CITY OF PHILOMATH

MUNICIPAL

CODE

A Codification of the General Ordinances

of the City of Philomath, Oregon

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TABLE OF CONTENTS

Preface

Table of Revised Pages

City Charter

Title 1 General Provisions

Title 2 Administration and Personnel

Title 3 Revenue and Finance

Title 4 (Reserved)

Title 5 Business Taxes, Licenses and Regulations

Title 6 Animals

Title 7 (Reserved)

Title 8 Health and Safety

Title 9 Public Peace, Morals and Welfare

Title 10 Vehicles and Traffic

Title 11 (Reserved)

Title 12 Streets, Sidewalks and Public Places

Title 13 Public Service and Utilities

Title 14 Public Improvements

Title 15 Buildings and Construction

Title 16 (Reserved)

Title 17 (Reserved)

Title 18 Zoning

Tables

Index

PREFACE

Citation to the Philomath Municipal Code: This code should be cited as PMC; i.e., "see PMC 3.05.010." A PMC title should be cited PMC Title 3. A PMC chapter should be cited Chapter 3.05 PMC. A PMC section should be cited PMC 3.05.010. Through references should be made as PMC 3.05.010 through 3.05.040. Series of sections should be cited as PMC 3.05.010, 3.05.020, and 3.05.030.

Numbering system: The number of each section of this code consists of three parts, in sequence as follows: Number of title; number of chapter within the title; number of section within the chapter. Thus PMC 3.05.020 is Title 3, Chapter 5, Section 20. The section part of the number (.020) initially consists of three digits. This provides a facility for numbering new sections to be inserted between existing sections already consecutively numbered. In most chapters of the PMC, sections have been numbered by tens (.010, .020, .030, .040, etc.), leaving nine vacant numbers between original sections so that for a time new sections may be inserted without extension of the section number beyond three digits.

Legislation: The legislative source of most sections is enclosed in parentheses at the end of the section. References to ordinances are abbreviated; thus "(Ord. 2221 § 1, 1995; Ord. 2024 § 2, 1991)" refers to Section 1 of Ordinance No. 2221 and Section 2 of Ordinance No. 2024. "Formerly" followed by a PMC citation preserves the record of original codification. A semicolon between ordinance citations indicates an amendment of the earlier section.

Codification tables: To convert an ordinance citation to its PMC number consult the codification tables. The parenthetical information at the end of each ordinance entry indicates where the ordinance has been codified. Ordinances designated as "Special," "Repealed," or "Not Codified" do not appear in the code.

Index: A complete subject matter index is included for PMC Titles 1 through 18. The index includes complete cross-referencing and is keyed to the section numbers described above.

Errors or omissions: Although considerable care has been used in the production of this code, it is inevitable in so large a work that there will be errors. As users of this code detect such errors, it is requested that a note citing the section involved and the nature of the error be e-mailed to: CPC@codepublishing.com, so that correction may be made in a subsequent update.

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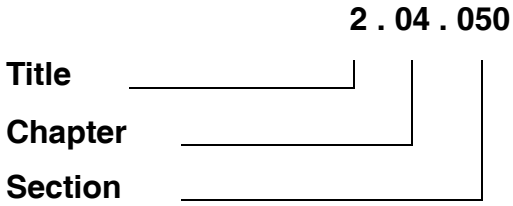
How to Amend the Code

Code Structure and Organization

The code is organized using a three-factor decimal numbering system which allows for additions between sections, chapters, and titles, without disturbing existing numbers.



Typically, there are nine vacant positions between sections; four positions between chapters, and several title numbers are "Reserved" to allow for codification of new material whose subject matter may be related to an existing title.

Ordinances of a general or public nature, or one imposing a fine, penalty or forfeiture, are codifiable. Prior to enacting a codifiable ordinance, ascertain whether the code already contains provisions on the topic.

Additions

If the proposed ordinance will add material not contained in the code, the ordinance will specify an "addition"; that is, a new title, chapter, section, or subsection, will be added. For example:

Section 1. Chapter 5.20, Taxicab Licenses, is added to read as follows:

-or-

Section 1. A new title, Title 18, Zoning, is added to read as follows:

A specific subsection can also be added when appropriate:

Section 2. Subsection D is added to Section 5.05.070, to read as follows:

Amendments

If the ordinance amends existing code provisions, specify the affected section or chapter numbers in the ordinance. This kind of amendment typically adds a section to an existing chapter, or amends an existing section. Set out the entire section or subsection, not just the text (e.g., sentence) that was changed. For example:

Section 1. Section 5.05.030 is amended to read as follows:

-or-

Section 1. Section 5.05.035, Additional fees, is added to Chapter 5.05 to read as follows:

An ordinance can also amend a specific subsection of a code section:

Section 3. Subsection B of Section 5.05.070 is amended to read:

Repeals

Ordinances which repeal codified material should specify the code chapter, section, or subsection number. The chapter, section, or subsection numbers will be retained in the code, along with their title, as a record of ordinance activity (and as an explanation for gaps in the numbering sequence). The number of the repealed section or chapter number can be reused at a later time when desired. For example:

Section 2. Section 5.05.020, License, is repealed.

Renumbering

If the ordinance renumbers existing code provisions (either sections or subsections), identify how remaining sections or subsections should be renumbered (or relettered).

Codification Assistance

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TABLE OF REVISED PAGES

The following table is included in this code as a guide for determining whether the code volume properly reflects the latest printing of each page. This table will be updated with the printing of each supplement.

Through usage and supplementation, pages in looseleaf publications can be inserted and removed in error when pages are replaced on a page-for-page substitution basis.

The "Page" column lists all page numbers in sequence. The "Revised Date" column reflects the latest revision date (e.g., "(Revised 6/07)") and printing of pages in the up-to-date volume. A "—" indicates that the page has not been revised since the 2006 republication. This table reflects all changes to the code through Ordinance 812, passed August 8, 2016.

Page	Revised Date
Table of Contents	—
Preface	1/09
City Charter	
1, 2	—
3, 4	—
5, 6	—
7, 8	—
9	—
Title 1	
1	6/07
3, 4	1/09
5, 6	1/09
7	12/11
Title 2	
1	—
3, 4	—
5, 6	—
7, 8	—
9, 10	—
11, 12	—
13, 14	5/15
14.1, 14.2	5/15
15, 16	—
17, 18	—
Title 3	
1	—
3, 4	12/13
5, 6	12/13
6.1, 6.2	12/13
7, 8	—
Title 4	
1	—
Title 5	
1	9/16
3, 4/6	12/11
7, 8	6/07
9, 10	9/16
11, 12	9/16
13, 14	9/16
Title 6	
1	1/09
3, 4	5/15
4.1, 4.2	5/15
5, 6	—
7, 8	1/09
Title 7	
1	—
Title 8	
1	—
3, 4	—
5, 6	1/09
7, 8	1/09
9	1/09
Title 9	
1	9/16
3, 4	5/15
4.1, 4.2	5/15
5, 6	12/11
7, 8	5/15
8.1, 8.2	5/15
9, 10	1/13
11, 12	9/16
12.1, 12.2	9/16
13, 14	—

Page	Revised Date
Title 10	
1	—
3, 4	—
5, 6	1/09
7, 8	1/09
8.1, 8.2	1/09
9, 10	—
11	—
Title 11	
1	—
Title 12	
1, 2	9/16
2.1, 2.2	9/16
3, 4	5/15
5, 6	5/15
6.1, 6.2	5/15
7, 8	1/11
Title 13	
1	—
3, 4	5/15
5, 6	5/15
7, 8	5/15
9, 10	5/15
11, 12	5/15
13, 14	5/15
15, 16	5/15
17, 18	5/15
19, 20	5/15
21, 22	5/15
23, 24	5/15
24.1, 24.2	5/15
24.2a, 24.2b	5/15
24.2c, 24.2d	5/15
24.2e, 24.2f	5/15
24.2g, 24.2h	5/15
24.3, 24.4	7/10
25, 26	—
27, 28	8/09
29, 30	8/09
31, 32	8/09
33, 34	1/11
35	8/09
Title 14	
1	—
3, 4	—
5, 6	—
7, 8	—
9, 10	—
11, 12	—
13, 14	—
15, 16	—
17, 18	—
19	—
Title 15	
1	—
3, 4	5/15
5	5/15
Title 16	
1	—
Title 17	
1	—
Title 18	
1, 2	12/13
3, 4	9/16
5, 6	9/16
7, 8	9/16
8.1, 8.2	9/16
9, 10	—
11, 12	—
13, 14	9/16
15, 16	—
17, 18	—
19, 20	9/16
21, 22	9/16
22.1, 22.2	9/16
23, 24	—
25, 26	9/16
27, 28	9/16
29, 30	9/16
31, 32	9/16
33, 34	—
35, 36	—
37, 38	—
39, 40	12/11
40.1, 40.2	12/11
41, 42	—
43, 44	—
45, 46	12/11
47, 48	12/11
49, 50	12/11
51, 52	12/11
52.1, 52.2	12/11

Page	Revised Date
52.3, 52.4	12/11
52.5, 52.6	12/11
52.7, 52.8	12/11
53, 54	9/16
54.1, 54.2	9/16
55, 56	12/13
57, 58	1/13
58.1, 58.2	9/16
58.3, 58.4	9/16
59, 60	—
61, 62	9/16
63, 64	—
65, 66	12/11
67, 68	—
69, 70	—
71, 72	—
73, 74	8/09
75, 76	8/09
77, 78	8/09
78.1, 78.2	8/09
79, 80	—
81, 82	—
83, 84	—
85, 86	—
87, 88	9/16
89, 90	9/16
91, 92	—
93, 94	—
95, 96	—
97, 98	—
99, 100	—
101, 102	—
103, 104	—
105, 106	—
107, 108	—
109, 110	—
111, 112	—
113, 114	—
115, 116	—
117, 118	—
119, 120	—
121, 122	—
123, 124	—
125	—

Ordinance Table

1, 2	1/09
3, 4	1/09
5, 6	1/09
7, 8	—
9, 10	12/11
11, 12	12/13
13, 14	5/15
15	9/16

Index

Preface	—
1, 2	12/11
3, 4	9/16
5, 6	9/16
6.1, 6.2	9/16
7, 8	5/15
9, 10	5/15
11, 12	9/16
12.1, 12.2	9/16
13, 14	1/13
14.1, 14.2	1/13
15, 16	12/11
16.1, 16.2	12/11
17, 18	8/09
19	—

CHARTER FOR THE CITY OF PHILOMATH

Table of Contents

PREAMBLE

Chapter I. NAME AND BOUNDARIES

Section 1.1 Title of enactment.
Section 1.2 Name of city.
Section 1.3 Boundaries.

Chapter II. POWERS

Section 2.1 Powers of the city.
Section 2.2 Construction of powers.

Chapter III. FORM OF GOVERNMENT

Section 3.1 Form of government.
Section 3.2 Where powers vested.
Section 3.3 Council.
Section 3.4 Councilors.
Section 3.5 Mayor.
Section 3.6 Other officers.
Section 3.7 Salaries.
Section 3.8 Qualifications of officers.

Chapter IV. COUNCIL

Section 4.1 Meetings.
Section 4.2 Quorum.
Section 4.3 Record of proceedings.
Section 4.4 Meetings to be public.
Section 4.5 Mayor's functions at council meetings.
Section 4.6 President of the council.
Section 4.7 Vote required.
Section 4.8 Interference in administration.

Chapter V. POWERS AND DUTIES OF OFFICERS

Section 5.1 Mayor.
Section 5.2 Municipal court.
Section 5.3 City manager.
Section 5.4 City recorder.
Section 5.5 City attorney.

Chapter VI. ELECTIONS

Section 6.1 Regulation of elections generally.
Section 6.2 Tie votes.
Section 6.3 Commencement of terms of office.
Section 6.4 Oath of office.
Section 6.5 Nominations.

Chapter VII. VACANCIES IN OFFICE

Section 7.1 What creates vacancy.
Section 7.2 Filling vacancies.

Chapter VIII. ORDINANCES

Section 8.1 Enacting clause.
Section 8.2 Mode of enactment.
Section 8.3 When ordinances take effect.

Chapter IX. PUBLIC IMPROVEMENTS

Section 9.1 Condemnation.
Section 9.2 Improvements.
Section 9.3 Special assessments.
Section 9.4 Public contracts.

Chapter X. MISCELLANEOUS PROVISIONS

Section 10.1 Debt limit.
Section 10.2 Existing ordinances continued.
Section 10.3 Repeal of previously enacted provisions.
Section 10.4 Time of effect of charter.

Chapter XI. CHARTER AMENDMENTS

Section 11.1 Annexations by majority vote.
Section 11.2 Services to property outside corporate city limits.

PREAMBLE

We, the people of the city of Philomath, Benton County, Oregon, in order to avail ourselves of self-determination in municipal affairs to the fullest extent now or hereafter granted or allowed by the constitutions and laws of the United States and the state of Oregon, by this charter confer upon the city the following powers, subject it to the following restrictions, prescribe for it the following procedures and governmental structure, and repeal all charter provisions of the city enacted prior to the time this charter takes effect.

Be it enacted by the people of the city of Philomath, Benton County, Oregon:

Chapter I

NAME AND BOUNDARIES

Section 1.1 Title of enactment.

This enactment may be referred to as the Philomath Charter of 1987.

Section 1.2 Name of city.

The municipality of Philomath, Benton County, Oregon, shall continue to be a municipal corporation with the name "City of Philomath."

Section 1.3 Boundaries.

The city shall include all territory encompassed by its boundaries as they now exist or hereafter are modified pursuant to law. The city recorder shall keep an accurate, up-to-date description of the boundaries. The copies and descriptions shall be available for public inspection during regular office hours.

Chapter II

POWERS

Section 2.1 Powers of the city.

The city shall have all powers that the constitutions, statutes, and common law of the United States and of this state expressly or implied grant or allow municipalities, as fully as though this charter specifically enumerated each of those powers.

Section 2.2 Construction of powers.

In this charter, no mention of a particular power shall be construed to be exclusive or to restrict the scope of the powers which the city would have if the particular power were not mentioned. The charter shall be liberally construed to the end that the city may have all powers necessary or convenient for the conduct of its municipal affairs, including all powers that cities may assume pursuant to state laws and to the municipal home rule provisions of the state constitution.

Chapter III

FORM OF GOVERNMENT

Section 3.1 Form of government.

The city of Philomath operates under the council-manager form of government.

Section 3.2 Where powers vested.

Except as this charter provides otherwise, all powers of the city are vested in the council.

Section 3.3 Council.

The council shall be composed of a mayor and six councilors elected from the city at large.

Section 3.4 Councilors.

Councilors in office at the time this charter is adopted shall continue in office until the end of the terms for which they were elected. Councilors elected at the 1986 biennial general election shall serve a term of four years. At the first biennial general election after this charter becomes effective, three councilors shall be elected, each for a term of two years. At each subsequent biennial general election, six councilors shall be elected, each for a term of two years.

Section 3.5 Mayor.

At each biennial general election a mayor shall be elected for a term of two years.

Section 3.6 Other officers.

(1) The city manager is an officer of the city who shall be appointed by the council for an indefinite term, to hold office at the pleasure of the council and who may be removed at any time by a

two-thirds vote of all the incumbent members of the council.

(2) The city recorder is also an appointed officer of the city and shall be appointed or removed from office as provided in section 5.3(6) of this charter.

(3) Other officers of the city who may be appointed by the council, if the council chooses to fill the positions, are the municipal judge and the city attorney, each appointed by the council for an indefinite term, to hold office at the pleasure of the council and who may be removed at any time by two-thirds vote of all the incumbent members of the council.

(4) The council may create or eliminate appointive offices as it deems necessary, except for the positions of city recorder and city manager, and may appoint qualified officers thereto. The council may combine any two or more appointive offices, except the offices of the city manager and the municipal judge, or city attorney and municipal judge. The municipal judge shall not be subject in judicial functions to supervision by any other officer.

Section 3.7 Salaries.

The compensation for the services of each city officer and employee shall be the amount fixed by the council.

Section 3.8 Qualifications of officers.

(1) To be eligible for an elective city office, a person at the time of election must be a qualified elector within the meaning of the state constitution and have resided in the city during the six months immediately preceding the election. For purposes of this subsection, city means all areas included in the corporate limits as of the date of the election.

(2) No appointive officer or employee may serve on the council.

(3) No person may be a candidate for the offices of mayor and council at the same election, nor shall any person serve a continuous period of the council, including service as mayor, of more than ten years plus the portion of a partial term to which he or she may have been originally appointed.

(4) Except as otherwise provided in this section, the council is the final judge of the qualifications and election of its own members.

Chapter IV

COUNCIL

Section 4.1 Meetings.

The council shall hold regular meetings at least once a month in the city at a time and place that it designates. Meetings of the council other than regular meetings may be held in accordance with procedures prescribed by state law and general ordinance. The council shall adopt rules for the government of its members and proceedings.

Section 4.2 Quorum.

A majority of the incumbent members of the council shall constitute a quorum for its business, but a smaller number may meet and compel the attendance of absent members in a manner provided by ordinance.

Section 4.3 Record of proceedings.

The council shall cause a record of its proceedings to be kept in the manner provided by state law.

Section 4.4 Meetings to be public.

All deliberations and proceedings of the council shall be public except as otherwise authorized by state law.

Section 4.5 Mayor's functions at council meetings.

The mayor shall preside over council deliberations and shall have a vote on all questions before the council. The mayor shall preserve order, enforce the rules of the council, and determine the order of business under the rules of the council.

Section 4.6 President of the council.

At its first meeting of each odd-numbered year, the council by ballot shall elect a president from its membership. In the mayor's absence from a council meeting, the president shall preside over it. Whenever the mayor is unable to perform the functions of the office, the president shall act as mayor.

Section 4.7 Vote required.

Except as this charter otherwise provides, the concurrence of a majority of the members of the council voting when a quorum of the council is

present at a council meeting shall be necessary to decide any questions before the council.

Section 4.8 Interference in administration.

A member of the council shall not attempt to coerce the manager or any other city employee in carrying out the duties of the office; or attempt to influence the manager or any other city employee in making an appointment or in removal of an officer or employee or in purchasing equipment, services or supplies; or attempt to exact a promise relative to an appointment from any candidate for manager. The council may, however, in session, discuss with or suggest to the manager anything pertinent to city affairs or the interests of the city. A violation of this subsection may occasion the censure or removal from office of the offending member of the council, by the council or a court of competent jurisdiction.

Chapter V

POWERS AND DUTIES OF OFFICERS

Section 5.1 Mayor.

The mayor shall appoint the committees provided by the rules of the council; preside and enforce the rules of council at all meetings; sign all records of proceedings approved by the council; shall have no veto power; sign all ordinances passed by the council after their passage; represent the city at ceremonial functions, unless council directs otherwise; and, after the council approves a bond of a city officer or a bond for a license, contract or proposal, shall endorse the bond.

Section 5.2 Municipal court.

(1) Jurisdiction. A judge appointed by the council may hold within the city a court known as the municipal court of the city of Philomath, Benton County, Oregon. The court shall be open for the transaction of judicial business at times specified by the council. All areas within the city and, as provided by law, territory outside the city, is within the territorial jurisdiction of the court. All proceedings of the municipal court are governed by the general laws of the state for justices of the peace and justice courts except as this charter or city ordinance prescribe to the contrary. The municipal court has original jurisdiction over all offenses that city ordinances define and make punishable and over all actions to recover or enforce forfeitures or penalties that city ordinances define or authorize. The municipal court shall have concurrent jurisdiction over state traffic or misdemeanor offenses when permitted by state law.

(2) The municipal judge shall have authority to:

(a) Render judgments and impose sanctions for enforcement of judgments on persons and property within the jurisdiction of the court;

(b) Issue process for the arrest of any person accused of an offense against the city or within the jurisdiction of municipal court;

(c) Commit any such person to jail or admit the person to bail pending trial;

(d) Issue search warrants;

(e) Issue subpoenas and compel obedience to such subpoenas;

(f) Compel witnesses to appear and testify in court on the trial of any cause before the court;

(g) Issue any process necessary to carry into effect the judgments of the Court;

(h) Punish witnesses and others for contempt of court;

(i) Perform other judicial or quasi-judicial functions as the council prescribes by general ordinance.

(3) The council may appoint a municipal judge and such pro tem judges as it considers necessary to hold office at the pleasure of the council. Notwithstanding this section and Section 3.6 of this charter, the council may provide for the transfer of powers and duties of the municipal court to the appropriate court of the state of Oregon.

Section 5.3 City manager.

(1) Qualifications. The city manager shall be the administrative head of the government of the city. The manager shall be chosen by a majority vote of all members of the council without regard to political considerations and solely with reference to executive and administrative qualifications. The city manager need not be a resident of the city or of the state at the time of appointment, but within six months thereafter shall become, and during his or her tenure remain, a resident of the city, unless this requirement is modified by the city council.

(2) Bond. Before taking office, the manager shall give a bond in an amount and with such surety

as is approved by the council. The premiums on the bond shall be paid by the city.

(3) Term. The manager shall be appointed for an indefinite term and may be removed at the pleasure of the council, as specified in section 3.6(1) of this charter. Upon vacancy occurring in the office of manager, the council shall adopt, at its next meeting, a resolution of its intention to appoint another manager. No appointment shall be made until at least four weeks have elapsed after adoption of the resolution. Within four weeks after adoption of the resolution, the city shall commence advertisement of the vacancy. Not later than six months after adopting the resolution, the council shall appoint a manager to fill such vacancy.

(4) Powers and Duties. The manager shall:

(a) Implement policy as determined by the council, keeping the council advised of the affairs and needs of the city;

(b) Attend all meetings of the council unless excused therefrom by the council or the mayor;

(c) Make reports as requested by the council about the affairs and departments of the city;

(d) See that all ordinances are enforced and that the provisions of all franchises, leases, contracts, permits and privileges granted by the city are observed;

(e) Appoint and remove all employees except as otherwise provided by this charter;

(f) Generally supervise and control appointive officers and employees in their work except as otherwise provided by this charter;

(g) Regulate, coordinate, systematize, adjust and, as necessary, reorganize the various city departments;

(h) Supervise all purchasing;

(i) Supervise preparation of the annual budget;

(j) Appoint such advisory boards as the manager may deem desirable to advise the manager, but the members of such boards shall receive no compensation as such board members;

(k) Execute all contracts;

(l) Supervise the operation of all city-owned public utilities and city-owned property;

(m) Devote full time to the office of city manager;

(n) Perform such other duties as the council directs.

(5) The manager shall have no control over the council, the city attorney, or the judicial activities of the municipal judge.

(6) The manager may only appoint or dismiss a department head with the approval of a majority of the incumbent members of the council. The council shall not appoint or dismiss a department head without the manager's recommendation, unless the position of city manager is vacant.

(7) Seats at Council Meetings. The manager is entitled to sit with the council and take part in all council discussions, but shall have no vote on questions before the council.

(8) Manager Pro Tem. If the office of city manager becomes vacant or if the city manager is absent from the city or disabled from acting as manager, the council may designate a city manager pro tem. The manager pro tem shall perform the duties of the city manager but may appoint or dismiss a department head only with the approval of three-fourths of the incumbent members of the council. The term of office of the city manager pro tem ends when the city manager returns to the city or takes office.

Section 5.4 City recorder.

The city recorder, or designee, shall serve ex officio as clerk of the council, attend all its meetings unless excused therefrom, and keep an accurate record of its proceedings.

Section 5.5 City attorney.

A city attorney may be appointed by the city council, serve for an indefinite term, and may be removed at the pleasure of the council. The city attorney shall be the chief legal officer of the city and shall perform whatever duties are required by the council.

Chapter VI

ELECTIONS

Section 6.1 Regulation of elections generally.

Except as this charter provides otherwise and as the council provides otherwise by ordinance, the general laws of the state apply to city elections.

Section 6.2 Tie votes.

In the event of a tie vote for candidates for an elective office, the successful candidate shall be determined by a public drawing of lots in a manner prescribed by the council.

Section 6.3 Commencement of terms of office.

The term of office of a person elected to a city office at a regular city election commences at the first council meeting of the year immediately following the election.

Section 6.4 Oath of office.

Before commencing the duties of office, each elective officer shall take an oath or shall affirm faithful performance of the duties of the office and support for the constitutions and laws of the United States and the state of Oregon.

Section 6.5 Nominations.

A person possessing the qualifications required by the charter may be nominated for an elective city office. The council, by general ordinance, shall prescribe the method and form of nomination.

Chapter VII

VACANCIES IN OFFICE

Section 7.1 What creates vacancy.

(1) An office becomes vacant upon the incumbent's:

(a) Death;

(b) Adjudicated incompetence;

(c) Conviction of a crime pertaining to the office or any felony;

(d) Unlawful destruction of public records;

(e) Resignation;

(f) Recall or removal from office;

(g) Ceasing to possess the qualifications for office;

(h) Failure, following election or appointment to the office, to qualify for the office within ten days after the time for the term of office to commence.

(2) In the case of a mayor or councilor, an office also becomes vacant on the incumbent's termination of residency in the city, absence from the city for 30 days without consent of the council, or absence from the meetings of the council occurring within a 60-day period without like consent, and on a declaration by the council of the vacancy.

Section 7.2 Filling vacancies.

Vacant elective city offices shall be filled by appointment by a majority vote of the remaining members of the council. The appointee's term of office begins immediately on appointment and continues throughout the unexpired term of the predecessor. During the temporary disability of an officer or during an officer's temporary absence from the city for any cause, the office may be filled pro tem in the manner provided for filling vacancies in office.

Chapter VIII

ORDINANCES

Section 8.1 Enacting clause.

The enacting clause of all ordinances hereafter enacted shall be, "The city of Philomath ordains as follows:".

Section 8.2 Mode of enactment.

(1) Except as subsections (2) and (3) provide to the contrary, an ordinance shall, before enactment, be read fully and distinctly in open council meetings on two different days.

(2) Except as subsection (3) allows both readings by title only, an ordinance may be enacted at a single council meeting by unanimous vote of all councilors present after being read first in full and then by title.

(3) Any of the readings may be by title only:

(a) If no council member present at the meeting requests to have the ordinance read in full; or

(b) If a copy of the ordinance is provided for each council member and three copies are provided for public inspection in the office of the city recorder not later than one week before the first reading of the ordinance and notice of the availability of the copies is given by written notice posted at the City Hall and two other public places in the city or by advertisement in a newspaper of general circulation in the city. An ordinance enacted after being read by title alone shall have no legal effect if it differs substantially from its terms as filed prior to the reading, unless each section

incorporating such a difference is read fully and distinctly in open council meeting as finally amended prior to being approved by the council.

(4) An ordinance may be amended at the time of enactment if the ordinance as amended deals with the same general subject.

(5) Upon the final vote on an ordinance, the ayes and nays of the members of the council shall be taken and entered in the record of the proceedings.

(6) On the enactment of an ordinance, the city recorder shall endorse it with the date of enactment and the attester's name and title of office. Thereafter, the mayor shall sign and date the ordinance over the title of "Mayor."

Section 8.3 When ordinances take effect.

An ordinance takes effect on the thirtieth day after its enactment. However, when the council considers it advisable, an ordinance may provide a later effective date or, in an emergency, an ordinance may take effect immediately on enactment by the affirmative vote of four or more members of the council.

Chapter IX

PUBLIC IMPROVEMENTS

Section 9.1 Condemnation.

A necessity of taking property for the city by condemnation shall be determined by the council and declared by a resolution of the council describing the property and stating the uses to which it shall be devoted.

Section 9.2 Improvements.

The procedure for making, altering, vacating, or abandoning a public improvement shall be governed by general ordinance or, to the extent not so governed, by applicable state laws. Actions on a proposed public improvement, except a sidewalk or an improvement unanimously declared by the incumbent members of the council to be needed at once because of an emergency, shall be suspended for six months on a remonstrance by the owners of two-thirds of the land to be specially assessed for the improvement. In this section, "owner" means the record holder of legal title or, if land is being purchased under a land sale contract recorded or verified in writing by the record holder of legal title to the land, the purchaser.

Section 9.3 Special assessments.

The procedure for levying, collecting and enforcing payment of special assessments for public improvements or other services to be charged against real property shall be governed by ordinance.

Section 9.4 Public contracts.

Public contracts shall be in accordance with state law and ordinances and resolutions adopted by the city council and at the discretion of the local contract review board for the city of Philomath in accordance with the rules and regulations adopted by the local contract review board.

Chapter X

MISCELLANEOUS PROVISIONS

Section 10.1 Debt limit.

The city's indebtedness may not exceed the limits imposed on a city by state law. All city officials and employees who create or officially approve indebtedness in excess of this limitation shall be jointly and severally liable for the excess.

Section 10.2 Existing ordinances continued.

All ordinances of the city consistent with this charter and in force when it takes effect remain in effect until amended or repealed.

Section 10.3 Repeal of previously enacted provisions.

All charter provisions of the city enacted prior to the time this charter takes effect are repealed. This repeal shall not affect the validity of an outstanding bond issued by the city or impair the obligation of the city under the bond or the rights of the holders of the bond, and it shall not affect bond issuing power that has not been exhausted.

Section 10.4 Time of effect of charter.

This charter shall take effect January 1, 1987.

Chapter XI

CHARTER AMENDMENTS

Section 11.1 Annexations by majority vote.

Unless mandated by state law, annexations to the city of Philomath may only be approved by a prior majority vote among the electorate. (Adopted at a special election conducted May 16, 1995.)

Section 11.2 Services to property outside corporate city limits.

The city shall furnish no services or enter into any agreement or contract to furnish such services to property outside the corporate limits of the city unless approved by a prior majority vote among the electorate. (Adopted at a special election conducted May 21, 1996.)

Title 1

GENERAL PROVISIONS

Chapters:

1.01 Code Adoption
1.10 Initiative and Referendum
1.15 General Penalty

Chapter 1.01

CODE ADOPTION

Sections:

1.01.010 Adoption, amendment and repeal.
1.01.020 Reservation of prosecutions.
1.01.030 Severability.

1.01.010 Adoption, amendment and repeal.

A. There is hereby adopted the Philomath Municipal Code which consists of the ordinances of the city that have ongoing effect and which have not expired according to their own terms.

B. This code may be cited as the Philomath Municipal Code.

C. This code may be amended by reference to code section without the necessity of referring to the underlying ordinance.

D. New ordinances may be added to the code, and if an ordinance is enacted with a numbering system that is inconsistent with the code numbering system, the city recorder is authorized to assign an appropriate code number and to codify the ordinance accordingly.

E. The repeal of any code section does not revive the original text of the code section, but rather, repeal of an existing section repeals the underlying ordinance section and all of its amendments. [Ord. 742 § 1, 2006.]

1.01.020 Reservation of prosecutions.

The adoption of this code shall not affect any prosecution for violations of ordinances, which violations were committed prior to the effective date of the adoption of the municipal code, nor shall the adoption of the municipal code be construed as a waiver of any license, fee, or penalty due and owing at the effective date of the code adoption, nor shall adoption affect the validity of any bond or cash deposited with the city pursuant to the terms of any ordinance, upon its codification; but rather, all rights and obligations pertaining under ordinances in effect prior to codification shall remain in full force and effect. [Ord. 742 § 1, 2006.]

1.01.030 Severability.

If any section, subsection, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code. The city declares that it would have enacted this code, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional. [Ord. 742 § 1, 2006.]

Chapter 1.10

INITIATIVE AND REFERENDUM

Sections:

1.10.010 Elections procedures generally.
1.10.020 Prospective petition.
1.10.030 Ballot title – Appeal.
1.10.040 Petition and circulation requirements.
1.10.050 Filing and percentage requirements – Verification.
1.10.060 Measure referred by council.
1.10.070 Withdrawal, adoption or election.
1.10.080 Election notice and results.

1.10.010 Elections procedures generally.

The elections laws of the state of Oregon applicable to municipal elections, as set forth in the provisions of Chapters 221 and 246 through 260 ORS, as now constituted, except as modified by this chapter, are hereby adopted as the elections code for the city of Philomath. In the event that any portion of this chapter is found invalid for any reason by a court and there exists a corresponding procedure or requirement in the state law or the regulations pursuant thereto adopted by the Secretary of State, the corresponding state elections procedure shall be applied to determine the validity of any matter in question. Any elections matter not specifically addressed by this code shall be governed by state law. [Ord. 750 § 1, 2008.]

