

**Title 12**

**STREETS, SIDEWALKS AND PUBLIC PLACES**

**Chapters:**

**12.10 Parks**

**12.15 Rights-of-Way**

**12.20 Sidewalk Construction**



**Chapter 12.10****PARKS**

## Sections:

- 12.10.010 Purpose.
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- 12.10.030 Nonresident reservations.
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- 12.10.060 Multiple reservations.
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12.10.070, 12.10.090, 12.10.110,  
12.10.130 and 12.10.150.

**12.10.010 Purpose.**

The purpose of this chapter is to establish rules and provide for fees for the use of Philomath city parks and related facilities. [Ord. 640 § 1, 1995.]

**12.10.020 Reservations.**

All groups of 20 or more people who want to reserve a specific facility in a city park must make a reservation for the use of the facility through the office of the finance department. [Ord. 640 § 2, 1995.]

**12.10.030 Nonresident reservations.**

A nonrefundable user fee shall accompany a park facility reservation application by a group based outside the Philomath city limits. Said fee shall be set by a city council resolution. [Ord. 640 § 3, 1995.]

**12.10.040 Responsibility.**

Users are responsible for cleanup following use of the park facility. The city may bill responsible individuals or organizations who have reserved the park facility and left it in an unclean or damaged state for the cost of the cleanup or repair. [Ord. 640 § 4, 1995.]

**12.10.050 Cleaning and damage deposit.**

A cleaning and/or damage deposit may be imposed (by resolution of the city council) at the discretion of the city manager. Such deposit shall be refunded if the park facilities are left in a clean and undamaged condition. Such deposit shall be forfeited if the city determines that the facility is left unclean and/or damaged. [Ord. 640 § 5, 1995.]

**12.10.060 Multiple reservations.**

Multiple reservations may be issued for the same day; provided, that the city will not issue reservations in excess of the number of covered picnic facilities available in the parks. Each group will be assigned a specific facility and shall post a reservation notice at the appropriate facility on the morning of the event. This reservation policy does not close the parks to others and the parks will remain open at all regular hours to individuals and other groups which have not made reservations. However, any individual or group occupying a facility at the time a reservation takes effect must yield the facility to the group with the reservation or be guilty of trespassing. [Ord. 640 § 6, 1995.]

**12.10.070 Groups over 200 persons.**

All requests for reservations from groups of more than 200 people shall require city manager approval and may necessitate additional fees and restrictions, which the city manager shall set after review of the group's request, based on consideration of matters such as the anticipated wear and tear on the park, security needs and the possibility of misuse. [Ord. 640 § 7, 1995.]

**12.10.080 Alcoholic beverage permits.**

PMC 9.10.060(J) prohibits the consumption of alcoholic beverages in the city parks, unless a permit has been issued by the chief of police. Consumption of alcoholic beverages in the city parks without first having obtained a permit is punishable under Chapter 9.10 PMC as a Class C misdemeanor. Any group wanting to consume alcoholic beverages in a city park must first obtain the alcoholic beverage permit from the chief of police and pay a fee that will be established by resolution of the city council. [Ord. 640 § 8, 1995.]

**12.10.090 Overnight camping.**

Overnight camping is generally forbidden (see PMC 12.10.100). However, overnight camping by recognized organizations (Scouts, etc.) may be allowed upon approval by the city manager. Overnight camping may necessitate additional fees and restrictions, based on consideration of the anticipated wear and tear on the park, security needs and the possibility of misuse, which the city manager shall set after review of the request. [Ord. 640 § 9, 1995.]

**12.10.100 Open and close times.**

City parks open at 8:00 a.m. and close at 10:00 p.m. Persons within city parks between 10:00 p.m. and 8:00 a.m. may be prosecuted for trespassing. [Ord. 640 § 10, 1995.]

**12.10.110 Vehicles and horses.**

Motor vehicles and horses shall remain on roadways at all times (see PMC 10.10.050(B)). Motor vehicles are prohibited on bike paths and trails (except for maintenance or emergency vehicles). [Ord. 640 § 11, 1995.]

**12.10.120 Dogs.**

Dogs must be leashed at all times, except as allowed in city parks designated as specific off-leash zones. [Ord. 745 § 1, 2007; Ord. 640 § 12, 1995.]

