010 Definitions

The following definitions apply in this chapter.

A. Authorized Agent. A property management company or other entity or person who has been designated by the owner to act on their behalf. An authorized agent may or may not be the designated point of contact for complaints.

B. Bed and Breakfast Facility. A short-term rental where the operator resides on the premises and meals are provided for a fee.

C. Bedroom. A habitable room that (a) is intended to be used primarily for sleeping purposes; (b) contains at least 70-square feet; and (c) is configured so as to take the need for a fire exit into account.

D. Dwelling Unit. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

E. Home share. A short-term rental, other than a bed and breakfast facility, where a portion of a dwelling unit is rented while the homeowner is present. For the purposes of this definition, "present" means the homeowner is staying in the dwelling overnight for the duration of the rental.

F. Owner. Means the natural person(s) or legal entity that owns and holds legal or equitable title to the property.

G. Short-Term Rental. A dwelling unit, or portion thereof, that is rented to any person for a period of less than thirty (30) consecutive nights.

H. Sale or Transfer. Means any change of ownership during the period of time that a license is valid, whether or not there is consideration, except:

1. A change of ownership in real property where title is transferred pursuant to a declaration of right of survivorship as recognized in ORS 93.180.

2. A transfer of ownership in real property to a trust, a limited liability company, a corporation, a partnership, a limited partnership, a limited liability partnership, or other similar entity so long as the conveyance does not result in any new individuals possessing titled or equitable interest in the property.

3. A transfer of ownership between titled interest holders.

4. A transfer of ownership between, or to include spouses, domestic partners, or children.

Examples: The following scenarios serve as examples of some, but not all, of the types of

transactions that will or will not constitute a sale or transfer as defined in this chapter:

- Title is held by a married couple or domestic partnership at the time the license is obtained. Partner dies and survivor retains license? This would not constitute a sale or transfer (Exception H.1).

- An individual owns a parcel subject to a declaration of right-of-survivorship to their children at the time a license is obtained. The individual dies and title is transferred pursuant to that provision? This would not constitute a sale or transfer (Exception H.1).

- Married couple possesses title to property at time license is obtained. They later elect to convey property into an irrevocable trust and retain a life estate in the deed? This would not constitute a sale or transfer (Exception H.2).

- A corporation consisting of three shareholders owns a parcel at the time a license is obtained. They later convert the corporation to a limited liability company controlled by two of the original three shareholders? This would not constitute a sale or transfer (Exceptions H.2. and H.3).

- A limited liability company is formed with four individuals possessing ownership interest at the time a license is obtained. A fifth person later obtains an ownership interest in the company? This would constitute a sale or transfer.

- Four tenants in common own a parcel at time license is obtained. An owner sells their 1/4 interest to one of the other existing owners? This would not constitute a sale or transfer (Exception H.3.) Alternatively, what if they sell their 1/4 interest to a new person? That would constitute a sale or transfer.

- Title is held by a married couple at time license is obtained. They later acquire a home equity line of credit to repair the home, which lender secures with a deed of trust. Lender subsequently

forecloses after a default under the term(s) of the security agreement? The instrument the lender uses to obtain possessory interest is a sale or transfer.

- Two married couples possess ownership interest in an LLC at the time a license is obtained. One of the couple's divorces and one of the partners drops off the title. Remaining partner remarries and the new spouse is added to the LLC? This is not a sale or transfer (Exception H.4).

- Property is held by an individual at time license is obtained. The individual dies and children inherit property (no right of survivorship)? This would not constitute a sale or transfer (Exception H.4).

- An individual possesses title to the property at the time a license is obtained. He/she later adds their domestic partner to the title to the property? This would not constitute a sale or transfer (Exception H.4).

I. Vacation Rental. A short-term rental where the entire dwelling unit is rented.

4.25.015 Annual Short-Term Rental Business License Endorsement Required

No owner of property within the Newport city limits may advertise, offer, operate, rent or otherwise make available for occupancy or use a short-term rental without a business license with a short-term rental endorsement. Advertise or offer includes through any media, whether written, electronic, web-based, digital, mobile or otherwise.

4.25.020 Application Information and Filing Fee

A. Applications for short-term rental business license endorsements are to be on forms provided by the City, and shall include the following:

1. Owner Information. Owner's name, permanent residence address, telephone number, email

address (if available) and short-term rental address and telephone number. In circumstances where the owner is a legal entity, a copy of the articles of organization or equivalent shall be provided identifying ownership interest holders in the short-term rental property.

2. Authorized Agent. The name, telephone number, mailing address and email of a property management company or other entity or person who has been designated by the owner to act on their behalf.

3. Representative Information. The name, telephone number, mailing address and email of a local representative who can be contacted concerning use of the property or complaints related to operation of the short-term rental. For the purposes of this requirement, local means the representative's address is within 30 minutes travel time of the subject property.

4. Liability Insurance. Letter of intent to insure (for new applications) or certificate of insurance (for renewals) establishing that the owner will have, or has, liability insurance which expressly covers the vacation rental operations on the subject property in the amount of $1,000,000 combined single limit for bodily injury and property damage. Where letters of intent to insure are provided, certificate of insurance shall be submitted to the city prior to use of the unit as a short-term rental.

5. Land Use Authorization. A land use compatibility statement, signed by the Community Development Director or designee and that is current within 90-days, indicating that the short-term rental satisfies the land use standards for short-term rentals listed in NMC Chapter 14.25.

6. Occupancy. Occupancy limits and number of bedrooms (as specified in the Land Use Authorization).

7. Parking. Statement that required off-street parking spaces are available, with a photo(s), dated within the last 90 days, of interior and

exterior parking spaces. A site plan including a parking diagram of the parking spaces shall also be provided.

8. Proof of Residential Use (for Home shares and Bed and Breakfast Facilities). At least two of the following items shall be submitted as evidence that the dwelling is the primary residence of the owner.

   a. A copy of the voter registration
   b. A copy of an Oregon Driver's License or Oregon Identification Card
   c. A copy of federal income tax return from last tax year (page one only and financial data should be redacted)

9. Good Neighbor Guidelines. Written acknowledgement that a copy of the good neighbor guidelines has been reviewed and relayed to short-term rental tenants, by incorporating it into the rental contract, including it in the rental booklet, posting it online, providing it in a conspicuous place in the dwelling unit, or a similar method.

10. Listing Number. For renewals, the listing numbers or website addresses of where the short-term rental advertises.

11. Fire Safety. Completed checklist identifying that the unit complies with the fire safety standards listed in NMC 4.25.030(C)(5).

12. Structural Safety. Completed checklist identifying that the unit complies with the Structural safety standards listed in NMC 4.25.030(C)(6).

13. Waste Management. Proof of garbage service as required in NMC 4.25.030(D)(10).

14. Other Requirements. Such other information as the City Manager or designee deems reasonably necessary to administer this chapter.

B. Incomplete Application. If a license application does not include all required materials, the application will

be considered incomplete and the City will notify the applicant, in writing, explaining the information required. If the applicant provides the missing required information within 30 calendar days of the date of the notice, the application will be reviewed. If the applicant does not provide the required information, the application will be deemed withdrawn and the City will refund the application fee.

C. License Fee. The fee for the application of a short-term rental business license endorsement, and any of its components requiring city action, shall be established by resolution of the City Council.

4.25.025 Term of Annual Business License Endorsement and Transferability

A. Term. A short-term rental business license endorsement shall be issued for a period of 12-months, effective July 1st of each year, and may be renewed annually by the owner provided all applicable standards of this chapter are met.

B. Transferability. The business license endorsement shall be issued in the name of the owner(s) and is not transferable.

4.25.030 Business License Endorsement and Endorsement Renewal

A. Endorsement Must Be Obtained. An endorsement to a business license for a short-term rental shall be obtained and renewed as required in this section. The ability to operate a short-term rental in the City of Newport shall be discontinued for failure to obtain or renew an endorsement to operate as provided in this chapter.

B. Application and Renewal Application Process. A person engaging in a short-term rental who has not yet obtained a business license endorsement, or who is required to renew an existing endorsement, shall do so as follows:

1. Time of Application.

a. Existing Non-Conforming Short-Term Rentals. A business license endorsement renewal application completed in accordance with the

provisions of NMC 4.25.020, is due on July 1, 2019 and annually every year thereafter.

b. New Short-Term Rentals. A business license endorsement for a short-term rental shall be obtained before beginning operations. Endorsement applications, completed in accordance with the provisions of NMC 4.25.020, may be submitted and issued at any time. The endorsement may be renewed annually thereafter on July 1st of each year.

2. Notice. On or about July 1 of each year, the City shall send notice to owners of property with short-term rental endorsements informing them that the endorsement must be renewed no later than August 15 of each year and that failure to do so will result in expiration of the endorsement. Notice shall be sent by first-class mail to the address the owner provided with the endorsement on file with the City.

3. Expiration of Endorsement. Failure of an owner to renew an endorsement by August 15 shall result in expiration of the endorsement, and the ability of the owner to operate shall be conclusively presumed to be discontinued with no further action by the City.

C. Approval Standards.

The owner or authorized agent has the burden of proof to demonstrate compliance with standards for the approval or renewal of an endorsement. The approval standards also serve as continuing code compliance obligations of the owner. To receive approval, an owner or authorized agent must demonstrate that the approval standards listed below have been satisfied:

1. Zoning. The property is in compliance with requirements of NMC Chapter 14.25.

2. Contact Information. The owner or authorized agent has provided information sufficient to verify a qualified person will be available to be contacted about use of the short-term rental during and after

business hours. The qualified person shall be available to be contacted by telephone to ensure a response to the short-term rental address at all hours (24 hours a day, seven days a week) while the dwelling unit is occupied for rent. The qualified person must be able to reach the premises within 30 minutes. The individual identified as the "qualified person" may be changed from time to time throughout the term of a license. To do so, the license information shall be revised with the city at least 14-days prior to the date the change takes effect, except when the failure to do so is beyond the owner or authorized agent's control. In an emergency or absence, contact forwarding information to a qualified person should be provided by the owner or authorized agent. In the case of home shares, the contact person shall be the permanent resident who will be hosting the transient accommodations.

3. Notice to Neighbors. The owner or authorized agent of a vacation rental shall post a non-illuminated sign on the premises, between 1 and 2 square feet in size, containing the owner and/or representatives contact information. Such sign shall be placed in a location clearly legible, from an adjacent street. In the event the City establishes a 24/7 hotline for dispatching calls to operators of short-term rentals, then the contact information contained on the placard or sign shall be that of the firm providing the dispatch service. For vacation rentals in condominiums, the number and placement of signs shall be as specified by the City.

(Chapter 4.25.030(C)(3) was amended by Ordinance No. 2168 adopted on June 29, 2020; effective June 30, 2020.)

4. Electronic Availability. The City will make a database electronically accessible within which any person can enter in an address of a short-term rental and obtain the owner, authorized agent, and/or representative's name, telephone number, and email address.

5. Fire and Emergency Safety. A completed checklist for fire safety (fire extinguishers, smoke alarms, carbon monoxide detectors, unobstructed

exits, etc.) shall be required with each new endorsement and renewal. The owner or authorized agent shall be responsible for completing the fire safety checklist and ensuring continued compliance. Verification by the City of Newport Fire Marshall shall be required prior to issuance of a new endorsement and may be required for renewals at the City Manager's discretion.

6. Structural Safety. A completed checklist, signed by the City of Newport Building Official, indicating that the short-term rental has been inspected and complies with the building safety standards listed below. Such checklist shall be completed prior to issuance of a new endorsement and may be required for renewals at the City Manager's discretion.

    a. Bedrooms shall have an operable emergency escape window or exterior door with a minimum opening size of 5.7 sq. ft. (5.0 sq. ft. at grade floor), with minimum net clear dimensions of 20-inches in width and 24-inches in height and having a sill height not more than 44-inches above the finished floor.

    b. All stairs with 4 or more risers shall have a handrail on at least one side. Handrails shall be secure, continuous, and have returns at each end.

    c. The open sides of stairs, decks, porches or other walking surfaces more than 30-inches above grade or the floor below shall have guardrails configured such that a 4-inch sphere cannot pass through.

    d. Windows within a 24-inch arc of doors and glass within bathtub or shower enclosures shall be safety glazed, or have an equivalent means of protection.

    e. Wood frame decks shall be structurally sound. In cases where a deck supports a hot tub or other features of a similar size and weight,

engineering analysis of the supports may be required.

f. Electrical plug-ins and light switches shall have faceplates.

g. Electrical breaker boxes shall have all circuits labeled, and empty breakers spaces must be plugged.

h. GFCI (Ground Fault Circuit Interrupter) protection shall be provided for exterior outlets, kitchens, garages, laundry areas, and bathroom receptacles.

i. Functioning smoke detectors shall be installed in all bedrooms and outside each bedroom in hallways or other rooms providing access to bedrooms, and on each story including basements. Such alarms shall be installed in compliance with State Fire Marshal Rules and any applicable requirements of the State Building Code, and there shall be available in the premises a written notice containing instructions for testing the alarms.

j. Functioning carbon monoxide alarms shall be installed if the unit (a) contains a heater, fireplace, appliance or cooking source that uses coal, kerosene, petroleum products, wood or other fuels that emit carbon monoxide as a by-product of combustion; or (b) includes an attached garage with an opening that communicates directly with a living space. Such alarms shall be installed in compliance with State Fire Marshal Rules and any applicable requirements of the State Building Code, and there shall be available in the premises a written notice containing instructions for testing the alarms.

k. Water heaters shall be strapped and secured in accordance with seismic protections standards, with a TEP (Temperature and Pressure Relief) line that is run to an approved location.

l. A 2A10BC fire extinguisher shall be provided on each floor.

m. Address numbers shall be posted and visible from the street.

n. Any violation of applicable codes that the Building Official determines to be hazardous shall be corrected prior to use of the dwelling as a vacation rental.

7. Proof of Use. For vacation rental renewals, room tax remittance records must show that the unit has been rented at least 30 days within the 12-month fiscal year. The City Manager may reduce the required number of rental days, or set aside this provision entirely, in circumstances where a vacation rental, or group of rentals, cannot be rented for reasons beyond the control of the vacation rental owner.

(Chapter 4.25.030(C)(7) was amended by Ordinance No. 2168 adopted on June 29, 2020; effective June 30, 2020.)

8. Room Tax Compliance. The unit shall be in compliance with room tax requirements of Chapter 3.05 of the Newport Municipal Code.

9. Violations. A short-term rental business license endorsement that is revoked shall not be renewed. An owner whose endorsement has been revoked shall not be eligible to reapply for a new endorsement for a period of two years.

D. Ongoing Operational Requirements

1. Complaints. The owner or representative shall respond to neighborhood complaints within one hour and shall maintain a written record of complaints, the dates they were received, and efforts taken to resolve issues that have been raised. The written record shall be provided to the City upon request.

2. Guest Registry. Owner or designee shall maintain a guest and vehicle register for each tenancy. The register shall include the name, home address, and phone number of the primary tenant; the total

number of occupants; vehicle license plate numbers of all vehicles used by the tenants, and the date of the rental period. This information shall be provided to emergency responders, and city finance and code compliance personnel when requested for enforcement or audit purposes. Guest registry information is to be treated as confidential to the extent allowed by law.

3. Mandatory Postings. The short-term rental business license endorsement issued by the City shall be displayed in a prominent location within the interior of the dwelling adjacent to the front door. The endorsement will contain the following information:

    a. A number or other identifying mark unique to the short-term rental endorsement which indicates that it was issued by the City of Newport, with date of expiration.

    b. The name of the owner and authorized agent and a telephone number where the owner and authorized agent may be contacted.

    c. The property address.

    d. The number of approved parking spaces.

    e. The maximum occupancy permitted for the short-term rental.

    f. Any required information or conditions specific to the operating license.

    g. The City of Newport official logo.

4. Emergency Information. Owner or designee shall provide information within the dwelling unit to inform and assist renters in the event of a natural disaster, power outage, or other emergency. Required information includes, but is not limited to:

    a. A tsunami evacuation map produced by Lincoln County Emergency Services, Oregon

Department of Geology and Mineral Industries or other agency with similar authority.

b. Phone numbers and addresses for emergency responders and utility providers.

c. Other information as established by resolution of the City Council.

5. Noise. Noise levels shall conform to the requirements of Chapter 8.15 of the Newport Municipal Code.

6. Nuisance. The short-term rental shall not be used in a manner that creates a public nuisance as defined in Chapter 8.10 of the Newport Municipal Code.

7. Required Parking. Off-street parking spaces approved for short-term rental use shall be available and are to be used by tenants at all times that the unit is rented. A parking diagram illustrating the location of the approved parking spaces shall be provided to tenants and be available in a prominent location within the short-term rental dwelling.

8. Occupancy. Maximum occupancy shall be limited to that which is specified in the Land Use Authorization.

9. Landscaping. Where the Land Use Authorization indicates landscaping is such landscaping shall be maintained. Changes may be made to the type and location of required landscaping as long as 50% of the front yard, and 40% of the total lot area remains landscaped.

10. Solid Waste Management. Weekly solid waste disposal service shall be provided while the dwelling is occupied as a short-term rental. The owner or authorized agent shall provide for regular garbage removal from the premises, and trash receptacles shall be stored or screened out of plain view of the street. City may require that an owner or authorized agent utilize solid waste collection valet service in circumstances where

there have been verified complaints that a short-term rental is not adhering to these requirements. For the purpose of this section, valet service means the collection driver retrieves the cart from where it is stored, rolls it out for service, and then places it back in its original location.

11. Liability Insurance. Liability insurance is required that expressly covers vacation rental operations on the subject property in the amount of $1,000,000 combined single limit for bodily injury and property damage.

12. Group Events. Company retreats, weddings, rehearsal dinners, family reunions and similar gatherings are permitted on the premises of a short-term rental during periods of transient use provided the total number of individuals does not exceed occupancy limits at any time during the rental period.

4.25.035 Inspections

Dwelling units for which a short-term rental business license endorsement is being sought, or has been obtained, shall be subject to initial inspection, and periodic re-inspection, by the City to ensure compliance with the provisions of this chapter. The timeframe for such inspections is subject to the City's discretion and available resources.

4.25.040 Appeals

A decision on a new short-term rental business license endorsement application, renewal of an endorsement, or the revocation of an endorsement may be appealed as provided in NMC 4.05.075.

4.25.045 Violations

Penalties, as specified in section 4.25.050, shall be imposed for one or more of the following violations:

A. Advertising; renting; using; or offering for use, occupancy or rent; a short-term rental where the owner does not hold a valid endorsement issued pursuant to this section.

B. Advertising; renting; using; or offering for use, occupancy or rent; a short-term rental in a manner that does not comply with the endorsement requirements of NMC Chapter 4.25.

C. Failure to comply with the endorsement standards and operational requirements of NMC Chapter 4.25.

D. Failure by the owner to pay the transient room tax required by NMC Chapter 3.05.

E. Failure of the owner or owner's representative to respond to tenant, citizen or City complaints or inquiries. "Failure to respond" occurs if City staff is unable to reach the owner or designated representative after three attempts within a 48-hour period, using the information that the owner or designee has on file with the City.

4.25.050 Penalties

Penalties for a violation of subsection 4.25.045(A) shall be a civil infraction to be enforced pursuant to the provisions listed in NMC Chapter 2.15. Where the owner possesses a valid short-term rental endorsement, the penalties for violations of subsections 4.25.045(B-E) shall be as follows:

A. For the first violation within a 12-month period, City shall issue a written warning to owner.

B. For the second violation within a 12 month period, City shall suspend owner's short-term rental endorsement for 30 days.

C. For the third violation within a 12-month period: 1) City shall revoke owner's short-term rental endorsement; and 2) where an endorsement includes a Conditional Use Permit, city shall also initiate the revocation procedure as outlined under section 14.52.150.

(Chapter 4.25 was enacted by Ordinance No. 2144, adopted on May 6, 2019: effective May 7, 2019.)

CHAPTER 4.30 SINGLE-USE PLASTIC CARRYOUT BAGS

4.30.010 Definitions

A. Garment bag. A large bag that incorporates a hanger on which garments may be hung to prevent wrinkling during travel or storage.

B. Recycled paper checkout bag. A paper bag that contains at least 40 percent post-consumer recycled fiber.

C. Restaurant. An establishment where the primary business is the preparation of food or drink:

1. For consumption by the public;

2. In a form or quantity that is consumable then and there, whether or not it is consumed within the confines of the place where prepared; or

3. In consumable form for consumption outside the place where prepared.

D. Retail establishment. A store that sells or offers for sale goods at retail and that is not a restaurant.

E. Reusable fabric checkout bag. A bag with handles that is specifically designed and manufactured for multiple reuse and is made of cloth or other machine-washable fabric.

F. Reusable plastic checkout bag. A bag with handles that is specifically designed and manufactured for multiple reuse and is made of durable plastic that is at least four mils thick.

G. Single-use checkout bag. A bag made of paper, plastic, or any other material that is provided by a retail establishment to a customer at the time of checkout, and that is not a recycled paper checkout bag, a reusable fabric checkout bag, or a reusable plastic checkout bag.

Single-use checkout bag does not mean:

1. A bag that is provided by a retail establishment to a customer at a time other than the time of checkout, including, but not limited to, bags provided to:

   a. Package bulk items such as fruit, vegetables, nuts, grains, greeting cards, or small hardware items, including nails, bolts, or screws;

   b. Contain or wrap frozen food, meat, fish, flowers, a potted plant or another item for the purpose of addressing dampness or sanitation;

   c. Contain unwrapped prepared food or a baker good; or

   d. Contain a prescription drug.

2. A newspaper bag, door hanger bag, garment bag, laundry bag or dry cleaning bag; or

3. A bag sold in a package containing multiple bags for uses such as food storage, garbage containment, or pet waste collection.

4.30.020 Regulations

A. Except as provided in subsection B. of this Section, a retail establishment may not provide:

1. Single-use checkout bags to customers.

2. Recycled paper checkout bags, reusable fabric checkout bags or reusable plastic checkout bags to customers unless the retail establishment charges not less than five cents for each recycled

paper checkout bag, reusable fabric checkout bag, or reusable plastic checkout bag.

B. A retail establishment may provide:

1. Reusable fabric checkout bags at no cost to customers as a promotion on 12 or fewer days in a calendar year.

2. Recycled paper checkout bags or reusable plastic checkout bags at no cost to customers who:

a. Use a voucher issued under the Women, Infants, and Children Program established under ORS 413.500.

b. Use an electronic benefits transfer card issued by the Department of Human Services.

C. Except as provided in subsection D. of this Section, a restaurant may not provide:

1. Single-use checkout bags to customers.

2. Reusable plastic checkout bags to customers unless the restaurant charges not less than five cents for each reusable plastic checkout bag.

D. A restaurant may provide:

1. Recycled paper checkout bags at no cost to customers.

2. Reusable plastic checkout bags at no cost to customers who use an electronic benefits transfer card issued by the Department of Human Services.

4.30.030 Violations and Penalties

A violation of any provision of this Chapter shall be a civil violation, and subject to the following penalties:

A. A first violation in a calendar year will result in a written warning.

B. The maximum fines for subsequent violations shall be:

1. $100 for the first violation after the written warning in any calendar year; and

2. $250 for a second or any subsequent violation after the written warning in any calendar year.

(Chapter 4.30 was amended by Ordinance No. 2159, adopted on January 6, 2020: effective on January 1, 2020.)

TITLE V PUBLIC WORKS AND UTILITIES

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. Change of Service. 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. Temporary Service. 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. Council-Imposed Restrictions. The City Council may impose or modify restrictions on the use of water obtained from the city.

B. City Manager-Imposed Restrictions. 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 sub-basins 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. On-Site Mitigation Control System 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. Person Responsible 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. Stormwater means water from precipitation, surface, or subterranean water from any source, drainage and nonseptic waste water.

G. Stormwater System 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. City Stormwater System means the portions of the stormwater system in public rights of way, within easements in favor of the city, or on city property.

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

H. Stormwater Service 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

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 or not the vehicle must be licensed under state law.

J. Park. To leave a vehicle unoccupied, whether or 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 wheel 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 Limited in Certain Areas

When signs are erected in any block, or within any public parking lot, limiting permissible parking time, no person shall park a vehicle within the block, or parking lot, for

longer than the time posted on the sign. Movement of a vehicle to a parking space on either side of the same street within the area between the intersections at each end of the block shall not extend the time limits for parking. Movement of a vehicle to another parking space within the same parking lot shall not extend the time limits for parking. After a vehicle has been moved from the posted block, or parking lot, for more than one hour, a new time limitation shall apply.

6.15.050 Parking Permits

The City Manager may put in place a program for issuing parking permits to reserve public right-of-way areas for use by designated parties. Parking permits may apply in timed parking areas, or elsewhere depending upon the specifications of the permit.

A. Parking permits are to be displayed on a vehicle in the manner specified on the permit, and shall include a description of the authorized activity, license number of the benefited vehicle, and the date or dates within which the permit is effective.

B. Permit holders and permitted vehicles are subject to all traffic laws and regulations not explicitly superseded by the permit.

(Chapter 6.15.050 was added by the adoption of Ordinance No. 2035, adopted on April 16, 2012; effective May 16, 2012. Ordinance No. 2035 renumbered the following two sections of this chapter of the NMC.)

6.15.055 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.

6.15.060 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.

6.15.070 Citation on Illegally Parked Vehicle

Whenever a vehicle without an operator is found parked in violation of a restriction imposed by this Chapter, the officer finding the vehicle shall take its license number and any other information displayed on the vehicle which may identify its owner, and shall conspicuously affix to the vehicle a traffic citation for the operator to answer to the charge against the owner, or pay the penalty imposed within seven days during the hours and at the place specified on the citation.

6.15.080 Registered Owner Presumption

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

6.15.090 Failure to Comply with Traffic Citation Attached to a Parked Vehicle

If the operator does not respond to a traffic citation affixed to such vehicle within a period of ten days, the Municipal Court may send to the registered owner of the vehicle, to which the traffic citation was affixed, a letter informing them of the violation and warning them that, any fine associated with the traffic citation is subject to an increase based on the number of days the traffic citation remains unpaid, and based on the city's master fee schedule set by Council resolution.

6.15.100 Penalty

Penalties for violation of this Chapter are set by Council resolution and contained in the city's master fee schedule. Penalties assessed in a traffic citation for a violation of the provisions of this Chapter shall be imposed unless the Municipal Court finds reasonable grounds exist for either increasing or reducing the penalties.

(Chapters 6.15.045, 6.15.070, 6.15.080, 6.15.090, and 6.15.100 was enacted by Ordinance No. 2145, adopted on February 19, 2019; effective February 19, 2019.)

CHAPTER 6.20 CITY PARKING LOTS

6.20.005 Parking in City-Owned Parking Lots

Vehicles may park in marked spaces in city-owned parking lots, subject to compliance with authorized signs limiting the allowable time for parking in the city-owned parking lot. The maximum amount of time a vehicle shall be parked in a city-owned parking lot is 16 hours. Vehicles parking in city-owned parking lots in violation of the posted time limits, or other posted regulations, may be towed, subject to the same restrictions applicable to towing of vehicles from private parking lots.

(Chapter 6.20.005 was enacted by Ordinance No. 2145, adopted on February 19, 2019; effective February 19, 2019.)

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.

6.35.040 Unlawful Transfer of Material Goods from a Vehicle on a Street or Public Right-of-Way to a Pedestrian on a Public Sidewalk or Public Right-of-Way

A. A person commits the offense of unlawful transfer on a street or public right-of-way if the person:

1. While a driver or passenger in a vehicle on a street or public right-of-way within the boundaries of the City of Newport, gives or relinquishes possession or control of, or allows another person in the vehicle to give or relinquish possession or control of any tangible personal property,

including but not limited to food and money, to a pedestrian on a public sidewalk or public right-of-way; or

2. While a pedestrian on a street or public right-of-way within the boundaries of the City of Newport, gives or relinquishes possession or control of any tangible personal property, including but not limited to food and money, to a driver or passenger in a vehicle on a street or public right-of-way; or

3. While a driver or passenger in a vehicle, accepts, receives, or retains possession or control of any tangible personal property, including but not limited to food and money, from a pedestrian on a street or public right-of-way within the boundaries of the City of Newport; or

4. While a pedestrian, accepts, receives, or retains possession or control of any tangible personal property, including but not limited to food and money, from a vehicle on a street or public right-of-way within the boundaries of the City of Newport.

B. This subsection does not apply if the vehicle is legally parked. This subsection also does not apply to persons participating in a "Pedestrian Activity," as defined in OAR 734 Division 58, for which a permit has been issued by the Oregon Department of Transportation, provided that all terms of such permit are being met.

C. Any person found violating this subsection shall be guilty of committing a traffic violation punishable by a fine not to exceed $50.00.

(6.35.040 added by Ordinance No. 2122, adopted on October 15, 2018; effective November 14, 2018.)

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

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 recyclable and mixed compostable materials.

B. Compost or Composting: The controlled biological decomposition of compostable material or the product resulting from such process.

C. Compostable Material: Yard debris, food waste, and food soiled paper when source-separated for composting; but does not include food-soiled paper containing plastic or any other material that inhibits controlled biological decomposition.

D. 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.

E. Disposal. The disposition of solid waste at a permitted solid waste handling facility.

F. 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.

G. Food-soiled Paper. Paper products that have been in contact with food or food waste to the degree that they would not be able to be recycled into new paper

products. Food-soiled paper includes, but is not limited to, used paper table covers, used napkins, pizza boxes, coffee filters, and waxy corrugated cardboard. Food-soiled paper does not include unsoiled cardboard, paperboard, newspaper or office paper.

H. Food Waste. Waste from meats, fish, shellfish, grains, fruits, and vegetables which attends or results from the storage, preparation, cooking, handling, selling, or serving of food for human consumption. Food waste includes, but is not limited to, excess, spoiled, or unusable food or dairy products, meats, fish, shellfish, grains, fruits, vegetables, breads and dough, incidental amounts of oils and meats which are collected for rendering, fuel production, or other reuse applications. Food waste does not include dead animals or animal excrement.

I. Franchisee. The person granted the franchise under Section 7.05.015, as well as authorized subcontractors and agents of the franchisee. .

J. Hazardous Waste. Any wastes regulated as hazardous wastes under state law.

K. Mixed Recycling and Mixed Compostables. The process where two or more types or recyclable or compostable materials are collected together (i.e., not separated) in a combination allowed by the city, and in accordance with Oregon Department of Environmental Quality regulations.

L. Person. An individual, partnership, association, corporation, trust, firm, estate or other private or public legal entity or agency.

M. Recyclable Material. Any material or group of materials that can be recycled.

1. Recyclable Material. Recyclable material that the franchisee is required to collect from customers. The resolution after consultation with the Franchisee. The following materials collected from a residential source are recyclable materials: used motor oil, newspaper, aluminum, corrugated cardboard, and tin cans. The following materials

collected from a commercial source are recyclable materials: Ferrous metal, nonferrous metal, used motor oil, corrugated cardboard, tin cans.

2. Depot-Recyclable Material. All recyclable material and container glass.

N. Recycling and Mixed Compostable Service. The collection, handling, and disposition of recyclable and mixed compostable materials. Recycling and mixed compostable service includes collection of recyclables and mixed compostables.

O. Resource Recovery. The process of obtaining useful material or energy resources from solid waste, including energy recovery, materials recovery, recycling, composting, or reuse of solid waste.

P. Service. Collection service, recycling service, mixed compostable service, and resource recovery.

Q. 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; mixed compostables, 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 if such materials are properly prepared for recycling.

5. Source separated used materials that are sold for fair market value for recycling or reuse.

R. Solid Waste Management. The business of collection, transportation, storage, treatment, utilization, processing, disposal, recycling, composting, and resource recovery of solid waste.

S. Source. The person last using recyclable, compostable, 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, to be processed as mixed compostables, or to be recycled; or the owner of a building that becomes construction debris.

T. 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.

U. Yard Debris. All vegetative waste generated from property maintenance and/or landscaping activities, including, but not limited to, grass clippings, leaves, hedge trimmings, and small tree branches, but excluding tree stumps and other similar bulky woody materials.

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, mixed composting, 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, recycling, or mixed compostable 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, recycling, or mixed compostable container set out for manual collection shall exceed 60 pounds gross loaded weight. No garbage, recycling or mixed compostable container set out for mechanical nuisance collection shall exceed the manufacturer's maximum recommended weight.

2. Sunken refuse cans or containers shall not be used.

3. All customers will be provided with containers for solid waste, recycling, and mixed compostables 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, recycling, and mixed compostable containers for collection at agreed upon location, if service is “curbside” then location will be the curb or fog line.

6. The customer shall set out garbage, recycling, and mixed compostable 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, recyclables, or mixed compostables placed out for collection, resource recovery, mixed composting, or recycling except the person so placing the materials 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 collections, 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.

(Chapter 7.05 was adopted by Ordinance No. 2067 on July 7, 2014; effective August 6, 2014.)

(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 VIIINUISANCES AND OFFENSES

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.

E. No person shall scatter or deposit any food or other attractants on public or private property with the intent of attracting and/or feeding wild animals, including, but not limited to, bears, raccoons, coyotes, cougar, and deer. This subsection does not apply to birdseed held in receptacles that are reasonably designed to avoid access by wild animals as described above.

(Section 8.10.030 (E) adopted by Ordinance No. 2141 on October 1, 2018; effective October 31, 2018)

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 top of the curb, or where no curb exists, from the street centerline grade. Vegetation, walls, fences, or structures that obstruct vision constitute a safety hazard if they are within a clear vision area pursuant to Chapter 14.17 of the Newport Municipal Code.

(8.10.060(D) enacted by Ordinance No. 2054, adopted on June 3, 2013; effective June 13, 2013.)

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.

D. The city may, at its discretion, remove dead, decaying, or unsafe trees or tree limbs on city owned or controlled property, including rights-of-way and easements, where the vegetation presents a safety hazard to the public or adjacent property.

(Section 8.10.160 was adopted by Ordinance 2154 on September 3, 2019; effective October 3, 2019.)

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.

E. 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 8.12 RECEIVERSHIP

8.12.010 Purpose and Scope

The purpose of this Chapter is to establish authority and procedures for the use of the Oregon Housing Receivership Act (ORS 105.420 to 105.455), and shall apply to all residential property.

8.12.015 Integration

The Oregon Rules of Civil Procedure, and Uniform Trial Court Rules, as amended hereafter, shall apply to all judicial proceedings authorized hereby, including matters related to the applications, petitions, orders, and judgments necessary and useful for the accomplishment of the purposes described herein.

8.12.020 Authority

A. When the City Manager finds that any residential property is in violation of provisions of the Newport Municipal Code, and believes that a violation is a threat to public health, safety, or welfare, the City Manager may apply to a court of competent jurisdiction for the appointment of a receiver to perform an abatement. As used in this Chapter, abatement shall mean the demolition or removal or correction of any condition at a property that violates any provision of the Newport Municipal Code as well as the making of other improvements or corrections as are needed to rehabilitate the property or structure.

B. In administering the provisions of this Chapter, the City Manager's authority shall include, but is not limited to:

1. The selection of properties;

2. The selection of appropriate receivers; and

3. The establishment of written rules and procedures as are deemed necessary or useful for the administration of this Chapter.

8.12.030 Selection of Properties

In identifying properties where the city may seek appointment of a receiver, the City Manager shall consider those properties that have, at a minimum, the following characteristics:

A. A violation of any provision of the Newport Municipal Code that threatens the public health, safety, or welfare.

B. The owner has not acted in a timely manner to correct the violations; and

C. Abatement of the violations on this property would further the Housing Goals, Policies, and Implementation Measures of the City of Newport as articulated in the City's Comprehensive Plan.

8.12.040 Notice to Interested Parties and Application

A. At least 60 days prior to the filing of an application for appointment of a receiver, the City Manager shall cause a notice to be sent by regular mail to all interested parties of record in the subject property.

B. The notice shall give the date upon which the city has the right to apply to a court of competent jurisdiction for the receiver, and in addition shall:

1. State the address and legal description of the property;

2. List the code violations which give rise to the proposed application; and

3. Give the name, address, and telephone number of an officer or official of the city who can provide additional information concerning the violations and their remedy.

C. If no interested party has taken any action to foreclose their security interest, or taken other significant actions to cure the identified violation(s), within 60 days of the date of the notice, the City Manager may thereafter apply for the appointment of a receiver.

8.12.050 Selection of Receivers

In selecting specific receivers, the City Manager shall choose a Housing Authority, a city department, an urban renewal agency, or a private not-for-profit corporation, the primary purpose of which is the improvement of housing conditions within the city. In making the selection, the City Manager shall consider, at a minimum, the following:

A. The location of the property relative to other properties owned or managed by the receiver.

B. The receiver's experience in rehabilitating and managing similar types of property.

C. The receiver's capacity to take on additional property management responsibilities.

8.12.060 Powers of a Receiver

A receiver appointed by the court pursuant to the Oregon Housing Receivership Act shall have all lawful authority to do any or all of the following, including without limitation, unless specifically limited by the court:

A. Take possession and control of the property, including the right to enter, modify and terminate tenancies pursuant to ORS Chapters 90 and 105, and to charge and collect rents and apply rents collected to the costs incurred due to the receivership.

B. Negotiate contracts and pay all expenses associated with the operation and conservation of the property, including, but not limited to all utility, fuel, custodial, repair, rehabilitation, and insurance costs.

C. Pay all accrued property taxes, penalties, assessments, and other charges imposed on the property by a unit of government, as well as any charge of like nature accruing during the pendency of the receivership.

D. Dispose of all abandoned personal property found on the property pursuant to ORS Chapter 90.

E. Enter into contracts and pay for the performance of any work necessary to complete the abatement.

F. Enter into financing agreements with public or private lenders and encumber the property so as to have monies available to correct the conditions at the property giving rise to the abatement.

G. Charge an administrative fee at an hourly rate approved by the court or at a rate of 15 percent of the total cost of abatement, whichever the court deems more appropriate.

H. Seek direction from or approval of the court for any action that the receiver deems necessary.

8.12.070 Plan and Estimate

Within 30 days after appointment by the court, a receive shall submit to the City Manager a written plan for the abatement. The City Manager shall approve the plan before the receiver commences work on the abatement.

8.12.080 Recordkeeping

The receiver shall keep a record of all monies received and expended, and all costs and obligations incurred, in performing the abatement and managing the property, including any charges as compensation for the receiver. Records shall be kept in a form as shall be agreed upon by the receiver and the City Manager, and copies shall be provided to the City Manager upon request. Periodic progress reports on the abatement shall be provided to the City Manager in a form as agreed upon by the receiver and City Manager upon request of the City Manager. In the absence of agreement as to the form of the report, the City Manager may prescribe the form.

8.12.090 Purchasing

All abatement work done under this Chapter is exempt from the purchasing and contracting provisions of the Newport Municipal Code and the city's Public Contracting Rules.

8.12.100 Liens

All monies expended and all costs and obligations incurred by the receiver in performing the abatement shall be reviewed by the court for reasonableness and their necessity in performing the abatement. To the extent that the court finds the monies, costs, or obligations to be reasonable and necessary, it shall issue an order or final judgment reciting this fact as well as the amount found to be reasonable and necessary.

8.12.110 Foreclosure

In the event that the lien created pursuant to the terms of this Chapter and the Oregon Housing Receivership Act is not paid in a timely fashion, the receiver, or their assignee, or other successor in interest, may bring a suit or action in foreclosure as provided for by law, including ORS 223.505 et. seq.

8.12.120 Termination of Receivership

The receivership authorized pursuant to the terms of this Chapter and the Oregon Housing Receivership Act shall terminate only by an order or final judgment of the court after a showing by an interested party, or the receiver, that:

A. The abatement has been completed;

B. The costs and obligations incurred due to the abatement have been paid by an interested party or a lien has been filed pursuant to 8.12.100 of this Chapter; and

F. The interested party will manage the property in conformance with the applicable provisions of the Newport Municipal Code, and consistent with directives and determinations of the court.

(Chapter 8.12 was enacted by Ordinance No. 2104, adopted on October 17, 2018: effective November 16, 2018.)

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, Section 8.30.016 or Section 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)

CHAPTER 8.40 FALSE ALARMS

8.40.005 Definitions

As used in this Section, unless the context otherwise requires, the following words shall have the following meanings:

A. "Alarm system" means any device, whether silent or audible, intended to signal the occurrence of an event that places property or human life at risk under circumstances that reasonably justify an urgent response by police, fire or emergency medical personnel.

B. "Emergency center" means the 9-1-1 emergency communications center serving the City of Newport.

C. "False alarm" means an alarm signal that elicits an urgent response by police, fire or emergency medical personnel, when in fact, circumstances reasonably justifying such response are found not to exist at the time the alarm signal was transmitted.

D. "Owner" means the person recognized by the law as having the ultimate control over, and right to use, property as long as the law permits and no agreement limits his or her rights.

G. "Protected premises or premises" means any building, property or location protected by an alarm system.

8.40.010 Responsibility for Maintaining and Operating Alarm Systems

An owner is responsible for the operation and condition of all alarm systems located on the protected premises. Owners shall train all individuals having regular access to owners' alarm systems, in the proper maintenance, operation and avoidance of false alarms for all alarm systems to which the individual has regular access to. An owner shall not maintain any automatic dialing device on the premises capable of directly soliciting a police or fire response, including dialing the local 9-1-1 emergency center.

8.40.020 Authority of Emergency Response Personnel

A police officer or firefighter may enter any building and cause an alarm system to be disabled if the owner or other authorized user of the alarm system does not respond within thirty minutes after being requested by the police or fire department; or if the alarm system has transmitted a signal for more than fifteen minutes after the arrival of police fire or emergency medical personnel and the person responsible for the alarm system is unable to respond or cannot be found. In order to accomplish entry into any building for this purpose, a police officer or firefighter shall be permitted to forcibly open locked doors and windows. The city shall not be responsible for any property damage or other expense resulting from such entry.

8.40.030 Report of False Alarms

A. The police or fire personnel responding to a false alarm shall file a false alarm report identifying:

1. The location from which the alarm was emitted;

2. The name and address of the owner of the premises from which the alarm was emitted;

3. The date and time the alarm was relayed;

4. The type of alarm (police or fire) indicated;

5. The total number of false alarms for emergency police services recorded year-to-date for the subject system; and

6. The total number of false alarms for emergency fire services recorded year-to-date for the subject system.

B. A summary of the report required in the above Subsection A, along with a copy of this Section 8.40, shall be mailed to the owner of the premises at the address where the alarm system was located at the time of the response, and to any other known address of the owner.

8.40.040 Imposition of Fees; Payment; Interest

A. For the third, fourth, and fifth false alarm for emergency police or fire services, responded to at the same location (excepting public and private schools while they are in session) in any calendar year, the owner shall be charged a fee, as set by Council resolution, which shall be considered partial reimbursement of the costs of such police response or fire response to the alarm. For the sixth and each subsequent false alarm for emergency police or fire services, responded to at the same location (excepting public and private schools while they are in session) in any calendar year, the owner shall be charged a fee as set by Council resolution for full reimbursement of the cost of such police response or fire response.

B. An invoice for the fee imposed under the above Subsection A, shall be included with the summary report sent to the owner as outlined in 8.40.030. Such statement shall identify the address to which payment of the fee will be received.

C. Payment of the false alarm fee shall be due thirty (30) days after the date of the statement unless the owner files a written appeal under 8.40.060.

D. Unless the amount of fee imposed under this Section is paid within thirty (30) days after notice of fee or the order becomes final by operation of law or after appeal, the order shall constitute a lien on the owner's property and shall be recorded in the city lien docket. Where the notification has been made by certified mail or other means providing a receipt, the returned receipt shall be attached to and made a part of the order recorded. The service fee provided in the order, so recorded become a lien upon the real property. That lien shall have priority over all other liens and encumbrances of any character. The lien shall accrue interest at the rate applicable for municipal assessment liens from the date of docketing until clearance. The lien may be foreclosed on and the property sold as may be necessary to discharge the lien in the manner specified in ORS 223.505 through 223.595.

E. Any lien for a service fee may be released when the full amount determined to be due has been paid to the city; and the owner or person making such payment shall receive a receipt therefor, stating that the full amount of service fee, interest, recording fees, and service costs have been paid and that the lien is thereby released and the record of the lien satisfied.

8.40.050 Application of Fees

A. A false alarm fee, and any interest thereon, shall be applied to offset the expenses of the department that responded to the false alarm and to reimburse the city for the cost of sending false alarm notices and collecting the associated fees.

B. Separate fees shall be set for police response and for fire response to false alarms in an amount based on 100% of the costs of such response and administering the provisions of this section. Such costs of response shall include, but not be limited to, the costs of communications and emergency response personnel for the average or actual time required for the alarm response and investigation, costs of equipment mobilization and operation, and administrative and collection expenses.

8.40.060 Right to Appeal

A. Any owner who has been notified of a false alarm or invoiced for a false alarm fee, may appeal to the City Manager by giving written notice of appeal within fifteen days of the date of such notice or invoice. The notice of appeal shall explain the reason why the owner believes the alarm was not false, and be accompanied by payment of the false alarm fee as invoiced by the city, if applicable, and an appeal fee as set by Council resolution. The false alarm fee (when applicable) and the appeal fee shall be refunded to the owner if the City Manager determines the alarm was not a false alarm as defined by this section. The burden of proof shall be upon the owner to show by a preponderance of evidence that the alarm signal was not false.

B. The City Manager shall fix the time and place of the appeal hearing no more than fifteen (15) days after receipt of the notice of appeal. The City Manager shall give the appellant at least five (5) days notice of the appeal hearing. Failure of the owner to appear at the hearing shall result in forfeiture of the false alarm fee (when applicable) and the appeal fee.

C. After hearing all the evidence, the City Manager shall render a decision within five (5) days of the date of the hearing. The City Manager's decision shall be in writing, supported by findings of fact and shall be final. If the City Manager determines the owner has met the burden of proof in showing that the alarm was not false, the false alarm determination shall be rescinded and the false alarm fee (when applicable) and appeal fee shall be refunded to the owner. If the owner fails to meet the burden of proof that the alarm was not false, the false alarm fee (if applicable) and the appeal fee as paid by the owner shall be applied as provided by this section.

8.40.070 Intentional Violation of False Alarm Regulations

It shall be considered a crime, punishable as provided in ORS 166.023 (1), for any person to intentionally violate any provision of this section.

(Chapter 8.40 was adopted by Ordinance No. 2143 on November 5, 2018; effective December 5, 2018)

TITLE IX STREETS, SIDEWALKS, AND PUBLIC PLACES

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. Utility Facility means any physical component of a utility system located within or attached to the rights-of-way.

H. Utility Operator means any person that places or maintains any portion of a utility system within the rights-of-way.

I. Utility System 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.

A. 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. Breast height means the tree trunk's diameter as measured at four and one-half feet above the ground.

B. Cut means to fell or remove a tree or to do anything that has the natural result of causing the death or substantial destruction of a tree, including girdling and topping.

C. D.B.H. (diameter at breast height) means the tree trunk's diameter as measured at four and one-half feet above the ground; for multi-trunked trees, the diameter of the two largest trunks combined.

D. Drip line means the area under a tree's canopy as defined by an imaginary vertical line extending downward from the outermost tips of a tree's natural length branches to the ground.

E. 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.

H. Girdling means the cutting or removal of the outer bark and conducting tissues of a tree, potentially causing death by interrupting the circulation of water and nutrients.

I. Hazardous growth habit means the development of a tree that, due to a combination of structural defect, disease, or existing disturbance, is subject to a high probability of failure; and such failure would result in a threat to persons or improved property.

J. Mitigation tree includes any tree required by this chapter as a replacement for a tree removed.

K. Person means natural person, corporation, company, partnership, association, or district of any type, but does not include the City of Newport.

L. Pruning means normal, seasonal maintenance pruning, trimming, shaping or thinning of a tree necessary to its health, growth and view maintenance where foliage reduction does not exceed one quarter of the total tree foliage.

M. Pruning (minor) means the removal of living parts in an amount of 20% or less of the tree's mass within a five-year period.

N. Removal means cutting or removing 50 percent or more of the crown, trunk or root system of a tree, or any action that results in the loss of aesthetic or physiological viability or causes the tree to fall or be in immediate danger of falling. Removal includes topping and girdling, but shall not include pruning performed to applicable standards.

O. Right-of-Way 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.

P. Topping means the severe cutting back of the tree's crown limbs to stubs to such a degree so as to remove the natural canopy and disfigure the tree.

Q. Tree means City-planted trees of any size, or a perennial woody plant, of eight feet or more in height, measuring four inches D.B.H. or larger, with a single main stem (the trunk or bole), or in some cases multiple trunks from which branches and twigs extend to form a characteristic crown of foliage.

R. Tree care professional means a licensed tree care consultant, who is certified as an arborist by the International Society of Arboriculture, or other tree

care professional approved by the City.

S. **Tunnel** 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.

9.10.015 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. This chapter shall further apply to the pruning and removal of public trees.

9.10.020 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.

C. No person shall prune or remove a public tree without obtaining a right-of-way permit. Minor pruning of street trees in the City's right-of-way directly abutting

private property to maintain minimum sidewalk and road clearance as described in NMC Chapter 14.17, Clear Vision Areas, shall be deemed exempt from this permitting requirement.

9.10.025 Tree Removal Requests and Authority

A private property owner may request permission from the City to remove public trees.

A. The City may ministerially approve or deny permits for removal of public trees fitting the following criteria:

   1. The tree is diseased, blighted, or insect infested.
   2. The tree is determined to be dead, or dying and not recoverable.
   3. The tree is determined to have a significantly damaged root structure that will adversely impact the health and stability of the tree.
   4. The tree is determined to exhibit a hazardous growth habit.
   5. Removal of the tree is required to build allowable improvements such as driveway access(es).

B. The Parks and Recreation Committee, serving as the City's "Tree Board," shall have authority to approve or deny requests for removal of public trees not fitting the criteria in Section 9.10.025(A)(1-5), and in other cases where the City chooses to refer the application to the Tree Board for a decision. In making a decision on whether to approve or deny a request for tree removal, the Tree Board shall consider the criteria listed below. The decision shall include findings that cite each of these criteria. These criteria are meant to be guides, and the varying importance or weight of each in determining the appropriateness of tree removal shall be as expressed in the findings:

   1. Any of the following criteria shall be considered as aspects that may warrant approval of a tree removal request:

      a. The tree encroaches in the public right-of-way so as to cause damage to improvements within the public right-of-way such as street pavement and sidewalks.
      b. The tree is causing structural damage that

includes, but is not limited to, foundations, water lines and sewer lines on private property.

c. An existing building footprint lies within the drip line of the tree.
d. Removal of trees is being done for thinning purposes to enhance the health of other trees.
e. The removal would allow solar access for an otherwise extremely shaded property.
f. The removal is being done to enhance a view.
g. In the absence of potential denial criteria listed below, removal is for the owner's landscape improvement but does not jeopardize the aesthetics of the neighborhood.

2. Any of the following criteria shall be considered as aspects that may warrant denial of a tree removal request:

    a. The tree is visually prominent.
    b. The tree is of significant size.
    c. The tree is part of a larger grove or grouping of trees and its removal will adversely affect the health and safety of the remaining trees within the grove or grouping.
    d. The tree is on land that is sloped and removal of the tree may exacerbate erosion or soil slumping in the vicinity of the tree.
    e. The tree acts as a privacy barrier for adjacent properties.

C. The City may refer any tree removal application to the Tree Board for a decision at any time.

D. A decision of the Tree Board becomes final 10 business days after the decision is issued. If the decision is to approve the removal request, the permit shall be issued only after the decision becomes final. If there is no appeal filed, the decision of the Tree Board becomes final 10 business days after it (the decision) is issued. The permit to remove the tree(s) will not be issued until the decision becomes final.

9.10.030 Appeals of Tree Board Decisions

A. Decisions of the Tree Board may be appealed to the City Council in writing within 10 calendar days of the date of the decision.

B. The City Council shall set a time and place for a hearing on the appeal within thirty (30) calendar days after receiving the appeal. Notice of the appeal hearing shall be mailed to the appellant at least ten (10) calendar days prior to the hearing. During the hearing, the appellant shall have an opportunity to present in writing or orally the grounds for the appeal. The decision and order of the City Council on such appeal shall be final and conclusive.

9.10.035 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 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 construction 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.

C. Applications for right-of-way permits for pruning and removing trees shall be accompanied by the following:

1. The number, diameter and species of trees requested to be pruned or removed;

2. A site plan identifying the size, location and species of the tree(s) to be pruned or removed. Applicants may use aerial maps as a site plan.

3. For pruning, a statement from a tree care professional indicating that the proposed pruning measures will not foreseeably lead to death or permanent damage to the tree(s).

4. For removals:

a. Reasons justifying the removal, referencing the criteria in Section 9.10.025;

b. A description of the proposed tree replacement including planting details specifying the number, size, species, cost and

proposed replacement location(s). In lieu of replacing trees, the applicant may propose to pay into the City tree fund an amount equivalent to the value of the mitigation trees after installation, as detailed in Section 9.10.055 (E).

c. After clearly marking the tree(s) on the property with brightly colored tape, the applicant shall take and include with the application photograph(s) of the tree(s) to be removed and the surrounding area.

d. The applicant may, at their discretion, submit a report by a tree care professional on the health and structure of the tree(s) to be removed and the impact of such removal upon surrounding trees. In Page 8 of 20 no way should this be construed to mean that the City requires such a report, except as noted in subsection (e) below. Reports from other professionals (engineers, appraisers, etc.) may also be included in the application but are not required.

e. If the application is being made on the criteria in Section 9.10.025(A)(1-4), a formal report from a tree care professional establishing that one or more of the criteria for removal are being met may be required by the Public Works Department, in the case that the Department is unable to make its own determination.

f. If the application is being referred to the Tree Board, names and addresses of property owners within 200 feet of the subject property (or outline of property that is held in common), as shown in the records of the County Assessor. If the property is within a homeowner's association, then contact information for the association shall also be provided.

9.10.040 Notice of Tree Removal Requests

The City will determine the level of notification needed based on the approval criteria in Section 9.10.025.

A. If the application is not being referred to the Tree Board, then no notification is needed.

B. For all other trees the City shall notify all property owners within 200 feet of the property for which the permit is being requested. The notice shall be sent via US Mail prior to the next Tree Board meeting and shall include the following:

1. The address (or legal description) of the property
2. A copy of the applicant's site plan
3. A description of the trees to be removed including the diameter and species
4. The reasons stated by the property owner justifying the removal
5. The expected Tree Board's decision date
6. How to request a copy of the decision
7. The appeal rights and process
8. The address and contact information of City staff for questions and comments

9.10.045 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.

9.10.050 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 or pruning or removal of public trees, 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.

9.10.055 Tree Removal and Replacement

A. If permission for removal is granted, all costs of removal, cleanup and replacement shall be borne by the person requesting the removal. Trees are to be removed at least flush with ground level, stumps shall be ground, and all debris removed.

B. Any person granted a tree removal permit shall replace each removed tree with at least one mitigation tree on the same property, or an approved alternate public property in the city. If approval criteria in Section 9.10.025(A)(1-4) apply, then 1 mitigation tree is required for each tree that is removed. All other tree replacements shall be in accordance with the table below.

DBH of tree to be removed (inches in diameter 4.5' above the ground)	Number of mitigation trees to be planted
<4" (if city planted)	1
4" - 6"	1
> 6" to 12"	2
>12" to 18"	3
>18" to 24"	4
>24" to 30"	5
>30"	8

C. The Tree Board may consider other types of landscaping in lieu of trees. The type, amount and arrangement of said landscaping shall be clearly illustrated on a plan provided by the applicant and shall be approved by the Tree Board if it is found that the proposed landscaping:

D. The preferred replacement site shall be on the property from which a tree is being removed. Provided one or more of the mitigation trees cannot be located viably on the property from which a tree is removed, the City may require that the applicant plant one or more mitigation trees on other public property within the city. The City, in conjunction with the Tree Board, shall select an appropriate planting site on

open space, a park, or other public land suitable for new trees.

E. In lieu of replacing trees, the applicant may propose to pay into the City tree fund an amount equivalent to the value of the mitigation trees after installation. The in-lieu payment amount shall be equivalent to the cost of the mitigation trees, plus the cost of delivery, installation, and maintenance for a period of one year, in an amount of $250.00 per tree, or such other amount established by City Council resolution. The in-lieu payment approved and received shall be used by the City for planting and maintenance of mitigation trees on City owned property. Any unspent funds shall be carried forward from year to year for the purpose of maintaining the City's urban forest.

F. The planting of mitigation trees shall take place in such a manner as to reasonably ensure that the trees grow to maturity. Any mitigation tree dying within one year of the date of planting shall be replaced by the applicant. Mitigation trees, including trees meant to replace a previously planted mitigation tree that has died within one year, shall be planted within six months of the date of issuance of a tree removal permit or death of a mitigation tree, unless the City Engineer has granted an extension of time no longer than six months due to season or unforeseen circumstances. Failure to complete mitigation within the allotted time frame shall be considered a violation of this chapter and subject to the penalties provided for in Section 9.10.130.

9.10.060 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.

9.10.065 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.

9.10.070 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.

9.10.075 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.

9.10.080 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.

9.10.085 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 9.10.100.

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.

9.10.090 Planting, Maintenance and Removal of Trees

A. Public plantings shall adhere to the following standards:

1. Only those species identified in the City's adopted Tree Manual may be planted along public streets;

2. Spacing between trees shall be in accordance with recommendations contained in the adopted Tree Manual;

3. Only those trees listed as small trees, forbs/herbs, shrubs and grasses in the adopted Tree Manual may be planted under or within 10 lateral feet of any overhead utility wire, underground water line, sewer line, transmission line or other utility;

4. Trees shall be set back from curbs and sidewalks by the size classification in the adopted Tree Manual, as follows: small trees, three feet; medium trees; four feet; and large trees, six feet;

5. No Street Tree shall be planted closer than 35 feet from a street corner, measured from the point of nearest intersecting curbs, curb lines, or edge of pavement; and

6. No Street Tree shall be planted closer than 25 feet from any street light. No Street Tree shall be planted closer than 20 feet from any stop or yield sign. No Street Tree shall be planted closer than 10 feet from any fire hydrant.

B. Removal of trees is allowed without a permit if performed by the City or its authorized agent to

remove vegetation and trees that present a danger to life or property, to restore utility services, or to reopen a public thoroughfare to traffic.

C. Removal of trees is allowed without a permit if performed by the City or its authorized agent to remove trees that are deemed nuisances under Chapter 8.10 NMC, Nuisances, or to remove trees necessary to install or maintain improvements on parklands, streets, sewers, or utilities within publicly owned and dedicated rights-of-way or public utility easements.

D. The City Manager may order the removal of any tree, or part thereof, irrespective of the adopted Tree Manual, upon a determination that such action is necessary to resolve an unsafe condition or prevent damage to public improvements.

E. No person shall remove or injure any public tree, except in accordance with the provisions specified in this Chapter.

9.10.095 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 9.10.075. 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.

9.10.100 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.

9.10.105 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.

9.10.110 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.

9.10.115 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.

9.10.120 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.

9.10.125 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.

9.10.130 Violation - Penalties

Failure to comply with a provision of this chapter is a civil infraction.

(Chapter 9.10, Right-of-Way Permits, was repealed and replaced by Ordinance No. 2154 on September 3, 2019; effective October 3, 2019.)

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. Landscaping activities, other than in the portion of the right-of-way immediately adjacent to property owned, controlled, or possessed by the person.

(Section 9.15.010(A) was amended by Ordinance No. 2154, adopted on September 3, 2019; effective October 3, 2019.)

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, plants, and approved street trees 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.

B. The encroachments allowed by subsection A must be located so as to not 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,I 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, vaporization, or carrying of any lighted pipe, cigar, cigarette, e-cigarettes, or similar product containing tobacco, nicotine, cannabis, illegal drug, or any similar substance. "Smoking" also includes discarding of any tobacco, nicotine, cannabis, or 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 use of any illegal 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 anywhere on the following properties:

A. The Newport Public Library.

B. City Hall.

C. The Recreation Center, Aquatic Center, and within the boundaries of all City of Newport parks, excluding parking areas.

9.20.015 Exceptions

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.

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, library employees and parks and recreation employees may be authorized by the Police Chief to act as code enforcement officers to enforce this chapter as to violations on or adjacent to Newport Public Library property and all City of Newport parks, the Recreation Center, and Aquatic Center.

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 9.20, as enacted by Ordinance 1917, was repealed and re-enacted in its entirety by Ordinance No. 2080, adopted on May 4, 2015; effective on June 3, 2015.)

(Chapter 9.25 adopted by Ordinance No. 1949, on February 19, 2008; effective March 17, 2008 was repealed in its entirety by Ordinance No. 2031 and the repeal was made effective on June 13, 2013, pursuant to Ordinance No. 2054.)

CHAPTER 9.30 USE OF CITY FACILITIES BY CONVICTED OFFENDERS

(Repealed by Ordinance No. 2039; adopted August 6, 2012; effective September 5, 2012.)

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. **Animal** means any living non-human member of the Animalia kingdom.

B. **Service animal** means any specially trained animal used for law enforcement purposes or to assist people with disabilities.

C. **City buildings** 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 9.75 PUBLIC PARKS

9.75.010 Parks and Property Covered

The provisions of this Chapter 9.75 shall apply to all park property and park facilities thereon belonging to the city, including county parks within the corporate limits of the city.

9.75.020 Park Hours

A. Unless a specific exemption has been granted by the City Council or a special event permit, between the hours of 10:00 P.M. of one day and 5:00 A.M. of the succeeding day, no person other than law enforcement or authorized personnel shall be in a park unless driving, bicycling, walking, or otherwise moving through the park on lawful business within the public street right-of-way or officially designated bicycle path or sidewalk. The Director of the Parks and Recreation Department may temporarily close all or any portion of a park or park facility upon finding that conditions that threaten the welfare or safety of the public exist and the need to preserve their welfare and safety outweighs the public's right of access to the park or park facility. The Director of the Parks and Recreation Department determination shall be by written order, contain findings, set forth the specific area that is closed to entry, the date of closure, and the date upon which it will be reopened. Clearly visible signs shall be posted at park entry points and such other locations deemed appropriate by the Director of the Parks and Recreation Department, advising the public that entry is prohibited and the penalty for violation. No person other than law enforcement officers or authorized personnel may enter or remain within a park or park facility during the closure period set forth in the order of the Director of the Parks and Recreation Department.

B. In addition to a closure ordered under Subsection (1) of this Section, the Director of the Parks and Recreation Department may restrict vehicular access to a park during regular open hours upon finding that such restriction is necessary for the preservation of the health, welfare, and safety of the citizens of the city. Upon such a determination, the gates at park

entry points may be closed and appropriate signs posted, indicating the hours that vehicular access is prohibited. A closure under this subsection shall not limit the public's right of non-vehicular access to a park or open space between 5:00 A.M. and 10:00 P.M.

9.75.030 Alcohol

A. "Alcoholic liquor" means any liquid or solid containing more than one-half of one percent alcohol by volume and capable of being consumed by a human being.

B. Unless the city has authorized the possession and consumption of alcoholic liquor as part of a park use permit, park rental permit, or a special event permit, no person may consume alcoholic liquor in a park or possess a receptacle in a park containing alcoholic liquor that has been opened, had the seal broken, or the contents partially removed.

9.75.040 Animals

A. No animal shall be left unattended and unsupervised in a park.

B. Except for assistance animals and assistance animal trainees, as those terms are used in state law, animals are not permitted in parks unless the animal is on a leash no longer than 8 feet in length and under the control of the animal's owner or caretaker.

C. Notwithstanding subsection B, dogs may be off-leash in areas of a park designated and signed as off-leash dog park areas. A dog's owner or caretaker must be present in the dog park area and is responsible for the dog's behavior at all times while the dog is in the dog park area.