1.10.020 Prospective petition.

A. Before circulating a petition proposing an initiative or referendum for city legislation, the chief petitioners must file a prospective petition with the recorder. The recorder will provide the form showing:

1. The signatures, printed names and mailing addresses of at least two and not more than three chief petitioners, all of whom must be city electors;

2. For initiative petitions, the text of the city legislation proposed for adoption, and, where applicable, the title, ordinance number, and charter or code section numbers proposed for amendment, revision or repeal;

3. For referendum petitions, the text of the city legislation proposed for referral, and, where applicable, the title, ordinance number or code section numbers of the city legislation proposed for referral; and

4. Whether one or more persons will be paid for obtaining signatures on the petition.

B. The recorder must date and time stamp any prospective petition filed.

C. After the recorder determines that the prospective petition complies with this section and state law, the recorder will certify to one of the chief petitioners that petitions may be circulated among city electors in accordance with PMC 1.10.040. [Ord. 750 § 2, 2008.]

1.10.030 Ballot title – Appeal.

A. Prior to the end of the fifth business day after a prospective initiative petition is filed and meets all legal requirements, the recorder will review the text of the proposed initiative to determine if it complies with the single subject requirement and if it proposes city legislation.

B. If the proposed text does not meet the requirements of subsection (A) of this section, the recorder will notify a chief petitioner by certified mail, return receipt requested, that the prospective petition does not meet the single subject or city legislation requirement.

C. Any city elector dissatisfied with the recorder's determination may file a petition for review in circuit court. The petition for review must be filed not later than the seventh business day after the written determination by the recorder.

D. If the proposed initiative meets the requirements of subsection (A) of this section or a referendum petition is certified for circulation, the recorder will send two copies of the prospective petition to the city attorney. The city attorney has five business days after receipt to prepare a ballot title for the proposed measure and an explanatory statement for the voter's pamphlet. The ballot title must conform to the requirements of state law. The city attorney or the city manager will prepare an explanatory statement for the voter's pamphlet that conforms to the requirements of state law.

1. The explanatory statement must consist of an impartial, simple and understandable statement of not more than 500 words explaining the measure and its effect.

2. After preparing the ballot title and explanatory statement, the city attorney will return one copy of the prospective petition, ballot title and

explanatory statement to the recorder and one copy to one of the chief petitioners.

E. After receiving a ballot title from the city attorney, the recorder must publish in a newspaper of general circulation in the city a notice of receipt of the ballot title. The notice must state that a city elector may file a petition for review of the ballot title not later than the date referred to in subsection (F) of this section.

F. After receiving the prospective petition ballot title from the city attorney, the recorder must write the date of receipt on it. Within seven business days after that date, any city elector may petition in circuit court to challenge the ballot title prepared by the city attorney. After the seven-day period, or following the final adjudication of any legal review, the recorder must certify the ballot title as prepared by the city attorney or as prescribed by the court to a chief petitioner.

G. Any city elector filing a petition of review with the circuit court must file a copy of the challenge with the recorder not later than the end of the next business day following the date the petition is filed with the circuit court. This requirement does not invalidate a petition that is timely filed with the circuit court.

H. The procedures in subsections (A) through (G) of this section also apply to referendum measures. However, the completion of these procedures is not a prerequisite to the circulation of petitions for referendum measures under PMC 1.10.040. Ballot titles need not be stated on petitions circulated to propose referendum measures. [Ord. 750 § 3, 2008.]

1.10.040 Petition and circulation requirements.

A. After the requirements of PMC 1.10.020(C) are met for referendum petitions and after the requirements of PMC 1.10.030(F) are met for initiative petitions, the chief petitioners may circulate a petition for the measure among city electors. The petition (cover sheet and signature sheet) must conform to the requirements of state law.

B. The petition identification number will be assigned by the recorder.

C. Each signature sheet of a referendum petition must contain the title, ordinance number or code section numbers of the city legislation proposed by referral and the date it was adopted by the council.

D. No signature sheet may be circulated by more than one person. Each signature sheet must contain a statement signed by the circulator that each elector who signed the sheet did so in the circulator's presence and, to the best of the circulator's knowledge, each such elector is a legal elector of the city, and that the information placed on the sheet by each elector is correct. [Ord. 750 § 4, 2008.]

1.10.050 Filing and percentage requirements – Verification.

A. The recorder will accept for signature verification only petitions that comply with the requirements of this section and other applicable laws.

B. No petition may be accepted for filing unless it contains at least the required number of verified signatures to submit the measure to the electors, as prescribed by subsection (G), (H) or (I) of this section.

C. No initiative petition may be accepted for signature verification more than six months after the date of the recorder's certification under PMC 1.10.030(F).

D. Any petition to refer legislation adopted by the council must be submitted for signature verification not more than 30 days after the council's adoption of the legislation.

E. An initiative or referendum petition may not be accepted for signature verification if it contains less than 100 percent of the required number of signatures.

F. Upon the acceptance of a petition, the Benton County elections division must verify the signatures. The verification may be performed by random sampling in a manner approved by the Secretary of State. Within 30 days after the recorder's acceptance of a petition, the recorder must certify to the council whether the petition contains a sufficient number of qualified signatures to require the submission of the proposed measure to city electors. The recorder must state in the certificate the number of qualified signatures prescribed by subsection (G), (H) or (I) of this section to require the proposed city legislation to be submitted to city electors. The petition is considered filed as of the date of the recorder's certification.

G. An initiative measure proposing the amendment, revision or repeal of the city charter will be submitted to the electors if the number of qualified signatures on the petition equals or exceeds 15 percent of the total number of registered voters in the city on January 1st of the calendar year the petition is filed.

H. An initiative measure proposing the adoption, amendment or repeal of any other city legislation will be submitted to the electors if the number of qualified signatures on the petition equals or exceeds 15 percent of the total number of registered voters in the city on January 1st of the calendar year the petition is filed.

I. A referendum measure will be submitted to the electors if the number of qualified signatures on the petition equals or exceeds 10 percent of the total number of registered voters in the city on January 1st of the calendar year the petition is filed. [Ord. 750 § 5, 2008.]

1.10.060 Measure referred by council.

A. The council may directly refer to the electors any ordinance or any proposed ordinance, property tax, bond or other proposition or question. It may also directly refer to the electors any proposed amendment, revision or repeal of the city charter.

B. The city attorney will prepare a ballot title and explanatory statement that conforms to the requirements of state law. The council will certify and file the ballot title and explanatory statement with the recorder. The explanatory statement will be prepared by the city attorney or the city manager.

C. The recorder will publish in a newspaper of general circulation in the city a notice of receipt of the ballot title, including notice that an elector may file a petition for review of the ballot title not later than the date set in subsection (D) of this section.

D. Any city elector may petition the circuit court to challenge the ballot title certified by the council. Such petition must be filed with the circuit court within seven business days of council filing of the ballot title. Any person filing a petition of review with the circuit court must file a copy of the challenge with the recorder not later than the end of the business day next following the date the petition is filed with the circuit court. This requirement does not invalidate a petition that is timely filed with the circuit court.

E. A measure will be considered filed under this section as of the date the council delivers its certified ballot title to the recorder. [Ord. 750 § 6, 2008.]

1.10.070 Withdrawal, adoption or election.

A. The chief petitioners may withdraw a verified petition at any time before council action to adopt the proposed legislation or submit it to the electors. Any withdrawal must be either by written or oral declaration made at a council meeting and entered in the minutes of that meeting.

B. Unless a petition is withdrawn, after receiving a certification from the recorder that a petition has sufficient signatures to require the proposed city legislation to be submitted to the electors under PMC 1.10.050(E), the council may either adopt the proposed legislation by ordinance or call an election to submit the legislation to the electors. The council may also call an election to submit matters to the electors upon referral under PMC 1.10.060.

C. The council must call the election on the next election date available under state law that is not sooner than the ninetieth day after the date of the recorder's certificate of sufficient signatures, and must call the election no later than the next regular election. For a council referral, the election on the measure may be held on the next election date available under state law. [Ord. 750 § 7, 2008.]

1.10.080 Election notice and results.

A. Notice of elections on measures submitted to city electors on regular or special election dates must be given in accordance with state law.

B. Measures referred by the council will be designated on the ballot: "Referred to the Voters by the City Council."

C. Measures proposed by referendum petition will be designated on the ballot: "Referred by Petition."

D. Measures proposed by initiative petition will be designated on the ballot: "Proposed by Initiative Petition."

E. The recorder must certify the election results to the council at the first council meeting after the results are certified by the county clerk.

F. A measure adopted by the electors takes effect 30 days after the election, unless the measure expressly provides a different effective date. [Ord. 750 § 8, 2008.]

Chapter 1.15

GENERAL PENALTY

Sections:

1.15.010 Criminal penalties.

1.15.010 Criminal penalties.

In addition to penalties provided by state law, any violation of this code not otherwise specified shall be a Class A infraction, punishable by a fine of up to $500.00. A violation of this code shall be considered a separate offense for each day the violation continues.

In the event of mislabeled or obsolete classifications relating to code violations, the provisions of this chapter shall apply. [Ord. 773 § 1, 2011.]

Title 2

ADMINISTRATION AND PERSONNEL

Chapters:

2.10 Rules of Council
2.15 Nominating Petitions
2.20 Jury Trial Process
2.25 Disposition of Unclaimed Personal Property
2.30 Planning Commission
2.35 Urban Renewal Agency
2.40 Tree Advisory Board
2.45 Transportation and Traffic Safety Commission
2.50 Historic Resources Commission
2.55 Park Advisory Board

Chapter 2.10

RULES OF COUNCIL

Sections:

2.10.010 Purpose.
2.10.020 Order of business.
2.10.030 Consent agenda.
2.10.040 Hearings and council impartiality.
2.10.050 Committee and representative assignments.
2.10.060 Committees, commissions and boards of the city.
2.10.070 Procedural matters.

2.10.010 Purpose.

In order to establish an orderly procedure for the conduct of city council business and to elaborate upon the provisions set forth in the Philomath city charter, the city council of the city of Philomath hereby adopts rules of council. City of Philomath Ordinance No. 273 will continue to govern the conduct of public hearings. In the event of a conflict between the provisions of this chapter and Ordinance No. 273, the provisions of this chapter shall govern. [Ord. 557 § 1, 1988.]

2.10.020 Order of business.

The order of business of the city council shall be as follows:

A. Roll call.
B. Consent agenda.
C. Public hearings.
D. Visitors and petitions.
E. Standing committee reports.
F. Representative reports.
G. Staff reports.
H. Unfinished business.
I. New business.
J. Ordinances and resolutions.
K. Adjournment. [Ord. 557 § 2, 1988.]

2.10.030 Consent agenda.

Before the vote is taken on the consent agenda, a council member may request that one or more items be excluded therefrom. The remaining items may then be voted upon as a whole. Items removed from the consent agenda as provided above shall be taken up for action immediately after the consent agenda vote and before the next item on the agenda is taken up. [Ord. 557 § 3, 1988.]

2.10.040 Hearings and council impartiality.

A. Challenging Participation by a Council Member.

1. Any proponent, opponent of, or other party interested in a matter to be heard by the council may challenge the qualification of any council member to participate in such proceeding and decision. Such challenge must state facts relied upon by the party relating to a council member's bias, prejudgment, personal interest, or other facts from which the party has concluded that the council member will not participate and make a decision in an impartial manner.

a. Such challenge must be made prior to the commencement of the public hearing.

b. Such challenge shall be incorporated into the record of the hearing.

2. No council member shall participate in discussion or vote on the matter when for any reason the council member determines he or she cannot participate in the hearing and decision in an impartial manner.

3. No other officer or employee of the city who has a financial or other private interest shall participate in discussion with, or give an official opinion to, the council on the matter without first declaring for the record the nature and extent of such interest.

4. The general public has a right to have councilors free from prehearing or ex parte contacts on matters heard by them. It is recognized that a countervailing public right is free access to public officials on any matter. Therefore, councilors shall reveal any significant prehearing or ex parte contacts with regard to any matter as early as possible under the circumstances in the hearing on the matter. If such contacts have impaired the council member's impartiality or ability to vote on the matter, the council member shall so state and shall abstain therefrom.

5. The remaining members of the council, by a two-thirds vote, may exclude a member of the council from participation in discussion and vote on a matter if the council member refuses to abstain and the council finds that the council member is not capable of participating in an impartial manner

because of a conflict of interest or pre-hearing contacts.

6. Notwithstanding any provision of this or any other rule, an abstaining or disqualified council member may be counted for purposes of forming a quorum; and a council member may represent himself or herself, a client or any other member of the public at a hearing; provided, that the council member:

a. Abstains from the vote on the matter;

b. Removes himself or herself from the council area and joins the audience; and

c. Makes full disclosure of his or her status and position at the time of addressing the council.

B. During public hearings, public testimony may be limited to five minutes for each witness, other than the proponent and appellant.

C. Preservation of Order. The presiding officer shall preserve order and decorum, discourage attacks on personalities or the impugning of council member's motives, and confine council member debate to the question under discussion. Persons in attendance at the meeting who become disorderly, abusive, or disruptive may be removed from the meeting. The presiding officer may summon the assistance of the police or other administrative staff to assist in maintaining order, and if an arrest of a person(s) is deemed necessary by the presiding officer to restore or maintain order, the presiding officer may sign a complaint or citation on behalf of the city. [Ord. 666, 1998; Ord. 557 § 4, 1988.]

2.10.050 Committee and representative assignments.

A. At the first regular meeting of each calendar year, or as soon as practicable thereafter, the mayor shall, after consultation with and consent of the members affected, appoint the members of the council to the council's standing committees and evenly assign representative responsibilities to the council members.

B. The standing committees for the council shall be:

1. Public works;
2. Finance and administration;
3. Ordinance;
4. Police.

C. Standing committee appointments and representative assignments shall be for at least one year. A member may, with the consent of the mayor, have his or her assignment changed. If a member of the council is temporarily unable to fulfill committee responsibilities, the mayor may appoint another council person to fill the assignment pro tem, until the council member is able to resume the assignment.

D. If a vacancy occurs on the council, the outgoing member's standing committee and representative duties shall pass to his or her replacement. During the period in which a new council member has not yet been elected or appointed, the mayor may assign additional committee and representative responsibilities to the remaining council members.

E. The standing committees of the council shall choose a chairperson from among their members and organize themselves as they see fit.

F. In addition to the above, the mayor or majority of the council may appoint temporary special committees as deemed necessary. [Ord. 557 § 5, 1988.]

2.10.060 Committees, commissions and boards of the city.

A. Unless otherwise provided for by ordinance, the committees, commissions and boards of the city, other than the committees of the council and special committees, may be established and their members appointed by the majority vote of the council.

B. Proposed appointees to the city's committees, commissions and boards shall be presented to the council not less than two weeks prior to council action. This requirement may be specifically waived by the council.

C. Appointees to the city's committees, commissions and boards shall serve for a term not to exceed four years and shall serve no more than two consecutive terms, unless provided otherwise in the ordinance establishing the commission or board. In the event that there is an insufficient number of eligible applicants available to appoint to an advisory body, the council may waive prior length of service as a consideration for a particular appointment.

D. Committees, commissions and boards so established by the council shall choose a chairperson from among their members and shall organize

themselves as they see fit. [Ord. 732, 2005; Ord. 557 § 6, 1988.]

2.10.070 Procedural matters.

A. If, when a vote is taken, a dissenting vote is cast, at the request of any member of the council, the vote shall be repeated by roll call and the vote of each council member shall be recorded.

B. Should any member so request, a motion or resolution shall be submitted in writing.

C. The council may by majority vote, in the course of its proceedings, temporarily suspend any rule, part of any rule or any number of rules provided in this chapter.

D. It shall be the duty of the chair, and the privilege of any member of the council, to call to order any member who violates any established rule of council.

E. A member who willfully violates any rule of council may be disciplined either by a vote of censure or by a reprimand from the chair, as the council may direct.

F. A proposed ordinance may be amended after any reading, provided the amendment does not materially alter the substance of the ordinance. Such an amendment of an ordinance does not require the repeating of any reading.

G. "Robert's Rules of Order, Newly Revised," shall be the parliamentary authority in all matters not specifically covered by these rules of council or by the Philomath city charter.

H. Matters brought before the council which are not included on the meeting agenda may be discussed. Prior to taking any action, council may refer the matter to staff or the appropriate committee for a recommendation. Upon development of a recommendation, the item will be placed on the next available meeting agenda for council action.

Nothing in this subsection shall prevent the council from taking action on a matter where a majority of the council determines that the public interest would be best served to act without any time delay. [Ord. 666, 1998; Ord 557 § 7, 1988.]

Chapter 2.15

NOMINATING PETITIONS

Sections:

2.15.010 Petitions.
2.15.020 Signatures required.
2.15.030 Time for filing petition.

2.15.010 Petitions.

A. A qualified elector of the city of Philomath, who shall have resided in the city during the six months immediately preceding the election, may be nominated for an elective city position. Nominations shall be by petition which shall contain:

1. The name by which the candidate is commonly known. (The candidate may use a nickname in parentheses in connection with the candidate's full name);

2. The mailing address of the residence of the candidate;

3. The office for which the candidate seeks nomination;

4. A statement that the candidate is willing to accept the office if elected;

5. A statement that the candidate will qualify if elected; and

6. The signature of the candidate.

B. For purposes of this section, residency is defined as the place where a person has their true, fixed and permanent home, and principal establishment and to which, whenever they are absent, they have the intention of returning. [Ord. 637, 1995; Ord. 629, 1994; Ord. 554 § 1, 1987.]

2.15.020 Signatures required.

Such petition shall be signed by not fewer than 20 registered voters who reside within the city limits of the city of Philomath. No signer shall sign more than one petition for each vacant position. If a signer does so, the signature shall be valid only on the first sufficient petition filed for the position. The signature sheets and forms therefor shall be in accordance with the applicable rules and forms designed by the Secretary of State. [Ord. 637, 1995; Ord. 554 § 2, 1987.]

2.15.030 Time for filing petition.

All nominating papers comprising a petition shall be assembled and filed with the recorder as

one instrument not sooner than the fifteenth day after the date of the primary election, and not later than the seventieth day before the date of the general election. The recorder shall make a record of the exact time at which each petition is filed and shall take and preserve the name and address of the person by whom it is filed. If the petition is not signed by the required number of qualified registered voters, the recorder shall notify the candidate and the person who filed the petition within five days after the filing. If the petition is insufficient in any other particular, the recorder shall return it immediately to the person who filed it, certifying in writing wherein the petition is insufficient. Such deficient petition shall be amended and filed again as a new petition, or a substitute petition for the same candidate may be filed within the regular time before filing nomination petitions. A petition of nomination for a successful candidate at an election shall be preserved in the office of the recorder until the term of office for which the candidate is elected expires. [Ord. 637, 1995; Ord. 554 § 3, 1987.]

Chapter 2.20

JURY TRIAL PROCESS

Sections:

2.20.010 Right to trial by jury.
2.20.020 Request for jury trial.
2.20.030 Jury terms.
2.20.040 Jury list.
2.20.050 Exemption from jury service.
2.20.060 Certification of jury list.
2.20.070 Notification of jurors.
2.20.080 Return of jury list.
2.20.090 Jury box.
2.20.100 Selection of jurors.
2.20.110 Disqualification of jurors.
2.20.120 Summons of jurors.
2.20.130 Additional jurors.
2.20.140 Reuse of ballots.
2.20.150 Selection of jurors.
2.20.160 Verdicts.
2.20.170 Compensation of jurors.
2.20.180 Failure to appear.

2.20.010 Right to trial by jury.

Every person charged with a crime defined and made punishable by the charter or an ordinance of this city shall have the right to trial by jury in the municipal court upon the terms and conditions hereinafter set forth. [Ord. 705 § 1, 2002.]

2.20.020 Request for jury trial.

The right to a jury trial shall be exercised by giving notice in writing to the municipal judge that a trial by jury is demanded. Such notice shall be signed by the defendant or his or her attorney and shall be effective only if given not less than 30 days before the date set for the trial of the cause. [Ord. 705 § 2, 2002.]

2.20.030 Jury terms.

Each calendar year shall be divided into two jury terms beginning on the effective date of the ordinance codified in this chapter and thereafter on the first day of January and July in each year. [Ord. 705 § 3, 2002.]

2.20.040 Jury list.

Within 10 days after the effective date of the ordinance codified in this chapter and thereafter,

and not more than 30 days before the commencement of each succeeding jury term, the court clerk shall make a jury list of 100 persons residing in the city. The jurors shall be competent to serve as jurors in the circuit court of the state of Oregon. [Ord. 705 § 4, 2002.]

2.20.050 Exemption from jury service.

In preparing the jury list, the court clerk shall discard the names of the persons drawn who are known to be disqualified as jurors or who are exempt from jury duty under the laws of the state of Oregon. [Ord. 705 § 5, 2002.]

2.20.060 Certification of jury list.

The jury list shall include the full name, residence address and occupation of each of the persons named therein and shall be certified by the court clerk at the time the list is prepared. [Ord. 705 § 6, 2002.]

2.20.070 Notification of jurors.

Not more than 10 days before the commencement of each jury term, the court clerk shall notify each juror by letter of his or her selection to the jury list for the term. During the term, each juror drawn for service at a trial shall be summoned to the municipal court at a time and place set for trial by written notice forwarded by ordinary mail. [Ord. 705 § 7, 2002.]

2.20.080 Return of jury list.

The court clerk shall return the jury list for the term to the municipal judge specifying the jurors notified of their selection to the jury list for the term, the manner in which each juror was notified and the date of notification. [Ord. 705 § 8, 2002.]

2.20.090 Jury box.

The municipal judge shall keep the jury box for each term; after the jury list has been made and returned, the court clerk shall prepare and deposit in the jury box a separate ballot containing the name, residence and occupation of each juror shown by the return to be notified as provided in PMC 2.20.080. [Ord. 705 § 9, 2002.]

2.20.100 Selection of jurors.

When a jury trial has been demanded as provided herein, and the date has been set, the court clerk shall draw 15 ballots from the jury box. [Ord. 705 § 10, 2002.]

2.20.110 Disqualification of jurors.

When it appears to the municipal judge that a juror whose ballot is drawn does not qualify to act as a juror and is exempt from jury duty under the laws of the state of Oregon, the ballot shall be returned to the jury box and another ballot shall be drawn. [Ord. 705 § 11, 2002.]

2.20.120 Summons of jurors.

When the drawing of jurors as provided in PMC 2.20.100 and 2.20.110 is completed, the court clerk shall summon each of the jurors as so drawn by ordinary mail, specifying the time and place of the trial and the provisions of PMC 2.20.180. The summons shall be mailed to each of the jurors not less than five days before the date set for trial. Before the date set for jury trial, the court clerk shall make a return of summons to the municipal judge specifying the name, address and date of mailing of summons to each juror summoned. [Ord. 705 § 12, 2002.]

2.20.130 Additional jurors.

When the number of jurors summoned do not appear at the time and place of trial, or when the municipal judge determines that the number of jurors to appear is likely to be exhausted before a jury is duly impaneled, he may draw additional names from the jury box and summon the jurors so drawn in the manner provided in PMC 2.20.120, or in person, if there is insufficient time to give the notice provided in PMC 2.20.120. [Ord. 705 § 13, 2002.]

2.20.140 Reuse of ballots.

The ballots drawn from the jury box, except ballots described in PMC 2.20.110, shall not be returned to the jury box during the term until all other ballots have been drawn from the jury box. Such ballots shall be kept secure by the court clerk. [Ord. 705 § 14, 2002.]

2.20.150 Selection of jurors.

At the trial, a jury of six persons shall be selected to hear the cause in the same manner in which juries are selected in the circuit courts of the

state of Oregon in criminal proceedings. [Ord. 705 § 15, 2002.]

2.20.160 Verdicts.

When the cause has been submitted to the jury and before proceeding to its deliberation, the jurors shall select from their number a foreperson; and when the verdict has been reached, the foreperson shall report the verdict orally to the court. The six jurors selected to hear the cause must concur to render a verdict. [Ord. 705 § 16, 2002.]

2.20.170 Compensation of jurors.

The jurors selected to hear the cause shall receive the sum of $10.00 for each day of service. Jurors who appear in response to a summons but who are not selected to hear the cause shall receive the sum of $10.00 for each day of service. [Ord. 705 § 17, 2002.]

2.20.180 Failure to appear.

Any person who is summoned for jury service as provided in this chapter who fails to appear as directed in the said summons is in contempt of court and shall be punished, upon conviction, by a fine not exceeding $25.00. [Ord. 705 § 18, 2002.]

Chapter 2.25

DISPOSITION OF UNCLAIMED PERSONAL PROPERTY

Sections:

2.25.010 Personal property in city custody.
2.25.020 Reclamation by owner.
2.25.030 Sale at public auction.
2.25.040 Sale at public auction – Certificate of sale.
2.25.050 Dangerous or perishable property.
2.25.060 Reclamation after sale at public auction.
2.25.070 Applicability.

2.25.010 Personal property in city custody.

Whenever any personal property other than motor vehicles is taken into custody by any department by reason of seizure, abandonment or for any other reason, the personal property shall be turned over to and held by the police department at the expense and risk of the owner or person lawfully entitled to possession thereof. [Ord. 424 § 1, 1980.]

2.25.020 Reclamation by owner.

Within 60 days after such property is taken into possession, except when confiscated or held as evidence, the owner or person lawfully entitled to possession may reclaim the same upon application to the police department, submission of satisfactory proof of ownership or right to possession, and payment of charges and expenses, if any, incurred in the storage, preservation, and custody of the property as determined by the chief of police. [Ord. 424 § 2, 1980.]

2.25.030 Sale at public auction.

A. At any time after said 60-day period, the chief of police may sell at public auction any unclaimed property and any property which has been confiscated and not ordered destroyed, except such property held as evidence in any legal or court proceeding. Notice of such sale shall be given once by publication in a newspaper of general circulation in the city of Philomath at least 10 days before the date of sale, giving the time and place of sale and generally describing the property to be sold.

B. All sales of such property shall be for cash to the highest and best bidder; provided, however,

that any person appearing at or prior to such sale and proving ownership or right to possession thereto shall be entitled to reclaim the property upon the payment of the charges and expenses incurred by the city in the storage, preservation, and custody of the property and a proportionate share of the costs of advertising the same for sale.

C. If no bids are entered for the property or if the highest bid entered is less than the costs incurred by the city, the chief of police may enter a bid on behalf of the city in an amount equal to such costs, and the property shall become the property of the city as compensation for the costs incurred. If the property is of no use or value to the city, it shall be disposed of in such manner as the city administrator directs.

D. In lieu of a sale of the property under the foregoing provisions of this chapter, the chief of police, with the approval of the city administrator, may transfer any portion of the unclaimed property to the city for use by the city or other governmental agencies, or by destruction, after the same notice as set forth in this section.

E. The proceeds of a sale shall be first applied to payment of the cost of the sale and the expense incurred in the preservation, storage and custody of the property, and the balance, if any, shall be credited to the general fund of the city.

F. Said sales shall be without the right of redemption. [Ord. 424 § 3, 1980.]

2.25.040 Sale at public auction – Certificate of sale.

At the time of the payment of the purchase price, the chief of police shall execute a certificate of sale in duplicate, the original to be delivered to the purchaser and a copy to be kept with the police department case file relating to such property. The certificate shall contain the date of sale, the consideration paid, a brief description of the property and a stipulation that the city does not warrant the condition or title of such property other than the return of the purchase price in case the title is for any reason invalid. The certificate of sale shall be in substantially the following form:

CERTIFICATE OF SALE

This is to certify that under the provisions of Ordinance No. ____ and pursuant to due notice of time and place of sale, I did on the ____ day of _____, 20____, sell at public auction to _____ for the sum of $_____ cash, he being the highest and best bidder, and that being the highest and best sum bid therefor, the following described property to-wit:

_____
_____
_____

and in consideration of the payment of the said sum of $_____, receipt whereof is hereby acknowledged, I have this day delivered to said purchaser the foregoing property. Dated this ____ day of _____, 20 ____.

_____
Chief of Police

[Ord. 424 § 4, 1980.]

2.25.050 Dangerous or perishable property.

Any property coming into the possession of the chief of police which he determines to be dangerous or perishable may be disposed of immediately, without notice, in such manner as he determines to be in the public interest. The chief of police shall cause contraband or illegal drugs and/or substances to be destroyed at the direction of the court after such property has been provided to the court as evidence and is no longer required by the procedure at the court. Any unclaimed contraband, illegal drugs and/or substances shall be destroyed at the direction of the chief of police and certification of destruction shall be placed in the case file relating to such found or unclaimed property. [Ord. 424 § 5, 1980.]

2.25.060 Reclamation after sale at public auction.

If the property is sold as provided herein and if within six months after the sale, the owner of the property, including money, files with the city administrator a claim for the property, and proves his right to the property, the city administrator shall direct that the money or the amount received for the property, less expenses of the sale, shall be paid to the owner from the city treasury. The city

administrator shall not approve any claim filed more than six months after the sale.

If the property is transferred to the city, or other governmental agency, in lieu of sale, it may be claimed by the lawful owner thereof at any time within six months from the transfer to the governmental agency. The chief of police in disposing of property in the manner provided herein shall not be liable to the owner thereof. [Ord. 424 § 6, 1980.]

2.25.070 Applicability.

This chapter shall apply to all personal property, except motor vehicles, now or hereafter in custody of the city. [Ord. 424 § 7, 1980.]

Chapter 2.30

PLANNING COMMISSION

Sections:

2.30.010 Purpose.
2.30.020 Members – Terms.
2.30.030 Qualifications.
2.30.040 Vacancies.
2.30.050 Officers – Meetings.
2.30.060 Duties and powers.
2.30.070 Zoning.
2.30.080 Public facilities.
2.30.090 Building and improvements.
2.30.100 Recommendations in writing.
2.30.110 Expenditures.
2.30.120 Conflict of interest.
2.30.130 Hearings.

2.30.010 Purpose.

The purpose of this chapter is to define terms, duties of and the method of appointing members of the planning commission. [Ord. 547 § 1, 1987.]

2.30.020 Members – Terms.

There shall be a planning commission known as the city of Philomath planning commission, which shall consist of seven members, each of whom shall be appointed by the city council. Commissioners in office at the time the ordinance codified in this chapter takes effect shall continue in office until the end of the terms for which they were appointed. Commissioners appointed after the ordinance codified in this chapter takes effect shall serve a term of four years, unless they are filling the remaining unexpired term of a vacant position. In addition, the Philomath city council may appoint one of its members to serve as an ex-officio non-voting representative to the planning commission. No member of the council may serve as a voting member of the planning commission. [Ord. 547 § 2, 1987.]

2.30.030 Qualifications.

To be eligible for appointment to and continued service on the planning commission, a person at the time of appointment and throughout his or her term of service must be a qualified elector within the meaning of the State Constitution and reside in the city of Philomath. Notwithstanding the provisions

of this section, the council may appoint two members to the commission who are qualified electors and reside within the urban growth boundary of the city of Philomath, but do not reside in the city; provided, that the other five commission seats are filled by city residents. Any commissioner may be removed from the commission by a majority vote of the city council. [Ord. 547 § 3, 1987.]

2.30.040 Vacancies.

Vacant positions on the commission shall be filled by appointment by a majority vote of the members of the council. The appointee's term of office begins immediately on appointment and continues throughout the unexpired term of the predecessor. During the temporary disability of a commissioner or during a commissioner's temporary absence from the city for any cause, the commission position may be filled pro tem in the manner provided for filling vacancies on the commission. Any commissioner may be reappointed for an additional four-year term by the city council, but no commissioner shall serve more than two consecutive full terms. [Ord. 547 § 4, 1987.]

2.30.050 Officers – Meetings.

The city planning commission at its first meeting of the year shall elect by ballot a chairman and vice-chairman who shall be members appointed by the city council and who shall hold office at the pleasure of the planning commission. A majority of the incumbent members of the commission shall constitute a quorum. The commission may make and alter rules and regulations for its government and procedure consistent with laws of this state and city charter and ordinances. It shall meet at least monthly unless there is no scheduled business to bring before the commission. The city council shall assign to the commission an office or headquarters in which to hold its meetings, transact its business and keep its records. Special meetings may be called at any time by the president and three members by written notice served upon each member of the commission at least 24 hours before the time specified for the proposed meeting. Emergency meetings may be held upon such notice as is appropriate to the circumstances, but the minutes for such a meeting shall describe the emergency justifying less than 24 hours' notice. [Ord. 547 § 5, 1987.]

2.30.060 Duties and powers.

The planning commission shall have the authority which is now or may hereafter be assigned to it by charter, ordinances, or resolutions of the city of Philomath and ORS 227.090, and other applicable state laws. [Ord. 547 § 6, 1987.]

2.30.070 Zoning.

Copies of all proposed ordinances for the establishment of the boundaries of any zone or district or amendments thereto, and of all proposed ordinances regulating or limiting the use, height, area, bulk and construction of buildings, to be submitted to the council shall, before the same are presented to the council, be first submitted to the city planning commission for recommendation or action in accordance with the requirements of the city zoning ordinance. [Ord. 547 § 7, 1987.]