**12.10.130 Fires.**

Fires are allowed only in designated fireplaces. [Ord. 640 § 13, 1995.]

**12.10.140 Motor vehicle speed limit.**

Motor vehicle speed limit in city parks is 15 miles per hour. [Ord. 640 § 14, 1995.]

**12.10.150 Skatepark regulations.**

A. Protective equipment consisting of a helmet and knee and elbow pads shall be worn by skaters while engaged in any form of skating activity within the skatepark structure.

B. Glass containers are prohibited within the skatepark structure and its immediate area.

C. Bicycles within the skatepark structure are prohibited during those times that skaters are using the skatepark structure. [Ord. 688 § 1, 2000; Ord. 640 § 15, 1995.]

**12.10.160 Penalties for violation of PMC 12.10.070, 12.10.090, 12.10.110, 12.10.130 and 12.10.150.**

A penalty shall not exceed a \$250.00 fine. [Ord. 688 § 2, 2000; Ord. 640 § 16, 1995.]

**Chapter 12.15****RIGHTS-OF-WAY**

Sections:

- 12.15.010 Definitions.
- 12.15.020 Jurisdiction.
- 12.15.030 Scope of regulatory control.
- 12.15.040 City permission requirement.
- 12.15.050 Obligations of the city.

**12.15.010 Definitions.**

For the purpose of this chapter, the following mean:

“City” means the city of Philomath, Oregon.

“Person” means individual, corporation, association, firm, partnership, joint stock company, and similar entities.

“Public rights-of-way” include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including subsurface and air space over these areas.

“Within the city” means territory over which the city now has or acquires jurisdiction for the exercise of its powers. [Ord. 659 § 1, 1997.]

**12.15.020 Jurisdiction.**

The city of Philomath has jurisdiction and exercises regulatory control over all public rights-of-way within the city under the authority of the city charter and state law. [Ord. 659 § 2, 1997.]

**12.15.030 Scope of regulatory control.**

The city has jurisdiction and exercises regulatory control over each public right-of-way whether the city has a fee, easement, or other legal interest in the right-of-way. The city has jurisdiction and regulatory control over each right-of-way whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means. [Ord. 659 § 3, 1997.]

**12.15.040 City permission requirement.**

No person may occupy or encroach on a public right-of-way without the permission of the city. The city grants permission to use rights-of-way by franchises, licenses and permits. [Ord. 659 § 4, 1997.]

**12.15.050 Obligations of the city.**

The exercise of jurisdiction and regulatory control over a public right-of-way by the city is not official acceptance of the right-of-way, and does not obligate the city to maintain or repair any part of the right-of-way. [Ord. 659 § 5, 1997.]

## Chapter 12.20

### SIDEWALK CONSTRUCTION

#### Sections:

- 12.20.010 Property owner responsibility.
- 12.20.020 Permit required – Issuance.
- 12.20.030 Sidewalk widths.
- 12.20.040 Council order for work.
- 12.20.050 Notice to construct, alter or repair.
- 12.20.060 Service process.
- 12.20.070 Time of service.
- 12.20.080 Notice provisions.
- 12.20.090 Performance of required work by city.
- 12.20.100 Notice of costs – Lien.
- 12.20.110 Liens.
- 12.20.120 Appeal.
- 12.20.130 Appeal procedure.
- 12.20.140 Property owner liability.

#### **12.20.010 Property owner responsibility.**

It is hereby made the joint and several duty of all owners of land adjoining any street in the city of Philomath to construct, repair and maintain in good condition the sidewalks in front of, along or abutting upon land owned by said owners. Sidewalks shall be required on all property abutting a street when a building permit is issued. [Ord. 702 § 1, 2002.]

#### **12.20.020 Permit required – Issuance.**

Any person who may desire to construct or lay down any sidewalk in the city of Philomath shall, before commencing to do grading for said sidewalk or to construct said sidewalk, apply to the public works director of said city for a permit therefor and in making said application shall specify the property in front of which such sidewalk is to be made, the name of the person for whom the same is to be made, by whom the same is to be done, and within what time the same is to be completed. The fee for such permit shall be set by resolution of the city council. Such permit shall be null and void after the time specified on the permit, which shall not exceed six months from the date of issue. [Ord. 702 § 2, 2002.]