D. No animal may deposit solid waste matter within a park unless the animal's owner or caretaker immediately removes the solid waste.

E. No animal may be hitched to a tree or shrub in a manner that damages the tree or shrub.

9.75.050 Skateboarding/Skating

A. A skateboard includes roller skates, in-line roller skates, roller blades, roller scooters, roller skis, and any similar non-motorized device.

B. Riding or operating a skateboard is prohibited within any city park including rights-of-way within the boundaries of a park unless the park, or a designated area within a park, has been specifically designated and signed for skateboard use.

9.75.060 Fires and Fireworks

A. Fires are prohibited in parks, except: (1) as authorized by special city permit; (2) to the extent the fire is confined to park grills provided for that purpose; or (3) to the extent the fire is confined to a portable barbeque grill and used appropriately.

B. No fire in a park may be left unattended. Every fire must be extinguished by the user before leaving the park.

C. Unless specifically authorized by the city, the possession, use, explosion, or discharge of fireworks is prohibited in all parks. This prohibition does not apply to fireworks covered by a property issued public display permit under the terms of ORS 480.130 to ORS 480.150. As used in this provision, the term "fireworks" means any device defined at ORS 480.110(1) and ORS 480.127 for which a permit from the State Fire Marshal is required before it may be sold, kept, used, or exploded.

9.75.070 Enforcement

A. The provisions of the Chapter 9.75 may be enforced by any peace officer or city code enforcement officer under the procedures set out in Newport Municipal Code Chapter 2.15.

B. The penalty for each violation of these park rules shall be a civil penalty of $50.

(Chapter 9.75 enacted by Ordinance No. 2028, adopted on January 17, 2012; effective February 17, 2012.)

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.NewportOregon.gov. 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.)

CHAPTER 9.85 STREET NAMING AND NUMBERING

9.85.010 Purpose

To assist the public, public safety, and emergency services providers, it is in the interest of the public health, safety, and welfare to have a uniform street naming and property numbering system.

9.85.015 Scope

The provisions of this Chapter shall apply to the naming of streets and numbering of property within the corporate limits of the City of Newport, and the renaming of streets within six miles of the corporate limits of the city.

9.85.020 Directional Designations

For the purpose of this Chapter, the urban area of the City of Newport is hereby divided into four sections having the directional designations, abbreviations, and dividing lines as listed herein.

The name or number of a public or private street within a section shall be preceded by the abbreviated directional designation of that section. The four sections are:

A. "Northwest," abbreviated "N.W.," consisting of the area north of Olive Street and west of Pacific Coast Highway;

B. "Northeast," abbreviated "N.E.," consisting of the area north of Olive Street and east of Pacific Coast Highway;

C. "Southwest," abbreviated "S.W.," consisting of the area south of Olive Street and west of Pine Street, Cape Street, and Pacific Coast Highway; and

D. "Southeast," abbreviated "S.E.," consisting of the area south of Olive Street and east of Pine Street, Cape Street, and Pacific Coast Highway.

9.85.025 Street Suffixes

Street suffixes shall be assigned to all public or private streets within a section as follows:

A. “Street” for streets oriented north-south or east-west;

B. “Place” for dead-end streets or short, north-south oriented street segments;

C. “Court” for dead-end streets or short, east-west oriented street segments;

D. “Drive” for hillside curved streets;

E. “Way” for diagonal streets;

F. “Circle” for circular streets;

G. “Lane” for short, narrow, curved streets;

H. “Boulevard” for arterial routes; and

I. “Highway” for regional routes.

9.85.030 Street Names

A. The existing pattern of street names designated by decision of the city or, in the absence of such a decision, as shown on County Assessor’s maps, is hereby established as the street naming system for the City of Newport.

B. An extension of a public or private city street shall continue the name of that street.

C. Except for the extensions of existing streets, no street name shall be used which will duplicate or be confused with the name of an existing street.

D. New public or private streets shall be named at the time they are platted as part of a subdivision or partition approved in accordance with the processes outline in Chapter 13.05 of the Newport Municipal Code. In the event that a public or private street is created independent of a subdivision or partition then the street shall be named by ordinance of the City Council.

9.85.035 Renaming City Streets

A. An action to rename all or the portion of an existing street located entirely within the City of Newport shall be initiated by:

   1. Resolution of the City Council; or

   2. A petition signed by 51 percent of the residents and businesses whose physical address would be impacted by the proposed name change. The petition shall further include signatures of support from no fewer than 100 eligible voters residing in the City of Newport.

B. A resolution or petition initiating the renaming of a street shall include a clear description of the street or portion thereof that is to be renamed.

C. If the resolution or petition to rename a street is in honor of an individual, then a written statement must be included describing why the individual is deserving of having a city street named in their honor.

D. Following adoption of a Council resolution or the filing of a petition under 9.85.035(A), the Planning Commission shall conduct a public hearing on the proposed street renaming.

   1. Notice of the Planning Commission hearing on the renaming proposal shall be provided by first class mail, postmarked at least 20 days prior to the hearing to all of the following:

      a. The residents and businesses whose physical addresses would be impacted by the proposed name change;

      b. The Newport Fire Department;

      c. The Postmaster having jurisdiction;

      d. The Lincoln County Surveyor;

      e. The Lincoln County Assessor;

f. 911 emergency dispatch;

g. In the case of a proposed renaming initiated by petition, the individuals who signed the petition; and

h. Any person who has requested notice of the hearing.

2. Notice of the hearing shall be published in a newspaper of general circulation in the city at least once within the week prior to the week within which the hearing is to be held.

E. The Planning Commission shall consider the following factors when making a recommendation on a street renaming proposal:

1. Factors of historical significance related to persons, circumstances or events;

2. Factors of geographical significance;

3. Factors of street location, function or direction;

4. Common usage of a name for the street or in the area;

5. Prior use of the name for the street;

6. Name consistency for a continuous route;

7. Non-duplication of another street name; and

8. Other circumstances that warrant consideration.

9. In the case of a proposal to rename a street in honor of an individual, the following conditions shall be met:

a. The individual made significant contributions to the betterment of the city and its citizens;

b. The proposed change is in the best interest of the city and will not cause undue adverse impact or hardship; and

c. The cost of the proposed change can either be reasonably borne by the city or assigned to the petitioner(s) as a condition of approval.

F. Following the public hearing, the Planning Commission shall forward a recommendation on the proposed street renaming to the City Council.

G. Upon receiving the Planning Commission's recommendation, the City Council shall hold a public hearing to take testimony on the proposed name change. Notice of the hearing shall be provided as outlined in 9.85.035(D).

H. After conducting a hearing, the City Council by ordinance shall either rename the street or streets or by resolution shall reject the renaming proposal. Certified copies of each such ordinance shall be recorded with the Lincoln County Clerk, and filed with the county assessor and county surveyor.

I. An ordinance adopted pursuant to this subsection shall instruct the county surveyor to enter the new names of renamed streets in red ink on the county surveyor's copy of any filed plat and tracing thereof which may be affected, together with appropriate notations concerning the same.

9.85.040 Renaming Streets Outside City Boundaries

A. Action to rename all or the portion of an existing street located outside the City of Newport's boundaries, but within six miles of its corporate limits shall follow the above procedures, with the exception that the City Council shall only consider renaming a street upon receipt of a recommendation from the Planning Commission that the proposed renaming is in the best interest of the city and the six-mile area, in conformance with ORS 227.120.

9.85.045 Numbering of Properties

The Community Development Department shall assign address numbers for buildings or property and shall maintain records thereof according to the following:

A. The dividing line for street numbering within the City

of Newport shall be as follows:

1. Olive Street for all buildings numbered to the north and to the south;

2. Pine Street, Cape Street, and Pacific Coast Highway for buildings numbered to the east and west.

B. Beginning at the dividing lines, building numbers will be increased by 100 for each block distance. One number shall be allotted for every 10 feet of street frontage.

C. Odd and even numbers shall be assigned to buildings or properties in a manner consistent with the numbering pattern in place for adjacent or nearby properties located on the same side of a public or private street.

D. Numbering of dead-end public or private streets one block in length or less shall be consecutive odd or even numbers consistent with those on the same side of the connecting street.

E. An address number shall be assigned for each property or building in separate ownership, possession or occupancy.

F. Where buildings are clustered on a parcel or lot, a number shall be assigned to each building.

G. Suites within multi-tenant buildings shall be assigned numeric addresses by the property owner.

H. In the event the building address number sequence exceeds the available numbers, a suffix “A,” “B,” “C,” etc. may be assigned.

I. An address number or numbers shall be assigned by the Community Development Director, or designee in conjunction with the application for a building permit, a land division, or upon written request of the property owner.

J. In case of doubt or where a question arises as to the proper number to be assigned to any building or property, the Community Development Director, or

designee shall decide the question and affix the number of each building or property.

(Section 9.85.045 was enacted by Ordinance No. 2126, adopted on January 2, 2018: effective February 1, 2018.)

9.85.050 Notice of Address Assignment or Reassignment

When the Community Development Director, or designee, assigns or reassigns an address to a building or property, the following notification is required.

A. Notice of the address assignment or reassignment shall be provided within 14 days after assignment or reassignment and given to:

   1. The Postmaster having jurisdiction;

   2. The Lincoln County Assessor

   3. 911 emergency dispatch; and

   4. Local utility providers.

B. In the event of an address reassignment, first class mail notice shall be provided to the property owner.

9.85.055 Placement of Address Numbers

A. The property owner or owner's agent shall place the address number assigned by the Community Development Director, or designee, on a building or property at the earliest practical time. For new buildings, the address shall be placed within 30 days of occupancy.

B. For buildings, numbers shall be placed on the door or door frame of the main entrance to the structure, or as near thereto as practical.

C. Numbers may also be affixed as follows:

   1. On a sign on the property;

   2. On a mailbox adjacent to the building, except for grouped mailboxes; or

3. In such other location as to be legible from the street.

D. Address numbers shall be permanently affixed and treated such that they will not rust or corrode. Numbers shall not be less than three inches in height and shall comply with Title X of the Newport Municipal Code regulating signs.

(Chapter 9.85 adopted by Ordinance No. 2019 on October 3, 2011; effective November 2, 2011.)

TITLE X - SIGNS

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 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.

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 sign face may be physically or mechanically changed, but does not include electronic message signs.

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. Electronic Message Sign means a permanent sign consisting of text, symbolic imagery, or both, that uses an electronic display created through the use of a pattern of lights in a pixilated configuration allowing the sign face to intermittently change the image without having to physically or mechanically replace the sign face, including an LED (Light Emitting Diode) sign, as distinguished from a static image sign.

2. Freestanding Sign means any sign permanently attached to the ground that is not affixed 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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

8. 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.

9. 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. Sign Structure 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 established by resolution of the City council, and paid with submission of the sign permit application, as follows:

1. For the erection, placement, replacement, reconstruction, or relocation of a sign. Such fee shall be supplemented by a surcharge 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.

3. For temporary signs placed in the right of way. Non-profit organizations are exempt from the requirement to pay this fee.

4. For portable signs placed in the right of way. Such fee shall include a monthly charge 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 Street 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 (800 lumens).

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.

K. While subject to these prohibitions, this section shall not be construed to prohibit electronic message signs where expressly permitted elsewhere in this chapter.

10.10.050 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.

10.10.055 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.

10.10.060 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.)

10.10.065 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.

10.10.070 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.

10.10.075 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.

10.10.080 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, but may not include electronic message signs.

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.

10.10.085 Commercial, Industrial, and Marine Districts

In commercial, industrial, and marine zoning districts, signs are allowed subject to the following parameters:

A. The maximum total area for roof and wall signs is two square feet of display area for each lineal foot of street frontage.

B. The maximum total area for projecting and freestanding signs is one square foot of display area for each lineal foot of street frontage. Projecting and freestanding 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.

C. Each street 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 200 lineal feet of street frontage, in which case one additional sign is permitted. Where a property contains an

electronic message sign, only one freestanding sign is permitted.

D. Window signs shall not exceed 16 square feet in area. Window signs are not included in the calculation of total display area.

E. Except within marine zoning districts or the Historic Nye Beach Design Review District, electronic message signs on properties with no more than one freestanding sign of up to 20 feet in height, provided the electronic message sign:

1. Is less than or equal to thirty-five percent (35%) of the total allowable sign area per sign face.

2. Displays text, symbolic imagery, or a combination thereof for a period of time in excess of (5) minutes before a change occurs. This provision does not apply to the display of time, date and temperature information.

3. Changes the entire display text, symbolic imagery, or combination thereof within two (2) seconds.

4. Is turned off between the hours of 11 p.m. and 6:00 a.m. unless the sign is associated with a business that is open to the public, in which case the sign may stay illuminated until the business is closed.

5. Does not contain or display animated, moving video, flashing, or scrolling messages.

6. Contains a default mechanism that freezes the sign in one position if a malfunction occurs.

7. Automatically adjusts the intensity of its display according to natural ambient light conditions.

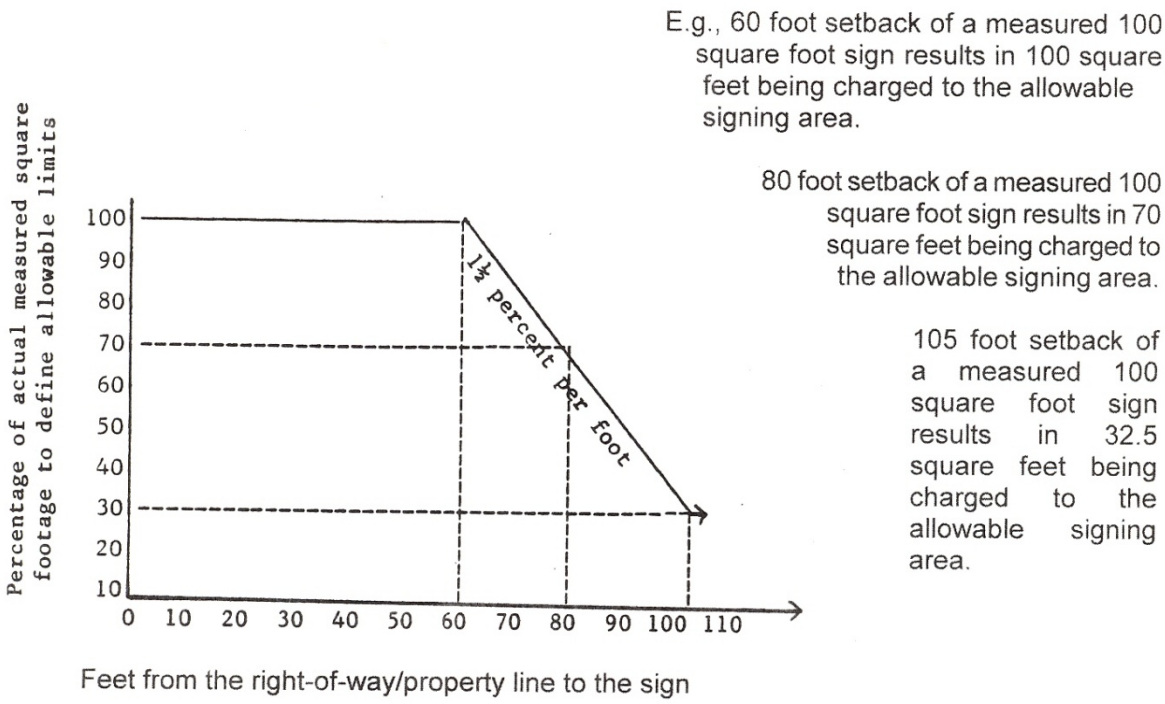
8. Adheres to a maximum night-time illumination standard of 0.3 foot-candles as measured from a distance, in lineal feet, from the sign that is equivalent to the square root of the display area, in square feet, multiplied by 100.

F. Mural signs.

G. 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.

H. Notwithstanding any limitation on total sign area, each separate business is allowed at least 50 square feet of display area.

I. 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 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.

J. The maximum height of all signs other than mural signs shall be no greater than 30 feet above grade.

K. 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 this chapter, the maximum horizontal or vertical dimension of any display surface shall not exceed 20 feet.

10.10.090 Signs in Shopping Centers

For shopping centers and multiple business properties, the number and size of signs are governed by this section.

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 provisions of NMC 10.10.085 for signs in commercial, industrial, or marine districts apply to shopping centers and multiple business properties except as modified by this subsection.

10.10.095 P1, P2, and P3 Public Districts

In public zoning districts, signs are allowed subject to the following parameters:

A. The maximum total area for roof and wall signs is two square feet of display area for each lineal foot of street frontage.

B. The maximum total area for projecting and freestanding signs is one square foot of display area for each lineal foot of street frontage. Projecting and freestanding 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.

C. Each street frontage of a property 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 200 lineal feet of street frontage, in which case one additional sign is permitted. Where a property contains an electronic message sign, only one freestanding sign is permitted.

D. Window signs shall not exceed 16 square feet in area. Window signs are not included in the calculation of total display area.

E. Electronic message signs on properties with no more than one freestanding sign of up to 20 feet in height, provided the electronic message sign:

1. Is less than or equal to thirty-five percent (35%) of the total allowable sign area per sign face.

2. Displays text, symbolic imagery, or a combination thereof for a period of time in excess of (5) minutes before a change occurs. This provision does not apply to the display of time, date and temperature information.

3. Changes the entire display text, symbolic imagery, or combination thereof within two (2) seconds.

4. Is turned off between the hours of 11 p.m. and 6:00 a.m. unless the sign is associated with a facility that is open to the public, in which case the sign may stay illuminated until the facility is closed.

5. Does not contain or display animated, moving video, flashing, or scrolling messages.

6. Contains a default mechanism that freezes the sign in one position if a malfunction occurs.

7. Automatically adjusts the intensity of its display according to natural ambient light conditions.

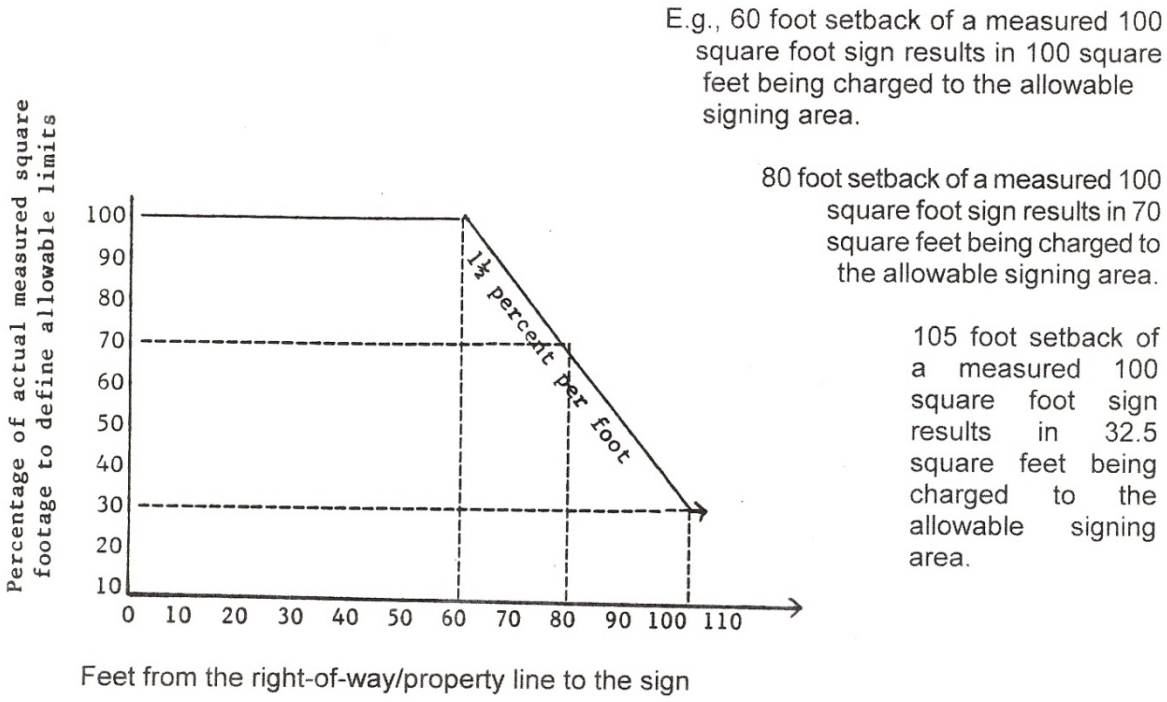
8. Adheres to a maximum night-time illumination standard of 0.3 foot-candles as measured from a distance, in lineal feet, from the sign that is equivalent to the square root of the display area, in square feet, multiplied by 100.

F. Mural signs.

G. Each street frontage of a property shall be limited to no more than 200 square feet of display area for all non-exempt signs other than mural signs.

H. Notwithstanding any limitation on total sign area, each separate building is allowed at least 50 square feet of display area.

I. 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 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.

J. The maximum height of all signs other than mural signs shall be no greater than 30 feet above grade.

K. 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 this chapter, the maximum horizontal or vertical dimension of any display surface shall not exceed 20 feet.

10.10.100 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.

10.10.105 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.

10.10.110 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.

10.10.115 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.

10.10.120 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.

10.10.125 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.

10.10.130 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 adjustments and 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 adjustment or variance requested) shall be followed. The fee shall be the same as for a zoning adjustment or variance. The criteria for the sign variance shall be as specified below. In addition to the requirements for submitting a zoning adjustment or variance, a sign inventory including the location, type, and size of each sign on the property shall be submitted with the 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 III 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 I Adjustment procedure, based on a determination that the proposal will result in a reduction of the nonconformity without increasing any aspect of nonconformity.

10.10.135 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 10.10 was enacted by Ordinance No. 2037 on May 21, 2012; effective June 20, 2012.)

(Chapter 10.10 was repealed and re-enacted by Ordinance No. 2075; adopted on January 5, 2015; effective February 5, 2015.)

10.10.140 Sign Adjustment and Variance Requirements

A. Purpose. Adjustments and Variances to the numerical standards of the sign code are intended to allow flexibility while still fulfilling the purpose of the Code.

B. Procedure.

1. Any person may seek an Adjustment or Variance to the numerical provisions of this Chapter or of Chapter 10.15 by filing an application with the Community Development Director or designate on a form prescribed for that purpose. Upon receipt of an application, the Director or designee shall determine if the request shall be processed as an Adjustment or as a Variance according to the procedure provided in Section 14.33.030 of the Zoning Ordinance.

2. The fee shall be the same as for a zoning Adjustment or Variance. No Adjustment or Variance shall be permitted that would negate the provisions of NMC Section 10.10.045, Prohibited Signs.

3. In addition to the application submittal requirements of Section 14.33.040 of the Zoning Ordinance, the applicant must provide an inventory of all signs including the location, type, and size of each sign on the property.

4. Approval criteria in (C) below are to be used when evaluating applications for Adjustments or Variances to the sign code, rather than those provided in Section 14.33.050 of the Zoning Ordinance.

C. Criteria. The approval authority must find that the application for an Adjustment or Variance complies with the following criteria:

1. The Adjustment or Variance is consistent with the purposes of the sign code, as provided in Chapter 10.10.010 or 10.15.005 of the Newport Municipal Code, as applicable; and

2. The Adjustment or Variance will allow for placement of a sign with exceptional design, style, or circumstance, or will allow a sign that is more consistent with the architecture and development of the site; and

3. The Adjustment or Variance will not significantly increase or lead to street level sign clutter, or will it create a traffic or safety hazard.

(Chapter 10.10.140 was enacted by Ordinance No. 2090, adopted on January 19, 2016; effective February 18, 2016.)

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 than 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

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, as adopted by Division 460 of OAR Chapter 918, as amended or revised by the State of Oregon, including the following optional provisions:

   1. Those types of construction activities listed in Section 101.2 as outside of the authority of the Oregon Structural Specialty Code, but within the authority of municipalities to regulate by local ordinance. Such activities shall be subject to the relevant construction standards contained in the 2018 International Building Code.

   2. Appendix G Flood – Resistant Construction.

   3. Appendix J Grading

B. The Oregon Mechanical Specialty Code, as adopted by Division 440 of OAR Chapter 918, as amended or revised by the State of Oregon.

C. The Oregon Plumbing Specialty Code, as adopted by Division 750 of OAR Chapter 918, as amended or revised by the State of Oregon.

D. The Oregon Electrical Specialty Code, as adopted by Division 305 of OAR Chapter 918, as amended or revised by the State of Oregon.

E. The Oregon Residential Specialty Code, as adopted by Division 480 of OAR Chapter 918, as amended or revised by the State of Oregon.

F. The Manufactured Dwelling Park and Mobile Home Park Rules, as adopted by Division 600 of OAR Chapter 918, as amended or revised by the State of Oregon.

G. The Manufactured Dwelling Rules adopted by Division 500 of OAR Chapter 918, as amended or revised by the State of Oregon.

H. The Recreational Park and Organizational Camp Rules adopted by Division 650 of OAR Chapter 918, as amended or revised by the State of Oregon.

I. The State of Oregon Reach Code adopted by Division 465 of OAR Chapter 918, as amended or revised by the State of Oregon.

J. The State of Oregon Energy Efficiency Specialty Code adopted by Division 460 of OAR Chapter 918, as amended or revised by the State of Oregon.

K. The 1997 edition of ICBO Uniform Code for the Abatement of Dangerous Buildings.

(Section 11.05.080 was amended by the adoption of Ordinance No. 2153, on December 2, 2019; effective January 1, 2020.)

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.

B. 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 2019 Oregon Fire Code is adopted as the City of Newport Fire Code.

(Section 11.10.005 was amended by Ordinance No. 2161, adopted on February 3, 2020; effective February 15, 2020.)

11.10.010 Enforcement, Remedies and Procedures Cumulative

The city's 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 No. 2070 on August 18, 2014; effective September 17, 2014. This repeals Ordinance No. 1918 which was adopted on May 21, 2007; effective June 20, 2007.)

11.50.000 Security Alarm Systems
(Reserved for Future Use)

TITLE XII - INFRASTRUCTURE FINANCING

CHAPTER 12.05 LOCAL IMPROVEMENT DISRICTS

12.05.005 Definitions:

The following definitions apply unless inconsistent with the context:

"Benefitted Property" means a property that is expected to be enhanced in value after an LID improvement is constructed, including: properties that are adjacent to an LID improvement; and properties that are proximate to an LID improvement. Benefiting properties will experience enhanced property value from improved accessibility, and improved urban services that result from an LID project.

"Chronic Disrepair" means a failing condition of public infrastructure that is deemed by the city to be beyond its useful life or failing in a manner that has necessitated unplanned public investment exceeding two times per year.

"Emergency condition" means public infrastructure that is failing and poses imminent risk to the health and safety of residents, visitors, and/or businesses, including infrastructure conditions deemed by the city to be in a state of chronic failure.

"Local Improvement" has the meaning given under ORS 310.140 (9) (a) means a capital construction project or part thereof, undertaken by a local government, pursuant to ORS 223.399, or pursuant to a local ordinance or resolution prescribing the procedure to be followed in making local assessments for benefits from a local improvement upon the lots that have been benefited by all or part of the improvement:

1. That provides a special benefit only to specific properties or rectifies a problem caused by specific properties; and

2. The costs of which are assessed against those properties in a single assessment upon the completion of the project.

"Local Improvement District (LID)" means the area determined by the council to be specially benefited by a

local improvement, within which properties are assessed to pay for the cost of the local improvement.

"Lot" means a lot, block or parcel of land.

"Non-Remonstrance Agreement" means a written agreement with the city, executed by a property owner or the owner's predecessor in title, waiving the right of an owner to file a remonstrance against formation of an LID to fund identified public infrastructure improvements.

"Owner" means the owner of the title to real property or the contract purchaser of real property of record as shown on the last available complete assessment role in the office of the County Assessor.

"Remonstrance" means a written objection to the formation of an LID filed by an owner of property within a proposed LID.

12.05.010 Initiation of Local Improvement Districts

A. The council by motion or on petition of the owners of 75 percent of 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, drainage and/or other public improvements.

B. When initiating an LID without petition by property owners, the city council shall consider the following factors:

1. Nature of the area benefited, including its existing condition and the extent to which the affected properties will benefit from the proposed public improvements.

2. The percentage of properties within the benefit area that have prerecorded non-remonstrance agreements or have owners that favor formation of an LID.

3. Whether or not the public improvements address existing or potential health and safety risk to city

residents, businesses, employees or visitors; and/or addresses infrastructure in a state of chronic failure.

4. Ability to leverage alternative methods of funding from existing sources. For LIDs in developed residential areas, the aggregate assessment amount within a prospective LID should be no more than 10% of the assessed value of properties within the boundaries of the proposed district. The aggregate assessed value may be higher for other types of LIDs, such as developer initiated districts; however, in no case should it exceed 50% of the assessed value of the affected property.

5. Project cost contingencies and related construction risk factors, such as the need to acquire new public right-of-way, topographic challenges, or environmental issues.

6. The priority of the project per adopted public facility plans or capital improvement programs.

C. In the consideration of any of the above mentioned factors, a council initiated LID should have a reasonable chance of being self-financing, with adequate reserves to ensure that payments are made on bonds/loans, regardless of the property owners repayment.

D. When a potential LID project is deemed by the city engineer or community development director to meet one or more of the factors listed in this section, a council initiated district may be advanced by the council through a resolution requesting that a preliminary engineering report on LID formation be prepared.

12.05.015 Preliminary Engineer's Report

A. The preliminary engineer's report shall contain:

1. A full description of the project and its boundaries.

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, engineering, legal, administrative, interest or other 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.

12.05.020 Council's Action on Engineer's Report

A. After the engineer's report has been filed with the city recorder, the council may thereafter by motion approve the report, request that staff reassess elements of the report, require the engineer to supply additional or different information for such improvements, or it may abandon the improvement.

12.05.025 Notice of Hearing on District Formation

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 provide notice to property owners of a council hearing on the proposed district by submitting a notice in a newspaper of general circulation within the town and by mailing notice to the owner's address listed in the county tax records. The city may provide additional notice.

A. Within ten (10) business days of the filing of the report required by NMC 12.05.015 the recorder shall cause a notice to be published twice in a newspaper of general circulation within the city setting out the following:

1. That a written project report for a proposed LID is on file and is available for examination at City Hall;

2. The date said report was filed;

3. The estimated probable cost of the proposed local improvement or the actual cost of the improvement if it has been completed;

4. A description of the proposed improvement district and that a map of the proposed district is available for examination at City Hall;

5. The time and place of the hearing required by NMC 12.05.030;

6. A statement that written and oral testimony submitted by any person will be considered at such hearing; and

That property owners wishing to remonstrate against the formation of the proposed district must submit their remonstrance in writing and file the remonstrance with the city recorder by the end of the public hearing. Remonstrances may be withdrawn any time prior to the close of the hearing.

C. Not less than ten (10) days prior to the hearing required by NMC12.05.030, mail to each property owner designated in the written engineering report a notice stating:

1. The information set forth in Subsection B of this section;

2. The proposed method of assessment;

3. The estimated amount of the assessment for each lot or portion thereof owned by the owner and whether the assessments are being levied prior to construction based upon estimates of project cost or after construction based upon known costs; and

4. A statement that 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. Post a copy of the preliminary map of the proposed

improvement district at City Hall.

12.05.030 Hearing on District Formation

A. After the engineer's report, as submitted or modified, has been approved or accepted by city council resolution, 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. Such hearing shall be held after the receipt of the engineering report described in NMC 12.05.015 but not less than fifteen (15) days after the date of the second publication of notice.

B. If property owners owning one half or more of the property area within the district to be specially assessed remonstrate against the improvement, the council shall suspend formation of the district for a period of not less than six (6) months. This provision shall not apply if the council unanimously declares the LID improvement to be needed because of an emergency or to remedy infrastructure in chronic disrepair. 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. This resolution shall at a minimum address the following:

1. Create the local improvement district and establish its boundaries;

2. Determine generally the time for commencing and the manner of construction;

3. Establish an account for the receipt and disbursal of monies relating to the project; and

4. Establish the method for allocating the costs associated with the project.

12.05.035 Final Plan and Specifications

A. After a council decision to form the district and proceed with the local improvement(s), the city shall obtain 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 exceeds the original cost estimate by 10% or more at the time of its hearing or if the city engineer deems there to be significant changes in the project as a result of the additional unanticipated 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.

12.05.040 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 if the contract with a private contractor, or the final scope and budget for projects constructed by a governmental agency, or any combination of the above, varies less than 10% from the final plan and specifications. If the scope and budget vary more than 10%, an additional hearing must be held. 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.

12.05.045 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, including but not limited to: streets, curbs, sidewalks gutters, catch basins, storm water improvements, driveways, accessways, lighting, traffic control devices, painting, and striping, surface water management facilities, water and sewer lines, lift stations, and fire hydrants.

D. Costs of preliminary studies.

E. Advertising, legal, administrative, notice, supervision, materials, labor, contracts, equipment, inspection and assessment costs.

F. Financing costs, including interest charges.

G. Attorney fees.

H. Any other necessary expenses.

12.05.050 Method of Assessment

A. The Council shall:

1. Use a fair and reasonable method for determining the extent of the improvement district boundaries that is consistent with the benefits derived.
2. Consider fair and reasonable methods for apportioning the actual or estimated costs of the improvement among benefited properties including but not limited to those methods identified in NMC 12.05.050(D).

B. The Council may:

1. Authorize payment by the City of all or any part of the cost of such improvements; provided that the method selected creates a reasonable relation between the benefits derived by the property specially benefited and the benefits derived by the City as a whole.

2. At any time prior to the effective date of the resolution levying the assessments for any improvement district, modify the method adopted in the resolution forming the improvement district if the Council determines that a different method is a more just and reasonable method of apportioning the cost of the project to the properties benefited.

3. Use any other means to finance improvements, including federal or state grants-in-aid, user charges or fees, revenue bonds, general obligation bonds, or any other legal means of finance to pay either all or any part of the cost of the improvements.

4. In establishing a fair and reasonable method for apportioning the actual or estimated cost of local improvements among benefited properties, the Council shall rely upon the following guidelines:

    1. Individual property owners shall pay for public improvements specially benefiting their property. The determination of benefit shall be made irrespective of whether the property is

vacant or the owner elects to connect to the local improvements. Special costs or features of the improvement that benefit a particular parcel of property in a manner peculiar to that parcel shall, together with a share of the overhead for the improvement, be assessed separately against the parcel.

2. Costs of the improvement to be borne by the City shall be excluded from the assessment before apportionment. The City will pay the cost of:

a. Extra capacity improvements when the size of the public improvements required exceed the minimum standards established in the Specifications and Standards for Construction of Public Improvements adopted in accordance with local transportation plans or public facility plans, and the project has been included in the City budget document for the fiscal year during which construction of the improvement is scheduled; or

b. Special and unusual costs when the Council determines that circumstances exist which warrant City payment of all or a portion of the cost of the public improvements.

D. In establishing a fair and reasonable method for apportioning actual or estimated costs of local improvements among benefited properties, the Council may, but in no way is required to, rely upon the following guidelines (as summarized in Exhibit 12.05.050-1) and described below:

1. Improvement Costs of Streets.

i. Street improvement costs may include all improvements required or as established by the improvement district within the public right of way. Such improvements shall meet the minimum standards adopted under the Newport Transportation System Plan and may include any of the elements identified in Section 12.05.045.

ii. Costs shall be applied on a per linear foot basis, or other methods identified in the engineer's report. Where a property owner requests or requires supplemental approach construction (i.e., widened driveway aprons that access individual properties), the costs associated with that additional construction shall be assessed to the individual property owner benefitting from this supplemental construction.

2. Improvement Costs of Sidewalks. Parcels abutting a sidewalk shall be liable for a proportionate share of the cost of the sidewalks, based on the front footage of the parcel abutting the sidewalk. Where, however, the Council finds that construction of a sidewalk on both sides of the street is unnecessary or not feasible; the cost of the sidewalk on one side of the street may be assessed to both the parcels abutting the sidewalk and the parcels on the opposite side of the street from the sidewalk.

3. Improvement Costs of Surface Water Management. The cost to be assessed shall be apportioned to each parcel within the improvement district on the basis of its land area that contributes to or otherwise directly benefits from the City's drainage system.

Exhibit 12.05.050-1	LID Improvement Type			
Assessment Method	Street/ Sidewalk	Sewer	Water	Stormwater

Existing Assessed Value	✓	✓	✓	✓
Expected Change in Assessed Value	✓	✓	✓	✓
Gross Land Area	✓	✓	✓	✓
Linear Frontage Along Improvement	✓	✓	✓	✓
Existing Trip Generation	✓	–	–	–
Expected Change in Trip Generation	✓	–	–	–
Existing Sewer Connections	–	✓	–	–
Expected Change in Sewer Connection	–	✓	–	–
Existing Water Meter Connections	–	–	✓	–
Expected Change in Water Meter Connections	–	–	✓	–
Existing Impervious Surface Area	–	–	–	✓
Expected Change in Impervious Surface Area	–	–	–	✓

Legend

✓ Primary Assessment Method

✓ Secondary Assessment Method

– Tertiary Assessment Method

4. Improvement Costs of Water and Sewer Lines.

   i. The properties specially benefited by a sewer main or water pipe shall bear the cost of the system up to and including eight inches of pipe diameter. These costs shall be apportioned to each parcel on the basis of a cost per square foot of service area, determined by dividing the total system cost by the total service area.

   ii. In addition to main or pipe costs, each property benefited by a sewer main or water pipe shall be considered to have at least one service line connection point. If more than one service line connection point is provided for a benefited

parcel, it shall be assessed for the actual number of service line connection points. All costs related to the service lines, including overhead costs, shall be divided by the total number of service line connection points, to determine the cost per service line connection point.

5. Corner Lots. For street, sewer, water and/or stormwater project LIDs that assess costs to properties based upon linear frontage, corner lots may be exempted from an assessment for the first 100 feet of frontage on the side abutting a local improvement, or for the full length of the side abutting the improvement, whichever is shorter, if one or more of the following conditions exist and the City Council grants an exemption:

   i. The local improvement is required to serve a new subdivision or new development, the corner lot is located outside the subdivision or development, and the corner lot will receive no benefit from the local improvement for which the assessment is levied; or

   ii. The corner lot has two sides abutting the local improvement for which the assessment is levied and is being assessed for the full frontage of one side abutting the improvement; or

   iii. The Council determines the Corner Lot receives no benefit from the local improvement for which the assessment is levied and the property has been previously assessed for the same type of local improvement on the side not abutting the local improvement for which the assessment is levied.

The City Council need not grant a Corner Lot exemption if the Council determines the property will receive a benefit from the local improvement for which the assessment is being levied.

6. Minimum Frontage. All lots may be assessed for an equivalent front footage of no less than 60 feet.

7. Benefited Property. A benefited property may be defined as one which is adjacent to any street, easement or right of way on which a local improvement is installed or which reasonably is capable of connecting to, or directly benefiting from, the improvement.

8. Assessment Alternative. Assessment alternatives that vary from those listed in this section may be identified within the engineer's report. A weighting method may be considered among multiple alternatives to determine a hybrid alternative assessment.

9. Equal Assessments. If property owners of all or part of the benefited properties within the improvement district are in unanimous agreement, and so request, then their share of the improvement costs may be apportioned in equal amounts.

12.05.055 Alternative Methods of Financing

A. The Council may allocate a portion of the cost of such improvement from the funds of the city. The council may base this on topographic concerns, the physical layout of the improvement, unusual or excessive public use of the improvement, or other characteristics. The amount assessed against all property specially benefited will be proportionately reduced.

B. The council may use other means to finance, in whole or in part, the improvements, including but not limited to: federal or state grants-in-aid, sewer or other types of utility charges, urban renewal funds, revenue or general obligation bonds.

12.05.060 Final 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.

G. If the initial assessment has been made on the basis of estimated cost, and, upon completion of the work, the cost is found to be greater than the estimated cost, the council may make a deficit assessment for the additional cost, provided, however, the council may not make a deficit assessment for more than ten (10) percent of the initial assessment. Proposed assessments upon the respective lots within the special improvement district for a proportionate share of the deficit shall be made, notices shall be sent, opportunity for objections shall be given, any objections shall be considered, and a determination of the assessment against each particular lot, block, or parcel of land shall be made in the same manner as in the case of the initial assessment, and the deficit assessment shall be spread by resolution.

H. If assessments have been made on the basis of estimated cost and upon completion of the improvement project the cost is found to be less than the estimated cost, the council shall ascertain and declare the same by resolution, and when so declared the excess amounts shall be entered on the city lien record as a credit upon the appropriate assessment. Thereafter, the person who paid the original assessment, or that person's legal representative or successor, shall be entitled to repayment of the excess amount. If the property owner has filed an application to pay the assessment by installment, the owner shall be entitled to such refund only when such installments, together with interest thereon, are fully paid. If the property owner has neither paid such assessment nor filed an application to pay in installments, the

amount of the refund shall be deducted from such assessment, and the remainder shall remain a lien on the property until legally satisfied.

12.05.065 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.

12.05.070 Financing of LID Program

A. The City will account for the payment of LID formation costs, construction costs and the retirement of debt incurred by the City in connection with local improvement projects on which the payment of assessments has been deferred under this Ordinance.

B. The initial funds for the LID program will be taken from fund transfers and/or debt approved by the City Council and shall be allocated to LID projects in a manner that takes into account expenditure restrictions. LID program financing by the City will be secured by property liens using debt instruments such as revenue bonds, loans, inter-fund loans, etc.

with a debt reserve that equates to 12-months of combined interest/principal obligations on outstanding LID fund balances.

C. Deferments shall be granted on a pro rata or otherwise equitable basis, depending upon individual assessment amounts for applications received within the time period set under Section 12.05.075(A) for submittal, to the extent that Program funds are available.

12.05.075 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 30 days after the notice of assessment is mailed or within 30 days of resolution of any writ of review proceeding challenging the assessment, the owner of the property may apply to pay the assessment in ten equal annual installments, with the first payment to be paid within 30 days of the determination by the finance director of the amount of the annual payment. This option for an owner to make installment payments is limited to assessments in excess of $500, unless a payment plan for a smaller amount is authorized, in writing, by the city manager. The installment payment application shall state:

1. That the applicant waives all irregularities or defects, jurisdictional or otherwise, in any way relating to the assessment.

2. State that the applicant understands the terms and conditions of the city's payment policies including the penalties for nonpayment.

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 a bond or obtain a loan for the amount financed. The interest rate will be set at the interest rate charged to the city for the bond or the loan, 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.

F. There shall be no penalty for early payment or early retirement of LID principal amounts.

12.05.080 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 in accordance with ORS 94.709.

D. The city may collect any payment due and may foreclose the liens in any manner authorized by state law.

12.05.085 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.

12.05.090 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.

12.05.095 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.

12.05.100 Reassessment

A. Whenever all or part of an assessment or reassessment for any local improvement is declared void, set aside for any reason, not enforced by a court or the council determines the assessments should be adjusted, the council may make a new assessment but shall not be required to repeat any portion of the procedure properly completed.

B. The reassessment procedures for making the new assessment will follow the same procedures used for the initial assessment under NMC12.05.050 and 12.05.085. The new assessment is not limited to the amounts included in the original assessments or to

the property included within the original assessment if the council finds that additional property is specially benefited and subject to assessment.

C. Credit must be allowed on the new assessment for any payments made on the original assessment as of the date of payment. Interest on the original assessments must be included in the new assessment to the extent the new assessment includes amounts also included in the original assessment. The council will include interest as part of the overall assessable project cost. The amount will be based on the construction financing interest rate in effect and applicable to the district at the time of the original proceedings on moneys paid on the construction or financing of the project.

12.05.105 Remedies

Actions of the council under this chapter are reviewable only by writ of review.

12.05.110 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.

12.05.115 Confidentiality

To the maximum extent possible under the law, the applications, records and other information relating to deferments shall be kept confidential by the City.

12.05.120 Appeals

Owners of property against which an assessment or reassessment for local improvements has been imposed may seek a review of any council decision under the

circuit court writ of review provisions of ORS 34.010 to 34.102.

(Chapter 12.05 adopted by Ordinance No. 1924, on June 18, 2007; effective July 18, 2007. It was repealed and re-enacted by Ordinance No. 2094, on May 2, 2016; effective June 1, 2016.)

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.

12.15.025 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 multi-family and other dwelling units that are assessed SDCs on an Equivalent Dwelling Unit basis, provided the addition does not result in a new 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. Temporary and seasonal uses, including special events, vending carts, and patio or deck seating associated with eating or drinking establishments..

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 a development occurs that is subject to SDCs, the SDC for the existing use(s), if applicable, shall be calculated and if it is less than the SDC for the use that will result from the development, the difference between the SDC for the existing use and the SDC for the proposed use shall be the SDC that is assessed. If the change in the use results in the SDC for the proposed use being less than the SDC for the existing use, no SDC shall be required; however, no refund or credit shall be given.

1. For the purpose of this section, "existing use" is any use or structure on a property within the last 10 years. If more than one use or structure was on a property within this timeframe than the existing use shall be that which placed the greatest demand on the capital system during this period of time.

2. Credits shall not be transferable from one development to another, except as provided in NMC 12.15.065(D)(6).*

3. Credits shall not be transferable from one type of capital improvement to another.

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 within 10 years of the date a restaurant was last operating, 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.

B. For credit certificates issued under prior SDC ordinances, such credits are to be used by the deadline specified in the ordinance in effect on the date they were issued. Certificates issued without a deadline shall automatically terminate if not used by December 31, 2020.

C. Notwithstanding subsection (A), credit given against storm drainage SDC assessments for existing use(s) shall be limited to circumstances where SDCs were previously paid or the impervious surfaces existed as of January 1, 2008. A credit may be provided for new development that incorporates improvements designed to reduce the impact of runoff on the storm drainage system (e.g. cisterns, detention facilities, pervious surface technology, etc.). In each case, the city will review the proposed mitigation measures and determine an appropriate storm drainage SDC credit for impervious surface reduction.

D. 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 may be used for future phases of development, redevelopment, a change in use of the property, or transferred to another property as provided in NMC 12.15.065(D)(6).*

5. Credit for qualified public improvements shall not be transferable from one type of capital improvement to another.
6. Credits for qualified public improvements shall be used within 10 years from the date the credit was given.

7. Credits for qualified public improvements may be transferred from one property to another within the 10 year period the credits are valid if (a) the receiving property is being developed with a residential use and (b) the amount of credit transferred is less than or equal to 50% of the total SDC assessment that would otherwise be payable.*

8. 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.

9. The City Council shall conduct a public hearing no later than August 21, 2023, to evaluate the impact of transferred SDC credits on the City's ability to fund qualified public improvements and determine if changes should be made to provisions of this section related to the transfer of SDC credits.*

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 amended by Ordinance No. 2135, adopted on July 16, 2018; effective August 15, 2018.)*
(Chapter 12.15 was amended by Ordinance No. 2113; adopted on August 7, 2017; effective September 6, 2017.)

TITLE XIII - LAND DIVISION

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.

M. Street Trees. Trees and other plantings may be installed within proposed or existing rights-of-ways provided they conform to the City's approved Tree Manual.

(Section 13.05.015 (M) was enacted by Ordinance No. 2154, adopted on September 3, 2019; effective October 3, 2019.)

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, except where a subdivision plat is reconfiguring or establishing rights-of-way for future public streets:

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 land owner shall be reimbursed for the construction of the sidewalk from the bond. The amount of the reimbursement shall be in proportion to the footage of sidewalks 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.

    c. Notwithstanding the above, a developer may guarantee installation of required sidewalks in an

Improvement Agreement as provided in Section 13.05.090(C).

(13.05.040(A)(5) was amended by Ordinance No. 2045, adopted on November 5, 2012; effective December 5, 2012.)

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. A Trip Assessment Letter, if required by Chapter 14.43.

14. A Traffic Impact Analysis, if required by Chapter 14.45.

15. Other materials that the applicant believes relevant or that may be required by the city.

(Section 13.05.070(A)(13 - 15) were added or amended by Ordinance No. 2045, adopted on November 5, 2012; effective December 5, 2012.)

B. 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.

C. 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.

D. 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., or where payment in lieu of constructing a required improvement is allowed by the city and has been paid by the developer per Chapter 14.45, 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.

(Section 13.05.090(B) was amended by Ordinance No. 2045, adopted on November 5, 2012; effective December 5, 2012.)

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

CHAPTER 14.01 PURPOSE AND DEFINITIONS**

14.01.010 Purpose

The several purposes of this ordinance are: To implement the Comprehensive Plan; to encourage the most appropriate use of the land; to conserve and stabilize the value of property; to aid in the rendering of fire and police protection; to provide adequate open spaces for light and air; to lessen the congestion on streets; to allow for orderly growth in the city; to prevent undue concentration of population; to facilitate adequate provisions for community utilities and facilities such as water, sewerage, electrical distribution systems, transportation, schools, parks, and other public requirements; and, in general, to promote public health, safety, convenience, and general welfare. The standards and conditions contained herein have been reviewed and deemed consistent with Comprehensive Plan policies.

14.01.020 Definitions

As used in this ordinance, the masculine includes the feminine and neuter, and the singular includes the plural. The following words and phrases, unless the context otherwise requires, shall mean:

Accessory Dwelling Unit. An interior, attached, or detached residential structure that is used in connection with or that is accessory to a single-family dwelling.

Accessory Structure or Use. A structure or use incidental and subordinate to the primary use of the property and which is located on the same lot or parcel as the primary use or is on a contiguous lot or parcel under the same ownership. Where an accessory building is attached to the main building in a substantial manner, as by a wall or roof, such accessory building shall be considered part of the main building.

Adult Recreation Facility. A facility or that portion of a facility that may have any uses allowed in family recreation facilities. In addition, card rooms, taverns, and bars are also adult recreation facilities. Social gambling,

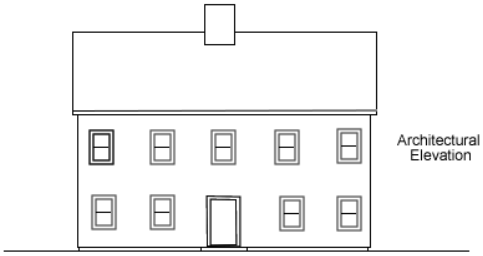
as defined by Oregon law and city ordinance, may occur. Alcoholic beverages may be sold and consumed.

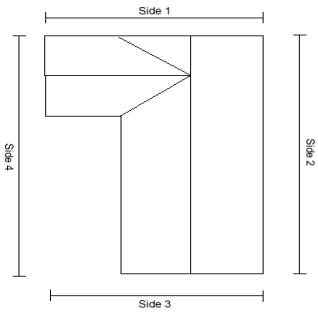
Alley. A narrow street 25 feet or less through a block primarily for vehicular service access to the back or side of properties otherwise abutting on another street. Frontage on said alley shall not be construed as satisfying the requirements of this Ordinance related to frontage on a dedicated street.

Apartment House. A residential structure having multiple residential living units where more than 50 percent of the units are rented for not less than 30 days at a time.

Applicant. A person who applies for a land use action or building permit. An applicant can be the owner of the property or someone who is representing the owner, such as a builder, developer, optional purchaser, consultant, or architect.

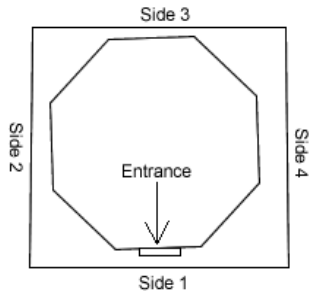
Architectural Elevation.*** A scale drawing of the four sides of a building, one each for the front, two sides and rear, from grade to the highest point of the building. The four sides shall show the entire perimeter of the building and shall be centered on each side. The four sides shall be at 90 degrees to each adjacent side.





For a building with many sides or a non-rectangular

shape, a rectangle shall be drawn around the outside of the building. Side 1 shall be centered on the entry to the building and each of the other three sides shall be 90 degrees to the adjacent side. Architectural elevations for use in the building height calculation shall be drawn for each side of the rectangle.



Assisted Living Facility. A facility licensed by or under the authority of the Department of Human Resources (DHR) per Oregon Administrative Rule 411-56-000, which provides or coordinates a range of services for elderly and disabled persons in a home-like environment. An assisted living facility is required to provide each resident with a separate living unit with a lockable door to guarantee their privacy, dignity, and independence.

Authorized Agent. A property management company or other entity or person who has been designated by the owner to act on their behalf. An authorized agent may or may not be the designated point of contact for complaints.

Automobile Service Station. A building or portion thereof and land used for dispensing automobile fuel, oil, and accessories. Automobile repairs may be made that do not produce an unreasonable or excessive amount of dust, odor, smoke, fumes, or noise. When the dispensing sale or offering for sale of motor fuels or oil is incidental to the conduct of a public garage, the premises shall be classified as a public garage.

Bed and Breakfast Facility. A short-term rental where the operator resides on the premises and meals are provided for a fee.

Bedroom. A habitable room that (a) is intended to be used primarily for sleeping purposes; (b) contains at

least 70-square feet; and (c) is configured so as to take the need for a fire exit into account.

Boarding, Lodging, or Rooming House. A building or portion thereof containing a single dwelling unit where a group of four or more unrelated persons may live but not more than 20 unrelated persons. A boarding, lodging, or rooming house may be occupied and managed by a family in addition to the four to twenty unrelated persons. Where such a facility has a majority of the residents residing for 30 days or longer, it shall be considered a residential use and a boarding house. If the majority of such occupancy is for less than 30 continuous days, the facility shall be considered transient and the same as a hostel. Where such a facility is occupied by more than 20 unrelated persons, or where such a facility has more than one kitchen, it shall be considered a hotel or motel.

Building. A structure built for the support, shelter, or enclosure of persons, animals, chattels, or property of any kind.

Child Care Facility. A day care provider who regularly provides day care to 12 or fewer children under the age of 13 in the provider's home in the family living quarters.

City. The City of Newport, Oregon.

Commission. The City Planning Commission of the City of Newport, Oregon.

Community Development Director. The City of Newport Community Development Director/Planning Director or designate.

Conditional Use. A use that may be permitted depending upon the individual circumstances. A conditional use permit will not be issued or shall be so conditioned so that neither the public nor neighboring property owners are unduly affected in an adverse way.

Condominiums. A form of ownership where buildings are subdivided into individual units such that each owner only owns his own unit and the air space occupied by it. The portion of land upon which the building is situated, the surrounding grounds, party walls, corridors, and services other than those within independent units (such

as electrical, water, gas, sewer, etc.) become joint responsibilities of all the owners as tenants in common.

Court. An open, unoccupied space on the same lot with the building or buildings and which is bounded on two or more sides by such building or buildings. An open, unoccupied space bounded by one "L" shaped building, which is not a court but a yard.

Court Apartments. Multiple dwellings arranged around two or three sides of a court opening upon a street.

Day Care Facility. Any facility that provides care, supervision, and guidance on a regular basis to more than 12 children under the age of 13 unaccompanied by a parent, guardian, or custodian during a part of the 24 hours of the day in a place other than the child's home, with or without compensation. A day care facility does not include any of the following:

A. A facility providing care that is primarily educational, unless provided to a preschool child for more than four (4) hours a day. Such facilities shall be considered a school.

B. A facility providing care that is primarily supervised training in a specific subject, including but not limited to dancing, drama, music, or religion. Such facilities shall be considered the same as a school.

C. A facility providing care that is primarily an incident of group athletic or social activities sponsored by or under the supervision of an organized club or hobby group.

D. A facility operated by a school district, signs subdivision of the State of Oregon, Lincoln County, the City of Newport, or another governmental agency.

E. Day care facilities are subject to (1) the rules and regulations established by the State of Oregon Children's Services Division and (2) the following:

   1. Compliance with the requirements of Section 14.33.

2. The provision of off-street parking at one (1) space per staff member.

3. A solid fence or hedge at least six (6) feet in height around the rear yard.

Design Guidelines. The discretionary design oriented approval criteria with which a project is required to be in compliance. The design guidelines are applicable for applications that do not meet the design standards.

Design Review. The process of applying design guidelines and/or design standards

Design Standards. Clear and objective design oriented approval criteria with which a project much demonstrate compliance. If a project does not meet the design standards, then the project is reviewed under the design guidelines.

Dwelling, Duplex; or Dwelling, Two-Family. A detached building containing two dwelling units.

Dwelling, Triplex; or Dwelling, Three-Family. A detached building containing three dwelling units.

Dwelling, Fourplex; or Dwelling, Four-Family. A detached building containing four dwelling units.

Dwelling, Multi-Family. A building containing five or more dwelling units.

Dwelling, Single-Family. A detached building containing one dwelling unit.

Dwelling Unit. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

Family. An individual or two or more persons related by blood, marriage, adoption, or legal guardianship, or not more than five persons not related by blood, marriage, or adoption living together in a dwelling unit. A family is also five or fewer physically or mentally handicapped persons living as a single housekeeping unit in a dwelling.

Family Recreation Facility. A facility designed for active indoor recreation, including a billiard parlor, dance hall, bowling alley, skating rink, teen club or youth center, arcade, indoor swimming pool, indoor tennis court, miniature golf course, and similar uses. No alcoholic beverages may be consumed or sold, nor may gambling occur in a family recreation facility. A supervisory employee must be present at all times, and public restrooms must be provided.

Footprint. The total square footage of the area within the perimeter of the building as measured around the foundation of a building.

Garage, Private. An accessory building detached or part of the main building including a carport which is intended for and used for storing the privately owned motor vehicles, boats, and trailers of the persons resident upon the premises and in which no business, service, or industry related to motor vehicles is carried on.

Garage, Public. A "public or commercial garage" is a building or part of a building or space used for business or commercial purposes used principally for the repair, equipping, and care of motor vehicles and where such vehicles may be parked or stored.

Geologic Hazards. A geologic condition that is a potential danger to life and property which includes but is not limited to earthquakes, landslides, erosion, expansive soils, fault displacement, and subsidence.

Grade. The average of the finished exterior ground level at the corners of each architectural elevation of the building. In case an architectural elevation is parallel to and within five feet of a sidewalk or on top of a retaining structure, the grade for that one architectural elevation shall be measured at the sidewalk or base of the retaining structure.

Gross Floor Area. The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage.

Height of Building. The vertical distance from the "grade" to the highest point of the roof.

Home share. A short-term rental, other than a bed and breakfast facility, where a portion of a dwelling unit is rented while the homeowner is present. For the purposes of this definition, "present" means the homeowner is staying in the dwelling overnight for the duration of the rental.

Home Occupation. An accessory use of a dwelling unit for gainful employment involving provision or sale of goods and/or services and the creation of handicrafts and artwork and is incidental to the primary use of the building or residence.

Hospital. An establishment which provides sleeping and eating facilities to persons receiving medical, obstetrical, or surgical care and nursing service on a continuous basis.

Hostel. A single building containing a single dwelling unit where four or more (but not more than 20) unrelated individuals may live for not more than 30 continuous days. A hostel may be occupied and managed by a family in addition to the 4-20 persons renting facilities. If there are more than 20 persons at maximum occupancy, such a facility shall be considered a hotel or motel for the purposes of this Ordinance except for parking requirements. Hostels shall meet the requirements of the Uniform Building Code for maximum occupancy.

Hotel (transient). A building in which lodging is provided for guests for compensation and contains a common entrance and where lodging rooms do not have an entrance opening directly to the outdoors (except for emergencies), with or without cooking facilities, and where 50 percent or more of the lodging rooms are for rent to guests for a continuous period of less than 30 days. Short-term rental use of a single family dwelling or individual dwelling unit is not a hotel use.*

Hotel (non-transient). A building in which lodging is provided for guests for compensation and contains a common entrance and where lodging rooms do not have an entrance opening directly to the outdoors (except for emergencies), where cooking facilities are provided within individual lodging rooms, or for groups of lodging rooms, and where 50 percent or more of the lodging rooms are offered for rent to guests for a continuous

period of 30 days or longer. Short-term rental use of a single family dwelling or individual dwelling unit is not a hotel use.*

Junk Yard. Any property used by a business that deals in buying and selling old motor vehicles, old motor vehicle parts, abandoned automobiles, or machinery or parts thereof, or appliances or parts thereof, or iron, paper, or waste of discarded material.

Kennel. A lot or building in which four or more dogs, cats, or animals at least four months of age are kept. Any building containing more than one dwelling unit shall be considered a lot or building for the purposes of this item.

Land Use Action. The procedure by which the City of Newport makes a land use decision.

Land Use Decision. In general, a final decision or determination that concerns the adoption, amendment, or application of the statewide planning goals, a comprehensive plan provision, or a land use regulation. Specifically, a city decision as defined by ORS 197.015(10).

Laundromat. An establishment providing washing, drying, or dry cleaning machines on the premises for rental use to the general public for family laundering or dry cleaning purposes.

Loading Space. An off-street space within a building or on the same lot with a building for the temporary parking of a commercial vehicle or truck while loading or unloading

Lot. A parcel or tract of land which is occupied or may be occupied by a structure or a use, together with yards and other open space.

Lot Area. The total horizontal area within the lot lines of a lot.

Lot Corner. A lot at least two adjacent sides of which but streets other than alleys, provided the angle of intersection of the adjacent streets does not exceed 135 degrees.

Lot, Corner, Reversed. A corner lot, the side street line of which is substantially a continuation of the front line of the first lot to its rear where the lot to the rear is of the prevailing yard pattern.

Lot Frontage. The front of a lot is the portion nearest the street. In no case shall the frontage (or front lot line) be less than 25 feet.

Lot, Interior. A lot other than a corner lot.

Lot, Through. A lot having frontage on two parallel or approximate parallel streets other than alleys.

Lot Line. The property line abounding a lot. Where the lot line extends below ordinary high tide, ORS 390.615 shall apply. Where the lot line extends below ordinary high water, ORS 274.025 shall apply.

Lot Line, Front. In the case of an interior lot, a straight line joining the foremost points of the side lot lines. The foremost points of the side lot, in the case of rounded property corners at street intersections, shall be assumed to be the point at which the side and front lot lines would have met without such rounding, and, in the case of a corner lot, all sides of a lot adjacent to streets other than alleys shall be considered frontage.

Lot Line, Rear. In the case of an interior lot, a straight line joining the rearmost points of the side lot lines, and in the case of an irregular, triangular, or other shaped lot, a line 10 feet in length within the lot, parallel to and at the maximum distance from the front lot line, and in the case of through lots, there will be no rear lot line. All corner lots shall have at least a 10 foot rear yard.

Lot Line, Side. Any lot line not a front or rear lot line.

Lot Measurements.

A. Depth of a lot is the mean horizontal distance between the front lot line and rear lot line of a lot. In the case of a corner lot, the lot depth is the greater of the mean horizontal distances between front lot lines and the respective lot lines opposite each other.

B. Width of a lot is the mean horizontal distance between side lot lines (of side and front lot lines for corner lots) perpendicular to the lot depth.

Lumber and Other Building Materials Dealer. Establishment engaged in selling lumber and a general line of building materials to the general public (see State Industrial Code 5211).

Lumber Yard. A place of storage in connection with the wholesaling of lumber by a manufacturer such as a planing mill, a sawmill, or a producer of mill work (see S.I.C. 24ll, 242l, 2426, 2429, and 243l).

Manufactured Dwelling. A manufactured home, mobile home, or residential trailer.

Manufactured Dwelling Park. Any place where four or more manufactured dwellings are located on a lot or parcel of land the primary purpose of which is to rent space and related facilities for a charge or fee or to offer space for free in connection with securing the trade or patronage of a person.

Manufactured Home. A structure constructed after June 15, 1976, for movement on the public highways that has sleeping, cooking, and plumbing facilities; that is intended for human occupancy; that is being used for residential purposes; and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction.

Mini-Storage. Individual small warehouse units.

Ministerial Action. A decision that does not require interpretation or the exercise of policy or legal judgment in evaluating approval standards. The review of a ministerial action requires no notice to any party other than the applicant and agencies that the Community Development Director, or designee, determines may be affected by the decision. A ministerial action does not result in a land use decision, as defined in ORS 197.015(10).