2.30.080 Public facilities.

Before final action shall be taken by the council, or any department of the city, on the location or design of any public building, bridge, statue, park, parkway boulevard, playground or public ground, the same shall be submitted to the city planning commission for consideration and report; and provided further, that unless the city council definitely names a longer period for the return of a report specified herein, the approval of the city planning commission shall be deemed to have been given at the end of 30 days after receipt of the same in writing by its secretary, unless the city planning commission shall submit a report thereon prior to that time. [Ord. 547 § 8, 1987.]

2.30.090 Building and improvements.

Any person, copartnership, corporation or public authority having charge of the construction, placing or designing of buildings or other structures and improvements, may call upon the city planning commission for a report thereon. The city planning commission may make recommendations to any person, copartnership, corporation, or public authority with reference to the location of buildings, structures or works to be erected, constructed or altered by or for such person, copartnership, corporation or public authority; provided however, such recommendation shall not have the force or effect of a law or ordinance, except when so pre-

scribed by the laws of the state of Oregon or by city ordinance. [Ord. 547 § 9, 1987.]

2.30.100 Recommendations in writing.

All recommendations made to the council by the commission shall be in writing. [Ord. 547 § 10, 1987.]

2.30.110 Expenditures.

The city planning commission shall have no authority to make any expenditures on behalf of the city, or to obligate the city for the payment of sums of money. [Ord. 547 § 11, 1987.]

2.30.120 Conflict of interest.

A member of a planning commission shall not participate in any commission proceeding or action in which any of the following has a direct or substantial financial interest: the member or the spouse, brother, sister, child, parent, father-in-law, mother-in-law of the member; any business in which the member is then serving or has served within the previous two years; or any business with which the member is negotiating for or has an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the meeting of the commission where the action is being taken. [Ord. 547 § 12, 1987.]

2.30.130 Hearings.

Hearings before the planning commission shall be conducted in accordance with applicable procedures adopted by city ordinance. [Ord. 547 § 13, 1987.]

Chapter 2.35

URBAN RENEWAL AGENCY

Sections:

2.35.010 Declaration of blight.
2.35.020 Agency title.
2.35.030 Membership.
2.35.040 Powers.
2.35.050 Limitations.
2.35.060 Advisory commission.
2.35.070 Savings clause.

2.35.010 Declaration of blight.

Pursuant to ORS 457.035, the Philomath city council declares that blighted areas now exist in the city and that there is currently a need for an urban renewal agency to function in the city of Philomath. [Ord. 583 § 1, 1990.]

2.35.020 Agency title.

The urban renewal agency created by this chapter shall be known as the Philomath urban renewal agency. [Ord. 583 § 2, 1990.]

2.35.030 Membership.

The Philomath urban renewal agency shall be comprised of members of the Philomath city council as it lawfully exists from time to time. Any change in membership of the Philomath city council shall automatically, and without need for further legislative action, constitute an identical change in the membership of the Philomath urban renewal agency. [Ord. 583 § 3, 1990.]

2.35.040 Powers.

Subject to the limitations imposed by PMC 2.35.050, the Philomath urban renewal agency shall have authority to exercise all power available to the agency under ORS Chapter 457, including, but not limited to, the power of eminent domain. The powers conferred to this agency by ORS Chapter 457 are in addition and supplemental to the powers conferred by any other law. [Ord. 583 § 4, 1990.]

2.35.050 Limitations.

Any act of the Philomath urban renewal agency shall be considered the act of the urban renewal agency only and shall not be considered an act of

the Philomath city council, even though membership of both are identical.

The Philomath urban renewal agency shall not exercise any power, which, by charter, requires voter approval. [Ord. 583 § 5, 1990.]

2.35.060 Advisory commission.

The Philomath urban renewal advisory commission is hereby established. The commission shall be comprised of five members appointed by the Philomath city council. The purpose of the commission is to assist in implementation of the urban renewal plan, to make recommendations to the Philomath urban renewal agency and to help inform Philomath's citizens of the plan's content and activities. [Ord. 583 § 6, 1990.]

2.35.070 Savings clause.

If any section or portion of this chapter is determined to be unconstitutional or otherwise unlawful, the remaining sections and portions of this chapter shall be severable and shall remain in effect. [Ord. 583 § 7, 1990.]

Chapter 2.40

TREE ADVISORY BOARD

Sections:

2.40.010 Establishment.
2.40.020 Composition.
2.40.030 Terms – Vacancies of citizen membership.
2.40.040 Duties.
2.40.050 Scope of permit requirements.
2.40.060 Prohibited acts.
2.40.070 Public nuisance definition.
2.40.080 Notice required.
2.40.090 Violation and penalty.

2.40.010 Establishment.

The Philomath tree advisory board is hereby established. [Ord. 618 § 1, 1993.]

2.40.020 Composition.

The tree advisory board shall be composed of the city's public works committee and at least one but not more than two citizen members. [Ord. 791 § 1, 2015; Ord. 738 § 1, 2006; Ord. 667 § 1, 1998; Ord. 618 § 2, 1993.]

2.40.030 Terms – Vacancies of citizen membership.

The terms of the citizen members shall be for three years, expiring on December 31st. Initial appointments shall expire on December 31, 2001. Any vacancy shall be filled by appointment by the mayor, with the confirmation by the council, for the unexpired portion of the term. [Ord. 667 § 2, 1998; Ord. 618 § 2.1, 1993.]

2.40.040 Duties.

A. Within a reasonable time after the establishment, the tree advisory board shall meet and adopt rules of procedure for regular and special meetings.

B. The tree advisory board shall decide or make recommendations as appropriate to the city council regarding any matter pertaining to the tree ordinance and its enforcement. These items include, but are not limited to:

1. Amendments to the tree ordinance and other ordinances referencing trees and landscaping;

2. Policies concerning the selection, planting, care and removal of trees, shrubs and other plants;

3. Funding for the purchase, planting and care of trees;

4. Development of policies and procedures;

5. Establishment of educational and informational programs; and

6. The issuance of permits as required by this chapter.

C. The tree advisory board shall hear all disputes which arise between the city and any person over the interpretation or enforcement of the arboricultural specifications manual, the urban forest plan and the interpretation of this chapter. The decision of the tree board shall be recommended to the city council for approval.

D. The tree advisory board shall develop, and as needed, update, an arboricultural specifications manual. This manual shall contain regulations and standards for the planting, maintenance, and removal of trees, shrubs and other plants on city-owned or controlled property.

E. The tree advisory board shall develop, and as needed, update, an urban forestry plan. The plan shall include specific projects which will meet goals defined in the plan. [Ord. 791 § 2, 2015; Ord. 738 § 1, 2006; Ord. 618 § 3, 1993.]

2.40.050 Scope of permit requirements.

A. No person, except a city employee, contractor hired by the city, or the electrical utility and their authorized agents, shall perform any of the following without first obtaining a permit from the city. Permits shall be issued at no cost.

1. Plant or remove trees on city-owned property or on the rights-of-way; or

2. Dig a tunnel or trench on city-owned or controlled property.

B. Prior to issuing a permit, the city shall ensure that the action proposed conforms with the urban forestry plan and the arboricultural specifications manual. If the city finds that the work performed under the permit is not in conformance with the conditions of the permit, the city may:

1. Nullify the permit;

2. Issue a written work order that the applicant cease and desist all work for which the permit was issued;

3. Impose penalties as defined in this chapter; and

4. Charge to the applicant the cost of steps taken to correct damage done. [Ord. 791 § 3, 2015; Ord. 618 § 4, 1993.]

2.40.060 Prohibited acts.

No person shall damage, cut, tap, carve or transplant any tree, shrub or other plant located on city property. This does not prohibit routine care and pruning.

No person shall attach any rope, wire, nail, sign, poster or other object to any tree, shrub, or plant located on city-owned property, except when authorized by the city.

No person shall top any tree on city-owned property without first obtaining a permit. [Ord. 618 § 5, 1993.]

2.40.070 Public nuisance definition.

As defined in PMC 9.15.070. [Ord. 618 § 6, 1993.]

2.40.080 Notice required.

Written notice shall be personally provided by door hanger, direct contact or sent by registered mail to the property owner.

A. The notice shall describe the kind of tree, shrub, or other plant, its location on the property, and the reason for declaring it a nuisance.

B. The notice shall include suggested actions that may be taken to abate the nuisance.

C. The notice shall require the elimination of the nuisance no less than 15 days after the notice is delivered, unless the nuisance is considered a hazard, at which point a lesser time of elimination shall be imposed depending on the risk hazard.

The city may have the nuisance abated after 15 days and file the cost of abatement as a lien against the property. [Ord. 791 § 4, 2015; Ord. 618 § 7, 1993.]

2.40.090 Violation and penalty.

Any person who violates any provision of this chapter or who fails to comply with any notice issued pursuant to the provisions of this chapter, upon being found guilty of violations in the municipal court, shall be subject to a fine for each separate offense not to exceed $500.00 or three times the appraised value of the tree, whichever is

greater. Each day during which any violation of the provisions of this chapter shall occur or continue shall be a separate offense.

If, as the result of the violation of any provision of this chapter, the injury, mutilation or death of a tree, shrub, or other plant located on city-owned or

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controlled property is caused, the cost of repair or replacement of such plant shall be borne by the party in violation.

The appraised value of trees shall be determined using methods described in the latest revision of "Valuation of Trees, Shrubs, and Other Plants," as published by the International Society of Arboriculture. [Ord. 618 § 8, 1993.]

Chapter 2.45

TRANSPORTATION AND TRAFFIC SAFETY COMMISSION

Sections:

2.45.010 Established – Membership.
2.45.020 Term – Vacancies.
2.45.030 Quorum – Rules and regulations.
2.45.040 Powers and duties.
2.45.050 Reports.

2.45.010 Established – Membership.

There is established a transportation and traffic safety commission which shall consist of seven voting members and nonvoting ex-officio members including the city manager, public works director, chief of police, city attorney, fire chief, and representatives from the Oregon Department of Transportation, and Benton County. The voting members shall consist of two members from the city council and five other persons, not more than two of whom may be nonresidents of the city but within the Philomath school district boundary, who shall be appointed by the mayor with confirmation by the city council. The community response team shall appoint one member as liaison to this commission.

The chair, vice-chair, and secretary shall be elected by the commission members. [Ord. 658 § 1, 1997.]

2.45.020 Term – Vacancies.

The term of the voting members shall be for two years, with three terms expiring on December 31st of one year and four expiring on December 31st of the next year. Any vacancy shall be filled by appointment by the mayor with the confirmation by the council for the unexpired portion of the term. [Ord. 658 § 2, 1997.]

2.45.030 Quorum – Rules and regulations.

Four voting members of the commission shall constitute a quorum. The commission may make rules and regulations for its government and procedure, consistent with the laws of the state and the city charter and ordinances, and shall meet monthly by the chair. [Ord. 658 § 3, 1997.]

2.45.040 Powers and duties.

The powers and duties of the transportation and traffic safety commission shall be as follows:

A. To act in an advisory capacity to the Philomath city council in the development and implementation of transportation improvements affecting the city.

B. To review, develop and/or advise the Philomath city council regarding traffic safety issues of the city.

C. To review and recommend projects for funding.

D. To assist in the development, update, and implementation of the city's transportation plan.

E. To serve as a liaison between the city and the Oregon Department of Transportation, Oregon Transportation Commission, and Oregon Traffic Safety Commission in development and implementing the Oregon Transportation Plan.

F. To promote public acceptance and knowledge on traffic and transportation programs of the city.

G. To act as an advocate of the city's position regarding implementation of the Oregon Transportation Plan.

H. To serve as liaison between the city and local governments in the coordination of local transportation plans. [Ord. 658 § 4, 1997.]

2.45.050 Reports.

The commission shall submit copies of its minutes to the city council and shall, in January of each year, make and file an annual report of its activities with the city council and such other reports as from time to time may be requested of them by the mayor and city council. [Ord. 658 § 5, 1997.]

Chapter 2.50

HISTORIC RESOURCES COMMISSION

Sections:

2.50.010 Purpose.
2.50.020 Membership.
2.50.030 Powers and duties of the commission.

2.50.010 Purpose.

The city of Philomath recognizes that certain significant historic resources located within its boundaries contribute to the unique character of the community and merit preservation. This chapter establishes an historic resources commission, a program for the identification of historic resources, developing a program to educate the public about historic preservation, and encouraging owners of eligible historic resources to place their properties on the Philomath register of historic resources and, if appropriate, the National Register of Historic Places. [Ord. 681 § 1, 1999.]

2.50.020 Membership.

A. The mayor and the city council shall appoint up to five historic resource commissioners with a demonstrated positive interest, knowledge, or competence in historic preservation to carry out the provisions of this chapter. A majority of the commissioners shall reside within the corporate boundaries of the city of Philomath. Commissioners shall serve without compensation.

B. Initial appointments to the commission shall be for terms of one, two and three years. Subsequent terms of appointment shall be for three years, or in the case of a replacement, for the remainder of the unexpired term. Commissioners shall be eligible for reappointment.

C. A simple majority of the seated commissioners shall constitute a quorum to conduct official business.

D. A chair, vice-chair, and secretary shall be elected annually by and from the seated membership. Officers are eligible for reelection.

E. The commission shall meet at least twice a year, or as required to conduct business in a timely fashion. Notice of the meetings shall be in accordance with applicable state law. Minutes, applications, staff reports, findings, and recommendations of the commission shall be maintained as public

records in accordance with applicable state law. [Ord. 681 § 2, 1999.]

2.50.030 Powers and duties of the commission.

A. The commission may adopt and amend bylaws, subject to the city council approval and consistent with the intent of this chapter, to regulate its internal operations.

B. The commission may undertake to inform the citizens of, and visitors to the city of Philomath, the community's history and prehistory; promote research into its history and prehistory; collect and make available materials on the preservation of historic resources; document historic resources prior to their major alteration, demolition, or removal and archive that documentation; assist the owners of historic resources in identifying sources of funding for the preservation of their properties; and develop self-guided walking tours highlighting Philomath's historic resources.

C. The commission shall periodically identify and evaluate the historic resources of the city and maintain an inventory of historic resources that shall be included in the comprehensive plan database. At such time as surveys are being conducted, owners of the subject properties shall be notified and invited to provide comment and input.

D. The commission may make a recommendation to the planning commission regarding all demolition permits and building permits for exterior alteration of structures listed in the inventory of historic resources. The planning commission shall consider such recommendations as a part of their public review process.

E. The commission shall advise and make policy recommendations to the city council on matters relating to historic preservation, and shall make an annual report, in writing, to the city council on its activities during the preceding 12 months, and its projected activities for the following 12 months. [Ord. 681 § 3, 1999.]

Chapter 2.55

PARK ADVISORY BOARD

Sections:

2.55.010 Establishment.
2.55.020 Composition.
2.55.030 Duties.

2.55.010 Establishment.

The Philomath park advisory board is hereby established. [Ord. 723 § 1, 2004.]

2.55.020 Composition.

The park advisory board shall be composed of a minimum of five and maximum of seven citizen members.

A. Terms. Initial appointments are for two positions for one year, two positions for two years, and the remaining positions are for three years; thereafter the terms of all members shall be for three years, expiring on December 31st. No member shall serve more than three consecutive terms.

B. Vacancies. All vacancies shall be filled by appointment by the mayor, with confirmation by the council.

C. Eligibility. Any citizen residing within the city or urban growth boundary is eligible to serve on this committee. Two positions may be filled from outside the urban growth boundary but within Benton County. [Ord. 723 § 2, 2004.]

2.55.030 Duties.

A. Officers. Upon appointment by the council, members shall meet to establish a chairperson and vice-chair/secretary for the advisory board.

B. Process. The chair shall receive matters referred from the public works committee. The chair shall report the board's findings or recommendations to the public works committee. The public works committee shall use those findings or recommendations as the committee sees fit.

C. Meetings. The park advisory board shall meet only as necessary to provide assistance to the public works committee.

D. Examples of Duties. The park advisory board shall advise the public works committee regarding any matter pertaining to city parks as referred by the public works committee. These items include, but are not limited to:

1. Amendments to city ordinances referencing general park activities.

2. General policies concerning the selection, care and removal of park assets.

3. Funding for the purchase and development of city parks. [Ord. 723 § 3, 2004.]

Title 3

REVENUE AND FINANCE

Chapters:

3.10 Assessment in Addition to Bail/Fine
3.15 Recording Municipal Liens
3.20 Public Contracting Procedures

Chapter 3.10

ASSESSMENT IN ADDITION TO BAIL/FINE

Sections:

3.10.010 Assessment.
3.10.020 Assessment – Deposit with bail.
3.10.030 Assessment – Forfeiture.

3.10.010 Assessment.

Whenever the Philomath municipal court imposes a fine or orders a bail forfeiture, as a penalty for violating a Philomath ordinance relating to traffic or criminal offenses, except an ordinance relating to cars unlawfully left or parked, an assessment in addition to such fine or bail forfeiture, and in addition to any assessment that may be required under state law, shall be collected and credited to the land, building and equipment capital fund for the purchase of equipment for use by the police department. The amount of the assessment shall be as follows:

A. When fine or forfeiture $100.00 or less, $10.00;

B. When fine or forfeiture is over $100.00, $25.00. [Ord. 694, 2000; Ord. 498 § 1, 1983.]

3.10.020 Assessment – Deposit with bail.

When any deposit of bail is made for an offense to which this chapter applies, the person making such deposit shall also deposit a sufficient amount to include the assessment prescribed in PMC 3.10.010. [Ord. 498 § 2, 1983.]

3.10.030 Assessment – Forfeiture.

If bail is forfeited, the assessment prescribed in this chapter shall be collected for credit to the land, building and equipment capital fund pursuant to this chapter. If bail is returned, the assessment made thereon shall also be returned. [Ord. 694, 2000; Ord. 498 § 3, 1983.]

Chapter 3.15

RECORDING MUNICIPAL LIENS

Sections:

3.15.010 Purpose.
3.15.020 Definitions.
3.15.030 Recording of city lien docket in the county clerk lien record.

3.15.010 Purpose.

The purpose of this chapter is to accomplish the following regarding municipal liens: to comply with state law, to provide additional notice of the existence of municipal liens for potential purchasers of property within the city limits of Philomath, and to provide additional security for sums loaned, or advanced, or charges deferred, by the city of Philomath. [Ord. 703 § 1, 2002.]

3.15.020 Definitions.

For purposes of this chapter the following definitions apply:

A. Municipal Lien. Any lien granted by a borrower, program participant, person deferring charges, or incurred or imposed as the result of an assessment, whether or not related to the issuance of municipal bonds. A municipal lien may be voluntary or involuntary depending upon the program and the ordinance authorizing the lien. Municipal liens include liens for system development charge deferrals, rehabilitation loans, liens securing assessments related to the installation or repair of streets and/or sidewalks, and/or other public infrastructure, and liens imposed by order of the municipal court. Any lien imposed under the authority of a city ordinance is a municipal lien.

B. Municipal Lien Docket. For purposes of any city ordinance referring to a "municipal lien docket" or "city lien docket," any entry in the financial records or books of the city which shows the initial amount owed to the city under any order, program, ordinance or resolution imposing a municipal lien, along with any records showing payments, credits, charges, and interest accrued as a result of the assessment loan or deferral which caused the lien, shall be considered the "municipal lien docket."

C. County Clerk Lien Record. Those records authorized under ORS 205.130, as may be

amended from time to time, kept by the county clerk or county recorder. [Ord. 703 § 2, 2002.]

3.15.030 Recording of city lien docket in the county clerk lien record.

The city manager and/or the city manager's designee may record any municipal lien authorized by ordinance or resolution in the county clerk lien record.

A. The city manager and/or the city manager's designee may choose, taking into account the best interest of the city, to provide an on-line electronic lien record consistent with ORS 93.643(2)(c)(B) in lieu of recording municipal liens in the county clerk lien record.

B. Notwithstanding the requirements of any other ordinance, the city manager and/or the city manager's designee may make an entry in the city lien record indicating that all future entries or records related to that specific lien will only be maintained in the county clerk lien record or on the electronic medium accessible on-line. In such a case where any city ordinance refers to the municipal lien record or the municipal lien docket, the county clerk lien record shall be the lien docket required by that ordinance.

C. Notwithstanding any other provisions in any city ordinance or resolution, the cost of recording a municipal lien in the county court lien record shall be included as part of the amount required to satisfy the lien. [Ord. 703 § 3, 2002.]

Chapter 3.20

PUBLIC CONTRACTING PROCEDURES

Sections:

3.20.010 Contract review board.
3.20.020 Definitions.
3.20.030 Public contracts for goods and services.
3.20.040 Public improvement contracts.
3.20.050 Offeror disqualification.
3.20.060 Personal services contracts.
3.20.070 Disposition of personal property.
3.20.080 Adoption of code and rules.

3.20.010 Contract review board.

The city council is designated as the local contract review board of the city and shall have all of the rights, powers and authority to carry out the provisions of ORS Chapters 279A, 279B, and 279C (the "Public Contracting Code"). Except as otherwise provided in this chapter, the city manager, or the designated purchasing agent, is designated as the city's contracting agency for purposes of contracting powers and duties assigned to the city as a contracting agency under the Public Contracting Code. [Ord. 730 § 1, 2005.]

3.20.020 Definitions.

As used in this chapter, the following words and phrases shall have the following meanings. All words or phrases not defined in this section shall have the meanings ascribed to them in the Public Contracting Code or the Model Rules adopted by the Oregon Attorney General thereunder ("Model Rules"):

"Formal quote" means procedure pursuant to which written offers are solicited by advertising or other writing stating the quantity and quality of goods or services to be acquired, and which offers are received by the contracting agency on or before a stated date. In soliciting formal quotes, the contracting agency shall seek quotes from a sufficiently large number of potential offerors to insure sufficient competition to meet the best interests of the city. An award based on less than three formal quotes may be made provided the contracting agency makes a written record of the effort to obtain quotes.

"Informal quote" means procedure pursuant to which written or verbal offers are gathered by correspondence, telephone or personal contact stating the quantity and quality of goods or services to be acquired. In soliciting informal quotes, the contracting agency shall seek quotes from a sufficiently large number of potential offerors to insure sufficient competition to meet the best interests of the city. An award based on less than three formal quotes may be made provided the contracting agency makes a written record of the effort to obtain quotes. If a contract is awarded it shall be awarded to the offeror whose quote or proposal will best serve the interests of the contracting agency, taking into account price as well as considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility under ORS 279B.110.

"Personal services contract" means a contract to retain the services of an independent contractor whose services require specialized technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment, and for which the quality of the service depends on attributes that are unique to the service provider. Such services shall include, but are not limited to: architects; engineers; surveyors; attorneys; accountants; auditors; computer programmers; artists; designers; performers; and consultants The contracting agency shall have the authority to determine whether a particular service is a "personal service" under this definition. [Ord. 785 § 1, 2013; Ord. 730 § 2, 2005.]

3.20.030 Public contracts for goods and services.

This section applies to public contracts that are not contracts for public improvements or contracts for personal services. A public contract shall not be artificially divided or fragmented to qualify for a different award procedure than that provided by this section.

A. The following classes of public contracts and respective award procedures are created:

1. A public contract for an amount which is valued at no more $10,000 shall be awarded by the contracting agency based on informal quotes. Amendments to public contracts under this section may not cause the contract price to exceed an amount that is 25 percent over the original contract price.

2. A public contract for an amount which is valued at $10,000 or more, but less than $150,000, shall be awarded by the contracting agency based on formal quotes. Amendments to public contracts under this section may not cause the contract price to exceed an amount that is 25 percent over the original contract price.

3. A public contract for an amount which is valued at $150,000 or more shall be awarded by the city council based on competitive sealed bidding or competitive sealed proposals pursuant to the Public Contracting Code.

B. Amendments. Subject to the limits in subsection (A) of this section, amendments to public contracts shall comply with the Public Contracting Code.

C. Exemptions.

1. The requirements of subsection (A) of this section do not apply to the following classes of public contracts:

a. Equipment repair and overhaul;

b. Purchases through federal programs;

c. Additions to developer constructed public improvements; and

d. Contracts for products or supplies under $10,000.

2. For public contracts predominantly for services, one extension not exceeding the original term of the contract or annual renewals, if provided in the contract, is permitted without going through competitive procurement requirements.

3. Amendments to contracts exceeding the limits in subsection (A) of this section shall be exempt if the city council determines that it is not reasonably feasible to require additional competitive procurement to complete the purpose of the contract; otherwise the amendment shall comply with subsection (B) of this section or the city council shall direct additional competitive procurement and the competitive procurement procedure required for the amendment.

4. By resolution, the city council may exempt other public contracts or classes of public contracts from the requirements of subsection (A) of this section pursuant to ORS 279B.085.

D. Notice of solicitation documents may be published electronically, in lieu of publication in a

newspaper of general circulation, if it results in a sufficiently large number of potential offerors to insure sufficient competition to meet the best interests of the city. [Ord. 785 § 2, 2013; Ord. 730 § 3, 2005.]

3.20.040 Public improvement contracts.

A public improvement contract is defined pursuant to the Public Contracting Code and does not include contracts for minor alterations, ordinary repair and maintenance of public improvements, contracts for projects for which no funds of the city are directly or indirectly used except for participation that is incidental or related primarily to project design or inspection, and does not include any other construction contract that is not defined as a public improvement under the Public Contracting Code. A public improvement contract shall not be artificially divided to qualify for a different award procedure than that provided by this section.

A. All public improvement contracts shall be awarded by the city council based on competitive sealed bids pursuant to the Public Contracting Code, except as stated hereinafter.

B. Exemptions. The requirements of subsection (A) of this section, and the procedures applicable to the award of those contracts, do not apply to the following classes of public improvement contracts:

1. Public improvement contracts valued at less than $5,000.

2. Public improvement contracts valued at $5,000 or more, but less than $25,000, shall be awarded by the contracting agency based on formal quotes.

3. Public improvement contracts valued at $25,000 or more shall be awarded by the city council based on competitive sealed bidding or competitive sealed proposals pursuant to the Public Contracting Code.

4. Emergency public improvement contracts may be exempted from competitive bidding if the contracting agency determines that an emergency exists and that conditions require the prompt execution of a contract. Emergency public improvement contracts shall be awarded in accordance with the Public Contracting Code. The contracting agency shall provide the city council with a written statement indicating the nature of the emergency and stating with particularity the emergency conditions and why they pose an imminent threat to the public health, safety or welfare. The contracting agency shall not declare the same emergency more than two times in any 90-day period.

5. By resolution, the city council may exempt from competitive bidding a public improvement contract or class of public improvement contracts not otherwise exempt under this section pursuant to ORS 279C.335.

6. When an exemption allows for award of the contract through competitive proposals, the provisions of ORS 279C.400 through 279C.410 shall apply.

C. Amendments to public improvement contracts shall comply with the Public Contracting Code.

D. The performance and payment bonds requirements and exceptions of the Public Contracting Code shall apply to all public improvement contracts.

E. Notice of solicitation documents may be published electronically, in lieu of publication in a newspaper of general circulation, if it results in a sufficiently large number of potential offerors to ensure sufficient competition to meet the best interests of the city.

F. The city may undertake to construct a public improvement using its own equipment and personnel if doing so will result in the least cost to the city or public, in accordance with ORS 279C.305.

G. If all responsive offers on a public improvement contract exceed the budget for the project, the contracting agency may, prior to contract award, negotiate for a price within the budget under the following procedures:

1. Negotiations shall start with the lowest responsive, responsible offeror. If negotiations are not successful, then the contracting agency may negotiate with the second lowest responsive, responsible offeror, and so on.

2. Negotiations may include value engineering and other options to attempt to bring the project cost within the budgeted amount.

3. A contract may not be awarded under this section if the scope of the project is significantly changed from the description in the original solicitation documents.

4. The records of an offeror used in contract negotiations under this section are not subject to public inspection until after the negotiated contract

has been awarded or the negotiation process has been terminated.

H. The use of brand name, mark or manufacturer specifications in public improvement contracts shall be made in accordance with ORS 279B.125. [Ord. 730 § 4, 2005.]

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3.20.050 Offeror disqualification.

A. The city council or contracting agency, whoever is awarding a public contract, may disqualify any person as an offeror on a contract if:

1. The person does not have sufficient financial ability to perform the contract. Evidence that the person can acquire a surety bond in the amount and type required shall be sufficient to establish financial ability;

2. The person does not have available equipment to perform the contract;

3. The person does not have key personnel of sufficient experience to perform the contract; or

4. The person has breached previous contractual obligations.

B. The provisions of the Public Contracting Code regarding disqualification of persons shall apply in addition to this section with respect to public improvement contracts.

C. A person who has been disqualified as an offeror may appeal the disqualification to the city council in accordance with the procedures in Chapter 279C of the Public Contracting Code. [Ord. 730 § 5, 2005.]

3.20.060 Personal services contracts.

A. The following procedures shall apply to the award of personal services contracts:

1. Personal services contracts involving an anticipated annual fee of $5,000 or more, but less than $25,000, shall be awarded by the contracting agency following solicitation of offers for personal services by written invitation or advertisement in sufficient number to provide a choice for the city from among qualified service providers. The contracting agency shall determine the selection criteria to be included in the written invitation or advertisement and shall have authority to negotiate and enter into the contract.

2. Personal services contracts having an anticipated annual fee of $25,000 or more shall be awarded by the city council following solicitation of offers based on the procedure and selection criteria adopted by the city council before offers are solicited.

3. Except as otherwise provided in the Public Contracting Code, for all other personal services contracts, including amendments to and annual renewals or extensions of existing contracts and emergencies, the contracting agency may enter into the contract without a solicitation of offers. A personal services contract shall not be artificially divided or fragmented to qualify for the award procedures provided by this subsection.

B. The following criteria shall be considered in the evaluation and selection of a personal services contractor. The criteria are not listed in order of preference or importance. This section does not preclude the use of other additional criteria:

1. Timeliness of delivery of services;

2. Expertise of the contractor in the area of specialty called for;

3. References from successfully completed projects managed by the contractor;

4. Utilization of locally procured goods, services, or personnel;

5. Other services provided by the contractor not specifically listed in the request for proposal;

6. Total cost to the agency for delivery of services; and

7. Other criteria specially listed in the solicitation document on a case by case basis. [Ord. 730 § 6, 2005.]

3.20.070 Disposition of personal property.

A. The city manager shall have the authority to determine when personal property owned by the city with an expected market value of less than $1,000 is surplus.

B. The city council shall determine when all other property is to be considered surplus.

C. When property is determined to be surplus, the city manager shall select the method of disposal which maximizes the value the city will realize from disposal of the surplus property. Surplus personal property shall be disposed of as follows:

1. If valued at less than $500.00 by the city manager, donated to a public or nonprofit service agency serving the Philomath area; or, sold to the first qualified buyer meeting the sale terms;

2. If valued at $500.00 or more by the city manager, any such item can be donated by the city council to a public or nonprofit agency serving the Philomath area, or sold to the highest qualified buyer meeting the sale terms and after the sale has been advertised at least once in a city newsletter of general circulation or in a newspaper of general circulation in the Philomath area not less than one week prior to the sale;

3. Traded in on the purchase of replacement equipment or supplies;

4. Sold at public auction advertised at least once in a newspaper of general circulation in the Philomath area not less than one week prior to the auction, or sold in an on-line Internet auction. The published notice shall specify the time, place and terms upon which the property shall be offered and a general description of the property to be sold; or

5. Sold at a fixed-price retail sale if doing so will result in substantially greater net revenue to the city.

D. All personal property sold pursuant to this section shall be sold as-is without any warranty, either express or implied, of any kind. [Ord. 730 § 7, 2005.]

3.20.080 Adoption of code and rules.

A. Except as specifically provided in this chapter, public contracts shall be awarded, administered and governed according to the Public Contracting Code and the Model Rules, as they now exist and may be amended in the future.

B. In the event of a conflict between any provisions of this chapter and the Public Contracting Code or Model Rules, the provisions of this chapter shall prevail. [Ord. 730 § 8, 2005.]

Title 4

(Reserved)

Title 5

BUSINESS TAXES, LICENSES AND REGULATIONS

Chapters:

5.20 *Repealed*
5.25 Liquor License
5.30 Sale of Tobacco Products
5.40 Marijuana Facilities

Chapter 5.20

ARCADE LICENSE AND PERMIT

(Repealed by Ord. 774)

Chapter 5.25

LIQUOR LICENSE

Sections:

5.25.010 Purpose.
5.25.020 Application conditions.
5.25.030 City investigation.
5.25.040 Temporary license.
5.25.050 Approval procedure.
5.25.060 Public hearing.
5.25.070 Criteria for recommendation.
5.25.080 Conditional recommendation.
5.25.090 Notice of hearing.