#### **12.20.030 Sidewalk widths.**

All sidewalks hereafter constructed or relaid within the corporate limits of the city of Philomath

shall be constructed of concrete and shall be five feet in width, except as follows: all business and commercial zones shall have 10-foot-wide walks, except that the common city council may grant a temporary variance of a lesser width. All sidewalks shall be constructed so that their edges shall be parallel to the line of the street upon which they are laid. The location shall be as determined by the public works director, and construction of all sidewalks shall conform to the minimum ADA specifications as well as existing city of Philomath standards, specifications, and drawings. [Ord. 707 § 1, 2002; Ord. 702 § 3, 2002.]

#### **12.20.040 Council order for work.**

Whenever it shall appear to the common council of the city of Philomath that the health, safety, or welfare of the public requires that any sidewalk within the corporate limits of the city should be altered or repaired, or that a sidewalk should be constructed in the city, the city manager, or the city manager's designee, upon being instructed to do so by resolution passed by the council, shall cause to be served a notice on the owner and on each of the owners of the lots or parts of lots or parcels of land abutting or adjoining the sidewalk proposed to be constructed, altered, or repaired. [Ord. 702 § 4, 2002.]

#### **12.20.050 Notice to construct, alter or repair.**

The city manager or the city manager's designee shall cause notice of the city council order to construct, alter, or repair to be served on the owner of each of the lots, or parts of lots, or parcels of land abutting or adjoining the sidewalk to be constructed, altered, or repaired as set out in PMC 12.20.060. [Ord. 702 § 5, 2002.]

#### **12.20.060 Service process.**

Any notice required by the provisions of this chapter shall be served in the following manner:

A. The city manager or the city manager's designee may serve the owner by (1) personal service, or (2) service upon some person of the family of the owner above the age of 18 years at the dwelling or usual place of abode of the owner, or (3) by certified mail with return receipt requested and directed to the owner at the address on the county assessor's most recent property assessment roll.

B. If notice by personal service, family service, or service by certified mail fails, the notice will be sufficient by posting a copy of the notice in a conspicuous place on each of the lots, parts of lots, or parcels of land abutting or adjoining the sidewalk to be constructed, altered, or repaired.

C. If the property has been posted, according to the provisions set out above, an owner may not object that actual notice was not received. [Ord. 702 § 6, 2002.]

**12.20.070 Time of service.**

The notice to construct, alter, or repair is effective at the time of personal service, or family service, or three days after mailing if sent by certified mail, or at the time of posting. [Ord. 702 § 7, 2002.]

**12.20.080 Notice provisions.**

The notice shall state:

- A. The work required to be performed;
- B. That the city has determined that the work is necessary for the public health, safety, and welfare;
- C. That the work must be completed in accordance with city standards within 90 days of the service of the notice;
- D. That if the owner fails to complete the work within 90 days, the owner may be subject to a fine of \$250.00 per day for a period beginning on the ninety-first day and ending when the work is completed;
- E. That if the owner fails to complete the work within the required time, the city may perform the work at the owner's expense;
- F. That if the owner fails to complete the work within the required time, the costs of the work performed by the city shall become a lien against the property;
- G. That the owner may appeal the order by filing an appeal within 15 days of the service of the notice; and
- H. That if the owner does not appeal the order, the order is final. [Ord. 702 § 8, 2002.]

**12.20.090 Performance of required work by city.**

A. If the owner fails to complete the work within the time prescribed by the final order, the city manager or city manager's designee shall

inform the council of the owner's noncompliance at the next regularly scheduled council meeting.

B. The city manager or city manager's designee shall also compile an estimate of costs, including but not limited to, legal, engineering, and administrative costs.

C. The city manager or city manager's designee shall present the estimate to the council at the council meeting.

D. By resolution, the council may, in its discretion, order the city manager or the city manager's designee to complete the work required and to advance the funds necessary for such construction, alteration or repair of the sidewalk from the general fund. [Ord. 702 § 9, 2002.]

**12.20.100 Notice of costs – Lien.**

A. When the work is completed by the city, pursuant to PMC 12.20.090, the owner shall be mailed by certified mail, return receipt requested, a copy of the estimate of costs.