Mobile Home. A structure constructed for movement on the public highways that has sleeping, cooking, and

plumbing facilities; that is intended for human occupancy; that is being used for residential purposes; and that was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon mobile home law at the time of construction.

Motel (transient). A building or group of buildings in which lodging is provided for guests for compensation, containing lodging rooms with separate entrances from the building exterior, with or without cooking facilities, and where 50 percent or more of the lodging rooms are for rent to guests for a continuous period of less than 30 days. Short-term rental use of a single family dwelling or individual dwelling unit is not a motel use.*

Motel (non-transient). A building or group of buildings in which lodging is provided for guests for compensation, containing lodging rooms with separate entrances from the building exterior, where cooking facilities are provided within individual lodging rooms, or for groups of lodging rooms, offered for rent to guests for a continuous period of 30 days or longer. Short-term rental use of a single family dwelling or individual dwelling unit is not a motel use.*

Nonconforming Lot. A lot legally existing on the effective date of this Ordinance that does not meet the minimum area requirement of the district in which the lot is located.

Nonconforming Structure or Use. A legally established structure or use in existence at the time of enactment or amendment of the Zoning Code but not presently in compliance with the regulations of the zoning district in which it is located. A use approved under criteria that have been modified or are no longer in effect is considered nonconforming.

Nursing Home. A nursing home provides 24 hour direct medical, nursing, and other health services. Registered nurses, licensed practical nurses, and nurses' aides provide services prescribed by resident(s) physician(s). A nursing home is for those persons who need health supervision but not hospitalization. The emphasis of this use is on nursing care, but convalescent, restorative physical, occupational, speech, and respiratory therapies are also provided. The level of care may also include specialized nursing services such as specialized

nutrition, rehabilitation services and monitoring of unstable conditions. The term nursing home is also synonymous with the terms nursing facility and skilled nursing facility.

Open Porch. A roofed, open structure projecting from the outside wall of a building without window sash or any other form of permanent enclosure.

Owner. Means the natural person(s) or legal entity that owns and holds legal or equitable title to the property.

Parking Lot, Public. An open, off-street area used for the temporary parking of more than three automobiles and available for public use, with or without charge, or as an accommodation for clients and customers.

Person. Every natural person, firm partnership, association, or corporation.

Planned Development. The development of an area of land as a single entity for a number of dwelling units or a number of uses, according to a plan which does not correspond in lot size, bulk or type of dwelling, density, lot coverage, or required open space to the regulations otherwise required by the ordinance.

Primary Structure or Use. A structure or use of chief importance or function on a site. A site may have more than one primary structure or use.

Public Facilities. Sanitary sewer, water, streets (including sidewalks), storm water, and electricity.

Recreational Vehicle (RV). A vehicle with or without motive power that is designed for human occupancy and to be used temporarily for recreational, seasonal, or emergency purposes and has a gross floor space of not more than 400 square feet in the setup mode.

Recreational Vehicle Park. A place where two or more recreational vehicles are located on a lot or parcel of land, the primary purpose of which is to rent space and related facilities for a charge or fee or to offer space for free in connection with securing the trade or patronage of a person.

Recreational Vehicle Storage. Storage for more than two recreational vehicles. No occupancy allowed.

Residential Care Home. A residential facility, as defined in ORS 443.400, which provides residential care and/or treatment to five or fewer individuals, excluding caregivers, with mental or other developmental disabilities; mental, emotional, or behavioral disturbances; or alcohol or drug dependence. This definition includes the state definitions of "residential training home" and "residential treatment home."

Residential Facility. A facility licensed by or under the authority of the Department of Human Services (DHS) as defined in ORS 443.400, which provides residential care alone or in conjunction with treatment or training or a combination thereof for six to fifteen individuals who need not be related. Required staff persons shall not be counted in the number of facility residents. This definition includes the state definitions of "residential care facility," "residential training facility," and "residential treatment facility."

Residential Trailer. A structure constructed for movement on the public highways that has sleeping, cooking, and plumbing facilities; that is intended for human occupancy; that is being used for residential purposes; and that was constructed before January 1, 1962.

Residential Unit. See definition of Dwelling Unit.

Sale or Transfer. Means any change of ownership during the period of time that a license is valid, whether or not there is consideration, except:

1. A change of ownership in real property where title is transferred pursuant to a declaration of right of survivorship as recognized in ORS 93.180.

2. A transfer of ownership in real property to a trust, a limited liability company, a corporation, a partnership, a limited partnership, a limited liability partnership, or other similar entity so long as the conveyance does not result in any new individuals possessing titled or equitable interest in the property.

3. A transfer of ownership between titled interest holders.

4. A transfer of ownership between, or to include, spouses, domestic partners, or children.

Examples: The following scenarios serve as examples of some, but not all, of the types of transactions that will or will not constitute a sale or transfer as defined in this chapter:

- Title is held by a married couple or domestic partnership at the time the license is obtained. Partner dies and survivor retains license? This would not constitute a sale or transfer (Exception 1).

- An individual owns a parcel subject to a declaration of right-of-survivorship to their children at the time a license is obtained. The individual dies and title is transferred pursuant to that provision? This would not constitute a sale or transfer (Exception 1).

- Married couple possesses title to property at time license is obtained. They later elect to convey property into an irrevocable trust and retain a life estate in the deed? This would not constitute a sale or transfer (Exception 2).

- A corporation consisting of three shareholders owns a parcel at the time a license is obtained. They later convert the corporation to a limited liability company controlled by two of the original three shareholders? This would not constitute a sale or transfer (Exceptions 2. and 3).

- A limited liability company is formed with four individuals possessing ownership interest at the time a license is obtained. A fifth person later obtains an ownership interest in the company? This would constitute a sale or transfer.

- Four tenants in common own a parcel at time license is obtained. An owner sells their 1/4 interest to one of the other existing owners? This would not constitute a sale or transfer (Exception 3.) Alternatively, what if they sell their 1/4 interest to a new person? That would constitute a sale or transfer.

- Title is held by a married couple at time license is obtained. They later acquire a home equity line of credit to repair the home, which lender secures with a deed of trust. Lender subsequently forecloses after a default under the term(s) of the security agreement? The instrument the lender uses to obtain possessory interest is a sale or transfer.

- Two married couples possess ownership interest in an LLC at the time a license is obtained. One of the couple's divorces and one of the partners drops off the title. Remaining partner remarries and the new spouse is added to the LLC? This is not a sale or transfer (Exception 4).

- Property is held by an individual at time license is obtained. The individual dies and children inherit property (no right of survivorship)? This would not constitute a sale or transfer (Exception 4).

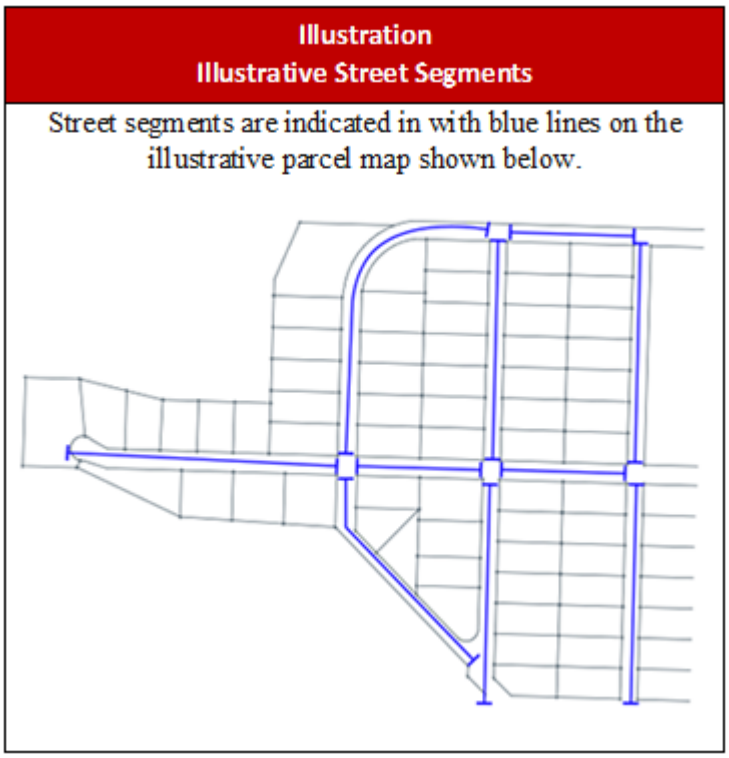
- An individual possesses title to the property at the time a license is obtained. He/she later adds their domestic partner to the title to the property? This would not constitute a sale or transfer (Exception 4).

Setback. The minimum distance required between a specified object, such as a building and another point. Typically, a setback refers to the minimum distance from a building to a specified property line to provide a required yard.

Short-Term Rental. A dwelling unit, or portion thereof, that is rented to any person for a period of less than thirty (30) consecutive nights.

Street. The term is defined in Section 13.05.005(J) of the Newport Subdivision Ordinance.

Street Segment. A portion of a local or collector street which is located between two intersections, or between an intersection and the end of a cul-de-sac or dead-end. *See Illustration: Illustrative Street Segments, below.*



Structural Alteration. Any change to the supporting members of a building including foundation, bearing walls or partitions, columns, beams or girders, or any structural change in the roof.

Structure. That which is built or constructed. An edifice or building or any kind of any piece of work artificially built up or composed of parts joined together in some manner and which require location on the ground or which is attached to something having a location on the ground.

Substantial Improvement. Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either:

A. before the improvement or repair is started; or

B. If the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either of the following:

1. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications that are solely necessary to assure safe living conditions; or

2. Any alteration of a structure listed on the National Register of Historic Places or the State Inventory of Historic Places.

Temporary Structures. Trailers, mobile homes, prefabricated buildings, or other structures that can readily be moved or which are not attached in a permanent manner to a permanent foundation and are used for residential or business purposes.

Temporary Vending Carts. A trailer or other vehicle that does not exceed 16 feet in length, has functional wheels, an axle for towing, is not attached in a permanent manner to a permanent foundation and is self-contained for sanitary sewer. A temporary vending cart may be mobile (i.e. does not remain stationary for longer than a few hours), or remain stationary, as permitted by Section 14.08.050.

Terrace. An open porch without a permanent roof and not over 30 inches in height (not requiring a railing according to the Uniform Building Code).

Town House. Buildings that are subdivided into individual units such that each owner owns his own unit and also has entitlement to the parcel of land upon which his unit is located.

Tourist. A person or group of people who are traveling for pleasure or are of a transient nature.

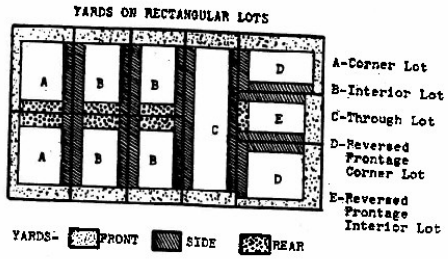
Use. The purpose for which land or a structure is designed, arranged, or intended, or for which it is occupied or maintained.

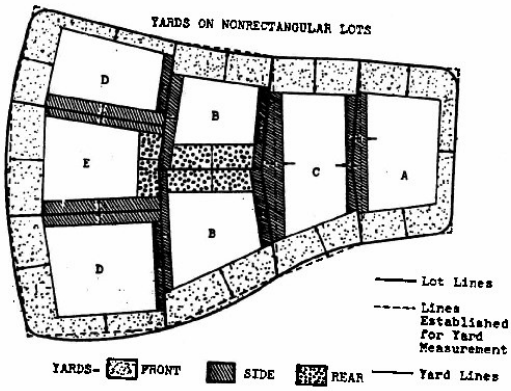
Vacation Rental. A short term rental where the entire dwelling unit is rented.

Wetlands. Wetlands are those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

Yard. An open space on a lot which is unobstructed by any building from the ground upward, except as otherwise provided in this ordinance. Yard depth is always measured horizontally and perpendicular to the respective lot line.

Yard, Front. A yard extending across the full width of the lot, the depth of which is the minimum horizontal distance between the front lot line and a line parallel thereto on the lots. In the case of corner lots, front yards shall be required as shown in Illustration A and in Table A.





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Newport Zoning Ordinance (No. 1308, as amended)

Yard, Rear. A yard extending across the width of the lot between the inner side yard lines, the depth of which is the minimum horizontal distance between the rear lot line and a line parallel thereto on the lot. In the case of through lots and reversed frontage corner lots, there will be no rear yard. In the case of corner lots with normal frontage, the rear yard shall extend from the inner side yard line of the side yard adjacent to the interior lot to the rear line of the lesser depth second front yard.

Yard, Side. A yard extending from the rear line of the required front yard to the rear lot line, the depth of which is the minimum horizontal distance between the side lot line and a line parallel thereto on the lot. In the case of through lots, side yards shall extend from the rear lines of the front yards required. In the case of corner lots with normal frontage, there will be only one side yard adjacent to the interior lot. In the case of corner lots with reversed frontage, the yards remaining after the normal front yard and lesser depth second front yard have been established shall be considered to be side yards. The accompanying Illustration A indicates the location of yards on rectangular and non-rectangular lots.

*(**Amended by Ordinance No. 2144 (5-7-19).)*
*(*Amended by Ordinance No. 2142 (11-14-18).)*
(Chapter 14.01 was enacted by Ordinance No. 2125, adopted on December 4, 2017: effective January 3, 2018.)

CHAPTER 14.02 ESTABLISHMENT OF ZONES

14.02.010 Establishment of Zones

In order to carry out the purpose and provisions of this Code, the following zones are hereby established:

Zone Designation	Abbreviated
Low Density Residential	(R-1)
Low Density Residential	(R-2)
High Density Residential	(R-3)
High Density Residential	(R-4)
Retail Commercial	(C-1)
Tourist Commercial	(C-2)
Highway Commercial	(C-3)
Light Industrial	(I-1)
Medium Industrial	(I-2)
Water Dependent	(W-1)
Water Related	(W-2)
Management Unit 1	(Mu-1)
Management Unit 2	(Mu-2)
Management Unit 3	(Mu-3)
Management Unit 4	(Mu-4)
Management Unit 5	(Mu-5)
Management Unit 6	(Mu-6)
Management Unit 7	(Mu-7)
Management Unit 8	(Mu-8)
Management Unit 9	(Mu-9)
Management Unit 10	(Mu-10)
Public Buildings and Structures	(P-1)
Public Recreation	(P-2)
Public Open Space	(P-3)
Mobile Homes	(M-H)

14.02.020 Establishment of a Zoning Map

A. The location and boundaries of the zones designated in Section 14.02.010 are hereby established as shown on the map entitled: "Zoning Map of the City

of Newport", which, together with all explanatory matter thereon, is hereby adopted by reference and designed to be a part of this Code.

B. The Official Zoning Map shall be identified by the signature of the Mayor, attested by the City Recorder, and bearing the seal of the City under the following words: "This is to certify that this is the Official Zoning Map referred to in Section 2-1-3 of Ordinance No. 1308 of the City of Newport, Oregon", together with the date of the adoption of this Ordinance.

C. If, in accordance with the provisions of this Ordinance, changes are made in district boundaries portrayed on the Official Zoning Map, such changes shall be made on the Official Zoning Map promptly after the amendment has been approved by the City Council, together with the ordinance number and date of said change.*

D. Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map, which shall be located in the office of the City Recorder, shall be the final authority as to current zoning status of land and water areas, buildings, and other structures in the city.

E. Replacement of Official Zoning Map. In the event that the Official Zoning Map becomes damaged, destroyed, lost, or difficult to interpret because of the nature or number of changes and additions, the City Council may, by ordinance, adopt a new Official Zoning Map which shall supersede the prior Official Zoning Map. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such corrections shall have the effect of amending the original zoning ordinance or any subsequent amendment thereof.

F. The new Official Zoning Map shall be identified by the signature of the Mayor, attested by the City Recorder, and bearing the seal of the City under the following words: "This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted (date of adoption of map being replaced) as

part of Ordinance No. _____ of the City of Newport, Oregon".

14.02.030 Zone Boundaries

Where uncertainty exists as to the boundaries of districts as shown on the Official Zoning Map, the following rules may apply:

A. Boundaries indicated as approximately following the center line of streets, highways, or alleys shall be construed to follow such center lines.

B. Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.

C. Boundaries indicated as approximately following city limits shall be construed as following city limits.

D. Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.

E. Boundaries indicated as following shore lines shall be construed to follow the mean higher high water line of such shore lines, and, in the event of change in the shore line, shall be construed as moving with the actual shore line; boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes, or other bodies of water shall be construed to follow such center lines. Areas below the mean higher high water or the line of non-aquatic vegetation in the estuarine area shall be considered to be in the estuarine management unit rather than the adjacent shore land zone.

(Amended by Ordinance No. 1656 (1-4-93).)*

F. Boundaries indicated as parallel to or extensions of geographic features indicated in Subsections A through E, above, shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the Map.

G. Where a zone boundary divides a lot between two zones, the entire lot shall be placed in the zone that accounts for a greater area of the lot by the

adjustment of the boundaries, provided the boundary adjustment is a distance of less than 20 feet.

CHAPTER 14.03 ZONING DISTRICTS

14.03.010 Purpose.

It is the intent and purpose of this section to establish zoning districts for the City of Newport and delineate uses for each district. Each zoning district is intended to service a general land use category that has common location, development, and use characteristics. The quantity and availability of lands within each zoning district shall be based on the community's need as determined by the Comprehensive Plan. Establishing the zoning districts also implements the General Land Use Plan Map as set forth in the Comprehensive Plan.

14.03.020 Establishment of Zoning Districts.

This section separates the City of Newport into four (4) basic classifications and thirteen (13) use districts as follows:

A. Residential.

1. R-1 Low Density Single-Family Residential.
2. R-2 Medium Density Single-Family Residential.
3. R-3 Medium Density Multi-Family Residential.
4. R-4 High Density Multi-Family Residential.

B. Commercial.

1. C-1 Retail and Service Commercial.
2. C-2 Tourist Commercial.
3. C-3 Heavy Commercial.

C. Industrial.

1. I-1 Light Industrial.
2. I-2 Medium Industrial.
3. I-3 Heavy Industrial.

D. Water Related.

1. W-1 Water Dependent.

2. W-2 Water Related.

E. Public.

1. P-1 Public Structures.

2. P-2 Public Parks.

3. P-3 Public Open Space.

**Section 2-2-6.010 amended by Ordinance No. 1336 (7-5-83); Section 2-2-4 amended by Ordinance No. 1344 (11-7-83); Sections 2-2-1 and 2-2-6 amended by Ordinance No. 1356 (1-3-84); Sections 2-2-3, 2-2-4, 2-2-5, 2-2-6, and 2-2-7 amended by Ordinance No. 1447 (12-16-85); Section 2-2-6.015 amended by Ordinance No. 1468 (8-19-86); Section 2-2-4 amended by Ordinance No. 1526 (11-7-88); Section 2-2-2.010 amended by Ordinance No. 1565 (14.36.0010); Section 2-2-4 amended by Ordinance No. 1567 (14.36.0010); the above became obsolete when Sections 2-2-1 through 2-2-12 were totally amended by Ordinance No. 1575 (7-2-90); and then the entire Section was repealed and replaced by Ordinance No. 2022 (10-20-11).*

14.03.030 City of Newport Zoning Map.

The zoning districts established by this section are officially identified on the map entitled "City of Newport Zoning Map," by reference incorporated herein. Zoning district boundaries, as shown on the official map, shall be construed as follows:

A. City limit lines;

B. Platted lot lines or other property lines as shown on the Lincoln County Assessor's plat maps;

C. The centerline of streets, railroad tracks, or other public transportation routes;

D. The centerline of streams or other watercourses as measured at Mean Low Water. In the event of a natural change in location of the centerline of such watercourse, then the zoning district boundary shall be construed to moving with the channel centerline; and

E. The Mean Higher High Tide Line.

14.03.040 Intent of Zoning Districts.

Each zoning district is intended to serve a general land use category that has common locations, development, and service characteristics. The following sections specify the intent of each zoning district:

R-1/"Low Density Single-Family Residential." The intent of the R-1 district is to provide for large lot residential development. This district should also be applied where environmental constraints such as topography, soils, geology, or flooding restrict the development potential of the land.

R-2/"Medium Density Single-Family Residential." The intent of this district is to provide for low density, smaller lot size residential development. It is also the ambition of this district to serve as a transitional area between the low density residential district and higher density residential districts.

R-3/"Medium Density Multi-Family Residential." This district is intended for medium density multi-family residential development. It is planned for areas that are able to accommodate the development of apartments. New R-3 zones should be near major streets, on relatively flat land, and near community or neighborhood activity centers.

R-4/"High Density Multi-Family Residential." This district is intended to provide for high density multi-family residential and some limited commercial development. New R-4 zones should be on major streets, on relatively flat land, and near commercial centers.

C-1/"Retail and Service Commercial." The intent of the C-1 district is to provide for retail and service commercial uses. It is also intended that these uses will supply personal services or goods to the average person and that a majority of the floor space will be devoted to that purpose. Manufacturing, processing, repair, storage, or warehousing is prohibited unless such activity is clearly incidental to the business and occupies less than 50% of the floor area.

C-2/"Tourist Commercial." The intent of this zone is to provide for tourist needs, as well as for the entertainment needs of permanent residents.

C-3/"Heavy Commercial." The intent of this zone is to provide for commercial uses that are frequently incompatible with retail and service commercial uses. This zone is also intended to provide uses that utilize more than 50% of the floor area for storage, repair, or compounding of products but do not constitute a nuisance because of noise, dust, vibration or fumes.

I-1/"Light Industrial." The intent of this zone is to provide for commercial and industrial uses that can be located near residential or commercial zones. Uses that are associated with excessive noise, dust, vibration, or fumes shall be prohibited.

I-2/"Medium Industrial." The intent of this zone is to provide areas suitable for industrial activities, including manufacturing, fabricating, processing, packing, storage, repairing, and wholesaling. This classification should be applied to industrial areas having good access to transportation facilities and not near residential zones.

I-3/"Heavy Industrial." The intent of this zone is to provide for industrial uses that involve production and processing activities generating noise, vibration, dust, and fumes. Typically, this zone requires good access to transportation, large lots, and segregation from other uses due to nuisances.

W-1/"Water-Dependent." The intent of the W-1 district is to protect areas of the Yaquina Bay Shorelands, as identified in the Newport Comprehensive Plan, for water-dependent uses. For purposes of this section, a water-dependent use is one which needs contact with or use of the water for water-borne transportation, recreation, energy production, or water supply. All uses in a W-1 district shall comply with the following standards:

A. Existing water-dependent uses or future water-dependent uses anticipated by the Comprehensive Plan shall not be preempted or restricted by non-water-dependent uses. In determining whether or not a use preempts or

restricts a water-dependent use, the following shall be considered:

1. Water-related uses accessory to and in conjunction with water-dependent uses.

2. Temporary or mobile uses such as parking lots or temporary storage areas.

3. Incidental and accessory non-water-dependent uses sharing an existing structure with a water-dependent use.

B. Applicable policies in the Yaquina Bay Estuary and Yaquina Bay Shoreland sections of the Comprehensive Plan shall be followed.

C. In determining whether a conditional use should be allowed, consideration shall be given to whether the site or portion thereof is within an area designated as especially suited for water-dependent or water-related uses in the Comprehensive Plan. If the property is within that area, then the site shall be protected for water-dependent and water-related recreational, commercial, and industrial uses.

W-2/"Water-Related." The intent of the W-2 district is to provide areas within and adjacent to the Yaquina Bay Shorelands for water-dependent, water-related, and other uses that are compatible or in conjunction with water-dependent and water-related uses. In determining whether or not a use is water-related, the following shall be uses:

A. The proposed use is directly associated with a water-dependent use by supplying materials or services, or by using projects of water-dependent uses; and

B. Location away from the water would result in a public loss in the quality of goods or services after considering economic, social, environmental, and energy effects.

All conditional uses in a W-2 district shall also comply with the following standard:

In areas considered to be historic, unique, or scenic, the proposed use shall be designed to maintain or enhance the historic, unique, or scenic quality.

14.03.050 Residential Uses.

The following list sets forth the uses allowed within the residential land use classification. Uses not identified herein are not allowed. Short-term rentals are permitted uses in the City of Newport's R-1, R-2, R-3 and R-4 zone districts subject to requirements of Chapter 14.25.

"P" = Permitted uses.
"C" = Conditional uses; permitted subject to the approval of a conditional use permit.
"X" = Not allowed.

		R-1	R-2	R-3	R-4
A.	Residential				
	1. Single-Family	P	P	P	P
	2. Two-family	X	P	P	P
	3. Multi-family	X	X	P	P
	4. Manufactured Homes*	P	P	P	P
	5. Mobile Home Park	X	P	P	P
B.	Accessory Dwelling Units	P	P	P	P
	(B. was added on the adoption of Ordinance No 255 on June 17, 2013; and subsequent sections relettered accordingly. Effective July 17, 2013.)				
C.	Accessory Uses	P	P	P	P
D.	Home Occupations	P	P	P	P
E.	Community Services				
	1. Parks	P	P	P	P
	2.Publicly Owned Recreation Facilities	C	C	C	C
	3. Libraries	C	C	C	C
	4.Utility Substations	C	C	C	C
	5.Public or Private Schools	C	C	C	P
	6. Child Care Facilities	P	P	P	P
	7. Day Care Facilities	C	C	C	C
	8. Churches	C	C	C	C
F.	Residential Care Homes	P	P	P	P
G.	Nursing Homes	X	X	C	P
H.	Bed and Breakfast Inns	X	X	C	C
I.	Motels and Hotels	X	X	X	C
J.	Professional Offices	X	X	X	C
K.	Rooming and Boarding Houses	X	X	C	P
L.	Beauty and Barber Shops	X	X	X	C
M.	Colleges and Universities	C	C	C	C
N.	Hospitals	X	X	X	P
O.	Membership Organizations	X	X	X	p
P.	Museums	X	X	X	P

Q.	Condominiums	X	P	P	P
R.	Hostels	X	X	X	C
S.	Golf Courses	C	C	C	X
T.	Recreational Vehicle Parks	X	X	X	C
U.	Necessary Public Utilities and Public Service Uses or Structures	C	C	C	C
V.	Residential Facility*	X	X	P	P
W.	Movies Theaters**	X	X	X	C
X.	Assisted Living Facilities***	X	C	P	P
Y.	Bicycle Shop****	X	X	X	C

(Section 14.03.050 was amended by Ordinance No. 2144, adopted on May 6, 2019: effective May 7, 2019.)

14.03.060 Commercial and Industrial Districts.

The uses allowed within each commercial and industrial zoning district are classified into use categories on the basis of common functional, product, or physical characteristics.

** Added by Ordinance No. 1622 (10-7-91).*
*** Added by Ordinance No. 1680 (8-2-93).*
**** Added by Ordinance No. 1759 (1-21-97).*
***** Added by Ordinance No. 1861 (10-6-03).*
****** Amended by Ordinance No. 1989 (1-1-10).*

A. Application of Use Categories. Uses are to be assigned to the category whose "Characteristics" most closely describe the nature of the primary use. Developments may have more than one primary use. "Use Examples" are provided for each use category. The names of uses on the list are generic. They are based on the common meaning of the terms and not on what a specific use may call itself. For example, a use whose business name is "Wholesale Liquidation" but that sells mostly to consumers would be included in the Retail Sales and Service category rather than the Wholesale Sales category. This is because the actual activity on the site matches the description on the Retail Sales and Service category.

B. Interpretation. When a use's category is not clearly identifiable, the Community Development Director shall determine the applicable use category under a Type I decision-making process as provided by Section 14.52. The following factors are to be considered to determine what use category the use is in, and whether or not the activities constitute a primary use.

1. The description of the activity(ies) in relationship the characteristics of each use category;

2. The relative amount of site or floor space and equipment devoted to the activity;

3. Relative amount of sales from each activity;

4. The customer type for each activity;

5. The relative number of employees for each activity;

6. Hours of operation;

7. Building and site arrangement;

8. Vehicles used with the activity;

9. The relative number of vehicle trips generated by the activity;

10. Signs;

11. How the use advertises itself; and

12. Whether the activity would function independently of other activities on the site;

C. Commercial Use Categories

1. Office

a. Characteristics. Office uses are characterized by activities conducted in an office setting and generally focusing on business, government, professional, medical, or financial services. Traffic is primarily from employees with limited customer interactions.

b. Examples. Examples include financial businesses such as lenders, brokerage houses, bank headquarters; data processing; headquarters for professional service firms (lawyers, accountants, engineers, architects, etc.), sales offices; government offices; public

utility offices; TV and radio studios; medical and dental clinics, and medical and dental labs.

c. Exceptions.

i. Offices that are part of and are located with a firm in another category are considered accessory to the firm's primary activity. Headquarters offices, when in conjunction with or adjacent to a primary use in another category, are considered part of the other category.

ii. Contractors and others who perform construction or similar services off-site are included in the Office category if equipment and materials are not stored on the site and fabrication, services, or similar work is not carried on at the site.

2. Retail Sales and Service

a. Characteristics. Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods.

b. Examples. Examples include uses from the four subgroups listed below:

i. Sales-oriented, general retail: Stores selling, leasing, or renting consumer, home, and business goods including art, art supplies, bicycles, books, clothing, dry goods, electronic equipment, fabric, fuel, gifts, groceries, household products, jewelry, pets, pet food, pharmaceuticals, plants, printed material, stationery, and videos; food sales. Sales oriented general retail includes the service but not repair of vehicles.

ii. Sales-oriented, bulk retail: Stores selling large consumer home and business goods,

including appliances, furniture, hardware, home improvements, and sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light and medium trucks, and other recreational vehicles.

iii. Personal service-oriented: Branch banks; urgency medical care; Laundromats; photographic studios; photocopy and blueprint services; printing, publishing and lithography; hair, tanning, and personal care services; tax preparers, accountants, engineers, architects, real estate agents, legal, financial services; art studios; art, dance, music, martial arts, and other recreational or cultural classes/schools; hotels (non-transient); motels (non-transient); taxidermists; mortuaries; veterinarians; kennels limited to boarding and training with no breeding; and animal grooming.
(Amended by Ordinance No. 2142 (11-14-18).)

iv. Entertainment-oriented: Restaurants (sit-down and drive through); cafes; delicatessens; taverns and bars; hotels (transient), motels (transient), recreational vehicles, and other temporary lodging with an average length of stay less than 30 days; athletic, exercise and health clubs or gyms; bowling alleys, skating rinks, game arcades; pool halls; dance halls, studios, and schools; theaters; indoor firing ranges, miniature golf facilities, golf courses, and driving ranges.
(Amended by Ordinance No. 2142 (11-14-18).)

v. Repair-oriented: Repair of TVs, bicycles, clocks, watches, shoes, guns, appliances and office equipment; photo or laundry drop off; quick printing; recycling drop-off; tailor; locksmith; and upholsterer.

c. Exceptions.

i. Lumber yards and other building material sales that sell primarily to contractors and

do not have a retail orientation are classified as Wholesale Sales.

ii. The sale of landscape materials, including bark chips and compost not in conjunction with a primary retail use, is classified as Industrial Service.

iii. Repair and service of consumer motor vehicles, motorcycles, and light and medium trucks is classified as Vehicle Repair. Repair and service of industrial vehicles and equipment, and heavy trucks is classified as Industrial Service.

iv. Sales, rental, or leasing of heavy trucks and equipment is classified as Wholesale Sales.

v. When kennels are limited to boarding, with no breeding, the applicant may choose to classify the use as Retail Sales and Service.

vi. Uses where unoccupied recreational vehicles are offered for sale or lease, or are stored, are not included as a Recreational Vehicle Park

3. Major Event Entertainment

a. Characteristics. Major Event Entertainment uses are characterized by spectator or participatory entertainment and recreational activities, either indoors or outdoors, that draw large numbers of people to specific events or shows.

b. Examples. Examples include fairgrounds, sports complexes, ball fields, exhibition and meeting areas, coliseums or stadiums, equestrian centers and animal arenas, outdoor amphitheaters and theme or water parks.

c. Exceptions.

i. Exhibition and meeting areas with less than 20,000 square feet of total event area are classified as Sales Oriented Retail Sales or Service.

ii. Banquet halls that are part of hotels or restaurants are accessory to those uses.

4. Self-Service Storage

a. Characteristics. Self-Service Storage uses provide separate storage areas for individual or business uses. The storage areas are designed to allow private access by the tenant for storing personal property.

b. Examples. Examples include single story and multistory facilities that provide individual storage areas for rent. These uses are also called mini warehouses.

c. Exceptions. A transfer and storage business where there are no individual storage areas or where employees are the primary movers of the goods to be stored or transferred is in the Warehouse and Freight Movement category.

5. Vehicle Repair

a. Characteristics. Firms servicing passenger vehicles, light and medium trucks and other consumer motor vehicles such as motorcycles, boats and recreational vehicles. Generally, the customer does not wait at the site while the service or repair is being performed.

b. Examples. Examples include vehicle repair, transmission or muffler shop, auto body shop, alignment shop, auto upholstery shop, auto detailing, and tire sales and mounting.

c. Exceptions.

i. Repair and service of industrial vehicles and equipment, and of heavy trucks; towing and vehicle storage; and vehicle

wrecking and salvage are classified as Industrial Service.

6. Parking Facility

a. Characteristics. Parking facilities provide parking for vehicles as the primary use. The Parking Facility use category does not include parking that is required for a primary use. A fee may or may not be charged to park at a facility.

b. Examples. Short and long term fee parking facilities, commercial district shared parking lots, commercial shuttle parking, and park-and-ride lots.

c. Exceptions.

i. Required parking that is accessory to a use is not considered a Parking Facility.

D. Industrial Use Categories

1. Contractors and Industrial Service

a. Characteristics. Industrial Service firms are engaged in the repair or servicing of industrial, business or consumer machinery, equipment, products or by-products. Firms that service consumer goods do so by mainly providing centralized services for separate retail outlets. Contractors and building maintenance services and similar uses perform services off-site. Few customers, especially the general public, come to the site.

b. Examples. Examples include welding shops; machine shops; tool repair; electric motor repair; repair of scientific or professional instruments; sales, repair, storage, salvage or wrecking of heavy machinery, metal, and building materials; towing and vehicle storage; auto and truck salvage and wrecking; heavy truck servicing and repair; tire re-treading or recapping; truck stops; building, heating, plumbing or electrical contractors; printing, publishing and lithography; exterminators;

recycling operations; janitorial and building maintenance services; fuel oil distributors; solid fuel yards; research and development laboratories; dry-docks and the repair or dismantling of ships and barges; laundry, dry-cleaning, and carpet cleaning plants; and photofinishing laboratories.

c. Exceptions.

i. Contractors and others who perform Industrial Services off-site are included in the Office category, if equipment and materials are not stored at the site, and fabrication or similar work is not carried on at the site.

ii. Hotels, restaurants, and other services that are part of a truck stop are considered accessory to the truck stop.

2. Manufacturing and Production

a. Characteristics. Manufacturing and Production firms are involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used. Products may be finished or semi-finished and are generally made for the wholesale market, for transfer to other plants, or to order for firms or consumers. Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site. Manufacturing and production activities within heavy commercial or light industrial areas are those that do not produce excessive noise, dust, vibration, or fumes.

b. Examples. Examples include uses from the two subgroups listed below:

i. Light Manufacturing: Industrial uses that do not generate excessive noise, dust, vibration or fumes, such that they can be

located near residential and commercial zones without creating nuisance impacts. Uses include processing of food and related products where the materials and processing activities are wholly contained within a structure, such as bakery products, canned and preserved fruits and vegetables, sugar and confectionary products, and beverages; catering establishments; breweries, distilleries, and wineries; manufacture of apparel or other fabricated products made from textiles, leather or similar materials; woodworking, including furniture and cabinet making; fabrication of metal products and fixtures; manufacture or assembly of machinery, equipment, or instruments, including industrial, commercial, and transportation equipment, household items, precision items, photographic, medical and optical goods, artwork, jewelry, and toys; manufacture of glass, glassware, and pressed or blown glass; pottery and related products; printing, publishing and lithography production; sign making; and movie production facilities.

ii. Heavy Manufacturing: Industrial uses that should not be located near residential areas due to noise, dust, vibration or fumes that may be generated by the activities. Uses include processing of food and related products where some portion of the materials are stored or processed outdoors, such as dairies, slaughter houses, or feed lots; leather tanning and finishing; weaving or production of textiles; lumber mills, pulp and paper mills, and other wood products manufacturing; production of chemicals, rubber, structural clay, concrete, gypsum, plaster, bone, plastic, or stone products; primary metal industries including blast furnaces, foundries, smelting, and rolling and finishing of metal products; production and refinement of fossil fuels; concrete batching; and asphalt mixing; and

manufacturing of prefabricated structures, including mobile homes.

c. Exceptions.

i. Manufacturing of goods to be sold primarily on-site and to the general public is classified as Retail Sales and Service.

ii. Manufacture and production of goods from composting organic material is classified as Waste-Related uses.

3. Warehouse, Freight Movement, and Distribution

a. Characteristics. Warehouse, Freight Movement, and Distribution involves the storage, or movement of goods for themselves or other firms. Goods are generally delivered to other firms or the final consumer, except for some will-call pickups. There is little on-site sales activity with the customer present.

b. Examples. Examples include separate warehouses used by retail stores such as furniture and appliance stores; household moving and general freight storage; cold storage plants, including frozen food lockers; storage of weapons and ammunition; major wholesale distribution centers; truck, marine, or air freight terminals; bus barns; parcel services; major post offices; grain terminals; and the stockpiling of sand, gravel, or other aggregate materials.

c. Exceptions.

i. Uses that involve the transfer or storage of solid or liquid wastes are classified as Waste and Recycling Related uses.

ii. Mini-warehouses are classified as Self-Service Storage uses.

5. Waste and Recycling Related

a. Characteristics. Uses that receive solid or liquid wastes from others for disposal on the site or transfer to another location, uses that collect sanitary wastes, or uses that manufacture or produce goods or energy from the decomposition of organic material. Waste related uses also include uses that receive hazardous wastes from others.

b. Examples. Examples include sanitary landfills, limited use landfills, waste composting, energy recovery plants, sewer treatment plants, portable sanitary collection equipment storage and pumping, and hazardous waste collection sites.

c. Exceptions.

i. Disposal of clean fill, as defined in OAR 340-093-0030, is considered fill, not a Waste and Recycling Related use.

ii. Sewer pipes that serve a development are considered a Basic Utility.

6. Wholesale Sales

a. Characteristics. Wholesale Sales firms are involved in the sale, lease, or rent of products primarily intended for industrial, institutional, or commercial businesses. The uses emphasize on-site sales or order taking and often include display areas. Businesses may or may not be open to the general public, but sales to the general public are limited as a result of the way in which the firm operates. Products may be picked up on site or delivered to the customer.

b. Examples. Examples include sale or rental of machinery, equipment, heavy trucks, building materials, special trade tools, welding supplies, machine parts, electrical supplies, janitorial supplies, restaurant equipment, and store fixtures; mail order houses; and wholesalers of food, clothing, auto parts, building hardware, and office supplies.

c. Exceptions.

i. Firms that engage primarily in sales to the general public are classified as Retail Sales and Service.

ii. Firms that engage in sales on a membership basis are classified as consideration of characteristics of the use.

iii. Firms that are primarily storing goods with little on-site business activity are classified as Warehouse, Freight Movement, and Distribution.

7. Mining

a. Characteristics. Include mining or extraction of mineral or aggregate resources from the ground for off-site use.

b. Examples. Examples include sand and gravel extraction, excavation of rock, and mining of non-metallic minerals.

c. Exceptions.

i. All other forms of mining or extraction of earth materials are prohibited.

E. Institutional and Civic Use Categories

1. Basic Utilities and Roads

a. Characteristics. Basic utilities and Roads are infrastructure services which need to be located in or near the area where the service is provided. Basic Utility and Road uses generally do not have regular employees at the site. Services may be public or privately provided.

b. Examples. Examples include water and sewer pump stations; sewage disposal and conveyance systems; electrical substations; water towers and reservoirs; water quality and

flow control devices. Water conveyance systems; stormwater facilities and conveyance systems; telephone exchanges; suspended cable transportation systems; bus stops or turnarounds; local, collector and arterial roadways; and highway maintenance.

c. Exceptions.

i. Services where people are generally present, other than bus stops or turnarounds, are classified as Community Services or Offices.

ii. Utility offices where employees or customers are generally present are classified as Offices.

iii. Bus barns are classified as Warehouse and freight movement.

iv. Public or private passageways, including easements for the express purpose of transmitting or transporting electricity, gas, oil, water, sewage, communication signals, or other similar services on a regional level are classified as Utility Corridors.

2. Utility, Road and Transit Corridors

a. Characteristics. Utility, Road and Transit Corridors include public or private passageways, including easements for the express purpose of transmitting or transporting electricity, gas, oil, water, sewage, communication signals, or similar services on a regional level. This category includes new or expanded regional roadways, and tracks and lines for the movement of trains.

b. Examples. Examples include highways, rail trunk and feeder lines; regional electrical transmission lines; and regional gas and oil pipelines.

c. Exceptions.

i. Highways, rail lines and utility corridors that are located within motor vehicle rights-of-way are not included.

3. Community Services

a. Characteristics. Public, non-profit or charitable organizations that provide local service to people of the community. Generally, they provide the service on-site or have employees at the site on a regular basis. Services are ongoing, not just for special events. Community centers or facilities that have membership provisions are open to the general public to join. Uses may include shelter or housing for periods of less than one month when operated by a public or non-profit agency. Uses may also provide special counseling, education, or training of a public, nonprofit or charitable nature.

b. Examples. Examples include libraries, museums, senior centers, community centers, publicly owned swimming pools, youth club facilities, hospices, police stations, fire and ambulance stations, drug and alcohol centers, social service facilities, mass shelters or short term housing when operated by a public or non-profit agency, soup kitchens, and surplus food distribution centers.

c. Exceptions.

i. Private lodges, clubs, and private commercial athletic or health clubs are classified as Entertainment and Recreation. Commercial museums (such as a wax museum) are in Retail Sales and Service.

4. Daycare

a. Characteristics. Daycare use includes day or evening care of more than 12 children under the age of 13 outside of the children's homes, with or without compensation. Daycare uses

also include the daytime care of teenagers or adults who need assistance or supervision.

b. Examples. Pre-schools, nursery schools, latch key programs, and adult daycare programs.

c. Exceptions.

i. Daycare use does not include care given by a "Child Care Facility" as defined by ORS 657A.250 if the care is given to 12 or fewer children at any one time including the children of the provider. Child care facilities are located in the provider's home and are permitted as a home occupation in non-residential districts.

5. Educational Institutions

a. Characteristics. Educational Institutions provide educational instruction to students. This category includes schools, colleges and other institutions of higher learning that offer courses of general or specialized study leading to a degree, and public and private schools at the primary, elementary, middle, junior, high, or high school level that provide state-mandated basic education. This category also includes trade schools and vocational schools that provide on-site training of trade skills.

b. Examples. Types of uses include universities, liberal arts colleges, community colleges, nursing and medical schools not accessory to a hospital, seminaries, public and private daytime schools, boarding schools, military academies, and trade/vocational schools.

c. Exceptions.

i. Preschools are classified as Daycare facilities.

6. Hospitals

a. Characteristics. Hospitals provide medical and surgical diagnosis and care to patients and offer overnight care. Hospitals tend to be on multiple blocks or in campus settings.

b. Examples. Examples include hospitals and medical complexes that include hospitals or emergency care facilities.

c. Exceptions.

i. Uses that provide exclusive care and planned treatment or training for psychiatric, alcohol, or drug problems, where patients are residents of the program, are “Residential Facilities” and permitted in R-3 and R-4 zoning districts.

ii. Medical clinics that provide care where patients are generally not kept overnight are classified as Office.

7. Courts, Jails, and Detention Facilities

a. Characteristics. Includes facilities designed to try, detain or incarcerate persons while being processed for arrest or detention by law enforcement. Inmates or detainees are under 24-hour supervision by sworn officers.

b. Examples. Examples include courts, prisons, jails, probation centers, juvenile detention homes.

c. Exceptions.

i. Uses that provide exclusive care and planned treatment or training for psychiatric, alcohol, or drug problems, where patients are residents of the program, are “Residential Facilities” and permitted in R-3 and R-4 zoning districts.

ii. Programs that provide transitional living experience for former offenders, such as halfway houses, where sworn officers do not supervise residents, are also

"Residential Facilities" and permitted in R-3 and R-4 zoning districts.

8. Communication Facilities

   a. Characteristics. Includes facilities designed to provide signals or messages through the use of electronic and telephone devices. Includes all equipment, machinery, structures (e.g. towers) or supporting elements necessary to produce signals.

   b. Examples. Examples include broadcast towers, communication/cell towers, and point to point microwave towers.

   c. Exceptions.

      i. Receive only antennae are not included in this category.

      ii. Radio and television studios are classified in the Office category.

      iii. Radio Frequency Transmission Facilities that are public safety facilities are classified as Basic Utilities.

14.03.070 Commercial and Industrial Uses.

The following list sets forth the uses allowed within the commercial and industrial land use categories.

"P" = Permitted uses.

"C" = Conditional uses; allowed only after the issuance of a conditional use permit.

"X" = Not allowed.

		C-1	C-2*	C-3	I-1	I-2	I-3
1.	Office	P	X	P	P	P	X
2.	Retails Sales and Service						
	a. Sales-oriented, general retail	P	P	P	P	P	C
	b. Sales-oriented, bulk retail	C	X	P	P	P	C
	c. Personal Services	P	C	P	P	C	X
	d. Entertainment	P	P**	P	P	C	X

	e. Repair-oriented	P	X	P	P	P	X
3.	Major Event Entertainment	C	C	P	P	C	X
4.	Vehicle Repair	X	X	P	P	P	X
5.	Self-Service Storage	X	X	P	P	P	X
6.	Parking Facility	P	P	P	P	P	P
7.	Contractors and Industrial Service	X	X	P	P	P	P
8.	Manufacturing and Production						
	a. Light Manufacturing	X	X	C	P	P	P
	b. Heavy Manufacturing	X	X	X	X	C	P
9.	Warehouse, Freight Movement, & Distribution	X	X	P	P	P	P
10.	Wholesale Sales	X	X	P	P	P	P
11.	Waste and Recycling Related	C	C	C	C	C	C
12.	Basic Utilities and Roads	P	P	P	P	P	P
13.	Utility, Road and Transit Corridors	C	C	C	C	C	C
14.	Community Service	P	C	P	P	C	X
15.	Daycare Facility	P	C	P	P	P	X
16.	Educational Institutions						
	a. Elementary & Secondary Schools	C	C	C	X	X	X
	b. College & Universities	P	X	P	X	X	X
	c. Trade/Vocational Schools/Other	P	X	P	P	P	P
17.	Hospitals	C	C	C	X	X	X
18.	Courts, Jails, and Detention Facilities	X	X	P	C	X	X
19.	Mining						
	a. Sand & Gravel	X	X	X	X	C	P
	b. Crushed Rock	X	X	X	X	X	P
	c. Non-Metallic Minerals	X	X	X	X	C	P
	d. All Others	X	X	X	X	X	X
20.	Communication Facilities	P	X	P	P	P	P
21.	Residences on Floors Other than Street Grade	P	P*	P	X	X	X

**Uses in excess of 2,000 square feet of gross floor area are Conditional Uses within the Historic Nye Beach Design Review District. Residential Uses within the Historic Nye Beach Design Review District are subject to limitations as set forth in NMC Chapter 14.30.*
*** Recreational Vehicle Parks are prohibited on C-2 zoned property within the Historic Nye Beach Design Review District.*

14.03.080 Water-dependent and Water-related Uses.

The following list sets forth the uses allowed with the water-dependent and water-related land use classifications. Uses not identified herein are not allowed.

"P" = Permitted uses.

"C" = Conditional uses permitted subject to the approval of a conditional use permit.

"X" = Not allowed.

		W-1	W-2
1.	Aquaculture	P	P
2.	Boat Rentals, Sport Fishing and Charter Boat Services	P	P
3.	Docks, Wharves, Piers	P	P
4.	Dry Dock, Boat Repair, Marine Service, and Marine Railway Facilities	P	P
5.	Fuel Facilities for Boats or Ships	P	P
6.	Marinas and Port Facilities	P	P
7.	Seafood Processing and Packaging Plants	P	P
8.	Terminal Facilities for Loading and Unloading Ships and Barges	P	P
9.	Marine Research and Education Facilities of Observation, Sampling, Recording, or Experimentation on or Near the Water	P	P
10.	Ice Production and Sales, Refrigeration Repair, and Cold Storage to Serve the Seafood Industry	C	P
11.	Boat Building and Marine Equipment Manufacture	C	P
12.	Parking Lots	C	P
13.	Warehouses	C	P
14.	Uses Allowed in the Adjacent Estuarine Management Unit	C	P
15.	Water-dependent Uses That Meet the Intent of the W-1 District	C	P
16.	Bait, Tackle, and Sporting Goods Stores Specializing in Water-related Merchandise	X	P
17.	Seafood Markets	X	P
18.	Uses Permitted Outright in a C-2 District	X	C
19.	Manufacturing in Conjunction with Uses X C Permitted Outright in a C-2 District	X	C
20.	Offices Not On the Ground Floor of an Existing Building	X	C
21.	Residences on Floors Other than Street Grade	X	C

(Sections 14.03.070 and 14.03.080 adopted by Ordinance No. 2125, adopted on December 4, 2017: effective January 3, 2018.)

14.03.090 Uses in State Park Master Plans.

* Where the W-1 and/or W-2 zones are applied to properties that are owned or managed by the Oregon Parks and Recreation Department within a state park with a master plan that has been approved by the City of Newport, only those uses that are consistent with the city's approval of the master plan are permitted. Such uses are permitted through the applicable development

review procedures set forth in this ordinance provided that the uses comply with the design standards in the master plan and with other applicable standards.

14.03.100 Public Uses

. The following list sets forth the uses allowed within the public land use classification. Uses not identified herein are not allowed.

"P" = Permitted Uses.

"C" = Conditional uses; permitted subject to the approval of a conditional use permit.

"X" = Not allowed.

		P-1	P2	P-3
1.	Public Parks	P	P	P
2.	Public Open Space	P	P	P
3.	Public Schools, Colleges, or Universities	P	X	X
4.	Any Building or Structure Erected by a Governmental Entity	P	X	X
5.	Community Buildings	P	X	X
6.	Fairgrounds	P	X	X
7.	Public Cemeteries	P	P	X
8.	Water & Wastewater Treatment Plants	P	X	X
9.	Performing Arts Centers	P	X	X
10.	Visual Arts Centers	P	X	X
11.	Senior Centers	P	X	X
12.	Airport and Accessory Structures	P	X	X
13.	Public Golf Courses	P	P	X
14.	City Halls	P	X	X
15.	County Courthouses	P	X	X
16.	Jails and Juvenile Detention Facilities	P	X	X
17.	City or County Maintenance Facilities	P	X	X
18.	Publicly Owned Recreational Vehicle Parks	C	C	X
19.	Public Museums	P	X	X
20.	Public Restrooms	P	P	X
21.	Recreation Equipment	P	P	X
22.	Post Office	P	X	X
23.	Parking Lots	P	P	X
24.	Public Hospitals	P	X	X
25.	Trails, paths, bike paths, walkways, etc.	P	P	P
26.	Water Storage Facilities	P	X	X
27.	Public Libraries	P	X	X
28.	Fire Stations	P	X	X

29.	Police Stations	P	X	X
30.	Accessory Structures for Any of the Above	P	P	P

**Added by Ordinance No. 1858 (9-2-03).*

14.03.110 Uses in State Park Master Plans.*

Where the P-1, P-2, and/or P-3 zones are applied to properties that are owned or managed by the Oregon Parks and Recreation Department within a state park with a master plan that has been approved by the City of Newport, only those uses that are consistent with the city's approval of the master plan are permitted. Such uses are permitted through the applicable development review procedures set forth in this ordinance provided that the uses comply with the design standards in the master plan and with other applicable standards.

**Added by Ordinance No. 1858 (9-2-03).*

CHAPTER 14.4 MANAGEMENT UNIT DISTRICTS

14.04.010 Purpose.

The purpose of the Management Unit Districts is to provide estuary area development guidance, to identify development, conservation, and natural management units, and to describe appropriate uses, activities, and structures.

14.04.020 Definitions**

Estuarine Enhancement. An action which results in a long term improvement of existing estuarine functional characteristics of processes that is not the result of a creation of restoration action.

Mitigation. The creation, restoration, or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats, species diversity, unique features, and water quality.

14.04.030 Uses Permitted***

Consistent with the requirements of State Planning Goal 16, within each management unit certain uses and activities are permitted with standards, other are permitted conditionally, and some uses are not allowed. All uses which involve dredging, fill, structures, shoreline stabilization (except vegetative) or other alteration waterward of Mean Higher High Water (MHHW) or the line of non-aquatic vegetation are also subject to regulations at either the state level (State Removal/Fill Law, ORS 196.800196.990), federal level (Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act), or both. Certain other uses such as energy facility siting, aquaculture, and exploration for oil, gas, or geothermal energy are further regulated by additional state and federal agencies. Uses and activities are categorized as follows:

Permitted With Standards (P).**** Permitted only after a case-by-case review of the proposed use and issuance of an estuarine use permit in accordance with 14.04.060 of this section and a Type I Land Use Action decision process consistent with Section 14.52, Procedural

Requirements. A use which is permitted with standards shall require the following findings:

A. It complies with the applicable estuarine use standards of Sections 14.04.080 through 14.04.230.

B. It complies with all policies specific to the individual management unit set forth in the Comprehensive Plan and Section 14.05.

C. It is consistent with the resource capabilities of the area as defined by Section 14.04.090.

(Entire section largely amended by Ordinance No. 1344 (11-7-83); Amended to correct scrivener's errors by Ordinance No. 1790 (7-6-98).*
*** Added by Ordinance No. 1622 (10-7-91).*
**** Amended by Ordinance No. 1622 (10-7-91).*
***** Amended by Ordinance No. 1989 (1-1-10).)*

Newport Zoning Ordinance (No. 1308, as amended) Conditional (C).* Permitted only after a case-by-case review of the proposed use and issuance of a conditional use permit in accordance with the provisions of Section 14.33, Conditional Uses, and a Type III Land Use Action decision process consistent with Section 14.52, Procedural Requirements. A conditional use shall require the following findings:

A. It is compatible with the management objective and policies of the management classification.

B. It complies with the applicable estuarine use standards of Sections 14.04.080 through 14.04.230.

C. It complies with all policies specific to the individual management unit set forth in the Comprehensive Plan and Section 14.5.

D. It complies with any other special condition which may be attached during the review process.

E. It is consistent with the resource capabilities of the area as defined by Section 14.04.090.

F. The cumulative impacts of the proposed use have been considered.

Not Allowed (N). Not permitted. Activity or uses can only be allowed upon adoption of a plan amendment by the governing body.

14.04.040 Application of Standards **

The Estuarine Use Standards of Section 14.04.080 through 14.04.230 are to be applied to developments on a case-by-case basis through the Estuarine Use Review Procedure specified in Section 14.04.060. In all cases the specific nature and circumstances of the proposal will be reviewed against each applicable standard or criterion. Findings of fact will be developed relative to compliance with each applicable standard or criterion, based on an analysis of the proposal. An impact assessment shall be prepared for activities which could affect the estuary's physical processes or biological resources such as dredging, fill, in-water structures, riprap, log storage, application of pesticides and herbicides, water intake or withdrawal and effluent discharge, and flow-lane disposal of dredged material. The impact assessment need not be lengthy or complex, but it should enable reviewers to gain a clear understanding of the impacts to be expected. The assessment shall include information on:

(Amended by Ordinance No. 1989 (1-1-10).*
*** Amended by Ordinance No. 1622 (10-7-91).)*

A. The type and extent of alterations expected;

B. The type of resource(s) affected;

C. The expected extent of impacts of the proposed alteration on water quality and other physical characteristics of the estuary, living resources, recreation and aesthetic use, navigation, and other existing and potential uses of the estuary; and Newport Zoning Ordinance (No. 1308, as amended).

D. The methods which could be employed to avoid or minimize adverse impacts.

In the process of gathering necessary factual information for the application of standards and the preparation of the impact assessment, the Planning Department may consult with any agency or individual able to provide relevant technical expertise. Federal impact statements

or assessments may be utilized to comply with this requirement if such statements are available.

14.04.050 Application Information *

The Planning Department may require an applicant to provide such information and technical analysis as may be needed to determine compliance with any and all applicable standards, including but not limited to the following:

A. Effects on physical characteristics such as: flushing and circulation; erosion and accretion patterns; and salinity, temperature, and dissolved oxygen characteristics.

B. Effects on biological characteristics such as: benthic habitats and communities; anadromous fish migration routes; fish and shellfish spawning and rearing areas; primary productivity; resting; feeding and nesting areas for migrating and residence shorebirds; wading birds and other wildfowl; riparian vegetation; and wildlife habitat.

C. Effects on other established uses in the area.

D. Alternative project designs and/or locations which have been considered.

E. Steps which have been taken to minimize or avoid adverse impacts.

14.04.060 Review Notice **

The City of Newport shall notify the following agencies of use applications which may require their review: Oregon Department of Fish and Wildlife; Oregon Division of State Lands; Oregon Department of Land Conservation and Development; U.S. Fish and Wildlife Service; National Marine Fisheries Service; Environmental Protection Agency; and the U.S. Army Corps of Engineers. This notice will include a description of the use applied for, references to applicable policies and standards, and notification of comment and appeal period.

14.04.070 Estuarine Use Review Procedure ***

The subsequent review procedure shall be followed for uses permitted with standards and conditional uses:

A. Upon receipt of an application or a public notice from a state or federal agency for a regulated activity, the Community Development Director shall review the proposed use or activity for consistency with applicable Estuarine Use Standards set forth in this Section and apply the appropriate Land Use decision process consistent with Section 14.52, Procedural Requirements. In cases where all applicable Estuarine Use Standards of Sections 14.04.080 through 14.04.230 have been met for a proposed.

   Permitted (P) activity, a Type I Land Use Action decision process shall be applied. In cases of a proposed Conditional (C) activity, a Type III Land Use Action decision process will apply in addition to the requirements for Conditional Uses provided by Section 14.33.

B. If the Planning Department or Commission finds that the proposed use or activity is consistent with all applicable Estuarine Use Standards, the Department shall notify the Division of State Lands to that effect prior to expiration of the public notice.

   As a part of this review process, the Planning Department shall impose any conditions or restrictions necessary to insure compliance with applicable Estuarine Use Standards.

C. If the Planning Department or Commission finds that the proposed use or activity is inconsistent with any applicable Estuarine Use Standard, the Department shall notify both the Division of State Lands and the applicant prior to the expiration date of the public notice. This notification shall cite the standard(s) which has not been met and state with particularity the reasons for the inconsistency.

D. If the information contained in the public notice is not sufficient for the city to reach a decision on the consistency of the proposed use or activity, the department shall notify the applicant to that effect

prior to the expiration date of the public notice. This notification shall cite the standard(s) needing to be addressed and state with particularity the information needed to arrive at a decision.

E. Any finding of consistency made through this review process may be subject to revocation by the city if it is ascertained that the application included any false information or if any conditions of approval have not been complied with or are not being maintained.

F. Any decision by the Planning Department or Planning Commission through this review process may be appealed in accordance with the provisions of Section 14.52 of the Zoning Ordinance of the City of Newport.

(Amended by Ordinance No. 1622 (10-7-91).*
*** Amended by Ordinance No. 1622 (10-7-91).*
***** Amended by Ordinance No. 1622 (10-7-91); Amended by Ordinance No. 1989 (1-1-10).)*

14.04.080 Estuarine Use Standards *

The following standards will be applied to all new uses, expansion of existing uses, and activities within Yaquina Bay. In addition to the standards set forth in this ordinance and the Comprehensive Plan, all uses and activities must further comply with all applicable state and federal regulations governing water quality, resource protection, and public health and safety.

14.04.090 Resource Capability Determinations **

Within the Natural and Conservation Management Units certain uses are allowed only if they are found to be consistent with the resource capabilities of the area and the purposes of the management unit. Those uses requiring a resource capability determination are so identified in the Permitted Use Matrix.

*(** Amended by Ordinance No. 1622 (10-7-91).*
*****Amended by Ordinance No. 1622 (10-7-91).)*

Natural Management Units: Within Natural Management Units, a use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biological productivity, and water quality are not significant or the

resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner to protect significant wildlife habitats, natural biological productivity, and values for scientific research and education. In this context, "protect" means to save or shield from loss, destruction, or injury or for future intended use.

Conservation Management Units: Within Conservation Management Units, a use or activity is consistent with the resource capabilities of the area when either the impacts of the use on estuarine species, habitats, biologic productivity, and water quality are not significant or the resources of the area are able to assimilate the use and activity and their effects and continue to function in a manner which conserves long-term renewable resources, natural biologic productivity, recreational and aesthetic values, and aquaculture. In this context, "conserve" means to manage in a manner which avoids wasteful or destructive uses and provides for future availability.

14.04.100 Structures.*

By definition, "structures" include all constructed, manmade facilities that extend into the estuary, whether fixed or floating. Not included are log rafts or new land created from submerged or submersible lands (see "fill"). Structural types include:

Breakwater: An offshore barrier, sometimes connected to the shore at one or both ends to break the force of the waves. Used to protect harbors and marinas, breakwaters may be constructed of rock, concrete, or piling, or may be floating structures.

Bridge Crossing: A portion of a bridge spanning a waterway. Bridge crossings do not include support structures or fill located in the waterway or adjacent wetlands.

Bridge Crossing Support Structures: Piers, piling, and similar structures necessary to support a bridge span but not including fill for causeways or approaches.

Docks: A fixed or floating decked structure against which a boat may be berthed temporarily or indefinitely.

Dolphin: A group of piles driven together and tied together so that the group is capable of withstanding lateral forces from vessels or other floating objects.

Groin: A shore protection structure (usually perpendicular to the shoreline) constructed to reap littoral drift or retard erosion of the shoreline. Generally made of rock or other solid material.

Jetty: An artificial barrier used to change littoral drift to protect inlet entrances from excessive sedimentation or direct and confine the stream of tidal flow. Jetties are usually constructed at the mouth of a river or estuary to help deepen and stabilize a channel.

Minor Navigational Improvements: Alteration necessary to provide water access to existing or permitted uses in conservation management units, including dredging for access channels and for maintaining existing navigation but excluding fill and in water navigational structures other than floating breakwaters or similar permeable wave barriers.

Pier: A structure extending into the water from solid land generally to afford passage for persons or goods to and from vessels, but sometimes to provide recreational access to the estuary.

Pile Dike: Flow control structures analogous to groins but constructed from closely spaced pilings connected by timbers.

Piling: A long, slender stake or structural element of steel, concrete, or timber which is driven, jetted, or otherwise embedded into the bed of the estuary for the purpose of supporting a load.

Wharf: A structure built alongside a waterway for the purpose of receipt, discharge, and storage of goods and merchandise from vessels.

A. It is recognized that development of structures may have some adverse impacts that are unavoidable; however, the siting and design of all structures shall be chosen to minimize these adverse impacts on aquatic life and habitats, flushing and circulation

characteristics, and patterns of erosion and accretion.

B. Materials to be used for structures shall be clean and durable so as to allow long-term stability and minimize maintenance. Materials which could create water quality problems or which rapidly deteriorate are not permitted.

C. The development of structures shall be evaluated to determine potential conflicts with established water uses (e.g., navigation, recreation, aquaculture, etc.). Such conflicts shall be minimized.

D. Occupation of estuarine surface areas by structures shall be limited to the minimum area practical to accomplish the proposed purpose.