5.25.010 Purpose.

The purpose of this chapter is to establish criteria for council consideration in recommending to the Oregon Liquor Control Commission (OLCC) that it grant, deny, modify or renew liquor licenses for premises within the city. The process established to review license applicants in order to make recommendations will be fair, effective and efficient. These sections are necessary to ensure that premises licensed to sell or dispense liquor meet community expectations and that such businesses are conducted in a lawful manner that does not unreasonably disturb the peace and tranquility of this city and its neighborhoods. [Ord. 572 § 1, 1989.]

5.25.020 Application conditions.

The city shall accept applications for regular OLCC liquor licenses only when the following conditions are met:

A. All required forms are properly completed and in order; and

B. The appropriate processing fee established by council resolution has been paid. [Ord. 572 § 2, 1989.]

5.25.030 City investigation.

The city manager shall coordinate an investigation of each application to determine the appropriate city recommendation to the OLCC. The city manager may require additional information as appropriate for conducting the investigation required for such city recommendation. The city manager shall provide a copy of each application to the appropriate city department for investigation

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and report. Reports from such departments shall be included in each staff recommendation to the council. [Ord. 572 § 3, 1989.]

5.25.040 Temporary license.

The city manager is authorized to approve applications for temporary OLCC licenses such as special events, special beer and special wine licenses. Such applications may be processed administratively after the fee established by council has been paid. The city manager may make an unfavorable recommendation to the OLCC if the city manager finds any of the criteria in PMC 5.25.070 applies to the applicant. Either the applicant or city manager may refer an application to the city council for a recommendation. [Ord. 744 § 1, 2007; Ord. 572 § 4, 1989.]

5.25.050 Approval procedure.

If the city manager recommends approval of an application, the matter will be scheduled as a council agenda item unless a council member requests a public hearing. Upon request of a council member or an adverse recommendation by the city manager, a public hearing will be scheduled and notice given pursuant to PMC 5.25.090. [Ord. 744 § 2, 2007; Ord. 572 § 5, 1989.]

5.25.060 Public hearing.

In the event that a public hearing is required, such public hearing will be scheduled and notice given pursuant to PMC 5.25.090.

A. The city, the applicant and any interested parties shall have the right to present evidence and witnesses. The mayor and council members may ask questions of any witness.

B. The city, the applicant or any other affected party may be represented by legal counsel at their own expense.

C. After due consideration of the evidence and testimony presented to it, the common council shall make its recommendation. The recommendation shall be based on substantial evidence relative to the criteria in this chapter and shall be final. Findings shall be produced and forwarded to the OLCC along with the council's recommendation. [Ord. 744 § 3, 2007; Ord. 572 § 6, 1989.]

5.25.070 Criteria for recommendation.

The council may make an unfavorable or conditionally favorable recommendation to the OLCC on an application if any of the following apply or a favorable recommendation if none of the following apply:

A. The applicant has a record of violations of state alcoholic liquor law;

B. The applicant has a record of use of controlled substances or excessive use of alcoholic beverages;

C. The applicant has a record of violations of criminal law or ordinances connected in time, place and manner with a liquor establishment or which demonstrate a disregard for law;

D. The applicant has maintained or allowed to exist an establishment which creates or is a public nuisance, or other violation of the city ordinances or federal or state law, which causes, permits or suffers disorderly or violent acts, litter, noise, vandalism, vehicular or pedestrian traffic congestion, or other locational problems, in the proximity of such establishment;

E. The applicant has not maintained the premises in accordance with the building, fire and life safety codes of the city and the state;

F. The applicant seeks licensing of premises which would not be consistent with city land use designations;

G. The applicant has demonstrated an unwillingness or inability to cooperate with the city or neighbors to resolve driving under the influence of liquor concerns or community disputes related to a licensed establishment; or

H. There is any other specific reason consistent with the purposes of these provisions which the city council concludes warrants an adverse recommendation to the OLCC based upon public health, safety, welfare, convenience or necessity. [Ord. 572 § 7, 1989.]

5.25.080 Conditional recommendation.

If the council finds that any of the criteria established by PMC 5.25.070 apply to an applicant, it may make a conditionally favorable recommendation with a letter of warning. The city manager shall deliver to the applicant in person or by certified mail a summary of the reports relating to the application and a notice to correct the problems cited. A copy of this notice and summary shall be

sent to the OLCC. During the following license period, the city manager shall monitor the progress of the applicant in correcting such problems and report to the council. At the time of the next license renewal, the applicant shall have the burden of proof to establish that the license should receive a favorable recommendation for renewal. If the council finds that the applicant has not made sufficient progress in correcting the conditions which resulted in the letter of warning, then the council may make an unfavorable recommendation to the OLCC without further public hearing. [Ord. 572 § 8, 1989.]

5.25.090 Notice of hearing.

In the event that a public hearing is scheduled, the city shall publish in a newspaper of general circulation in the city a notice specifying a time, date and location of the hearing and business name and address of the applicant. The notice shall inform the public that testimony may be given for or against the application.

Notice of the public hearing shall be given to the applicant either personally or by certified mail postmarked not later than 10 days prior to the hearing. The notice shall contain:

A. A statement of the time and place of the hearing;

B. A statement from the city manager of the matter(s) asserted or charged supporting the adverse recommendation or stating why the hearing was requested;

C. A statement that the applicant may be represented by legal counsel at the hearing, but legal counsel shall not be provided at public expense; and

D. A statement that if the applicant desires to participate in the hearing, the city manager must receive notice in writing no later than five working days prior to the hearing. [Ord. 744 § 4, 2007; Ord. 572 § 9, 1989.]

Chapter 5.30

SALE OF TOBACCO PRODUCTS

Sections:

5.30.010 Definitions.
5.30.020 License requirement.
5.30.030 License fee.
5.30.040 Nontransferability of license.
5.30.050 Sales to minors.
5.30.060 Vendor-assisted sales.
5.30.070 Nonretaliation.
5.30.080 License holder penalties.
5.30.090 Selling tobacco without a license – Penalty.
5.30.100 Notice.
5.30.110 Hearing.
5.30.120 Tobacco license fees.

5.30.010 Definitions.

For the purposes of this chapter, the following definitions shall apply:

A. "License" means a license issued by the city of Philomath for the retail sale of tobacco products.

B. "Licensee" means the holder of a valid license for the retail sale of tobacco products.

C. "Minor" means any person under 18 years of age.

D. "Self-service displays" means open display of tobacco products that the public has access to without the intervention of a store employee.

E. "Tobacco product" means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, chewing tobacco, or any other form of tobacco which may be utilized for smoking, chewing, inhalation, or other means of ingestion.

F. "Vendor-assisted" means only a store employee has access to the tobacco product and assists the customer by supplying the tobacco products. The customer does not take possession of the tobacco product until after it is purchased. [Ord. 683 § 1, 2000.]

5.30.020 License requirement.

A. It shall be a violation of this chapter for a retailer to sell tobacco products unless that retailer holds a valid license from the city of Philomath for each location in which tobacco products are sold. All such licenses shall be renewed annually on or before March 1st.

B. Any license issued in accordance with the provisions of this chapter shall remain the property of the city, and upon expiration, revocation, or suspension, it shall be returned to the city. If a license is lost or destroyed, it may be replaced upon the payment by the applicant of a fee as set forth in PMC 5.30.030. [Ord. 683 § 2, 2000.]

5.30.030 License fee.

No tobacco retailer's license shall be issued or continue to be valid unless the holder thereof has paid the fees as required by this chapter. [Ord. 683 § 3, 2000.]

5.30.040 Nontransferability of license.

A license is nontransferable. [Ord. 683 § 4, 2000.]

5.30.050 Sales to minors.

It shall be a violation of this chapter for a retailer to sell tobacco products to minors under 18 years of age. [Ord. 683 § 5, 2000.]

5.30.060 Vendor-assisted sales.

It shall be a violation of this chapter for any person, business, or tobacco retailer to sell, permit to be sold, or offer for sale any tobacco product by means of self-service displays or any means other than vendor-assisted sales. [Ord. 683 § 6, 2000.]

5.30.070 Nonretaliation.

It shall be a violation of this chapter for any person or employer to discharge, refuse to hire, or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer reports or attempts to prosecute any violation of this chapter. [Ord. 683 § 7, 2000.]

5.30.080 License holder penalties.

A. Any licensee who violates any provision of this chapter other than PMC 5.30.020 shall be assessed penalties and/or have their license suspended as follows:

1. In the case of a first violation within any two-year period, the licensee shall be fined $200.00 and shall be notified in writing of penalties levied for further violations.

2. In the case of a second violation within any two-year period, the licensee shall be fined $350.00, and the license shall be suspended and the suspended retailer shall be ineligible to apply for a new license for 45 days after the effective date of the suspension.

3. In the case of three or more violations within any two-year period, the licensee shall be fined $500.00, and the license shall be revoked and the revoked retailer shall be ineligible to apply for a new license for six months after the effective date of the revocation.

B. Failure to pay a fine levied under this section within 30 days of the date that the fine becomes effective shall result in the suspension of the licensee's license until such fines are paid.

C. During any suspension or revocation of a license under this section, the retailer so suspended may not sell tobacco products and must remove all tobacco products from all retail areas. In addition, any new application for a license while a retailer is suspended under this chapter shall be denied. [Ord. 683 § 8, 2000.]

5.30.090 Selling tobacco without a license – Penalty.

Violators of PMC 5.30.020 are subject to a fine of $500.00 for each day a violation occurs. [Ord. 683 § 9, 2000.]

5.30.100 Notice.

A. Unless otherwise provided, prior to the revocation or suspension of a license issued under this chapter, the city manager or his/her designee shall provide a notice to the holder of said license. The notice shall contain the following information:

1. The name and title of the person issuing the notice;

2. The date on which the fine, suspension, or revocation will become effective;

3. The reason for the fine, revocation, or suspension;

4. That the licensee may request a hearing regarding the fine, revocation, or suspension;

5. That the request for a hearing must be made in person or in writing and received by the city manager within 10 days after receipt of the notice of penalty;

6. That failure to request a hearing within 10 days after receipt of the notice or by the notice's return by the postal service shall act as a waiver of the right to a hearing and the fine, revocation, or

suspension will, if applicable, become effective on the date included in the notice. [Ord. 683 § 10, 2000.]

5.30.110 Hearing.

A. Upon request for a hearing as provided in PMC 5.30.100, a hearing shall be held before the city council. The hearing shall be conducted at a regular council meeting within 25 days after the request for hearing is filed with the city. The hearing can be set for a later day if the applicant or licensee so requests.

B. At the hearing, the applicant or licensee may contest the fine, suspension, revocation or denial.

C. If the city council finds that the applicant is not eligible for a license, the city council shall declare the license application denied. If the city council finds that the fine, suspension, or revocation is in accordance with this chapter, then that fine, suspension, or revocation shall take effect immediately. The action of the city council is final.

D. If the applicant or licensee does not appear at the scheduled hearing, the city council may move to deny, fine, revoke, or suspend the licensee or applicant. [Ord. 683 § 11, 2000.]

5.30.120 Tobacco license fees.

A. The fees applicable to the processing of a tobacco retailer's license shall be paid by the applicant at the time the application is presented to the city and shall be as follows:

1. Application for original, renewal or change of ownership location or privilege: $35.00. [Ord. 683 § 12, 2000.]

Chapter 5.40

MARIJUANA FACILITIES

Sections:

5.40.010 Purpose.
5.40.020 Definitions.
5.40.030 Registration required.
5.40.040 Initial registration application and fee requirements.
5.40.050 Registration termination – Renewal – Fee.
5.40.060 Registration conditions.
5.40.070 Background checks.
5.40.080 Examination of books, records, and premises.
5.40.090 Administrative and other remedies for noncompliance, administrative appeals, and penalties.
5.40.100 Confidentiality.
5.40.110 Severability.

5.40.010 Purpose.

The purpose of this chapter is to minimize any adverse public safety and public health impacts that may result from allowing medical and recreational marijuana facilities in the city by adopting particular time, place and manner requirements and a registration process for such facilities. Specifically, these time, place and manner requirements are intended to further the following objectives:

A. Prevent the distribution of marijuana to persons under 21 years of age;

B. Prevent revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;

C. Prevent the diversion of marijuana from this state to other states;

D. Prevent marijuana activity that is legal under state law from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

E. Prevent violence and the use of firearms in the cultivation and distribution of marijuana;

F. Prevent drugged driving and the exacerbation of other adverse public health consequences associated with the use of marijuana. [Ord. 810 § 1, 2016; Ord. 798 § 1, 2015.]

5.40.020 Definitions.

A. "Controlled substances" means substances designated as Schedule I or Schedule II controlled substances in the Code of Federal Regulations Title 21, Chapter II, Part 1308.

B. "Manager" means the city manager of the city of Philomath or his/her designee.

C. "Marijuana" means all parts of the plant of the Cannabis Moraceae, whether growing or not, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin, as may be defined by Oregon Revised Statutes or as they currently exist or may be amended from time to time.

D. "Marijuana facility" means a recreational marijuana facility or a medical marijuana facility.

E. "Marijuana processing site" means an entity registered with the Oregon Health Authority to process marijuana.

F. "Marijuana processor" means an entity licensed by the Oregon Liquor Control Commission to process marijuana.

G. "Marijuana producer" means an entity licensed by the Oregon Liquor Control Commission to manufacture, plant, cultivate, grow or harvest marijuana.

H. "Marijuana retailer" means an entity licensed by the Oregon Liquor Control Commission to sell marijuana items to a consumer in this state.

I. "Marijuana wholesaler" means an entity licensed by the Oregon Liquor Control Commission to purchase items in this state for resale to a person other than a consumer.

J. "Medical marijuana" means all parts of marijuana plants that may be used to treat or alleviate a medical marijuana qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition.

K. "Medical marijuana facility" means a medical marijuana facility that is registered by the Oregon Health Authority under ORS 475.300 through 475.346 and that sells, distributes, transmits, gives, dispenses or otherwise provides medical marijuana to qualifying patients.

L. "Recreational marijuana facility" means an entity that engages in the growing, processing, production, or retail of recreational marijuana, including but not limited to those listed in subsections (E) through (I) of this section.

M. "Operator" means the person who is a proprietor of a facility, whether in the capacity of operator, lessee, sub-lessee, mortgagee in possession, licensee or any other capacity. [Ord. 810 § 1, 2016; Ord. 798 § 1, 2015.]

5.40.030 Registration required.

The operator of any marijuana facility in the city must possess a valid annual marijuana facility registration issued under this chapter and must comply with the requirements of any and all state and local laws. [Ord. 810 § 1, 2016; Ord. 798 § 1, 2015.]

5.40.040 Initial registration application and fee requirements.

A. Applications for initial and renewal marijuana facility registrations must be submitted to the manager and must be signed under penalty of perjury. The application documents must include at least the following:

1. The location of the proposed facility.

2. The true names and addresses of the persons or legal entities that have an operatorship interest in the facility; that have loaned or given money or real or personal property to the applicant for use by the facility within the preceding year; or that have leased real property to the applicant for future use.

3. A detailed description of the type, nature and extent of the enterprise to be conducted.

4. A detailed description of the proposed accounting and inventory systems for the facility.

5. Certification that the proposed facility is registered as an Oregon medical marijuana facility pursuant to ORS 475.300 through 475.346 or is registered with the Oregon Liquor Control Commission as a recreational marijuana facility.

6. Certification that the proposed facility has met all applicable requirements in the Philomath Development Code.

7. Certification that all current fees and taxes owed have been paid.

8. Detailed illustrations (to scale) of all proposed signage and location of such signage.

9. Such other information deemed necessary by the city manager to conduct any investigation or background check.

B. At the time of submission of an initial facility registration application, the applicant must pay a marijuana facility registration application and investigation fee. The fee amount shall be set by council resolution. No portion of the fee is refundable.

C. A separate registration application must be submitted for each proposed location.

D. The applicant for a proposed facility shall be solely responsible for directly contacting property owners, tenants, and occupants of property within 1,500 feet of the proposed site for the facility to confirm that it complies with the location conditions of this chapter as set out in PMC 5.40.060(J). [Ord. 810 § 1, 2016; Ord. 798 § 1, 2015.]

5.40.050 Registration termination – Renewal – Fee.

A. A facility registration terminates automatically on May 1st of each year, unless a registration renewal application is approved.

B. A facility registration terminates automatically if federal or state statutes, regulations or guidelines are modified, changed, or interpreted in such a way by state or federal law enforcement officials as to prohibit operation of the facility under this chapter.

C. A registration renewal application shall include information similar in nature to that provided on the registered party's initial registration application and must be submitted to the city no less than 30 days prior to expiration of the registration.

D. At the time of submission of a facility registration renewal application, the registered party must pay a marijuana facility registration renewal application and investigation fee. The fee shall be set by council resolution. No portion of the fee is refundable in the event operation of the facility is discontinued for any reason. [Ord. 810 § 1, 2016; Ord. 798 § 1, 2015.]

5.40.060 Registration conditions.

Any marijuana facility must comply with the following requirements, in addition to any other state or local requirements:

A. The facility must continue to be registered in good standing as an Oregon medical marijuana facility or recreational marijuana facility pursuant to state law.

B. The facility must meet applicable laws and regulations, including, but not limited to, building and fire codes, including the payment of all fines, fees, and taxes owing to the city.

C. The facility must not manufacture or produce any extracts, oils, resins or similar derivatives of marijuana on site and must not use open flames or gases in preparation of any products.

D. Marijuana and tobacco products must not be smoked, ingested or otherwise consumed on the premises of the facility.

E. Operating hours for retail sales must be no earlier than 9:00 a.m. nor later than 5:00 p.m. on the same day.

F. The facility must utilize an air filtration and ventilation system which, to the greatest extent feasible, confines all objectionable odors associated with the facility to the premises. For the purposes of this provision, the standard for judging "objectionable odors" shall be that of an average, reasonable person with ordinary sensibilities after taking into consideration the character of the neighborhood in which the odor is made and the odor is detected.

G. The facility must provide for secure disposal of marijuana remnants or by-products; such remnants or by-products shall not be placed within the facility's exterior refuse containers.

H. The facility must not be co-located on the same tax lot or within the same building with any marijuana social club, smoking club or grow site.

I. The facility must be located within 2,000 feet of the Philomath police department.

J. The facility shall not be located:

1. Within 1,500 feet of any public or private school, public or private preschool, public library, public park, public or private youth activity center;

2. Within 1,500 feet of any structure housing a public or private youth organization or any structure housing public or private classes on at least a weekly basis for people under the age of 21; or

3. Within 500 feet of any public property not otherwise described in this section, not including right-of-way; or

4. Within 200 feet of a residential zone; or

5. Within 1,500 feet of a public or private daycare center; or

6. Within 1,500 feet of another facility; or

7. Within 500 feet of a state highway.

K. The facility shall have no marijuana in edible form.

L. No minor is allowed on the premises unless the minor is a medical marijuana qualifying patient and is accompanied by a parent, guardian, or caregiver whose purpose is to procure the minor's medical marijuana.

M. A person with any felony convictions may not be an operator, employee, or volunteer of a facility, nor have any financial interest in the facility.

N. The facility must have an accounting system specifically designed for enterprises reliant on transactions conducted primarily in cash and sufficient to maintain detailed, auditable financial records. If the city finds the books and records of the facility are deficient in any way or if the accounting system is not auditable, the facility must modify the accounting system to meet the requirements of the city.

O. Each facility must keep and preserve for a period of at least three years records containing at least the following information:

1. Daily wholesale purchases (including grow receipts) and retail sales, including a cash receipts and expenses journal;

2. State and federal income tax returns;

3. Names and any aliases of any operators of the facility;

4. Names and any aliases of any employees or volunteers of the facility;

5. Names of and any aliases of any persons with a financial interest in the facility;

6. Any additional information that the city deems necessary.

P. Each facility must display its current registration inside the facility in a prominent place easily visible to persons conducting business there.

Q. Sales or any other transfers of marijuana products must occur completely inside the facility building. No walk-up or drive-through service is allowed.

R. Each facility must obtain and maintain general liability insurance in an amount of not less than $1,000,000 per occurrence/$2,000,000 aggregate each claim, incident, or occurrence for bodily injury and property damage that specifically covers the facility for liability related to selling marijuana to an already impaired person who leaves the facility driving a motor vehicle.

S. Each facility must maintain adequate off-street parking for the facility. [Ord. 810 § 1, 2016; Ord. 798 § 1, 2015.]

5.40.070 Background checks.

The applicant will provide completed criminal background checks for each individual who is proposed to be an operator, employee, volunteer, or person with a financial interest in the facility when the application is submitted to the city. The police department may verify the criminal background checks provided by the applicant under ORS 181.534 to determine whether any person therein has any history of felony convictions. If, following an initial or renewal application, an additional person is proposed to be an operator, employee, volunteer, or person with a financial interest, then that registered party must provide a criminal background check on that individual prior to that individual assuming said position. [Ord. 810 § 1, 2016; Ord. 798 § 1, 2015.]

5.40.080 Examination of books, records, and premises.

A. To determine compliance with the requirements of this chapter, Philomath Development Code, or any and all applicable regulations, the manager may examine or cause to be examined by the agent or representative of the manager, at any reasonable times, the premises of the facility, including wastewater from the facility, and any and all financial, operation, and facility information, including books, papers, payroll reports and state and federal income tax returns. Every registered party is directed and required to furnish the manager the means, facilities, and opportunity for making such examinations and investigation.

B. As part of investigation of a crime or violation of this chapter which law enforcement officials reasonably suspect has taken place on the premises, the Philomath police shall be allowed to view surveillance videotapes or digital recordings at any reasonable time.

C. Without reducing or waiving any provisions of this chapter, the Philomath police department shall have the same access to the facility, its records and its operations, as allowed to state inspectors. Denial or interference with access shall be grounds for revocation or suspension of a facil-

ity registration. [Ord. 810 § 1, 2016; Ord. 798 § 1, 2015.]

5.40.090 Administrative and other remedies for noncompliance, administrative appeals, and penalties.

A. The manager may deny, suspend, or revoke a facility registration for failure to comply with this chapter or rules adopted under this chapter, for submitting falsified information to the city or the Oregon Health Authority, or for noncompliance with any other city chapters or regulations, or violation of any state or federal laws.

1. Any suspension or revocation pursuant to this section shall be in writing, setting forth the reasons therefor, and giving the registered party written notice by first-class United States Mail at least 10 calendar days prior to the effective date of the revocation or suspension.

2. A decision to deny, suspend, or revoke a facility registration may be appealed by filing a notice of appeal in writing physically delivered to the manager on or before the effective date. Unless the manager has declared imminent danger to the public will exist, the manager's decision to revoke or suspend is stayed pending appeal. The matter shall be heard by the Philomath municipal court which shall determine, by preponderance of the evidence, whether the manager's decision should be upheld or reversed, or upheld in part and reversed in part.

B. In addition to the remedies of suspension and revocation, failure to comply with the requirements of this chapter constitutes a violation of Philomath Municipal Code. Violations are subject to fines not to exceed $500.00 per day. Each day in violation constitutes a separate offense.

C. The remedies provided in this section are not exclusive and shall not prevent the city from exercising any other remedy available under the law, nor shall the provisions of this chapter prohibit or restrict the city or other appropriate prosecutor from pursuing criminal charges under state law or city chapter. Such remedies include, but are not limited to, any equitable remedies such as temporary restraining orders or other injunctive relief. [Ord. 810 § 1, 2016; Ord. 798 § 1, 2015.]

5.40.100 Confidentiality.

Except as otherwise required by law, it shall be unlawful for the city, any officer, employee or agent to divulge, release or make known in any manner any financial or employee information submitted or disclosed to the city under the terms of this chapter. Nothing in this section shall prohibit:

A. The disclosure of names and addresses of any operator or provider of equity or debt financing for a facility; or

B. The disclosure of general statistics in a form which would prevent identification of financial information regarding a facility operator; or

C. The presentation of evidence to a court, or other tribunal having jurisdiction, in the prosecution of any criminal or civil claim by the city under this chapter; or

D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures. [Ord. 810 § 1, 2016; Ord. 798 § 1, 2015.]

5.40.110 Severability.

If any section, subsection, paragraph, sentence, or word in this chapter is deemed to be invalid or beyond the authority of the city, either on its face or as applied, the invalidity of such provision shall not affect the other sections, subsections, paragraphs, sentences, or words of this chapter, and the application thereof; and to that end, sections, subsections, paragraphs, sentences, and words of this chapter shall be deemed severable. [Ord. 810 § 1, 2016; Ord. 798 § 1, 2015.]

Title 6

ANIMALS

Chapters:

6.10 Animal Control
6.11 Wildlife Control

Chapter 6.10

ANIMAL CONTROL

Sections:

6.10.010 Short title.
6.10.020 Definitions.
6.10.030 Applicability of county animal control ordinance.
6.10.040 Adoption of state statutes.
6.10.050 Dogs at large prohibited.
6.10.060 Keeping a noisy animal.
6.10.070 Riding animals in the city.
6.10.080 Restrictions on keeping animals and fowl.
6.10.090 Animals at large.
6.10.100 Dangerous animals.
6.10.110 Feral dogs and cats.
6.10.120 Trapping within the city.
6.10.130 Penalty.

6.10.010 Short title.

This chapter may be cited as the "Philomath animal control ordinance." [Ord. 574 § 1, 1989.]

6.10.020 Definitions.

"Animal" means livestock, horses, rabbits, ferrets, chickens, pigeons, or any other animal, rodent, reptile, bird or fowl, domesticated or otherwise, except a dog or cat, which does not physically live within the dwelling of the person in charge of the animal.

"Domestic animal" means any dog or cat, or other animal, rodent, bird, fish or reptile allowed to inhabit the dwelling of the person in charge of the domestic animal.

"Keeping an animal" means to hold, keep, maintain, harbor, or provide shelter or habitat for any creature defined as an animal or domestic animal by this chapter.

"Keeper of an animal" means any person who owns, or is in control of, or keeps an animal or a domestic animal.

"Person" means a natural person, firm, partnership, association or corporation.

"Police officers" includes officers of the Philomath police department and any animal control officer duly appointed by the city of Philomath or by Benton County, Oregon. [Ord. 574 § 2, 1989.]

6.10.030 Applicability of county animal control ordinance.

It is the intention of this chapter to consent to the application of the animal control ordinances of Benton County, Oregon, within the city limits of Philomath in order that Benton County officials may exercise animal control within the limits of the city of Philomath. [Ord. 574 § 3, 1989.]

6.10.040 Adoption of state statutes.

A. Each and every misdemeanor and violation made an offense against the state of Oregon under the provisions in ORS Chapters 133, 156, 166, 167 and 475, as constituted on January 1, 1989, are adopted by reference and made a part of this chapter, and designated an offense against the city of Philomath. The provisions of ORS Chapter 161 are also hereby adopted by reference and made a part of this chapter.

B. A person who violates any of those provisions enumerated in subsection (A) of this section within the jurisdiction of the city of Philomath is in violation of this chapter and shall be charged with the offense of violating this section of the Philomath animal control ordinance and reference shall be made in the charging instrument to that particular section of the ORS which has been violated. In the event that any other section of this chapter creates a specific misdemeanor or violation in conflict with the misdemeanor or violation offense herein incorporated by reference, the provisions of the specific ordinance misdemeanor or ordinance violation shall govern. [Ord. 574 § 4, 1989.]

6.10.050 Dogs at large prohibited.

A. It shall be unlawful for any person to permit or allow any dog owned by that person or under that person's control to be out of doors upon any street, alley or sidewalk or upon any premises other than the premises of the owner or person in control of the dog unless the dog is under a leash not exceeding 10 feet long and under control of the person holding the leash.

B. Scoop Law. No person shall allow a dog owned by or under the person's control to defecate on property other than the owner's without immediately thereafter picking up and disposing of the excrement.

C. Violation of subsection (A) or (B) of this section shall be punishable as a violation, with a

fine for the first offense of not more than $35.00, and for a second conviction a fine of not less than $40.00 and not more than $80.00, and for the third and subsequent convictions a fine of not less than $80.00. [Ord. 792 § 1, 2015; Ord. 656, 1997; Ord. 574 § 5, 1989.]

6.10.060 Keeping a noisy animal.

A. No keeper of an animal or a domestic animal shall allow such animal to make or cause a noise which, because of its loudness and frequency, causes annoyance or alarm to another person, or disturbs the comfort and repose of a person in the vicinity.

B. Violation of this section shall be punishable as a violation, with a fine for the first offense to be not more than $35.00, and upon a second conviction with a fine not less than $40.00 and not more than $80.00, and upon a third or subsequent conviction with a fine of not less than $80.00. [Ord. 574 § 6, 1989.]

6.10.070 Riding animals in the city.

A. No person shall ride, lead or tether, and no owner shall permit the riding, leading, or tethering of any horse, mule or other animal within the city except along a designated bridle path, upon city streets or upon private property with the consent of the owner.

B. The owner or rider of an animal lawfully ridden in the city shall be responsible for removing any manure deposited by such animal on any public way.

C. The rider of any animal on a public way shall yield the right-of-way to vehicles and pedestrians. [Ord. 574 § 7, 1989.]

6.10.080 Restrictions on keeping animals and fowl.

A. It shall be unlawful for any person to keep any animal, except a domestic animal, in this city or to permit the same to be kept upon premises owned, occupied or controlled by said person except under conditions prescribed by this section.

B. Any person desiring to keep any such animal shall submit to the city manager an application for a permit, accompanied by written evidence that three-fourths of the adjoining property owners or residents within a 200-foot radius from the site where the applicant proposes to keep said animals do consent to the keeping of such animals. The city manager shall cause a record to be made of its approval or disapproval of such permit, and provide a copy thereof to the applicant and to the police department.

C. No stable, barn, shed, coop, hutch, pen, or shelter in which any animal is kept shall be located within 30 feet of a city street or sidewalk. Such structures, with their pens and yards, shall be kept clean and sanitary.

D. Any and all animals and domestic animals kept in this city shall be protected by proper and adequate shelter from exposure to the elements.

E. The manure and offal shall be removed by hauling beyond the city limits, unless used for fertilizer, in which case it shall be spread upon the ground evenly and turned under at once. Manure must be removed with sufficient frequency to prevent offensive odors.

F. Diseased animals or diseased domestic animals shall be securely confined on the premises of their keeper and shall not be allowed to approach within 50 feet of any street, sidewalk or place of habitat of other animals or domestic animals.

G. Any person permitted to keep an animal or domestic animal within the city shall be fully responsible for any injury, harm or discomfort to any person or property caused by such animal whether while confined within its habitat or at large outside its confines. Failure of the keeper of such animal to make restitution for any injury or harm or to abate any discomfort caused by such animal shall be considered to maintain a nuisance and may be dealt with as set forth in PMC 6.10.130(A). [Ord. 574 § 8, 1989.]

6.10.090 Animals at large.

A. Except for house cats, no keeper of any animal or domestic animal shall permit such animal to be at large.

B. Any animal at large may be taken into custody by the city. Animals taken into custody due to a violation of any section of this chapter may be held by the city or lodged at a facility designated by the city, or returned to the owner or person responsible for the animal.

C. Any animal taken into custody which is in need of medical attention shall be delivered to the nearest veterinary clinic or, if delivery is not practical, a veterinarian may be called to the location of the animal by a police officer.

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D. The keeper of any animal taken into custody or given medical attention at the request of a police officer shall be responsible for all costs incurred as a result of such custody and care. In the event that the city has paid veterinary bills for medical care given an animal, the municipal court judge may order the animal keeper to reimburse the city for such expenses in addition to any fine or other fees imposed.

E. The escape of any animal from the confines permitted by the city manager three times in any 12-month period shall cause said animal and their shelter and yard to be a nuisance and offensive to the area and shall be dealt with as set forth in PMC 6.10.130.

F. The keeper of any animal which escapes from its confines shall reimburse the city for actual costs incurred by city personnel in the capture and boarding of such animal.

G. An animal impoundment fee schedule shall be established and periodically revised by the city council. [Ord. 574 § 9, 1989.]

6.10.100 Dangerous animals.

A. Any animal or domestic animal which attempts to attack or attacks or harms any person or other animal is hereby declared a dangerous animal and a public nuisance. For purposes of this section, "animal" refers to both animals and domestic animals.

It is the intent of the city to promote a safe coexistence between pet owners and citizens and to apply sanctions only in those instances where there is a need to protect public safety.