B. When the work is completed, the city manager or the city manager's designee shall prepare for council an accounting of the actual costs, including but not limited to legal, engineering, construction, administrative costs, and any fees imposed by the council.

C. If the cost for the work is to be allocated between two or more properties, the accounting shall include an allocation of cost to each property and describe the method of allocation.

D. After reviewing the accounting, the council, by resolution, may approve the accounting of the individual costs or the allocation of costs to each property owner. The council will also establish an interest rate for the balance due to the city from the owner or owners and the council shall order that the total interest due as a result of the work shall not exceed the cost of the original work, including but not limited to, legal, engineering, construction, and administrative costs.

E. Upon approval of the accounting costs and allocations, council shall order the finance director to record a lien against the property in the amount approved by the resolution above.

F. Upon approval of the accounting and costs above, council shall order the finance director to serve the affected property owner a notice of intent to lien the property. The notice shall include (1) the amount of the lien, (2) how the amount of the lien

was determined (total cost or allocation of total cost), (3) the interest rate, (4) the cap on interest, (5) a statement that the owner may appeal the cost determination by filing an appeal within 15 days of service of the notice, and (6) a lien will be filed against the property with the county recorder 16 days after the date of the notice if no appeal has been filed. [Ord. 702 § 10, 2002.]

#### **12.20.110 Liens.**

A. Upon passage of resolution to lien properties, the finance director will record the lien in the city lien docket.

B. If no appeal is filed regarding the cost determination, then the finance director will record a lien with the county recorder 16 days after the owner is served with notice of intent to file a lien.

C. The city shall have a lien upon the described property for the total amount of cost from the time of entry until the city releases the lien.

D. The lien shall have priority over all other liens and encumbrances of any character and may be enforced in any manner permitted by law.

E. Any lien imposed under this section is hereby declared to be an incurred charge imposed on property by reason of owner's failure to meet routine obligations of ownership necessary to protect the public's health, safety, and welfare.

F. The city may enforce this lien in any manner authorized by ordinance or state law. [Ord. 702 § 11, 2002.]

#### **12.20.120 Appeal.**

An owner may appeal the city manager's order to construct, alter or repair the sidewalk, and/or the city manager's determination of cost to the city council. If the owner does not file an appeal within 15 days from the service of notice, the owner waives the right to appeal and the order of determination of costs is final. [Ord. 702 § 12, 2002.]

#### **12.20.130 Appeal procedure.**

A. An appeal shall be filed in writing with the city council within 15 days of service of notice of the order or the cost determination. The appeal shall be considered at the next regularly scheduled meeting of the council.

B. Any appeal must be addressed to the city council. Appeals must clearly state whether they are an appeal of an order to construct, alter or repair

or an appeal of a cost determination. Appeals must clearly and briefly set out the specifics of the appeal and the issues for the city council to consider.

C. If the appeal is from an order to construct, alter or repair the sidewalk, the issue on appeal will be whether the work ordered is necessary for the health, safety, and welfare of the public. If the council determines that the work order is necessary for the health, safety, and welfare of the public, the council shall issue an order requiring that the work be completed within the original 90 days or 60 days from the council's determination, whichever is longer. If the council determines the work order is not necessary for the health, safety, and welfare of the public, the council shall order the city manager or the city manager's designee to cancel the order to construct, alter, or repair the sidewalk. The city council's order is final.

D. If the appeal is from a cost determination, the issue before the council shall be limited to the accuracy of the costs assessed. The council shall issue an order affirming or modifying the cost determination requiring payment. The council's order is final. Council will then order the finance director to place a lien in the lien docket and to record a lien with the county recorder.

E. An appeal to the council from a cost determination shall not have the effect of tolling the period of time in which the owner must complete such construction, alteration, or repair of the sidewalk. [Ord. 702 § 13, 2002.]

#### **12.20.140 Property owner liability.**

It is not only the duty of all owners of land within the city of Philomath to keep and repair all sidewalks existing in front of, along or abutting upon their respective lots, parcels of land, or parts thereof; but such owners are hereby declared to be liable for all damage whatsoever, resulting or arising from their fault or negligence in failing to keep any such sidewalk in repair. [Ord. 702 § 14, 2002.]