E. Where feasible, breakwaters of the floating type shall be preferred over those of solid construction.

F. Floating structures shall not be permitted in areas where they would regularly contact the bottom at low water (i.e., shall be located waterward of mean lower low water). Exceptions may be granted for structures of limited areas that are necessary as part of an overall approved project where grounding would not have significant adverse impacts.

G. Individual single purpose docks and piers for recreational and residential uses shall be permitted only when it has been demonstrated that there are no practical alternatives (e.g., mooring buoys, dry land storage, etc.). Community facilities or other structures common to several uses are encouraged at appropriate locations.

H. The size, shape, and orientation of a dock or pier shall be limited to that required for the intended uses.

I. Structures associated with the docking of water craft must comply with Section 14.03.140/"Marina and Port Facilities."

(Amended by Ordinance No. 1622 (10-7-91).)*

14.04.110 Dredging.*

By definition, "dredging" involves the removal of sediment or other material from the estuary for the purpose of deepening a channel, mooring basin, or other navigation area. (This does not apply to dredging for clams.)

A. All dredging in the estuary shall be conducted in such a manner so as to minimize:

   1. Adverse short-term effects such as pollutant release, dissolved oxygen depletion, and disturbance of important biological communities.

   2. Adverse long-term effects such as loss of fishing habitat and tidelands, loss of flushing capacity, destabilization of bottom sediments, and biologically harmful changes in circulation patterns.

   3. Removal of material in wetlands and productive shallow submerged lands.

B. Dredging shall be permitted only:

   1. For navigation or navigational access;

   2. In conjunction with a permitted or conditionally permitted water-dependent use;

   3. If a need (i.e., a substantial public benefit) is demonstrated, and the use or alteration does not unreasonably interfere with public trust rights; and

   4. If no feasible alternative upland locations exist.

C. The effects of dredge activities in intertidal or tidal marsh areas shall be mitigated by creation, restoration, or enhancement of another area to insure that the integrity of the estuarine ecosystem is maintained. Dredging projects shall meet all requirements of ORS 196.800 through 196.990 (the State Removal Fill Law), Section 10 of the Rivers and Harbors Act of 1899, and other applicable state and federal laws. These requirements shall be enforced by state and federal agencies with regulatory authority over dredging projects.

(Amended by Ordinance No. 1622 (10-7-91).)*

14.04.120 Shoreline Stabilization*

By definition, "shoreline stabilization" is the stabilization or protection from erosion of the banks of the estuary by vegetative or structural (riprap or bulkhead) means.

A. Shoreline stabilization procedures shall be confined to those areas where:

   1. Active erosion is occurring that threatens existing uses or structures; or

   2. New development or redevelopment, or water-dependent or water-related uses requires protection for maintaining the integrity of upland structures or facilities.

B. The following, in order, are the preferred methods of shoreline stabilization:

   1. Vegetative or other nonstructural.

   2. Vegetated riprap.

   3. Unvegetated riprap.

   4. Bulkheads (except that the use of bulkheads shall be limited to "development" and "conservation" management units).

   Structural shoreline stabilization methods shall be permitted only where the shoreline protection proposal demonstrates that a higher priority method is unreasonable.

C. Materials to be used must be cleaned and of a non-erosive quality that will allow long-term stability and minimize maintenance. Materials that could create water quality problems or which will rapidly deteriorate are not permitted.

D. Minor modifications of the bankline profile may be permitted on a case-by-case basis. These alterations

shall be for the purpose of stabilizing the shoreline, not for the purpose of gaining additional upland area.

E. Shoreline stabilization structures shall be designed and located so as to minimize adverse impacts on aquatic life and habitat, circulation and flushing characteristics, and patterns of erosion and accretion.

F. In addition to requirements identified in C-E above, cobble/pebble dynamic revetments permitted in Management Units 8 and 9-A may be permitted if:**

1. There is a demonstrated need to protect public facility uses; and

2. Land use management practices and nonstructural solutions are inadequate; and

3. The proposal is consistent with the applicable management unit as required by Goal 16.

G.* For the purposes of shoreline stabilization, a "cobble/pebble dynamic revetment" is defined as: "The use of naturally rounded pebbles or cobbles placed in front of property to be protected and designed to move under force of wave, currents, and tides. A cobble/pebble dynamic revetment represents a transitional strategy between conventional rip rap revetment of large stones and a beach nourishment project."

(Amended by Ordinance No. 1622 (10-7-91).*

14.04.130 Fill**

By definition, "fill" is the placement of material in the estuary to create new shoreland area.

A. Fill shall be permitted only if required for navigation, a water-dependent use, or for a public improvement project for which there is a demonstrated need and for which no practical alternatives (e.g., construction on piling, an upland location, etc.) exist, and if the fill does not unreasonably interfere with public trust rights.

B. As far as possible, all fill projects shall be designed and placed so as to minimize adverse impacts on aquatic life and habitats, flushing and circulation characteristics, erosion and accretion patterns, navigation, and recreation.

C. Fill materials that would create water quality problems or that will rapidly deteriorate are not permitted.

D. When available from an authorized dredgeline project, dredged materials shall be preferred over upland materials for approved fill projects.

E. As an integral part of the fill process, new fills placed in the estuary shall be protected by approved methods of bank stabilization to prevent erosion.

F. The effects of fill activities in intertidal or tidal marsh areas shall be mitigated by creation, restoration, or enhancement of another area to insure that the integrity of the estuarine ecosystem is maintained. Fill projects shall meet all requirements of ORS 196.800 through 196.990 (the State Removal Fill Law), Section 10 of the Rivers and Harbors Act of 1899, and other applicable state and federal laws. These requirements shall be enforced by state and federal agencies with regulatory authority over fill projects.

*** Amended by Ordinance No. 1622 (10-7-91).*

14.04.140 Marina and Port Facilities***

Definitions:

Marina. A small harbor, boat basin, or moorage facility providing dockage for recreational craft.

****Amended by Ordinance No. 1622 (10-7-91).)*

Port Facilities. Facilities which accommodate and support commercial fishery and navigation activities, including terminal and boat basins and moorage for commercial vessels, barges, and ocean-going ships.

A. All structures, fills, dredging, or shoreline stabilization measures undertaken in conjunction with marina or port facility development must comply with applicable

standards set forth in this Ordinance. Structures shall comply with Section 14.04.100; fills shall comply with Section 14.04.130; dredging shall comply with Section 14.04.110; and shoreline stabilization shall comply with Section 14.04.120.

B. Provisions must be made in the design of the marina or port facilities to insure adequate flushing for maintenance of water quality.

C. Open moorage shall be preferred over covered or enclosed moorage except for repair or construction facilities.

D. Multi-purpose and cooperative use of moorage parking, cargo handling, and storage facilities shall be encouraged.

E. In the development of new port or marina facilities, maximum feasible public access shall be encouraged, consistent with security and safety requirements.

14.04.150 Aquaculture*

By definition, "aquaculture" is the raising, feeding, planting, and harvesting of fish, shellfish, or marine plants, including facilities necessary to engage in the use.

A. All structures located in conjunction with aquaculture operations shall be subject to the standards set forth in this ordinance for structures. All dredge and fill, shoreline stabilization, or other activities in conjunction with aquaculture activities shall be subject to the respective standards for those activities.

B. Water diversion structures or manmade spawning channels shall be constructed so as to maintain minimum required stream flows for aquatic life in the adjacent streams.

C. The potential impacts of introducing a new fish or shellfish species (or a race within a species) shall be carefully evaluated in light of existing aquatic life

and potential fish and shellfish production in the stream, estuary, and ocean.

D. Aquaculture facilities shall be located far enough from any sanitary sewer outfalls to prevent any potential health hazard.

14.04.160 Mineral and Aggregate Extraction**

By definition, this extraction is the removal for economic use of minerals, petroleum resources, sand, gravel, or other materials from the estuary.

A. All mineral and aggregate removal projects shall be conducted in such a manner so as to minimize:

   1. Adverse short-term effects such as pollutant release, dissolved oxygen depletion, excessive turbidity, and disturbance of important biological communities.

   2. Adverse long-term effects such as loss of fish habitat and tidelands, loss of flushing capacity, destabilization of bottom sediments, and biographically harmful changes in circulation patterns.

B. Removal of aggregate materials from the estuary shall be allowed only after a clear demonstration that comparable materials are not available from local upland sources.

C. Unless part of an approved fill project, spoils and stockpiles shall be placed beyond the reach of high water and in such a manner that sediment will not enter or return to the waterway.

D. Riparian vegetation shall be retained to the optimum degree possible. Disturbed shoreline areas shall be revegetated.

*(*Amended by Ordinance No. 1622 (10-7-91).*
***Amended by Ordinance No. 1622 (10-7-91).)*

14.04.170 Dikes*

By definition, a "dike" is an earthen embankment or ridge constructed to restrain high water. New diking is the placement of dikes on an area that (1) has never been previously diked; or (2) has previously been diked but all of a substantial part of the area is presently subject to tidal inundation and tidal marsh has been established.

A. Existing functional dikes and tide gates may be maintained and repaired as necessary to fulfill their purpose as flood control structures.

B. New dikes in estuarine areas shall be allowed only:

   1. As part of an approved fill project, subject to the standards for fill; and

   2. If appropriate mitigation is undertaken in accordance with all relevant state and federal standards.

C. Dikes constructed to retain fill materials shall be considered fill and subject to standards for fill.

D. The outside face of new dikes shall be protected by approved shoreline stabilization procedures.

14.04.180 Outfalls**

By definition, an "outfall" is an outlet through which materials are discharged into the estuary. Outfalls include sanitary (sewer) discharges, storm drainage facilities, waste seawater discharges, and industrial waste discharges.

A. As applicable, the standards for dredging, shoreline stabilization, and placement of structures as set forth in this ordinance must be complied within the installation of outfalls.

B. Sanitary outfalls shall not be allowed in poorly flushed areas of the estuary.

*(*Amended by Ordinance No. 1622 (10-7-91).*
***Amended by Ordinance No. 1564 (1-16-90); amended by Ordinance No. 1622 (10-7-91).)*

14.04.190 Submerged Crossings*

By definition, "submerged crossings" are power, telephone, water, sewer, gas, or other transmission lines that are constructed across the estuary, usually by embedding into the bottom of the estuary.

A. Trenching or other bottom disturbance undertaken in conjunction with installation of a submerged crossing shall conform to the standards for dredging as set forth in this ordinance.

B. Submerged crossings shall be designed and located so as to eliminate interference with present or future navigational activities.

C. Submerged crossings shall be designed and located so as to ensure sufficient burial or water depth to avoid damage to the crossing.

14.04.200 Restoration**

By definition, "restoration" is revitalizing, returning, or replacing original attributes and amenities such as natural biological productivity or cultural and aesthetic resources that have been diminished or lost by past alterations, activities, or catastrophic events. Estuarine restoration means to revitalize or reestablish functional characteristics and processes of the estuary diminished or lost by past alteration, activities, or catastrophic events. A restored area must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work began. Active restoration involves the use of specific remedial actions such as removing dikes, installing water treatment facilities, etc. Passive restoration is the use of natural processes, sequences, or timing to bring about restoration after the removal or reduction of adverse stresses.

A. Restoration in areas designated for development shall be undertaken only if it is likely that the project will not conflict with or be destroyed by existing or subsequent development.

B. All restoration projects shall be designed so as to minimize adverse impacts on aquatic life and habitats, flushing and circulation characteristics,

erosion and accretion patterns, navigation, and recreation.

14.04.210 Excavation***

By definition as used here, "excavation" is the process of digging out shorelands to create new estuarine surface area directly connected to other estuarine waters.

A. Creation of new estuarine surface area shall be allowed only for navigation, other water-dependent use, or restoration.

B. All excavation projects shall be designed and located so as to minimize adverse impacts on aquatic life and habitats, flushing and circulation characteristics, erosion and accretion patterns, navigation, and recreation.

C. Excavation of as much as is practical of the new water body shall be completed before it is connected to the estuary.

D. In the design of excavation projects, provision of public access to the estuary shall be encouraged to the extent compatible with the proposed use.

*(*Amended by Ordinance No. 1622 (10-7-91).*
***Amended by Ordinance No. 1622 (10-7-91).*
****Amended by Ordinance No. 1622 (10-7-91).)*

14.04.220 Dredged Material Disposal*

By definition, "dredged material disposal" is the deposition of dredged material in estuarine areas or shorelands.

A. Disposal of dredged materials should occur on the smallest possible land area in order to minimize the quantity of land that is disturbed. Clearing of land should occur in stages on an "as needed" basis.

B. Dikes surrounding disposal sites shall be well constructed and large enough to encourage proper "ponding" and to prevent the return of suspended sediments into the estuary.

C. The timing of disposal activities shall be coordinated with the Department of Environmental Quality and the Department of Fish and Wildlife to insure adequate protection of biologically important elements such as fish runs, spawning activity, etc. In general, disposal should occur during periods of adequate river flow to aid flushing of suspended sediments.

D. Disposal sites that will receive materials with toxic characteristics shall be designed to include secondary cells in order to achieve good quality effluent. Discharge from the sites should be monitored to insure that adequate cell structures have been constructed and are functioning properly.

E. Revegetation of disposal sites shall occur as soon as is practical in order to stabilize the site and retard wind erosion.

F. Outfalls from dredged material disposal sites shall be located and designed so as to minimize adverse impacts on aquatic life and habitats and water quality.

G. General priorities for dredged material disposal sites shall be (in order of preference):

1. Upland or approved fill project sites.

2. Approved offshore disposal sites.

3. Aquatic areas.

*(*Amended by Ordinance No. 1622 (10-7-91).)*

H. Where flow lane disposal of dredged material is allowed, monitoring of the disposal is required to assure that estuarine sedimentation is consistent with the resource capabilities and purposes of affected natural and conservation management units.

The Yaquina Bay section of the Newport Comprehensive Plan (as amended) and the Yaquina Bay Dredged Material Disposal Plan (as amended) shall be referred to for specific disposal sites and policy requirements.

14.04.230 Water Handling of Logs*

By definition, water handling of logs is the combined process of log dumping, storage, transportation, millside handling, and take-out as logs are placed into the water and moved to a final processing site.

A. Water handling of logs shall be conducted in such a manner as to insure that violations of water quality standards do not result from such activities.

B. New free fall log dumps shall not be permitted. All new log dumps and shipside unloading shall employ easy letdown devices.

C. The inventory of logs in the estuary for any purpose shall be the lowest practical number for the shortest practical time considering log availability and market conditions.

D. The inventory of logs in areas where grounding will occur shall be the lowest practical number for the shortest practical time considering log availability and market conditions.

E. The best practical bark and wood debris control, collection, and disposal methods shall be employed at log dumps, ship side unloading areas, raft building areas, and millside handling and takeout areas.

14.04.240 Temporary Alteration**

By definition, "temporary alteration" is dredging, filling, or another estuarine alteration occurring over a specified short period of time that is needed to facilitate a use allowed by the Comprehensive Plan and the Permitted Use Matrices. The provision for temporary alterations is intended to allow alterations to areas and resources that would otherwise be required to be preserved or conserved.

*(*Amended by Ordinance No. 1622 (10-7-91).*
***Amended by Ordinance No. 1622 (10-7-91).)*

A. Temporary alterations include:

1. Alterations necessary for federally authorized navigation projects (e.g., access to dredged material disposal sites by barge or pipeline and staging areas or dredging for jetting maintenance);

2. Alterations to establish mitigation sites, alterations for bridge construction or repair, and for drilling or other exploratory operations; and

3. Minor structures (such as blinds) necessary for research and educational observation.

B. Temporary alterations may not be for more than three (3) years.

C. Temporary alterations to require a resource capability determination to insure that:

1. The short-term damage to resources is consistent with resource capabilities of the area; and

2. The area and affected resources can be restored to their original condition.

CHAPTER 14.05 MANAGEMENT UNIT SPECIAL POLICIES

14.05.010 Management Unit No. 1

A. Management Unit 1 shall be managed to conserve shellfish beds, fish spawning and nursery areas, and other natural resources.

B. Improvements necessary for the maintenance and replacement of the Yaquina Bay Bridge shall be allowed.

C. Navigation improvements necessary for the maintenance of the harbor entrance and channel, including jetty maintenance, shall be allowed.

D. The algal bed within Management Unit 1 as defined by the Oregon Department of Fish and Wildlife Classification Map shall be preserved.

(Section 14.01 amended by Ordinance No. 1379 (5-21-84); section amended by Ordinance No. 1566 (14.36.0010); entire section added and/or amended by Ordinance No. 1622 (10-7-91).)*

14.05.020 Management Unit No. 2

A. Management Unit 2 shall be managed to conserve shellfish beds, algal beds, fish spawning and nursery areas, and other natural resources.

B. Navigation improvements necessary for the maintenance of the harbor entrance and channel, including jetty maintenance, shall be allowed.

14.05.030 Management Unit No. 3

A. Management Unit 3 shall be managed to conserve natural resources of importance.

B. Improvements necessary for the maintenance and replacement of the Yaquina Bay Bridge shall be allowed.

C. Navigation improvements necessary for the maintenance of the harbor entrance and channel, including jetty maintenance, shall be allowed.

D. Major clam beds are located within Management Unit 3. These clam beds shall be protected.

14.05.040 Management Unit No. 4

A. Management Unit 4 shall be managed to protect and maintain the channel and turning basin for deep draft navigation.

B. Adverse impacts of mining, mineral extraction, or other dredging operations within Management Unit 4 on existing commercial clam harvest shall be minimized.

C.* Medium and deep draft port facilities shall be allowed subject to approval by the US Army Corps of Engineers.

*(*Added by Ordinance No. 1995 (1/6/10))*

14.05.050 Management Unit No. 5

A. Management Unit No. 5 shall be managed to provide for the development of port facilities and other water-dependent uses and water-related and non-water-related uses in keeping with the scenic, historic, and unique characteristics of the area. Water-related and non-related development shall be consistent with the purpose of this unit and with adjacent shoreland designated as especially suited for water-dependent uses or designated for waterfront development.

B. Non-water-related uses may be conditionally permitted within the estuarine area adjacent to the old waterfront from Bay Street to John Moore Road, extending out to the pierhead line as established by the U.S. Army Corps of Engineers.

C. Experimental shellfish beds were introduced in Management Unit 5 in the 1940s and1950s. It is anticipated that these shellfish beds will be impacted by future development; however, adverse impacts on these beds shall be minimized as much as possible while meeting these development needs.

D. Due to the limited water surface area available and the need for direct land to water access, alternatives

(such as mooring buoys or dry land storage) to docks and piers for commercial and industrial uses are not feasible in Unit 5. Multiple use facilities common to several users are encouraged where practical.

E. Tourist-related activities will be encouraged to locate on the landward side of S.W. Bay Boulevard. The bay side of Bay Boulevard should accommodate water-dependent and water-related types of uses. Some tourist-related uses may locate on the water side, but only upon the issuance of a conditional use permit.

14.05.060 Management Unit No. 6

A. Management Unit 6 shall be managed to conserve natural resources and to provide for uses like existing navigation and recreation activities.

B. Management Unit 6 will need to be disturbed for the placement of the submerged sewer and water lines, bridge footings, and the relocation of the breakwater. Care should be taken to return the disturbed areas to a condition consistent with the conservation classification. The shellfish beds south of the port breakwater are considered a resource of major importance.

14.05.070 Management Unit No. 7

A. Management Unit 7 shall be managed to provide for water-dependent development compatible with existing uses and consistent with the purpose of the area.

B. Development of deep and medium draft port facilities shall be a permitted use only outside of the existing South Beach Marina boat basin.

C. Adverse impacts of future development on eelgrass beds, shellfish beds, and fish spawning and nursery areas shall be minimized, consistent with allowed development.

14.05.080 Management Unit No. 8

A. Management Unit 8 shall be managed to conserve natural resources such as eelgrass and shellfish beds.

B. Navigational improvements found to be necessary for the maintenance of the deep water channel shall be provided.

C. Temporary moorages of log rafts in Management Unit 8 shall conform to the following standards:

1. Whenever feasible, individual logs shall be prohibited. Other activities may not be bundled, but they shall always be held in rafts.

2. The number of log rafts moored at any time shall be the lowest practical number for the shortest practical time, considering log supply and tidal cycles.

3. Water surface areas occupied by temporary moorage shall not at any time exceed seven (7) acres.

4. Dolphins shall be sited and moorage conducted so that log rafts will not ground at law water.

5. As much as practical, shipment and movements of logs shall be timed to minimize conflicts with recreational uses in the area.

D.* A cobble/pebble dynamic revetment for shoreline stabilization may be authorized in Management Unit 8 for protection of public facilities (such as the Hatfield Marine Science Center facilities).

14.05.090 Management Unit No. 9-A

A. Management Unit 9-A shall be managed to preserve and protect natural resources and values. In order to maintain resource values, alterations in this unit should be kept to a minimum. Minor alterations that result in temporary disturbances such as limited dredging for submerged crossings would be consistent with resource values in this area; other more permanent alterations should be reviewed

individually for consistency with the resource capabilities of the area.

B. Active restoration activities are limited to fish and wildlife habitat and water quality and estuarine enhancement.

C. Goal 16 exceptions have been taken for the waste seawater outfall for the Oregon Coast Aquarium and for increased storm water runoff through an existing drainage system.

D. The Idaho Point Marina and the channel that serves it may be maintained as allowed under the existing Army Corps of Engineers permit.

E. A cobble/pebble dynamic revetment for shoreline stabilization may be authorized in Management Unit 9-A for protection of public facilities (such as the Hatfield Marine Science Center facilities).**

*(*Policy Added by Ordinance No. 1905 (1-16-07).*
***Policy Added by Ordinance No. 1905 (1-16-07).)*

14.05.100 Management Unit No. 10-A

A. Management Unit 10-A shall be managed to preserve and protect natural resources and values. Permitted alterations should be limited to those that result in only temporary disturbances. More permanent alterations should be reviewed for consistency with the resource capabilities of the area.

B. Active restoration activities are limited to fish and wildlife habitat and water quality and estuarine enhancement.

14.05.110 Permitted Use Matrices

Each management unit district has a permitted use matrix. The Comprehensive Plan contains a description, classification, resource capabilities, management objectives, and special policies for each of the management units found in the Newport Comprehensive Plan. These sections should be read in conjunction with the Permitted Use Matrices.

The Permitted Use Matrices correspond to those in the Lincoln County Estuary Management Plan, except for non-water-related commercial uses in Management Unit 5. The commercial use category includes recreational uses. Only the Special Policies that would apply to a specific use appear on the Permitted Use Matrices. Other Special Policies which apply more widely to the particular management unit can be found in Section 14.05.

A use may be permitted with standards or conditionally permitted. In addition, a certain type of structure or alteration may or may not be permitted in conjunction with a permitted or conditional use. For example: In Management Unit No. 1 mining is permitted conditionally. In conjunction with mining, new dredging is permitted conditionally, and navigational aids are permitted with standards. Thus, new dredging activity would be reviewed by the Planning Commission for compliance with all standards. However, if navigational aids are found to be needed once mining activity has begun, those can be permitted with standards by staff without Planning Commission review.

CHAPTER 14.06 MANUFACTURED DWELLINGS AND RECREATIONAL VEHICLES

14.06.010 Purpose

The purpose of this section is to provide criteria for the placement of manufactured dwellings and recreational vehicles within the City of Newport. It is also the purpose of this section to provide for dwelling units other than site-built structures.

14.06.020 Manufactured Dwellings on Individual Lots

A. In addition to the uses permitted in the underlying zone, a single manufactured dwelling may be placed on an individual lot or parcel in any residential district where single-family residences are allowed subject to the following provisions:

1. Conform to the definition of a manufactured dwelling in Section 14.01.010 of this Code.

2. Have the wheels and tongue or hitch removed.

3. Be placed on an excavated and backfilled foundation and enclosed at the perimeter such that the manufactured home is located not more than 12 inches above grade.

4. Have a pitched roof of at least two and one half feet for each 12 feet in width and be provided with gutters and down-spouts consistent with the standards contained in the current State of Oregon amended Council of American Building Officials.

5. Have exterior siding and roofing which, in color, material, and appearance, is similar to the exterior siding and roofing material commonly used on residential dwellings within the community or which is comparable to the predominant materials used on adjacent dwellings as determined by the Building Official.

6. Have a garage or carport constructed of like materials if an adjacent lot or parcel is developed with a dwelling that has a garage or carport.

7. Be multisectional and enclose a space of not less than 1,000 square feet as determined by measurement of exterior dimensions of the unit. Space within accessory structures, extensions, or additions shall not be included in calculating space.

8. Be connected to the public water system and an approved sewage disposal system.

9. Be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce heat loss to levels equivalent to the performance standards required of single-family dwellings constructed under the state building code as defined in ORS 455.010.

B. A manufactured dwelling constructed in accordance with current Federal Manufactured Home Construction and Safety Standards that does not meet criteria listed in subsection (A), may be approved by the Planning Commission as a Conditional Use pursuant to Section 14.33 of this Ordinance. Requests of this nature shall be reviewed under a Type III decision making process consistent with Section 14.52, Procedural Requirements.

(Entire section amended by Ordinance No. 1641 (8-3-92) and replaced in its entirety by Ordinance No. 2008 (12-2-2010).)*

14.06.030 Manufactured Dwelling Park Standards

Manufactured dwelling parks may only be allowed in the R-2, R-3, and R-4 zoning districts, subject to the development standards contained in this section.

14.06.040 Manufactured Dwelling Parks

Manufactured dwelling parks are permitted subject to the following:

A. Construction of the manufactured dwelling park and placement of manufactured dwellings shall comply with the Oregon Manufactured Dwelling and Park Specialty Code, 2002 Edition, as amended.

B. Streets within the manufactured dwelling park shall adhere to the standards outlined in Newport Municipal Code Chapter 13.05.040 where the construction or extension of such street is identified in the City of Newport Transportation System Plan.

C. The maximum density allowed in a manufactured dwelling park is one unit for every 2,500 sq. ft. of lot area in the R-2 zoning district and one unit for every 1,250 sq. ft. of lot area in R-3 and R-4 zoning districts.

D. Recreational vehicles may be occupied as a residential unit provided they are connected to the manufactured dwelling parks water, sewage, and electrical supply systems. In such cases, the recreational vehicles shall be counted against the density limitations of the zoning district.

E. Any manufactured dwelling park authorized under this section shall have a common outdoor area of at least 2,500 sq. ft. or 100 sq. ft. per unit, whichever is greater. Common outdoor areas shall be landscaped and available for the use of all park residents.

F. If the park provides spaces for 50 or more manufactured dwelling units, each vehicular way in the park shall be named and marked with signs that are similar in appearance to those used to identify public streets. A map of the vehicular ways shall be provided to the fire department for appropriate naming.

G. Public fire hydrants shall be provided within 250 feet of manufactured dwelling spaces or permanent structures within the park. If a manufactured dwelling space or permanent structure in the park is more than 250 feet from a public fire hydrant, the park shall have water supply mains designed to serve fire hydrants. Each hydrant within the park shall be located on a vehicular way and shall conform in design and capacity to the public hydrants in the city.

H. The manufactured dwelling park may have a community or recreation building and other similar amenities.

I. All dead end streets shall provide an adequate turn around for emergency vehicles.

14.06.050 Recreational Vehicles: General Provisions

A. Recreational vehicles may be stored on property within the City of Newport provided they are not used as a place of habitation while so stored unless the recreational vehicle is located within a manufactured dwelling park or recreational vehicle park, or is authorized as a temporary living quarters pursuant to NMC Chapter 14.9.

B. Removal of the wheels or placement of a recreational vehicle on a permanent or temporary foundation shall not change the essential character of any recreational vehicle or change the requirements of this section.

C. It shall be unlawful for any person occupying or using any recreational vehicle within the City of Newport to discharge wastewater unless connected to a public sewer or an approved septic tank in accordance with the ordinances of the City of Newport relating thereof. All recreational vehicle parks within the City of Newport shall comply with the sanitary requirements of the City of Newport and the State of Oregon.

(Chapter 14.06.040 and 14.06.050 were enacted by Ordinance No. 2059, adopted on September 3, 2013; effective October 3, 2013.)

14.06.060 Recreational Vehicle Parks

Recreational vehicle parks are allowed conditionally in an R-4 zone and conditionally if publicly owned in the P-1 and P-2 zoning districts (excluding those P-1 properties within the Historic Nye Beach Design Review District), subject to subsections A through D below and in accordance with Section 14.52, Procedural Requirements. Recreational vehicle parks are allowed outright in C-1, C-2, C-3, I-1, and I-2 zoning districts (excluding those C-2 properties within the Historic Nye Beach Design Review District), subject to the subsections A through D as follows:

A. The park complies with the standards contained in state statutes and the Oregon Administrative Rules.

B. The developer of the park obtains a permit from the state.

C. The developer provides a map of the park to the City Building Official.

D. The park complies with the following provisions (in case of overlap with a state requirement, the more restrictive of the two requirements shall apply):

1. The space provided for each recreational vehicle shall not be less than 600 square feet, exclusive of any space used for common areas (such as roadways, general use structures, walkways, parking spaces for vehicles other than recreational vehicles, and landscaped areas). The number of recreational vehicles shall be limited to a maximum of 22 per gross acre.

2. Roadways shall not be less than 30 feet in width if parking is permitted on the margin of the roadway or less than 20 feet in width if parking is not permitted on the edge of the roadway, they shall be paved with asphalt, concrete, or similar impervious surface and designed to permit easy access to each recreation vehicle space.

3. A space provided for a recreational vehicle shall be covered with crushed gravel or paved with asphalt, concrete, or similar material and be designed to provide run-off of surface water. The part of the space which is not occupied by the recreational vehicle, not intended as an access way to the recreation vehicle or part of an outdoor patio, need not be paved or covered with gravel provided the area is landscaped or otherwise treated to prevent dust or mud.

4. A recreational vehicle space shall be provided with piped potable water and sewage disposal service. A recreational vehicle staying in the park shall be connected to the water and sewage service provided by the park if the vehicle has equipment needing such service.

5. A recreational vehicle space shall be provided with electrical service.

6. Trash receptacles for the disposal of solid waste materials shall be provided in convenient locations for the use of guests of the park and located in such number and be of such capacity that there is no uncovered accumulation of trash at any time.

7. The total number of off-street parking spaces in the park shall be provided in conformance with Section 14.14.030. Parking spaces shall be covered with crushed gravel or paved with asphalt, concrete, or similar material.

8. The park shall provide toilets, lavatories, and showers for each sex in the following ratios: For each 15 recreational vehicle spaces, or any fraction thereof, one toilet (up to 1/3 of the toilets may be urinals), one lavatory, and one shower for men; and one toilet, one lavatory, and one shower for women. The toilets and showers shall afford privacy, and the showers shall be provided with private dressing rooms. Facilities for each sex shall be located in separate buildings, or, if in the same building, shall be separated by a soundproof wall.

9. The park shall provide one utility building or room containing one clothes washing machine, and one clothes drying machine for each ten recreational vehicle spaces, or any fraction thereof.

10. Building spaces required by Subsection 9 and 10 of this section shall be lighted at all times of the night and day, shall be ventilated, shall be provided with heating facilities which shall maintain a room temperature of at least 62˚F, shall have floors of waterproof material, shall have sanitary ceilings, floor and wall surfaces, and shall be provided with adequate floor drains to permit easy cleaning.

11. Except for the access roadway into the park, the park shall be screened on all sides by a sight-obscuring hedge or fence not less than six feet in

height unless modified through either the conditional use permit process (if a conditional use permit is required for the RV park) or other applicable land use procedure. Reasons to modify the hedge or fence buffer required by this section may include, but are not limited to, the location of the RV park is such that adequate other screening or buffering is provided to adjacent properties (such as the presence of a grove or stand of trees), the location of the RV park within a larger park or development that does not require screening or has its own screening, or screening is not needed for portions not adjacent to other properties (such as when the RV park fronts a body of water). Modifications to the hedge or fence requirement of this subsection shall not act to modify the requirement for a solid wall or screening fence that may otherwise be required under Section 14.18.020 (Adjacent Yard Buffer) for non-residentially zoned property abutting a residentially zoned property.

12. Except for vehicles, there shall be no outside storage of materials or equipment belonging to the park or to any guest in the park.

13. Evidence shall be provided that the park will be eligible for a certificate of sanitation as required by state law.

CHAPTER 14.07 RECREATIONAL VEHICLES

CHAPTER 14.08 TRAILER COACHES AND TRAILER PARKS

CHAPTER 14.09 TEMPORARY STRUCTURES PERMITS

14.09.010 Purpose

The purpose of this section is to provide some allowance for short-term uses that are truly temporary in nature, where no permanent improvements are made to the site, and the use can be terminated and removed immediately. Temporary activities include special events as defined in 9.80.010 of the Newport Municipal Code, temporary living quarters, construction trailers, leasing offices, vending carts, kiosks, storage buildings, and similar structures.

14.09.020 Special Events Structures

Placement of special events structures is regulated under Chapter 9.80 of the Newport Municipal Code.

14.09.030 Temporary Living Quarters

Notwithstanding any other restrictions and prohibitions in this code, a recreational vehicle may be used as a temporary living quarters subject to the following conditions:

A. The request for temporary living quarters must be in conjunction with a valid, active building permit.

B. The time limit shall be no longer than one (1) year from issuance. After the expiration of the time limit, the recreational vehicle used for the temporary living quarters must no longer be used for on-site living purposes.

C. The recreational vehicle used as the temporary living quarters must be self-contained for sanitary sewer.

D. Temporary living situations for non-residential projects may use a job shack or other such structure instead of a recreational vehicle as the living quarters and may have a portable toilet instead of a self-contained unit.

E. The location of the temporary living quarters on the site shall satisfy the vision clearance requirements as set forth in Section 14.21 of the zoning code.

F. Prior to the issuance of a temporary living quarters permit, the applicant shall sign an agreement that the applicant shall comply with the provisions of this subsection.

14.09.040 Temporary Structures for Other Than Special Events

Notwithstanding any other restrictions and prohibitions in this code, a temporary structure not associated with a special event may be erected subject to the following:

A. The permit, if approved, shall be issued for a period not to exceed two (2) years. Upon like application and approval, the permit may be renewed for up to an additional (1) year.

B. Temporary structures are limited to commercially and industrially zoned properties.

C. No permanent changes will be made to the site in order to accommodate the temporary structure.

D. Permission is granted by the property owner.

E. Sanitary facilities will be made available to the site.

F. The structure does not interfere with the provision of parking for the permanent use on the site.

G. The structure satisfies the vision clearance requirements of the zoning code.

H. Approval is obtained from the City Building Official if the structure is to be erected for 180 days or longer.

I. For temporary structures that are to be placed in one location for 12 or more consecutive months, a bond or cash deposit for the amount required to remove the temporary structure, if not removed in the required time frame, shall be placed in an interest-bearing account in the name of the applicant and the City of Newport. Any bond or cash deposit must be in a form approved by the City Attorney.

(Section added by Ordinance No. 1644 (9-8-92); amended by Ordinance No. 1731 (10-16-95); and section amended in its entirety by Ordinance No. 2001 (4-4-10)*

14.09.050 Temporary Vending Carts

Notwithstanding any other restrictions and prohibitions in this code, a temporary vending cart, not associated with a special event, may be located within the City of Newport subject to the following:

A. Temporary vending carts may be located on commercially-zoned property that is at least ½ mile from a permanent eating and drinking establishment.

B. Temporary vending carts and any accessory improvements (such as seating) are limited to privately-owned properties, and may encroach onto public property or public right-of-way only if the city consents to the encroachment as provided in Chapter 4.10 of the Newport Municipal Code.

C. The items available for sale from temporary vending carts are limited to food and beverages for immediate consumption. Requests to have a different item or service considered shall be submitted in writing to the City Manager, who shall determine if the item or service:

   1. Can be vended from a regulation size temporary vending cart;

   2. Not lead to or cause congestion or blocking of pedestrian traffic on the sidewalk;

   3. Involve a short transaction period to complete the sale or render the service;

   4. Not cause undue noise or offensive odors; and

   5. Be easily carried by pedestrians.

D. A permit for a temporary vending cart, if approved, shall be issued for a period not to exceed two (2) years. Upon expiration of a permit, a temporary vending cart must immediately cease operation, and must be permanently removed within seven (7) days.

E. At least one trash and one recycling receptacle will be made available to the public.

F. The City of Newport receives a signed statement that the permittee shall hold harmless the City of Newport, its officers and employees, and shall indemnify the City of Newport, its officers and employees for any claims for damage to property or injury to persons which may be occasioned by any activities of the permittee. Permittee shall furnish and maintain public liability, products liability, and property damage insurance as will protect permittee, property owners, and city from all claims for damage to property or bodily injury, including death, which may arise from operations of the permittee. Such insurance shall provide coverage of not less than $1,000,000 per occurrence. Such insurance shall be without prejudice to coverage otherwise existing, and shall name as additional insured the City of Newport, their officers and employees, and shall further provide that the policy shall not terminate or be canceled prior to the completion of the contract without 30 days written notice to the City Recorder of the City of Newport.

G. A bond or cash deposit for the amount required to remove the temporary vending cart, if not removed in the required time frame, shall be placed in an interest-bearing account in the name of the applicant and the City of Newport. Any bond or cash deposit must be in a form approved by the City Attorney.

14.09.060 Permits Not Transferable Unless Approved

Permits authorized by this section are not transferable to another person or location unless approved by the Community Development Director.

14.09.070 Approval Authority

Unless otherwise provided, placement of temporary structures is subject to review and approval by the Community Development Director as ministerial action.

14.09.080 Application Submittal Requirements

In addition to a land use application form with the information required in Section 14.52.080, applications for temporary structures shall include the following:

A. A site plan, drawn to scale, showing:

1. The proposed location of the temporary structure, seating areas, and amenities, as applicable.

2. Existing buildings.

3. Existing parking.

4. Access(es) to the parking areas.

5. Any additional structures, seating areas, and amenities associated with the temporary structure.

6. The location and size of trash receptacles.

7. Utilities.

8. Existing signs and signs associated with the temporary structure.

9. Temporary structure building elevations or photos.

10. The location of drive-up windows (if applicable).

B. A signed agreement stating that the applicant is aware of the limitations and conditions attached to the granting of the permit and agrees to abide by such limitations and conditions.

C. A description of the types of items sold or services rendered, if applicable.

D. A valid copy of all necessary permits required by State or local health authorities, and other required licenses or permits, such as business license or sign permit obtained by the applicant and maintained on site.

14.09.090 Fire Marshal Inspection

Prior to the issuance of any permit, the Fire Marshal shall inspect and approve any temporary structure to assure conformance with the provisions of the Fire Code.

14.09.100 Construction Trailer Exemption

Construction trailers located on the site upon which construction is to occur that are used during the course of the construction project are exempt from the process outlined in this section and may be permitted at the time of building permit approval provided said structures comply with the building code and the vision clearance requirements of the zoning code.

CHAPTER 14.10 HEIGHT LIMITATIONS

14.10.010 Height Limitations

A building, structure, or portion thereof hereafter erected shall not exceed the height listed in Table A for the zone indicated except as provided for in Sections 14.10.020, General Exceptions to Building Height Limitations and 14.10.030, Special Exceptions to Building Height Limitations.

14.10.020 General Exceptions to Building Height Limitations

A. The following types of structures or structural parts are not subject to the building height limitations of this Code as long as the square footage of said structure or structural part is no greater than 5% of the main building foot print as shown on the site plan, or 200 square feet, whichever is less: chimneys, cupolas, church spires, belfries, domes, transmission towers, smokestacks, flag poles, radio and television towers, elevator shafts, conveyors and mechanical equipment.

B. No structure or structural part excepted under Subsection (A) from the building height limitations of this Code, whether freestanding or attached to another structure or structural part, may exceed the maximum allowable height by more than 25% unless approved by the Planning Commission per section 14.10.030.

C. Standalone antennas, cell towers, electrical transmission towers, telephone or electric line poles and other public utility types of structures or structural parts, where allowed by this Ordinance, are limited in height to 50 feet in R-1, R-2, R-3, R-4, W-1, W-2, and C-2 zones; 100 feet in the P-1, C-1 and C-3 zones; 150 feet in the I-1, I-2 and I-3 zones. A taller structure or structural part referenced under this subsection may be allowed upon the issuance of a conditional use permit per Section 14.33 of this Code.

D. A stand-alone structure or portion of a building designed for vertical evacuation from a tsunami where the property upon which the structure or building is located is situated south of the Yaquina

Bay Bridge within the "XXL" tsunami inundation area boundary, as depicted on the maps titled "Local Source (Cascadia Subduction Zone) Tsunami Inundation Map Newport North, Oregon" and "Local Source (Cascadia Subduction Zone) Tsunami Inundation Map Newport South, Oregon" produced by the Oregon Department of Geology and Mineral Industries (DOGAMI), dated February 8, 2013 (i.e. the tsunami inundation maps), provided:

1. Evacuation assembly areas shall provide at least 10 square feet of space per occupant. Vertical-evacuation assembly areas that are incorporated into a building shall be sized to accommodate the occupant load of the assembly spaces in building plus half of the occupant load of the remainder of the building; for stand-alone structures, the assembly area shall be sized to accommodate the occupant load of nearby building(s) and/or assembly area(s) to which it is associated; and

2. Ingress/egress to the evacuation assembly area shall be signed in a manner consistent with state and/or federal guidelines for the identification of such facilities; and

3. Plans and specifications, stamped by an architect or engineer licensed in the State of Oregon, establish that the structure is of sufficient height and has been designed to withstand an earthquake and wave forces attributable to an "XXL" tsunami event as depicted on the tsunami inundation maps; and

4. An architect or engineer licensed in the State of Oregon is retained by the applicant or land owner to perform structural observations during the course of construction. Prior to issuance of a building permit, the observer shall submit a written statement identifying the frequency and extent of the structural observations to be performed. At the conclusion of the work and prior to issuance of a certificate of occupancy, the structural observer shall submit a statement that the site visits were performed and that any deficiencies identified as a result of those observations were addressed to their satisfaction.

(Section 14.10.20(D) was enacted by Ordinance No. 2121, adopted on October 16, 2017: effective November 15, 2017.)

E. Except as provided in Section 14.10.020(D), no structure or structural part excepted under this section from the building height limitations of this Code may be used for human habitation.

14.10.030 Special Exceptions to Building Height Limitations

Any person seeking a special exception to the building height limitations of this Code shall do so by applying for an adjustment or variance as described in Section 14.33 of this Code, and consistent with Section 14.52, Procedural Requirements.**

*(*Amended by Ordinance No. 1839 (10-1-01).*
***Amended by Ordinance No. 1989 (1-1-10).)*
(Chapter 14.10 was amended by Ordinance No. 2105, adopted on December 5, 2016; effective on January 4, 2017.)

CHAPTER 14.11 REQUIRED YARD AND SETBACKS

14.11.010 Required Yards

A building, or portion thereof, hereafter erected shall not intrude into the required yard listed in Table A for the zone indicated.

14.11.020 Required Recreation Areas

All multiple-family dwellings, condominiums, hotels, motels, mobile home parks, trailer parks, and recreational vehicle parks shall provide for each unit a minimum of 50 square feet of enclosed outdoor area landscaped or improved for recreation purposes exclusive of required yards such as a patio, deck, or terrace.

14.11.030 Garage Setback

The entrance to a garage or carport shall be set back at least 20 feet from the access street for all residential structures.

14.11.040 Yards for Group Buildings

A. In case of group buildings on one lot, including institutions and dwellings, the yards on the boundary of the lots shall not be less than required for one building on one lot in the district in which the property is located.

B. The distance between group buildings on one lot shall be twice the width of the required side, front, or rear yards, except in the case of yard combinations that no yard be required to exceed 25 feet.

C. In the case of court apartments rearing on side yards, the required side yards shall be increased two feet in width for each dwelling unit rearing thereon.

D. No group dwelling court shall be less than 25 feet in width.

E. In the R-3 and R-4 zones where three or more commercial or residential dwelling units are in a

continuous row on interior lots rearing on one side yard and fronting upon another side yard, the side yard on which the dwelling rears shall not be less than eight feet. The side yard on which the dwellings front shall not be less than 18 feet in width.

14.11.050 General Exceptions to Required Yard

A. Front Yards.* In the event a front yard less than the minimum has been legally established on one or both of the adjacent lots, the minimum front yard for an interior lot may be reduced to the average of what has been established for the adjoining front yards.

B. Projections Into Yards. Every part of a required yard shall be open from the ground to the sky, unobstructed except for the following:

1. Accessory building in the rear yard as provided in Section 14.16.*

*(*Sentence amended by Ordinance No. 2011 (2-18-11).)*

2. Ordinary building projections such as cornices, eaves, belt courses, sills, or similar architectural features may project into side yards not more than 12 inches or into front and rear yards not more than 24 inches.

3. Chimneys may project into any required yard not more than 16 inches.

4. Uncovered balconies or fire escapes may project into any required yard not more than one foot.

5. Uncovered terraces may project or extend into a required front yard not more than five feet or into a required side yard not more than one foot or into a required court not more than six feet. The regulations contained in this paragraph shall not apply to paved parking or driveway areas at ground level.

C. Dwelling Units Above Stores. Yards are not required for dwellings above businesses unless the dwelling area exceeds 50% of the floor area of the business dwelling.

CHAPTER 14.12 MINIMUM LOT SIZE

14.12.010 Minimum Size

All lots hereafter created within the City of Newport shall have a minimum lot area and width as listed in Table A for the zone indicated. It is not the intent of the Zoning Ordinance to deprive owners of substandard lots the use of their property. Substandard single lots lawfully created prior to the passage of this Zoning Ordinance shall not be prevented from being built upon solely because the lot does not comply with the minimum lot size requirements of this ordinance. However, the density standards shall apply to all partitioning or resubdivision of property in the future and to developments of over two dwelling units at one time.

14.12.020 General Exceptions to Lot Size Requirements

A residentially zoned lot having less width or less area than required under the terms of this ordinance that was of record prior to December 5, 1966, may be occupied by a one-family dwelling unit, provided all yard requirements (setbacks) are complied with. Substandard lots in R-3 and R-4 zones may be occupied by multi-family dwellings not exceeding the density limitations for that zone provided in Table A, as provided in Section 14.13 herein below, but only upon allowance of a conditional use in accordance with the provisions of Section 14.33, Conditional Uses, and Section 14.52, Procedural Requirements.*

CHAPTER 14.13 DENSITY LIMITATIONS

14.13.010 Density Limitations

A residential building structure or portion thereof hereafter erected shall not exceed the maximum living unit density listed in Table A, as hereinafter set forth, for the zone indicated, except in the case of a lot having less than is required and of record prior to December 5, 1966, which may be occupied by a single-family dwelling unit, providing other requirements of this ordinance are complied with, except to the extent that a higher density may specifically be allowed by any term or provision of this Ordinance.

(BY THIS REFERENCE, THERE IS INCLUDED HEREIN AND MADE A PART HEREOF, A TABLE OF DENSITY AND OTHER REQUIREMENTS, DESIGNATED "TABLE A".)

CHAPTER 14.14 PARKING, LOADING, AND ACCESS REQUIREMENTS

14.14.010 Purpose

The purpose of this section is to establish off-street parking and loading requirements, access standards, development standards for off-street parking lots, and to formulate special parking areas for specific areas of the City of Newport. It is also the purpose of this section to implement the Comprehensive Plan, enhance property values, and preserve the health, safety, and welfare of citizens of the City of Newport.

14.14.020 Definitions

For purposes of this section, the following definitions shall apply:

Access. The point of ingress and egress from a public street to an off-street parking lot or loading and unloading area.

Aisle. Lanes providing access to a parking space.

Gross Floor Area. The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage.

Loading Space. A parking space for the loading and unloading of vehicles over 30 feet in length.

Parking Space. An area for the parking of a vehicle.

Site Plan. A map showing the layout of the building, parking, landscaping, setbacks, and any other pertinent information concerning the development of a site.

Use. Any new building, change of occupancy, or addition to an existing building.

14.14.030 Number of Parking Spaces Required

Off-street parking shall be provided and maintained as set forth in this section. Such off-street parking spaces shall be provided prior to issuance of a final building inspection, certificate of occupancy for a building, or

occupancy, whichever occurs first. For any expansion, reconstruction, or change of use, the entire development shall satisfy the requirements of Section 14.14.050, Accessible Parking. Otherwise, for building expansions the additional required parking and access improvements shall be based on the expansion only and for reconstruction or change of type of use, credit shall be given to the old use so that the required parking shall be based on the increase of the new use. Any use requiring any fraction of a space shall provide the entire space. In the case of mixed uses such as a restaurant or gift shop in a hotel, the total requirement shall be the sum of the requirements for the uses computed separately. Required parking shall be available for the parking of operable automobiles of residents, customers, or employees, and shall not be used for the storage of vehicles or materials or for the sale of merchandise. A site plan, drawn to scale, shall accompany a request for a land use or building permit. Such plan shall demonstrate how the parking requirements required by this section are met.

Parking shall be required at the following rate. All calculations shall be based on gross floor area unless otherwise stated.

*(*Section previously amended by Ordinance No. 1332 (5-23-83), Ordinance No.1447 (12-16-85), Ordinance No. 1462 (5-3-86), Ordinance No. 1548 (8-21-89), Ordinance No. 1638 (7-20-92), and Ordinance No. 1622 (10-7-91); section amended in its entirety by Ordinance No. 1780 (11-17-97); and amended in its entirety by Ordinance No. 2010 (1-6-2011).)*

1.	General Office	1 space/600 sq. ft.
2.	Post Office	1 space/250 sq. ft.
3.	General Retail (e.g. shopping centers, apparel stores, discount stores, grocery stores, video arcade, etc.)	1 space/300 sq. ft.
4.	Bulk Retail (e.g. hardware, garden center, car sales, tire stores, wholesale market, furniture stores, etc.)	1 space/600 sq. ft.
5.	Building Materials and	1 space/1,000 sq. ft.

Lumber Store	
6. Nursery–Wholesale land + building	1 space/2,000 sq. ft. land + 1 space/1,000 sq. ft. building
7. Eating and Drinking Establishments	1 space/150 sq. ft.
8. Service Station	1 space/pump
9. Service Station with Convenience Store	1 space/pump + 1 space/200 sq. ft. of store space
10. Car Wash	1 space/washing module + 2 spaces
11. Bank	1 space/300 sq. ft.
12. Waterport/Marine Terminal	20 spaces/berth
13. General Aviation Airport	1 space/hangar + 1 space/300 sq. ft. of terminal
14. Truck Terminal	1 space/berth
15. Industrial	1.5 spaces/1,000 sq. ft.
16. Industrial Park	1.5 spaces/5,000 sq. ft.
17. Warehouse	1 space/2,000 sq. ft.
18. Mini-Warehouse	1 space/10 storage units
19. Single-Family Detached Residence (one space may be the driveway between garage and front property line)	2 spaces/dwelling
20. Duplex	1 space/dwelling

21. Apartment	1 space/unit for first four units + 1.5 spaces/unit for each Additional unit
22. Condominium (Residential)	1.5 spaces/unit
23. Elderly Housing Project	0.8 space/unit if over 16 Dwelling units
24. Congregate Care/Nursing Home	1 space/1,000 sq. ft.
25. Hotel/Motel	1 space/room + 1 space for the manager (if the hotel/motel contains other uses, the other uses Shall be calculated separately)
26. Park	2 spaces/acre
27. Athletic Field	20 spaces/acre
28. Recreational Vehicle Park	1 space/RV space + 1 space/10 RV spaces
29. Marina	1 space/5 slips or berths
30. Golf Course	4 spaces/hole
31. Theater	1 space/4 seats
32. Bowling Alley	4 spaces/alley
33. Elementary/Middle School	1.6 spaces/classroom
34. High School	4.5 spaces/classroom
35. Community College	10 spaces/classroom

36. Religious/Fraternal Organization	1space/4 seats in the main auditorium
37. Day Care Center	1space/4 persons of license occupancy
38. Hospital	1 space/bed
39. Assembly Occupancy	1 space/8 occupants (based on 1 occupant/15 square feet of Exposition/Meeting/ Assembly Room
	Conference Uses Not Elsewhere Specified

14.14.040 Parking Requirements for Uses Not Specified

The parking space requirements of buildings and uses not set forth above shall be determined by the Planning Director or designate. Such determination shall be based upon requirements for the most comparable building or use specified in Section 14.14.030 or a separate parking demand analysis prepared by the applicant and subject to a Type I decision making procedure as provided in Section 14.52, Procedural Requirements.

14.14.050 Accessible Parking

Parking areas shall meet all applicable accessible parking requirements of the Oregon Structural Specialty Code to ensure adequate access for disabled persons.

14.14.060 Compact Spaces

For parking lots of four vehicles or more, 40% of the spaces may be compact spaces, as defined in Section 14.14.090(A). Each compact space must be marked with the word "Compacts" in letters that are at least six inches high.

14.14.070 Bicycle Parking

Bicycle parking facilities shall be provided as part of new multi-family residential developments of four units or more and new retail, office, and institutional developments.

A. The required minimum number of bicycle parking spaces is as follows:

Parking Spaces Required	Bike Spaces Required
1 to 4	0
5 to 25	1
26 to 50	2
51 to 100	3
Over 100	1/50

B. Bicycle parking for multiple uses (such as commercial shopping centers) may be clustered in one or several locations but must meet all other requirements for bicycle parking.

C. Each required bicycle parking space shall be at least two and a half by six feet. An access aisle at least five feet wide shall be provided and maintained beside or between each row of bicycle parking.

D. Bicycle parking facilities shall offer security in the form of either a lockable enclosure in which the bicycle can be stored or a stationary object (e.g., a "rack") upon which a bicycle can be locked.

E. Areas set aside for required bicycle parking must be clearly marked and reserved for bicycle parking only.

14.14.080 Shared Parking

The off-street parking requirements of two or more uses, structures, or parcels may be satisfied by the same parking lot or loading spaces used jointly to the extent that it can be shown by the owners or operators of the uses, structures, or parcels that their parking needs do not overlap. If the uses, structures, or parcels are under separate ownership, the right to joint use of the parking space must be evidenced by a deed, lease, contract, or

other appropriate written document to establish the joint use.

14.14.090 Parking Lot Standards

Parking lots shall comply with the following:

A. Size of Spaces. Standard parking spaces shall be nine (9) feet in width by 18 feet in length. Compact spaces may be 7.5 feet wide by 15 feet long. Wherever parking areas consist of spaces set aside for parallel parking, the dimensions of such parking space(s) shall be not less than eight (8) feet wide and 22 feet long. Lines demarcating parking spaces may be drawn at various angles in relation to curbs or aisles so long as the parking spaces so created contain within them the rectangular area required by this section.

B. Aisle Widths. Parking area aisle widths shall conform to the following table, which varies the width requirement according to the angle of parking:

Parking Angle	0	30°	45°	60°	90°
Aisle Width					
One way traffic	13	11	13	18	24
Two-way traffic	19	20	21	23	24

C. Surfacing.

1. All parking lots that are required to have more than five parking spaces shall be graded and surfaced with asphalt or concrete. Other material that will provide equivalent protection against potholes, erosion, and dust may be approved by the City Engineer if an equivalent level of stability is achieved.

2. Parking lots having less than five parking spaces are not required to have the type of surface material specified in subsection (1), above. However, such parking lot shall be graded and surfaced with crushed rock, gravel, or other suitable material as approved by the City Engineer. The perimeter of such parking lot shall be defined by brick, stones, railroad ties, or other such similar devices. Whenever such a parking lot abuts a paved street, the driveway leading from such street to the parking lot shall be paved with concrete from the street to the property line of the parking lot.

3. Parking spaces in areas surfaced in accordance with subsection (1) shall be appropriately demarcated with painted lines or other markings.

D. Joint Use of Required Parking Spaces. One parking lot may contain required spaces for several different uses, but the required spaces assigned to one use may not be credited to any other use.

E. Satellite Parking.

1. If the number of off-street parking spaces required by this chapter cannot be provided on the same lot where the principal use is located, then spaces may be provided on adjacent or nearby lots in accordance with the provisions of this section. These off-site spaces are referred to as satellite parking spaces.

2. All such satellite parking spaces shall be located within 200 feet of the principal building or lot associated with such parking.

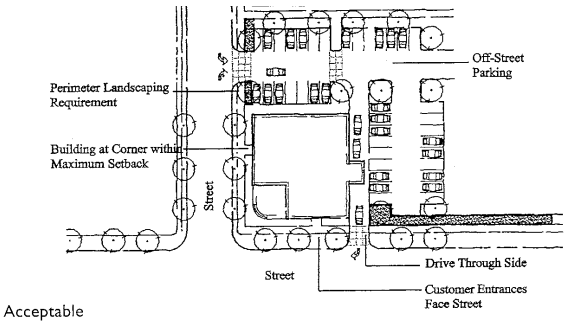
3. The applicant wishing to take advantage of the provisions of this section must present satisfactory written evidence that the permission of the owner or other person in charge of the satellite parking spaces to use such spaces has been obtained. The applicant must also sign an acknowledgement that the continuing validity of the use depends upon the continued ability to provide the requisite number of parking spaces.

4. Satellite parking spaces allowed in accordance with this subsection shall meet all the requirements contained in this section.

F. Lighting. Lighting from parking lots shall be so designed and located as to not glare onto neighboring residential properties. Such lighting shall be screened, shaded, or designed in such a way as to comply with the requirement contained in this section. This section is not intended to apply to public street lighting or to outdoor recreational uses such as ball fields, playing fields, and tennis courts.

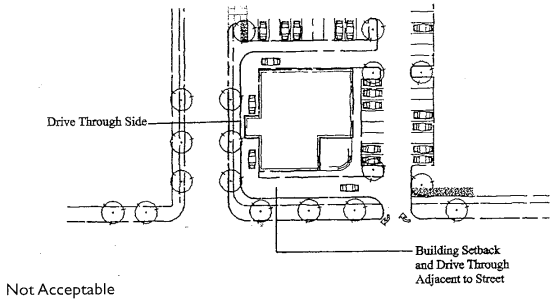
G. Drive-Up/Drive-In/Drive-Through Uses and Facilities. Drive-up or drive-through uses and facilities shall conform to the following standards, which are intended to calm traffic, and protect pedestrian comfort and safety (Figures 1 and 2).

Figure 1 – Drive-Up and Drive-Through Facilities



1. The drive-up/drive-through facility shall orient to an alley, driveway, or interior parking area, and not a street; and

2. None of the drive-up, drive-in or drive-through facilities (e.g., driveway queuing areas, windows, teller machines, service windows, kiosks, drop-boxes, or similar facilities) are located within 20 feet of a street and shall not be oriented to a street corner. (Walk-up only teller machines and kiosks may be oriented to a street or placed adjacent to a street corner); and



3. Drive-up/in queuing areas shall be designed so that vehicles do not obstruct a driveway, fire access lane, walkway, or public right-of-way.

14.14.100 Special Area Parking Requirements

These special areas are defined as follows:

A. Nye Beach. That area bounded by SW 2nd Street, NW 12th Street, NW and SW Hurbert Street, and the Pacific Ocean.

B. Bay Front. That area bounded by Yaquina Bay and the following streets: SE Moore Drive, SE 5th and SE 13th, SW 13th Street, SW Canyon Way, SW 10th, SW Alder, SW 12th, SW Fall, SW 13th, and SW Bay.

C. City Center. That area bounded by SW Fall Street, SW 7th Street, SW Neff Street, SW Alder Street, SW 2nd Street, SW Nye Street, Olive Street, SE Benton Street, SW 10th Street, SW Angle Street, SW 11th Street, SW Hurbert Street, and SW 10th Street.

Uses within a special area are not required to provide the parking required in this section if a parking district authorized by the City Council is formed in all or part of the special area. In such circumstances, off-street parking shall be provided as specified by the parking district.

(Section 14.14.100 adopted by Ordinance No. 2081, adopted on May 18, 2015: effective June 18, 2015.)

14.14.110 Loading and Unloading Areas

Off-street loading and unloading areas shall be provided per this section.

A. Whenever the normal operation of any use requires that goods, merchandise, or equipment be routinely delivered to or shipped from that use, a sufficient off-street loading and unloading area must be provided in accordance with this subsection to accommodate the delivery or shipment operations in a safe and convenient manner.

B. The loading and unloading area must accommodate the numbers as set forth in Table A. At a minimum, a

loading and unloading space must be 35 feet in length, 10 feet in width, and 14 feet in height. The following table indicates the number of spaces that, presumptively, satisfy the standard set forth in this subsection.

Table A

Square footage of Building	Number of Loading Spaces
0-19,999	0
20,000 - 79,999	1
80,000 - 119,999	2
120,000+	3

C. Loading and unloading areas shall be located and designed so that vehicles intending to use them can maneuver safely and conveniently to and from a public right-of-way or any parking space or parking lot aisle. No space for loading shall be so located that a vehicle using such loading space projects into any public right-of-way.

D. No area allocated to loading and unloading facilities may be used to satisfy the area requirements for off-street parking, nor shall any portion of any off-street parking area be used to satisfy the area requirements for loading and unloading facilities.

E. Whenever a change of use occurs after January 1, 1995, that does not involve any enlargement of a structure, and the loading area requirements of this section cannot be satisfied because there is insufficient area available on the lot that can practicably be used for loading and unloading, then the Planning Commission may waive the requirements of this section.

F. Whenever a loading and unloading facility is located adjacent to a residential zone, the loading and unloading facility shall be screened per Section 14.18.

14.14.120 Access

A. Access to parking lots shall be from a public street or alley. Access to loading and unloading areas shall be from a public street, an alley, or a parking lot.

B. Access to nonresidential parking lots or loading and unloading areas shall not be through areas that are zoned residential.

C. All accesses shall be approved by the City Engineer or designate.

D. Driveway accesses onto Arterial streets shall be spaced a distance of 500 feet where practical, as measured from the center of driveway to center of driveway.

E, Each parcel or lot shall be limited to one driveway onto an Arterial street unless the spacing standard in (D) can be satisfied.

F. Access Consolidation. Accesses shall be consolidated unless demonstrated to be unfeasible as determined by the City Engineer.

14.14.130 Variances

Variances to this section may be approved in accordance with provisions of Section 14.33, Adjustments and Variances, and a Type III Land Use Action decision process consistent with Section 14.52, Procedural Requirements.*

CHAPTER 14.15 RESIDENTIAL USES IN NONRESIDENTIAL ZONING DISTRICTS

14.15.010 Purpose

It is the intent of this section to regulate the placement of residences in nonresidential zoning districts.

14.15.020 Residential Uses in Nonresidential Zoning Districts

Residences shall be allowed in nonresidential zones as follows:

A. **C-1 zones:** Residences are prohibited at street grade. For floors other than street grade, residences are allowed as an outright permitted use.

B. **C-2 zones:** For areas outside of the Historic Nye Beach Design Review District, residences are prohibited at street grade. For floors other than street grade, residences are allowed as an outright permitted use. On lands zoned C-2 that are within the Historic Nye Beach Design Review District, residential uses shall be allowed as specified in Chapter 14.30, Design Review Standards.

C. **C-3 zones:** Same as the C-1 zone.

D. **For all I zones:** One residence for a caretaker or watchman as an accessory use is allowed as a permitted use.

E. **W-2 zones:** Residences are prohibited at street grade. For floors other than street grade, residences are allowed subject to the issuance of a conditional use permit in accordance with the provisions of Section 14.34, Conditional Uses, and Section 14.52, Procedural Requirements.

F. **For all other nonresidential zones:** Residences are prohibited.

(Section 14.15.020 adopted by Ordinance No. 2125, adopted on December 4, 2017: effective January 3, 2018.

CHAPTER 14.16 ACCESSORY USES AND STRUCTURES

14.16.010 Purpose

The provisions of this section are intended to establish the relationship between primary and accessory structures or uses and to specify development criteria for accessory structures or uses.