B. Classification of Levels of Dangerousness. An animal shall be classified as dangerous based upon specific behaviors exhibited by the animal. Behaviors establishing various levels of dangerousness are as follows:

1. Level 1 behavior is established if an animal at large is found to menace, chase, display threatening or aggressive behavior, or otherwise threaten or endanger the safety of any animal.

2. Level 2 behavior is established if an animal at large is found to menace, chase, display threatening or aggressive behavior or otherwise threaten or endanger the safety of any person.

3. Level 3 behavior is established if an animal, while confined, aggressively bites any person.

4. Level 4 behavior is established if an animal, while at large, aggressively bites or causes physical injury to any person or animal.

5. Level 5 behavior is established if:

a. An animal, whether or not confined, causes the serious injury or death of any person;

b. An animal, while at large, kills any animal;

c. An animal engages in or is found to have been trained to engage in exhibitions of fighting; or

d. An animal that has been classified as a Level 4 dangerous animal repeats the behavior described in subsection (B)(4) of this section after the owner receives notice of Level 4 classification.

6. Notwithstanding subsections (B)(1) through (B)(5) of this section, the chief of police or the chief's designee shall have discretionary authority to refrain from classifying an animal as potentially dangerous, even if the animal has engaged in the behaviors specified in subsections (B)(1) through (B)(5) of this section, if the chief of police or the designee determines that the behavior was the result of abusing or tormenting the animal or other extenuating circumstances. In any case, no animal shall be classified as dangerous if the behavior in question was directed against a trespasser inside any fully enclosed building on private property if all exterior doors of the building were locked at the time the trespassing occurred.

C. Identification of Dangerous Animals – Appeals – Restrictions Pending Appeal.

1. The chief of police or the chief's designee shall have authority to determine whether any animal has engaged in the behaviors specified in subsection (B) of this section. This determination shall be based upon an investigation that includes observation of and testimony about the animal's behavior. These observations and testimony can be provided by the county animal control officer or by other witnesses who personally observed the behavior. They shall sign a written statement attesting to the observed behavior and agree to provide testimony regarding the animal's behavior if necessary.

2. The chief of police or the chief's designee shall give the animal's owner written notice by certified mail or personal service of the animal's classification as a dangerous animal and of the additional restrictions applicable to that animal by

reason of its classification. If the owner denies that the behavior in question occurred, the owner may appeal the decision to the municipal judge by filing a written request for a hearing with the chief of police within 10 days of the date the notice was mailed to the owner by certified mail or the owner was personally served.

3. The municipal judge shall hold a public hearing on any appeal from the chief of police's decision to classify an animal as potentially dangerous. The owner and any other persons having relevant evidence concerning the animal's behavior as specified in subsection (B) of this section shall be allowed to present testimony. The municipal judge shall determine whether the animal exhibited the behavior, specified in subsection (B) of this section, in question. The municipal judge shall issue an order containing his or her determination, which shall be final.

4. Once the owner has received notice of the animal's classification as a Level 1, 2, 3, or 4 dangerous animal pursuant to subsection (C)(2) of this section, the owner shall comply with the restrictions specified in the notice until such time as the chief of police or the chief's designee's decision may be reversed on appeal. Failure to comply with the specified restrictions pending the completion of all appeals shall be a violation of this chapter for which a fine can be imposed. Additionally, the chief of police or the designee shall have authority to impound the animal pending completion of all appeals.

5. If the chief of police or the designee finds that an animal has engaged in Level 5 behavior, the animal shall be impounded pending the completion of an appeal. If the chief of police or his/her designee's decision is upheld on appeal, the animal's owner shall be liable for the cost of the animal's impoundment.

D. Regulation of Dangerous Animals. The owner of a dangerous animal shall comply with the following regulations:

1. If the animal has been classified as a Level 1 dangerous animal, the animal shall be restrained by a physical device or structure that prevents the animal from reaching any public sidewalk or adjoining property whenever that animal is outside the owner's home and not on a leash.

2. If the animal has been classified as a Level 2 dangerous animal, the owner shall confine the animal within a secure enclosure whenever the animal is not on a leash or inside the home of the owner.

3. If the animal has been classified as a Level 3 dangerous animal, the owner shall meet the requirements of subsection (D)(2) of this section, and shall also post warning signs on the property where the animal is kept.

4. If the animal has been classified as a Level 4 dangerous animal, the owner shall meet the requirements of subsections (D)(2) and (D)(3) of this section and shall, additionally, not permit the animal to be off the owner's property unless the animal is muzzled and restrained by an adequate leash and under the control of a capable person.

5. Any animal that has been classified as a Level 5 dangerous animal may be euthanized. In addition, the municipal court judge may suspend, for a period of up to five years, that animal owner's right to be the owner of any animal within the city limits, including animals currently owned by that person.

E. Banning of Dangerous Animals. At the discretion of the chief of police, an animal that has been classified as a Level 3 or 4 dangerous animal may be prohibited from entering or residing within the city limits except to be transported in a secure vehicle while passing through the city.

In addition, the chief of police is empowered to ban a Level 3 or 4 animal from the city limits for a specified period of time or permanently; however, the animal's owner shall have the right of appeal, specified in subsection (C) of this section, of any decision under this section.

F. Selling of Dangerous Animals. No person shall sell or otherwise transfer to another ownership of a dangerous animal within the city limits. No person shall secrete or harbor a dangerous animal for another while the owner of that animal exercises the right of appeal. [Ord. 698 § 1, 2001; Ord. 574 § 10, 1989.]

6.10.110 Feral dogs and cats.

Police officers are hereby authorized to capture dogs and cats which have apparently been abandoned or lost and deliver them to the Humane Society shelter for disposition. [Ord. 574 § 11, 1989.]

6.10.120 Trapping within the city.

A. The city manager is hereby authorized to issue permits to licensed trappers to rid the city of animals when such animals constitute a hazard or substantial inconvenience to any resident of the city or cause or threaten to cause substantial damage to property.

B. Domestic animals may be trapped using noninjurious methods in those cases where such animals are found off the premises of the keeper or the identity of the keeper is indeterminable. [Ord. 574 § 12, 1989.]

6.10.130 Penalty.

A. Any person violating any provision of this chapter which has no specific penalty clause shall, upon conviction, be deemed guilty of a violation and punished by a fine of not less than $20.00 nor more than $250.00.

B. Any person convicted of a violation of PMC 6.10.080 and 6.10.090 shall be punished as set forth in subsection (A) of this section and in addition thereto, at the discretion of the court, may be allowed up to 15 days to abate such an offense. Any such offense contained after 15 days shall be considered a separate violation.

C. In addition to the penalties set forth in this chapter, the keeper of any animal impounded while in violation of any section of this chapter may be required to pay impoundment fees to the city or the Humane Society, dependent upon the storage location of the animal. [Ord. 574 § 13, 1989.]

Chapter 6.11

WILDLIFE CONTROL

Sections:

6.11.010 Short title.
6.11.020 Definitions.
6.11.030 Feeding of wildlife prohibited.
6.11.040 Abatement.
6.11.050 Penalties.
6.11.060 Severability.

6.11.010 Short title.

This chapter may be cited as the "Philomath wildlife control ordinance." [Ord. 751 § 1, 2008.]

6.11.020 Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

"City" means the city of Philomath.

"Songbird" means any of a large number of bird species in which the vocal organ is developed in such a way as to provide various sound notes commonly known as bird song.

"Waterfowl" means any bird that frequents the water or lives around rivers, lakes, etc., including, but not limited to, ducks, geese, swans, and herons.

"Wildlife" shall include any animal which is not normally domesticated including, but not limited to, bears, coyotes, deer, feral cats, foxes, groundhogs, opossums, raccoons, skunks, turkeys, and waterfowl. [Ord. 751 § 1, 2008.]

6.11.030 Feeding of wildlife prohibited.

Feeding of wildlife within the city limits of Philomath is declared a public nuisance and is prohibited at all times. Feeding of wildlife includes any manner by which a person allows food or other attractants to be placed on their property with the intent of attracting and/or feeding wildlife. Nothing contained in this chapter shall prohibit the feeding of songbirds; provided, that bird seed shall be contained in receptacles which are reasonably designed to avoid access by wildlife. [Ord. 751 § 1, 2008.]

6.11.040 Abatement.

In the event that any part of the city is experiencing the presence of wildlife populations that threaten the health and welfare or endanger the

property of Philomath citizens, the city shall take those steps authorized by the appropriate regulatory agency to disperse or otherwise control the offending wildlife. Should the city manager determine that feeders for songbirds are attracting wildlife, the city shall require that those persons remove feeders until such time that the wildlife disperse. Failure to remove feeders within 24 hours from notification shall constitute a separate violation of this chapter. [Ord. 751 § 1, 2008.]

6.11.050 Penalties.

Any person violating any provision of this chapter shall be liable to a fine not less than $50.00 or more than $250.00 for each offense. A separate offense shall be deemed committed on each day or part of each day during which a violation occurs or continues. [Ord. 751 § 1, 2008.]

6.11.060 Severability.

Every section of this chapter or subsection or separate part thereof shall be considered a separate provision to the intent that if any portion shall be declared unconstitutional, it shall not affect the remaining parts of this chapter. [Ord. 751 § 1, 2008.]

Title 7

(Reserved)

Title 8

HEALTH AND SAFETY

Chapters:

8.10 Rats
8.15 Smoking in Public Places
8.20 Hazardous Waste Response

Chapter 8.10

RATS

Sections:

8.10.010 Definitions.
8.10.020 Application of chapter.
8.10.030 Notice and eradication.
8.10.040 Notice to rat-proof.
8.10.050 Duty to maintain.
8.10.060 Removal of rat-proofing unlawful.
8.10.070 Protective measures.
8.10.080 Storage of food.
8.10.090 Accumulation of garbage prohibited.
8.10.100 Accumulation of rubbish prohibited.
8.10.110 Inspections by health officer.
8.10.120 Adoption of rules.
8.10.130 Penalties.
8.10.140 Future construction.

8.10.010 Definitions.

For the purposes of this chapter the following definitions shall apply:

A. Words and Phrases. Words and phrases used in this chapter shall be construed as follows: Words used in the present tense shall include the future; words in the singular number shall include the plural; and words in the plural shall include the singular. The male personal pronoun may be applied to any person as hereinafter defined.

B. Building. The term "building" shall mean any structure or dwelling, whether public or private, which is devoted to or designed for occupancy or for the transaction of business; for the rendering of professional service; for amusement; for the display, sale or storage of goods, wares or merchandise; or for the performance of work or labor, including hotels, apartment buildings, rooming houses, motels, office buildings, public buildings, stores, theaters, markets, restaurants, grain elevators, abattoirs, warehouses, workshops, factories and all other houses, outhouses, sheds, barns and other structures on premises used for business or dwelling purposes, whether the same be occupied or not.

C. Rat-Proofing. The term "rat-proofing" as used herein applies to a form of construction to prevent the ingress of rats into buildings from the exterior or from one building to another. It consists essentially of the closing of all actual or potential openings in the exterior walls, ground or first floors, basements, roofs and foundations that may be reached by rats from the ground by climbing or by burrowing, with material or equipment impervious to rat-gnawing.

D. Rat-Harborage. The term "rat-harborage" shall mean any condition which provides shelter or protection for rats, thus favoring their multiplication and continued existence in, under, or outside a building of any kind.

E. Rat Eradication. The term "rat eradication" shall mean the elimination or extermination of rats within buildings of any kind by any or all measures, such as poisoning, fumigation, trapping or clubbing.

F. Health Officer. The term "health officer" shall mean the district health officer, commissioner, director of health or any duly authorized representative.

G. Owner. The term "owner" shall mean the actual owner or owners of a building within the city of Philomath, whether individuals, partnerships or corporations and the agent thereof, and also the lessee or lessees thereof when, under the terms of a lease, the lessee is responsible for maintenance and repairs.

H. Occupant. The term "occupant" shall mean the individual, partnership or corporation using or occupying any building or part thereof, whether owner or lessee. In the case of a vacant building, the term "occupant" shall mean the owner or the person who as agent of the owner undertakes to care for the same for the owner.

I. Person. The term "person" shall include one or more natural persons, partnerships, corporation, association, syndicate or any group of the foregoing doing business as a single organization. [Ord. 109 § 1, 1951.]

8.10.020 Application of chapter.

It is hereby ordained and required that all buildings or structures in the city of Philomath shall be freed of rats and maintained in a rat-free condition to the satisfaction of the health officer. [Ord. 109 § 2, 1951.]

8.10.030 Notice and eradication.

Whenever the health officer notifies the occupant or occupants of a building in writing that there is evidence of rat infestation of the building, said

occupant or occupants shall immediately institute rat-eradication measures and shall continuously maintain such measures in a satisfactory manner until the premises is declared by the health officer to be free of rat infestation. Unless said measures are undertaken within five days after receipt of notice, it shall be construed as a violation of the provisions of this chapter and occupant shall be held responsible therefor. [Ord. 109 § 3, 1951.]

8.10.040 Notice to rat-proof.

Whenever the health officer notifies the owner of any building in writing that there is evidence of the need of rat-proofing of the building, said owner shall take immediate measures for rat-proofing the building; and unless said work and improvements have been completed by the owner in the time specified in the written notice, in no event to be less than 15 days, or within the time to which a written extension may have been granted by the health officer, then the owner shall be deemed guilty of an offense under the provisions of this chapter. [Ord. 109 § 4, 1951.]

8.10.050 Duty to maintain.

The owner, agent or occupant in charge of all rat-freed and/or rat-proofed buildings or structures shall maintain them in a rat-free and/or rat-proof condition and repair all breaks or leaks that may occur in the rat-proofing without a specific order of the health officer. [Ord. 109 § 5, 1951.]

8.10.060 Removal of rat-proofing unlawful.

It shall be unlawful for the owner, occupant, contractor, public utility company, plumber or any other person, to remove the rat-proofing from any building or structure for any new openings that are not closed or sealed against the entrance of rats. [Ord. 109 § 6, 1951.]

8.10.070 Protective measures.

Whenever conditions inside or under any building or structure provide such extensive harborage for rats that the health officer deems it necessary to eliminate such harborage, he may require the owner or occupant in charge of any such building or structure to install suitable cement floors in basements, or to require such owner or occupant to correct such rat harborage as may be necessary in order to facilitate the eradication of rats. [Ord. 109 § 7, 1951.]

8.10.080 Storage of food.

All food and feed within the city of Philomath for feeding chickens, cows, pigs, horses and other animals shall be stored in rat-free and rat-proof containers, compartments or rooms unless stored in a rat-proof building. [Ord. 109 § 8, 1951.]

8.10.090 Accumulation of garbage prohibited.

It shall be unlawful for any person to place, leave, dump or permit to accumulate any garbage or trash in any building, structure or premises so that the same shall afford food or harborage for rats, or to dump or place on any premises, land or waterway, any dead animals or waste vegetable or animal matter of any kind. [Ord. 109 § 9, 1951.]

8.10.100 Accumulation of rubbish prohibited.

It shall be unlawful for any person to accumulate or permit the accumulation on any open lot or other premises, any lumber, boxes, barrels, bricks, stones, scrap metal, motor vehicle bodies or parts, or similar materials, rubbish, or any articles of junk which provide rat harborage, unless the same shall be placed on open racks that are elevated not less than 18 inches above the ground, evenly piled or stacked. [Ord. 109 § 10, 1951.]

8.10.110 Inspections by health officer.

The health officer is empowered to make such inspections of the interior and exterior of any building or structure as in his opinion may be necessary to determine full compliance with this chapter, and the health officer may make periodic inspections at intervals of not more than 45 days of all rat-proofed buildings to determine evidence of rat infestation and the existence of new breaks or leaks in the rat-proofing. When any evidence is found indicating the presence of rats or openings through which rats may enter such buildings again, the health officer shall serve the owner or occupants with written notice to abate the conditions found. [Ord. 109 § 11, 1951.]

8.10.120 Adoption of rules.

The health officer is empowered to adopt rules, regulations and standards in aid of the construction and enforcement of this chapter which are not inconsistent with the terms and provisions hereof. [Ord. 109 § 12, 1951.]

8.10.130 Penalties.

Any person who shall violate any provision of this chapter or of any rule, regulation or lawful order made by the health officer relative to this chapter shall be punished by a fine of not more than $50.00, or imprisonment of not more than 25 days, or both. Each day's violation shall constitute a separate offense. [Ord. 109 § 13, 1951.]

8.10.140 Future construction.

Every building hereafter constructed in the city of Philomath shall be rat-proof. A rat-proof building is one constructed in such a manner and of such material as to prevent the ingress of rats. [Ord. 109 § 17, 1951.]

Chapter 8.15

SMOKING IN PUBLIC PLACES

Sections:

8.15.010 Definitions.
8.15.020 Smoking prohibited in public places.
8.15.030 Smoking prohibited in places of employment.
8.15.040 Smoking prohibited outside entrances.
8.15.050 Places where smoking is not regulated.
8.15.060 Posting "no smoking" signs.
8.15.070 Nonretaliation.
8.15.080 Smoking in or near entrances to publicly owned buildings.
8.15.090 Other violations and penalties.
8.15.100 Other laws.
8.15.110 Hiatus on enforcement.

8.15.010 Definitions.

For the purposes of this chapter, the following definitions shall apply:

A. "Bar" means an area which is devoted to the serving of alcoholic beverages for consumption by guests on premises and in which the serving of food is only incidental to the consumption of such beverages.

B. "Business" means any sole proprietorship, partnership, joint venture, corporation, or other business entity, including retail establishments where goods or services are sold as well as professional corporations and other entities where professional services are delivered.

C. "Employee" means any person who is employed by any employer in the consideration for direct or indirect monetary wages or profit, and any person who volunteers his or her services to a non-profit entity.

D. "Employer" means any person or entity who employs the services of one or more individuals.

E. "Enclosed area" means all space between a floor and a ceiling which is exposed on all sides by solid walls or windows (exclusive of doors or passageways) which extend from the floor to the ceiling, including all space therein screened by partitions which do not extend to the ceiling or are not solid, "office landscaping" or similar structure.

F. "Place of employment" means any enclosed area under the control of a public or private

employer which employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges and restrooms, conference rooms and classrooms, cafeterias and hallways. A private residence is not a "place of employment" unless it is used as a childcare, adult day care, or health care facility.

G. "Public place" means any enclosed area to which the public is invited or in which the public is permitted including, but not limited, to banks, education facilities, health facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a "public place" unless it is used as a childcare, adult day care, or health care facility.

H. "Restaurant" means any coffee shop, cafeteria, sandwich stand, private or public school cafeteria, and any other eating establishment which gives or offers for sale food to the public, guests, or employees, as well as kitchens in which food is prepared on the premises for serving elsewhere, including catering facilities.

I. "Retail tobacco store" means a retail store utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.

J. "Service line" means any indoor line or any portion of an indoor line that extends out of doors, at which one or more persons are waiting for or receiving services of any kind, whether or not such services involve the exchange of money.

K. "Smoking" means any inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, weed, plant, or other tobacco-like product or substance in any manner or in any form.

L. "Sports arena" means any sports pavilion, gymnasium, health spa, swimming pool, roller rink, bowling alley, and other places where members of the general public assemble either to engage in physical exercise, participate in athletic competition, or witness sports events.

M. "Tobacco product" means any tobacco cigarette, cigar, pipe tobacco, smokeless tobacco, chewing tobacco, or any other form of tobacco which may be utilized for smoking, chewing, inhalation, or other means of ingestion. [Ord. 684 § 1, 2000.]

8.15.020 Smoking prohibited in public places.

A. Smoking shall be prohibited in all enclosed public places that are within the city or located on city-owned property, including, but not limited to, the following places:

1. Elevators;
2. Restrooms, lobbies, reception areas, hallways, and any other common-use areas;
3. Buses, taxicabs, and any other means of public transportation under the authority of the city;
4. Service lines or within 10 feet of a service line that extends out of doors;
5. Retail stores;
6. All areas available and customarily used by the general public located in all businesses patronized by the public, including nonprofit and public businesses. Affected businesses include, but are not limited to, professional offices, banks, laundromats, hotels and motels;
7. Restaurants;
8. Any facility which is primarily used for exhibiting any motion picture, stage or drama production, lecture, music recital or other similar performances, except performers when smoking is part of a stage or drama production;
9. Sports arenas, including bowling facilities and convention halls;
10. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, and other multiple-unit residential facilities; and
11. Polling places.

B. Notwithstanding any other provision of this section, any owner, operator, manager or other person who controls any establishment or facility may declare that entire establishment or facility as a nonsmoking establishment. [Ord. 684 § 2, 2000.]

8.15.030 Smoking prohibited in places of employment.

It shall be the responsibility of employers to provide a smoke-free workplace for all employees, but employers are not required to incur any expense to make structural or other physical modifications. [Ord. 684 § 3, 2000.]

8.15.040 Smoking prohibited outside entrances.

Smoking shall not occur within a reasonable distance, not to be less than 10 feet, of any entrance of any enclosed area where smoking is prohibited or of any service line that extends out of doors. [Ord. 684 § 4, 2000.]

8.15.050 Places where smoking is not regulated.

Notwithstanding any other provision of this section to the contrary, the following areas shall not be subject to any smoking restrictions contained within this chapter:

A. Private residences, unless the private residence is used as a childcare, adult day care, or health care facility;

B. Rented motel/hotel rooms that are designated in some manner as smoking allowed rooms by the owners of the establishment renting the rooms;

C. Private rooms rented for an occupancy that exceeds one month and that are not located in a private residence used as a childcare, adult day care or health care facility; and

D. Retail tobacco stores. [Ord. 684 § 5, 2000.]

8.15.060 Posting "no smoking" signs.

A. "No smoking" signs or the international "no smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across the cigarette) shall be clearly, sufficiently, and conspicuously posted in every building or other area where smoking is prohibited by this chapter, by the owner, manager, or other person having control of such building or other area, including private residences used as a childcare, adult day care or health care facility.

B. Every public place where smoking is prohibited by this section shall have posted at every entrance a conspicuous sign stating that smoking is prohibited. [Ord. 684 § 6, 2000.]

8.15.070 Nonretaliation.

It shall be a violation of this section for any person or employer to discharge, refuse to hire, or in any manner retaliate against any employee, applicant for employment, or customer because such employee, applicant, or customer reports or attempts to prosecute any violation of this chapter. [Ord. 684 § 7, 2000.]

8.15.080 Smoking in or near entrances to publicly owned buildings.

A. No person shall smoke anywhere within any publicly owned buildings.

B. No person shall smoke within 10 feet of any entrance to a publicly owned building.

C. A violation of this section is a Class B infraction. [Ord. 684 § 8, 2000.]

8.15.090 Other violations and penalties.

A. It shall be a violation of this chapter for every day any person who owns, manages, operates or otherwise controls the use of any premises, subject to regulation under this chapter, fails to comply with any provisions herein.

B. It shall be a violation of this chapter for any person to smoke in any area where smoking is prohibited by the provisions of this section.

C. Any person who violates this chapter shall be guilty of an infraction, punishable by a fine:

1. Not less than $50.00 exclusive of unitary assessment nor more than $100.00 for a first violation within any 12-month period;

2. Not less than $100.00 exclusive of unitary assessment nor more than $200.00 for a second violation within any 12-month period;

3. Not less than $200.00 exclusive of unitary assessment nor more than $500.00 for each additional violation of this chapter within any 12-month period. [Ord. 684 § 9, 2000.]

8.15.100 Other laws.

This section shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. [Ord. 684 § 11, 2000.]

8.15.110 Hiatus on enforcement.

A. Purpose. The purpose of this hiatus is to allow for uniform enforcement of the Oregon Indoor Clean Air Act within Benton County.

B. Scope. In order to be consistent with the terms of Senate Bill 571, amending the Oregon Indoor Clean Air Act, PMC 8.15.010 through 8.15.100 shall not be enforced or enforceable by the city of Philomath, until such time as the city council shall affirmatively act by ordinance to repeal this section.

C. Biennial Review. This section shall be reviewed every two years by the city council. [Ord. 752 § 1, 2008.]

Chapter 8.20

HAZARDOUS WASTE RESPONSE

Sections:

8.20.010 Strict liability for spill or relief.
8.20.020 Response.
8.20.030 Billing period.
8.20.040 Definitions.

8.20.010 Strict liability for spill or relief.

Any person owning or having control over any oil or hazardous material spilled or released or threatening to spill or release shall be strictly liable without regard to fault for the spill or release or threatened spill or release. [Ord. 685 § 1, 2000.]

8.20.020 Response.

If a spill or release of oil or hazardous material or threatened spill or release of hazardous material requires a response by city staff, city staff shall follow the appropriate procedures for notifying state and county officers responsible for emergency responses. If response by city staff beyond contacting the appropriate emergency response officer is required, the city manager shall calculate the time that city staff expended in responding to the spill or release or threatened spill or release and shall charge the person owning or having control over the oil or hazardous material the actual cost for the city's response and a 15 percent administration fee.

A. If city staff respond to a spill or release or threatened spill or release of any oil or hazardous material and can immediately locate the person owning or having control over the oil or hazardous material, city staff shall give the person owning or having control over the oil or hazardous material the choice of immediately contacting a qualified private contractor to assess and appropriately respond to the spill or release or threatened spill or release; or of requesting that city staff immediately call a qualified private contractor to do the same. The person owning or having control over any oil or hazardous material spilled or released or threatened to spill or release shall be strictly liable without regard to fault for the costs of the qualified private contractor, even if that qualified private contractor was contacted by city staff.

B. If city staff cannot locate the person owning or having control over any oil or hazardous mate-

rial spilled or released or threatening to spill or release, city staff shall immediately contact a qualified private contractor to assess and appropriately respond to the spill or release or threatened spill or release. The person owning or having control over the oil or hazardous material spilled or released or threatening to spill or release shall be strictly liable without regard to fault for the costs of the city and the costs of the qualified private contractor. [Ord. 685 § 2, 2000.]

8.20.030 Billing period.

Within 30 days from the city's response to any oil or hazardous spill or release or threatened spill or release, the city of Philomath will mail to the person owning or having control over the oil or hazardous material a bill for services provided by the city of Philomath, including any costs associated with a qualified contractor acting at the city's request and an additional 15 percent for the city's administrative costs. If the response and cleanup is not complete at the time of the first bill, the city will send additional billings. The person owning or having control over the oil or hazardous material shall pay the bill within 30 days or make arrangements with the city for a time payment agreement. If the person owning or having control over the oil or hazardous material owns property within the city limits of the city of Philomath and has not paid the bill within 30 days from the date the bill was mailed to the person, the city will send the person a notice that if payment or arrangements for a time payment agreement have not been made within 10 days, the city will place a lien in the amount owed in the city's lien docket against that person's real property. If the person owning or having control over any oil or hazardous material does not own real property within the city limits of the city of Philomath, the city will take appropriate legal action to collect the amount owed. [Ord. 685 § 3, 2000.]

8.20.040 Definitions.

For purposes of this chapter, "cleanup," "cleanup costs," "hazardous material," "oils" or "oil," "person," "respond" or "response," "spill or release" and "threatened spill or release" are defined as set out in ORS 466.605 as amended. [Ord. 685 § 4, 2000.]

Title 9

PUBLIC PEACE, MORALS AND WELFARE

Chapters:

9.10 Criminal Offenses
9.15 Nuisances
9.20 Marijuana
9.25 Curfew

Chapter 9.10

CRIMINAL OFFENSES

Sections:

9.10.010 Purpose.
9.10.020 Title.
9.10.030 Definitions.
9.10.040 Procedures.
9.10.050 Adoption of state criminal misdemeanor offenses and violations.
9.10.060 Offenses against the public order.
9.10.070 Offenses against persons.
9.10.080 Restricted activities.
9.10.090 General.

9.10.010 Purpose.

It is the intention of this chapter to make the prosecution of and the applicable penalty for all criminal misdemeanors and violations match as closely as possible those provided under state law. [Ord. 464 § 1, 1981.]

9.10.020 Title.

This chapter shall be known as the "Philomath criminal misdemeanor and violation ordinance." [Ord. 464 § 2, 1981.]

9.10.030 Definitions.

In addition to those definitions contained in the Oregon Criminal Code of 2014, adopted by reference and made a part of this chapter, the following words or phrases, except where the context clearly indicates a different meaning, shall mean:

"Hinder" means any attempt to delay, impede, or prevent action.

"Interfere" means to interpose in a way that hinders or impedes.

"Obstruct" means to hinder from passage, action, or operation. [Ord. 790 § 1, 2014; Ord. 736 § 1, 2006; Ord. 694 § 1, 2000; Ord. 621 § 1, 1994; Ord. 464 § 3, 1981.]

9.10.040 Procedures.

The criminal procedures applicable to the prosecution of misdemeanors and violations contained in the Oregon Revised Statutes as constituted on January 2, 2014, are adopted by reference and made a part of this chapter, and all references therein to "district attorney" shall include the city attorney. This shall include those provisions relating to defenses and burden of proof, general principles or criminal liability, parties, and general principles of justification. [Ord. 790 § 2, 2014; Ord. 736 § 1, 2006; Ord. 694 § 1, 2000; Ord. 646, 1996; Ord. 621 § 2, 1994; Ord. 604 § 1, 1991; Ord. 552 § 1, 1987; Ord. 532 § 1, 1986; Ord. 464 § 4, 1981.]

9.10.050 Adoption of state criminal misdemeanor offenses and violations.

Each and every misdemeanor and violation made an offense against the state of Oregon under the provisions in ORS Chapters 161 through 169; 419(A), (B), and (C); 471; and 475, as constituted on January 2, 2014, are adopted by reference and made a part of this chapter, and designated an offense against the city of Philomath. A person who violates any one of those provisions within the jurisdiction of the city of Philomath is in violation of this chapter and may be charged with the offense of violating this section and reference shall be made in the charging instrument to that particular section of the Oregon Revised Statutes, as incorporated by reference, which has been violated. In the event that any other section of this chapter or any other ordinance creates a specific misdemeanor or violation offense in conflict with a misdemeanor or violation offense herein incorporated by reference, the provisions of the specific ordinance misdemeanor or ordinance violation offense shall govern. [Ord. 790 § 3, 2014; Ord. 736 § 1, 2006; Ord. 694 § 1, 2000; Ord. 646, 1996; Ord. 621 § 3, 1994; Ord. 604 § 2, 1991; Ord. 552 § 2, 1987; Ord. 532 § 2, 1986; Ord. 464 § 5, 1981.]

9.10.060 Offenses against the public order.

A. Disorderly Conduct at Fires. No person at or near a fire shall obstruct or hinder the fighting of the fire, interfere with emergency personnel or apparatus, behave in a disorderly manner or refuse to promptly observe an order of a member of the fire or police department.

Violation of this subsection shall be punishable as a Class B misdemeanor.

B. False Reports.

1. No person shall knowingly initiate, or cause to be initiated, a false alarm or report which is transmitted to a fire department or law enforce-

ment agency or other organization that deals with emergencies involving danger to life or property.

2. No person shall knowingly make or file with the police department or with the city attorney or with a police officer a false, misleading, or unfounded statement or report concerning the violation or alleged violation of a city ordinance or the commission or alleged commission of a crime.

Violation of this subsection shall be punishable as a Class C misdemeanor.

C. Obstructing a Police Officer. A person commits the crime of obstructing a police officer if that person intentionally or knowingly interferes with or obstructs another person, knowing the other person to be a police officer and while such other person is acting in the course of official duty.

Violation of this subsection shall be punishable as a Class A misdemeanor.

D. Providing False Information to a Police Officer. A person commits the crime of providing false information to a police officer if that person, intentionally or knowingly uses a false or fictitious name, intentionally or knowingly gives a false or fictitious address or intentionally or knowingly gives a false date of birth to another person, knowing the other person to be a police officer while the police officer is investigating any violation of any city ordinance or state statute.

Violation of this subsection shall be punishable as a Class B misdemeanor.

E. Interference with Police or Fire Communications. No person shall knowingly operate any generator, transmitter, or electric or magnetic wave or cause the disturbance of such magnitude as to interfere with the proper functioning of any police or fire department radio communication system.

Violation of this subsection shall be punishable as a Class A misdemeanor.

F. Obstruction or Tampering with Fire Hydrants. No owner or occupant of property adjacent to a street upon which is located a fire hydrant shall place or maintain within eight feet of such fire hydrant any bush, shrub, tree, or other obstruction. It shall be unlawful for any unauthorized person to tamper with a fire hydrant.

Obstructing a fire hydrant shall be a violation. Tampering with a fire hydrant shall be a Class B misdemeanor.

G. Vending Goods on Streets or Sidewalks. No person shall use or occupy any portion of a street or sidewalk for the purpose of vending goods, wares or merchandise by public outcry or otherwise, unless a written permit has been first obtained from the city council.

Violation of this subsection shall be punishable as a Class C misdemeanor.

H. Begging. No person shall accost another in a public place for the purpose of soliciting money or any other thing of value.

Violation of this subsection shall be punishable as a Class C misdemeanor.

I. Posted Notices. No person shall affix a sign, placard, bill or poster upon personal or real property, private or public, without first obtaining permission from the owner thereof or from the proper public authority. Permission for use of public property for placement of signs must be in writing.

Violation of this subsection shall be punishable as a Class C misdemeanor.

J. Drinking Alcoholic Beverage in Public Place. No person shall dispense or consume alcoholic liquor in a public place, to wit, in a street, alley, mall, parking lot or structure, motor vehicle, public grounds, or in any room or building used for public dancing, or other places open to the public unless such place has been licensed for that purpose by the Oregon Liquor Control Commission and a permit has been obtained from the chief of police. No premises licensed by the Oregon Liquor Control Commission shall serve alcoholic liquors without first screening from public view the place where the alcohol is to be served and consumed. The consumption of alcoholic liquor in a city park shall be prohibited unless a permit therefor has been received from the chief of police. The fee for such permit shall be set by the city council.

Violation of this subsection shall be punishable as a Class C misdemeanor.

K. Lawful Hours of Sale of Liquor. No licensed package store, restaurant, tavern, or bar shall sell, dispense, deliver or allow the consumption of any alcoholic liquor on any licensed premises or permit the removal of any alcoholic liquor from any licensed premises between the hours of 2:30 a.m. and 7:00 a.m.

Violation of this subsection shall be punishable as a Class C misdemeanor.

L. Selling or Pledging Property of Intoxicated Persons. No person shall purchase property from any person who is in an intoxicated condition or under the influence of any narcotic drug, or advance or loan money to such persons or have any

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dealing with any such person respecting the title to property.

Violation of this subsection shall be punishable as a Class A misdemeanor. [Ord. 621 § 4, 1991; Ord. 571 § 1, 1989; Ord. 532 §§ 3, 4, 5, 9, 1985; Ord. 464 § 6, 1981.]

9.10.070 Offenses against persons.

A. Endangering the Welfare of a Minor. In addition to the provisions of ORS 163.575, a person commits the crime of endangering the welfare of a minor if the person knowingly:

1. Employs a person under 18 years of age in or about a card room, poolroom, billiard parlor or dance hall, unless the establishment is an "arcade" as defined in PMC 9.10.080(B)(1)(b).

2. Solicits, aids, abets, or causes a person under 18 years of age to:

a. Violate a law of the United States or any statute or any city or county ordinance; or

b. Run away or conceal himself from a person, agency, or institution having lawful custody of the minor.

Violation of this subsection shall be punishable as a Class B misdemeanor.

B. Public Indecency. No person shall, while in or in view of a public place, perform:

1. An act of sexual intercourse;

2. An act of deviate sexual intercourse;

3. An act of exposing the genitals with the intent of arousing the sexual desire of himself or another person; or

4. An act of urination or defecation, except in toilets provided for that purpose.

Violation of this subsection shall be punishable as a Class A misdemeanor.

C. Violating the Privacy of Another. No person other than a peace officer performing a lawful duty shall enter upon land or into a building used in whole or in part as a dwelling not his own without permission of the owner or person entitled to possession thereof, and while so trespassing, look through or attempt to look through a window, door or transom of the dwelling or that part of the building used as a dwelling with the intent to violate the privacy of any other person.

Violation of this subsection shall be punishable as a Class B misdemeanor.

D. Unlawful Discharge of Weapons.

1. Except at ranges approved by the chief of police or city council, no person other than a peace officer shall fire or discharge a firearm, including spring or air actuated pellet guns or BB guns, rockets, archery equipment, or any other weapon which propels a projectile by use of gunpowder, explosive or flammable liquid fuel, or any sling shot, wrist rocket or similar device designed or used to discharge a projectile within the city limits of Philomath.

2. Nothing in subsection (D)(1) of this section shall prevent any person from defending his life or the life of another, or his property or the property of another, within the limitations set by Oregon statutes.

3. Any weapon or device used in committing a violation of this subsection shall be confiscated by police and, upon conviction, may be forfeited to the city of Philomath by order of the municipal court judge.

Violation of this subsection shall be punishable as a Class A misdemeanor

E. Misrepresentation of Age or Status. No person shall, being less than a certain, specified age, knowingly represent himself to be of any age other than his true age with the intent of securing a right, benefit or privilege which by law is denied to persons under that certain age.

Violation of this subsection shall be punishable as a Class C misdemeanor.

F. Unlawful Communication.

1. No person shall communicate with another person with intent to harass, annoy, or alarm that other person anonymously or otherwise, by telephone, mail or other form of written communication to:

a. Threaten injury or death to another;

b. Threaten damage to the property of another;

c. Use abusive or obscene language; or

d. Initiate a report, knowing it to be false, concerning an alleged or impending fire, explosion, crime, catastrophe, death, injury, or other emergency.

2. No person shall use or cause to be used any telephone with the intent to harass, annoy or alarm any person by means of a series of two or more calls during which the caller makes no intelligible communication.

Violation of this subsection shall be punishable as a Class C misdemeanor. [Ord. 621 § 5, 1994; Ord. 582A § 19, 1990; Ord. 574 § 15, 1989; Ord. 532 § 6, 1985; Ord. 475 § 1, 1982; Ord. 464 § 7, 1981.]

9.10.080 Restricted activities.

A. Occult Arts.

1. "Occult arts" means the use or practice of fortune telling, astrology, phrenology, palmistry, clairvoyance, mesmerism, spiritualism or any other practice or practices generally recognized to be unsound and unscientific whereby an attempt or pretense is made:

a. To reveal or analyze past incidents or events;

b. To analyze or define the character or personality of a person;

c. To foretell or reveal the future;

d. To locate by such means lost or stolen property; or

e. To give advice or information concerning any matter or event.

2. No person shall for hire or profit engage in the practice of occult arts, either public or private, but no charge shall issue under this subsection unless upon the complaint of a person who has thereby suffered physical or mental injury or monetary damage in excess of $50.00.

3. Nothing in this section shall be construed to prohibit or prevent:

a. A duly organized and recognized religious organization which promulgates religious teachings or beliefs involving spiritualism or similar media from holding its regular meetings or services.

b. A school, church, fraternal, charitable or other benevolent organization from utilizing occult arts for a bazaar or other money-raising project; provided, that all money so received is devoted exclusively to the organization sponsoring the affair. In such case, the money so received shall be considered as a donation for benevolent and charitable purposes.

Violation of this subsection shall be punishable as a Class C misdemeanor.

B. Places of Amusement.

1. Definitions.

a. "Games of amusement" shall be defined as pinball, pool, billiards, and electronic amusement devices.

b. An "arcade" is defined as any area, enclosure or room open to minors where five or more games of amusement are in operation to earn a profit for the owner or operator of the games or establishment.

2. a. No person owning or having charge of any game of amusement available to the public shall permit a person under 18 years of age to operate or play, until after 3:00 p.m., any game of amusement on days Philomath schools are in session and shall not permit a person under 18 years of age to operate or play any game of amusement after the hours of curfew as specified by Philomath ordinance.

b. No person shall make any game of amusement available to the public without first obtaining a permit to operate such game from the city of Philomath.

3. In addition to complying with subsection (B)(2) of this section, the operator of an arcade must:

a. Not allow the sale, consumption, or possession of alcoholic beverages or illegal drugs on the premises; and

b. Maintain order at all times by providing adequate supervision. For the purpose of this subsection, adequate supervision means at least one adult employee shall be physically present on the premises for every 40 customers, or fraction thereof.

4. An exemption from the provisions of this subsection may be made by the city council.

Violation of this subsection shall be punishable as a Class C misdemeanor.

C. Second-Hand Merchandise.

1. Every "used merchandise dealer" shall keep records of all used merchandise valued at $25.00 or more which is purchased or taken in on loan or consignment or sold. A "used merchandise dealer" is a person or business that devotes all or a part of his, her or its business to the collection, purchase, exchange or sale of used articles or the lending of money on the security of used articles. This definition shall not apply to persons dealing exclusively in automobiles, farm implements and

machinery, books, or to any business which sells, buys or takes in trade used articles incidental to the sale of new articles or merchandise. The records shall include the general description of the item, brand, name, value, size, color, serial number, model number, and the name, address, telephone number, date of birth of the customer, and the customer's vehicle license number. Such records shall be maintained on forms supplied by the Philomath police department and shall be completed at the time of the transaction, and said records shall be kept by the "used merchandise dealer" for a period of time of one year after the date of the transaction.

2. Every person delivering for sale, loan, or consignment any item to a "used merchandise dealer" shall provide to the operator or the operator's agent or employee adequate identification at the time of the transaction so as to positively establish his or her identity.

3. The records described in subsection (C)(1) of this section shall be made in triplicate at the time of the transaction. The third (pink) copy shall be given to the customer; the second (yellow) copy shall be maintained by the merchant; and the original (white) sheet shall be delivered by the merchant to the Philomath police department between the first and tenth day of each month. Officers of the police department may inspect the merchant's copies of the transaction forms at any time during normal business hours.

4. The provisions of this section shall not apply to periodic sales by individuals of used merchandise at garage sales, yard sales, or other similar activities, or to sales sponsored by recognized nonprofit charitable organizations. Such exclusion shall not apply, however, if either of the following conditions is met:

a. More than three such sales take place within any calendar year at the same location.

b. The sale has a duration of more than 72 consecutive hours.

5. The city council may, upon request, exempt any operator of any business from the provisions of this section by a majority vote.

Violation of this subsection shall be punishable as a Class B misdemeanor. [Ord. 774 § 1, 2011; Ord. 621 § 6, 1994; Ord. 558 § 1, 1988; Ord. 532 § 7, 1985; Ord. 499 § 1, 1983; Ord. 475, §§ 2, 3, 1982; Ord. 464 § 8, 1981.]

9.10.090 General.

A. Offenses Outside of the City Limits. Where permitted by Oregon law, an act made unlawful by this chapter shall constitute an offense when committed on any property owned or leased by the city, even though outside the corporate limits of the city.

B. Separate Violations. Whenever in this chapter, or any ordinance of the city of Philomath, an act is prohibited or is made or declared to be unlawful or an offense, or the doing of an act is required, or the failure to do an act is declared to be unlawful or an offense, each day a violation is continued after notification shall constitute a separate offense.

C. Classes of Offenses and Penalties. Those provisions of the Oregon Revised Statutes, as constituted on January 2, 2014, creating and designating classes of offenses, provisions for the disposition of offenders and provisions for authority of the sentence in court, be and hereby are adopted by reference and incorporated herein. Any special offense set forth in this chapter which is classified in the section defining the offense shall be punishable as so classified. Any special offense shall be processed and sentenced as a Class A misdemeanor and is punishable by a fine not to exceed $6,250 or imprisonment not to exceed 365 days or by both such fine and imprisonment; provided, however, if there is a violation of any provision identical to a state statute with a lesser penalty attaching, punishment shall be limited to the lesser penalty prescribed in the state law.

D. Nuisance Abatement. No provision in this chapter shall preclude the abatement of a nuisance as provided in any other city of Philomath ordinances. [Ord. 790 § 4, 2014; Ord. 621 § 7, 1994; Ord. 604 § 3, 1991; Ord. 552 § 3, 1987; Ord. 532 § 8, 1985; Ord. 464 § 9, 1981.]

Chapter 9.15

NUISANCES

Sections:

9.15.010 Definitions.

Article 1. Nuisances Affecting Public Health

9.15.020 Nuisances affecting public health.
9.15.025 Use of a recreational vehicle as a dwelling.

Article 2. Nuisances Affecting Public Safety

9.15.030 Attractive nuisances.
9.15.040 Snow and ice.
9.15.050 Noxious vegetation and tall grass.
9.15.055 Piling of leaves and yard debris.
9.15.060 Scattering rubbish.
9.15.070 Trees, bushes and vision clearance.
9.15.080 Fences.
9.15.090 Surface waters, drainage.

Article 3. Nuisances Affecting Public Peace

9.15.100 Radio and television interference.
9.15.110 Junk.
9.15.120 Unnecessary noise.
9.15.130 Abandoned vehicles.
9.15.135 Graffiti.

Article 4. Unenumerated Nuisances

9.15.140 Unenumerated nuisances.

Article 5. General Provisions

9.15.150 Summary abatement.
9.15.160 Penalties.
9.15.170 Separate violations.

9.15.010 Definitions.

A. Person. A natural person, firm, partnership, association or corporation.

B. Person in Charge of Property. An agent, occupant, lessee, contract purchaser, or other person having possession or control of property or the supervision of any construction project.

C. Person Responsible. The person responsible for abating a nuisance shall include:

1. The owner.

2. The person in charge of property, as defined in subsection (B) of this section.

3. The person who caused to come into or continue in existence a nuisance as defined in this chapter or another ordinance of this city. [Ord. 582A § 1, 1990.]

Article 1. Nuisances Affecting Public Health

9.15.020 Nuisances affecting public health.

No person shall cause or permit, on property owned or controlled by him, a nuisance affecting public health. The following are nuisances affecting public health and may be abated as provided in this chapter.

A. Privies. An open vault or privy constructed and maintained within the city, except those constructed or maintained in connection with construction projects in accordance with the health division regulations.

B. Debris. Accumulation of debris, rubbish, manure and other refuse that are not removed within a reasonable time and that affect the health of the city.

C. Stagnant Water. Stagnant water which affords a breeding place for mosquitoes and other insect pests.

D. Water Pollution. Pollution of a body of water, well, spring, stream or drainage ditch by sewage, industrial wastes or other substances placed in or near the water in a manner that will cause harmful material to pollute the water.

E. Food. Decayed or unwholesome food which is offered for human consumption.

F. Odor. Premises which are in such a state or condition as to cause an offensive odor, or which are in an unsanitary condition.

G. Surface Drainage. Drainage of liquid wastes from private premises.

H. Cesspools. Cesspools or septic tanks which are in an unsanitary condition or which cause an offensive odor.

I. Slaughterhouses, Etc. A slaughterhouse, tannery or pigsty.

J. Drainage of petroleum products on public or private property, unless otherwise authorized by law. [Ord. 582A § 2, 1990.]

9.15.025 Use of a recreational vehicle as a dwelling.

For purposes of this section "recreational vehicle" or "trailer" means any vehicle that is self-propelled or towed by a motor vehicle and designed for camping, nonpermanent or recreational habitation. No person shall live, cook, sleep or reside in a recreational vehicle or trailer located on a lot or on a public street for more than five consecutive days nor more than 10 days total in a 30-day period, except when situated on a legally permitted campground where overnight camping is allowed. [Ord. 793 § 1, 2015.]

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Article 2. Nuisances Affecting Public Safety

9.15.030 Attractive nuisances.

A. No owner or person in charge of property shall permit thereon:

1. Unguarded machinery, equipment or other devices which are attractive, dangerous and accessible to children.

2. Lumber, logs or piling placed or stored in a manner so as to be attractive, dangerous and accessible to children.

3. An open pit, quarry, cistern or other excavation without safeguards or barriers to prevent such places from being used by children.

B. This section shall not apply to authorized construction projects with reasonable safeguards to prevent injury or death to playing children. [Ord. 582A § 3, 1990.]

9.15.040 Snow and ice.

No owner or person in charge of property, improved or unimproved, abutting on a public sidewalk shall permit:

A. Snow to remain on the sidewalk for a period of longer than the first two hours of daylight after the snow has fallen.

B. Ice to remain on the sidewalk for more than two hours of daylight after the ice has formed, unless the ice is covered with sand, ashes or other suitable material to assure safe travel. [Ord. 582A § 4, 1990.]

9.15.050 Noxious vegetation and tall grass.

No owner or person in charge of property shall permit weeds or other noxious vegetation to grow upon their property nor on the public rights-of-way of any street or alley which abuts their property. It shall be the duty of an owner or person in charge of property to:

A. Not allow the height of grass or weeds to exceed 12 inches;

B. To destroy weeds or other noxious vegetation as often as needed to prevent them from maturing and going to seed; and

C. To prevent grass, shrubbery, brush, bushes, and other vegetation from becoming a fire hazard. [Ord. 655, 1996; Ord. 582A § 5, 1990.]

9.15.055 Piling of leaves and yard debris.

No owner or person in charge of property shall deposit upon public rights-of-way yard debris that interferes with sidewalk or street traffic, to include but not be limited to leaves, tree branches and grass clippings. Exceptions will be permitted for leaf collection subject to the following conditions:

A. Leaves may be piled on the street seven days prior to scheduled leaf pickup days. Leaf piles shall not be more than four feet high and four feet wide and may extend along the entire length of a property's street frontage. The leaf pile shall maintain a minimum of six inches of clearance from the curb, if present, and shall not contain any other types of yard debris or materials other than leaves; and

B. A minimum of 15 feet from a leaf pile to mailboxes, storm drain catch basin openings, fire hydrants and parked vehicles shall be maintained at all times. [Ord. 776 § 1, 2011.]

9.15.060 Scattering rubbish.

No person shall deposit upon public or private property any kind of rubbish, trash, debris, refuse or any other substance that would mar the appearance, threaten the environment, create a stench or fire hazard, detract from the cleanliness or safety of the property, or would be likely to injure a person, animal or vehicle traveling upon a public way. [Ord. 582A § 6, 1990.]

9.15.070 Trees, bushes and vision clearance.

A. No owner or person in charge of property that abuts upon a street or public sidewalk shall permit trees or bushes on their property to interfere with street or sidewalk traffic. It shall be the duty of an owner or person in charge of property that abuts upon a street or public sidewalk to keep all trees and bushes on the premises, including the adjoining parking strip, trimmed to a height of not less than eight feet above the sidewalk and not less than 10 feet above the roadway. Mandatory minimum heights higher than specified level may be required at the discretion of the public works director or his/her designee.

B. No owner or person in charge of property shall allow to stand a dead or decaying tree that is a hazard to the public or to persons or property on or near the property.

C. It shall be a violation of this chapter if an owner or person in charge does not provide a clear

vision area on the corner of all property at the intersection of two streets, a street and a railroad, a street and an alley, and driveways of parking lots open to the public.

1. A clear vision area is a triangular area, two sides of which are:

a. Twenty feet along the lot lines, measured from the intersection of two streets or a street and a railroad, and the third side of which is a line across the corner of the lot, joining the other two lines. Where a lot has a rounded corner, the lot lines shall be extended in a straight line to a point of intersection and measured from that point.

b. Ten feet along the lot lines, measured from the intersection of a street and an alley, and the third side of which is a line across the corner of the lot, joining the other two lines. Where a lot has a rounded corner, the lot lines shall be extended in a straight line to a point of intersection and measured from that point. The 10-foot vision clearance area shall not be required in any commercial district as defined in PMC Title 18.

2. A clear vision area shall contain no planting, fences, walls, structures or temporary or permanent obstruction exceeding two and one-half feet in height, measured from the top of the curb, or, where no curb exists, from the established street centerline grade. Trees exceeding this height may be located in this area; provided, all branches or foliage are removed to a height of eight feet above grade. [Ord. 781 § 1, 2012; Ord. 582A § 7, 1990.]

9.15.080 Fences.

A. No owner or person in charge of property shall construct or maintain a barbed-wire fence thereon or permit barbed wire to remain as part of a fence along a sidewalk or public way; except such wire may be placed above the top of other fencing not less than six feet, six inches high.

B. No owner or person in charge of property shall construct, maintain or operate an electric fence along a sidewalk or public way or along the adjoining property line of another person.

C. Any electric fence permitted by this section must be equipped with a commercially manufactured controller in good operating condition with a pulsating output not to exceed 2.4 joules and a quick-blow fuse rated at 1/16 AMP or less. [Ord. 582A § 8, 1990.]

9.15.090 Surface waters, drainage.

A. No owner or person in charge of a building or structure shall suffer or permit rainwater, ice or snow to fall from the building or structure onto a street or public sidewalk or to flow across the sidewalk.

B. The owner or person in charge of property shall install and maintain in a proper state of repair adequate drainpipes or a drainage system, so that any overflow water accumulating on the roof or about the building is not carried across or upon the sidewalk. [Ord. 582A § 9, 1990.]

Article 3. Nuisances Affecting Public Peace

9.15.100 Radio and television interference.

A. No person shall operate or use an electrical, mechanical or other device, apparatus, instrument or machine that causes reasonably preventable interference with radio or television reception by a radio or television receiver of good engineering design.

B. This section does not apply to devices licensed, approved, and operated under the rules and regulations of the Federal Communications Commission. [Ord. 582A § 10, 1990.]

9.15.110 Junk.

A. No person shall keep any junk outdoors on any street, lot or premises or in a building that is not wholly or entirely enclosed, except doors used for ingress and egress.

B. The term "junk" as used in this section includes all old motor vehicles, old motor vehicle parts, abandoned automobiles, old machinery, old machinery parts, old appliances or parts thereof, old iron or other metal, glass, paper, lumber, wood or other waste or discarded material.

C. This section shall not apply to junk kept in a duly licensed junkyard or automobile wrecking yard or materials left for weekly curbside pickup by the city's franchised solid waste collector. [Ord. 738 § 2, 2006; Ord. 582A § 11, 1990.]

9.15.120 Unnecessary noise.

No person shall create, assist in creating or permit the continuance of unreasonable noise in the city of Philomath. "Unreasonable noise" is defined as noise which, because of its loudness and frequency, causes serious annoyance or serious alarm

to another person, and includes the following specific offenses, which are not exclusive, but are rather illustrative:

A. The use of an engine, thing or device which is so loaded, out of repair, unmuffled, or operated in such a manner as to create a loud or unnecessary grating, grinding, rattling, exhaust, or other noise.

B. The use of a mechanical device operated by compressed air, steam or otherwise, unless the noise created thereby is effectively muffled.

C. The construction, including excavation, demolition, alteration or repair of a building other than between the hours of 7:00 a.m. and 7:00 p.m., except upon special permit granted by the city.

D. The use or operation of an automatic or electric piano, organ, radio, phonograph, tape player, television, loudspeaker, or sound-amplifying device in an area near residences, private businesses, or buildings open to the public, so loudly as to disturb persons in such residences, private businesses, or buildings open to the public; provided however, that upon application to the city manager, permits in writing may be granted to responsible persons or organizations to broadcast programs of music, news, speeches, advertisements, or general entertainment. [Ord. 582A § 12, 1990.]

9.15.130 Abandoned vehicles.

A. It shall be unlawful to store or permit the storing of a discarded vehicle upon any private property within the city, unless the vehicle is completely enclosed within a building, or unless it is in connection with a licensed business enterprise dealing in junked vehicles lawfully conducted within the city.

B. "Vehicle" shall mean every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

C. "Discarded" shall mean any vehicle which does not have lawfully affixed thereto an unexpired license plate or is in one or more of the following conditions:

1. Inoperative.
2. Wrecked.
3. Dismantled.
4. Partially dismantled.
5. Abandoned.
6. Junked.

Discarded vehicles may be deemed to include major parts thereof, including, but not limited to, bodies, frames, engines, transmissions, and rear ends. [Ord. 582A § 13, 1990.]

9.15.135 Graffiti.

A. No owner or person in charge of property shall allow graffiti to remain on their premises that is visible from any public right-of-way, from any other private property or from any premises open to the public.

Upon discovery, the chief of police or his designee may serve notice to the person responsible for the property requesting that the graffiti be removed within five days. Notice may be served through personal contact or delivery by registered or certified mail to the person responsible for the property.

Upon good cause shown, the chief of police may grant an extension of up to 10 additional days.

B. "Graffiti" means any inscription, word, figure, design, painting, writing, drawing or carving that is marked, etched, scratched, drawn, painted, or otherwise applied to a property regardless of the graffiti content, or nature of the material used in the commission of the act, or the material of the property. The term "graffiti" as used in this section does not include lawfully placed signage pursuant to Chapter 18.95 PMC by residents or businesses in the normal course of their presence within the city of Philomath.

C. Exception shall be made for school spirit monuments deemed appropriate for the public by school district and city officials upon mutual consent of both entities. [Ord. 783 § 1, 2013.]

Article 4. Unenumerated Nuisances

9.15.140 Unenumerated nuisances.

A. The acts, conditions or objects specifically enumerated and defined in PMC 9.15.020 through 9.15.130 are declared public nuisances; and such acts, conditions or objects may be abated by the procedures set forth in PMC 9.15.150 and 9.15.160.

B. In addition to the nuisances specifically enumerated within this chapter, every other thing, substance or act which is determined by the city council to be injurious or detrimental to the public health, safety or welfare of the city, is declared a

nuisance and may be abated as provided in this chapter. [Ord. 582A § 14, 1990.]

Article 5. General Provisions

9.15.150 Summary abatement.

The procedure provided by this chapter is not exclusive, but is in addition to procedures provided by other ordinances; and the chief of the fire department, the chief of police, or any other city official may proceed summarily to abate a health or other nuisance which unmistakably exists and which imminently endangers human life or property. [Ord. 582A § 15, 1990.]

9.15.160 Penalties.

A person violating any provision of this chapter shall, upon conviction, be punished by a fine not to exceed $250.00. It shall be within the authority of the municipal judge to require abatement of any action or condition found to be a nuisance under this chapter. It shall further be within the authority of the municipal judge to assess all costs associated with the abatement against the property owner or person responsible, in addition to any fine imposed. [Ord. 582A § 16, 1990.]

9.15.170 Separate violations.

A. Each day's violation of this chapter constitutes a separate offense.

B. The abatement of a nuisance is not a penalty for violating this chapter, but is an additional remedy. [Ord. 582A § 17, 1990.]

Chapter 9.20

MARIJUANA

Sections:

9.20.010 Purpose.
9.20.020 Definitions.
9.20.030 Unlawful possession of marijuana.
9.20.040 Attempted purchase of marijuana by person under 21 – Entry of licensed premises by person under 21.
9.20.050 Use of marijuana in public place prohibited.
9.20.060 Homegrown marijuana in public view prohibited.
9.20.070 Providing marijuana to certain persons prohibited.
9.20.080 Hosting party for minors.
9.20.090 Marijuana odor.
9.20.100 Diversion.

Prior legislation: Ord. 680.

9.20.010 Purpose.

The purpose of this chapter is to minimize any adverse public safety and public health impacts that may result from the legal use of marijuana in the city by prohibiting certain acts within the city of Philomath and is intended to further the following objectives:

A. Prevent the distribution of marijuana to persons under 21 years of age;

B. Prevent revenue from the sale of marijuana from going to criminal enterprises, gangs, and cartels;

C. Prevent the diversion of marijuana from this state to other states;

D. Prevent marijuana activity that is legal under state law from being used as a cover or pretext for the trafficking of other illegal drugs or other illegal activity;

E. Prevent violence and the use of firearms in the cultivation and distribution of marijuana;

F. Prevent drugged driving and the exacerbation of other adverse public health consequences associated with the use of marijuana. [Ord. 809 § 1, 2016.]

9.20.020 Definitions.

For the purposes of this section, the following definitions shall apply:

A. "Marijuana" means all parts of the plant Cannabis family Moraceae, whether growing or not, other than marijuana extracts.

B. "Marijuana extract" means a product obtained by separating resins from marijuana by solvent extraction, using solvents other than vegetable glycerin, such as butane, hexane, isopropyl alcohol, ethanol, and carbon dioxide.

C. "Marijuana items" means marijuana, marijuana products, and marijuana extracts.

D. "Marijuana products" means products that contain marijuana or marijuana extracts and are intended for human consumption.

E. "Public place" means a place to which the general public has access and includes, but is not limited to, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds and premises used in connection with public passenger transportation.

F. "Juvenile party" means a social gathering attended by one or more persons under the age of 21. [Ord. 809 § 1, 2016.]

9.20.030 Unlawful possession of marijuana.

A. It is unlawful for any person under 21 years of age knowingly or intentionally to possess marijuana or marijuana product.

B. Unlawful possession of less than one avoirdupois ounce of marijuana by a person under 21 years of age is a specific fine violation. The presumptive fine for a violation under this section is $650.00.

C. It shall be an affirmative defense, consistent with ORS 475.319, if a person is acting within the scope of and in compliance with the Oregon Medical Marijuana Act. [Ord. 809 § 1, 2016.]

9.20.040 Attempted purchase of marijuana by person under 21 – Entry of licensed premises by person under 21.

A. A person under 21 years of age may not attempt to purchase marijuana items.

B. Except as authorized by rule or as necessitated in an emergency, a person under 21 years of age may not enter or attempt to enter any portion of a licensed premises that is posted or otherwise identified as being prohibited to the use of minors.

C. A person who violates subsection (A) or (B) of this section commits a Class B violation.

D. It shall be an affirmative defense to this section if a person is acting within the scope of and in compliance with the Oregon Medical Marijuana Act.

E. The prohibitions of this section do not apply to a person under 21 years of age who is acting under the direction of the Oregon Liquor Control Commission or under the direction of state or local law enforcement agencies for the purpose of investigating possible violations of laws prohibiting sales of marijuana items to persons who are under 21 years of age. [Ord. 809 § 1, 2016.]

9.20.050 Use of marijuana in public place prohibited.

A. It is unlawful for any person to engage in the use of marijuana items in a public place.

B. A violation of subsection (1) of this section is a Class B violation. [Ord. 809 § 1, 2016.]

9.20.060 Homegrown marijuana in public view prohibited.

A. No person may produce, process, keep, or store homegrown marijuana or homemade marijuana products if the homegrown marijuana or homemade marijuana products can be readily seen by normal unaided vision from a public place.

B. A violation of subsection (A) of this section is a Class B violation. [Ord. 809 § 1, 2016.]

9.20.070 Providing marijuana to certain persons prohibited.

A. No one shall sell, give, or otherwise make available any marijuana or marijuana products to a person under the age of 21 years.

B. No one shall sell, give, or otherwise make available marijuana or marijuana products to a person with the knowledge that the person will violate this section.

C. A violation of this section is a Class A misdemeanor. Upon conviction, the court shall impose at least a mandatory minimum sentence:

1. Upon a first conviction, a fine of $650.00;

2. Upon a second conviction, a fine of $1,300; and

3. Upon a third conviction, a fine of $2,600 and not less than 30 days of imprisonment.

D. The mandatory minimum penalty provisions of subsection (C) of this section shall not apply to persons licensed or appointed by or through the Commission.

E. It shall be an affirmative defense to this section if a person is acting within the scope of and in compliance with the Oregon Medical Marijuana Act as a designated primary caregiver as defined under ORS 475.312.

F. Except as provided in subsection (B) of this section, this section is intended to be a strict liability crime and the court shall not require proof of a mental state. [Ord. 809 § 1, 2016.]

9.20.080 Hosting party for minors.

A. No person shall permit, allow or host a juvenile party at his or her place of residence or premises under the person's control while marijuana or marijuana products are consumed or possessed by any minor.

B. This section is intended to be a strict liability crime and the court shall not require proof of a mental state.

C. A violation of this section is a Class A misdemeanor. Upon conviction, the court shall impose at least a mandatory minimum sentence:

1. Upon a first conviction, a fine of $650.00;

2. Upon a second conviction, a fine of $1,300; and

3. Upon a third conviction, a fine of $2,600 and not less than 30 days of imprisonment. [Ord. 809 § 1, 2016.]

9.20.090 Marijuana odor.

A. No owner of real property or person in charge thereof shall allow, permit or cause the odor of marijuana to emanate from that premises to any other property.

B. Violation of subsection (A) of this section is declared to be a public nuisance, and is subject to the requirements and penalties of Chapter 9.15 PMC. Violations of this section may be abated in the manner provided in this chapter. [Ord. 809 § 1, 2016.]

9.20.100 Diversion.

A. A person charged with unlawful possession of marijuana may be eligible for a diversion agreement, if the offense for which the defendant is before the court is the defendant's first offense, and the defendant files with the court a petition for a possession of marijuana diversion agreement.

B. Unlawful possession of marijuana diversion petitions shall be available to a defendant at the court. The petition form shall conform to the requirements of state law.

C. Diversion procedures shall be as prescribed by state statutes for possession of marijuana diversion agreements. [Ord. 809 § 1, 2016.]

Chapter 9.25

CURFEW

Sections:

9.25.010 Curfew for minors.

Article 1. School Hours Curfew

9.25.020 Hours of curfew for minors under the age of 14.
9.25.030 Hours of curfew for minors 14 and over.
9.25.040 Curfew as it pertains to city parks specifically.

Article 2. Evening Hours Curfew

9.25.050 Hours of curfew for minors under 14.
9.25.060 Hours of curfew for minors 14 and over.
9.25.070 Defense to violation.
9.25.080 Parental responsibility.
9.25.090 Criminal penalties.