14.16.020 General Provisions

A. Accessory uses and structures are those of a nature customarily incidental and subordinate to the primary use of a property. Typical accessory structures include detached garages, sheds, workshops, greenhouses, gazebos, and similar structures that, with the exception of Accessory Dwelling Units, are not intended for habitation by people. The Community Development Director, or the Director's designee, shall determine if a proposed accessory use is customarily associated with, and subordinate to, a primary use and may at his/her discretion elect to defer the determination to the Planning Commission. A determination by the Planning Commission shall be processed as a code interpretation pursuant to Section 14.52, Procedural Requirements.

B. An accessory use or structure shall be subject to, and comply with, the same requirements that apply to the primary use except as provided in this section.

14.16.030 Accessory Use or Structure on a Separate Lot or Parcel

An accessory use or structure may be located on a lot or parcel that is separate from the primary use provided:

A. The lot or parcel upon which the accessory use or structure is to be located is contiguous to the property containing the primary use; and

B. The subject lots or parcels are under common ownership and within the same zone district; and

C. A deed restriction, in a form approved by the city, is recorded stating that the property on which the

accessory use or structure is to be located cannot be sold or otherwise transferred separate from the lot or parcel containing the primary use. This restriction shall remain in effect until a primary use is situated on the same lot or parcel as the accessory building or the accessory building is removed.

14.16.040 Development Standards (Excluding Accessory Dwelling Units)

Accessory buildings and structures, except for Accessory Dwelling Units, shall conform to the following standards:

A. The maximum floor area of the accessory structure in a residential zoning district shall not exceed 1,500 square feet or 65% of the total floor area of the primary structure, whichever is less.

B. The maximum height of an accessory building in a residential zoning district shall not exceed that of the primary structure.

C. Accessory buildings shall not extend beyond the required front yard setback lines of adjacent lots or parcels.

D. Regardless of the setback requirements, a rear yard in a residential zone district may be reduced to five (5) feet for a one-story detached accessory building provided the structure does not exceed 625 square feet in size and 15 feet in height.

14.16.050 Development Standards – Accessory Dwelling Unit Standards

Accessory Dwelling Units shall conform to the following standards:

A. Accessory Dwelling Units are exempt from the housing density standards of residential zoning districts.

B. A maximum of one Accessory Dwelling Unit is allowed for each detached single-family dwelling on a lot or parcel. In cases where a property is developed with one or more single family attached dwellings, a maximum of one Accessory Dwelling Unit is allowed per lot or parcel.

C. Accessory Dwelling Units may be a portion of the primary dwelling, attached to a garage, or a separate free-standing unit.

D. The maximum floor area for a freestanding Accessory Dwelling Unit shall not exceed 800 square feet or 75% of the area of the primary dwelling, whichever is less.

E. The maximum floor area for an Accessory Dwelling Unit that is a portion of a primary dwelling or attached to a garage shall not exceed 800 square feet or 75% of the area of the primary dwelling, whichever is less. However, an Accessory Dwelling Unit that results from the conversion of a level or floor (e.g. basement, attic, or second story) of the primary dwelling may occupy the entire level or floor, even if the floor area of the Accessory Dwelling would be more than 800 square feet.

F. The maximum height of an Accessory Dwelling Unit detached from the primary dwelling shall not exceed that of the primary dwelling. An Accessory Dwelling Unit attached to the primary dwelling is subject to the height limitation of the residential zone district within which it is located.

G. Accessory Dwelling Units shall not extend beyond the required front yard setback lines of the adjacent lots or parcels.

(Section 14.16.050 adopted by Ordinance No. 2152, adopted on November 4, 2019: effective December 4, 2019.)

14.16.060 Conditional Use Approval of Accessory Dwelling Units

If one or more of the standards of this Chapter cannot be met, an owner may seek approval of an Accessory Dwelling Unit as a Conditional Use, pursuant to Chapter 14.34. A Conditional Use Permit may allow relief from one or more of the standards of the Chapter, but does not excuse the owner from complying with the standards that can be satisfied.

(Chapter 14.16 was replaced on the adoption of Ordinance No. 2055; adopted on June 17, 2013; effective July 17, 2013.)

CHAPTER 14.17 CLEAR VISION AREAS

14.17.010 Purpose

The purpose of this section is to promote safety at intersections and drive access points by reducing obstructions to clear vision at intersections.

14.17.020 Clear Vision Area Defined

A vision clearance area includes the following:

A. At the intersection of two streets, a triangle formed by the intersection of the curb lines, with each leg of the vision clearance triangle being a minimum of 35 feet in length. Where curbs are absent, the edge of the asphalt or future curb locations shall be used as a guide. The City Engineer may modify this requirement, in writing, upon finding that more or less distance is required (i.e., due to traffic speeds, roadway alignment, etc.).

B. A portion of a lot subject to a front yard setback as defined in Section 14.11. A clear vision area does not include that portion of a second front yard outside of the area described in subsection (A).

14.17.030 Clear Vision Area Requirements

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 three feet in height, measured from the top of the curb, or where no curb exists, from the street centerline grade. Trees located within a clear vision area shall have their branches and foliage removed to the height of eight feet above the grade.

14.17.040 Maintenance of Clear Vision Areas

It shall be the duty of the person who owns, possesses, or controls real property or right-of-way adjacent thereto, to maintain a clear vision area in the manner provided in this section.

14.17.050 Exemptions for Buildings

A building erected in compliance with zoning ordinance setbacks is exempt from this section.

14.17.060 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 this section. 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 section.

14.17.070 Variances

The requirements of this section shall be subject to the processes and criteria contained in Section 14.33.

(Chapter 14.17 repealed and re-enacted by Ordinance No. 2031, adopted March 5, 2013; and made effective by Ordinance No. 2054 adopted on June 3, 2013; effective June 13, 2013.)

CHAPTER 14.18 SCREENING AND BUFFERING BETWEEN RESIDENTIAL AND NONRESIDENTIAL ZONES

14.18.010 Height Buffer

Non-residential sites of districts abutting or having any portion located adjacent to any residential zone shall have a height limitation beginning at a height of ten feet at the property line abutting the residential zone and increasing at a slope of 1:2 for R-1 property, 1:1 for R-2 property, 2:1 for R-3 property, and 3:1 for R-4 property until intersecting the height limit otherwise established in that district.

14.18.020 Adjacent Yard Buffer

On any portion of a site in a non-residential zone that abuts a residential zone, a minimum interior yard of 10 feet planted and maintained as a landscaped screen shall be required.

14.18.030 Separated Yard Buffer

On any portion of a non-residential site that is opposite from a residential district and separated therefrom by a street, alley, creek, drainage facility, or other open area, a minimum yard of ten feet shall be required. The minimum yard shall be planted and maintained as a landscape screen (excluding areas required for access to the site).

CHAPTER 14.19 LANDSCAPING REQUIREMENT

14.19.010 Purpose

The purpose of this section is to provide for the installation, long-term maintenance and protection of trees, vegetation and other landscape elements within the City of Newport recognizing however, that development often times requires the removal of trees and other plant material. When removal is done, the purpose of this section is to require replacement that is attractive, well placed and enhances the overall appearance of the property and the City as a whole. It is further the purpose of this section to:

A. Aid in air purification and storm water runoff retardation;

B. Aid in the reduction of noise and glare;

C. Provide visual buffers;

D. Enhance the beauty of the city;

E. Improve property values;

F. Reduce erosion; and

G. To protect and enhance the natural beauty, environment and greenspace within the City of Newport to advance economic development, attract residents and promote tourism.

14.19.020 Definitions

For purposes of this section, the following definitions shall apply. Where no definition is given, the common usage of the word shall be used. If there is a conflict between the definitions contained in this section and the more general definitions contained in the definitions section of this Ordinance, this section shall apply.

A. Addition. An increase in the gross floor area.

B. Bay Front. The area of the city defined in the Bay Front Plan section of the City's Comprehensive Plan.

C. Buffer. The use of landscaping, or the use of landscaping along with berms or fences, that obscure the sight from an abutting property and uses, that at least partially and periodically obstructs view and noise. For purposes of this Section, the buffer does not count toward the required landscaping.

(Entire section amended by Ordinance No. 1827 (9-7-00).)*

D. City Center. The area of the city defined in Section 14.14.050(3) of this Code.

E. Development. That which is done on a tax lot or parcel of property under one ownership pursuant to any permit issued by the City of Newport Department of Planning and Community Development.

F. Gross Floor Area. The total area of a building measured by taking the outside dimensions of the building at each floor level intended for occupancy or storage.

G. Hanging Basket. A basket of flowers or other plant material that is over a public right-of-way or private property and attached to a building, pole, wall, tree or other attachment. In no case shall a hanging basket be less than eight feet above a sidewalk or other pedestrian way or within two feet of a street or driveway.

H. Landscaped Area. That area within the boundaries of a given lot or other area authorized for landscaping purposes which is devoted to and consists of landscaping.

I. Landscaping. Material placed in a landscaped area including but not limited to grass, trees, shrubs, flowers, vines and other groundcover, native plant materials, planters, brick, stone, natural forms, water forms, aggregate and other landscape features, provided, however that the use of brick, stone, aggregate or other inorganic materials shall not predominate over the use of organic plant material. Landscaping does not include sidewalks, fences, walls, benches or other manufactured materials unless same is incidental to the total area of the landscaped area.

J. Landscaping Plan. A drawing to scale showing the location, types and density of landscaping.

K. Maintain or Maintenance. Any activity such as pruning, mulching, mowing, fertilizing, removal and replacement of dead vegetation and other similar acts that promote the life, growth, health or beauty of the landscape vegetation.

L. Nye Beach. The area of the City defined in the Historic Nye Beach Overlay District section of this Ordinance.

M. Planter. A decorative container for flowers, bushes, trees and other plant materials including but not limited to window boxes, planter boxes, flower pots and other containers.

N. Sight obscuring. Landscaping, berms, fences, walls or a combination of all those elements that completely blocks the ability to see through it.

O. Window or Planter Box. A decorative box, pot, or other container that contains flowers and other plant material that is placed immediately below a window, along a walkway or other location. In no case shall a window or planter box extend more than two feet or 20% of the distance from the building to the street curb into the public right-of-way, whichever is less.

14.19.030 Applicability

The provisions of this ordinance shall apply to all new development, additions to existing development or remodels, other than single family and two-family dwelling units.

14.19.040 General Requirements

The objective of this section is to encourage the planting and retention of existing trees and other vegetation to improve the appearance of off-street parking areas, yard areas and other vehicular use areas; to protect and preserve the appearance, character, and value of surrounding properties, and thereby promote the general welfare, safety and aesthetic quality of the City of Newport; to establish buffer strips between properties of

different land uses in order to reduce the effects of sight and sound and other incompatibilities between abutting land uses; to insure that noise, glare and other distractions within one area does not adversely affect activity within the other area. Prior to the issuance of a building permit, landscaping plans showing compliance with this section are required.

A. No landscape plan submitted pursuant to this section shall be approved unless it conforms to the requirements of this ordinance.

B. Landscape plans shall be submitted for all development other than one and two-family residential. Said plans shall include dimensions and distances and clearly delineate the existing and proposed building, parking space, vehicular access and the location, size and description of all landscape areas and materials.

C. Landscaping shall not obstruct the view at the intersection of two or more streets or alleys; or at the intersection of a street and a driveway.

D. A guarantee of performance bond or escrow agreement shall be required in an amount to be determined by the Planning Director and approved by the City Attorney as to form to insure satisfactory completion of the landscaping plan as approved if the required landscaping is not installed prior to certificate of occupancy as required by the Building Code.

14.19.050 Landscaping Required for New Development, Exceptions

All new development, except for one and two family residences, shall be required to install landscaping per this section. For purposes of this section, new development shall mean construction upon a vacant lot or a lot that becomes vacant by virtue of the demolition of an existing building. Landscaping shall be provided as follows:

A. Area. Landscaping shall be ten percent of the total square footage of a lot or parcel.

B. Location. Landscaping shall be located along a street frontage or frontages.

C. Exceptions. The right-of-way between a curb and a property line, not counting any sidewalk, driveway or other hard surfaces, may be used and counted toward the required landscaping as long as it has been determined by the Planning Director that the right-of-way is not needed for future street expansion. A developer may also plant a street tree within the sidewalk and it shall count toward meeting landscaping requirements subject to approval by the Planning Director and the City Engineer. A window or planter box may also be used to meet landscaping requirements at a ratio of 1 to 1. If the developer chooses to exercise this option, he or she shall enter into an agreement that the landscaping in the right-of-way is to be maintained as landscaping.

D. Landscaping for Parking Lots. The purpose of this subsection is to break up large expanses of parking lots with landscaping. Therefore, all parking areas not abutting a landscaping area with 20 or more parking stalls shall comply with the following provisions:

1. Five percent of the parking area shall be dedicated to a landscaped area and areas.

2. In no cases shall a landscaped area required under this subsection be larger than 300 square feet. If more landscaping is required than the 300 square feet it shall be provided in separate landscaping areas.

   The provisions of this subsection do not apply to areas for the storage and/or display of vehicles.

14.19.060 Landscaping Requirements for Additions and Remodels

For purposes of this section, addition means any development that increases the floor area of a building. Remodel is any work requiring a building permit. For additions and remodels, landscaping shall be provided as follows:

A. Area. If the subject development after completion complies with the requirements for new development,

no additional landscaping is required. If the subject development does not comply with the requirement for new development, landscaping shall be installed so as follows:

1. For projects with a value of $50,000 or less, no additional landscaping is required.

2. For projects with a value of $50,001 to $100,000, the amount of landscaping shall be no less than 25% of that required for new development.

3. For projects with a value of $100,001 to $175,000, the amount of landscaping shall be no less than 50% of that required for new development.

4. For projects with a value of $175,001 to $300,000, the amount of landscaping shall be no less than 75% of that required for new development.

5. For projects with a value greater than $300,000, the amount of landscaping shall be 100% of that required for new development.

Values shall be based on year 2000 dollars and adjusted on July 1 of each year for inflation. The adjustment shall be based on the latest available Portland, Oregon Consumer Price Index.

For purposes of this section, the value shall be based on the amount placed on the application for a building permit. If the Building Official determines that the value is below the actual value as calculated by the formulas developed by the State of Oregon Building Codes Division, the value on the permit shall be as determined by the Building Official. If there is a dispute as to the value, the matter shall be referred to the Planning Commission for resolution. The procedure used shall be the same as for a Type I variance contained in Section 14.33 of this Ordinance.

In the case where a second addition or remodel is commenced within one year of the first addition or remodel, the two projects shall be counted as one with regard to determining the above landscaping requirements.

B. Location. Landscaping shall be located along a street frontage or frontages.

C. Exceptions. The right-of-way between a sidewalk and a property line may be used and counted toward the required landscaping as long as it has been determined by the Planning Director that the right-of-way is not needed for future street expansion. If the developer chooses to exercise this option, he or she shall enter into an agreement that the landscaping in the right-of-way is to be maintained as landscaping. In addition, window boxes may be substituted for surface landscaping. The calculation shall be one square foot of window box accounts for three square feet of surface landscaping as required in Subsection A of this Section. A developer may also plant a street tree within the sidewalk and it shall count toward meeting landscaping requirements subject to approval by the Planning Director and the City Engineer.

14.19.070 Nye Beach*

Development in the Historic Nye Beach Design Review District shall follow the same landscaping requirements as Subsection 14.19.080 (City Center and Bay Front) of Section14.23 if landscaping requirements are not specified elsewhere. If landscaping is required under a permit issued under the design review design guidelines or design standards, then the permit requirements shall be the applicable landscaping requirements. If the permit requirements specify landscaping requirements that are to be implemented in conjunction with, or in addition to, the landscape requirements of this section, then the landscaping requirements of the permit shall be implemented in conjunction with, or in addition to, the requirements of landscaping specified in Subsection 14.19.080 (City Center and Bay Front) of Section 14.23.

** Amended by Ordinance No. 1865 (12-1-03).*

14.19.080 City Center and Bayfront

Because the City Center and Bayfront areas were platted and built on very small lots and many of the existing buildings are located on or near the property lines, a strict area landscaping requirement is difficult to obtain and

places an undue burden on the property owner. Those areas shall therefore be subject to this section rather than Sections 14.34.040 and 14.34.050 of this ordinance.

A. New Development. The requirement for new development, defined as building on a vacant lot, shall be 10% of the lot area. In lieu of the 10%, hanging baskets or window/planter boxes may be substituted for surface landscaping, or any combination thereof. The calculation for square footage may be up to one square foot of hanging basket, planter box or window box for every three feet of otherwise required landscaping.

B. Additions. Landscaping shall be required at a rate of 10% of the area of the addition. In lieu of the 10%, hanging baskets or window/planter boxes may be substituted for surface landscaping, or any combination thereof. The calculation for square footage may be up to one square foot of hanging basket, planter box or window box for every three feet of otherwise required landscaping.

C. Remodels. Landscaping shall be required per Section 14.34.050 except that in lieu of providing surface landscaping, window/planter boxes or hanging baskets may be substituted at a rate of one square foot of window/planter box or hanging basket for every ten square feet otherwise required.

14.19.090 Maintenance of Required Landscaping

Landscaping required by this section, whether existing prior to January 1, 1999 or not, shall be reasonably maintained based on the time of year and kept free of weeds and garbage. Failure to maintain required landscaping may be found to be a violation and subject to penalties contained in Section 14.54 of this Code.

14.19.100 Variances

Variances to the requirements of this section shall be subject to the processes and criteria contained in Section 14.33, Adjustments and Variances, and Section 14.52, Procedural Requirements.* As a condition of approval, the Planning Commission may require a bond to assure

satisfactory completion of the required landscaping. The Planning Commission may also approve, in lieu of providing a strict landscaping area, window or planter boxes in numbers and size to comply with the intent of this section or a reduction of up to 25% of the required landscaping when the Commission finds that the architectural character of the building is of such quality to justify the reduction. The Commission may also waive up to 25% of the area requirement if the developer puts in an automatic sprinkling system to water the landscaping. The required parking may be reduced up to 10% of the number ordinarily required by this Code if the parking spaces lost is put into landscaping. The site plan prepared by a registered surveyor as required by Sections 14.33.050 and 14.33.060 is not required for a variance under this Section. If there is a neighborhood design review process, that process supersedes the requirements in this section and, if the design review committee finds that the landscaping is consistent with their review, supersedes the need for a variance otherwise required by this Section.

*(*Amended by Ordinance No. 1989 (1-1-10).)*

CHAPTER 14.20 FLOOD HAZARD AREA

14.20.005 Authority

The State of Oregon has in ORS 197.175 delegated the responsibility to local governmental units to adopt floodplain management regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, the City of Newport does ordain as follows:

A. The flood hazard areas of the City of Newport are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

B. These flood losses may be caused by the cumulative effect of obstructions in special flood hazard areas which increase flood heights and velocities, and when inadequately anchored, cause damage in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to flood loss.

14.20.010 Purpose

It is the purpose of this Chapter to promote the public health, safety, and general welfare, and to minimize public and private losses due to flooding in flood hazard areas by provisions designed to:

A. Protect human life and health;

B. Minimize expenditure of public money for costly flood control projects;

C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

D. Minimize prolonged business interruptions;

E. Minimize damage to public facilities and utilities such

as water and gas mains; electric, telephone and sewer lines; and streets and bridges located in special flood hazard areas;

F. Help maintain a stable tax base by providing for the sound use and development of flood hazard areas so as to minimize blight areas caused by flooding;

G. Notify potential buyers that the property is in a special flood hazard area;

H. Notify those who occupy special flood hazard areas that they assume responsibility for their actions;

I. Participate in and maintain eligibility for flood insurance and disaster relief.

14.20.015 Methods of Reducing Flood Losses

In order to accomplish its purposes, this Chapter includes methods and provisions for:

A. Restricting or prohibiting development which is dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

B. Requiring that development vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

C. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

D. Controlling filling, grading, dredging, and other development which may increase flood damage;

E. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or may increase flood hazards in other areas.

14.20.020 Definitions

Words or phrases used in this Code shall be interpreted so as to give them the meaning they have in common

usage and to give this Code its most reasonable application.

1. Appeal: A request for a review of the interpretation of any provision of this Chapter or a request for a variance.

2. Area of shallow flooding: A designated Zone AO, AH, AR/AO, AR/AH, or VO on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

3. Area of special flood hazard: The land in the floodplain within a community subject to a 1% or greater chance of flooding in any given year. It is shown on the Flood Insurance Rate Map (FIRM) as Zone A, AO, AH, A1-30, AE, A99, AR (V, VO, V1- 30, VE). "Special flood hazard area" is synonymous in meaning and definition with the phrase "area of special flood hazard".

4. Base flood: the flood having a 1% chance of being equaled or exceeded in any given year.

5. Base flood elevation (BFE): The elevation to which floodwater is anticipated to rise during the base flood.

6. Basement: Any area of the building having its floor or subgrade (below ground level) on all sides.

7. Breakaway walls: A wall that is not part of the structural support of the building and is intended - through its design and construction - to collapse under specific lateral loading forces without causing damage to the elevated portion of the building or supporting foundation system.

8. Coastal high hazard area: An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources.

9. Development: Any man-made change to improved or unimproved real estate, including - but not limited to - buildings or other structures, mining, dredging, filling, grading, paving, excavation, or drilling operations or storage of equipment or materials located within the area of special flood hazard.

10. Flood or flooding:

    A. General and temporary condition of partial or complete inundation of normally dry land areas from:

        i. The overflow in inland or tidal waters.

        ii. The unusual and rapid accumulation or run-off of surface waters from any source.

        iii. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (A)(ii) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

    B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (A)(i) of this definition.

11. Flood Elevation Study: An examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.

12. Flood insurance rate map (FIRM): the official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

13. Flood Insurance Study: See "Flood elevation study."

14. Floodproofing: Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

15. Floodway: The channel of a river or other water-course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height. Also referred to as "Regulatory Floodway."

16. Functionally dependent use: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, and does not include long term storage or related manufacturing facilities

17. Highest adjacent grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

18. Historic structure: Any structure that is:

    A. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

    B. Certified or preliminarily determined by the

Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

C. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

D. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:

i. By an approved state program as determined by the Secretary of the Interior or

ii. Directly by the Secretary of the Interior in states without approved programs.

19. Lowest floor: The lowest floor of the lowest enclosed area (including the basement). An unfinished or flood-resistant enclosure, usable solely for the parking of vehicles, building access, or storage in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Chapter.

20. Manufactured dwelling: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured dwelling" does not include a “recreational vehicle” and is synonymous with “manufactured home.”

21. Manufactured dwelling park or subdivision: A parcel (or contiguous parcels) of land divided into two or more manufactured dwelling lots for rent or sale.

22. Mean sea level (MSL): For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which Base Flood Elevations shown on a

community's Flood Insurance Rate Map are referenced.

23. New construction: For floodplain management purposes, “new construction” means structures for which the “start of construction" commenced on or after the effective date of a floodplain management regulation adopted by the City of Newport and includes any subsequent improvements to such structures

24. Recreational vehicle: A vehicle which is:

    A. built on a single chassis;

    B. 400 square feet or less when measured at the largest horizontal projection;

    C. designed to be self-propelled or permanently towable by a light duty truck; and

    D. designed primarily not for uses as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

25. Special flood hazard area: See “Area of special flood hazard” for this definition

26. Start of construction: Includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site (such as the pouring of slab or footings, the installation of piles, the construction of piles, the construction of columns, or any work beyond the stage of excavation) or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation (such as clearing, grading, and filling), the installation of streets and/or walkways, excavation (for a basement, footings, piers, or foundation or the erection of temporary forms), or the installation on the property of accessory buildings (such as garages or sheds not occupied as dwelling units or not part of the main structures). For

substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

27. Structure: For floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above the ground, as well as a manufactured dwelling.

28. Substantial damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

29. Substantial improvement: Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either:

    A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or

    B. Any alteration of a “historic structure,” provided that the alteration will not preclude the structure's continued designation as a "historic structure.”

30. Variance: A grant of relief by the City of Newport from the terms of a flood plain management regulation.

31. Violation: The failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this Chapter is presumed to

be in violation until such time as that documentation is provided.

14.20.025 Lands to Which this Chapter Applies

This Chapter shall apply to all special flood hazard areas within the jurisdiction of the City of Newport.

14.20.030 Basis for Establishing the Special Food Hazard Areas

The special flood hazard identified by the Federal Insurance Administrator in a scientific and engineering report entitled "The Flood Insurance Study (FIS) for Lincoln County, Oregon and Incorporated Areas," dated October 18, 2019, with accompanying Flood Insurance Rate Maps (FIRMs) 41041C0354E, 41041C0360E, 41041C0362E, 41041C0364E, 41041C0366E, 41041C0368E, 41041C0369E, 41041C0502E, 41041C0504E, 41041C0506E, 41041C0507E, 41041C0508E, 41041C0515E, and 41041C0520E are hereby adopted by reference and declared to be part of this Chapter. The FIS and FIRM panels are on file at the Community Development Department located at Newport City Hall (169 SW Coast Hwy, Newport).

14.20.035 Coordination with State of Oregon Specialty Codes

Pursuant to the requirement established in ORS 455 that the City of Newport administers and enforces the State of Oregon Specialty Codes, the City of Newport does hereby acknowledge that the Oregon Specialty Codes contain certain provisions that apply to the design and construction of buildings and structures located in special flood hazard areas. Therefore, this Chapter is intended to be administered and enforced in conjunction with the Oregon Specialty Codes.

14.20.040 Compliance

All development within special flood hazard areas is subject to the terms of this Chapter and required to comply with its provisions and all other applicable regulations.

14.20.045 Penalties for Noncompliance

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this Chapter and other applicable regulations. Violations of the provisions of this Chapter by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a civil infraction subject to penalties set forth in NMC Chapter 14.57. Nothing contained herein shall prevent the City of Newport from taking such other lawful action as is necessary to prevent or remedy any violation.

14.20.050 Abrogation

This Chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Chapter and other provisions of the Newport Municipal Code, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

14.20.055 Severability

This Chapter and the various parts thereof are hereby declared to be severable. If any section clause, sentence, or phrase of the Chapter is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way effect the validity of the remaining portions of this Chapter.

14.20.060 Interpretation

In the interpretation and application of this Chapter, all provisions shall be:

A. Considered as minimum requirements;

B. Liberally construed in favor of the governing body; and

C. Deemed neither to limit nor repeal any other powers granted under state statutes.

14.20.065 Warning

The degree of flood protection required by this Chapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Chapter does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages.

14.20.070 Disclaimer of Liability

This Chapter shall not create liability on the part of the City of Newport, any officer or employee thereof, or the Federal Insurance Administrator for any flood damages that result from reliance on this Chapter or any administrative decision lawfully made hereunder.

14.20.075 Designation of the Floodplain Administrator

The Community Development Director is hereby appointed to administer, implement, and enforce this Chapter by granting or denying development permits in accordance with its provisions. The Floodplain Administrator may delegate authority to implement these provisions.

14.20.080 Administration

A. Establishment of Building/Development Permit. A Building/Development Permit shall be obtained before construction or development begins within any area horizontally within the special flood hazard area established in Section 14.20.030. The development permit shall be required for all structures, including manufactured dwellings, and for all other development, as defined in Section 14.20.020, including fill and other development activities.

B. Application for Permit. Application shall be made on forms provided by the Community Development Department for this purpose and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and

elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

1. In riverine flood zones, the proposed elevation (in relation to mean sea level), of the lowest floor (including basement) and all attendant utilities of all new and substantially improved structures; in accordance with the requirements of Subsection 14.20.080(F).

2. In coastal flood zones (V zones and coastal A zones), the proposed elevation in relation to mean sea level of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all structures, and whether such structures contain a basement.

3. Proposed elevation in relation to mean sea level to which any non-residential structure will be floodproofed.

4. Certification by a registered professional engineer or architect, licensed in the State of Oregon, that the floodproofing methods for any nonresidential structure meet the flood-proofing criteria in Subsection 14.20.095(B)(4); and

5. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

6. Base Flood Elevation data for subdivision proposals or other development when required per Subsection 14.20.080(C) and Subsection 14.20.095(A)(6).

7. Substantial improvement calculation for any improvement, addition, reconstruction, renovation, or rehabilitation of an existing structure.

8. The amount and location of any fill or excavation activities proposed.

C. Duties and Responsibilities. The duties of the

Community Development Director, or their designee, shall include, but not be limited to, permit review to determine:

1. That the permit requirements of this Chapter have been satisfied;

2. That necessary permits have been obtained and approved from those Federal, State, or local governmental agencies from which prior approval is required.

3. Whether or not the proposed development is located in the floodway. If located in the floodway, assure that the floodway provisions of Subsection 14.20.095(B)(8) are met.

4. If the proposed development is located in an area where Base Flood Elevation (BFE) data is available either through the Flood Insurance Study (FIS) or from another authoritative source. If BFE data is not available then ensure compliance with the provisions of Subsection 14.20.080(E).

5. If the proposed development qualifies as a substantial improvement as defined in Section 14.20.020.

6. If the proposed development activity is a watercourse alteration. If a watercourse alteration is proposed, ensure compliance with the provisions in Subsection 14.20.080(I).

7. If the proposed development activity includes the placement of fill or excavation.

D. Provide to building officials the Base Flood Elevation (BFE) applicable to any building requiring a development permit.

E. Use of Other Base Flood Data.

1. When base flood elevation data has not been provided in accordance with this Section, the Community Development Director shall obtain, review, and reasonably utilize any base flood

elevation data available from a Federal, State, or other source, in order to administer Section 14.20.095 (Specific Standards) and Subsection 14.20.095(B)(8) (Floodways).

2. All new subdivision proposals and other proposed new developments (including proposals for manufactured dwelling parks and subdivisions) must meet the requirements of Subsection 14.20.095(A)(6).

3. Base Flood Elevations shall be determined for development proposals that are 5 acres or more in size or are 50 lots or more, whichever is lesser in any A zone that does not have an established base flood elevation. Development proposals located within a riverine unnumbered A Zone shall be reasonably safe from flooding; the test of reasonableness includes use of historical data, high water marks, FEMA provided Base Level Engineering data, and photographs of past flooding, etc… where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

F. Information to be obtained and maintained by the Community Development Director:

1. Obtain, record, and maintain the actual elevation (in relation to mean sea level) of the lowest floor (including basements) and all attendant utilities of all new or substantially improved structures where Base Flood Elevation (BFE) data is provided through the Flood Insurance Study (FIS), Flood Insurance Rate Map (FIRM), or obtained in accordance with Subsection 14.20.080(E).

2. Obtain and record the elevation (in relation to mean sea level) of the natural grade of the building site for a structure prior to the start of construction and the placement of any fill and ensure that the requirements of Subsection 14.20.095(B)(8), Subsection 14.20.095(C)(7), Subsection 14.20.080(C)(2) are adhered to.

3. Upon placement of the lowest floor of a

structure (including basement) but prior to further vertical construction, obtain documentation, prepared and sealed by a professional licensed surveyor or engineer, certifying the elevation (in relation to mean sea level) of the lowest floor (including basement).

4. Where base flood elevation data are utilized, obtain Asbuilt certification of the elevation (in relation to mean sea level) of the lowest floor (including basement) prepared and sealed by a professional licensed surveyor or engineer, prior to the final inspection.

5. Maintain all Elevation Certificates (EC) submitted to the City of Newport.

6. Obtain, record, and maintain the elevation (in relation to mean sea level) to which the structure and all attendant utilities were floodproofed for all new or substantially improved floodproofed structures where allowed under this Chapter and where Base Flood Elevation (BFE) data is provided through the FIS, FIRM, or obtained in accordance with Subsection 14.20.080(E).

7. Maintain all floodproofing certificates required under this Chapter.

8. Record and maintain all variance actions, including justification for their issuance.

9. Obtain and maintain all hydrologic and hydraulic analyses performed as required under Subsection 14.20.095(B)(8).

10. Record and maintain all Substantial Improvement and Substantial Damage calculations and determinations as required under Section 14.20.090.

11. Maintain for public inspection all records pertaining to the provisions of this Chapter.

G. Structures Located in Multiple or Partial Flood Zones. In coordination with the State of Oregon Specialty

Codes:

1. When a structure is located in multiple flood zones on the community's Flood Insurance Rate Maps (FIRM) the provisions for the more restrictive flood zone shall apply.

2. When a structure is partially located in a special flood hazard area, the entire structure shall meet the requirements for new construction and substantial improvements.

H. Community Boundary Alterations. The Floodplain Administrator shall notify the Federal Insurance Administrator in writing whenever the boundaries of the community have been modified by annexation or the community has otherwise assumed authority or no longer has authority to adopt and enforce floodplain management regulations for a particular area, to ensure that all Flood Hazard Boundary Maps (FHBM) and Flood Insurance Rate Maps (FIRM) accurately represent the community's boundaries. Include within such notification a copy of a map of the community suitable for reproduction, clearly delineating the new corporate limits or new area for which the community has assumed or relinquished floodplain management regulatory authority.

I. Alteration of Watercourses. The Community Development Director shall:

1. Notify adjacent communities (if any), Lincoln County, the Department of Land Conservation and Development, and other appropriate state and federal agencies prior to any alteration or relocation of a water course and submit evidence of such notification to the Federal Insurance Administration. This notification shall be provided by the applicant to the Federal Insurance Administration as a Letter of Map Revision (LOMR) along with either:

   a. A proposed maintenance plan to assure the flood carrying capacity within the altered or relocated portion of the watercourse is maintained; or

b. Certification by a registered professional engineer that the project has been designed to retain its flood carrying capacity without periodic maintenance.

2. The applicant shall be required to submit a Conditional Letter of Map Revision (CLOMR) when required under Section 14.20.085. Ensure compliance with all applicable requirements in Sections 14.20.085 and 14.20.080(I).

14.20.085 Requirement to Submit New Technical Data

A. A community's base flood elevations may increase or decrease resulting from physical changes affecting flooding conditions. As soon as practicable, but not later than six months after the date such information becomes available, a community shall notify the Federal Insurance Administrator of the changes by submitting technical or scientific data in accordance with Section 44 of the Code of Federal Regulations (CFR), Subsection 65.3. The community may require the applicant to submit such data and review fees required for compliance with this Section through the applicable FEMA Letter of Map Change (LOMC) process.

B. The Floodplain Administrator shall require a Conditional Letter of Map Revision prior to the issuance of a floodplain development permit for:

1. Proposed floodway encroachments that increase the base flood elevation; and

2. Proposed development which increases the base flood elevation by more than one foot in areas where FEMA has provided base flood elevations but no floodway.

C. An applicant shall Notify FEMA within six (6) months of project completion when an applicant has obtained a Conditional Letter of Map Revision (CLOMR) from FEMA. This notification to FEMA shall be provided as a Letter of Map Revision (LOMR).

14.20.090 Substantial Improvement and Substantial Damage Assessments and Determinations

Conduct Substantial Improvement (SI) (as defined in Section 14.20.020) reviews for all structural development proposal applications and maintain a record of SI calculations within permit files in accordance with Subsection 14.20.080(F). Conduct Substantial Damage (SD) (as defined in Section 14.20.020) assessments when structures are damaged due to a natural hazard event or other causes. Make SD determinations whenever structures within the special flood hazard area (as established in Section 14.20.030) are damaged to the extent that the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

14.20.095 Provisions for Flood Hazard Reduction

A. General Standards. In areas of special flood hazard as adopted by this Chapter (which may be illustrated on a zoning map as a Flood Hazard Overlay Zone (FH Zone)) the following provisions are required:

1. Anchoring.

a. All new construction and substantial improvements shall be anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

b. All manufactured homes shall be anchored to resist flotation, collapse, or lateral movement by providing over-the-top and frame ties to ground anchors. Specific requirements shall be that:

i. Over-the-top ties be provided at each end of the manufactured home, with two (2) additional ties per side at intermediate locations, and manufactured homes less than 50 feet long requiring one (1) additional tie per side.

ii. Frame ties are to be provided at each corner of the

home with five (5) additional ties per side at intermediate points, and manufactured homes less than 50 feet long will require four (4) additional ties per side;

iii. All components of the anchoring system are to be capable of carrying a force of 4,800 pounds; and

iv. Additions to the manufactured home are to be similarly anchored.

c. An alternative method of anchoring may involve a system designed to withstand the wind force of 90 miles an hour or greater.

d. Certification must be provided by a registered structural engineer to the Building Official that this standard has been met.

e. All modular homes shall comply with the requirements of the applicable building code.

2. Construction Materials and Methods

a. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

b. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

3. Water Supply, Sanitary Sewer, and On-Site Waste Disposal Systems.

a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

b. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into the flood waters; and

c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding consistent with Department of Environmental Quality regulations.

4. Electrical, Mechanical, Plumbing, and Other Equipment.

a. Electrical, heating, ventilating, air-conditioning, plumbing, duct systems, and other equipment and service facilities shall be elevated one foot above the base flood level or shall be designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during conditions of flooding. In addition, electrical, heating, ventilating, air-conditioning, plumbing, duct systems, and other equipment and service facilities shall:

i. If replaced as part of a substantial improvement shall meet all the requirements of this Section.

ii. Not be mounted on or penetrate through breakaway walls.

5. Tanks.

a. Underground tanks shall be anchored to prevent flotation, collapse and lateral movement under conditions of the base flood.

b. Above-ground tanks shall be installed one foot above the base flood level or shall be anchored to prevent flotation, collapse, and lateral movement under conditions of the base flood.

c. In coastal flood zones (V Zones or coastal A Zones) when elevated on platforms, the platforms shall be cantilevered from or knee braced to the building or shall be supported on foundations that conform to the requirements

of the State of Oregon Specialty Code.

6. Subdivision Proposals.

   a. All subdivision proposals and other proposed new developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, shall include within such proposals, Base Flood Elevation data.
   b. All new subdivision proposals and other proposed new developments (including proposals for manufactured home parks and subdivisions) shall:

i. Be consistent with the need to minimize flood damage.

ii. Have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage.

iii. Have adequate drainage provided to reduce exposure to flood hazards.

7. Alteration of Watercourses.

Require that the flood carrying capacity within the altered or relocated portion of said watercourse is maintained. Require that maintenance is provided within the altered or relocated portion of said watercourse to ensure that the flood carrying capacity is not diminished. Require compliance with sections Subsections 14.20.080(I)(1) and 14.20.085(A).

B. Specific Standards for Riverine (including all non-coastal) flood zones. These specific standards shall apply to all new construction and substantial improvements in addition to the General Standards contained in Subsection 14.20.095(A) of this Chapter.

1. Residential Construction.

   a. New construction and substantial improvement of any residential structures shall have the lowest floor, including the

basement, elevated to a minimum of one (1) foot above the base flood elevation.

b. Enclosed areas below the lowest floor shall comply with the flood opening requirements in Subsection 14.20.095(B)(7).

2. Garages.

a. Attached garages may be constructed with the garage floor slab below the Base Flood Elevation (BFE) in riverine flood zones, if the following requirements are met:

i. If located within a floodway the proposed garage must comply with the requirements of Subsection 14.20.095(B)(8);

ii. The floors are at or above grade on not less than one side;

iii. The garage is used solely for parking, building access, and/or storage;

iv. The garage is constructed with flood openings in compliance with Subsection 14.20.095(B)(7) to equalize hydrostatic flood forces on exterior walls by allowing for the automatic entry and exit of floodwater;

v. The portions of the garage constructed below the BFE are constructed with materials resistant to flood damage;

vi. The garage is constructed in compliance with the standards in Subsection 14.20.095(B)(2); and

vii. The garage is constructed with electrical, and other service facilities located and installed so as to prevent water from entering or accumulating within the components during conditions of the base flood.

b. Detached garages must be constructed in compliance with the standards for appurtenant structures in Subsection 14.20.095(B)(3) or nonresidential structures in Subsection 14.20.095(B)(4) depending on the square

footage of the garage.

3. Appurtenant (Accessory) Structures.

Relief from elevation or floodproofing requirements for Residential and Non-Residential structures in Riverine (Non-Coastal) flood zones may be granted for accessory structures that meet the following requirements:

a. Appurtenant structures located partially or entirely within the floodway must comply with requirements for development within a floodway found in Subsection 14.20.095(B)(8).

b. Appurtenant structures must only be used for parking, access, and/or storage and shall not be used for human habitation;

c. In compliance with State of Oregon Specialty Codes, Appurtenant structures on properties that are zoned residential are limited to one-story structures less than 200 square feet, or 400 square feet if the property is greater than two (2) acres in area and the proposed appurtenant structure will be located a minimum of 20 feet from all property lines. Appurtenant structures on properties that are zoned as non-residential are limited in size to 120 square feet.

d. The portions of the appurtenant structure located below the Base Flood Elevation must be built using flood resistant materials;

e. The appurtenant structure must be adequately anchored to prevent flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the base flood.

f. The appurtenant structure must be designed and constructed to equalize hydrostatic flood forces on exterior walls and comply with the requirements for flood openings in Subsection

14.20.095(B)(7);

g. Appurtenant structures shall be located and constructed to have low damage potential;

h. Appurtenant structures shall not be used to store toxic material, oil, or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality unless confined in a tank installed incompliance with Subsection 14.20.095(A)(5).

i. Appurtenant structures shall be constructed with electrical, mechanical, and other service facilities located and installed so as to prevent water from entering or accumulating within the components during conditions of the base flood.

4. Nonresidential Construction.

New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor (including the basement) elevated to one (1) foot above the base floor elevation or, together with attendant utility and sanitary facilities, shall:

a. Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;

b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;

c. Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this Subsection based on their development and/or review of the structural design, specifications, and plans. Such certifications shall be provided to the Community Development Director, or their

designee.

d. Nonresidential structures that are elevated, not floodproofed, shall comply with the standards for enclosed areas below the lowest floor as described in Subsection 14.20.095(B)(7).

e. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one (1) foot below the flood-proofed level (e.g., a building constructed to the base flood level will be rated as one (1) foot below).

5. Manufactured Dwellings.

a. New or substantially improved manufactured dwellings supported on solid foundation walls shall be constructed with flood openings that comply with Subsection 14.20.095(B)(7);

b. The bottom of the longitudinal chassis frame beam shall be at or above Base Flood Elevation;

c. New or substantially improved manufactured dwellings shall be anchored to prevent flotation, collapse, and lateral movement during the base flood. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (Reference FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for additional techniques), and;

d. Electrical crossover connections shall be a minimum of twelve (12) inches above Base Flood Elevation (BFE).

6. Recreational Vehicles.

Recreational vehicles placed on sites are required to:

a. Be on the site for fewer than 180 consecutive days,

b. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

c. Meet the requirements of Subsection 14.20.095(B)(5), including the anchoring and elevation requirements for manufactured dwellings.

7. Flood Openings.

All new construction and substantial improvements with fully enclosed areas below the lowest floor (excluding basements) are subject to the following requirements. Enclosed areas below the Base Flood Elevation, including crawl spaces shall:

a. Be designed to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exist of floodwaters;

b. Be used solely for parking, storage, or building access;

c. Be certified by a registered professional engineer or architect or meet or exceed all of the following minimum criteria:

i. A minimum of two openings;

ii. The total net area of non-engineered openings shall be not less than one (1) square inch for each square foot of enclosed area, where the enclosed area is measured on the exterior of the enclosure walls;

iii. The bottom of all openings shall be no higher than one foot above grade;

iv. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they shall allow the automatic flow of floodwater into and out of the enclosed areas and shall be accounted for in the determination of the net open area;

v. All additional higher standards for flood openings in the State of Oregon Residential Specialty Codes Section R322.2.2 shall be complied with when applicable.

8. Floodways.

a. Located within the special flood hazard areas established in Section 14.20.030 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of the floodwaters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

i. Prohibit encroachments, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless:

A. Certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that proposed encroachment shall not result in any increase in flood levels within the community during that occurrence of the base flood discharge; or

B. A community may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that a Conditional Letter of Map Revision (CLOMR) is applied for and approved by the Federal Insurance Administrator, and the requirements for such revision as established under Volume 44 of the Code of Federal Regulations, Section 65.12 are fulfilled.

b. If the requirements of Subsection 14.20.095(B)(8)(a)(i) above are satisfied, all new construction, substantial improvements, and other development shall comply with all other applicable flood hazard reduction provisions of Section 14.20.095.

9. Before Regulatory Floodway. In areas where a regulatory floodway has not been designated, no new construction, substantial improvement, or

other development (including fill) shall be permitted within Zones A1-A30 and AE on the community FIRMs, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

C. Coastal High Hazard Area. Located within areas of special flood hazards established in Subsection 14.32.040 are "Coastal High Hazard Areas," designated as Zones V1-V30, VE, and/or V. These areas have special flood hazards associated with high velocity waters from tidal surges and, therefore, in addition to meeting all applicable provisions of this Chapter and the State Building Code, the following criteria shall apply:

1. All new construction and substantial improvements in Zones V1 - V30 and VE (V if base flood elevation data is available) shall be elevated on pilings and columns such that:

   a. The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated a minimum of one foot above the base flood level; and

   b. The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those specified by the State of Oregon Specialty Codes.

2. A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction, and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of this Section.

3. Obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures and whether or not such structures contain a basement. The Community Development Director shall maintain a record of all such information in accordance with Subsection 14.20.080(F).

4. All new construction shall be located landward of the reach of mean high tide.

5. Provide that all new construction and substantial improvements have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. For the purposes of this Section, a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls that exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or State codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:

    a. Breakaway wall collapse shall result from water load less than that which would occur during the base flood; and

    b. If breakaway walls are utilized, such enclosed space shall be usable solely for parking of vehicles, building access, or storage. Such space shall not be used for human habitation.

    c. Walls intended to break away under flood loads shall have flood openings that meet or exceed the criteria for flood openings in Subsection 14.20.095(B)(7).

6. The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and water loads acting simultaneously on all building components (structural and non-structural). Maximum water loading values to be used in this determination shall be those associated with the base flood. Maximum wind loading values used shall be those specified by the State of Oregon Specialty Codes.

7. Prohibit the use of fill for structural support of buildings.

8. Prohibit man-made alteration of sand dunes which would increase potential flood damage.

9. All structures, including but not limited to residential structures, non-residential structures, appurtenant structures, and attached garages shall comply with all the requirements of Subsection 14.20.095(C)(1) Floodproofing of non-residential structures is prohibited.

10. Manufactured Dwelling Standards for Coastal High Hazard Zones. All manufactured dwellings to be placed or substantially improved within Coastal High Hazard Areas (Zones V, V1-30, VE, or Coastal A) shall meet the following requirements:

    a. Comply with all of the standards within Subsection 14.20.095(C);

    b. The bottom of the longitudinal chassis frame beam shall be elevated to a minimum of one foot above the Base Flood Elevation (BFE); and

    c. Electrical crossover connections shall be a minimum of 12 inches above the BFE.

11. Recreational Vehicle Standards for Coastal High Hazard Zones. Recreational vehicles within Coastal High Hazard Zones V1-30, V, and VE on the community's FIRM shall either:

a. Be on the site for fewer than 180 consecutive days; and

b. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

c. Meet the permit requirements of Section 14.20.020 (Administration) and the requirements for manufactured homes in Subsection 14.20.095(C)(10).

12. Tank Standards for Coastal High Hazard Zones. Tanks shall meet the requirements of Subsection 14.20.095(A)(5).

D. Standards for Shallow Flooding Areas (AO Zone).

Shallow flooding areas appear on FIRMs as AO zones with depth designations. The base flood depths range from one (1) to three (3) feet above ground where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow.

1. In AO zones, adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures.

2. New construction and substantial improvements of residential structures and manufactured dwellings within AO zones shall have the lowest floor (including basement) elevated above the highest grade adjacent to the building, at minimum at or above the depth number specified on the Flood Insurance Rate Map (FIRM) plus one (1) foot or by at least two (2) feet if no depth number is specified. For manufactured dwellings the lowest floor is considered to be the bottom of the longitudinal chassis frame beam.

3. All new construction and substantial improvements of nonresidential structures within

AO zones shall either:

a. Have the lowest floor (including basement) elevated above the highest adjacent grade of the building site, at minimum at or above the depth number specified on the Flood Insurance Rate Map (FIRM) plus one (1) foot or by at least two (2) feet if no depth number is specified; or

b. Together with attendant utility and sanitary facilities, be completely floodproofed to or above the depth number specified on the FIRM plus one (1) foot or a minimum of two (2) feet above the highest adjacent grade if no depth number is specified, so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as stated in Subsection 14.20.095(B)(4)(c).

4. Recreational vehicles placed on sites within AO Zones on the community's Flood Insurance Rate Maps (FIRM) shall either:

a. Be on the site for fewer than 180 consecutive days, and

b. Be fully licensed and ready for highway use, on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

c. Meet the elevation requirements of Subsection 14.20.095(D)(2), and the anchoring and other requirements for manufactured dwellings of Subsection 14.20.095(B)(5).

5. New and substantially improved appurtenant structures must comply with the standards in

Subsection 14.20.095(B)(3).

6. Enclosed areas beneath elevated structures shall comply with the requirements in Subsection 14.20.095(B)(7).

14.20.100 Variance Procedures

A. The issuance of a variance is for floodplain management purposes only. Flood insurance premium rates are determined by federal statute according to actuarial risk and will not be modified by the granting of a variance.

B. Variances shall be processed and authorized by the Planning Commission using a Type III decision making procedure.

C. Conditions for Variance(s). A variance(s) may only be granted if the following conditions exist:

1. New construction and substantial improvements to be erected will occur on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level; or

2. New construction, substantial improvements and other development is necessary for the conduct of a functionally dependent use.

D. Variance(s) permissible pursuant to Subsection 14.20.100(C) may be approved upon a finding that the following criteria have been satisfied.

1. The structure or other development is protected by methods that minimize flood damages during the base flood.

2. There is a good and sufficient cause for the variance. In considering this criterion, the Planning Commission shall consider:

a. The importance of the services provided by the facility to the community.

b. The necessity to the facility of a waterfront

location, where applicable.

c. The availability of alternative locations for the use that are not subject to flooding.

d. The compatibility of the use with existing and anticipated development.

3. Failure to grant the variance would result in an exceptional hardship to the applicant based on exceptional, unusual, and/or peculiar circumstances of the property. For functionally-dependent uses (a use that cannot perform its intended purpose unless it is located or carried out in close proximity to water) only practical difficulties resulting from the failure to grant the variance rather than exceptional hardship are required.

4. The granting of the variance will not result in increased flood levels during the base flood discharge, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

5. The variance is the minimum necessary, considering the flood hazard, to afford relief.

E. Variance Notification. In addition to the notification requirements provided in NMC Chapter 14.52, an applicant to whom a variance is granted shall be given written notice that the issuance of a variance to construct a structure below the Base Flood Elevation will result in increased premium rates for flood insurance and that such construction below the base flood elevation increases risks to life and property. Such notification and a record of all variance actions, including justification for their issuance shall be maintained in accordance with Subsection 14.20.080(F).

(Chapter 14.20 was repealed and replaced by Ordinance No. 2156, adopted on October 7, 2019: effective October 18, 2019.)

CHAPTER 14.21 GEOLOGIC HAZARDS OVERLAY

14.21.010 Purpose

The purpose of this section is to promote the public health, safety, and general welfare by minimizing public and private losses due to earth movement hazards and limiting erosion and related environmental damage, consistent with Statewide Planning Goals 7 and 18, and the Natural Features Section of the Newport Comprehensive Plan.

14.21.020 Applicability of Geologic Hazards Regulations

A. The following are areas of known geologic hazards or are potentially hazardous and are therefore subject to the requirements of Section 14.21:

1. Bluff or dune backed shoreline areas within high or active hazard zones identified in the Department of Geology and Mineral Industries (DOGAMI) Open File Report O-04-09 Evaluation of Coastal Erosion Hazard Zones along Dune and Bluff Backed Shorelines in Lincoln County,

Oregon: Cascade Head to Seal Rock, Technical Report to Lincoln County, dated 2004.

2. Active or potential landslide areas, prehistoric landslides, or other landslide risk areas identified in the DOGAMI Open File Report O-04-09.

3. Any other documented geologic hazard area on file, at the time of inquiry, in the office of the City of Newport Community Development Department.

A "documented geologic hazard area" means a unit of land that is shown by reasonable written evidence to contain geological characteristics/conditions which are hazardous or potentially hazardous for the improvement thereof.

B. The DOGAMI Open File Report O-04-09 is not intended as a site specific analysis tool. The City will use DOGAMI Open File Report O-04-09 to identify when a Geologic Report is needed on property prior to development. A Geologic Report that applies to a specific property and that identifies a proposed development on the property as being in a different hazard zone than that identified in DOGAMI Open File Report O-04-09, shall control over DOGAMI Open File Report O-04-09 and shall establish the bluff or dune-backed shoreline hazard zone or landslide risk area that applies to that specific property. The time restriction set forth in subsection 14.21.030 shall not apply to such determinations.

C. In circumstances where a property owner establishes or a Geologic Report identifies that development, construction, or site clearing (including tree removal) will occur outside of a bluff or dune-backed shoreline hazard zone or landslide risk areas, as defined above, no further review is required under this Section 14.21.

D. If the results of a Geologic Report are substantially different than the hazard designations contained in DOGAMI Open File Report O-04-09 then the city shall provide notice to the Department of Geology and Mineral Industries (DOGAMI) and Department of Land Conservation and Development (DLCD). The

agencies will have 14 days to provide comments and the city shall consider agency comments and determine whether or not it is appropriate to issue a Geologic Permit.

*(*Section amended by Ordinance No. 1601 (5-20-91) and then repealed and replaced in its entirety by Ordinance No. 2017 (8-17-2011).)*

14.21.030 Geologic Permit Required

All persons proposing development, construction, or site clearing (including tree removal) within a geologic hazard area as defined in 14.21.010 shall obtain a Geologic Permit. The Geologic Permit may be applied for prior to or in conjunction with a building permit, grading permit, or any other permit required by the city.

Unless otherwise provided by city ordinance or other provision of law, any Geologic Permit so issued shall be valid for the same period of time as a building permit issued under the Uniform Building Code then in effect.

14.21.040 Exemptions

The following activities are exempt from the provisions of this chapter:

A. Maintenance, repair, or alterations to existing structures that do not alter the building footprint or foundation;

B. An excavation which is less than two feet in depth, or which involves less than twenty-five cubic yards of volume;

C. Fill which is less than two feet in depth, or which involves less than twenty-five cubic yards of volume;

D. Exploratory excavations under the direction and oversight of a certified engineering geologist or geotechnical engineer. A letter from the certified engineering geologist or geotechnical engineer outlining the scope of work shall be submitted before earthwork is commenced;

E. Construction of structures for which a building permit is not required;

F. Removal of trees smaller than 8-inches dbh (diameter breast height);

G. Removal of trees larger than 8-inches dbh (diameter breast height) provided the canopy area of the trees that are removed in any one year period is less than twenty-five percent of the lot or parcel area;

H. Forest practices as defined by ORS 527 (the State Forest Practices Act) and approved by the state Department of Forestry;

I. Maintenance and reconstruction of public and private roads, streets, parking lots, driveways, and utility lines, provided the work does not extend outside the area previously disturbed;

J. Installation of utility lines not including electric substations; and

K. Emergency response activities intended to reduce or eliminate an immediate danger to life, property, or flood or fire hazard.

14.21.050 Application Submittal Requirements

In addition to a land use application form with the information required in Section 14.52.020, an application for a Geologic Permit shall include the following:

A. A site plan that illustrates areas of disturbance, ground topography (contours), roads and driveways, an outline of wooded or naturally vegetated areas, watercourses, erosion control measures, and trees with a diameter of at least 8-inches dbh (diameter breast height) proposed for removal; and

B. An estimate of depths and the extent of all proposed excavation and fill work; and

C. Identification of the bluff or dune-backed hazard zone or landslide hazard zone for the parcel or lot upon which development is to occur. In cases where properties are mapped with more than one hazard zone, a certified engineering geologist shall identify

the hazard zone(s) within which development is proposed; and

D. A Geologic Report prepared by a certified engineering geologist, establishing that the site is suitable for the proposed development; and

E. An engineering report, prepared by a licensed civil engineer, geotechnical engineer, or certified engineering geologist (to the extent qualified), must be provided if engineering remediation is anticipated to make the site suitable for the proposed development.

14.21.060 Geologic Report Guidelines

Geologic Reports shall be prepared consistent with standard geologic practices employing generally accepted scientific and engineering principles and shall, at a minimum, contain the items outlined in the most recent edition of the Oregon State Board of Geologist Examiners "Guidelines for Preparing Engineering Geologic Reports in Oregon." Such reports shall address subsections 14.21.070 to 14.21.090, as applicable. For oceanfront property, reports shall also address the "Geological Report Guidelines for New Development on Oceanfront Properties," prepared by the Oregon Coastal Management Program of the Department of Land Conservation and Development, in use as of the effective date of this section. All Geologic Reports are valid as prima facie evidence of the information therein contained for a period of five (5) years. They are only valid for the development plan addressed in the report. The city assumes no responsibility for the quality or accuracy of such reports.

14.21.070 Construction Limitations within Geologic Hazard Areas

A. New construction shall be limited to the recommendations, if any, contained in the Geologic Report; and

1. Property owners should consider use of construction techniques that will render new buildings readily moveable in the event they need to be relocated; and

2. Properties shall possess access of sufficient width and grade to permit new buildings to be relocated or dismantled and removed from the site.

14.21.080 Prohibited Development on Beaches and Foredunes

Construction of residential, commercial, or industrial buildings is prohibited on beaches, active foredunes, other foredunes that are conditionally stable and subject to ocean undercutting or wave overtopping, and interdune areas (deflation plains) that are subject to ocean flooding. Other development in these areas shall be permitted only if a certified engineering geologist determines that the development is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves and is designed to minimize adverse environmental effects. Such a determination shall consider:

A. The type of use proposed and the adverse effects it might have on the site and adjacent areas;

B. Temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;

C. Methods for protecting the surrounding area from any adverse effects of the development; and

D. Hazards to life, public and private property, and the natural environment that may be caused by the proposed use.

14.21.090 Erosion Control Measures

A certified engineering geologist, geotechnical engineer, or qualified civil engineer shall address the following standards.

A. Stripping of vegetation, grading, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction;

B. Development plans shall minimize cut or fill operations so as to prevent off-site impacts;

C. Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development;

D. Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical;

E. Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary;

F. Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching, seeding, planting, or armoring with rolled erosion control products, stone, or other similar methods;

G. All drainage provisions shall be designed to adequately carry existing and potential surface runoff from the twenty year frequency storm to suitable drainageways such as storm drains, natural watercourses, or drainage swales. In no case shall runoff be directed in such a way that it significantly decreases the stability of known landslides or areas identified as unstable slopes prone to earth movement, either by erosion or increase of groundwater pressure.

H. Where drainage swales are used to divert surface waters, they shall be vegetated or protected as necessary to prevent offsite erosion and sediment transport;

I. Erosion and sediment control devices shall be required where necessary to prevent polluting discharges from occurring. Control devices and measures which may be required include, but are not limited to:

1. Energy absorbing devices to reduce runoff water velocity;

2. Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;

3. Dispersal of water runoff from developed areas over large undisturbed areas;

J. Disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures; and

K. Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, site monitoring and clean-up activities.

14.21.100 Storm water Retention Facilities Required

For structures, driveways, parking areas, or other impervious surfaces in areas of 12% slope or greater, the release rate and sedimentation of storm water shall be controlled by the use of retention facilities when specified by the City Engineer. The retention facilities shall be designed for storms having a 25-year recurrence frequency. Storm waters shall be directed into a drainage with adequate capacity so as not to flood adjacent or downstream property.

14.21.110 Approval Authority

An application shall be processed and authorized using a Type I decision making procedure.

14.21.120 Peer Review within Active Landslide Zones

Upon receipt of an application for development within an active landslide zone, City shall refer the Geologic Report to a certified engineering geologist to perform a peer review during the 30-day period within which the application is reviewed for completeness. The peer

reviewer shall conduct a site visit and confirm, in writing, that the Geologic Report was prepared in accordance with the requirements set forth in this Chapter.
In the event the peer reviewer identifies the need for additional analysis or clarification, those comments shall be provided to the applicant so that they can be addressed by the Report's author.

In circumstances where a Geologic Report is accompanied by an engineering report, prepared by a licensed civil engineer, geotechnical engineer, or certified engineering geologist (to the extent qualified), that report shall be subject to peer review by an individual with equivalent qualifications in the same manner as described above.

City may require that a fee deposit be paid by the applicant to off-set the cost of the peer review, with the amount of the deposit being set by City Council resolution.

14.21.130 Appeals of Geologic Permits

Any appeal from the issuance or denial of a Geologic Permit shall be filed within 15 calendar days of the date the city issues a final order as provided by Section 14.52.050. Appellants challenging substantive elements of a Geologic Report shall submit their own analysis prepared by a certified engineering geologist. Such report shall be provided within 30 days of the date the appeal is filed. A failure to submit a report within this timeframe is grounds for dismissal of the appeal.

14.21.140 Certification of Compliance

No development requiring a Geologic Report shall receive final approval (e.g. certificate of occupancy, final inspection, etc.) until the city receives a written statement by a certified engineering geologist indicating that all performance, mitigation, and monitoring measures contained in the report have been satisfied. If mitigation measures involve engineering solutions prepared by a licensed professional engineer, then the city must also receive an additional written statement of compliance by the design engineer.

14.21.150 Removal of Sedimentation

Whenever sedimentation is caused by stripping vegetation, grading, or other development, it shall be the responsibility of the person, corporation, or other entity causing such sedimentation to remove it from all adjoining surfaces and drainage systems and to return the affected areas to their original or equal condition prior to final approval of the project.

14.21.160 Applicability of Nonconforming Use Provisions

A. A building or structure that is nonconforming under Section 14.32 of the Zoning Ordinance that is destroyed by fire, other casualty or natural disaster shall be subject to the casualty loss provisions contained in Section 14.32 of the Zoning Ordinance. Application of the provisions of this section to a property shall not have the effect of rendering it nonconforming.

B. A building or structure that conforms to the Zoning Ordinance that is destroyed by fire, other casualty or natural disaster may be replaced with a building or structure of up to the same size provided a Geologic Report is prepared by a certified engineering geologist. A Geologic Report prepared pursuant to this subsection shall adhere to the Geologic Report Guidelines outlined in subsection 14.21.030. All recommendations contained in the report shall be followed, however the report need not establish that the site is suitable for development as required in subsection 14.21.050(D). An application filed under this subsection shall be processed and authorized as a ministerial action by the Community Development Department.

(Chapter 14.21 was repealed and replaced by Ordinance No. 2157, adopted on November 4, 2019: effective November 4, 2019.)

CHAPTER 14.22 AIRPORT RESTRICTED AREA

14.22.010 Purpose

The purpose of the Airport Restricted Area and Airport Development Zone overlays is to encourage and support the continued operation and vitality of the Newport Municipal Airport by establishing compatibility and safety standards to promote air navigational safety and to reduce potential safety hazards for persons living, working or recreating near the airport.

14.22.020 Definitions

As used in this section, unless the context otherwise requires:

A. Airport. The strip of land used for taking off and landing aircraft, together with all adjacent land used in connection with the aircraft landing or taking off from the strip of land, including but not limited to land used for existing airport uses. Refers to the Newport Municipal Airport.

B. Airport Development Zone. An overlay zone that applies to land identified as being within the airport boundary on the "Property Map" identified as Sheet 16 of the Newport Municipal Airport Master Plan, prepared by WHPacific (dated February 2018).

C. Airport Elevation. The highest point of an airport's usable runway, measured in feet above mean sea level (with respect to the North American Datum of 1988 (NAVD-88)).