9.25.010 Curfew for minors.

It shall be unlawful for any child under the age of 18 years to be or remain upon any street, alley, park or other public place within the Philomath city limits between the hours specified hereafter herein unless said child is accompanied by a parent, guardian, a person having legal custody or control of said child or other proper companion of the age of 21 years or more, specifically chosen by the parent, guardian or legal custodian of said child, to escort said child on the occasion in question, or unless such child is then engaged in going to or from employment, night school, lunch, or school activities which make it necessary to be in or upon such street, alley, park or other public place during the time between such specified hours.

School Hours Curfew. Article 1 shall apply to all school age children except those who are exempt under ORS 339.030. [Ord. 704 § 1, 2002.]

Article 1. School Hours Curfew

9.25.020 Hours of curfew for minors under the age of 14.

For the purpose of this chapter, the specified hours of curfew shall be: for children under 14 years who have not begun high school, between 8:00 a.m. and 3:00 p.m. This chapter shall apply only to those days that school is in session and children are normally expected to be in school. [Ord. 704 § 2, 2002.]

9.25.030 Hours of curfew for minors 14 and over.

For children 14 years of age or over who have begun high school, the hours shall be between 8:00 a.m. and 3:00 p.m. This does not apply to lunchtime that varies according to school procedures. This chapter shall apply only to those days that school is in session and children are normally expected to be in school. [Ord. 704 § 3, 2002.]

9.25.040 Curfew as it pertains to city parks specifically.

For the purpose of this chapter, children under the age of 18 shall not be or remain in any city park within the Philomath city limits between 8:00 a.m. and 3:00 p.m. when school is normally in session and children are expected to be in school. [Ord. 704 § 4, 2002.]

Article 2. Evening Hours Curfew

9.25.050 Hours of curfew for minors under 14.

For the purpose of this chapter, the specified hours shall be: for children under 14 years who have not begun high school, between 9:30 p.m. and 6:00 a.m. of the following morning, except that during the months of June, July and August the hours shall be between 10:30 p.m. and 6:00 a.m. of the following morning. [Ord. 704 § 5, 2002.]

9.25.060 Hours of curfew for minors 14 and over.

For children 14 years of age or over or who have begun high school, the hours shall be between 11:00 p.m. on Sunday, Monday, Tuesday, Wednesday and Thursday and 6:00 a.m. on the following morning and between 12:00 a.m. on Friday and

Saturday and 6:00 a.m. of the following morning, except that during the months of June, July, and August the hours for such children shall be between 12:00 a.m. and 6:00 a.m. of the following morning. [Ord. 704 § 6, 2002.]

9.25.070 Defense to violation.

The matter of going to or from an employment, night school, lunch, school activity or of participating in an exempt employment which makes it necessary to be in or upon a street, alley, park or public place within the city of Philomath between the specified hours shall be a matter of defense, and the burden of proof thereof shall be upon the child or person claiming the exempt status. [Ord. 704 § 7, 2002.]

9.25.080 Parental responsibility.

It shall be unlawful for any parent, guardian or person having the custody or control of an unemancipated child under the age of 18 years to allow said child, with whom they hold that relationship, to violate this chapter. The conviction of such minor child for violation of this chapter on three separate occasions shall be prima facie evidence that said parent, guardian or person having the care, custody and control of said child, allowed said child to violate such chapter. [Ord. 704 § 8, 2002.]

9.25.090 Criminal penalties.

A person who violates PMC 9.25.010 through 9.25.060 commits a violation punishable by a fine of not more than $200.00. [Ord. 704 § 9, 2002.]

Title 10

VEHICLES AND TRAFFIC

Chapters:

10.10 Traffic Regulations
10.15 Traffic Enforcement on Public Property
10.20 Inventory of Impounded Vehicles

Chapter 10.10

TRAFFIC REGULATIONS

Sections:

10.10.010 Short title.
10.10.020 Applicability of state traffic laws.
10.10.030 Definitions.
10.10.040 Administration.
10.10.050 General regulations.
10.10.060 Parking regulations.
10.10.070 Bicycles.
10.10.080 Parades and processions.
10.10.090 Parking citations and owner responsibility.
10.10.100 Impoundment.
10.10.110 Penalties.
10.10.120 Existing control devices and markings.

10.10.010 Short title.

This chapter may be cited as the "Philomath uniform traffic ordinance." [Ord. 544 § 1, 1987.]

10.10.020 Applicability of state traffic laws.

A. Adoption of Oregon Vehicle Code. Oregon Revised Statutes, Chapters 801 through 822, as constituted on January 2, 2006, are adopted by reference. Violation of an adopted provision of those chapters is an offense against the city of Philomath.

B. Adoption of Procedural Statutes. The procedures applicable to the prosecution of traffic offenses as contained in the Oregon Revised Statutes, as constituted on January 2, 2006, including the procedures set forth in Chapter 153 of the Oregon Revised Statutes, are by this reference adopted in full and made a part of this chapter.

C. Continuity Between References. A reference in any ordinance, resolution or regulation of the city of Philomath to any Oregon Revised Statute repealed on January 1, 1984, by Oregon Laws 1983, Chapter 338, Section 978, is deemed to be a reference to the corresponding section of Chapter 338, Oregon Laws 1983, as amended by Chapter 16, Oregon Laws 1985, which is codified in the Oregon Vehicle Code, ORS Chapters 801 through 822. [Ord. 736 § 2, 2006; Ord. 694 § 3, 2000; Ord. 647, 1996; Ord. 603 § 1, 1991; Ord. 587 § 1, 1991; Ord. 544 § 2, 1987.]

10.10.030 Definitions.

In addition to those definitions contained in the Oregon Vehicle Code, the following words or phrases, except where the context clearly indicates a different meaning, shall mean:

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

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

"Person" means a natural person, firm, partnership, association, or corporation.

Street. The terms "highway," "road," and "street" shall be considered synonymous, unless the context precludes such construction. "Street" includes alleys and all of the area within the public right-of-way.

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

"Traffic lane" means that area of the road used for the movement of a single line of traffic. [Ord. 544 § 3, 1987.]

10.10.040 Administration.

A. Powers of the Council.

1. Subject to state laws, the city council shall exercise all municipal traffic authority for the city except those powers specifically and expressly delegated by this chapter or another ordinance.

2. The powers of the council, which may be exercised by resolution, include, but are not limited to:

a. Designation of through streets.

b. Designation of one-way streets.

c. Designation of truck routes.

d. Designation of parking meter zones.

e. Designation of certain streets as bridle paths and prohibition of horses and animals on other streets, parks or property.

f. Authorization of greater maximum weights or lengths for vehicles using city streets than specified by state law.

g. Initiation of proceedings to change speed zones.

h. Establishment and revision of speed limits and traffic regulations in parks.

i. Temporary blocking or closing of streets.

j. Establishment of bicycle lanes and paths and traffic controls for such facilities.

k. Restriction of the use of certain streets by any class or kind of vehicle to protect the streets from damage.

l. Authorize issuance of oversize or overweight vehicle permits.

m. Establishment, maintenance, removal, or alteration of the following classes of traffic controls:

i. Crosswalks, safety zones, and traffic lanes.

ii. Intersection channelization and areas where drivers of vehicles shall not make right, left, or U-turns, and the time when the prohibition applies.

iii. Truck parking areas, parking for disabled persons, parking areas and time limitations, including the form of permissible parking (e.g., parallel or diagonal).

iv. Loading zones and stops for vehicles.

v. Traffic control signals.

B. Implementation of Regulations. The city manager shall direct the implementation of the ordinances, resolutions and motions of the council by having traffic control devices installed, maintained, removed, and altered. The installation shall be based on the standards contained in the state manual specified under ORS 810.200.

C. Public Danger. Under conditions constituting a danger to the public, the police chief or his or her designee may install temporary traffic control devices.

D. Standards. The regulations of the manager or his or her designee shall be based on:

1. Traffic engineering principles and traffic investigations.

2. Standards, limitations, and rules promulgated by the Oregon Transportation Commission.

3. Other recognized traffic control standards.

E. Authority of Police and Fire Officers.

1. It is the duty of police officers to enforce the provisions of this chapter.

2. In the event of a fire, parade accident or other emergency, officers of the police and fire departments may stop, detour or direct traffic as conditions require, notwithstanding the provisions of this chapter. [Ord. 544 § 4, 1987.]

10.10.050 General regulations.

A. Crossing Private Property. No operator of a motor vehicle shall proceed from one street to an intersecting street by crossing private property or premises open to the public. This provision does not apply to the operator of a motor vehicle who stops on the property to procure or provide goods or services.

B. Vehicles in Park. All motor vehicles within the city park must remain upon the city streets or parking areas while in the park.

C. Unlawful Riding.

1. No operator of a motor vehicle shall permit a passenger to, and no passenger shall, ride on a motor vehicle on premises open to the public except on a portion of the vehicle designed or intended for the use of passengers. This provision does not apply to an employee engaged in the necessary discharge of a duty or to a person riding within a truck body in space intended for merchandise.

2. No person shall board or alight from a motor vehicle while the vehicle is in motion on premises open to the public.

D. Roller Skates, Sleds, Etc.

1. No person upon roller skates or riding in or by means of a coaster, skateboard, toy vehicle or similar device shall use the streets except while crossing at a crosswalk, or in an authorized area.

2. No person shall use the streets for traveling on skis, toboggans, sleds, or similar devices, except where authorized, or when the street has been designated a play street.

E. Damaging Sidewalks and Curbs.

1. The operator of a motor vehicle shall not drive on a sidewalk or roadside planting strip except to cross at a permanent or temporary driveway.

2. No unauthorized person shall place dirt, wood or other material in the gutter or space next to the curb of a street with the intention of using it as a driveway.

3. No person shall remove a portion of a curb or move a motor vehicle or a device moved by a motor vehicle onto a curb or sidewalk without first obtaining authorization from the city and posting bond if required. A person who causes damage shall be responsible for the cost of repair.

F. Play Streets. No person shall drive a vehicle upon a street during the hours when it has been des-

ignated, by the city manager or his designee, and is being used as a play street, except drivers having business on such street or whose residences are along such street, and then such driver shall yield the right-of-way to persons using the street as a play street.

G. Storage of Vehicles or Personal Property on Public Property.

1. No person shall store or permit to be stored on a public right-of-way or other public property, without permission of the chief of police or designee, a recreational vehicle, boat, travel trailer, utility trailer, camper or any other personal property for a period in excess of 72 hours. Failure to remove such vehicle or property from the street or public property within a period of 72 hours constitutes prima facie evidence of a violation of this section, to wit: Storage of personal property on public property.

2. No person shall store or permit to be stored on a public right-of-way or other public property, without permission of the chief of police or designee, an operable motor vehicle, other than those specified in subsection (G)(1) of this section, for a period in excess of 120 hours. Failure to remove such a motor vehicle from public property within a period of 120 hours constitutes prima facie evidence of a violation of this section, to wit: Storage of a motor vehicle on public property.

3. No person shall store or permit to be stored on a public right-of-way or other public property, without permission of the chief of police or designee, an inoperable motor vehicle for a period in excess of 24 hours. Failure to remove such a motor vehicle from public property within a period of 24 hours constitutes prima facie evidence of a violation of this section, to wit: Storage of an inoperable motor vehicle on public property.

4. It is the intent of the city council to prohibit long-term storage of vehicles and personal property on city streets, alleys, rights-of-way or other public property. Moving a vehicle or personal property from place to place on public ways or property does not constitute compliance with subsection (G)(1), (G)(2) or (G)(3) of this section.

5. The decision of the chief of police or designee granting or denying permission as specified above may be appealed by filing a written request of appeal with the city recorder.

6. The city council shall schedule a hearing date, which shall not be later than the next regular council meeting following the filing of the written appeal with the city recorder, and shall notify the appellant of the date and time so that the appellant may appear either in person or by a representative.

7. Unless and until the city council rescinds the police chief's denial of a storage permit, failure to comply with any part of this section shall constitute prima facie evidence of a violation.

8. When a police officer finds a vehicle or property in violation of this section, a written warning may be issued to the registered owner or other person responsible for the vehicle or property, and/or a notice of intent to impound, allowing a reasonable period for the person to comply with this section. Failure of the person to comply within the time allowed shall result in the issuance of a citation as required by PMC 10.10.090(A).

9. A vehicle or property which violates this section may be towed/removed at the owner's expense after notifications have been made as required by Oregon State Statutes.

10. In addition to paying any expenses incurred by the city in connection with the impoundment and/or storage of a vehicle or property which violates this section, a person found guilty of violating subsection (G)(1) or (G)(2) of this section shall be fined a minimum of $100.00, and a person found guilty of violating subsection (G)(3) of this section shall be fined a minimum of $150.00.

H. Obstructing Public Ways.

1. Except as authorized by ordinance of the city and in a manner prescribed by the city, no person shall obstruct the free movement of vehicles or pedestrians using the street, sidewalks or other public ways.

2. No person shall park or stand a vehicle in such a manner or location that it impedes traffic or obstructs the view or constitutes a hazard to public safety or an obstruction on a street, sidewalk or other public way.

I. Motor Truck Traffic Prohibited.

1. Except as provided in subsection (I)(2) of this section, no person shall operate any motor truck upon any public street or alley within the city unless such street or alley has been designated as a truck route by resolution of the city council.

2. Motor trucks being operated on public streets for the following specific purposes are exempt from the restriction imposed by subsection (I)(1) of this section when:

a. Picking up or discharging goods or services at any business establishment, public building or residence in the city;

b. Going to or from a business in the city to obtain fuel, service, or repair for the truck;

c. Servicing utility facilities or construction sites in the city;

d. Being used for the repair and maintenance of public streets, public utilities or public facilities;

e. Traveling to or from the driver's residence; provided, a parking permit has been obtained pursuant to PMC 10.10.060(A);

f. Traveling to or from an area designated by the city for truck parking; or

g. Traveling to or from private property used for truck parking.

3. The exemptions listed in subsection (I)(2) of this section do not allow drivers or passengers of trucks to attend to personal business in violation of subsection (I)(1) of this section.

4. Motor trucks which are exempt from the provisions of subsection (I)(1) of this section shall use the most direct route in traveling to and from their destination. The exemptions listed above do not allow drivers or passengers of trucks to attend to personal business in violation of subsection (I)(1) of this section.

5. For purposes of subsection (I) of this section and PMC 10.10.060(A), "motor truck" means a motor vehicle or combination of vehicles that are primarily designed or used for carrying loads other than passengers and having a gross weight In excess of 8,000 pounds, excluding emergency vehicles, government-owned vehicles and city-franchised vehicles.

6. If it is determined the public interest will not be harmed, the police chief, or other city official designated by council, may issue a temporary written permit, upon such conditions as the police chief deems reasonable, allowing any truck to move over any portion of a street closed to truck traffic. [Ord. 657 §§ 1, 2, 1997; Ord. 574 § 15, 1989; Ord. 544 § 5, 1987.]

10.10.060 Parking regulations.

A. Motor Truck Parking Permit.

1. No person shall park a motor truck, truck tractor, or truck trailer on a street that has not been approved by the city council as a designated truck parking location between the hours of 9:00 p.m. and 7:00 a.m. of the following day. An exception to these restricted times may be granted to the holder of a motor truck residential parking permit. A motor truck residential parking permit may be obtained to allow the owner/operator of a motor truck to park their motor truck at their residence.

2. Application for a new or renewal motor truck residential parking permit shall be made on forms provided by the police department and shall be accompanied by:

a. Written consents of the occupants of all of the properties adjacent to the property of the applicant; and

b. Written consents of the occupants of at least a simple majority of the other properties located within a distance of 300 feet in any direction from the external boundaries of the applicant's property.

3. As used in subsection (A)(2) of this section, "adjacent" shall mean the properties have at least one foot of common property line, or would, if not separated by a street right-of-way.

4. Approval of the permit shall be conditioned upon the following:

a. A change in occupancy of any property from which consent was obtained under the application shall not require the submittal of a new consent.

b. Applicant shall be responsible for compliance with all local ordinances, including, but not limited to, noise, noxious fumes and home occupations. Failure to comply with any such ordinance or with the provisions of PMC 10.10.050(I) and subsection (A) of this section shall be grounds for termination of the permit. In addition, the city may revoke the permit for any reason upon 30 days' written notice to the permit holder.

c. Permits shall be issued for periods of one year upon payment of a fee in the amount set by council resolution.

d. The permit shall automatically terminate at such time as the applicant terminates residence at the address stated in the permit.

e. Applicant shall use the most direct route available to move to and from the location granted within the permit to an established truck route.

f. No permit will be granted to an applicant who has had a motor truck residential parking permit revoked within 90 days prior to the date of the application for the permit.

g. The permit shall apply only to unloaded motor trucks or truck tractors and does not authorize the parking of such vehicles when loaded.

h. Upon receipt of a complaint concerning noise, the police department shall mail written notice to the permit holder within 10 days. If a subsequent complaint is received after the date of the notice, the permit shall be immediately revoked.

i. The applicant shall maintain in the applicant's possession a valid residential parking permit at all times within any truck or vehicle parked as provided for herein or in coming to or going from the residence, and shall display a sticker provided by the city on the driver's side front bumper.

5. An applicant or permit holder may appeal a decision refusing to grant a permit or the revocation of a permit by filing a written request of appeal with the city manager within five days after notice of the decision is mailed to the applicant or permit holder. The city manager or designee shall then hold a hearing within 10 days after receipt of the request for appeal.

B. Method of Parking.

1. No person shall stand or park a vehicle other than in the direction of traffic flow of the nearest lane, and where parking spaces are designated on a street, vehicles must be parked within a single marked space, unless the size or shape of the vehicle makes compliance impossible within a single marked space.

2. The operator who first begins maneuvering a motor vehicle into a vacant parking space on a street has priority to park in that space, and no other vehicle operator shall attempt to interfere.

3. When the operator of a vehicle discovers that the vehicle is parked close to a building to which the fire department has been summoned, the operator shall immediately remove the vehicle from the area, unless otherwise directed by police or fire officers.

C. Prohibited Parking or Standing.

1. No person shall park or stand a vehicle in violation of state motor vehicle laws or in violation of a lawfully erected parking limitation sign or marking.

2. No person shall park or stand a vehicle in an alley other than for the expeditious loading or unloading of persons or materials, and in no case for a period in excess of 15 consecutive minutes.

3. No operator shall park and no owner shall allow a vehicle to be parked upon a street for the principal purpose of:

a. Displaying the vehicle for sale.

b. Repairing or servicing the vehicle, except repairs necessitated by an emergency.

c. Displaying advertising from the vehicle.

d. Selling merchandise from the vehicle.

4. No person shall park a truck trailer, when otherwise authorized to park by this ordinance, without placing wood blocking under each landing gear. Each block must be at least two inches thick, eight inches wide and six feet long.

5. No person shall park or stand a vehicle beside a curb which has been painted yellow by the city of Philomath.

6. No person shall park or stand a vehicle beside a curb which has been designated as a fire lane with red paint. Signage shall follow the Uniform Fire Code Article 9, Fire department access and water supply, Section 901.4.5.

7. Fire apparatus access roads shall meet the Uniform Fire Code for access, dimensions, surface, turn radius, dead ends and grades.

8. The required width of a fire apparatus access road shall not be obstructed in any manner, including parking of vehicles. Minimum required widths and clearances shall be maintained at all times.

D. Use of Loading Zone. No person shall stop, stand, or park a vehicle for any purpose or length of time other than for the expeditious loading or unloading of persons or materials in a place designated as a loading zone when the hours applicable to that loading zone are in effect. When the hours applicable to the loading zone are in effect, the loading and unloading shall not exceed the time limits posted. If no time limits are posted, then the use of the zone shall not exceed 15 minutes.

E. Unattended Vehicles.

1. When a police officer finds a motor vehicle parked or standing unattended with the ignition key in the vehicle, the officer is authorized to remove the key from the vehicle and hold the key at the police station until claimed by the vehicle owner.

2. No person shall leave the ignition key within an unattended vehicle.

F. Standing or Parking of Buses and Taxicabs. The operator of a bus or taxicab shall not stop, stand, or park the vehicle on a street in a business district other than at a bus stop or taxicab stand, respectively, except that this provision shall not prevent the operator of a taxicab from temporarily stopping the taxicab outside a traffic lane while loading or unloading passengers.

G. Restricted Use of Bus and Taxicab Stands. No person shall stop, stand, or park a vehicle other than a taxicab in a taxicab stand, or a bus in a bus stop.

H. Lights on Disabled Vehicle. Any vehicle parked in the traveled portion of any street, due to an emergency, must display at least one flashing light to the front and rear of the vehicle.

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

J. Exemption. The provisions of this chapter regulating the parking or standing of vehicles shall not apply to any vehicle of the city, county, or state or public utility while necessarily in use for construction or repair work on a street, or a vehicle while in use for the collection, transportation or delivery of mail. [Ord. 748 § 1, 2008; Ord. 738 § 3, 2006; Ord. 706 § 1, 2002; Ord. 544 § 6, 1987.]

10.10.070 Bicycles.

A. Operating Rules. In addition to observing all other applicable provisions of this chapter and state law, a rider of a bicycle shall:

1. Not leave a bicycle, except in a bicycle rack. If no rack is provided, the person shall leave the bicycle so as not to obstruct any road, sidewalk, driveway or building entrance.

2. Not leave a bicycle in violation of the provisions relating to the parking of motor vehicles.

3. Yield the right-of-way on sidewalks to pedestrians.

B. Impounding of Bicycles.

1. No person shall leave a bicycle on private property without the consent of the owner or person in charge. Consent is implied on private business property unless bicycle parking is expressly prohibited.

2. A bicycle left unsecured on property open to the public may be impounded by the police department for safekeeping. Property open to the public includes any property open to the general public for their use, whether the property is publicly or privately owned and whether or not a fee is charged for use of the premises.

3. In addition to any citation issued, a bicycle parked in violation of this chapter may be immediately impounded by the police department.

4. If the owner of a bicycle impounded under this chapter can be readily determined, the police shall make reasonable efforts to notify the owner. No impounding fee shall be charged to the owner of a bicycle impounded pursuant to subsection (B)(2) of this section; provided, that the owner has not previously had a bicycle impounded or to the owner of a stolen bicycle which has been impounded.

5. A bicycle impounded under this chapter that remains unclaimed shall be disposed of in accordance with the city's procedures for disposal of abandoned or lost personal property.

6. Except as provided in subsection (B)(4) of this section, a fee, as set by council resolution, shall be charged to the owner of a bicycle impounded under this section.

C. Licensing.

1. A resident of the city buying or otherwise obtaining a bicycle shall obtain a license from the Philomath police department, prior to allowing the operation of or operating the bicycle upon the streets of Philomath.

2. No resident of the city shall operate upon the streets of Philomath a bicycle which does not have a current license.

3. The police department shall issue licenses and obtain the name and address of each person purchasing a license and record the make, model, and serial number (if any) of the bicycle.

4. A number shall be assigned to each bicycle licensed by the police department, and a record of the license issued shall be maintained as part of the police department records. The license shall be

affixed to the frame of the bicycle and display the name of the city and the license number.

5. The fee for a bicycle license shall be in the amount set by council resolution.

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6. All license fees collected shall be paid over to the general fund and used for educational activities concerning bicycle safety, and for bicycle licensing materials.

7. A bicycle brought into this city, by a resident of the city, whether or not the bicycle is licensed by any other governmental unit, shall be licensed in accordance with this section within 30 days, if the bicycle will be operated upon the streets of Philomath.

D. Renting of Bicycles. No person shall rent to another a bicycle not licensed in accordance with this chapter. [Ord. 740 § 1, 2006; Ord. 544 § 7, 1987.]

10.10.080 Parades and processions.

A. Prohibited Activity. No person shall organize or participate in a parade or event which may disrupt or interfere with traffic without obtaining a permit and paying the fee therefor in the amount set by council resolution. A permit shall always be required of a procession of people utilizing the public right of way and consisting of 50 or more persons or 10 or more vehicles.

B. Parade Permit.

1. Application for parade permits shall be made to the chief of police at least 30 days prior to the intended date of the parade, unless the time requirement is waived by the chief.

2. Applications shall include the following information:

a. The name and address of the person responsible for the proposed parade.

b. The date of the proposed parade.

c. The desired route, including assembly and dispersal points.

d. The number of persons, vehicles and animals which will be participating in the parade.

e. The proposed starting and ending time.

f. The application shall be signed by the person designated as chairman, who shall be responsible for the formation and orderly procession of the parade.

g. The application shall be accompanied by a liability insurance coverage rider.

3. If the chief of police, upon receipt of the application, determines that the parade or event can be conducted without endangering public safety and without seriously inconveniencing the general public, the police chief shall approve the route and issue the permit.

4. The chief of police may establish traffic control needs and set fees therefor, which fees shall not exceed the actual costs incurred by the city as a result of the additional traffic control needs. A deposit, based on the police chief's estimate of the amount of costs that will be incurred by the city, shall be paid in advance of the parade. Any requests for waiver of the fee shall be submitted to the council for its consideration.

5. If the chief of police determines that the parade or event cannot be conducted without endangering public safety or seriously inconveniencing the general public, he may:

a. Propose an alternate route.

b. Propose an alternate date.

c. Refuse to issue a permit.

6. The chief of police shall notify the applicant of the decision within 10 days of receipt of the application.

7. If the chief of police proposes alternatives or refuses to issue a permit, the applicant shall have the right to appeal the decision to the city council.

C. Appeal to Council.

1. An applicant may appeal the decision of the chief of police by filing a written request of appeal with the city recorder within five days after the chief of police has proposed alternatives or refused to issue a permit.

2. The council shall schedule a hearing date which shall not be later than the next regular council meeting following the filing of the written appeal with the city recorder and shall notify the applicant of the date and time so that the applicant may appear either in person or by a representative.

D. Offenses Against Parade.

1. No person shall interfere with a parade or parade participant.

2. No person shall operate a vehicle that is not part of a parade between the vehicles or persons comprising a parade.

E. Permit Revocable. The chief of police may revoke a parade permit if circumstances clearly show that the parade can no longer be conducted consistent with public safety.

F. Funeral Processions.

1. No permit shall be required for a funeral procession.

2. A funeral procession shall proceed to the place of interment by the most direct route which is both legal and practicable.

3. All motor vehicles in the procession shall be operated with their lights turned on. [Ord. 544 § 8, 1987.]

10.10.090 Parking citations and owner responsibility.

A. Citation on Illegally Parked Vehicle. When a vehicle without an operator is found parked in violation of a restriction imposed by this chapter or state law, the officer finding the vehicle shall take its license number and any other information displayed on the vehicle that may identify its owner and shall conspicuously affix to the vehicle a parking citation instructing the owner to answer to the charge or pay the penalty imposed within 10 days during specific hours and at a specific place.

B. Failure to Comply with Traffic Citation Attached to Parked Vehicle. If the operator does not respond to a traffic citation affixed to a vehicle within a period of 10 days, the municipal judge shall send to the owner of the vehicle to which the traffic citation was affixed a letter informing the owner of the violation and warning the owner that in the event that the letter is disregarded for a period of five days, a warrant for the arrest of the owner will be issued.

C. Illegal Cancellation of Traffic Citation. No person shall cancel or solicit the cancellation of a traffic citation in any manner, except when approved by the municipal judge. This provision shall not apply to a police officer or prosecutor acting within the course and scope of their authority.

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

E. Registered Owner Presumption. In a prosecution of a vehicle owner charging a violation of a restriction on parking, proof that the vehicle at the time of the violation was registered to the defendant shall constitute a presumption that he was then the owner in fact. [Ord. 544 § 9, 1987.]

10.10.100 Impoundment.

A. Impoundment of Vehicles.

1. When a vehicle is placed in a manner or location that constitutes an obstruction to traffic or a hazard to public safety, a police officer shall order the owner or operator of the vehicle to remove it. If the vehicle is unattended, the officer may cause the vehicle to be towed and stored at the owner's expense. The owner shall be liable for the costs of towing and storing, notwithstanding that the vehicle was parked by another or that the vehicle was initially parked in a safe manner but subsequently became an obstruction or hazard.

2. The disposition of a vehicle towed and stored under authority of this section shall be in accordance with the provisions of state law relating to impoundment and disposition of abandoned vehicles.

3. The impoundment of a vehicle will not preclude the issuance of a citation for violation of a provision of this chapter.

4. Recovered stolen vehicles may be towed from public or private property and stored at the expense of the vehicle owner. [Ord. 544 § 10, 1987.]

10.10.110 Penalties.

A. Violation of any provision of PMC 10.10.050 through 10.10.110 is punishable by a fine not to exceed $250.00.

B. Violation of a provision identical to a state statute is punishable as specified by state statute. [Ord. 544 § 11, 1987.]

10.10.120 Existing control devices and markings.

Parking and traffic control devices and markings installed prior to the adoption of the ordinance codified in this chapter are lawfully authorized. [Ord. 544 § 12.02, 1987.]

Chapter 10.15

TRAFFIC ENFORCEMENT ON PUBLIC PROPERTY

Sections:

10.15.010 Enforcement on public property.

10.15.010 Enforcement on public property.

The motor vehicle laws of the state of Oregon contained in ORS Chapters 803, 807, 809, 810, 811, 814, 815, 816 and 819, together with all acts and amendments applicable to cities which are now or hereafter enacted, as well as the provisions of Chapter 10.10 PMC and amendments thereto, are hereby adopted by reference and made a part of this chapter. These motor vehicle laws shall apply to all public school properties within the city of Philomath and to all public properties owned by the city of Philomath. [Ord. 594 § 1, 1991.]

Chapter 10.20

INVENTORY OF IMPOUNDED VEHICLES

Sections:

10.20.010 Inventory of impounded vehicles.

10.20.010 Inventory of impounded vehicles.

Any peace officer who impounds a motor vehicle shall conduct an inventory of said motor vehicle as soon as practical. Inventories of impounded vehicles under this section shall be conducted according to the policies and procedures of the Philomath police department. [Ord. 634 § 1, 1995.]

Title 11

(Reserved)

Title 12

STREETS, SIDEWALKS AND PUBLIC PLACES

Chapters:

12.08 Standard Specifications for Public Works Construction
12.10 Parks
12.15 Rights-of-Way
12.20 Sidewalk Construction

Chapter 12.08

STANDARD SPECIFICATIONS FOR PUBLIC WORKS CONSTRUCTION

Sections:

12.08.010 Adoption – Conformance required – Modification.
12.08.900 Violation – Penalty.

12.08.010 Adoption – Conformance required – Modification.

A. The city has adopted the "city of Philomath public works design standards" establishing design standards and construction specifications.

B. All public works design and construction, including workmanship and materials, shall be in accordance with the current edition of the city of Philomath public works design standards. This section applies to all public improvements within the city limits of the city of Philomath, the Philomath urban growth boundary or otherwise required by law.

C. The public works director may periodically update and modify the city of Philomath public works design standards to reflect changes in policy, procedure, new technology, design methods and construction methods.

1. Changes in federal, state, county and other regulatory agency requirements will be reviewed and incorporated into the city of Philomath public works design standards.

2. Requests for modifications may be initiated either by the city or by an interested party.

3. The public works director is hereby granted authority to approve or deny requests for modifications to the city of Philomath public works design standards.

4. Updates to the city of Philomath public works design standards will be posted on the city's website. Copies may be purchased from the city.

5. The public works director will provide the city council with an annual report which lists the updates and modifications made to the city of Philomath public works design standards during the preceding year. [Ord. 801 § 1 (Exh. A), 2015.]

12.08.900 Violation – Penalty.

Violation of any regulation promulgated by authority of this chapter is punishable by a fine of up to $500.00. A violation of this code shall be considered a separate offense for each day the violation continues. [Ord. 801 § 1 (Exh. A), 2015.]

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Chapter 12.10

PARKS

Sections:

12.10.010 Purpose.
12.10.020 Reservations.
12.10.030 Nonresident reservations.
12.10.040 Responsibility.
12.10.050 Cleaning and damage deposit.
12.10.060 Multiple reservations.
12.10.070 Groups over 200 persons.
12.10.080 Alcoholic beverage permits.
12.10.090 Overnight camping.
12.10.100 Open and close times.
12.10.110 Vehicles and horses.
12.10.120 Dogs.
12.10.130 Fires.
12.10.140 Motor vehicle speed limit.
12.10.150 Skatepark regulations.
12.10.160 Penalties for violation of PMC 12.10.070, 12.10.090, 12.10.110, 12.10.120, 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 sunrise and close one hour past sunset, as determined for the Philomath area by the Portland National Weather Service Forecast Office. Persons within city parks between one hour past sunset and before sunrise may be prosecuted for trespassing. [Ord. 782 § 1, 2012; 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 under a leash not exceeding 10 feet long and under control of the person holding the leash at all times, except as allowed in city parks designated as specific off-leash zones. [Ord. 794 § 1, 2015; 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, 12.10.120, 12.10.130 and 12.10.150.