D. Airport Imaginary Surfaces. Imaginary areas in space and on the ground that are established in relation to the airport and its runways. Imaginary areas are defined by the primary surface, runway protection zone, approach surface, horizontal surface, conical surface and transition surface.

E. Airport Noise Impact Boundary. Areas within established noise contour boundaries exceeding 55 Average Day-Night Sound Level (DNL), as shown on the "Off-Airport Land Use Map" identified as Sheet No. 15.1 of the

Newport Municipal Airport Master Plan, prepared by WHPacific (dated February 2018).

F. Airport Restricted Area. An overlay zone that applies to public and privately owned land within the airport imaginary surfaces.

G. Airport Sponsor. The City of Newport. The owner, manager, or other person or entity designated to represent the interests of an airport.

H. Approach Surface for Instrument Approaches. A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface.

The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of:

a. 2,000 feet for a utility runway having a non-precision instrument approach;

b. 3,500 feet for a non-precision instrument runway, other than utility, having visibility minimums greater than three-fourths statute mile;

c. 4,000 feet for a non-precision instrument runway, other than utility, having visibility minimums at or below three-fourths statute mile; and

d. 16,000 feet for precision instrument runways.

The approach surface extends for a horizontal distance of:

a. 5,000 feet at a slope of 20 feet outward for each foot upward for all utility runways;

b. 10,000 feet at a slope of 34 feet outward for each foot upward for all non-precision instrument runways, other than utility; and

c. 10,000 feet at a slope of 50 feet outward for each

one foot upward, with an additional 40,000 feet at slope of 40 feet outward for each one foot upward, for precision instrument runways.

The outer width of an approach surface will be that width prescribed in this subsection for the most precise approach existing or planned for that runway end.

I. Approach Surface for Visual Only Approaches. A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface.

1. The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of:

a. 1,250 feet for a utility runway; or

b. 1,500 feet for a runway other than a utility runway.

2. The approach surface extends for a horizontal distance of 5,000 feet at a slope of 20 feet outward for each foot upward.

3. The outer width of an approach surface will be that width prescribed in this subsection for the most precise approach existing or planned for that runway end.

J. Conical Surface. A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.

K. Department of Aviation. The Oregon Department of Aviation, formerly the Aeronautics Division of the Oregon Department of Transportation.

L. FAA. The Federal Aviation Administration.

M. FAA's Technical Representative. As used in this ordinance, the federal agency providing the FAA with expertise on wildlife and bird strike hazards as they relate to airports. This may include, but is not limited to, the USDAAPHIS- Wildlife Services.

N. Height. The highest point of a structure or tree, plant or other object of natural growth, measured from mean sea level (with respect to the North American Datum of 1988 (NAVD-88)).

O. Horizontal Surface. A horizontal plane of 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. The radius of each arc is:

1. 5,000 feet for all runways designated as utility.

2. 10,000 feet for all other runways.

3. The radius of the arc specified for each end of a runway will have the same arithmetical value. That value will be the highest determined for either end of the runway. When a 5,000-foot arc is encompassed by tangents connecting two adjacent 10,000-foot arcs, the 5,000-foot arc shall be disregarded on the construction of the perimeter of the horizontal surface.

P. Non-precision Instrument Runway. A runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in non-precision instrument approach has been approved, or planned, and for which no precision approach facilities are planned or indicated on an FAA approved airport layout plan or other FAA planning document.

Q. Obstruction. Any structure or tree, plant or other object of natural growth that penetrates an imaginary surface.

R. Other than Utility Runway. A runway that is constructed for and intended to be used by turbine-driven aircraft or by propeller-driven aircraft exceeding 12,500 pounds gross weight.

S. Precision Instrument Runway. A runway having an existing instrument approach procedure utilizing air navigation facilities that provide both horizontal and vertical guidance, such as an Instrument Landing System (ILS) or Precision Approach Radar (PAR). It also

means a runway for which a precision approach system is planned and is so indicated by an FAA-approved airport layout plan or other FAA planning document.

T. Primary Surface for Instrument Approaches. A surface longitudinally centered on a runway. When the runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway. When a runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is:

1. 500 feet for utility runways having non-precision instrument approaches,

2. 500 feet for utility runways having non-precision instrument approaches, with visibility minimums greater than three-fourths statute mile, and

3. 1,000 feet for non-precision instrument runways with visibility minimums at or below three-fourths statute mile, and for precision instrument runways.

U. Primary Surface Visual Only Approaches. A surface longitudinally centered on a runway. When a runway has a specially prepared hard surface, the primary surface extends 200 feet beyond each end of that runway. When a runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline. The width of the primary surface is:

1. 200 feet for utility runways.

2. 500 feet for other than utility runways.

V. Public Assembly Facility. A permanent or temporary structure or facility, place or activity where concentrations of people gather in reasonably close quarters for purposes such as deliberation, education, worship, shopping, employment, entertainment, recreation, sporting events, or similar activities. Public

assembly facilities include, but are not limited to, schools, churches, conference or convention facilities, employment and shopping centers, arenas, athletic fields, stadiums, clubhouses, museums, and similar facilities and places, but do not include parks, golf courses or similar facilities unless used in a manner where people are concentrated in reasonably close quarters. Public assembly facilities also do not include air shows, structures or uses approved by the FAA in an adopted airport master plan, or places where people congregate for short periods of time such as parking lots or bus stops.

W. Runway. A defined area on an airport prepared for landing and takeoff of aircraft along its length.

X. Runway Protection Zone (RPZ). An area off the runway end used to enhance the protection of people and property on the ground. The RPZ is trapezoidal in shape and centered about the extended runway centerline. The inner width of the RPZ is the same as the width of the primary surface. The outer width of the RPZ is a function of the type of aircraft and specified approach visibility minimum associated with the runway end. The RPZ extends from each end of the primary surface for a horizontal distance of:

1. 1,000 feet for utility runways.

2. 1,700 feet for other than utility runways having non-precision instrument approaches.

3. 2,500 feet for precision instrument runways.

Y. Significant. As it relates to bird strike hazards, “significant” means a level of increased flight activity by birds across an approach surface or runway that is more than incidental or occasional, considering the existing ambient level of flight activity by birds in the vicinity.

Z. Structure. Any constructed or erected object, which requires location on the ground or is attached to something located on the ground. Structures include but are not limited to buildings, decks, fences, signs, towers, cranes, flagpoles, antennas, smokestacks, earth formations and overhead transmission lines. Structures do not include paved areas.

AA. Transitional Surfaces. Those surfaces that extend upward and outward at 90-degree angles to the runway centerline and the runway centerline extended at a slope of seven (7) feet horizontally for each foot vertically from the sides of the primary and approach surfaces to the point of intersection with the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces, which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at a 90-degree angle to the extended runway centerline.

BB. Utility Runway. A runway that is constructed for and intended to be used by propeller-driven aircraft of 12,500 pounds maximum gross weight or less.

CC. Visual Runway. A runway intended solely for the operation of aircraft using visual approach procedures, where no straight-in instrument approach procedures or instrument designations have been approved or planned, or are indicated on an FAA-approved airport layout plan or any other FAA planning document.

DD. Water Impoundment. Includes wastewater treatment settling ponds, surface mining ponds, detention and retention ponds, artificial lakes and ponds, and similar water features. A new water impoundment includes an expansion of an existing water impoundment except where such expansion was previously authorized by land.

14.22.030 Airport Areas, Surfaces, and Zones

A. Runway Protection Zone (RPZ). An area off the runway end used to enhance the protection of people and property on the ground. The RPZ is trapezoidal in shape and centered about the extended runway centerline. The inner width of the RPZ is the same as the width of the primary surface. The outer width of the RPZ is a function of the type of aircraft and specified approach visibility minimum associated with the runway end. The RPZ extends from each end of the primary surface for a horizontal distance of:

1. 1,000 feet for utility runways.

2. 1,700 feet for other than utility runways having non-precision instrument approaches.

3. 2,500 feet for precision instrument runways.

B. Utility Runway Visual Approach Surface. A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface.

1. The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of:

   a. 2,000 feet for a utility runway having a non-precision instrument approach;

   b. 3,500 feet for a non-precision instrument runway, other than utility, having visibility minimums greater than three-fourths statute mile;

   c. 4,000 feet for a non-precision instrument runway, other than utility, having visibility minimums at or below three-fourths statute mile; and

   d. 16,000 feet for precision instrument runways.

2. The approach surface extends for a horizontal distance of:

   a. 5,000 feet at a slope of 20 feet outward for each foot upward for all utility runways;

   b. 10,000 feet at a slope of 34 feet outward for each foot upward for all non-precision instrument runways, other than utility; and

   c. 10,000 feet at a slope of 50 feet outward for each one foot upward, with an additional 40,000 feet at a slope of 40 feet outward for each one foot upward, for precision instrument runways.

3. The outer width of an approach surface will be that width prescribed in this subsection for the most precise approach existing or planned for that runway

end.

C. Conical Surface. A surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.

D. Non-Precision Instrument Approach Surface Approach Surface. A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface.

1. The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of:

a. 2,000 feet for a utility runway having a non-precision instrument approach;

b. 3,500 feet for a non-precision instrument runway, other than utility, having visibility minimums greater than three-fourths statute mile;

c. 4,000 feet for a non-precision instrument runway, other than utility, having visibility minimums at or below three-fourths statute mile.

E. Precision Instrument Approach Surface. A surface longitudinally centered on the extended runway centerline and extending outward and upward from each end of the primary surface.

1. The inner edge of the approach surface is the same width as the primary surface and it expands uniformly to a width of 16,000 feet for precision instrument runways.

F. Transitional Surface. Those surfaces that extend upward and outward at 90-degree angles to the runway centerline and the runway centerline extended at a slope of seven (7) feet horizontally for each foot vertically from the sides of the primary and approach surfaces to the point of intersection with the horizontal and conical surfaces. Transitional surfaces for those portions of the precision approach surfaces, which project through and beyond the limits of the conical surface, extend a distance of 5,000 feet measured horizontally from the edge of the approach surface and at a 90-degree angle

to the extended runway centerline.

14.22.040 Imaginary Surface and Noise Impact Boundary Delineation

The airport elevation, the airport noise impact boundary, and the location and dimensions of the runway, primary surface, runway protection zone, approach surface, horizontal surface, conical surface and transitional surface are shown on the "Airport Airspace Plan (Part 77)" identified as Sheet 6 of the "Off-Airport Land Use Map" identified as Newport Municipal Airport Master Plan, prepared by WHPacific (dated February 2018) and Sheet 15.1 of the Newport Municipal Airport Master Plan, prepared by WHPacific (dated February 2018), which are made a part of this Ordinance. All lands, water and airspace, or portions thereof, which are located within these boundaries or surfaces shall be subject to the requirements of the Airport Restricted Area Zoning Overlay.

14.22.050 Notice of Land Use and Permit Applications within Overlay Zone Area

Except as otherwise provided herein, written notice of applications for land use or limited land use decisions, including comprehensive plan or zoning amendments, in an area within the Airport Restricted Area Zoning Overlay, shall be provided to the City of Newport in the same manner as notice is provided to property owners entitled by law to written notice of land use or limited land use applications.

A. Instrument Approaches:

1. Notice shall be provided to the City of Newport when the property, or a portion thereof, that is subject to the land use or limited land use application is located within 10,000 feet of the sides or ends of a runway.

2. Notice of land use and limited land use applications shall be provided in the same manner, and at the same time that written notice of such applications is provided to property owners entitled to such notice.

3. Notices required under this section for instrument approaches need not be provided to the City of Newport where the land use or limited land use application meets all of the following criteria:

    a. Would only allow structures of less than 35 feet in

height; and

b. Involves property located entirely outside the approach surface.

B. Visual Only Approaches:

1. Notice shall be provided to the City of Newport when the property, or a portion thereof, that is subject to the land use or limited land use application is located within 5,000 feet of the sides or ends of a runway.

2. Notice of land use and limited land us applications shall be provided in the same manner, and at the same time that written notice of such applications is provided to property owners entitled to such notice.

3. Notices required under this section need not be provided to the City of Newport where the land use or limited land use application meets all of the following criteria:

a. Would only allow structures of less than 35 feet in height; and

b. Involves property located entirely outside the approach surface.

14.22.060 Height Limitations on Allowed Uses in Underlying Zones

All uses permitted by the underlying zone shall comply with the height limitations in this Section. When height limitations of the underlying zone are more restrictive than those of the Airport Restricted Area Zoning Overlay, the underlying zone height limitations shall control.

A. Except as provided in subsections B and C of this Section, no structure or tree, plant or other object of natural growth shall penetrate an airport imaginary surface.

B. For areas within airport imaginary surfaces but outside the approach and transition surfaces, where the terrain is at higher elevations than the airport runway surfaces such that existing structures and permitted development

penetrate or would penetrate the airport imaginary surfaces, the City of Newport may authorize structures up to 35 feet in height.

C. Variances to the height limitations of this section may be permitted when supported in writing by the City of Newport and the FAA. Applications for height variances shall satisfy criteria for a Variance as determined by the Planning Commission using a Type III decision-making procedure.

14.22.070 Application Submittal Requirements

In addition to a land use application form with the information required in Section 14.52.080, an applicant seeking a land use or limited land use approval in an area within the Airport Restricted Area Zoning Overlay required to provide notice pursuant to Section 14.22.050, or seeking a variance to the height limitations outlined in Section 14.22.060, shall provide the following information in addition to any other information required in the permit application:

A. A map or drawing showing the location of the property in relation to the airport imaginary surfaces. The Planning Department shall provide the applicant with appropriate base maps upon which to locate the property.

B. Elevation profiles and a site plan, both drawn to scale, including the location and height of all existing and proposed structures, measured in feet above mean sea level.

C. If a height variance is requested, letters of support from the City of Newport and the FAA.

14.22.080 Land Use Compatibility Requirements

Applications for land use or building permits for properties within the boundaries of the Airport Restricted Area Zoning Overlay shall comply with the requirements of this chapter as provided herein.

A. Outdoor Lighting. No new or expanded industrial, commercial or recreational use shall project lighting directly onto an existing runway or taxiway or into existing airport approach surfaces except where necessary for safe and convenient air travel. Lighting for

these uses shall incorporate shielding in their designs to reflect light away from airport approach surfaces. No use shall imitate airport lighting or impede the ability of pilots to distinguish between airport lighting and other lighting.

B. Glare. No glare producing material, including but not limited to unpainted metal or reflective glass, shall be used on the exterior of structures located within an approach surface or on nearby lands where glare could impede a pilot's vision.

C. Industrial Emissions. No new industrial, mining or similar use, or expansion of an existing industrial, mining or similar use, shall, as part of its regular operations, cause emissions of smoke, dust or steam that could obscure visibility within airport approach surfaces, except upon demonstration, supported by substantial evidence, that mitigation measures imposed as approval conditions will reduce the potential for safety risk or incompatibility with airport operations to an insignificant level. The review authority shall impose such conditions as necessary to ensure that the use does not obscure visibility.

D. Communications Facilities and Electrical Interference. Proposals for the location of new or expanded radio, radiotelephone, television transmission facilities, and electric transmission lines shall be coordinated with the ODOT Aeronautics Division to ensure that the use will not cause or create electrical interference with navigational signals or radio communications between an airport and aircraft.

E. Limitations on Water Impoundments.

No new water impoundments of one-quarter acre or larger shall be allowed:

1. Less than 5,000 feet from the end of a runway within an approach surface; and

2. On land owned by the airport or airport sponsor where the land is necessary for airport operations, except where such impoundment is for a storm water management basin established by the airport.

F. Prohibited Uses within a Runway Protection Zone (RPZ). New residential development, schools, hospitals,

nursing homes, theaters, auditoriums and other public assembly facilities are prohibited within the RPZ.

G. Limitations on Landfills.

New landfills are prohibited within 10,000 feet of any airport runway.

14.22.090 Nonconforming Uses

A. These regulations shall not be construed to require the removal, lowering or alteration of any structure not conforming to these regulations. These regulations shall not require any change in the construction, alteration or intended use of any structure, the construction or alteration, which was begun prior to the effective date of the Airport Restricted Area Zoning Overlay.

B. Notwithstanding subsection A. of this section, the owner of any existing structure that has an adverse effect on air navigational safety as determined by City of Newport shall install or allow the installation of obstruction markers as deemed necessary by the City of Newport, so that the structures become more visible to pilots.

C. No land use or limited land use approval or other permit shall be granted that would allow a nonconforming use or structure to become a greater hazard to air navigation that it was on the effective date of the Airport Restricted Area Zoning Overlay.

14.22.100 Airport Development Zone Overlay

A. Purpose. The purpose of the Airport Development Zone Overlay is to encourage and support the continued operation and vitality of Newport Municipal Airport by allowing certain airport-related commercial and recreational uses in accordance with state law.

B. Application. The Airport Development Zone Overlay applies to land identified as being within the airport boundary on the “Property Map” identified as Sheet 16 of the Newport Municipal Airport Master Plan.

C. Conformance with Airport Restricted Area Zoning Overlay. All uses, activities, facilities and structures allowed in the Airport Development Zone Overlay shall

comply with the requirements of the Airport Restricted Area Zoning Overlay. In the event of a conflict between the requirements of the Airport Development Zone Overlay and the Airport Restricted Area Zoning Overlay, the requirements of the Airport Restricted Area Zoning Overlay shall control.

D. Permitted Uses. The following permitted uses replace the permitted uses identified in the underlying zoning district:

1. Customary and usual aviation-related activities, including but not limited to takeoffs and landings; aircraft hangars and tie-downs; construction and maintenance of airport facilities; fixed based operator facilities; a residence for an airport caretaker or security officer; and other activities incidental to the normal operation of an airport. Except as provided in this section, “customary and usual aviation-related activities” do not include residential, commercial, industrial, and other uses.

2. Air passenger and airfreight services and facilities, at levels consistent with the classification and needs identified in the Oregon Department of Aviation Airport System Plan.

3. Emergency medical flight services, including activities, aircraft, accessory structures, and other facilities necessary to support emergency transportation for medical purposes. Emergency medical flight services do not include hospitals, medical offices, medical labs, medical equipment sales, and other similar uses.

4. Law enforcement and firefighting activities, including aircraft and ground-based activities, facilities and accessory structures necessary to support federal, state or local law enforcement or land management agencies engaged in law enforcement or firefighting activities. Law enforcement and firefighting activities include transport of personnel, aerial observation, and transport of equipment, water, fire retardant and supplies.

5. Search and rescue operations, including aircraft and ground based activities that promote the orderly and

efficient conduct of search or rescue related activities.

6. Flight instruction, including activities, facilities, and accessory structures located at airport sites that provide education and training directly related to aeronautical activities. Flight instruction includes ground training and aeronautic skills training, but does not include schools for flight attendants, ticket agents or similar personnel.

7. Aircraft service, maintenance and training, including activities, facilities and accessory structures provided to teach aircraft service and maintenance skills and to maintain, service, refuel or repair aircraft or aircraft components. “Aircraft service, maintenance and training” includes the construction and assembly of aircraft and aircraft components for personal use, but does not include activities, structures or facilities for the manufacturing of aircraft or aircraft related products for sale to the public.

8. Aircraft rental, including activities, facilities and accessory structures that support the provision of aircraft for rent or lease to the public.

9. Aircraft sales and the sale of aeronautic equipment and supplies, including activities, facilities and accessory structures for the storage, display, demonstration and sales of aircraft and aeronautic equipment and supplies to the public but not including activities, facilities or structures for the manufacturing of aircraft or aircraft related products for sale to the public.

10. Crop dusting activities, including activities, facilities and structures accessory to crop dusting operations. Crop dusting activities include, but are not limited to, aerial application of chemicals, seed, fertilizer, defoliant and other chemicals or products used in a commercial agricultural, forestry or rangeland management setting.

11. Agricultural and forestry activities, including activities, facilities and accessory structures that qualify as a “farm use” as defined in ORS 215.203 or “farming practice” as defined in ORS 30.930.

12. Utilities and roads scaled to primarily serve the airport and airport related used, including water and sewer pump stations; water, sewer, and storm water conveyance systems; sewage disposal; electrical service and telecommunication service

E. Conditional Uses. The following conditional uses replace the permitted uses identified in the underlying zoning district:

1. Aeronautic recreational and sporting activities, including activities, facilities and accessory structures at airports that support recreational usage of aircraft and sporting activities that require the use of aircraft or other devices used and intended for use in flight. Aeronautic recreation and sporting activities authorized under this paragraph include, but are not limited to, fly-ins; glider flights; hot air ballooning; ultralight aircraft flights; displays of aircraft; aeronautic flight skills contests; and gyrocopter flights, but do not include flights carrying parachutists or parachute drops (including all forms of skydiving).

2. Flights carrying parachutists, and parachute drops including all forms of skydiving onto an airport, but only upon demonstration that the parachutist business has secured approval to use a drop zone that is at least 10 contiguous acres. The configuration of the drop zone shall roughly approximate a square or a circle and may contain structures, trees, or other obstacles only if the remainder of the drop zone provides adequate areas for parachutists to land safely.

3. Utility corridors for the express purpose of transmitting or transporting electricity, telecommunications, gas, water, sewer and similar services on a regional level.

4. Aviation dependent or related commercial, industrial, or public uses not otherwise listed as permitted uses.

5. Non-aviation related residential, commercial, industrial or public uses in areas designated for non-aeronautical use on the “On-Airport Land Use” map identified as Sheet 15.2 of the Newport Municipal

Airport Master Plan, prepared by WHPacific (dated February 2018).

F. Conditional Use Approval Criteria. In addition to the approval standards listed in Section 14.35.050, an application for a conditional use permit shall:

1. Demonstrate that the uses will not create a safety hazard or otherwise limit existing and/or approved airport uses.

(Chapter 14.22 was enacted by Ordinance No. 2133, adopted on June 18, 2018: effective July 18, 2018.)

CHAPTER 14.23 HISTORIC BUILDINGS AND SITES

14.23.010 Purpose

The purpose of this Section is to assure that alteration, removal, conflicting uses, and energy and environmental consequences are carefully considered when such changes are proposed.

14.23.020 Notice

Notice of intent shall be published for two consecutive weeks in the News-Times or other local newspaper prior to a hearing by the Planning Commission.

14.23.030 Hearing Required

In addition to the provisions of this Section 14.23, the Planning Commission shall conduct a public hearing in accordance with the provisions of Section 14.33, Conditional Uses, and Section 14.52, Procedural Requirements.*

A. Any exterior alteration involving structural changes, or changes which would detract or destroy historic architectural features (such as changes in windows, doors, siding, or roofing) shall require a public hearing. Such hearing shall only be required for buildings or structures listed in the Comprehensive Plan as being significant historical resources which should be preserved. Painting of a structure or repair using materials which restore the building to its original character shall not require a public hearing. Interior alterations shall not require a public hearing unless such changes would be evident on the exterior of the structure.

B. Where such changes would have a negative effect on a significant historical resource, a delay of up to 60 days may be required by the Planning Commission so that alternative solutions may be examined.

14.23.040 Alterations Prohibited**

No changes shall be made if the Planning Commission determines that such changes would detract from or

destroy historic buildings or architectural features of a building determined to be of substantial and significant architectural importance. (See Chapter 2, Physical and Historical Characteristics, of the Comprehensive Plan.)

*(*Amended by Ordinance No. 1989 (1-1-10).*
***Amended to correct scrivener's error by Ordinance No. 1790 (7-6-98).)*

CHAPTER 14.24 BEACH AND SAND DUNE AREAS

14.24.010 Purpose

The purpose of this section is to assure that the sensitive nature of beach and dune landforms is recognized and that development in these areas is designed so as to protect important natural values and reduce hazards to life and property.

14.24.020 Applicability

Compliance with the approval criteria contained in this section is required for development proposed within beach or dune areas identified on the Ocean Shorelands Map contained in the Comprehensive Plan.

14.24.030 Procedure for Review**

A. Applications for land use actions in beach and dune areas shall be accompanied by a site-specific report prepared by a qualified expert. Beach and dune site reports shall conform to the requirements set forth in Section 14.32.040.

B. Site reports for beach and dune areas shall be reviewed in accordance with the review requirements for the land use action being proposed (e.g. building permit, subdivision, etc.).

C. Upon acceptance of the application, the Community Development Department shall process the request in accordance with a Type II Land Use Action decision process consistent with Section 14.52.020.

14.24.040 Site Report Requirements

Site reports for land use actions in beach and dune areas shall, at a minimum, address the following considerations:

A. The type(s) of dune forms to be affected by the proposed development (e.g. active foredunes, interdune areas, older stabilized dunes, etc.).

B. The type of use proposed and the adverse effects it might have on the site and adjacent areas.

C. Hazards to life, public and private property, and the natural environment which may be caused by the proposed use.

D. Temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation.

E. Methods employed to minimize adverse environmental effects on the site and surrounding area.

F. Methods employed to adequately protect the proposed development from geologic hazards, wind erosion, undercutting, ocean flooding, and storm waves.

14.24.050 Review Criteria***

Development other than residential, commercial, or industrial may be allowed only if the following criteria are complied with:

A. The type of use proposed and the adverse effects it might have on the site and adjacent areas;

(Section amended by Ordinance No. 1344 (11-7-83).*
*** Amended to correct scrivener's error by Ordinance No. 1790 (7-6-98).*
**** Subsection added by Ordinance No. 1622 (10-7-91).)*

B. Temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;

C. Methods for protecting the surrounding area from any adverse effects of the development;

D. Hazards to like, public and private property, and the natural environment which may be caused by the proposed use;

E. Is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding, and storm waves, or is of minimal value; and

F. Is designed to minimize adverse environmental effects.

CHAPTER 14.25 SHORT-TERM RENTAL LAND USE REGULATIONS

14.25.010 Purpose

This chapter establishes criteria by which short-term rental uses may be permitted in order to ensure the safety and convenience of renters, owners, and neighboring property owners; protect the character of residential neighborhoods; protect the City's supply of needed housing; and address potential negative effects such as excessive noise, overcrowding, illegal parking, and nuisances (e.g. accumulation of refuse, light pollution, etc.).

It is the intent of these regulations to strike a reasonable balance between the need to limit short-term rental options within neighborhoods to ensure compatibility, while also recognizing the benefits of short-term rentals in providing recreation and employment opportunities, as well as transitional housing for tourists, employees of businesses, and others who are in need of housing for a limited duration.

14.25.010 Approval Authority

A. Upon receipt of a request by an owner or authorized agent to complete a land use compatibility statement for a short-term rental the Community Development Director, or designee, shall determine if the request satisfies the standards of section 14.25.030. If the request satisfies the standards, then the Director shall sign the statement confirming that short-term rental is a permitted use. Such action is ministerial and, as a non-discretionary act, is not subject to appeal.

B. In the event that the Community Development Director or designee, determines that an application does not meet one or more of the standards of section 14.25.030, then the land use compatibility statement shall not be signed.

C. If one or more of the standards under section 14.25.030 cannot be met, an owner may seek relief from those standards through a conditional use permitting process, pursuant to section 14.34.010. Such an application is subject to review by the

Planning Commission via a Type III decision making process, consistent with section 14.52.010, and is to be limited in scope to those standards that cannot be satisfied.

D. A Conditional Use Permit may authorize more than one vacation rental use on street segments in R-1 and R-2 zones where ten or more lots front the street. In such cases, no more than one vacation rental may be permitted for every five lots fronting the street.

E. An approved Conditional Use Permit that grants relief from, or provides alternative requirements to, one or more of the standards of section 14.25.030 shall serve as evidence that standards have been satisfied so that the Director can sign the land use compatibility statement.

14.25.015 Submittal Requirements

Land use compatibility statements shall be submitted on a form provided by the Community Development Department, and shall include the following:

A. Site plan, drawn to scale, showing the dimensions, property lines, existing buildings, landscaped area, and off-street parking locations.

B. Floorplan of the dwelling unit that identifies the rooms dedicated to short-term rental use.

C. If the dwelling unit is within a residential zone, a calculation of the percentage of front yard and total lot area maintained in landscaping.

D. If the dwelling unit relies upon shared parking areas, a copy of a covenant or other binding legal instrument detailing unit owner rights and responsibilities related to the parking areas.

14.25.020 Establishment of a Vacation Rental Overlay Zone

A Vacation Rental Overlay Zone is hereby established to identify areas within the city limits where vacation rentals are compatible uses and, by exclusion from the overlay, areas where vacation rentals are prohibited in order to protect the City's supply of needed housing and

character of its residential neighborhoods. The sole purpose of the Vacation Rental Overlay Zone is to identify where vacation rentals are permitted uses and does not alleviate a vacation rental from having to satisfy requirements that are otherwise applicable under the Newport Municipal Code.

The Vacation Rental Overlay Zone shall be indicated on the Zoning Map of the City of Newport with the letters VROZ and is the area described as follows:

Real property lying within the corporate limits of the City of Newport beginning at the southwest corner of the intersection of NW 12th Street and US 101; thence west along the south line of NW 12th Street to the statutory beach line of the Pacific Ocean; thence southerly along the statutory beach line of the Pacific Ocean to the north line of SW 95th Street; thence east along the north line of SW 95th Street to its intersection with US 101; thence south along the west line of US 101 to a point opposite the south line of SE 98th Street; thence east across US 101 to the southeast corner of the intersection of US 101 and SE 98th Street, such point being coterminous with the Wolf Tree Destination Resort Site incorporated into the Newport Urban Growth Boundary pursuant to City of Newport Ordinance No. 1520; thence southerly, easterly, northerly, and westerly around the perimeter of the Wolf Tree Destination Resort Site to a point at the northeast corner of the intersection of SE 98th Street and US 101; thence north along the east line of US 101 to its intersection with SW Naterlin Drive; thence north and east along the south line of SW Naterlin Drive to SW Bay Street; thence south and east along the south line of SW Bay Street to the Mean Higher High Water(MHHW) line of Yaquina Bay; thence easterly and northerly along the MHHW line to its intersection with the Newport Urban Growth Boundary; thence northerly along the Urban Growth Boundary line to the south line of the Yaquina Bay Road; thence west along the south line of the Yaquina Bay Road to the point where it transitions into SE Bay Boulevard; thence west along the south line of SE Bay Boulevard to SE Moore Drive; thence north and west along the east line of SE More Drive to US 20; thence west along the south line of US 20 to the west line of SE Grant Street; thence north across US 20 to the west line of NE Grant Street; thence north along the west line of NE Grant Street to NE 1st Street; thence west

along the north line of NE 1st Street to US 101; thence north along the east line of US 101 to the north line of NE 12th Street; thence west across US 101 to the point of beginning.

14.25.025 Allowed Locations

A. Home share and bed & breakfast facility use of a dwelling unit is permitted in all residential and commercial zone districts.

B. Vacation rental use of a dwelling unit is permitted within the Vacation Rental Overlay Zone.

14.25.030 Approval Standards

A. Density. The total number of vacation rentals within the Vacation Rental Overlay shall be capped at a level not to exceed 200 dwelling units.

1. A specific cap number shall be established by City Council resolution and that number shall serve as the maximum number of business license endorsements the City will issue for vacation rentals.

2. In the event the cap number established by City Council is reached, the City shall establish a waiting list for the issuance of business license endorsements as they become available on a first come, first served basis.

B. Spacing. Vacation rental use shall be limited to a single building on a lot, or group of lots, that abut a street segment. All dwelling units contained within the building are eligible for vacation rental use. For buildings on corner lots, this standard applies to both street segments.

C. Occupancy. Maximum occupancy for a short-term rental shall be two (2) persons per bedroom, plus two additional persons per property.

D. Guestroom Limitations. The following limitations apply to the number of bedrooms within a dwelling unit that may be occupied by guests staying at a short-term rental.

1. Vacation Rentals and Bed and Breakfast Facilities. A maximum of five (5) bedrooms.

2. Home shares. A maximum of two (2) bedrooms.

E. Parking Standards. One (1) off-street parking space per bedroom that is dedicated to short-term rental use, unless the dwelling unit is within a parking district as defined in section 14.14.100, in which case on-street parking may be used to meet the one (1) space per bedroom requirement provided the parking is allocated in accordance with the requirements of the parking district. Parking spaces shall comply with the dimensional standards of subsection 14.14.090(A). Off-street parking on driveways that extend into underdeveloped rights-of-way may be used to satisfy this requirement provided a stipulation is placed on the endorsement that the authorization may be revoked if the street is improved and driveway shortened.

F. Shared Access. Short-term rentals that rely upon use of shared access and parking areas may only be permitted if a covenant or other binding legal instrument establishes that the owner of the unit maintains exclusive use of the required parking space(s).

G. Landscaping. For short-term rentals situated on individual lots or parcels in residential zones, at least 50% of the front yard and 40% of the total area shall be landscaped. No more than 50% of the front yard landscaping may be impervious surfaces, such as patios and decks. Driveway and parking areas shall not satisfy any portion of these landscaping requirements.

14.25.035 Non-Conforming Short-Term Rentals

A. The non-conforming use provisions of NMC Chapter 14.32 shall apply to all short-term rentals licensed prior to the effective date of this ordinance, except:

1. Vacation rentals located inside the Vacation Rental Overlay Zone within, or adjacent to, a commercial or water-related zone shall count towards the specific cap number established

pursuant to NMC 14.25.030(A)(1), but are not subject to the density limitation of NMC 14.25.030(A), and may be sold or transferred notwithstanding the waiting list provisions of NMC 14.25.030(A)(2).

2. All other vacation rentals located inside the Vacation Rental Overlay Zone shall count towards the specific cap number established pursuant to NMC 14.25.030(A)(1) and, upon sale or transfer, shall be subject to the density limitation of NMC 14.25.030(A) and the spacing standards of NMC 14.25.030(B).

3. Vacation rental use of dwelling units located outside of the Vacation Rental Overlay Zone shall cease upon sale or transfer of the units.

B. In the event that a property owner believes they can establish that imposition of these regulations results in a demonstrable reduction in the property's fair market value, such owner may apply to the City for compensation and/or relief from the regulation under ORS 195.310 to 195.314. If the property owner demonstrates with credible evidence a reduction in fair market value the City may provide compensation and/or regulatory relief in a form and amount of its choosing. The property owner may appeal any such final determination pursuant to ORS 195.318.

(Chapter 4.25 was repealed and replaced by Ordinance No. 2144, adopted on May 6, 2019, effective May 7, 2019.)

CHAPTER 14.26 MAINTENANCE OF PUBLIC ACCESS

14.26.010 Maintenance of Public Access

The city shall review, under ORS 271.080 - 271.230, proposals for the vacation of public easements or rights-of-way that provide access to or along the Yaquina Estuary or the Pacific Ocean. The city shall review, under ORS 271.300 - 271.360, proposals for the sale, exchange, or transfer of public ownership that provide access to or along the Yaquina Estuary or the Pacific Ocean.

Existing public ownerships, rights-of-way, and similar public easements that provide access to or along the estuary or the ocean shall be retained or replaced if they are sold, exchanged, or transferred. Rights-of-way may be vacated to permit redevelopment of existing developed shoreland areas, provided public access across the affected site is retained.

CHAPTER 14.27 HOME OCCUPATIONS

14.27.010 Purpose

The purpose of this section is to allow persons to conduct businesses out of their residences subject to the provisions of this section. It is the intent of this section to:

A. Ensure the compatibility of home occupations with other uses permitted in the residential districts;

B. Maintain and preserve the character of residential neighborhoods;

C. Provide peace, quiet, and domestic tranquility within all residential neighborhoods within the city, and provide freedom from excessive noise, excessive traffic, nuisance, fire hazard, and other possible effects of commercial uses being conducted in residential areas; and

D. Promote the efficient use of public services and facilities by assuring these services are provided to the residential population for which they were planned and constructed, rather than commercial uses.

14.27.020 Permitted Uses

It is not the intent of this section to specifically list all the uses that may qualify as a home occupation. Whether or not a use may be permitted as a home occupation shall be based upon the standards contained in Section 14.27.030 of this ordinance.

14.27.030 Standards

Home occupations shall comply with the following:

A. The home occupation, including storage, must be carried out in a dwelling and/or an accessory building provided there is no outward appearance of a business being operated on the premises.

B. The home occupation may be carried on only by the residents of the dwelling in question.

C. No alteration of the residential appearance of the premises will occur except that which is allowed in the underlying zoning district.

D. There shall be no display of products visible in any manner from the outside of the dwelling.

E. The home occupation, including storage, may occupy no more than 25% of the total gross floor area of the structure or structures in which the home occupation is conducted.

F. Use or storage of hazardous substances is prohibited; except at the consumer commodity level.

G. Any activity that produces radio, TV, or other electronic interference; noise, glare, vibration, smoke, or odor beyond allowable levels as determined by local, state, or federal standards, or that can be detected beyond the property line; is prohibited.

H. The home occupation shall not include repair or assembly of vehicles or equipment with internal combustion engines (e.g. as autos, motorcycles, marine engines, lawn mowers, chain saws, etc.) or of large appliances (e.g. washing machines, dryers, refrigerators, etc.).

I. Visitors, customers, or deliveries shall not exceed that normally and reasonably occurring for a residence, including not more than two business visitors an hour and eight a day.

(This section added by Ordinance No. 1627 (1-21-92); and replaced in its entirety by Ordinance No. 2011 (2-18-11))*

14.27.040 Home Occupation Agreement

Any applicant for a home occupation must sign a Home Occupation Agreement. Such agreement shall be on a form provided by the city and shall, at a minimum, include the standards contained in Section 14.27.030. The application shall also provide a floor plan of all structures on the property where the home occupation is to be located. The site plan shall be drawn to scale and shall

clearly delineate where the home occupation will be conducted.

14.27.050 Business License Required

A business license for the home occupation shall be obtained pursuant to Chapter 4.05 of the Newport Municipal Code.

14.27.060 Revocation

Standards listed in this section shall be construed as conditions of approval. Authorization of a home occupation may be revoked by the Planning Commission in the event conditions of approval are not met or the activities of the use, or use itself, are substantially different from what was represented by the applicant. The revocation process shall be as outlined in Section 14.52, Procedural Requirements.

CHAPTER 14.28 IRON MOUNTAIN IMPACT AREA

14.28.010 Purpose

The purpose of this section is to protect the operation of the Iron Mountain Quarry from adverse impacts of nearby development and to protect development within the area from adverse impacts from quarry operations, while recognizing that some impacts upon each use are unavoidable. It is also the intent of this section to implement the Comprehensive Plan as it relates to the Iron Mountain Rock Quarry.

14.28.020 Establishment of an Iron Mountain Impact Area Overlay Zone

An Iron Mountain Impact Area Overlay Zone is hereby established and applied to any area within the city limits that is within the impact area as defined in the city's Comprehensive Plan. All restrictions and criteria established by this section shall be complied with prior to the issuance of any building permit within the overlay zone. The Iron Mountain Impact Area shall be designated on the official Zoning Map with the symbol "(IMIA)" beside the symbol for the underlying zoning district.

14.28.030 Uses Permitted in an I-1/"Light Industrial" Zoning District**

The following uses are permitted subject to the criteria and standards of the underlying zone and the criteria and standards contained in Section 14.28.140 of this Code:

A. Forest Services.

B. Building Construction - General Contractors and Operative Builders.

C. Construction Other Than Building Contractors - General Contractors.

D. Construction - Special Trade Contractors.

E. Manufacturing of Apparel and Other Finished Products Made From Fabrics and Similar Materials.

F. Manufacturing of Furniture and Fixtures.

G. Printing, Publishing, and Allied Industries.

H. Local and Suburban Transit and Interurban Highway Passenger Transportation.

I. Motor Freight Transportation and Warehousing.

J. U.S. Postal Service.

K. Transportation by Air.

L. Transportation Services.

M. Wholesale Trade--Durable Goods.

N. Wholesale Trade--Nondurable Goods.

O. Automotive Repair, Services, and Garages.

P. Miscellaneous Repair Services.

Q. Bowling Alleys and Billiard and Pool Establishments.

(Added by Ordinance No. 1691 (11-5-93).*
*** Added by Ordinance No. 1775 (9-2-97).)*

14.28.040 Conditional Uses Permitted in an I-1/"Light Industrial" Zoning District*

The following uses are permitted subject to the criteria and standards of the underlying zone, the criteria and standards contained in Section 14.28.140 of this Code, and the issuance of a conditional use permit in accordance with the provisions of Section 14.34, Conditional Uses, and Section 14.52, Procedural Requirements.**

A. Manufacturing of Beverages.

B. Miscellaneous Manufacturing Industries.

C. Building Materials, Hardware, Garden Supplies, and Mobile Home Dealers.

D. Eating and Drinking Places.

E. Dance Halls, Studios, and Schools.

F. Commercial Sports.

G. Miscellaneous Amusement and Recreation Services.

H. Tobacco Manufacturing.

I. Manufacturing of Wood Containers.

J. Miscellaneous Services.

K. Leather and Leather Products.

L. Manufacturing of Fabricated Metal Products (Except Machinery and Transportation Equipment).

M. Manufacturing of Machinery (Except Electrical).

N. Manufacturing of Electric and Electronic Machinery, Equipment, and Supplies.

O. Manufacturing of Transportation Equipment.

P. Pipe Lines (Except Natural Gas).

Q. Electric, Gas, and Sanitary Services.

14.28.050 Uses Prohibited in an I-1/"Light Industrial" Zoning District***

Other uses not listed in Section 14.28.030 and 14.28.040 of this Code are prohibited.

14.28.060 Uses Permitted in an R-4/"High Density Multi-Family Residential" Zoning District****

The following uses are allowed subject to the criteria and standards of the underlying zone and the criteria and standards contained in Section 14.28.140 of this Code:

A. Dwellings, Including Accessory Buildings Such As Meeting Rooms and Recreational Areas.

B. Condominiums.

C. Mobile Home Parks.

D. Child Care Facilities.

E. Uses Related to Federal or State Subsidized Low Income Housing Projects, Including, but not limited to, Head Start, Tenants Associations, and the like.

(Added by Ordinance No. 1775 (9-2-97).*
***Amended by Ordinance No. 1989 (1-1-10).*
**** Added by Ordinance No. 1775 (9-2-97).*
***** Amended by Ordinance No. 1775 (9-2-97).)*

14.28.070 Uses Prohibited in an R-4/"High Density Multi-Family Residential" Zoning District*

The following uses are prohibited in the Iron Mountain Impact Area:

A. Hospitals.

B. Schools, Libraries, Colleges, Churches, Clubs, Lodge Halls, and Museums.

C. Motels, Hotels, and Time-Share Projects.

D. Bed and Breakfast Facilities.

E. Boarding, Lodging, or Rooming Houses.

F. Golf Courses.

G. Recreational Vehicle Parks.

H. Hostels.

I. Any other use not listed in the permitted list contained in Section 14.28.060 of this Code.

(Amended by Ordinance No. 1775 (9-2-97).*

14.28.080 Uses in the Impact Area that are zoned I-2 or I-3**

*** Section Added by Ordinance No. 1878 (10-19-04))*

14.28.090 Uses Permitted Outright and Conditionally in an I-2/"Medium Industrial" Zoning District

The following land use categories authorized by the I-2 zoning in Section 14.03.070 (Commercial and Industrial Uses) either as uses permitted outright or conditionally

may be allowed within the impact area subject to the underlying zone requirements and any applicable standard of Section 14.28.140 (Iron Mountain Impact Area Development Requirements), excluding the noise standards for residential development provided in Section 14.28.140(D):

A. Retail Sales and Service (sales-oriented, general, and bulk);

B. Retail Sales and Service (repair-oriented);

C. Vehicle Repair;

D. Self-Service Storage;

E. Parking Facility;

F. Contractors and Industrial Service;

G. Manufacturing and Production (light and heavy);

H. Warehouse, Freight Movement, and Distribution;

I. Wholesale Sales;

J. Waste and Recycling Related;

K. Basic Utilities and Roads;

L. Utility, Road, and Transit Corridors;

M. Community Service (post offices only);

N. Mining;

O. Communication Facilities.

14.28.100 Uses Permitted in an I-2/"Medium Industrial" Zoning District with Conditions for the IMIA

The following land use categories authorized by the I-2 zoning in Section 14.03.070 (Commercial and Industrial Uses) either as uses permitted outright or conditionally may be allowed within the impact area subject to the underlying zone requirements and any applicable standard of Section 14.28.140 (Iron Mountain Impact

Area Development Requirements), including the noise standards for residential development provided in Section 14.28.140(D):

A. Office;

B. Retail Sales and Service (Personal Services);

C. Retail Sales and Service (Entertainment);

D. Day Care Facility;

E. Educational Institutions (Trade/Vocational Only).

14.28.110 Uses Permitted in an I-3/"Heavy Industrial" Zoning District

The following land use categories authorized by the I-2 zoning in Section 14.03.070 (Commercial and Industrial Uses) either as uses permitted outright or conditionally may be allowed within the impact area subject to the underlying zone requirements and any applicable standard of Section 14.28.140 (Iron Mountain Impact Area Development Requirements), excluding the noise standards for residential development provided in Section 14.28.140(D):

A. Retail Sales and Service (sales-oriented, general, and bulk);

B. Parking Facility;

C. Contractors and Industrial Service;

D. Manufacturing and Production (light and heavy);

E. Warehouse, Freight Movement, and Distribution;

F. Wholesale Sales;

G. Waste and Recycling Related;

H. Basic Utilities and Roads;

I. Utility, Road, and Transit Corridors;

J. Mining;

K. Communication Facilities.

14.28.120 Uses Permitted in an I-3/"Heavy Industrial" Zoning District with Conditions in the IMIA

The following land use categories authorized by the I-3 zoning in Section 14.03.070 (Commercial and Industrial Uses) either as uses permitted outright or conditionally may be allowed within the impact area subject to the underlying zone requirements and any applicable standard of Section 14.28.140 (Iron Mountain Impact Area Development Requirements), including the noise standards for residential development provided in Section 14.28.140 (D):

A. Educational Institutions (trade/vocational only).

14.28.130 Change of Zone or Use in the Iron Mountain Impact Area

In order to approve any change of zone or use in the Iron Mountain Impact Area, the city shall amend the Comprehensive Plan to incorporate a revised analysis of the economic, social, environmental, and energy (ESEE) consequences on the Iron Mountain Quarry. A change of zone may require that the permitted use list in Section 14.03.070 be amended. Uses added to the permitted use list must be compatible with the intent and purpose of the Iron Mountain Impact Area Overlay Zone and the Comprehensive Plan.

14.28.140 Iron Mountain Impact Area Development Requirements

In addition to the criteria established in the underlying zone, all development within the Iron Mountain Impact Area shall comply with the following requirements:

A. The minimum setback for dwelling structures shall be 50 feet from the property line between the Iron Mountain Quarry and its haul road and the structure, and 25 feet from the property line between the Oregon Department of Transportation (ODOT) stockpile site (Tax Lot 800) and the structure. Setbacks from other property lines shall be as required in the underlying zone.

B. All residential development shall install fences or walls or similar site-obscuring structures, including

vegetative barriers such as hedgerows and the like, which shall be no less than six (6) feet in height, between living areas and the Iron Mountain Quarry, haul road, and stockpile site.

C. To the extent it is practicable, all developments shall retain existing vegetation within required setback areas between living areas and the Iron Mountain Quarry, haul road, and stockpile site to serve as visual screening, except for vegetation removed to accommodate required fencing or walls. Nothing set forth herein shall be construed so as to prevent a development from creating lawn areas, playground areas, or similar common areas outside the setback area which are designed to serve the development.

D. Noise Standards.

1. Except as provided in subsection (D)(4) of this section, residential developments shall be designed so that lawful mining, crushing, and processing activities at the Iron Mountain Quarry will not result in anticipated sound levels that violate applicable noise control regulations adopted by the Oregon Department of Environmental Quality (OAR Chapter 340, Division 35).

2. "Anticipated sound levels" refers to sound levels which would be produced by typical quarry operations conducted in compliance with the following:

a. The Department of Geology and Mineral Industries (DOGAMI) mining permit and application for the quarry;

b. ODOT's mining plans set forth in the ESEE analysis adopted as part of the Comprehensive Plan;

c. Any ordinance or regulations adopted by Lincoln County;

d. Refraining from the use of explosives or rock drills before 7:00 A.M. and after 7:00 P.M.; and

e. Utilizing portable noise barriers to attenuate noise from rock drills and compressors, except where topographical features provide equal or better attenuation.

3. In view of the sporadic operation of the quarry, anticipated sound levels may be determined utilizing acoustical modeling techniques based on noise studies of typical aggregate plants.

4. The requirements set forth in subsection (D)(1) of this section shall not apply in the event the provisions of 24 CFR 51 subpart B or successor regulations apply to the development. In that case, the development shall provide evidence of compliance with such provisions which shall be deemed satisfactory compliance with this section.

E. The owner/developer of land in the Iron Mountain Impact Area shall record an easement in favor of the owner and operators of the Iron Mountain Quarry. The easement shall:

1. Identify the Iron Mountain Quarry, haul road, and stockpile site as lawful, preexisting uses of adjacent property described as Tax Lots 600, 700, and 800, Lincoln County Assessor's Map 10-11-20, and state that the quarry is identified as a protected aggregate resource site in the Lincoln County Comprehensive Plan.

2. Identify the Iron Mountain Quarry as an "existing industrial or commercial noise source" as defined by Oregon Department of Environmental Quality administrative rules.

3. Identify that mining and processing of rock and aggregate products for road construction projects occurs on adjacent property. Activities involving the mining and processing or rock and aggregate products includes, but is not limited to, drilling, blasting, excavation, crushing, sorting, and transportation of these products off of the site on the preexisting haul road, and may include manufacture and transportation of asphaltic and Portland cement concrete.

4. State that the owner shall include notice in any rental or lease agreement to advise tenants and occupants of the existence of the quarry and the possibility of residents being disturbed by lawful mining, processing, and transportation activities at the Iron Mountain Quarry.

5. State that residents, tenants, and occupants agree that operations of the quarry are regulated by Lincoln County and agencies of the State of Oregon.

6. State that owners, tenants, and occupants agree not to object to or contest the terms of a permit issued by regulatory authorities for lawful operation at the Iron Mountain Quarry. Owners, tenants, and occupants agree not to initiate or seek any change of land use designation or permit modification which would limit or curtail lawful operation of the quarry.

7. State that the owner of the property grants to the owners and operators of the Iron Mountain quarry, their successors and assigns, an easement to create noise across the owner's property at levels not in excess of the noise standards referenced in this section.

8. State that owners, tenants, and occupants of the property agree to hold the owner and operators of the Iron Mountain Quarry, their successors and assigns, harmless from any claims, demands, and causes of action, of whatever nature, whether legal, equitable, or administrative, arising out of noise produced by the owner or operators of the Iron Mountain Quarry within the standards referenced in this section.

9. State that the owner releases the owners and operators of the Iron Mountain Quarry, their successors and assigns, from all claims of whatever nature, whether legal, equitable, or administrative, present or future, relating to noise produced by the owner or operators of the Iron Mountain Quarry within the standards referenced in this section.

10. State that the easement shall run with the land and bind the parties and their successors, and the tenants and occupants of the property.

11. State that the easement shall terminate when mining quarry is completed and the quarry has been reclaimed in accordance with state laws regulating reclamation.

14.28.150 Iron Mountain Impact Area Review Procedure

Permitted uses listed herein shall be reviewed as follows:

A. Applicants for permitted uses shall submit a site plan conforming to the requirements of Section 14.28.140 and other applicable sections of this Ordinance.

B. Applicants for permitted uses shall submit a report prepared by a registered engineer indicating that the development is designed and will be built to meet the standards of Section 14.28.140.

CHAPTER 14.29 NON-CONFORMING USES IN R-1 ZONING DISTRICTS

CHAPTER 14.30 DESIGN REVIEW STANDARDS

14.30.010 Purpose

Design review districts may be adopted by the City of Newport in accordance with applicable procedures to ensure the continued livability of the community by implementing standards of design for both areas of new development and areas of redevelopment. Design review is an important exercise of the power of the City to regulate for the general welfare by focusing on how the built environment shapes the character of the community.

The Newport Comprehensive Plan identifies six potential urban design districts within the Newport Peninsula including the City Center District (and Highway 101 corridor), Waterfront District, Nye Beach District, Upland Residential District, East Olive District, and the Oceanfront Lodging/Residential District. Additionally, neighborhood plans may be adopted for other areas of Newport that include as an objective the implementation of design review to maintain and/or provide a flexible approach to development by offering two methods of design review from which an applicant can choose. One method of design review is under clear and objective design standards and procedures to allow development that is consistent with the standards to occur with certainty in a timely and cost effective manner. A second alternative method of design review is review under design guidelines, which are a more flexible process for proposals that are creative/innovative and meet the identified guidelines of the applicable design review district.

It is further the purpose of these standards to:

A. Preserve the beautiful natural setting and the orientation of development and public improvements in order to strengthen their relationship to that setting.

B. Enhance new and redeveloping architectural and landscape resources to preserve and strengthen the historic, scenic and/or identified neighborhood character and function of each setting.

C. Improve the vehicular and pedestrian networks in order to improve safety, efficiency, continuity, and relationships connecting Newport neighborhoods.

D. Strengthen Newport's economic vitality by improving its desirability through improved appearance, function, and efficiency.

E. Improve the built environment in order to strengthen the visual appearance and attractiveness of developed areas.

F. Implement the goals and objectives of the adopted neighborhood plans.

14.30.020 Design Review Districts: Overlay Zones Established

The following:

A. Historic Nye Beach Design Review District. The Historic Nye Beach Design Review District Overlay Zone shall be indicated on the Zoning Map of the City of Newport with the letters HNBO and is the area described as follows:

> Beginning at the northeasterly corner of SW Hurbert Street and SW 2nd Street; thence westerly along the north line of SW 2nd Street to the west line of SW Dolphin Street, said point also being the southeast corner of Lot 1, Block B, Barlow Blocks Addition to the City of Newport; thence north along the west line of SW Dolphin Street to 10 feet beyond the north line of Lot 7, said Barlow Blocks Addition; thence westerly, 10 feet north of and parallel with said north line of Lot 7 to the Pacific Ocean; thence northerly along the Pacific Ocean to the south line of NW 12th Street; thence east along the south line of NW 12th Street to the east line of an alley between NW Spring Street and NW Hurbert Street; thence south along the east line of said alley way to the north line of NW 10th Street; thence southwesterly to the southwest corner of the intersection of NW 10th Street and NW Brook Street; thence south along the west line of NW Brook Street to the south line of NW 8th Street;

thence east along the south line of NW 8th Street to the west line of NW Hurbert Street; thence south along the west line of NW Hurbert Street to the north line of NW 6th Street; thence east to the northeast intersection of NW 6th Street and NW Hurbert Street; thence south along the east line of NW Hurbert Street and SW Hurbert Street to the north line of SW 2nd Street and the point of beginning.

14.30.030 Adoption of Design Review: Guidelines and Standards

The document entitled "Newport Design Review: Guidelines and Standards" dated July 29, 2015, is hereby adopted by reference and made a part hereof. The guidelines and standards contained therein shall be the guidelines and standards applicable to the Historic Nye Beach Design Review District.

14.30.040 Design Review Required

The following development activities in an established design review district are required to obtain a design review permit under the design standards in an identified design review district or, in the alternative, to apply for a design review permit and to obtain approval under the design guidelines for that design review district:

A. New construction, substantial improvement, or relocation of one or more dwelling units.

B. New construction, substantial improvement, or relocation of a commercial or public/institutional building.

C. New construction, substantial improvement, or relocation of a residential accessory structure that contains more than 200 square feet of gross floor area and is not more than 10 feet in height.

D. New construction, substantial improvement, or relocation of a commercial accessory structure that contains more than 120 square feet of gross floor area.

E. An addition that increases the footprint of an existing building by more than 1,000 square feet.

14.30.050 Exemptions

The following activities are exempt from the provisions of this chapter:

A. Development activity that is subject to the provisions of Newport Municipal Code Chapter 14.23, Historic Buildings and Sites.

B. Any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications that are solely necessary to assure safe living conditions.

C. Development that does not involve the construction, substantial improvement, or relocation of a dwelling unit, commercial or public/institutional building, or accessory structure.

D. Conversion of space within an existing structure into an accessory dwelling unit.

(Section 14.30.050 revised by Ordinance No. 2152, adopted on November 4, 2019: effective December 4, 2019.)

14.30.060 Approval Authority

The following are the initial review authorities for a Design Review application:

A. Community Development Director. For projects subject only to the design standards specified in the document entitled "Newport Design Review: Guidelines and Standards," dated July 29, 2015. The approval or denial of a Design Review application by the Community Development Director is a ministerial action performed concurrent with City review of a building permit.

B. Planning Commission. For projects that require design review under the design guidelines contained in the document entitled "Newport Design Review: Guidelines and Standards," dated July 29, 2015, including the following:

1. New construction, substantial improvement, or relocation of a dwelling unit; commercial or public/institutional building; or accessory structure that is over 65 feet in length or 35 feet in height; or

2. New construction, substantial improvement, or relocation of a dwelling unit; commercial or public/institutional building; or accessory structure that does not meet the design standards contained in the document entitled "Newport Design Review: Guidelines and Standards" dated July 29, 2015; or

3. New construction, substantial improvement, or relocation of a dwelling unit; commercial or public/institutional building; or accessory structure that involves a conditional use, a variance, or any other type of land use permit for which a Type III Land Use Action decision process is required, pursuant to Chapter 14.52, Procedural Requirements.

14.30.070 Application Submittal Requirements

A. For requests that are subject to Community Development Director review for compliance with design standards, an application for Design Review shall consist of the following:

   1. A completed and signed City of Newport Building Permit Application Form.

   2. Building plans that conform to the submittal requirements for a building permit that include a site plan, floor plan, exterior architectural elevations, cross-section drawings, and construction specifications illustrating how the design standards have been met.

   3. A written checklist identifying the design elements used to comply with the design standards.

B. For requests that are subject to Planning Commission review for compliance with design guidelines, an application for Design Review shall consist of the following:

1. Submittal requirements for land use actions listed in Section 14.52.050.

2. Exterior elevations of all buildings on the site as they will appear after development. Such plans shall indicate the material, texture, shape, and other design features of the building(s), including all mechanical devices.

3. A parking and circulation plan illustrating all parking areas, drive isles, stalls, and points of ingress/egress to the site.

4. A landscape plan showing the location, type and variety, size and any other pertinent features of the proposed landscaping and plantings for projects that involve multiple-family (more than 2 units), commercial, and public/institutional development.

5. A lighting plan identifying the location and type of all permanent area lights, including parking area lighting, along with details of the lighting fixtures that are to be installed.

6. A written set of proposed findings that explain how the project complies with the applicable design guidelines.

7. Any other information the applicant believes is relevant to establishing that the project complies with applicable design guidelines.

C. All plans shall be drawn such that the dimensions can be verified with an engineers or architects scale.

14.30.080 Permitted Uses

In addition to uses permitted outright or conditionally in the underlying zoning district, the following uses are permitted within areas subject to design review.

A. Historic Nye Beach Design Review District.

1. Tourist Commercial (C-2) zoned property.

a. Up to five (5) multi-family dwelling units per lot or parcel are permitted outright provided they

are located on a floor other than a floor at street grade.

b. A single-family residence is permitted outright if located on a floor other than a floor at street grade.

c. A single-family residence is permitted outright, including the street grade floor, within a dwelling constructed prior to January 1, 2004. Residential use at the street grade is limited to the footprint of the structure as it existed on this date.

d. Single family, duplex, triplex, fourplex and multifamily dwelling units, including at the street grade, are permitted outright on property located south of NW 2nd Court and north of NW 6th Street, except for properties situated along the west side of NW Cliff Street.

(Section 14.30.080(A)(1)(d) was amended by Ordinance No. 2165, adopted on June 15, 2020; effective July 15, 2020.)

2. High Density Multi-Family Residential (R-4) zoned property.

a. Uses permitted outright in the C-2 zone district that are not specified as a use permitted outright or conditionally in the R-4 zone district, are allowed subject to the issuance of a conditional use permit in accordance with the provisions of Chapter 14.34, Conditional Uses and subject to the limitation that the use not exceed a total of 1,000 square feet of gross floor area. This provision does not preclude an application for a use as a home occupation under Chapter 14.27, Home Occupations.

14.30.090 Prohibited Uses

The following uses are prohibited within areas subject to Design Review.

A. Historic Nye Beach Design Review District

1. Any new or expanded outright permitted

commercial use in the C-2 zone district that exceeds 2,000 square feet of gross floor area. New or expanded uses in excess of 2,000 square feet of gross floor area may be permitted in accordance with the provisions of Chapter 14.34, Conditional Uses.

2. Recreational vehicle parks within the Tourist Commercial (C-2) and Public Structures (P-1) zoning districts.

(Section 14.30.090 revised by Ordinance No. 2120, adopted on September 18, 2017: effective October 18, 2017.)

14.30.100 Special Zoning Standards in Design Review Districts

All zoning standards and requirements applicable under Ordinance No. 1308 (as amended) in the subject zoning district shall apply, except that the following additional zoning standards are applicable for the design review district as applicable in the underlying zoning designation and shall be modified for each district as specified.

A. Historic Nye Beach Design Review District:

1. No drive through windows are allowed.

2. Commercial buildings with frontage on NW and SW Coast Street, W Olive Street, NW and SW Cliff Street, NW Beach Drive, and NW Third Street shall be set back from the property line fronting the street no more than 5 feet unless the development provides for a pedestrian oriented amenity (such as a courtyard, patio, or café with outdoor seating), compliance with the setback is precluded by topography or by easement, or a larger setback is authorized by the Planning Commission through the design review process.

3. Required yards and setbacks established in Chapter 14.11 (Required Yards and Setbacks) and Chapter 14.18 (Screening and Buffering between Residential and Non-Residential Zones) shall be reduced by 50%, except for Section 14.11.030, Garage Setback, which is to remain at 20-feet. A setback for a garage that is less than 20-feet may be permitted if it is found by the

Planning Commission to be consistent with the Design Review Guidelines pursuant to NMC 14.30.060(B).

4. The following adjustments to Chapter 14.12 (Minimum Size) and Chapter 14.13 (Density Limitations, Table "A") are allowed within the District.

   a. The minimum lot area within both the R-4 and C-2 zones shall be 3,000 square feet.

   b. The minimum lot width for the R-4 zone shall be 30 feet.

5. Residential use permitted on C-2 zoned property located south of NW 2nd Court and north of NW 6th Street, except for properties situated along the west side of NW Cliff Street, shall comply with the following additional requirements:

   a. The maximum residential density is 1,250 square feet per unit.

   b. The maximum building height is 35 feet.

   c. The maximum lot coverage in structures is 64%. If the proposed residential use provides at least 1 off-street parking space for each dwelling unit in a below-grade parking structure (for the purposes of this section below-grade is defined to mean that 50% or more of the perimeter of the building is below-grade) located directly below the residential portion of the structure, the maximum lot coverage allowed is 90%.

   d. The residential use provides at minimum 1 off-street parking space for each dwelling unit.

   e. At least one residential building per lot is set back from the property line abutting the street no more than 5 feet.

(Section 14.30.100(A)(5) was amended by Ordinance No. 2165, adopted on June 15, 2020; effective July 15, 2020.)

6. The following adjustments to the off-street parking requirements of Chapter 14.14 (Parking, Loading, and Access Requirements) are provided for uses within the District:

   a. Commercial uses shall have the first 1,000 square feet of gross floor area exempted from the off-street parking calculation.

   b. All uses within the District shall be allowed an on-street parking credit that shall reduce the required number of off-street parking spaces by one off-street parking space for every one on-street parking space abutting the property subject to the following limitations:

      i. Each on-street parking space must be in compliance with the City of Newport standards for on-street parking spaces.

      ii. Each on-street parking space to be credited must be completely abutting the subject property. Only whole spaces qualify for the on-street parking credit.

   e. On-street parking spaces credited for a specific use may not be used exclusively by that use, but shall be available for general public use at all times. No signs or actions limiting general public use of on-street parking spaces are allowed except as authorized by the City of Newport.

(Section 14.30.100 revised by Ordinance No. 2120, adopted on September 18, 2017: effective October 18, 2017.)

14.30.110 Modification of a Design Review Permit

A modification of an approved design may be requested of the approving authority for any reason by an applicant. Applications for a modification shall be submitted and processed in the same manner as the original application.

A. If the requested modification is from an approval issued under design standards, the modification request shall be approved by the Community

Development Director if the modification also meets the design standards.

B. If the modification does not meet the design standards or if the modification is from an approval issued under the design guidelines, the modification shall be processed under the design review process for compliance with the applicable design guidelines. The Commission's authority is limited to a determination of whether or not the proposed modification is consistent with the applicable design review guidelines.

(Chapter 14.30 was revised by Ordinance No. 2084; adopted September 21, 2015; effective October 21, 2015.)

CHAPTER 14.31 TOWNHOUSES

14.31.010 Purpose

The purpose of this section is to allow for different ownership patterns by allowing townhouses in certain zones subject to specific development standards, to regulate the development of townhouses, and to outline specific development criteria and design parameters to protect public health, safety, and welfare.

14.31.020 Definitions

For the purposes of this section, the following definitions shall apply:

A. Parent Lot. The legal lot or lots in existence prior to the townhouse development.

B. Townhouse. A single-family dwelling in a row of at least two units in which each unit has its own front and rear access to the outside, no unit or portion thereof is located over another unit or portion thereof except for parking spaces or garages, each unit is separated from any other unit by one or more common walls, and each unit has its own underlying townhouse lot.

C. Townhouse Lot. The underlying real estate associated with a townhouse.

14.31.030 Zoning Districts Where Townhouses are Located

Townhouse are an outright permitted use in the R-2, R-3, and R-4 zoning districts subject to the standards contained in this section.

14.31.040 Density

The overall density of a townhouse development shall not exceed the density allowed in the underlying zoning district and shall be computed on the parent lot.

14.31.050 Number of Units in Building

No separate building in a townhouse development may exceed six townhouse units.

14.31.060 Development Standards

All townhouse developments shall meet the following:

A. Minimum lot size: None.**

B. Maximum parent lot coverage: Underlying zone.

C. Maximum height: Underlying zone.

D. Minimum outdoor open space or patio: 150 square feet per townhouse.

E. Minimum parking: 1.5 spaces per townhouse.***

F. Minimum parent lot frontage: 25 feet.

G. Minimum parent lot setback: Underlying zone.

H. Utilities: Each dwelling unit shall be served by separate utilities.

*(*Added by Ordinance No. 1783 (1-20-98).*
***Amended by Ordinance No. 1791 (7-6-98).*
****Parking may be on each lot or in a common parking lot, carport, or garage for one or more townhouses.)*

(Not to Scale)

Lot 1 = 2,000 Sq. Ft./Lot 2 = 1,500 Sq. Ft./Lot 3 = 1,500 Sq. Ft.

14.31.070 Access

The parent lot shall have a minimum of 25 feet of frontage onto a street. For purposes of this section, a street can be either a public or private way dedicated for street purposes. Townhouse lots are not required to have frontage on a street, but in no case may a townhouse lot be further than 100 feet from a street. For townhouse developments where frontage for townhouse lots is not provided, an adequate turnaround as determined by the Fire Marshal on the parent lot is required. In addition, townhouse lots with no frontage shall have a perpetual

easement across any and all lots that have frontage and any intervening lot.

14.31.080 Deed Covenant and Maintenance Agreements

The developer of a townhouse development shall provide the city with copies of any deed restrictions, covenants and conditions, and any maintenance agreements to the Community Development Director prior to final plat approval. Such documents shall be approved by the City Attorney and Community Development Director to assure that adequate provisions are contained in those documents for maintenance of buildings, utilities, landscaping, parking areas, common areas, private streets or drives, and other items held in common.

14.31.090 Process

Townhouse developments are permitted in the R-2, R-3, and R-4 zoning districts as an outright permitted use. However, since a townhouse development will require a segregation of lots, a partition or subdivision, as applicable, will be required with its appurtenant requirements as per the City of Newport Subdivision Ordinance (No. 1285, as amended).

14.31.100 Exception for Reconstruction or Repair of Non-Conforming Townhouse Developments

Nothing in this Ordinance shall be construed to prohibit the complete reconstruction or repair of a non-conforming townhouse development that was in existence on or before February 1, 1998, subject to the conditions and requirements in effect when the townhouse development originally occurred.

CHAPTER 14.32 NONCONFORMING USES, LOTS, AND STRUCTURES

14.32.010 Purpose

The purpose of this section is to establish policy and guidelines for the regulation of nonconforming uses, lots, and structures. It is further the purpose of this section to work towards bringing nonconforming uses, lots, and structures into compliance with this Ordinance, the Comprehensive Plan, and other applicable ordinances and regulations.

14.32.020 General Provisions

A. For purposes of this section, the effective date of this ordinance is September 7, 1982, or the adoption date of any amendment if the amendment, rather than the ordinance originally adopted, creates a nonconforming situation.

B. A nonconforming use, as defined in this ordinance, may be continued and maintained at its lawful nature and extent.

C. Normal maintenance and repair of nonconforming structures is permitted.

D. Nonconforming uses or structures may be altered, expanded, or replaced as provided in subsections 14.32.070 and 14.32.040 after verification under 14.32.030.

E. An application to alter, expand, or replace a nonconforming use or structure may be processed and authorized under a Type II or Type III decision-making procedure as provided by Section 14.52, Procedural Requirements, in addition to the provisions of this section.

F. A nonconforming use may expand onto neighboring properties.

G. If a nonconforming use or structure is discontinued for a period of one year (12 continuous months) or more, further use of the property shall conform to the requirements of this ordinance.

(Portions of this section were amended by Ordinance No. 1426 (4-1-85); Amended in its entirety by Ordinance No. 1679 (7-19-93); Amended in its entirety by Ordinance No. 1996 (1-7-10).)*

14.32.030 Approval Authority

Upon receipt of an application, the Community Development Director or designate shall determine if an alteration, expansion, or replacement of a nonconforming use or structure qualifies for Type II or Type III review based on the standards established in this subsection. There shall be no appeal of the Director's determination as to the decision-making process, but the issue may be raised in any appeal from the final decision on the application.

A. An application shall be processed and authorized using a Type II decision-making procedure when characterized by the following.

   1. The request is to alter, expand, or replace a nonconforming single-family dwelling or structure accessory thereto; or

   2. Alteration or expansion of a nonconforming use or structure is necessary in order to satisfy health and safety or Americans with Disabilities Act (ADA) requirements.

B. All other applications for the alteration, expansion, or replacement of nonconforming uses or structures shall be processed and authorized using a Type III decision-making procedure.

14.32.040 Application Submittal Requirements

In addition to a land use application form with the information required in Section 14.52.020, the application shall include the following:

A. For requests involving structures that do not satisfy required setbacks, the site plan shall also show survey monuments along the property line(s) adjacent to the encroachment.

B. For requests involving structural work within required setbacks or construction that exceeds building height limitations, the application shall include exterior

architectural elevations, drawn to scale, illustrating the proposed structure and adjoining finished ground elevations.

14.32.050 Nonconforming Lots

A. When a nonconforming lot can be used in conformity with all of the regulations applicable to the intended use, except that the lot is smaller than the required minimum set forth in this Ordinance, then the lot may be used as proposed just as if it were conforming.

B. This section applies only to undeveloped nonconforming lots. A lot is undeveloped if it has had no structures upon it from the effective date to the date of intended use.

14.32.060 Verification of Status of Nonconforming Use or Structure

A. Upon receiving an application to alter, expand, or replace a nonconforming use or structure, the approval authority shall determine that the use or structure is nonconforming. Such determination shall be based on findings that:

1. The use or structure was legally established at the time the Zoning Ordinance was enacted or amended; and

2. The use has not been discontinued for a continuous 12-month period.

The approval authority may require the applicant provide evidence that a use has been maintained over time. Evidence that a use has been maintained may include, but is not limited to, copies of utility bills, tax records, business licenses, advertisements, and telephone or trade listings.

B. The approval authority shall verify the status of a nonconforming use as being the nature and extent of the use at the time of adoption or amendment of the Zoning Code provision disallowing the use. When determining the nature and extent of a nonconforming use, the approval authority shall consider:

1. Description of the use;

2. The types and quantities of goods or services provided and activities conducted;

3. The scope of the use (volume, intensity, frequency, etc.), including fluctuations in the level of activity;

4. The number, location, and size of physical improvements associated with the use;

5. The amount of land devoted to the use; and

6. Other factors the approval authority may determine appropriate to identify the nature and extent of the particular use.

7. A reduction of scope or intensity of any part of the use as determined under this subsection for a period of 12 months or more creates a presumption that there is no right to resume the use above the reduced level. Nonconforming use status is limited to the greatest level of use that has been consistently maintained since the use became nonconforming. The presumption may be rebutted by substantial evidentiary proof that the long-term fluctuations are inherent in the type of use being considered.

14.32.070 Alteration, Expansion, or Replacement of Nonconforming Uses or Structures

A. After verification of the status of a nonconforming use pursuant to Section 14.32.030, the approval authority may authorize alteration, expansion, or replacement of any nonconforming use or structure when it is found that such alteration, expansion, or replacement will not result in a greater adverse impact on the neighborhood. In making this finding, the approval authority shall consider the factors listed below. Adverse impacts to one of the factors may, but shall not automatically, constitute greater adverse impact on the neighborhood.

1. The character and history of the use and of development in the surrounding area;

2. The comparable degree of noise, vibration, dust, odor, fumes, glare, or smoke detectable within the neighborhood;

3. Adequacy of infrastructure to accommodate the use. For the purpose of this subsection, infrastructure includes sewer, water, and streets;

4. The comparative numbers and kinds of vehicular trips to the site;

5. The comparative amount and nature of outside storage, loading, and parking;

6. The comparative visual appearance;

7. The comparative hours of operation;

8. The comparative effect on solar access and privacy;

9. Other factors which impact the character or needs of the neighborhood.

B. The approval authority must consider the purpose of the current zoning provisions that cannot be satisfied when determining whether or not the alteration, expansion, or replacement of a nonconforming use or structure will have a greater adverse impact on the neighborhood.

C. To the extent there is a rational nexus, and the City can establish that needed improvements are roughly proportional to proposed development, an alteration, expansion, or replacement of a nonconforming use or structure shall be brought into compliance with provisions of the Zoning Ordinance that relate to:

1. Surfacing of parking areas and landscaping;

2. Exterior design of structures;

3. Outdoor displays, storage, and signage.

D. Nonconforming residences in nonresidential zones may be altered, expanded, or replaced without the

procedure outlined in subsections (A) through (C), above, provided such alteration, expansion, or replacement complies with the siting criteria contained in the R-4 zoning district.

14.32.080 Alteration, Expansion, or Replacement Due to Casualty Loss or Health, Safety and Related Standards

Notwithstanding the provisions of subsection 14.32.070, after verification of the status of a nonconforming use, the approval authority may authorize the alteration, expansion, or replacement of a nonconforming use or structure based on findings that:

A. The alteration or replacement is made necessary by fire, other casualty or natural disaster, provided the restoration or replacement is “in-kind” and an application is submitted within one year from the date of occurrence, or;

B. The alteration, expansion, or replacement is necessary in order to satisfy health and safety or Americans with Disabilities Act (ADA) requirements.

CHAPTER 14.33 ADJUSTMENTS AND VARIANCES

14.33.010 Purpose

The purpose of this section is to provide flexibility to numerical development standards in recognition of the wide variation in property size, configuration, and topography within the City of Newport and to allow reasonable and economically practical development of a property.

14.33.020 General Provisions

A. Application for an Adjustment or Variance from a numerical standard including, but not limited to, size, height, or setback distance may be processed and authorized under a Type I or Type III decision-making procedure as provided by Section 14.52, Procedural Requirements, in addition to the provisions of this section.

B. No Adjustment or Variance from a numerical standard shall be allowed that would result in a use that is not allowed in the zoning district in which the property is located, or to increase densities in any residential zone.

C. In granting an Adjustment or Variance, the approval authority may attach conditions to the decision to mitigate adverse impacts which might result from the approval.

14.33.030 Approval Authority

Upon receipt of an application, the Community Development Director or designate shall determine if the request is to be processed as an Adjustment or as a Variance based on the standards established in this subsection. There shall be no appeal of the Director's determination as to the type of application and decision-making process, but the issue may be raised in any appeal from the final decision on the application.

A. A deviation of less than or equal to 10% of a numerical standard shall satisfy criteria for an Adjustment as determined by the Community

Development Director using a Type I decision-making procedure.

B. A deviation of greater than 10%, but less than or equal to 40%, of a numerical standard shall satisfy criteria for an Adjustment as determined by the Planning Commission using a Type III decision-making procedure.

C. Deviations of greater than 40% from a numerical standard shall satisfy criteria for a Variance as determined by the Planning Commission using a Type III decision-making procedure.

(Amended by Ordinance No. 1511 (1-18-88); amended by Ordinance No. 1828 (10-3-00); amended in its entirety by Ordinance No. 1992 (1-1-2010).)*

14.33.040 Application Submittal Requirements

In addition to a land use application form with the information required in Section 14.52.080, the petition shall include a site plan prepared by a registered surveyor that is drawn to scale and illustrates proposed development on the subject property.

A. For requests to deviate from required setbacks, the site plan shall also show survey monuments along the property line subject to the Adjustment or Variance.

B. For requests to deviate from building height limitations, the application shall include exterior architectural elevations, drawn to scale, illustrating the proposed structure and adjoining finished ground elevations.

14.33.050 Criteria for Approval of an Adjustment

The approval authority may grant an Adjustment using a Type I or Type III decision-making process when it finds that the application complies with the following criteria:

A. Granting the Adjustment will equally or better meet the purpose of the regulation to be modified; and

B. Any impacts resulting from the Adjustment are mitigated to the extent practical. That mitigation may

include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage; and

C. The Adjustment will not interfere with the provision of or access to appropriate utilities, including sewer, water, storm drainage, streets, electricity, natural gas, telephone, or cable services, nor will it hinder fire access; and

D. If more than one Adjustment is being requested, the cumulative effect of the Adjustments results in a project which is still consistent with the overall purpose of the zoning district.

14.33.060 Criteria for Approval of a Variance

The approval authority may grant a Variance using a Type III decision-making process when it finds that the application complies with the following criteria:

A. A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or zoning district. The circumstance or condition may relate to:

1. The size, shape, natural features, and topography of the property, or

2. The location or size of existing physical improvements on the site, or

3. The nature of the use compared to surrounding uses, or

4. The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or zoning district, or

5. A circumstance or condition that was not anticipated at the time the Code requirement was adopted.

6. The list of examples in (1) through (5) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.

B. The circumstance or condition in “A” above is not of the applicant’s or present property owner’s making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.

C. There is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.

D. Authorization of the Variance will not result in substantial adverse physical impacts to property in the vicinity or zoning district in which the property is located, or adversely affect the appropriate development of adjoining properties. Adverse physical impacts may include, but are not limited to, traffic beyond the carrying capacity of the street, unreasonable noise, dust, or loss of air quality. Geology is not a consideration because the Code contains a separate section addressing geologic limitations.

E. The Variance will not interfere with the provision of or access to appropriate utilities, including sewer, water, storm drainage, streets, electricity, natural gas, telephone, or cable services, nor will it hinder fire access.

F. Any impacts resulting from the Variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.

CHAPTER 14.34 CONDITIONAL USES

14.34.010 Purpose

There are certain uses, which, due to the nature of their impacts on surrounding land uses and public facilities, require a case-by-case review and analysis. These are identified as "Conditional Uses." It is the purpose of this section to establish the terms, criteria, and procedures by which Conditional Uses may be permitted, enlarged, or altered. It is further the purpose of this section to supplement the other sections of this Code and the Comprehensive Plan. Nothing in this section guarantees that a Conditional Use permit will be issued.

14.34.020 General Provisions

A. Application for approval of a Conditional Use may be processed and authorized under a Type II or a Type III decision making procedure as provided by Section 14.52, Procedural Requirements, as well as the provisions of this Section.

B. A Conditional Use permit shall be issued only for the specific use or uses, together with the limitations or conditions as determined by the approval authority.

C. The findings and conclusions made by the approval authority and the conditions, modifications, or restrictions of approval, if any, shall specifically address the relationship between the proposal and the approval criteria listed in Section 14.34.050, in the underlying zoning district, and any applicable overlay zones.

D. An application shall be approved if it satisfies the applicable criteria or can be made to meet the criteria through imposition of reasonable conditions of approval. If findings or data or reasonable conditions cannot bring an application into compliance with the criteria, then the application shall be denied.

14.34.030 Approval Authority

A. Application for approval of a Conditional Use shall be processed and authorized using a Type II decision making procedure where specifically identified as

eligible for Type II review elsewhere in this Code or when characterized by the following:

1. The proposed use generates less than 50 additional trips per day as determined in the document entitled Trip Generation, an informational report prepared by the Institute of Traffic Engineers; and

2. Involves a piece(s) of property that is less than one (1) acre in size. For an application involving a condominium unit, the determination of the size of the property is based on the condominium common property and not the individual unit.

B. All other applications for Conditional Uses shall be processed and authorized as a Type III decision-making procedure.

*(*Amended in its entirety by Ordinance No. 1704 (4-18-94); Amended in its entirety by Ordinance No. 1991 (1-1-2010).)*

14.34.040 Application Submittal Requirements

Requests for a Conditional Use permit shall be filed with the Community Development Department on forms prescribed for this purpose. In addition to a land use application form with the information required in Section 14.52.080, the petition shall be accompanied by:

A. A site plan drawn to scale showing the dimensions and arrangement of the proposed development on the applicant's lot; and

B. A signing plan (if applicable); and

C. Building elevations (if the building is existing, photographs documenting the building elevations are sufficient if no exterior changes are proposed); and

D. The applicant's proposed findings of fact; and

E. A list of affected property owners described in Section 14.52.060(C); and

F. For commercial activities that are conditional, a proposed plan of business operation.

14.34.050 Criteria for Approval of a Conditional Use

The approval authority must find that the application complies with the following criteria:

A. The public facilities can adequately accommodate the proposed use.

B. The request complies with the requirements of the underlying zone or overlay zone.

C. The proposed use does not have an adverse impact greater than existing uses on nearby properties, or impacts can be ameliorated through imposition of conditions of approval.

   For the purpose of this criterion, “adverse impact” is the potential adverse physical impact of a proposed Conditional Use including, but not limited to, traffic beyond the carrying capacity of the street, unreasonable noise, dust, or loss of air quality.

D. A proposed building or building modification is consistent with the overall development character of the area with regard to building size and height, considering both existing buildings and potential buildings allowable as uses permitted outright.

CHAPTER 14.35 PD, PLANNED DEVELOPMENTS

14.35.010 Purpose

The purpose of the Planned Development Permit is to provide a greater flexibility in development of land than may be possible under a strict interpretation of the provisions of this Ordinance. It is intended to encourage variety in the development pattern of the community and provides an opportunity for innovative and creative land development. It is further intended to achieve economics in land development, maintenance, street systems, and utility networks while providing building groupings for privacy, usable and attractive open spaces, safe circulation, and the general well-being of the inhabitants. The planned development option serves to encourage developing as one project tracts of land that are sufficiently large to allow a site design for a group of structures. Deviation from specific site development standards is allowable as long as the general purposes for the standards are achieved and the general provisions of the zoning regulations are observed.

14.35.020 Permitted Uses

An approved planned development permit may only include those uses permitted outright or conditionally in the underlying district, except that commercial uses as provided in the C-1/"Retail and Service Commercial" zone district may be permitted within residential zoned areas provided:

A. The area surrounding the proposed location of the commercial uses is deficient in support of commercial opportunities;

B. The proposed commercial development and uses will be primarily for the service and convenience of residents of the neighborhood; and

C. The proposed commercial development and uses must be consistent with the purpose and regulations of the C-1/"Retail and Service Commercial" zone district.

14.35.030 Accessory Uses in Planned Development

In addition to the accessory uses typical for the primary or conditional uses authorized, accessory uses approved as a part of a planned development may include the following uses:

A. Golf courses.

B. Private parks, lakes, or waterways.

C. Recreation areas.

D. Recreation buildings, clubhouses, or social halls.

E. Other accessory structures that the Planning Commission finds are designed to serve primarily the residents of the planned development and are compatible to the design of the planned development.

*(*Section amended in its entirety by Ordinance No. 2005 (July 7, 2010).)*

14.35.040 Preapplication Conference

Prior to actually filing the application with the city, the applicant shall meet with the Community Development Director and other city officials as may be necessary for preliminary staff review of the proposal.

14.35.050 Application Submission

An application for a planned development shall include a Preliminary Development Plan and Final Development Plan. Such plans may be submitted sequentially as separate applications, or they may be submitted at the same time for concurrent review. Submittal requirements for a Preliminary Development Plan are as described in Section 14.35.060. Submittal requirements for a Final Development Plan are as described in Section 14.35.090. Except as otherwise described in this Section, the procedure for review and approval of a planned development shall be in accordance with the provisions of Section 14.52, Procedural Requirements.

14.35.060 Submittal Requirements for Preliminary Development Plans

In addition to a land use application form with the information required in Section 14.52.080, an application for a Preliminary Development Plan shall include:

A. Nine (9) copies of the Preliminary Development Plan that include the following information:

1. A map showing street systems, lot or partition lines and other divisions of land for management, use, or allocation purposes, and status of street ownership.

2. Areas proposed to be conveyed, dedicated, or reserved for public streets, parks, parkways, playgrounds, school sites, public buildings, and similar public and semi-public uses, especially open spaces.

3. A plot plan for each building site and common open space area showing the approximate location of buildings, structures, and other improvements, indicating the open spaces around buildings and structures.

4. A narrative description in specific terms of the size and type of buildings, grading modifications, water supply, drainage, and sewage collection and disposal.

5. Elevation and perspective drawings of proposed structures.

6. A list of all variances to standards of this ordinance or any other city ordinance. All other standards for which variances have not been requested shall apply.

7. A development schedule indicating:

   a. The approximate date when construction of the project can be expected to begin.

b. The stages in which the project will be built and the approximate date when construction of each stage can be expected to begin.

c. The anticipated rate of development.

d. The approximate dates when each stage in the development will be completed.

e. The area, location, and degree of development of common open space that will be provided at each stage.

8. Agreements, provisions, or covenants that govern the use, maintenance, and continued protection of the planned development and any of its common open space areas.

9. The following plans and diagrams, insofar as the reviewing body finds that the planned development creates special problems of traffic, parking, landscaping, or economic feasibility:

a. An off-street parking and loading plan.

b. A circulation diagram indicating proposed movement of vehicles, goods, bicycles, and pedestrians within the planned development and to and from thoroughfares. Any special engineering features and traffic regulation devices needed to facilitate or insure the safety of this circulation pattern shall be shown.

c. A landscaping and tree plan.

d. An economic feasibility report or market analysis.

10. The preliminary plan shall include enough information on the area surrounding the proposed development to show the relationship of the planned development to adjacent uses, both existing and proposed.

14.35.070 Criteria for Approval of a Preliminary Development Plan

The approval authority may approve an application for a Preliminary Development Plan when it finds that the application complies with the following criteria:

A. Size of the Planned Development Site.

1. A planned development shall be on a tract of land at least two acres in low-density residential areas, or;

2. A planned development may be allowed on any size tract of land in high- density residential areas if:

a. An unusual physical or topographic feature of importance to the people of the area or the community as a whole exists on the site or in the neighborhood that can be conserved and still leave the land owner equivalent use to the land by the use of a planned development.

b. The property or its neighborhood has a historical character of importance to the community that will be protected by the use of a planned development.

c. The property is adjacent to or across a street from property that has been developed or redeveloped under a planned development, and a planned development will contribute to the maintenance of the amenities and values of the neighboring development.

B. Dimensional and Bulk Standards.

1. The minimum lot area, width, frontage, and yard requirements otherwise applying to individual buildings in the zone in which a planned development is proposed do not apply within a planned development.

2. If the spacing between main buildings is not equivalent to the spacing that would be required between buildings similarly developed under this Code on separate parcels, other design features shall provide light, ventilation, and other

characteristics equivalent to that obtained from the spacing standards.

3. Buildings, off-street parking and loading facilities, open space, landscaping, and screening shall provide protection outside the boundary lines of the development comparable to that otherwise required of development in the zone.

4. The maximum building height shall, in no event, exceed those building heights prescribed in the zone in which the planned development is proposed, except that a greater height may be approved if surrounding open space within the planned development, building setbacks, and other design features are used to avoid any adverse impact due to the greater height.

5. The building coverage for any planned development shall not exceed that which is permitted for other construction in the zone exclusive of public and private streets.

C. Project Density.

1. The planned development may result in a density in excess of the density otherwise permitted within the zone in which the planned development is to be constructed not to exceed 5%. An increase in density of over 5% but less than 10% can be permitted by the Planning Commission if the arrangement of yards and common open space is found to provide superior protection to existing or future development on adjacent property.

2. If the Planning Commission finds that any of the following conditions would be created by an increase in density permitted by this Section, it may either prohibit any increase in density or limit the increase in density by an amount which is sufficient to avoid creation of any of these conditions:

   a. Inconvenient or unsafe access to the planned development.

b. Traffic congestion in the streets that adjoin the planned development.

c. An excessive burden on sewerage, water supply, parks, recreational areas, schools, or other public facilities which serve or are proposed to serve the planned development.

D. Common Open Space.

1. No open areas may be accepted as common open space within a planned development unless it meets the following requirements:

a. The location, shape, size, and character of the common open space is suitable for the planned development.

b. The common open space is for amenity or recreational purposes, and the uses authorized are appropriate to the scale and character of the planned development, considering its size, density, expected population, topography, and the number and type of dwellings provided.

c. Common open space will be suitably improved for its intended use, except that common open space containing natural features worthy of preservation may be left unimproved. The buildings, structures, and improvements to be permitted in the common open space are appropriate to the uses that are authorized for the common open space.

d. The development schedule that is part of the development plan coordinates the improvement of the common open space and the construction of buildings and other structures in the common open space with the construction of residential dwellings in the planned development.

e. If buildings, structures, or other improvements are to be made in the common open space, the developer shall provide a bond or other

adequate assurance that the buildings, structures, and improvements will be completed. The City Manager shall release the bond or other assurances when the buildings, structures, and other improvements have been completed according to the development plan.

2. No common open space may be put to a use not specified in the Final Development Plan unless the Final Development Plan is first amended to permit the use. However, no change of use may be considered as a waiver of any of the covenants limiting the use of common open space areas, and all rights to enforce these covenants against any use permitted are expressly reserved.

3. If the common open space is not conveyed to a public agency, the covenants governing the use, improvement, and maintenance of the common open space shall authorize the city to enforce their provisions.

E. The planned development is an effective and unified treatment of the development possibilities on the project site while remaining consistent with the Comprehensive Plan and making appropriate provisions for the preservation of natural features such as streams and shorelines, wooded cover, and rough terrain.

F. The planned development will be compatible with the area surrounding the project site and with no greater demand on public facilities and services than other authorized uses for the land.

G. Financial assurance or bonding may be required to assure completion of the streets and utilities in the planned development prior to final approval as for a subdivision (see the Newport Subdivision Ordinance, Newport Municipal Code Chapter 13.05).

14.35.080 Approval of the Final Development Plan

A. Within 12 months following the approval of the Preliminary Development Plan, the applicant shall file with the Planning Commission a Final Development

Plan containing in final form the information required in the preliminary plan. At its discretion, the Planning Commission may extend for six months the period for the filing of the Final Development Plan.

B. If the Community Development Director finds evidence of a major change in the approved Preliminary Development Plan, the Community Development Director shall advise the applicant to submit an application for amendment of the planned development. An amendment shall be considered in the same manner as an original application.

14.35.090 Submittal Requirements for a Final Development Plan

In addition to a land use application form with the information required in Section 14.52.080, an application for a Final Development Plan shall include:

A. The Final Development Plan may be submitted for any reasonably-sized portion of the area previously given preliminary approval for development. The Final Development Plan shall contain the following information:

1. Proposed land uses, building locations, and housing unit densities.

2. Proposed circulation patterns indicating the status of street ownership.

3. Proposed open space locations and uses.

4. Proposed grading and drainage patterns.

5. Proposed methods of water supply and sewage disposal.

14.35.100 Criteria for Approval of a Final Development Plan

The approval authority may approve an application for a Final Development Plan when it finds that the application complies with the following criteria:

A. The Final Development Plan must substantially conform to the land use and arterial street pattern as approved in the Preliminary Development Plan.

B. The proposed uses shall be compatible in terms of density and demand for public services with uses that would otherwise be allowed by the Comprehensive Plan.

C. Adequate services normally rendered by the city to its citizens must be available to the proposed development at the time of approval of the Final Development Plan. The developer may be required to provide special or oversize facilities to serve the planned development.

D. Access shall be designed to cause minimum interference with traffic movement on abutting streets.

E. The plan shall provide for adequate landscaping and effective screening for off-street parking areas and for areas where nonresidential use or high-density residential use could be detrimental to residential areas.

F. The arrangement of buildings, parking areas, signs, and other facilities shall be designed and oriented to minimize noise and glare relative to adjoining property.

G. Artificial lighting, including illuminated signs and parking area lights, shall be so arranged and constructed as not to produce direct glare on adjacent property or otherwise interfere with the use and enjoyment of adjacent property.

H. The area around the development can be developed in substantial harmony with the proposed plan.

I. The plan can be completed within a reasonable period of time.

J. The streets are adequate to serve the anticipated traffic.

K. Proposed utility and drainage facilities are adequate for the population densities and type of development proposed.

L. Land shown on the Final Development Plan as common open space shall be conveyed under one of the following options:

1. To a public agency that agrees to maintain the common open space and any buildings, structures, or other improvements that have been placed on it.

2. To an association of owners or tenants, created as a non-profit corporation under the laws of the State, which shall adopt and impose a declaration of covenants and restrictions on the common open space that is acceptable to the Planning Commission as providing for the continuing care of the space. Such an association shall be formed and continued for the purpose of maintaining the common open space.

M. The Final Development Plan complies with the requirements and standards of the Preliminary Development Plan.

N. No building shall be erected in a planned development district except within an area contained in an approved Final Development Plan, and no construction shall be undertaken in that area except in compliance with the provisions of said plan. All features required in the Final Development Plan shall be installed and retained indefinitely or until approval has been received from the Planning Commission or Community Development Director for modification.

14.35.110 Procedure for Modification of a Planned Development

A. A minor change in the Preliminary or Final Development Plan may be approved by the Community Development Director. A minor change is any change that is not within the description of a major change as provided in the following subparts B and C of this Section.

B. A major change in a Preliminary or Final Development Plan that includes a change from a more restricted use to a less restricted use, or a change in the location, width, or size of a collector or

major thoroughfare street, or in the location or specifications for utilities that is likely to materially affect future street or utility plans of the City may be approved only by the Commission after public hearing.

C. A major change in a Preliminary or Final Development Plan that includes any change in the character of the development or any increase in the intensity or density of the land use or in the location or amount of land devoted to specific land uses or any change in the location, width, or size of a collector or major thoroughfare street, or that substantially changes the location or specification for utilities but which will not materially affect future street or utility plans of the city may be approved by the Commission after public hearing.

D. In considering any request for a change in a Preliminary or Final Development Plan, the Planning Commission shall apply the same standards as are provided in this Article for the approval of Preliminary or Final Development Plans. The Planning Commission may approve, reject, modify, or attach special conditions to a request for modification of a Preliminary or Final Development Plan. The Community Development Director in his reasonable discretion shall determine whether each request for modification of a Preliminary or Final Development Plan is a minor or major change within the remaining of subparts A, B, or C of this Section and shall determine or refer each request appropriately.

14.35.120 Control of the Development After Completion

The Final Development Plan shall continue to control the planned development after it is finished, and the following shall apply:

A. The Community Development Director, in issuing a certificate of completion of the planned development, shall note the issuance on the recorded Final Development Plan.

B. After the certificate of completion has been issued, the use of the land and the construction, modification, or alteration of a building or structure within the

planned development shall be governed by the approved Final Development Plan.

C. After the certificate of completion has been issued, no change shall be made in development contrary to the approved Final Development Plan without approval of an amendment to the plan except as follows:

1. Minor modification of existing buildings or structures may be authorized by the Planning Commission if they are consistent with the purposes and intent of the final plan and do not increase the cubic footage of a building or structure.

2. A building or structure that is totally or substantially destroyed may be reconstructed without approval of an amended planned development if it is in compliance with the purpose and intent of the Final Development Plan.

D. An amendment to a completed planned development may be approved if it is required for the continued success of the planned development, if it is appropriate because of changes in conditions that have occurred since the Final Development Plan was approved, or because there have been changes in the development policy of the community as reflected by the Comprehensive Plan or related land use regulations.

E. No modification or amendment to a completed planned development is to be considered as a waiver of the covenants limiting the use of the land, buildings, structures, and improvements within the area of the planned development. All rights to enforce these covenants against any change permitted by this Section are expressly reserved.

14.35.130 Appeal

In the event that a dispute arises between the Planning Commission and the developer as to any provisions of the Final Development Plan, either party may appeal to the City Council, in accordance with the process outlined

in Section 14.52. Should the developer appeal, a fee for an appeal in an amount set by the city shall be paid.

CHAPTER 14.36 AMENDMENTS TO THE ZONING ORDINANCE

14.36.010 General

Whenever the public necessity and the general welfare require, the City Council of the City of Newport may, on its own motion, or on petition, or on recommendation of the City Planning Commission, (after said Planning Commission and City Council gives public notice and holds public hearings), amend, supplement, or change the regulations or the districts of this ordinance herein established.

14.36.020 Initiation of Amendment

An amendment, supplement, or change in this ordinance may be initiated by:

A. A motion of the City Council.

B. A motion by the City Planning Commission.

C. A petition of the property owner or authorized representative to either the Planning Commission or the City Council.

D. Referral to the Planning Commission. All requests for amendments, supplements, or changes in this ordinance shall, whether initiated with the City Council or otherwise, first be referred to the City Planning Commission.

14.36.030 Filing of Zone Change Petitions

Request for approval of a zoning text or zoning map change shall be filed with the City Manager and shall be upon forms prescribed for the purpose.

14.36.040 Record of Amendments

The City Recorder shall maintain a record of amendments to the text and map of this ordinance in a form convenient for the use of the public.

CHAPTER 14.37 ANNEXATIONS

14.37.010 Purpose

It is the purpose of this section to establish and define annexation terms, criteria, and procedures for when a request is made of the city to annex territory. It is further the purpose of this section to implement the Comprehensive Plan. This section does not apply to city initiated annexations pursuant to ORS Chapter 222.

14.37.020 Definitions

For purposes of this section, the following definitions shall apply:

A. Annexation. The incorporation of county property into the corporate limits of the City of Newport.

B. Consent. A signed document by those agreeing to be annexed.

C. Contiguous. Touching and having a common boundary or point of intersection or separated only by a public right-of-way, stream, lake, bay, or other body of water.

D. Electorate. A person living in an area proposed for annexation and registered to vote in Lincoln County.

E. Owner. An individual, firm, association, syndicate, partnership, or corporation having legal title to land, or is under contract to purchase land, as indicated in the records of the Lincoln County Tax Assessor.

14.37.030 Filing of Application

Requests for annexation shall be filed with the Planning Director on forms prescribed for that purpose. The application shall be accompanied by:

A. The consents of more than half of the owners of land who also own more than half of the land and more than half of the assessed value; or

B. The consents of more than half the owners and more than half the electorate in the territory to be annexed.

14.37.040 Criteria

The sole criteria for annexations are:

A. The required consents have been filed with the city; and

B. The territory to be annexed is within the acknowledged urban growth boundary (UGB); and

C. The territory to be annexed is contiguous to the existing city limits.

(Amended in its entirety by Ordinance No. 1752 (9-16-96).)*

14.37.050 Review and Procedure

Upon receipt of an application for annexation, the Planning Director shall determine within five (5) days whether or not the application is complete. If the application is found to be incomplete, the Planning Director shall return the application to the applicant along with an explanation of why the application is incomplete. The applicant shall have 30 days to submit the necessary materials to complete the application. If the necessary materials are not submitted within the 30 days period, the application shall be considered withdrawn. If the application is found to be complete, it shall be accepted.

After acceptance, the application shall be placed on the agenda of the Planning Commission for a public hearing for their review and recommendation, including a recommendation for an appropriate zoning designation, to the City Council. After the Planning Commission review and recommendation, the proposal shall be forwarded to the City Council for a public hearing. Notice and other procedural requirements for both the Planning Commission and City Council hearings shall be as contained in Section 14.52 of this Ordinance and Chapter 222 of the Oregon Revised Statutes.

14.37.060 Zoning Upon Annexation

The City Council shall determine at the time of annexation during the public hearings the appropriate zoning designation for the property to be annexed. The zoning shall be incorporated into the ordinance annexing the property and shall become effective at the same time the annexation is effective. Such zoning designation shall be in conformity with the Comprehensive Plan.

CHAPTER 14.38 OCEAN SHORELANDS OVERLAY ZONE

14.38.010 Purpose

It is the purpose of this section to recognize the value of the natural resources as identified on the Ocean Shorelands Map contained in the Comprehensive Plan and not addressed by other sections of this Ordinance, more specifically, significant habitat, park and outstanding natural areas, and public access points. This section, in conjunction with the various underlying zones, implements the Natural Features policies contained in the City of Newport Comprehensive Plan.

14.38.020 Definitions

For purposes of this section, the following definitions shall apply:

A. Natural Resources: A significant habitat, park, and outstanding natural area or public access point as inventoried on the Ocean Shorelands Map contained in the Comprehensive Plan.

B. Ocean Shorelands: Land with the Ocean Shorelands Boundary as shown on the Ocean Shorelands Map in the Comprehensive Plan.

C. Planning Director: The Planning Director for the City of Newport or designate.

14.38.030 Permitted Uses

Any permitted use or conditional use authorized in the underlying zone may be permitted, subject to the applicable provisions of this Ordinance and the additional provisions of this overlay zone.

14.38.040 Procedure

Upon receipt of a request for a land use action or a building permit for property within the Ocean Shorelands, the Planning Director shall determine which natural resource is applicable. Applicants requesting approval of land use actions or building permits within areas subject to the provisions of this section shall submit, along with

any application, a detailed site plan and written statement demonstrating how the proposed activities will conform to applicable standards in the section.

Upon acceptance of the application, the Community Development Department shall process the request in accordance with a Type II Land Use Action decision process consistent with Section 14.52, Procedural Requirements.**

14.38.050 Standards for Review

The following standards for the applicable natural resource shall be used in considering the findings required in Section 2-5-7.040:

A. Significant Habitat.

1. No residential, commercial, or industrial development shall be allowed within the boundaries of a significant habitat.

(Section added by Ordinance No. 1344 (11-7-83); completely revised by Ordinance No. 1681 (8-16-93).*
***Amended by Ordinance No. 1989 (1-1-10).)*

2. Development proposed adjacent to a significant habitat shall be located no closer than 50 feet from the habitat area.

3. Low intensity structural developments such as hiking trails, platforms for wildlife viewing, or similar types of educational, scientific, or recreational uses may be permitted within the boundaries of the significant habitat or the 50 foot setback area under the following conditions:

   a. Such development shall not act as a barrier to fish or wildlife.

   b. Such development shall not result in major disturbances or displacement of fish or wildlife.

   c. Such development shall not alter a water course.

d. Such development shall not result in a permanent destruction of wetland vegetation.

B. Park and Outstanding Natural Area.

1. Residential, commercial, or industrial development is prohibited within a Park and Outstanding Natural Area boundary.

2. Development proposed adjacent to a Park and Outstanding Natural Area shall be located no closer than twenty-five (25) feet from the Park and Outstanding Natural Area.

3. The setback area required in (2), above, shall comply with the following:

a. Natural vegetation shall be maintained whenever possible.

b. If natural vegetation cannot be maintained, it shall be replaced within one year after issuance of a final occupancy permit. A bond may be required by the Planning Director to cover the cost of such replacement.

C. Public Access Points. Public access points shall be retained or replaced if sold, exchanged, or transferred.

CHAPTER 14.39 DREDGED MATERIAL DISPOSAL SITES

14.39.010 Purpose

The purpose of this section is to provide a procedure for review of development proposals on dredged material disposal sites within the Newport Urban Growth Boundary (as identified in the amended Yaquina Bay and River Dredged Material Disposal Plan) to ensure that an adequate number of sites are maintained to meet projected dredging needs.

14.39.020 Information Required

Any person proposing development on an identified dredged material disposal site that would preclude its use for dredged material disposal shall submit a conditional use application in accordance with the provisions of Section 14.33, Conditional Uses, and Section 14.52, Procedural Requirements.** The application shall set forth the intended use of the property and any alternative disposal sites or methods (with appropriate documents) considered by the applicant.

14.39.030 Special Notice Requirement

In lieu of the standard notice requirement for conditional use applications, the following requirement shall apply:

The city shall notify the port district and public agencies which participated in the Yaquina Bay Task Force of the proposal in writing at least 14 days prior to the conditional use hearing.

14.39.040 Standards

Following the conditional use hearing, the city shall make findings and determine if adequate alternative disposal sites are available to meet projected needs. The city's decision shall be based on information in the amended Yaquina Bay and River Dredged Material Disposal Plan and the Yaquina Bay Resource Inventory, as well as information submitted by the applicant, port district, or state and federal agencies.

If the city determines that adequate alternative disposal sites are available to meet projected needs, the city may approve or deny the development and may impose conditions consistent with city zoning and other city requirements. The city's Comprehensive Plan shall be amended to designate any new identified alternative sites, increase in capacity of these sites, or deletion of existing sites.

If it is determined that these sites are still required, the development request shall be denied.

*(*Section amended by Ordinance No. 1344 (11-7-83).*
***Amended by Ordinance No. 1989 (1-1-10).)*

CHAPTER 14.40 PDR, PLANNED DESTINATION RESORT

14.40.010 Applicability of Planned Destination Resort Regulations

The City of Newport Comprehensive Plan recognizes that lands designated "Destination Resort" shall be subject to and implemented by a Planned Destination Resort ("PDR") overlay zone. The requirements set forth in this section shall be applicable to all destination resort lands and, except where otherwise provided, are in addition to the applicable underlying zones. Application of the PDR overlay zone to specific properties is accomplished through Comprehensive Plan and Zoning Map amendments. Approval of a map amendment for a site signifies its suitability for development as a destination resort subject to the requirements of this section.

14.40.020 Purpose

The purpose of the PDR overlay zone is to enhance and diversify the recreational opportunities in the City of Newport through the development of destination resorts that complement the natural and cultural attractiveness of the area without significant adverse effect to environmental and natural features, cultural or historic resources and their settings, and other significant resources. The PDR overlay zone provides for the development of destination resorts as recreational developments which provide visitor-oriented accommodations and recreational facilities for resort visitors and residents, consistent with the Comprehensive Plan.

It is the intent of this section to establish procedures and standards for developing large scale destination resorts while ensuring that all applicable land use requirements are achieved and available resources are used productively and efficiently.

14.40.030 Uses Permitted Outright

The following uses shall be permitted outright provided they are part of, and are intended to serve persons at, a destination resort pursuant to this section, and are approved in a final development plan.

A. Visitor-oriented accommodations designed to provide for the needs of visitors of the resort:

1. Overnight lodging, including lodges, hotels, motels, bed and breakfast facilities, time share units and similar transient lodging facilities;

2. Convention and conference facilities and meeting rooms;

3. Retreat centers;

4. Restaurants, lounges, and similar eating and drinking establishments; and

5. Other visitor oriented accommodations compatible with the purposes of this section.

(Entire section added by Ordinance No. 1507 (12-21-87); amended to correct scrivener's errors by Ordinance No. 1790 (7-6-98))*

B. Developed recreational facilities designed to provide for the needs of visitors and residents of the resort:

1. Golf courses and clubhouses;

2. Indoor and outdoor swimming pools;

3. Indoor and outdoor tennis courts;

4. Recreational and health facilities;

5. Marinas, docks, and boating facilities;

6. Equestrian facilities;

7. Shelters for ocean side activities;

8. Wildlife observation shelters;

9. Theaters;

10. Adult recreation facilities;

11. Family recreation facilities;

12. Fishing facilities; and

13. Walkways, bike paths, jogging paths, equestrian trails;

14. Other recreational facilities compatible with the purposes of this section.

C. Residential dwellings:

1. Single-family dwellings;

2. Duplexes, triplexes, fourplexes, and multi-family dwellings;

3. Condominiums;

4. Town houses;

5. Time-share projects; and

6. Other residential dwellings compatible with the purposes of this section.

D. Commercial services and specialty shops designed to provide for the visitors of the resort:

1. Specialty shops, including but not limited to delis, clothing stores, book stores, and specialty food shops;

2. Gift shops;

3. Barber shops/beauty salons;

4. Automobile service stations;

5. Craft and art studios and galleries;

6. Real estate offices;

7. Grocery stores; and

8. Other commercial services which provide for the needs of resort visitors and are compatible with the purposes of this section.

E. Open space areas:

1. Wildlife observation areas;

2. Parks;

3. Lakes;

4. Golf courses; and

5. Any land which is not part of the area for or accessory to visitor-oriented accommodations, developed recreational facilities and residential dwelling.

6. Other open space areas compatible with the purposes of this section.

F. Facilities necessary for public safety and utility service within the destination resort or the city, notwithstanding any limiting provision of this subsection to the contrary.

G. Other uses permitted in the underlying zone compatible with the purposes of this section.

14.40.040 Accessory Uses in Planned Destination Resorts

The following accessory uses shall be permitted provided they are ancillary to the destination resort:

A. Transportation-related facilities;

B. Emergency medical facilities;

C. Storage structures and areas;

D. Kennels as a service for resort guests only;

E. Heliports providing service to the destination resort only, if determined not to interfere with aeronautical operations at the Newport Municipal Airport; and

F. Other accessory uses necessary to accomplish the purposes of this section.

14.40.050 General Requirements

The following requirements shall govern uses and development in a PDR zone:

A. The value of important natural features (INF) shall be preserved.

   1. The necessary habitat of threatened or endangered species shall be protected so as not to diminish the necessary features of that habitat. These areas shall be designated as "INF-no change," and no construction or alteration shall be permitted in these areas which would adversely impact the value of the features.

   2. The overall value of other important natural features on the site, such as streams, rivers, riparian vegetation within 100 feet of streams and rivers, and significant wetlands shall be maintained; or, if altered, the developer shall indicate how the overall values are maintained even with construction, alteration, or post construction activities.

These areas shall be designated as "INF-protected". Construction or alteration in an "INF-protected" area shall be permitted only if the developer files a general description with the city Planning Department showing how the overall values of these "INF-protected" features are to be maintained.

This section is not intended to insure complete in-kind replacement for "INF-protected" features which are altered but is intended to insure that the overall values of these "INF-protected" features are maintained.

B. A destination resort shall in the first phase provide for, and shall include as part of the first PDP and FDP, the following minimum requirements:

   1. At least 150 separate rentable units for visitor-oriented lodging must be provided.

   2. Visitor-oriented eating establishments for at least 100 persons and meeting rooms which provide seating for at least 100 persons.

3. The aggregate cost of developing the lodging facilities and the eating establishments and meeting rooms required in subsections (1) and (2) shall be at least four (4) million dollars (in 1987 dollars).

4. At least $2 million dollars (in 1987 dollars) shall be spent on developed recreational facilities.

5. The facilities and accommodations required by this section must be physically provided or financially assured pursuant to 14.40.160(B) of this section prior to closure of sales, rental, or lease of any residential dwellings or lots, except that the developer may sell undeveloped land for purposes of construction of residential dwellings other than single-family dwellings, duplexes, and triplexes, provided however that no residential dwelling may be occupied until the facilities and accommodations are either physically provided or financially assured as required above.

"Developed recreational facilities" as used in this Section 14.40 shall mean built, constructed, or modified land or pre-existing structures for such recreational purposes as set forth in Section 14.40.030(B).

"1987 Dollars" as used in this subsection shall be the construction cost index set forth in the October 29, 1987, issue of Construction Weekly magazine, which had a construction cost value of 4448.09. The construction cost in future years shall be adjusted in accordance with this index to determine compliance with this subsection.

C. A destination resort shall, cumulatively for all approved FDP's, meet the following minimum requirements:

1. At least 50% of the sum total of the acreage for all approved FDPs, including previously approved FDPs, of the entire destination resort site must be dedicated to permanent open space, excluding yards, streets and parking areas.

2. Individually owned residential units shall not exceed two such units for each unit of visitor-oriented overnight lodging. Individually

owned units may be considered visitor-oriented lodging if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through one or more central reservation and check-in service(s).

D. The commercial uses permitted in Section 14.40.030(D) shall be limited in type, location, number, dimensions, and scale (both individually and cumulatively) to that necessary to serve the needs of resort visitors. A commercial use is necessary to serve the needs of visitors if:

1. Its primary purpose is to provide goods or services that are typically provided to overnight or other short-term visitors to the resort, or the use is necessary for operation, maintenance, or promotion of the destination resort; and

2. That the use is oriented to the resort and is located away from or screened from highways or other major through roadways.

E. Phasing. A destination resort authorized pursuant to this section may be developed in phases. If a proposed resort is to be developed in phases, each phase shall be described in the manner required by the preliminary development plan. Each individual phase shall meet the following requirements:

1. Each phase, together with previously completed phases, if any, shall be capable of operating in a manner consistent with the intent and purpose of this section.

2. All phases of the destination resort taken cumulatively shall meet the minimum requirements of Section 14.40.050(C).

3. Each phase may include two or more distinct non-contiguous areas within the destination resort.

F. PDR Density. Maximum allowable PDR residential density shall not exceed 75% of the gross density allowed by the underlying residential zoning designation. Only those areas designated

"residential" in the CMP shall be considered when calculating the maximum number of allowable residential units.

G. Dimensional Standards. The minimum lot area, width, frontage and yard requirements and building heights otherwise applying to residential dwellings in the underlying zone(s) do not apply within a planned destination resort. The Planning Commission shall require conditions, covenants, and restrictions for the planned destination resort that govern the minimum lot area, width, frontage and yard requirements, and building heights within the resort.

H. Applicability of Other City Ordinances. Provisions of this section shall take precedence over other city ordinances that would otherwise disallow certain uses or activities authorized by this section upon a finding by the City Council that it is compatible with the purposes of the destination resort. The finding shall specifically designate the affected ordinance(s) or portions thereof.

I. All subsequent development of any property zoned PDR shall be in substantial conformance with the applicable CMP.

J. No building permit or building occupancy permit shall be issued for any structure or use to be located within "Destination Resort" lands unless the structure and use complies with the requirements of the FDP and Section 14.40.050(D).

K. No structure or use shall be permitted within an area designated as "buffer area" in the CMP, except to the extent as permitted in the CMP. The "buffer area" shall contain natural vegetation, fences, berms, and landscaped areas as indicated in the applicable PDP.

14.40.060 Application Submission

The authorization and development of a planned destination resort pursuant to this section shall be submitted in three steps: A conceptual master plan (CMP) application, a preliminary development plan (PDP) application for each phase of development, and a

final development plan (FDP) application for each phase of development.

14.40.070 Procedure for Conceptual Master Plan (CMP) Application

The CMP provides the framework for development of the destination resort and is intended to ensure that the destination resort meets, or will cumulatively meet, the requirements of this section, whether developed all in one FDP or throughout the build-out period.

A. The CMP application shall include:

1. Illustrations and graphics identifying:

   a. The location and total number of acres to be developed as a planned destination resort;

   b. The subject area and all land uses adjacent to the subject area;

   c. The topographic character of the site;

   d. Types and general location of proposed development uses, including residential and commercial uses;

   e. Major geographic features;

   f. Proposed methods of access to the development, identifying the main vehicular circulation system within the resort and an indication of whether streets will be public or private;

   g. Major pedestrian, equestrian, and bicycle trail systems;

   h. Important natural features of the site, including habitat of threatened or endangered species, streams, rivers, and significant wetlands and riparian vegetation within 100 feet of streams, rivers and significant wetlands.

      The areas designated as important natural features should be clearly illustrated and labeled either "INF-no change" or

"INF-protected." (See Section 14.40.050(A) for development restrictions relating to areas designated as important natural features.)

i. The location and number of acres reserved as open space, buffer area, or common area. Areas designated as "open space", "buffer area" or "common area" should be clearly illustrated and labeled as such; and

j. Proposed overall density.

2. An explanation of:

a. The natural characteristics of the site and surrounding areas, including a description of resources and the effect of the destination resort on the resources; methods employed to mitigate adverse impacts on natural resources or to overcome site limitations; analysis of how the overall values of the natural features of the site will be preserved, enhanced or utilized in the design concept for the destination resort; and a proposed resource protection plan to ensure that important natural feature values will be protected and maintained in compliance with 14.40.050(A). Resources to be addressed include:

i. Compatibility of soil composition for proposed development(s) and potential erosion hazard;

ii. Geology, including areas of potential instability;

iii. Slope and general topography;

iv. Drainage patterns, including major drainage ways;

v. Areas subject to flooding;

vi. Other hazards or development constraints;

vii. Vegetation;

viii. Water areas, including streams, lakes, ponds, and wetlands;

ix. Fish and wildlife habitats; and

x. Important natural features.

b. How the proposed destination resort will meet the minimum requirements of Section 14.40.050(B) and (C);

c. Design guidelines and development standards defining visual and aesthetic parameters for:

i. Building character;

ii. Landscape character;

iii. Preservation and removal of vegetation; and

iv. Siting of buildings.

d. Proposed method of providing all utility systems, including the location and sizing of the utility systems;

e. Proposed order and schedule for phasing, if any, of development;

f. How the destination resort has been sited or designed to avoid or minimize adverse effects or conflicts on adjacent lands. The application shall identify the surrounding uses and potential conflicts between the destination resort and adjacent uses within 200 feet of the boundaries of the CMP. The application shall explain how any proposed buffer area will avoid or minimize adverse effects or conflicts; and

g. Proposed method of provision of emergency medical facilities or services and public safety facilities or services.

3. Proposed covenants, conditions, and restrictions (CC&R's) which shall include, at a minimum, provisions for:

   a. Use, improvement and maintenance of all common open space areas which may be accomplished through a homeowners or business owners association;

   b. The availability of private security patrol;

   c. Architectural control over all residential dwellings and the establishment of residential design review committee;

   d. Limitations on the nature and extent of individual business advertising so that all commercial uses are publicized as an integral part of the resort and are oriented toward the resort;

   e. Dimensional standards for all residential dwellings; and

   f. The ability of the city to enforce those provisions of the CC&R's which are designated as a requirement for approval of the CMP and which may not be amended without City Council approval. Such designated portions of the CC&R's shall be considered a part of the zoning requirements of this section, and non-enforcement shall not result in waiver of the right to subsequently enforce.

14.40.080 Procedure for Approval of the CMP

A. The applicant shall submit 25 copies of the CMP to the Planning Director, Planning Commission, and City Council for study.

B. Within 30 days of receipt of the CMP application, the Planning Director must determine if the application is complete. If the application is incomplete, the Planning Director shall notify the applicant which portion of the application is incomplete. The applicant shall be given 30 days within which to submit any

additional information necessary to complete the application.

C. An applicant's proposed CMP may be approved only if the CMP and the land uses proposed therein comply with the requirements of this section, including but not limited to Subsections 14.40.030, 14.40.020, 14.40.050, and 14.40.070.

D. The Planning Commission and City Council shall consider the CMP at their respective public hearings pursuant to Section 14.52, Procedural Requirements, except that notice shall be published at least once a week for two successive weeks prior to each hearing.*

E. The Planning Commission shall recommend to the City Council approval, disapproval, or modification and approval of the CMP and attach any conditions it finds are necessary to carry out the purposes of this section.

F. The City Council must take final action on the CMP application within 120 days after the CMP application is complete.

G. Approval of the CMP by the City Council shall give the applicant the right to proceed with submission of the preliminary development plan.

H. An applicant may submit an application for the CMP and an application for a preliminary development plan for the first phase of the development at the same time, and the Planning Commission and City Council may consider both at a public hearing pursuant to the procedures of this section.

*(*Amended by Ordinance No. 1989 (1-1-10).*

14.40.090 Procedure for Modification of a Conceptual Master Plan

A. Any substantial as determined by the Planning Director, proposed to an change approved CMP shall be considered in the same manner as the original CMP. An insubstantial change may be approved by the Planning Director. Substantial change to an approved CMP, as used in this section, means an alteration in the type, scale, location, phasing, or

other characteristics of the proposed development such that the findings of fact upon which the original approval was based would be materially affected. The Planning Director shall provide written notice by mail to the members of the City Council as to the nature of the proposed change, and the decision of the Planning Director as to whether the change is substantial, or whether the Director has referred the issue to the Planning Commission, as provided in Subsection (B) below.

B. The Planning Director may refer to the Planning Commission the decision as to whether a change in the CMP is substantial. The Planning Commission shall render a determination on all such referrals unless the City Council, within 14 days from the date of the notice by the Planning Director, in the manner provided below, elects to review the Planning Director's decision to refer the issue to the Planning Commission. The Planning Director shall notify by mail the members of the City Council as to the decision of the Planning Commission.

C. The decision of the Planning Director or the Planning Commission shall be final, unless within 14 days a majority of the City Council members then present and voting elect to have the issue considered by the City Council. In such event, the City Council shall thereafter consider the issue at a public meeting. The developer shall be notified of the date, time, and place of the public meeting, and the developer shall have an opportunity to submit written or oral testimony on the issue at the public meeting.

14.40.100 Procedure for Preliminary Development Plan (PDP) Application

A PDP shall be provided for each development phase of the destination resort. Completion of construction of a phase shall not be a prerequisite to approval of subsequent PDP's.

A. The PDP application shall include:

1. Identification of the area to be included within the phase. A phase may include two or more distinct, non-contiguous areas within the destination resort.

2. Text or graphics explaining and illustrating:

   a. How the phase complies with the CMP and contributes to the cumulative, integrated destination resort;

   b. The use, location, size, and design or proposed alteration, if permitted, of all important natural feature values (both "INF-no change" and "INF-protect"), "open space", "buffer areas" and "common areas" included in the phase;

   c. The use and general location of all buildings, other than residential dwellings, and the proposed density of residential development by location;

   d. Preliminary location of all sewer, water, storm drainage, and other utility facilities, and the materials, specifications and construction methods for the water and waste water systems;

   e. Preliminary location and widths of all roads, streets, parking, pedestrian ways, equestrian trails, and bike paths;

   f. Methods to be employed to buffer and mitigate the potential adverse effects on adjacent resource uses and properties;

   g. Building elevations of visitor-oriented accommodations, recreational facilities, and commercial services sufficient to demonstrate the architectural character of the proposed development; and

   h. How all commercial uses meet the requirements of 14.40.050(D), and the size or floor area of the commercial uses.

   i. Preliminary location of any emergency medical facilities and public safety facilities.

B. When a phase includes a residential subdivision, a preliminary subdivision plat consistent with the requirements set forth in the Subdivision Ordinance shall be submitted with the PDP, and the procedures of this PDR Section shall be applicable.

14.40.110 Procedure for Approval of PDP

A. Each PDP application shall be submitted to the Planning Director, who shall, within 30 days of its receipt, determine whether the application is complete. If the application is incomplete, the Planning Director shall notify the applicant which portions of the PDP application are incomplete. The applicant shall be given 30 days within which to submit any missing information.

B. The Planning Commission shall consider each PDP at a public hearing pursuant to Section 14.52.

C. An applicant's proposed PDP may be approved only if the PDP and the land uses proposed therein substantially comply with the approved CMP and comply with the requirements of this section, including but not limited to Subsections 14.40.030, 14.40.020, 14.40.050, and 14.40.070.

D. The Planning Commission shall approve, disapprove, or modify and approve the PDP and attach any conditions it finds are necessary to carry out the purposes of this section.

E. The Planning Commission must take final action on each PDP application within 120 days after the PDP application is complete.

F. Planning Commission approval of a PDP shall give the applicant the right to proceed with submission of an FDP for that approved phase.

G. Any person having standing (as defined in Section 14.52) may appeal the decision of the Planning Commission in the manner provided in Section 14.52.* A majority of the City Council present and voting at a regular or special City Council meeting within 14 days from the date of the decision by the Planning Commission may elect to review the

decision of the Planning Commission. Review of the Planning Commission's decision by the City Council shall not be considered an appeal, and no appeal fee shall be required.

*(*Amended by Ordinance No. 1989 (1-1-10).)*

14.40.120 Procedure for Modification of an Approved Preliminary Development Plan

A. Any substantial change, as determined by the Planning Director, proposed to an approved PDP shall be considered in the same manner as the original PDP. An insubstantial change to the PDP may be approved by the Planning Director. Substantial change to an approved PDP as used in this section means:

1. A change from a more restricted use to a less restricted use;

2. A substantial change in the location, width, or size of a major street;

3. Any increase in the intensity or density of a land use or a substantial change in the location or amount of land devoted to specific land use;

4. Any substantial change in the location or maintenance costs of utilities or streets that would materially affect future street or utility plans of the city; or

5. Any other change that would result in a change in the character of the development.

The Planning Director shall provide written notice by mail to the members of the City Council as to the nature of the proposed change, and the decision of the Planning Director as to whether the change is substantial, or whether the Director has referred the issue to the Planning Commission, as provided in Subsection (B) below.

B. The Planning Director may refer to the Planning Commission the decision as to whether a change in the PDP is substantial. The Planning Commission

shall render a determination on all such referrals unless the City Council, within 14 days from the date of the notice by the Planning Director in the manner provided below, elects to review the Planning Director's decision to refer the issue to the Planning Commission. The Planning Director shall notify by mail the members of the City Council as to the decision of the Planning Commission.

C. The decision of the Planning Director or the Planning Commission shall be final, unless within 14 days a majority of the City Council members then present and voting elect to have the issue considered by the City Council. Review of the Planning Commission's decision by the City Council shall not be considered an appeal, and no appeal fee shall be required. In such event, the City Council shall thereafter consider the issue at a public meeting. The developer shall be notified of the date, time, and place of the public meeting, and the developer shall have an opportunity to submit written or oral testimony on the issue at the public meeting.

D. Any person having standing (as defined in Section 14.52) may appeal the decision of the Planning Commission in the manner provided in Section 14.52.*

*(*Amended by Ordinance No. 1989 (1-1-10).)*

14.40.130 Procedure for Final Development Plan (FDP) Application

A. Within one year following the approval of each PDP, the applicant shall file with the Planning Commission an FDP containing, in final form, the information required in the PDP. In its discretion (at the request of the applicant) and for a good cause, the Planning Commission may extend for six (6) months the period for filing of the FDP.

B. When a phase includes a residential subdivision, a final subdivision plat consistent with the requirements set forth in the Subdivision Ordinance shall be submitted with the FDP, and the procedures of this section shall be applicable.

14.40.140 Procedure for Approval of an FDP

A. If the Planning Director, in his/her reasonable discretion, finds evidence of a substantial change from the PDP, the Planning Director shall advise the Applicant to submit an application for amendment of the PDP in accordance with Section 14.40.110.

B. The Planning Commission shall determine whether the FDP is consistent with the PDP, whether all areas which are either protected or limited from development as shown on the PDP are appropriately mapped, and may approve, disapprove, or modify and approve the FDP, and may attach any reasonable conditions to an FDP.

C. The decision of the Planning Commission shall be final, unless within 14 days a majority of the City Council members then present and voting elect to have the issue considered by the City Council. Review of the Planning Commission's decision by the City Council shall not be considered an appeal, and no appeal fee shall be required. In such event, the City Council shall thereafter consider the issue at a public meeting. The developer shall be notified of the date, time, and place of the public meeting, and the developer shall have an opportunity to submit written or oral testimony on the issue at the public meeting.

D. Any person having standing (as defined in Section 14.52) may appeal the decision of the Planning Commission in the manner provided in Section 14.52.*

*(*Amended by Ordinance No. 1989 (1-1-10).)*

14.40.150 Administration of the Final Development Plan

No building permits shall be issued except within an area contained in an approved FDP, and no construction shall be undertaken in that area except in compliance with the provisions of the FDP. The following requirements shall apply to the administration of a FDP:

A. The building official, in reviewing plans submitted for building permits, shall note the issuance on the FDP.

B. After the building permits have been issued, the use of the land and the construction, modification, or alteration of buildings or structures within the destination resort shall be governed by the approved FDP.

C. No change shall be made in development contrary to the approved FDP without approval of an amendment to the plan except as follows and as determined by the Planning Director:

1. Insubstantial modifications of existing buildings or structures, or in the location of buildings or structures, are allowed if they are consistent with the purposes and intent of the FDP.

2. A building or structure that is totally or substantially destroyed may be reconstructed without a final development plan amendment if it is in compliance with the purpose and intent of the FDP.

D. An amendment to an FDP may be approved if it is required for the continued success of the destination resort, if it is appropriate because of conditions that have occurred since the FDP was approved, or because there have been changes in the development policy of the city as reflected by the Comprehensive Plan or related land use regulations, provided that the amendment is consistent with the purpose and general requirements of this section.

14.40.160 Provision of Streets, Utilities, Developed Recreational Facilities, and Visitor-Oriented Accommodations

A. The Planning Commission shall assure that streets, utilities, developed recreational facilities, and visitor-oriented accommodations required by the FDP are physically provided or are guaranteed through surety bonding or substantial financial assurances prior to closure of sale of individual lots or units.

B. Financial assurance or bonding to assure completion of the streets and utilities, developed recreational facilities, and visitor-oriented accommodations in the

FDP may be required pursuant to procedures of Section 3-6-1 of the Newport Subdivision Ordinance.

14.40.170 Expiration

If substantial construction of an FDP has not taken place within one year from the effective date of an FDP, the approval shall expire and be void. The Planning Commission may grant extensions to the deadline for substantial construction of an approved FDP.

CHAPTER 14.41 ASSISTED LIVING FACILITIES IN R-2 ZONES

14.41.010 Applicability

The requirements for an assisted living facility in an R-2 zone set forth in this section are in addition to the provisions of Section 14.33, Conditional Uses, and Section 14.52, Procedural Requirements.**

For the purpose of this section, an assisted living facility is defined in Section 14.01.010 "Definitions" of this Ordinance.

*(*Added by Ordinance No. 1759 (1-21-97).*
***Amended by Ordinance No. 1989 (1-1-10).)*

14.41.020 Purpose

The purpose of this section is to provide for assisted living facilities in the R-2 zoning districts. It is also the intent of this section to require development criteria so as to minimize the impacts of assisted living facilities on surrounding properties.

14.41.030 Standards

Assisted living facilities in an R-2 zone shall comply with the following:

A. The minimum lot size shall be two (2) acres.

B. Parking requirements shall be 0.8 spaces per unit, or greater, as may be required by the reviewing body to meet the needs of the proposal. Parking shall be provided on-site, and it shall not be allowed in a required front yard.

C. The total number of units shall not exceed one (1) unit per 3,750 square feet of lot area.

D. The parking area shall be screened from adjoining properties by a sight-obscuring fence or landscaping.

E. Outward modification of the structure or grounds may be made only if such changes are compatible with the character of the neighborhood.

F. One (1) on-premise sign is allowed. Such sign may be a wall sign or a pole/ground sign as defined in the City of Newport Sign Ordinance. The sign shall be limited to 10 square feet and shall not be internally illuminated. External illumination shall be so directed as to not shine directly onto any adjacent building. Pole/ground signs shall be no higher than five (5) feet in height and shall be so placed as to not create a vision clearance at street intersections or at street and driveway intersections.

G. An assisted living facility in an R-2 zone shall comply with the width, frontage, lot coverage, and building height requirements of the R-2 zone.

H. Buildings, structures, or portions thereof shall comply with the required yards and setbacks of the R-2 zone, except that side and rear setbacks shall be a minimum of one (1) foot per unit, and all setbacks shall additionally be increased by one (1) foot for every foot by which the building exceeds a height of 25 feet.

I. Landscaping and screening, which may include vegetated berms, shall provide protection outside the boundary lines of the parcel comparable to that otherwise required of development in the R-2 zone.

J. Along with the application for the conditional use permit, the applicant shall submit a landscaping plan (showing tree and plant locations, species, and size, as well as the parking layout), elevations (showing materials to be used for siding and roofing), and a site plan. All of these shall be drawn to scale and shall demonstrate how the project complies with criteria A through I, above.

K. Deliveries of food and the like to an assisted living facility in an R-2 zone shall be allowed only during the hours between 8:00 A.M. and 5:00 P.M.

CHAPTER 14.42 SOUTH BEACH OPEN SPACE OVERLAY ZONE

14.42.010 Purpose

The South Beach Open Space Overlay Zone (indicated by the letters "SBOS" on the City of Newport Zoning Map) is intended to implement the South Beach Neighborhood Land Use Plan's Policy No. 4 to encourage the private maintenance of open space in the South Beach neighborhood and the use of ORS 308A tax incentives for private property owners maintaining open space.

14.42.020 Procedure

The consideration of the designation of property with the South Beach Open Space Overlay Zone shall be processed in the same manner as an amendment to the Comprehensive Plan.

14.42.030 Criteria

A determination of whether or not to apply the South Beach Open Space Overlay Zone shall be based on the following criteria:

A. Suitability of the land for the open space zone designation in consideration of any one of the following factors:

1. The land is designated by the Newport Comprehensive Plan as open space land or potential open space land; or,

2. The preservation of the land area in its present use would:

a. Conserve and enhance natural or scenic resources; or,

b. Protect air or streams or water supply; or,

c. Promote conservation of soils, wetlands, beaches, or tidal marshes; or,

d. Conserve landscaped areas, such as public or private golf courses, which reduce air pollution

and enhance the value of abutting or neighboring property; or,

e. Enhance the value to the public or abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries, or other open space; or,

f. Enhance recreation opportunities; or,

g. Preserve historic sites; or,

h. Promote orderly urban or suburban development; or,

i. Retain in their natural state tracts of land, on such conditions as may be reasonably required by the City Council.

B. A weighing of the following factors:

1. The projected costs and other consequences of extending urban services to the affected property;

2. The value of preserving the property as open space;

3. The projected costs and other consequences of extending urban services beyond the affected lot or parcel; and,

4. The projected costs and other consequences, including the projected costs of extending urban services, of expanding the urban growth boundary in other areas if necessary to compensate for any reduction in available buildable lands.

*(*Entire section added by Ordinance No. 1900 (12-4-06).)*

14.42.040 Uses Permitted

Uses permitted outright within the South Beach Open Space Overlay Zone include:

A. Uses existing at the time the open space designation is applied.

B. Low intensity recreational, educational, or scientific uses (including such uses as hiking/bicycle pathways/trails, wildlife viewing platforms, monitoring stations, and other similar types of uses).

C. Public or private utility infrastructure.

CHAPTER 14.43 SOUTHBEACH TRANSPORTATION OVERLAY ZONE (SBTOZ)

14.43.010 Purpose

The purpose of the SBTOZ is to promote development in the South Beach area of Newport in a way that maintains an efficient, safe, and functional transportation system. This Section implements the Trip Budget Program for South Beach established in the Newport Transportation System Plan to ensure that the planned transportation system will be adequate to serve future land use needs.

14.43.020 Boundary

The boundary of the SBTOZ is shown on City of Newport Zoning Map.

14.43.030 Applicability

The provisions of this Section shall apply to development that has the effect of increasing or decreasing vehicle trips to a property that is within the city limits. Any conflict between the standards of the SBTOZ and those contained within other chapters of the Newport Zoning Ordinance shall be resolved in favor of the SBTOZ.

14.43.040 Permitted Land Uses

Any permitted use or conditional use authorized in the underlying zone may be permitted, subject to the applicable provisions of this Ordinance and the additional provisions of this overlay zone.

14.43.050 Definitions

A. Transportation Analysis Zone (TAZ). A geographical area used in transportation planning modeling to forecast travel demands.

B. Trip. A single or one-direction vehicle movement with either the origin or destination inside the area being studied as specified in the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual.

C. Primary Trip. A trip made for the specific purpose of visiting the generator. The stop at the generator is the primary reason for the trip. The trip typically goes from origin to generator and then returns to the origin. Primary trips do not include "passby" or "diverted linked" trips as those terms are defined in the latest edition of the Institute of Transportation Engineers (ITE) Trip Generation Manual.

D. Trip Budget Program. The program for tracking the number of vehicle trips attributed to new development as described in Chapter 14.43 of the Newport Zoning Ordinance and Transportation System Plan element of the Newport Comprehensive Plan.

14.43.060 Trip Generation

Proposed development on parcels within the SBTOZ may not generate more PM peak hour trips than are budgeted for the TAZ in which the parcel is located, except as provided in Section 14.43.100.

A. Documentation that this requirement is met can be provided through the submittal of a Trip Assessment Letter, pursuant to 14.43.080.A, or a Traffic Impact Analysis, if required by 14.45.010.

B. The PM peak hour trip generation is determined through the latest edition of the ITE Trip Generation Manual. The following uses are required to calculate primary trips only, as defined in 14.43.050.C:

1. Personal service oriented uses.

2. Sales or general retail uses, total retail sales area under 15,000 square feet.

3. Repair oriented uses.

14.43.070 Trip Budget Ledger

The Community Development Director shall maintain a ledger which contains the following:

A. For each TAZ, the total number of vehicular PM peak-hour trips permitted to be generated by future development projects.

B. The balance of unused PM peak-hour trips within each TAZ.

C. The balance of unused PM peak-hour trips in the Trip Reserve Fund.

D. For each TAZ, where applicable, the number of trips allocated from the Trip Reserve Fund.

E. For each TAZ, where applicable, the number of additional trips authorized as a result of mitigation performed in accordance with recommendations contained in a Traffic Impact Analysis approved by the City of Newport, pursuant to Chapter 14.45.

F. The percentage of the total trips that have been allocated within each TAZ.

14.43.080 Trip Assessment Letter

A. Proposed development that would increase or decrease the number of vehicle trips being generated to or from a property must submit a Trip Assessment Letter that demonstrates that the proposed development or use will not generate more PM peak-hour trips than what is available in the trip budget for the TAZ in which it is located. A Trip Assessment Letter shall be prepared and submitted:

1. Concurrent with a land use that is subject to a land use action; or

2. If no land use action is required, than prior to issuance of a building permit.

B. Upon request by the applicant, the City shall develop and provide applicant with a Trip Assessment Letter.

C. The latest edition of the Trip Generation Manual published by the Institute of Transportation Engineers (ITE) shall be used as the standard by which to determine expected PM peak hour vehicle trips, unless a specific trip generation study that is approved by the City Engineer indicates an alternative trip generation rate is appropriate.

D. A copy of the Trip Assessment Letter will be provided to ODOT prior to City action on the proposal.

E. A Trip Assessment Letter shall rely upon information contained in a Traffic Impact Analysis, where such analysis has been prepared pursuant to Chapter 14.45 of this Ordinance.

14.43.090 Allocation of Trips

Trips are allocated by TAZ in the SBTOZ. The trip totals for each TAZ, available for future allocation within the SBTOZ, can be obtained from the Community Development Department.

A. Trips may not be transferred from one TAZ to another.

B. Total number of trips allocated to any TAZ may be exceeded only through:

1. The allocation of trips from the Trip Reserve Fund, pursuant to 14.43.100, or

2. Mitigation of the expected impacts of the proposed development, supported by a Traffic Impact Analysis (Chapter 14.45).

C. City shall allocate trips to proposed development by deducting them from the Trip Budget Ledger if trips available in the Trip Budget Ledger meet or exceed the number of trips identified in the Trip Assessment Letter.

D. Except as otherwise provided in this subsection, City shall deduct trips from the Trip Budget Ledger at such time as a land use decision is approved and is to treat those trips as vested so long as that land use decision

is valid. In the event a land use decision expires, the City shall add the trips back to the Trip Budget Ledger.

1. For a tentative (preliminary) plat that does not include phases, trips shall be vested so long as the application for final plat is submitted within the time established by the Subdivision Ordinance;

2. For a tentative (preliminary) plat that includes phases the total vesting period for all phases shall not be greater than ten (10) years;

3. For a final plat, trips shall vest for a period of ten (10) years from the date the plat is recorded;

4. City shall not deduct trips from the Trip Budget Ledger at such time as a land use decision is issued for a property line adjustment, partition plat, or minor replat; and

5. An applicant seeking approval of a tentative or final plat may elect to have the City not deduct trips from the Trip Budget Ledger at such time as a land use decision is approved. In such cases the land use decision shall note that use of the resulting lots may be limited to available trips within the TAZ as documented in the Trip Budget Ledger.

E. For development that is not subject to a land use decision, the City shall deduct trips from the Trip Budget Ledger at such time as a Trip Assessment Letter is submitted or requested by the applicant. The number of trips deducted is to be documented in writing as vested with the development for a period of six months or until such time as a building permit is issued, whichever is shorter. If a building permit is not obtained within this timeframe than the City shall add the trips back to the Trip Budget Ledger. City implementation of this subsection shall be a ministerial action.

14.43.100 Trip Reserve Fund

The Trip Reserve Fund total is maintained by the Community Development Department.

A. Development proposals that require trips from the Trip Reserve Fund to satisfy the requirements of this Section are subject to a Type III review process.

B. Trips from the Trip Reserve Fund may be used to satisfy the requirements of this Section for any permitted land use type, provided all of the following criteria is met:

1. There are insufficient unassigned trips remaining in the TAZ to accommodate the proposed types of use(s);

2. The proposal to use trips from the Trip Reserve Fund to meet this Section is supported by a Transportation Impact Analysis, pursuant to Chapter 14.45; and

3. There are sufficient trips available in the Trip Reserve Fund to meet the expected trip generation needs of the proposal.

14.43.110 Notice of Allocation of Trips

Notice of a proposal to allocate trips from the Trip Budget and notice of the subsequent decision is not required. The City will provide notice of an application for approval of trips from the Trip Reserve Fund in a manner consistent with that of a Type III notice procedure.

14.43.120 Amending the Trip Budget Program

A. A comprehensive reassessment of the Trip Budget Program will occur no later than 10 years from the effective date of this ordinance.

B. The Trip Budget Program shall be evaluated for compliance with the provisions of OAR 660-012 prior to, or concurrent with, changes in the comprehensive plan land use designations within the SBTOZ.

C. A reevaluation of the Trip Budget Program is required when 65% of the total trips in any given TAZ have been committed to permitted development.

1. A 65% Review will be initiated by the City and coordinated with ODOT. A 65% Review must be initiated no later than 6 months from the time the threshold is reached.

2. The 65% Review will be completed within 12 months from initiation, or pursuant to a schedule that is part of a work program previously agreed upon by both the City and ODOT. Prior to completion, applicants can propose mitigation and potentially obtain approval of proposed development, pursuant to OAR 660-012-0060.

(Section 14.43 became effective on December 18, 2013 after Lincoln County adopted corresponding implementation measures for unincorporated lands with the boundary of the zoning overlay and the Oregon Transportation Commission amended the Oregon Highway Plan to put in place the alternate mobility standard for US 101.)

CHAPTER 14.44 TRANSPORTATION STANDARDS

14.44.010 Purpose

The purpose of this Chapter is to provide planning and design standards for the implementation of public and private transportation facilities and city utilities and to indicate when and where they are required. Streets are the most common public spaces, touching virtually every parcel of land. Therefore, one of the primary purposes of this Chapter is to provide standards for attractive and safe streets that can accommodate vehicle traffic from planned growth and provide a range of transportation options, including options for driving, walking, bus, and bicycling. This Chapter implements the city's Transportation System Plan.

14.44.020 When Standards Apply

The standards of this section apply to new development or redevelopment for which a building permit is required that places demands on public or private transportation facilities or city utilities. Unless otherwise provided, all construction, reconstruction, or repair of transportation facilities, utilities, and other public improvements within the city shall comply with the standards of this Chapter.

14.44.030 Engineering Design Criteria, Standard Specifications and Details

The design criteria, standard construction specifications and details maintained by the City Engineer, or any other road authority within Newport, shall supplement the general design standards of this Chapter. The city's specifications, standards, and details are hereby incorporated into this code by reference.

14.44.040 Conditions of Development Approval

No development may occur unless required public facilities are in place or guaranteed, in conformance with the provisions of this Code. Improvements required as a condition of development approval, when not voluntarily accepted by the applicant, shall be roughly proportional to the impact of the development on public facilities. Findings in the development approval shall indicate how

the required improvements are directly related and roughly proportional to the impact.

14.44.050 Transportation Standards

A. Development Standards. The following standards shall be met for all new uses and developments:

1. All new lots created, consolidated, or modified through a land division, partition, lot line adjustment, lot consolidation, or street vacation must have frontage or approved access to a public street.

2. Streets within or adjacent to a development subject to Chapter 13.05, Subdivision and Partition, shall be improved in accordance with the Transportation System Plan, the provisions of this Chapter, and the street standards in Section 13.05.015.

3. Development of new streets, and additional street width or improvements planned as a portion of an existing street, shall be improved in accordance Chapter 13.05, and public streets shall be dedicated to the applicable road authority;

4. Substandard streets adjacent to existing lots and parcels shall be brought into conformance with the standards of Chapter 13.05.

B. Guarantee. The city may accept a future improvement guarantee in the form of a surety bond, letter of credit or non-remonstrance agreement, in lieu of street improvements, if it determines that one or more of the following conditions exist:

1. A partial improvement may create a potential safety hazard to motorists or pedestrians;

2. Due to the developed condition of adjacent properties it is unlikely that street improvements would be extended in the foreseeable future and the improvement associated with the project under review does not, by itself, provide increased street safety or capacity, or improved pedestrian circulation;

3. The improvement would be in conflict with an adopted capital improvement plan; or

4. The improvement is associated with an approved land partition or minor replat and the proposed land partition does not create any new streets.

C. Creation of Rights-of-Way for Streets and Related Purposes. Streets may be created through the approval and recording of a final subdivision or partition plat pursuant to Chapter 13.05; by acceptance of a deed, provided that the street is deemed in the public interest by the City Council for the purpose of implementing the Transportation System Plan and the deeded right-of-way conforms to the standards of this Code; or other means as provided by state law.

D. Creation of Access Easements. The city may approve an access easement when the easement is necessary to provide viable access to a developable lot or parcel and there is not sufficient room for public right-of-way due to topography, lot configuration, or placement of existing buildings. Access easements shall be created and maintained in accordance with the Uniform Fire Code.

E. Street Location, Width, and Grade. The location, width and grade of all streets shall conform to the Transportation System Plan, subdivision plat, or street plan, as applicable and are to be constructed in a manner consistent with adopted City of Newport Engineering Design Criteria, Standard Specifications and Details. Street location, width, and grade shall be determined in relation to existing and planned streets, topographic conditions, public convenience and safety, and in appropriate relation to the proposed use of the land to be served by such streets, pursuant to the requirements in Chapter 13.05.

(Chapter 14.44 as adopted by Ordinance No. 2045 on November 5, 2012; effective December 30, 2012. This ordinance renumbered Municipal Code Chapters 14.43, "Procedural Requirements," through 14.51, "Fees," and enacted new Chapters 14.43, "South Beach Overlay Zone," 14.44, "Transportation Standards," and 14.45, "Traffic Impact Analysis.")

CHAPTER 14.45 TRAFFIC IMPACT ANALYSIS

14.45.010 Applicability

A Traffic Impact Analysis (TIA) shall be submitted to the city with a land use application under any one or more of the following circumstances:

A. To determine whether a significant effect on the transportation system would result from a proposed amendment to the Newport Comprehensive Plan or to a land use regulation, as specified in OAR 660-012-0060.

B. ODOT requires a TIA in conjunction with a requested approach road permit, as specified in OAR 734-051-3030(4).

C. The proposal may generate 100 PM peak-hour trips or more onto city streets or county roads.

D. The proposal may increase use of any adjacent street by 10 vehicles or more per day that exceeds 26,000 pound gross vehicle weight.

E. The proposal includes a request to use Trip Reserve Fund trips to meet the requirements of Chapter 14.43, South Beach Transportation Overlay Zone.

14.45.020 Traffic Impact Analysis Requirements

A. Pre-application Conference. The applicant shall meet with the City Engineer prior to submitting an application that requires a Traffic Impact Analysis (TIA). This meeting will be coordinated with ODOT when an approach road to US-101 or US-20 serves the property so that the completed TIA meets both City and ODOT requirements.

B. Preparation. The submitted TIA shall be prepared by an Oregon Registered Professional Engineer that is qualified to perform traffic engineering analysis and will be paid for by the applicant.

C. Typical Average Daily Trips and Peak Hour Trips. The latest edition of the Trip Generation Manual, published by the Institute of Transportation Engineers

(ITE) shall be used to gauge PM peak hour vehicle trips, unless a specific trip generation study that is approved by the City Engineer indicates an alternative trip generation rate is appropriate. An applicant may choose, but is not required, to use a trip generation study as a reference to determine trip generation for a specific land use which is not well represented in the ITE Trip Generation Manual and for which similar facilities are available to count.

D. Intersection-level Analysis. Intersection-level analysis shall occur at every intersection where 50 or more peak hour vehicle trips can be expected as a result of the proposal.

E. Transportation Planning Rule Compliance. The TIA shall comply with the requirements of OAR 660-012-0060.

F. Structural conditions. The TIA shall address the condition of the impacted roadways and identify structural deficiencies or reduction in the useful life of existing facilities related to the proposed development.

G. Heavy vehicle routes. If the proposal includes an increase in 10 or more of the vehicles described in Section 14.45.010.D, the TIA shall address the provisions of Section 14.45.020.F for the routes used to reach US-101 or US-20.

14.45.030 Study Area

The following facilities shall be included in the study area for all TIAs:

A. All site-access points and intersections (signalized and unsignalized) adjacent to the proposed site. If the proposed site fronts an arterial or collector street, the analysis shall address all intersections and driveways along the site frontage and within the access spacing distances extending out from the boundary of the site frontage.

B. Roads through and adjacent to the site.

C. All intersections needed for signal progression analysis.

D. In addition to these requirements, the City Engineer may require analysis of any additional intersections or roadway links that may be adversely affected as a result of the proposed development.

14.45.040 Approval Process

When a TIA is required, the applicable review process will be the same as that accorded to the underlying land use proposal. If a land use action is not otherwise required, then approval of the proposed development shall follow a Type II decision making process.

14.45.050 Approval Criteria

When a TIA is required, a development proposal is subject to the following criteria, in addition to all criteria otherwise applicable to the underlying proposal:

A. The analysis complies with the requirements of 14.45.020;

B. The TIA demonstrates that adequate transportation facilities exist to serve the proposed development or identifies mitigation measures that resolve the traffic safety problems in a manner that is satisfactory to the City Engineer and, when state highway facilities are affected, to ODOT; and

C. Where a proposed amendment to the Newport Comprehensive Plan or land use regulation would significantly affect an existing or planned transportation facility, the TIA must demonstrate that solutions have been developed that are consistent with the provisions of OAR 660-012-0060; and

D. For affected non-highway facilities, the TIA establishes that any Level of Service standards adopted by the city have been met, and development will not cause excessive queuing or delays at affected intersections, as determined in the City Engineer's sole discretion; and

E. Proposed public improvements are designed and will be constructed to the standards specified in Chapter 14.44 Transportation Standards or Chapter 13.05, Subdivision and Partition, as applicable.

14.45.060 Conditions of Approval

The city may deny, approve, or approve a development proposal with conditions needed to meet operations, structural, and safety standards and provide the necessary right-of-way and improvements to ensure consistency with the city's Transportation System Plan.

14.45.070 Fee in lieu Option

The city may require the applicant to pay a fee in lieu of constructing required frontage improvements.

A. A fee in lieu may be required by the city under the following circumstances:

1. There is no existing road network in the area.

2. There is a planned roadway in the vicinity of the site, or an existing roadway stubbing into the site, that would provide better access and local street connectivity.

3. When required improvements are inconsistent with the phasing of transportation improvements in the vicinity and would be more efficiently or effectively built subsequent to or in conjunction with other needed improvements in area.

4. For any other reason which would result in rendering construction of otherwise required improvements impractical at the time of development.

B. The fee shall be calculated as a fixed amount per linear foot of needed transportation facility improvements. The rate shall be set at the current rate of construction per square foot or square yard of roadway built to adopted city or ODOT standards at the time of application. Such rate shall be determined by the city, based upon available and appropriate bid price information, including but not limited to surveys of local construction bid prices, and ODOT bid prices. This amount shall be established by resolution of the City Council upon the recommendation of the City Engineer and reviewed periodically. The fee shall be paid prior to final plat recording for land division

applications or issuance of a building permit for land development applications.

C. All fees collected under the provisions of Section 14.45.070 shall be used for construction of like type roadway improvements within City of Newport's Urban Growth Boundary, consistent with the Transportation System Plan. Fees assessed to the proposed development shall be roughly proportional to the benefits the proposed development will obtain from improvements constructed with the paid fee.

(Chapter 14.45 was adopted by Ordinance No. 2045 on November 5, 2012; effective December 30, 2012. This ordinance renumbered Municipal Code Chapters 14.43, "Procedural Requirements," through 14.51, "Fees," and enacted new Chapters 14.43, "South Beach Overlay Zone," 14.44, "Transportation Standards," and 14.45, "Traffic Impact Analysis.")

CHAPTER 14.46 TSUNAMI HAZARDS OVERLAY ZONE

14.46.010 Purpose

The purpose of this section is to promote the public health, safety, and general welfare to minimize risks to essential facilities, and special occupancy structures serving high risk populations within a tsunami inundation area, consistent with Statewide Planning Goals 7 and 18, and the Natural Features Section of the Newport Comprehensive Plan.

14.46.020 Definitions

As used in this chapter:

A. Hazardous facility means structures housing, supporting or containing sufficient quantities of toxic or explosive substances to be of danger to the safety of the public if released. Such facilities are subject to a high hazard (Group H) occupancy classification by the Oregon Structural Specialty Code.

B. Tsunami inundation area means those portions of the City of Newport within the "XXL" tsunami inundation area boundary, as depicted on the maps titled "Local Source (Cascadia Subduction Zone) Tsunami Inundation Map Newport North, Oregon" and "Local Source (Cascadia Subduction Zone) Tsunami Inundation Map Newport South, Oregon" produced by the Oregon Department of Geology and Mineral Industries (DOGAMI), dated February 8, 2013.

C. Vertical evacuation structure means a stand-alone structure, portion of a building or constructed earthen mound designed for vertical evacuation from a tsunami that is accessible to evacuees, has sufficient height to place evacuees above the design level of tsunami inundation, and is designed and constructed with the strength and resiliency needed to withstand the effects of tsunami waves.

14.46.030 Overlay Zone Established

A Tsunami Hazards Overlay Zone District shall be indicated on the Zoning Map of the City of Newport with

the letters of THOZ, the boundaries of which encompass and conform to the tsunami inundation area.

14.46.040 Relationship to Underlying Zone Districts

Except for the prohibited uses set forth in section 14.46.050, all uses permitted pursuant to the provisions of the underlying zone may be permitted, subject to the additional requirements and limitations of this chapter.

14.46.050 Prohibited Uses

A. Unless authorized in accordance with section 14.46.060, the following uses are prohibited in the Tsunami Hazard Overlay Zone:

1. Hospitals and other medical facilities having surgery and emergency treatment areas;

2. Fire and police stations;

3. Emergency vehicle shelters and garages;

4. Structures and equipment in emergency preparedness centers;

5. Standby power generating equipment for essential facilities;

6. Structures and equipment in government communication centers and other facilities required for emergency response;

7. Medical, assisted, and senior living facilities with resident incapacitated patients. This includes residential facilities, but not residential care homes, as defined in ORS 443.400;

8. Jails and detention facilities;

9. Day care facilities;

10. Hazardous facilities; and

11. Tanks or other structures used for fire suppression purposes to protect uses listed in this sub-section.

B. Unless authorized in accordance with section 14.46.060, the following uses are prohibited in the portions of the Tsunami Hazard Overlay Zone subject to inundation from a Small (S) or Medium (M) magnitude local source tsunami event:

1. Buildings with a capacity greater than 250 individuals for every public, private or parochial school through secondary level;

2. Child care facilities;

3. Buildings for colleges or adult education schools with a capacity greater than 500 persons; and

4. Tanks or other structures used for fire suppression purposes to protect uses listed in this sub-section.

C. The provisions of this section do not apply to water-dependent and water-related facilities, including but not limited to docks, wharves, piers and marinas.

14.46.060 Use Exceptions

A use listed in section 14.46.050 may be permitted upon authorization of a Use Exception issued in accordance with a Type III decision-making procedure as outlined in Chapter 14.52, Procedural Requirements, provided the following requirements are satisfied:

A. Public schools may be permitted upon findings that there is a need for the school to be within the boundaries of a school district and fulfilling that need cannot otherwise be accomplished.

B. Fire or police stations may be permitted upon findings that there is a need for a strategic location.

C. Uses otherwise prohibited, such as child or day care facilities, are allowed when accessory to a permitted use, provided a plan is submitted outlining the steps that will be taken to evacuate occupants to designated assembly areas.

D. Other uses prohibited section 14.46.050 may be permitted upon the following findings:

1. There are no reasonable, lower-risk alternative sites available for the proposed use; and

2. Adequate evacuation measures will be provided such that life safety risk to building occupants is minimized; and

3. The structures will be designed and constructed in a manner to minimize the risk of structural failure during the design earthquake and tsunami event.

14.46.070 Vertical Evacuation Structures

All vertical evacuation structures, irrespective of their height, shall adhere to the provisions set forth in NMC 14.10.020(D)(1-4).

14.46.080 Evacuation Route Improvement Requirements

All new, or substantial improvements to, multifamily residential, commercial, industrial or institutional development on existing lots and parcels and land divisions in the Tsunami Hazard Overlay Zone shall:

A. Provide all-weather pedestrian access from the building(s) to adjacent public rights-of-way or City designated evacuation routes; and

B. Install wayfinding signage, in a format and location approved by the City, indicating the direction and location of the closest evacuation routes; and

C. Post emergency evacuation information in public areas, meeting rooms, or common areas, alerting residents, visitors, and employees to the tsunami threat. Such information shall include a map indicating the direction and location of the closest evacuation route.

(Chapter 14.46 was adopted by Ordinance No. 2166 on August 3, 2020; effective September 2, 2020.)

CHAPTER 14.52 PROCEDURAL REQUIREMENTS

14.52.010 Purpose

The purpose of this section is to designate and define the responsibilities of the approving authorities and to set forth the procedural requirements for land use actions requiring public notice before or after the decision.

14.52.020 Description of Land Use Actions/Decision-Making Procedures

The following is a description of four general types of land use actions/decision-making procedures utilized for land use and limited land use decisions within the City of Newport:

A. Type I Land Use Actions. Type I decisions are generally made by the Community Development Director without public notice prior to the decision and without a public hearing. A notice of the decision and opportunity to appeal is provided. Type I decisions involve limited administrative discretion. An example of a Type I action is an estuarine review. An appeal of a Type I decision is heard by the Planning Commission.

B. Type II Land Use Actions. Type II decisions are generally made by the Community Development Director with public notice and an opportunity to comment but without a public hearing. Type II decisions involve administrative discretion in the application of criteria but usually involve land use actions with limited impacts or involve limited land use decisions. Examples of Type II actions include Conditional Use Permits that generate less than 50 vehicle trips per day and involve property that is less than an acre in size, Property Line Adjustments, Minor Partitions, and Minor Replats. An appeal of a Type II decision by the Community Development Director is heard by the Planning Commission, and an appeal of a Type II decision by the Planning Commission is heard by the City Council.

C. Type III Land Use Actions. Type III decisions are considered quasi-judicial land use actions and

generally are made by the Planning Commission after public notice and a public hearing. Type III decisions generally use discretionary criteria or involve land use actions with larger impacts than those reviewed under a Type I or Type II procedure. Examples of Type III actions include Conditional Use Permits that generate more than 50 trips per day, variances, preliminary and final planned development applications, interpretation requests, and tentative subdivision plat applications. An appeal of a Type III permit decision is heard by the City Council.

D. Type IV Land Use Actions. Type IV decisions are made by the City Council as either quasi-judicial or legislative decisions involving land use action such as urban growth boundary amendments, Comprehensive Plan map/text amendments, Zoning map/text amendments, annexation requests, planned destination resorts conceptual master plans, and street/plat vacations for which an ordinance must be adopted by the City Council. Most Type IV decisions require a public hearing and recommendation by the Planning Commission prior to the City Council public hearing.

(Entire section amended by Ordinance No. 1989 (1-1-10).)*

14.52.030 Approving Authorities

The approving authority for the various land use actions shall be as follows:

A. City Council. A public hearing before the Council is required for all land use actions identified below. Items with an "*" require a public hearing and recommendation from the Planning Commission prior to a City Council hearing.

1. Annexations*.

2. Comprehensive Plan amendments (text or map)*.

3. Planned destination resorts--conceptual master plans*.

4. Urban growth boundary amendments*.

5. Vacations (plat or street)*.

6. Withdrawals of territory (public hearing required).

7. Zone Ordinance amendments (text or map)*.

8. Any other land use action defined in ordinance as a Type IV decision*.

9. Any land use action seeking to modify any action or conditions on actions above previously approved by the City Council where no other modification process is identified.

10. Appeals of a Planning Commission action.

B. Planning Commission. A public hearing before the Commission is required for all land use actions identified below. Items with an "*" are subject to Planning Commission review as defined in the section of the ordinance containing the standards for that particular type of land use action. Planning Commission decisions may be appealed to the City Council.

1. Conditional use permits*.

2. Nonconforming use changes or expansions*.

3. Planned destination resorts - preliminary and final development plans*.

4. Planned developments.

5. Subdivisions (tentative subdivision plat).

6. Variances.

7. Adjustments*.

8. Design review*.

9. Interpretations of provisions of the Comprehensive Plan or Zoning Ordinance that require factual, policy, or legal discretion.

10. Any land use action defined as a Type III decision.

11. Any land use action defined as a Type II decision for which the Planning Commission is the initial approving authority.

12. Any land use action seeking to modify any action or conditions on actions above previously approved by the Planning Commission where no other modification process is identified.

13. Appeal of the Community Development Director decision under a Type I or Type II decision.

C. Community Development Director. Land use actions decided by the Director are identified below. A public hearing is not required prior to a decision being rendered. Items with an "*" are subject to Director review as defined in the section of the ordinance containing the standards for that particular type of land use action. Decisions made by the Community Development Director may be appealed to the Planning Commission.

1. Conditional use permits*.

2. Partitions, minor.

3. Replats, minor.

4. Estuarine review.

5. Adjustments*.

6. Nonconforming use changes or expansions*.

7. Design review*.

8. Ocean shorelands review.

9. Any land use action defined as a Type I or Type II decision for which the Community Development Director is the initial approving authority.

10. Any land use action seeking to modify any action or conditions on actions above previously approved by the Community Development

Director where no other modification process is identified.

14.52.040 Application for a Land Use Action

All requests for land use actions shall be on forms prescribed by the city. The Community Development Department prepares the application forms and, from time to time, amends the forms as the need arises. At a minimum, the application shall require the following:

A. Name and address of the applicant.

B. Name and address of the property owner, if different and applicable.

C. Legal description of the property, if applicable.

D. A site plan drawn to scale, if applicable, which shows dimension, property lines, existing buildings, and/or the proposed development.

E. A Lincoln County Assessor's map showing the subject property and the notification area, if applicable.

F. Street address of the subject property, if applicable.

G. Names and addresses of property owners within the notification area, if applicable, as shown in the records of the county assessor.

H. Signature blocks for the applicant and property owner, if different and applicable.

I. Comprehensive plan and zoning designation of the subject property, if applicable.

J. Findings of fact and other information that support the request and address all the applicable criteria.

K. A current list of the site addresses of any structure in the area proposed to be annexed, if applicable.

L. Any other information as identified by ordinance for the applicable type of land use action.

14.52.050 Submittal of Applications

A property owner, any person with the written approval of the property owner, or the city manager, may apply for a land use action. All documents or evidence in the file on an application shall be available to the public.

A. Not later than 30 calendar days after receipt, the Community Development Director or designate shall determine whether or not the applicant is complete and notify the applicant in writing of what information is missing and allow the applicant to submit the missing information. If the Community Development Director or designate does not make a determination of an incomplete application within 30 days after receipt, the application is deemed complete. Complete applications shall be accepted and processed. If an application is deemed incomplete, the application shall be deemed complete upon receipt by the Community Development Department of:

   1. All of the missing information;

   2. Some of the missing information and written notice that no other information will be provided; or

   3. Written notice that none of the missing information will be provided.

B. The completeness determination is not a review of the merit of the application and a positive completeness determination is not a conclusion that the application can be approved.

C. On the 181st calendar day after first being submitted, the application shall be void if the applicant has been notified of the missing information as required under subsection A above and has not submitted:

   1. All of the missing information;

   2. Some of the missing information and written notice that no other information will be provided; or

   3. Written notice that none of the missing information will be provided.

D. For applications subject to ORS 227.178, if the application was complete when first submitted, or if the applicant submits the requested information within 180 calendar days of the date the application was first submitted, approval or denial of the application shall be based on the standards and criteria that were applicable at the time the application was first submitted.

E. For applications subject to ORS 227.178, the 100 and 120 day rules as specified in ORS 227.178 shall be applicable.

(Section 14.52.050 adopted by Ordinance No. 2125, adopted on December 4, 2017: effective January 3, 2018.)

14.52.060 Notice

The notification requirements in general for the various types of land use actions are identified below. The applicant shall provide city staff with the required names and addresses for notice. Notice of hearings to individual property owners is not required for Type IV legislative actions unless required by state law, such as ORS 227.186 (notice to owners whose property is rezoned). These notification requirements are in addition to any other notice requirements imposed by state law or city ordinance.

A. Information Required in all Notices of Actions and Hearings:

1. Name of applicant and property owner (if different), and file number.

2. Location of property (if applicable).

3. Date, time, and location for public hearing (for all hearings).

4. A brief summary of the nature and substance of the application or decision.

5. A list of applicable Newport Ordinance and/or Comprehensive Plan standards and where the applicable criteria may be found.

6. A statement that relevant information (decision, staff report, application or other materials) may be reviewed and providing information about where and when they can be reviewed, and a statement that copies are available at cost).

7. Staff contact information, including name, address, and phone number.

8. Date the notice is mailed.

B. Information Required in Specific Notices:

1. Date of decision (for Type I actions).

2. A statement describing the process and the deadline for filing comments (for Type II actions).

3. A statement that the failure to raise an issue with sufficient specificity to allow the decision maker an opportunity to respond to the issue precludes raising the issue on appeal, including an appeal to the Land Use Board of Appeals (for Type II and III and quasi-judicial Type IV actions).

4. Date, time, and location of the hearing (all hearing notices).

5. A statement that the staff report will be available for view at no cost and that copies will be available at a reasonable cost at least seven days before the hearing (Type III and Type IV quasi-judicial actions).

6. A general description of the hearing process, including the process for submitting written materials (Type III and IV decisions).

7. An explanation of the use or uses that could be authorized by the decision (Type IV decisions).

C. Mailing of Notice. Notices of hearings and actions shall be mailed by first class mail at least 14 days prior to the deadline for providing testimony for Type II decisions and at least 20 days prior to the public

hearing for Type III and Type IV quasi-judicial actions. Notices shall be mailed to:

1. The applicant and property owner (if different).

2. Any affected public agency or public/private utility.

3. Any person who has requested notice of the hearing or action in writing.

4. Any officially recognized neighborhood association whose boundaries include the subject property.

5. Record owners of property (as specified in the most recent Lincoln County Assessor's property tax assessment roll):

   a. Within 200 feet of the subject property (Type I, Type II, and Type III actions).

   b. Within 300 feet of the subject property (Type IV quasi-judicial actions).

D. Written Notice for Rezoning of Mobile Home or Manufactured Dwelling Park. If an application would change the zone of property that includes all or part of a mobile home or manufactured dwelling park, written notice by first class mail shall be given to each existing mailing address for tenants of the mobile home or manufactured dwelling park at least 20 days, but not more than 40 days, before the date of the first hearing on the application.

E. Written Notice to Airport Owners. Notice of a public hearing on a zone use application shall also be provided to the owner of an airport, defined by the Department of Transportation as a "public use airport," if:

1. The name and address of the airport owner has been provided by the Aeronautics Division of the Department of Transportation to the City Community (Planning) Department; and

2. The property subject to the zone use hearing is:

a. Within 5,000 feet of the side or end of a runway of an airport determined by the Department of Transportation to be a "visual airport," or

b. Within 10,000 feet of the side or end of the runway of an airport determined by the Department of Transportation to be an "instrument airport."

3. Notice of a zone use hearing need not be provided if the permit or zone change would only allow a structure less than 35 feet in height, and the property is located outside of the runway "approach surface" as defined by the Department of Transportation.

F. Published Notice. Notice of each Type III and Type IV hearing shall be published at least once in a newspaper of general circulation in the city at least 5 days, and no more than 14 days, prior to the date set for public hearing.

14.52.070 Staff Reports

Staff reports on any quasi-judicial land use action shall be available for public inspection at least seven (7) days prior to the date set for public hearing, and copies will be provided at the city's rate for photocopies.

14.52.080 Hearings Procedures (Quasi-Judicial/Limited Land Use)

This section shall govern the conduct of quasi-judicial/limited land use hearings. The following public hearing procedures are the minimum procedures for use in conduct of quasi-judicial and limited land use hearings and may be supplemented by any duly adopted rules of procedure.

A. Nature and General Conduct of Hearing. The approving authority, in conducting a hearing involving a land use action, is acting in a quasi-judicial capacity, and all hearings shall be conducted accordingly. Parties to the hearing are entitled to an opportunity to be heard, to present and rebut evidence, and to have a decision based on evidence supported by findings of fact and supporting information. Testimony shall be made with sufficient

specificity so as to afford the approving authority and other parties an adequate opportunity to respond to each issue.

B. Disqualification, Ex Parte Contacts, Bias, Challenges to Participation. Proponents and opponents are entitled to an impartial tribunal that judge land use actions. A proponent or opponent may, therefore, challenge the qualifications of a member of the approving authority to participate in the meeting or decision. A challenge must state with sufficient specificity the facts relied upon by the submitting party relating the person's bias, prejudgment, personal interest, or other facts from which the party has concluded that the member of the approving authority may be unable to participate and make a decision in an impartial manner. Challenges shall be incorporated into the record of the meeting.

1. Disqualification. No member of the approving authority shall participate in discussion of an application or vote on an application for any land use action when any of the following conditions exist:

a. Any of the following have a direct or substantial financial interest in the proposal: members of the approving authority or a member's spouse, brother, sister, child, parent, father-in-law, mother-in-law, or household, or there is an actual conflict of interest under state law.

b. The land use action involves a business in which the member is directly associated or has served within the past two (2) years, or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment.

c. The member owns property within the area entitled to receive notice of the action.

d. For any other reason, the member has determined that participation in the decision cannot be in an impartial manner.

2. Disclosure of Potential Conflict of Interest. Even if an approval authority member chooses to participate, the member shall disclose any potential conflict of interest as required by state law.

3. Ex parte Contacts. In quasi-judicial matters, approving authority members shall reveal any ex parte contacts, including site visits. Parties to a hearing shall have the right to rebut the substance of an ex parte contact.

4. Challenges. Any person may challenge the participation of a member of the approving authority in a decision-making process. A challenge must state with sufficient specificity the factual and legal basis of the reasons for the challenge.

5. Rights of Disqualified Members of the Approving Authority. An abstaining or disqualified member of the approving authority shall be counted if present for purposes of forming a quorum. A member who represents personal interest at a meeting may do so only by abstaining from voting on the proposal, vacating the seat on the approving authority, and physically joining the audience, and by making full disclosure of his or her status and position at the time of addressing the approving authority.

6. Requalification of Disqualified Members of the Approving Authority. If all members of the approving authority abstain or are disqualified, all members present, after stating their reasons for abstention or disqualification, shall by doing so be requalified unless prohibited by state law and proceed to hear the issues and make a decision.

7. Participation in Decision by Absent Member of Approving Authority. A member of the approving authority absent during the presentation of evidence in a land use action meeting may not participate in the deliberations or final decision regarding the matter of the meeting unless the member has reviewed all the evidence in the

record to date, including audio tapes of prior meetings.

8. Failure to Achieve Meeting Quorum. In the event an approving authority is not able to achieve a quorum for a meeting at which there is scheduled a consideration of a land use action, the land use action shall be automatically set over to the next regularly-scheduled approving authority meeting. In the event that an approving authority other than the City Council is unable to achieve quorum for two consecutive meetings, the land use action shall be scheduled for a public hearing before the next level of approving authority and shall be renoticed and a new public hearing held.

9. Failure to Make a Final Decision on a Quasi-Judicial Land Use Action, Limited Land Use Action, or on Appeal. In the event an approving authority other than the City Council is not able to make a final decision on a quasi-judicial land use action within three meetings after the hearing or record is closed, the land use action shall be scheduled for a public hearing before the next level of approving authority and shall be renoticed and a new public or appeal hearing held. In the event that an approving authority other than the City Council becomes deadlocked through an even split in the approving authority such that a decision cannot be made, the approving authority shall forward the land use action to the next higher review authority for a new public or appeal hearing.

C. Public Hearing. This subsection shall govern the conduct of all public hearings.

1. Nature of Hearing. All parties participating in a public hearing shall have an opportunity to be heard, to present and rebut evidence, to have the proceedings recorded, and to have a decision rendered in accordance with the facts on record and the law. The presiding officer of the approving authority shall have authority to:

a. Regulate the course and decorum of the meeting.

b. Dispose of procedural requests and similar matters.

c. Impose reasonable limitations on the number of witnesses heard and set reasonable time limits for oral presentation, questions, and rebuttal testimony.

d. Question any person appearing, and allow other members to question any such person.

e. Waive the application of any rule herein where the circumstances of the hearing indicate that it would be expedient and proper to do so, provided that such waiver does not act to prejudice or deny any party substantial rights as provided herein or otherwise by law.

f. Take such other action as authorized by the approving authority to appropriately conduct the hearing.

A ruling of the presiding officer may be challenged by any member of that approving authority present at the hearing. The challenge must be seconded. A ruling may be reversed by a majority of the members present and voting. A tie vote upholds the presiding officer's decision.

2. Conduct of Participants. Proceedings shall at all times be orderly and respectful. The presiding officer may refuse to recognize or may exclude from the hearing anyone who:

a. Is disorderly, abusive, or disruptive.

b. Takes part in or encourages audience demonstrations such as applause, cheering, display of signs, or other conduct disruptive to the hearing.

c. Testifies without first receiving recognition from the presiding officer.

d. Presents irrelevant, immaterial, or repetitious evidence.

3. Order of Procedure. The hearing shall proceed in the following manner:

   a. Open Public Hearing. The presiding officer shall open the public hearing and announce the nature and purpose of the hearing, identify the applicant, describe the general nature of the proposal, and state (or defer to staff to state) the applicable substantive criteria by which the application is being judged. The presiding officer shall also state that testimony and evidence must be directed toward the applicable criteria. In addition, for quasi-judicial land use actions or limited land use actions, the presiding officer shall state that failure to raise an issue with sufficient specificity to afford the approving authority and the parties an opportunity to respond to the issue precludes an appeal based on that issue, including to the Land Use Board of Appeals.

   b. Call for Abstentions. The presiding officer shall call for any conflicts of interest, and, if applicable, ex parte contacts, or site visits by members of the approving authority.

   c. Call for Objections. The presiding officer shall call for any objections to the approving authority hearing the matter before it.

   d. Staff Report. Staff present a staff report and any recommendations.

   e. Proponents' Presentation. The presiding officer shall call for testimony from the applicant and from any person supporting the application.

   f. Opponents' Presentation. The presiding officer shall call for testimony from any person objecting to the application.

   g. Rebuttal by Applicant. The presiding officer shall call for rebuttal from the applicant in response to evidence or issues raised by the opponents.

h. Continuance. Review authorities may continue a public hearing or leave a record open to allow for additional testimony. In a quasi-judicial or limited land use action, prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments, or testimony regarding the application. If the request is made prior to the conclusion of the initial evidentiary hearing, the review authority shall grant the request by either continuing the public hearing or leaving the record open in conformance with the requirements of ORS 197.763.

i. Close Public Hearing. Unless there is a continuance, the presiding officer shall close the public hearing and state that no further testimony will be received by the approving authority.

j. Deliberation by Approving Authority. The approving authority shall consider the testimony and evidence before it in open discussion. The approving authority may ask questions of staff. The approving authority may ask proponents or opponents for clarification on a matter; but if they choose to do so, others must be given opportunity to rebut.

k. Decision. Following deliberation, the approving authority shall vote on the matter, including on any conditions of approval to be attached (or in the case of a review and recommendation, any recommended conditions of approval).

l. Adoption of Findings of Fact. The approving authority shall adopt findings of fact that support their decision. If there are no findings available to support their decision, staff may prepare findings of fact to be presented at a future meeting. The approving authority may also call for the preparation of findings of fact by the proponent or opponent, or any

combination, including staff, of each to be presented at a future meeting. The approving authority may also request that findings of fact be presented at a future meeting other than the next regularly-scheduled meeting. For hearings that are for a review and recommendation only, no findings of fact are required.

m. Final Decision. The decision of the approving authority is final when reduced to writing and signed by the presiding officer of the approving authority. Final decisions shall be by order unless an ordinance is required for the decision. Appeal periods shall begin from the date the final decision is signed. For hearings that are for a review and recommendation only, no final order is required.

n. Notice of Decision. A notice of the decision (except for those made for the purpose of a review and recommendation only) made by the approving authority shall be given to:

i. Anyone who has made appearance of record (see Section 14.39.045); and

ii. Anyone who has filed a written request for notice of the approving authority's decision; and

iii. Anyone who has requested notice of any appeal hearing.

14.52.090 Public Hearings Procedures (Legislative)

This section shall govern the conduct of legislative land use hearings. The following public hearing procedures are the minimum procedures for use in conduct of legislative land use hearings and may be supplemented by any duly adopted rules of procedure.

A. Nature and General Conduct of Hearing. The approving authority, in conducting a hearing involving a legislative land use action, is acting in a legislative capacity, and all hearings shall be conducted accordingly.

B. Disqualification. No member of the approving authority shall participate in discussion of an application or vote on an application for any land use action when there exists an actual conflict of interest under state law. Potential conflicts of interest under state law shall be disclosed by members of the approving authority. An abstaining or disqualified member of the approving authority shall be counted if present for purposes of forming a quorum.

C. Failure to Achieve Meeting Quorum. In the event an approving authority is not able to achieve a quorum for a meeting at which there is scheduled a consideration of a land use action, the land use action shall be automatically set over to the next regularly-scheduled approving authority meeting. In the event that an approving authority other than the City Council is unable to achieve quorum for two consecutive meetings, the land use action shall be scheduled for a public hearing before the next level of approving authority and shall be renoticed and a new public hearing held.

D. Public Hearing. The public hearing process identified above in 14.52.080(C) for quasi-judicial/limited land use hearings shall be utilized with the following modifications noted for the legislative hearing process to the following subsections of 14.52.080(C)(3):

1. Final Decision. The decision of the approving authority is final when reduced to writing and signed by the presiding officer of the approving authority. Final decisions shall be by order unless an ordinance is required for the decision. Appeal periods shall begin from the date the final decision is signed. For hearings that are for a review and recommendation only, no final order is required. Unless required by law to do so, the approving authority is not obligated to adopt a final order or ordinance if the approving authority chooses not to adopt a legislative amendment.

2. Notice of Decision. A notice of the decision (except for those made for the purpose of a review

and recommendation only) made by the approving authority shall be given to:

a. Anyone who has made appearance of record (see Section 14.52.080(B)) and submitted a written request for a notice of decision; and

b. Anyone who has filed a written request for notice of the approving authority's decision.

c. The Department of Land Conservation and Development as required for a post acknowledgement plan amendment.

14.52.100 Appeals

Any person with standing may appeal a decision of the approving authority. No person shall have standing to appeal unless the person made an appearance of record in the initial proceeding prior to the close of the public comment period, public hearing, or close of the record. All appeals shall be made no later than 15 calendar days after the date the final order is signed. "Appearance of record" shall mean either appearance in person or in writing. City Council decisions may be appealed to the Oregon Land Use Board of Appeals as provided by state law.

A. Appeal Document. All appeals shall be signed by the appellant or authorized agent and shall contain:

1. An identification of the decision sought to be reviewed, including the date of the decision.

2. A statement demonstrating that the appellant has standing to appeal.

3. A statement of the specific grounds which the appellant relies on as the basis for the appeal. If the appellant contends that the findings of fact made by the approving authority are incorrect or incomplete, the application shall specify the factual matters omitted or disputed. If the appellant contends that the decision is contrary to city code, an ordinance statute, or other law, the appeal shall identify the city code, an ordinance, statute, or other legal provision, and state how the

applicable provision has been violated. For appeals of a quasi-judicial or limited land use action, a statement demonstrating that the appeal issues were raised with sufficient specificity in the hearing below.

B. Scope of Review. Unless the appeal is heard de novo, the appeal of a decision by a person with standing shall be limited to the specific issues raised during the hearing from which the decision is being appealed. Approving authorities may hear appeals on the record of the initial hearing (if a previous hearing was held) or de novo. An appeal from a land use action that had a previous hearing shall be held on the record unless the approving authority determines that a de novo hearing is warranted.

1. When de novo hearing is warranted.

a. Where a land use decision was made without a public hearing, the appeal shall be heard de novo.

b. Where a land use decision was made following a public hearing, the approving authority may consider holding the appeal de novo for any of the following reasons:

i. (The appellant(s) have documented as part of a petition to appeal a significant procedural error that resulted in a substantive harm to their ability to participate in the initial hearing that could be cured by a subsequent de novo hearing.

ii. The appeal of the decision is part of a package of land use requests submitted by the applicant that include other land use requests that will be considered in a new public hearing before the review authority, and it would be more efficient to conduct the appeal de novo in conjunction with the hearings for the other land use requests.

iii. A significant number of appeals have been filed such that the efficiency of the appeal

process would be better served through a de novo hearing.

2. Procedure for determining when de novo hearing is warranted on appeal from a land use decision made following a public hearing:

   a. Following the end of the appeal period for which an appeal has been filed with a request for a de novo hearing, the matter of the de novo appeal hearing request shall be scheduled at the next available approving authority meeting for consideration.

   b. The appeal authority shall review the submitted request for de novo hearing along with any staff and applicant (if other than appellant) input on the matter and make a decision.

C. Notice of Appeal. Notice of the appeal hearing shall be given to the applicant, the applicant's authorized agent (if any), and to interested persons. Interested persons are:

   1. Anyone who has made appearance of record.

   2. Anyone who has filed a written request for notice of the approving authority's decision; and

   3. Anyone who has requested notice of any appeal hearing.

D. Appeal Hearings. The following is a minimum set of procedures supplemented by any duly adopted rules of procedure:

   1. Appeal hearings on the record shall be conducted as follows:

      a. A record of hearing shall be prepared by the Community Development Department containing the written material involving the approval through the filing of the appeal. A transcript of the hearing shall be prepared and included with the record.

b. Following preparation of the record, a date for the on-the-record hearing shall be set by the Community Development Department, and notice of the date of the appeal hearing shall be given.

c. The appellant(s) shall have seven calendar days from the date the record is available to supplement the petition for appeal by identifying items in the record in support of the appeal ("support brief").

d. The applicant(s) (if other than the appellant) and city staff shall have seven calendar days from the date the appellant support brief is due to respond ("response brief").

e. The appeal hearing will allow for comments by city staff, argument from appellant(s), applicant(s) (if other than appellant), rebuttal, and questions and deliberation by the approving authority.

2. De novo appeal hearings may be held by the appeals approving authority. In cases of a de novo hearing, the same procedure shall be used as was employed in the initial hearing.

3. Ability for City Council to deny appeal without hearing. The City Council may deny an appeal from a Planning Commission decision where the Planning Commission has held a de novo hearing following an appeal of a decision of the Community Development Director for land use actions subject to the 120-day rule in ORS 227.178. If the City Council votes to deny an appeal, the Council shall adopt the Planning Commission Final Order as the final decision of the City.

E. Appeals Decision. Upon review of the appeal, the appeals approving authority may, by final order, affirm, reverse, or modify in whole or part the initial decision. When the appeals approving authority modifies or reverses a decision of the initial approving authority, the final order shall set forth findings and reasons for the change. The appeals approving

authority may also remand the matter back to the initial approving authority for further consideration or clarification. A notice of the decision made by the approving authority shall be given to:

1. Anyone who has made appearance of record; and

2. Anyone who has filed a written request for notice of the approving authority's decision; and

3. Anyone who has requested notice of any appeal hearing.

F. Judicial Finality. No permit shall be issued, no permit or approval shall be considered valid, and no project may proceed, based on any land use decision of the City of Newport for a land use action processed under this section of the Ordinance, until such time as all rights of appeal from such decision have been exhausted and such decision is "judicially final." A decision shall be considered judicially final at such time as any applicable period for the appeal of such decision shall have expired without initiation of an appeal, or any properly initiated appeal shall have been exhausted, whichever is later. However, this shall not preclude the making of an application for, or the conduct of proceedings to consider, the issuance of a permit or approval based on such land use decision.

14.52.110 Decision Time

Once a complete application is received by the City of Newport, the city shall take final action, including resolution of all local appeals, on applications subject to ORS 227.178 within 100 or 120 days, as applicable, unless otherwise waived by the applicant in accordance with state requirements.

(Section 14.52.110 adopted by Ordinance No. 2125, adopted on December 4, 2017: effective January 3, 2018.)

14.52.120 Conditions of Approval

All city decision makers have the authority to impose reasonable conditions of approval designed to ensure that all applicable approval standards are, or can be met.

14.52.130 Consolidated Procedure

Any applicant for a land use action may apply at one time for all related land use actions. Where different land use actions requiring different review authorities are submitted, decisions on applications made by a lower level review authority may be made contingent on the applicant receiving approval from the higher level review authority. Alternatively, the higher level reviewing authority may take action on all of the related land use actions. Fees for land use actions that are consolidated are set forth as established by resolution of the City Council for land use fees.

14.52.140 Expiration and Extension of Decision

Expiration or extension of all land use decisions shall be as follows:

A. All land use decisions shall be void if within eighteen (18) months of the date of the final decision:

   1. All necessary building permit(s) have not been issued, if required; or

   2. In cases where building permit(s) are not required, the authorized use has been established.

B. Notwithstanding Subsection (A) of this section, the approval authority may set forth in the written decision specific instances or time periods when a permit expires.

C. The Community Development Department may extend any approved decision for a period of six months; provided the permit holder

   1. Submits a written request for an extension of time prior to expiration of the approval period;

   2. Has applied for all necessary additional approvals or permits required as a condition of the land use permit;

3. There have been no changes to the applicable comprehensive plan policies and ordinance provisions on which the approval was based.

D. The granting of an extension pursuant to this section is an administrative action, is not a land use decision as described in ORS 197.015, and is not subject to appeal as a land use decision.

E. Expiration of an approval shall require a new application for any use on the subject property that is not otherwise allowed outright.

F. If a permit decision is appealed beyond the jurisdiction of the city, the expiration period shall not begin until review before the Land Use Board of Appeals and the appellate courts has been completed, including any remand proceedings before the city. The expiration period provided for in this section will begin to run on the date of final disposition of the case (the date when an appeal may no longer be filed).

14.52.150 Revocation of Decisions

In the event an applicant, or the applicant's successor in interest, fails to fully comply with all conditions of approval or otherwise does not comply fully with the city's approval, the city may institute a revocation proceeding under this section.

A. Type I, Type II, and Type III decisions may be revoked or modified if the Planning Commission determines a substantial likelihood that any of the following situations exists:

1. One or more conditions of the approval have not been implemented or have been violated: or

2. The activities of the use, or the use itself, are substantially different from what was approved or represented by the applicant.

B. A revocation shall be processed as a Type III decision. The Community Development Department or any private complaining party shall have the burden of proving, based on substantial evidence in

the whole record, that the applicant or the applicant's successor has in some way violated the city's approval.

C. Effect of revocation. In the event that the permit approval is revoked, the use or development becomes illegal. The use or development shall be terminated within thirty days of the date the revocation final order is approved by the Planning Commission, unless the decision provides otherwise. In the event the Planning Commission's decision on a revocation request is appealed, the requirement to terminate the use shall be stayed pending a final, unappealed decision.

14.52.160 Applicability in the Event of Conflicts

The provisions of this section supersede all conflicting provisions in the Newport Zoning Ordinance.

Chapter 14.53 Council Review

Chapter 14.54 Applicability of the provisions of this ordinance

The rules, requirements, and provisions of this Ordinance are in addition and not in lieu of any prior ordinance, resolution, rule, requirement, or procedure previously adopted by the City of Newport except as may have been expressly repealed, provided, however, that the provisions of this Ordinance shall be controlling in cases where there may be conflicting provisions.

Chapter 14.55 Compliance with ordinance provisions

No structure or lot shall hereafter be used or occupied, and no structure or part thereof shall be erected, moved, reconstructed, extended, enlarged, or altered contrary to the provisions of this Ordinance.

Chapter 14.56 Enforcement

A. The City Manager shall have the power and duty to enforce the provisions of this Ordinance. An appeal from a ruling of the City Manager shall be made to the City Planning Commission.

B. Any use authorized under the provisions of this ordinance shall be open to inspection and review at reasonable times by code enforcement personnel for the purpose of verifying compliance with ordinance standards or conditions of approval.

Chapter 14.57 Penalty

Except as provided hereafter, a violation hereof shall be punishable as an infraction by a fine not to exceed $500.00 for each violation. If a person has committed more than two violations of this Ordinance within the preceding 24 months, a subsequent violation shall be a misdemeanor, punishable by a fine not to exceed $1,000.00, or by jail not to exceed 60 days, or both. A violation shall be deemed to occur on the date of the occurrence of the act constituting the violation and not on the date the court shall find the defendant guilty of such violation.

Each day during which a violation continues shall constitute a separate offense. Violation of more than one provision hereof shall constitute a separate offense with respect to each provision so violated.

*(*Section replaced in its entirety by Ordinance No. 2011 (2-18-11).*
*** Amended by Ordinance No. 1484 (3-16-87).)*

Chapter 14.58 Interpretation

The provisions of this Ordinance shall be held to be the minimum requirements for the promotion of the public safety, health, morals, or general welfare. It is not intended by this Ordinance to interfere with or abrogate or annul any easements, covenants, or other agreements between parties. Where this Ordinance imposes a greater restriction upon the use of buildings or premises, or upon the heights of buildings, or requires larger yards and open spaces than are required in other ordinances, codes, regulations, easements, covenants, or agreements, the provisions of this Ordinance shall govern.

Chapter 14.59 Severability

The provisions of this Ordinance are hereby declared to be severable. If any section, sentence, clause, or phrase of this Ordinance is adjudged by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

Chapter 14.60 Fees

Zoning and planning fees shall be fixed by the City Council by resolution and shall be reviewed annually. Zoning and planning fees shall be paid upon submission of application of petition and shall not be refundable.

(Chapter XIV enacted by Ordinance No. 2033, adopted on May 7, 2012; effective June 6, 2012.)