A penalty shall not exceed a $250.00 fine. [Ord. 765 § 1, 2010; 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.
12.15.060 Obligations of property owner.

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.]

12.15.060 Obligations of property owner.

Notwithstanding the city's authority over public rights-of-way, the owner of property abutting any unimproved public right-of-way shall be responsible to maintain said right-of-way and shall not need permission, a permit, or a license to perform maintenance, except to remove trees. Examples of maintenance include, but are not limited to: mowing, leaf removal, solid waste cleanup, weed and vegetation abatement, etc. Maintenance does not include occupying the public right-of-way with any structure or improvement except as allowed under PMC 12.15.040. [Ord. 795 § 1, 2015.]

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 *Repealed*.
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 (1) a building permit is issued; or (2) within three years of the date when the city council orders sidewalks to be installed on the property to connect to sidewalks that have been extended to one or more property lines with adjoining lots, whichever occurs first. [Ord. 787 § 1, 2014; Ord. 702 § 1, 2002.]

12.20.020 Permit required – Issuance.

Any person who may desire or be required to construct or lay down any sidewalk in the city of Philomath, before commencing to do grading for said sidewalk or to construct said sidewalk, shall make application to the 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. 766 § 1, 2010; Ord. 702 § 2, 2002.]

12.20.030 Sidewalk widths.

All sidewalks hereafter constructed or reconstructed 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. 766 § 2, 2010; Ord. 707 § 1, 2002; Ord. 702 § 3, 2002.]

12.20.040 Council order for work.

Repealed by Ord. 766. [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 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. 766 § 4, 2010; 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) certified mail with return receipt requested and regular mail and will be directed to the owner at the address on the county assessor's most recent property assessment roll.

B. If notice by personal service, regular or 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 in this section, an owner may not object that actual notice was not received. [Ord. 766 § 5, 2010; Ord. 702 § 6, 2002.]

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12.20.070 Time of service.

The notice to construct, alter, or repair is effective at the time stated on the notice. [Ord. 766 § 6, 2010; 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 the time specified on the notice;

D. That if the owner fails to complete the work within the required time, the city may perform the work at the owner's expense;

E. 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;

F. That the owner may appeal the order by filing an appeal within 15 days of the service of the notice; and

G. That if the owner does not appeal the order, the order is final. [Ord. 766 § 7, 2010; 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. The homeowner shall bear the cost to file the lien.

F. The city may enforce this lien in any manner authorized by ordinance or state law. [Ord. 766 § 8, 2010; 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 time allocated or 14 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. The homeowner shall bear the cost to file the lien.

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. 766 § 9, 2010; 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.]

Title 13

PUBLIC SERVICE AND UTILITIES

Chapters:

13.10 Garbage Collection
13.20 Sewer System
13.30 Water System
13.35 Water Usage Curtailment Plan
13.40 Storm Drain Utility

Chapter 13.10

GARBAGE COLLECTION

Sections:

13.10.010 Definitions.
13.10.020 Regulation by council.
13.10.030 Containers required.
13.10.040 License required to haul garbage.
13.10.050 License application and fee.
13.10.060 License conditions.
13.10.070 Rates.
13.10.080 Accumulation of garbage prohibited.
13.10.090 Exception to license requirement.
13.10.100 Manner of hauling garbage.
13.10.110 Provisions not exclusive.
13.10.120 Penalty.

13.10.010 Definitions.

A. The word "garbage," when used in this chapter shall, for the purposes hereof, mean all putrescible waste, except sewage and body waste, including vegetable and animal waste, the carcasses of dead animals, rubbish, trash, debris, ashes, tin cans, swill and waste matter generally and shall embrace articles and things ordinarily and customarily hauled off and dumped for the purpose of promoting the cleanliness and health of the city.

B. The words "person," "firm" or "corporation" shall, in addition to their ordinary usage and meaning, mean any unit, group, association or entity under which business is transacted. [Ord. 141 § 1, 1956.]

13.10.020 Regulation by council.

The regulation of the disposal and hauling of garbage in the city of Philomath shall be under the supervision of the city council. [Ord. 141 § 2, 1956.]

13.10.030 Containers required.

It shall be unlawful for any person, firm or corporation in possession, charge, or in control of any dwelling, apartment house, trailer camp, fraternity, restaurant, place of business or manufacturing establishment where garbage is created or accumulated to fail at all times to keep portable cans or containers of standard type and construction, and to deposit said garbage therein; provided however, that stiff paper products or wooden waste matter may remain outside of cans or containers if neatly and orderly stored. [Ord. 141 § 3, 1956.]

13.10.040 License required to haul garbage.

It shall be unlawful for any person, firm or corporation in the city of Philomath to haul garbage upon the streets and public ways of said city without first having procured a license as hereinafter provided, except as provided in PMC 13.10.090. [Ord. 141 § 4, 1956.]

13.10.050 License application and fee.

Any person, firm or corporation desiring to engage in the business of hauling garbage upon the streets of the city of Philomath shall first make application to the city recorder for a license and shall tender with such application a sum to be set by resolution of the city council for the annual fee for each calendar year or portion thereof, payable in advance; and the city recorder shall thereupon issue to such person, firm or corporation a license to haul garbage in the city of Philomath, which license shall continue in force until expiration thereof; provided, the same shall not have been suspended or revoked by the city council for noncompliance with the laws, ordinances and orders of said city. [Ord. 628 § 4, 1994; Ord. 141 § 5, 1956.]

13.10.060 License conditions.

The securing of a license by an applicant shall in itself constitute an agreement that such applicant will haul garbage for any person in the city of Philomath making application for such service upon payment, or arrangements being made for payment, of compensation therefor as hereinafter provided, it being the intention of this section to make it incumbent upon all garbage haulers qualifying by the taking out of a license to respond to calls from any person in the city of Philomath desiring the applicant's service, and performing the service requested within a reasonable time, and that failure on the part of such applicant to so call and perform the service requested shall be deemed a violation of this chapter. [Ord. 141 § 6, 1956.]

13.10.070 Rates.

The rates and compensation for the service rendered by any licensed garbage hauler shall be reasonable and uniform and shall not be in excess of a schedule of charges and compensation to be

adopted from time to time by the common council of the city of Philomath. [Ord. 141 § 7, 1956.]

13.10.080 Accumulation of garbage prohibited.

All persons, firms or corporations in the city of Philomath are hereby required to dispose of all perishable garbage before the same shall have become offensive and to dispose of all nonperishable garbage promptly and not permit the same to accumulate on or about premises. [Ord. 141 § 8, 1956.]

13.10.090 Exception to license requirement.

Any person, firm or corporation may transport garbage produced by himself or itself upon the streets of the city of Philomath without procuring a license therefor; provided, that such garbage must be hauled in such manner as to prevent leakage or litter upon the streets. [Ord. 141 § 9, 1956.]

13.10.100 Manner of hauling garbage.

It shall be unlawful for any licensed garbage hauler or person transporting garbage produced by himself or itself, except in a watertight and drip proof vehicle; provided however, that nonliquids and innocuous substances and garbage may be conveyed in suitable conveyance with provision against litter by covering. [Ord. 141 § 10, 1956.]

13.10.110 Provisions not exclusive.

The powers and duties herein granted for the suspension or revocation of licenses issued hereunder shall not be exclusive and shall not preclude the filing of complaint or complaints and subsequent prosecution thereunder by any person for any violation of this chapter. [Ord. 141 § 11, 1956.]

13.10.120 Penalty.

Any person, firm or corporation violating any of the terms of this chapter shall, upon conviction thereof in the municipal court or upon a plea of guilty before such court, be subject to a fine not exceeding $200.00. [Ord. 141 § 12, 1956.]

Chapter 13.20

SEWER SYSTEM

Sections:

13.20.010 Companion ordinance.
13.20.020 Definition of terms.
13.20.030 Service area.
13.20.040 Description of service.
13.20.050 Application for service.
13.20.060 Public policy.
13.20.070 Bills and payments.
13.20.080 Delinquent accounts.
13.20.090 Notices.
13.20.100 Discontinuance of service.
13.20.110 Sewer connections.
13.20.120 Sewer renovation.
13.20.130 The use of the public sewers.
13.20.140 Powers and authority of inspector.
13.20.150 Unauthorized connections.
13.20.160 Requirement to eliminate unauthorized connections.
13.20.170 Notice of violation.
13.20.180 Appeal.
13.20.190 Abatement by city.
13.20.200 Recovery of abatement costs.
13.20.210 Summary abatement.
13.20.220 Penalties.
13.20.230 Violations deemed a public nuisance.
13.20.240 Severability.
13.20.250 Ultimate responsibility of the discharger.

13.20.010 Companion ordinance.

This chapter is a companion ordinance to Chapter 14.15 PMC.

A. The city council has adopted Chapter 14.15 PMC requiring new development to pay system development charges. PMC 14.15.050(C) requires adoption of an SDC methodology by ordinance.

B. It has been determined that the existing sanitary sewer master plan and methodology for sanitary sewer development charges needs to be updated to reflect current and future needs of the city sanitary sewer system. The Philomath city council therefore adopts the "Capital Improvement Plan and Methodology for Sanitary Sewer SDCs," attached to the ordinance codified in this section. [Ord. 725 §§ 1, 2, 2004; Ord. 624 § 1, 1994.]

13.20.020 Definition of terms.

Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

"Applicant" means a person, corporation, association or agency applying for sewer service.

"BOD (biochemical oxygen demand)" means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedures in five days at 20 degrees Celsius, expressed in milligrams per liter.

"Building drain" means that part of the lowest horizontal piping of a building drainage system which receives the discharge from soil, waste, and other drainage pipes within or adjoining the building or structures, and conveys the same to the building sanitary sewer.

"Building sanitary sewer" means that part of the horizontal piping of a wastewater drainage system beginning five feet or more from any building or structure and which receives the discharge of the building drain and conveys it to a public sewer, private sewer, individual sewage disposal system or other point of disposal.

"Building storm sewer" means that part of the piping of a stormwater drainage system which begins at the connection to the building storm drain at a point five feet outside the established line of the building or structure and conveys stormwater, surface water, and other unpolluted water to the public storm sewer, street, or other point of disposal.

"City" or "city of Philomath" means the city of Philomath, a municipal corporation of the state of Oregon.

"City engineer" shall be the city's duly authorized agent as designated by the city manager.

"Collection system" means facilities maintained by the city of Philomath for collecting, pumping, conveying and controlling wastewater.

"Combined sewer" means a sewer that is designed as both a sanitary sewer and a storm sewer.

"Commercial service/user" means all buildings or premises used for any purpose other than a dwelling unit, having a sewage discharge of a kind, type and volume similar to a single-family dwelling unit or multi-unit residential structure, but not an industrial waste contributor.

"Council" means the city council of the city of Philomath.

"Customer" means a property owner of record, agent of the owner, or tenant who receives service from the city and is responsible for payment of charges/fees.

Director. See "Public works director."

"Domestic sewage" means wastewater of the type commonly introduced into a treatment works by residential users.

"Dwelling unit" includes each single-family dwelling unit used for human habitation.

"Garbage" means solid wastes from the preparation, cooking and dispensing of food and from the handling, storage and sale of produce.

"Grab sample" means a wastewater sample which is taken from a waste stream on a one-time basis without regard to the flow in the waste stream and without consideration of time.

"Industrial user" means any customer who discharges industrial wastewaters directly or indirectly into the city sewer system or discharges a significantly larger volume of wastewater than a single-family residence as determined by the city.

"Industrial wastewater" means any nondomestic liquid, gaseous substance or semisolid from any producing, manufacturing business or trade, or processing operation of whatever nature (as distinct from sanitary sewage), and the contents of chemical toilets, septic tanks, and waste holding tanks.

"Infiltration" means water that enters the sewerage system from the surrounding soil. Although generally limited to sewers laid below the normal groundwater level, infiltration also occurs as a result of rain or irrigation water soaking into the ground and entering sewers with defective pipes or joints.

"Inflow" means stormwater runoff that enters the sewerage system only during or immediately after rainfall.

"Lateral sewer" means any side lateral off a sewer main line which is in the public right-of-way or easement, operated and maintained by the city, and to which a building sewer connects or may connect.

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

"Operation and maintenance" means activities required to assure the dependable and economical function of treatment works.

1. "Operation" means control of the unit processes and equipment which make up the treatment records, laboratory control, process control, safety and emergency operation planning.

2. "Maintenance" means preservation of functional integrity and efficiency of equipment and structures. This includes preventive maintenance, corrective maintenance, and replacement of equipment.

"Person" means any individual, company, enterprise, partnership, corporation, association, society or group; the singular term shall include the plural.

"pH" means the negative logarithm (base 10) of the hydrogen ion concentration. The concentration is the weight of hydrogen ions in moles per liter of solution. It is a measure of the acidity or alkalinity of the wastewater. Neutral water, for example, has a pH of seven and a hydrogen concentration of 10.

"Pollutant" means any spoil, waste, residue, sewage, garbage, sludge, munitions, chemicals, biological materials, radioactive materials, heat, rock, sand, dirt, soil, agricultural municipal, or industrial material discharged into water.

"Pollution" means the degradation of the chemical, physical, biological or radiological quality of ground, surface, subsurface, or storm drainage waters by man, or the activities thereof.

"Private collection system" means a privately owned and maintained lateral sewer system installed to serve multi-unit structures on single ownership properties which cannot legally be further divided, such as apartments, mobile home parks, and schools. A single-family residence with a detached garage or shop with sanitary facilities is exempt from this definition.

"Properly shredded garbage" means the wastes from the preparation, cooking and dispensing of food that have been shredded to such degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch in any dimension.

"Public sewer" means any sewer in the public right-of-way or easement operated and maintained by the city.

"Public works director" means the public works director for the city of Philomath or the city's authorized representative.

"Rate schedules" means the entire body of effective rates, rentals, charges and fees as established by the city council.

"Replacement" means obtaining and installing equipment, accessories, or appurtenances which are necessary during the design or useful life of the treatment works, whichever is longer, to maintain the capacity and performance for which such works were designed and constructed.

"Residential user" means the owner or lessee of a dwelling unit as defined in this chapter. Said dwelling unit may be a single-family dwelling, or a portion of a multifamily dwelling.

"Sanitary sewer" means a conduit intended to carry liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions together with minor quantities of ground, storm and surface waters that are not admitted intentionally.

"Service charge (user charge)" means a charge levied on users of a treatment works for the user's proportionate share of the cost of operation and maintenance (including replacement) of such works.

"Sewage" means a combination of water-carried wastes from residences, business buildings, institutions and industrial establishments, together with such ground, surface and stormwaters as may be present.

"Sewer" means a pipe or conduit for carrying either sewage and industrial wastewater, or storm and surface waters and drainage.

"Sewerage system" means the entire sewage collection and treatment system, exclusive of building sewers. This includes all conduits, pumps, treatment equipment and any other components involved in the collection, transportation, treatment, and disposal of sanitary and industrial wastewater and sludge.

"Shall" is mandatory; "may" is permissive.

"Side sewers" means the city sewer between the property line and main or trunk sewer of the sewer system; also called a lateral sewer.

"Storm drain" means that portion of the storm drainage system that is within the public right-of-way or easement operated and maintained by the city. This may include but is not limited to pipes,

culverts, ditches, waterways or any other appurtenances used for the removal or transportation of rainwater or other unpolluted water.

"Storm sewer" means a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastewater.

"Suspended solids (SS)" means the total suspended matter that either floats on the surface or is in suspension in water or wastewater, and that is removable by laboratory filtering.

"Unauthorized connection" is defined as any of the following:

1. Any drain or conveyance, whether on the surface or subsurface, that allows discharge to enter the sewer system that has not been documented in drawings, maps, or equivalent records and approved by the city.

2. Any connection to the sewer system that requires either a plumbing permit or permission from the city, made without the permit or permission.

"Wastewater" means liquid or water-carried pollutants including any groundwater, surface water, and stormwater that may be present, whether treated or untreated, which is contributed into or permitted to enter the publicly owned treatment works.

"Water user" means any person using water through the facilities of the municipal water systems.

"Watercourse" means a channel in which a flow of water occurs, either continuously or intermittently. [Ord. 796 § 1, 2015; Ord. 624 § 2, 1994.]

13.20.030 Service area.

The area in which service may be furnished at the city's option includes all that territory within the corporate limits of the city and certain areas adjacent to or in reasonable proximity thereto. [Ord. 624 § 3, 1994.]

13.20.040 Description of service.

A. Classes of Service. All services installed by the city will be classified as follows:

1. Residential. Single-family and multifamily units.

2. Commercial – Industrial.

a. Standard Discharge Strength. All nonresidential users with discharge strengths (BOD or SS) not exceeding 240 mg/liter of discharge flow.

b. Nonstandard Discharge Strength. All nonresidential users with discharge strengths (BOD or SS) in excess of 240 mg/liter.

c. Industrial. Establishments discharging industrial wastewater as defined in this chapter.

B. Service Charges. A service (user) charge shall be set by the city council upon all customers using the city sewer system.

C. Financial Self-Sufficiency. The user charges shall be fixed at such amounts to assure the financial self-sufficiency of the sewerage system, and thereafter amended as necessary by resolution of the city council.

D. Rate and Fee Structure. Sewer service rates for each of the respective customer classifications enumerated in this subsection shall be derived and calculated in accordance with the following standards and fixed by resolution of the city council:

1. Residential. A monthly base fee plus a use charge based upon residential water consumption during winter months; during the summer months, the average monthly winter water consumption.

2. Standard Discharge Strength. The monthly base fee plus a unit charge per 100 cubic feet (748 gallons) of estimated sewage contribution based upon water consumption. Where the customer in this class can demonstrate to the satisfaction of the city that the volume of sewer discharge does not equal the water volume use because some or all of the water used is not being discharged into the sewer system, the city may determine the appropriate amount of charges based upon the city's estimate or actual amount of sewer discharge.

3. Nonstandard Discharge Strength. A monthly charge calculated in the same manner as for users in the standard discharge strength class, plus an extra strength fee per unit of discharge based on measured or estimated sewage parameters as established by the city.

4. Industrial. A monthly charge calculated in the same manner as for users in the nonstandard discharge strength class.

E. Review and Revision of Rates. The sewer user charges established in subsection (B) of this section shall, as a minimum, be reviewed annually by the city council of the city of Philomath, and shall be revised periodically to reflect actual costs of operation, maintenance, and replacement of the treatment works, and to maintain the equitability of

the user charge with respect to distribution of the costs of operation and maintenance proportional to each user's contribution to the total wastewater loading of the treatment works. In conjunction with annual review of sewer user charges, the public works director shall review and revise as appropriate the schedule of measured or estimated sewage parameters applicable to the nonstandard discharge strength customer class.

F. Notification. Every customer will be notified, at least annually, in conjunction with a regular bill, of the rate and that portion of the user charges which are attributable to wastewater treatment services. On or before November 15th of each year, the city manager shall post for public review at City Hall a listing of the sewage parameters and corresponding categories of business which serve as the basis for the derivation of extra strength fees for users in the nonstandard discharge strength customer class as specified in subsections (D) and (E) of this section.

G. Appeals. Any customer, regardless of customer classification, who believes their sewer user charge as applied to their premises is not within the intent of the foregoing provisions, may make written application to the public works director within 15 days of the date of billing requesting a review of their user charge. The written request shall, where necessary, show the actual or estimated average flow of the user's wastewater in comparison with the values upon which the charge is based, including how the measurements or estimates were made.

Review of the request shall be made by the public works director. The public works director shall respond within 45 days of the receipt of the appeal. If the customer desires to appeal further, they shall request in writing that the city place their appeal on the agenda of the next regular city council meeting. The decision of the city council shall be final. If the city council determines that the user's charges shall be recomputed, based on approved revised flow and/or strength data, the new charges thus recomputed may be applied retroactively for a period of up to six months.

H. Adjustments of Sewer Charges. In the event of an underground leak in the waterline during a time when sewer charges are based on water usage, the finance director may remove the portion of sewer charges appropriate if the customer demonstrates some or all of the excess charges resulted from water that did not enter the sewage system. In this circumstance, the winter average water usage shall be appropriately adjusted. Before the city will make any adjustments for a leaking service, the leak must be repaired and a leak adjustment form must be submitted to the utility billing department. The city will not adjust more than four full months prior to the date the leak adjustment form was submitted. [Ord. 796 §§ 2, 3, 2015; Ord. 767 § 1, 2011; Ord. 624 § 4, 1994.]

13.20.050 Application for service.

A. Application. Each applicant for sewer service shall be required to complete an application for service either in person or over the phone.

B. Special Contracts. Contracts, other than applications, may be required prior to service where, in the opinion of the city, special circumstances warrant special consideration. The city may require a special contracts provision requiring the owner of rental property to agree to be responsible for new or continued service at any address where service has been delinquent more than two times in the prior calendar year, or where more than one account has been abandoned with a delinquency due or pending in the prior calendar year. Such a special contract shall include language making any delinquent amount a lien against the property.

C. Security Deposit. A deposit as specified in the rate schedule may be required of any person desiring service. A security deposit need not be made if the applicant has promptly paid all accounts due the city for a reasonable time in the past.

D. Sewer Service Account Fee. Any new application for a sewer service account shall be charged a nonrefundable new account fee in an amount specified in the rate schedule in effect at the time of the application for service.

E. Sewer Only Accounts. Only the owner of real property may apply for a new sewer only account after February 28, 2011. Such a sewer only account shall include language making any delinquent amount a lien against the property.

F. Prior delinquent accounts for any applicant must be brought current before that applicant may have service in that applicant's name. [Ord. 767 § 2, 2011; Ord. 624 § 5, 1994.]

13.20.060 Public policy.

A. Prior to commencing any work on a building sewer or public sewer system, all applicable permits from the city of Philomath and other agencies must be secured and all associated permit fees paid in full. The permits necessary may include, but are not limited to, a plumbing permit, a permit to construct public facilities, and an encroachment permit. The permit shall set forth at what point the connection is to be made, the location, size of facility, type of construction, and other details as the director or his/her designee may reasonably require. Under no circumstances shall any person cut, tap, extend or in any way alter any city owned and operated sewer line or any other appurtenance without first obtaining a permit to do so.

B. No Use Outside City without Contract. No use or benefits of the sewer system or sewage treatment plant of the city shall be extended to or made available to any property not within the corporate limits of the city, except under a contractual agreement. Consistent with Philomath City Charter, no new contract to use or connect to the sewer system, except as is required by state law for health hazard annexations, may be extended unless it is first approved by a majority of voters of the city of Philomath.

1. Charges to Customers Outside the City. Any person having connection to the city sewerage system for property which is outside the corporate boundaries of the city of Philomath shall, in addition to the fees and charges for service called for in PMC 13.20.040(B), be charged monthly fees derived and calculated in accordance with the following standard and fixed by resolution of the city council:

a. Fee in Lieu. A fee in lieu of property tax payments supporting principal and interest for the retirement of indebtedness associated with investment in capital facilities necessary to the sewerage system.

C. Use of Public Sewers Required.

1. It shall be unlawful to discharge to any natural outlet within the city of Philomath, or in any area under the jurisdiction of said city, any sanitary sewage, industrial wastes or other polluted waters.

2. Except as hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.

3. The owner of all houses, buildings or properties used for human occupancy, employment, or other purposes situated within the city and abutting on any street, alley (easement), or right-of-way in which there is now located a sewer line of the city is hereby required to connect directly to the sewer line in accordance with the provisions of this chapter at their expense within 30 days after the date of official notice to do so; provided, that said public sewer is within 170 feet of the property line.

4. Where a public sewer line is not available as specified in subsection (C)(3) of this section, a private sewage disposal system may be used if approved and installed in accordance with the State of Oregon Department of Environmental Quality or the authorized state department that has controlling jurisdiction. At such time as a public sewer becomes available, the private sewage disposal system shall be abandoned and filled in with fill material and the sewer user's sewer service connection shall be connected to the public sewer line.

5. All sewer lines, service laterals and customer sewer service shall be installed in accordance with the provisions established by the State of Oregon Department of Environmental Quality or the authorized state department that has controlling jurisdiction. In addition, all installations must be done in accordance with the city's standards.

D. When Use Is Not Required. When charges are made in those instances where sewer service is not in fact furnished, but the service is available or abutting the property charged, said charges may be waived by the city. Application for such a waiver shall be made by the property owner to the public works director stating fully the grounds for the application. Before a waiver of the sewer charge may be granted, the public works director shall first determine:

1. That special topographical conditions affecting the property exist that are not common to all property in the area;

2. That such special topographical conditions would necessitate the installation and maintenance of pumps or other special equipment which will thereby increase the cost to other property owners in the area; and

3. That the waiver of the sewer service complies with the spirit of these regulations and will not be detrimental to the public health, safety or welfare, or injurious to other properties in the vicinity.

The city shall act upon the application for waiver of sewer service charges within 30 days after the filing thereof. If the city disapproves the application, it shall mail a notice of its action to the applicant forthwith.

Any person aggrieved shall have the right to appeal the decision of the public works director to the city council. The appeal shall be filed within 10 days after the decision of the public works director. The appeal shall be considered at the next regularly scheduled city council meeting. The decision of the city council shall be final. [Ord. 796 § 4, 2015; Ord. 767 § 3, 2011; Ord. 624 § 6, 1994.]

13.20.070 Bills and payments.

A. Responsibility for Payment. The customer who applied for service shall be responsible for payment of all charges prescribed in this chapter and set in the rate schedule. All sewer service charges shall be mailed to the premises where sewer service is furnished unless the customer provides an alternate mailing address.

B. Rendering of Bills. Bills for sewer service will be rendered at the intervals provided in the rate and fee schedule.

C. Payment of Bills.

1. All bills shall be due and payable on presentation. An account becomes delinquent if unpaid 16 days after date of billing. Late fees may be charged and collected on delinquent accounts as set forth in the rate schedule.

2. Closing bills will be collected at the time of discontinuance of service.

3. When bills are delinquent, the city will follow the procedure outlined in PMC 13.20.080.

4. Any change in sewer user shall result in the new user paying the sewer use charges commencing from the date of change. Any new sewer service user shall commence paying the sewer use charges from the time of connection. The sewer base charges shall be prorated on a daily basis. [Ord. 767 § 4, 2011; Ord. 624 § 7, 1994.]

13.20.080 Delinquent accounts.

A. Shutoff Notices to Customers. All customer charges levied in accordance with this chapter shall be a debt due the city. A notice shall be sent to each account which has not been paid by the forty-fifth day after presentation of bill. All delinquent accounts may be collected in any lawful manner. Reasonable costs of collection may be added to the delinquent account.

B. Disputed Billing. If the customer disputes the accuracy of the billing, the customer shall present the objection within 15 days after the date of presentation of the bill. Failure to file a notice of objection to the billing as specified in this section shall constitute a waiver of any defects in the bill and of the customer's right to object. [Ord. 767 § 5, 2011; Ord. 624 § 8, 1994.]

13.20.090 Notices.

A. Notices to Customers. Notices required to be given by the city to a customer will be given in writing and may be mailed to the billing address of record, hung on the front door or personally delivered to the customer. The city is not responsible for lost, stolen or nondeliverable mail. Any defect in a notice of delinquency or other violation of these provisions shall not prevent enforcement of these provisions.

B. Notice from Customers. Notice from a customer to the city shall be given by the customer or their authorized representative in writing at the office of the city finance department. [Ord. 796 § 5, 2015; Ord. 767 § 6, 2011; Ord. 624 § 9, 1994.]

13.20.100 Discontinuance of service.

A. Nonpayment of Bills. The city will refer to PMC 13.20.080 for debt due the city.

B. Fraud and Abuse. The city shall have the right to refuse or to discontinue service to any premises to protect itself against fraud and abuse.

C. Noncompliance. The city may, unless otherwise provided, discontinue service to a customer for noncompliance with any of these regulations if the customer fails to comply with said regulations within seven days after the city delivers written notice of the city's intention to discontinue service. If such noncompliance affects matters of health or safety or other conditions that warrant such action, the city may discontinue service immediately. The expense of such discontinuance, as well as the

expense of restoring service, shall be a debt due the city and may be recovered by any lawful means.

D. Prior to the city reestablishing service after turning off due to nonpayment of bills, customers may be required to enter into special contracts and/or customers may be required to pay a special sewer service deposit consistent with PMC 13.20.050(C) or (E).

E. Customer's Request for Service Discontinuance.

1. A customer may have the service discontinued by notifying the city at least five days in advance of the desired date of discontinuance. The customer will be required to pay all sewer charges until the date of such discontinuance.

2. If notice is not given, the customer will be required to pay for service until the date the city has learned that the customer has vacated the premises or otherwise has discontinued service.

F. Reconnection Charge. In all instances where service has been discontinued because of a delinquent account, a reconnection fee shall be charged in accordance with the rate schedule for the restoration of service. [Ord. 767 § 7, 2011; Ord. 624 § 10, 1994.]

13.20.110 Sewer connections.

A. No customer shall uncover, make any connections with, use, alter or disturb any public sewer or appurtenances without first obtaining a written permit from the city. The written permit will not be issued until the systems development charge has been paid to the city in accordance with the ordinances relating to a systems development charge.

B. All costs and expenses incidental to the installation and connection of the building sanitary sewer shall be borne by the applicant for sewer service. The applicant shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation.

C. Existing building sanitary sewers that connect to a customer's building drain may be used in connection with new buildings only when they are found to meet all the requirements of this chapter, when tested and examined by the city or its representative. A systems development charge shall be charged in accordance with the city ordinance(s) relating to systems development charges.

D. The size and scope of the building sanitary sewer shall be subject to the approval of the city or its representative, but in no event shall the diameter be less than four inches. The slope of such four-inch pipe shall not be less than one-eighth inch per foot.

E. The connection of the service lateral into the public sewer line shall be made at a "Y" branch, if such a branch is available at a suitable location. If a "Y" branch is unavailable, the sewer user shall, at his expense, install a "Y" branch in the public sewer at the location specified by the city. A section of the sewer line shall be removed and a new section shall be installed with a tight seal being made between the existing sewer lines and the new section with the use of Calder couplings. In lieu of a "Y" branch and Calder couplings, the connection may be made utilizing an approved type of saddle in accordance with the public works design standards or the public works director. The invert of the customer's sewer service connection at the point of connection shall be at a higher elevation than the invert of the public sewer.

F. The sewer user shall notify the city when the building sanitary sewer is ready for inspection and connection to the public sewer. The connection and installation shall be made in accordance with the city's standards and shall be inspected and approved by a state-certified plumbing inspector and a representative of the city.

G. Whenever possible, the building sanitary sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any customer's building drain is too low to permit gravity flow to the sewer line, sanitary sewage carried by such building drain connection shall be lifted and discharged to the building sanitary sewer by a method approved by the city.

H. All installations of sewer lines and service laterals shall be adequately guarded with barricades and lights so as to protect the public from hazards. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city.

I. Once the sewer user is ready to discharge sewage into the sewer system, the sewer user shall pay all deposits and monthly sewer use fees as established by the city of Philomath resolution(s) that relate to monthly sewer use charges.

J. All service lateral renovations or new installations shall be in accordance with city standards:

1. Utilize pipe and fittings meeting the following specifications:

Cast iron, Class 150, ANSI 21.1.
Ductile iron, Class 50, ANSI 21.51.
PVC, SDR 35, ASTM 3034.
PVC, SDR 41, ASTM F789/D3212.

2. Have a minimum four-inch cleanout, as per the Philomath public works design standards, readily accessible to city crews at or as close as possible to the property line and conforming to city standard service lateral cleanout details.

Utilize no bends greater than 1/16 bends (22.5 degrees), unless a cleanout is installed immediately upstream.

K. Changes in Customer's Equipment. Customers making any material change in size, character or extent of the equipment or operation utilizing sewer service shall immediately give the city written notice of the nature of the change.

L. Sewer Permits.

1. Permit Required. Before commencement of construction of building a sanitary sewer, the sewer user shall first obtain a written permit issued by the city. The application for such permit shall be made on a form furnished by the city which shall be supplemented by any plans, specifications and other information as are deemed necessary by the city. A permit and inspection fee as set forth in this section shall be paid to the city at the time the application is filed.

2. Fees Set by Council. The permit and inspection fees shall be just and equitable charges that are set by resolution of the city council.

3. Issue Subject to Approval of City Manager. The issuance of sewer permits is subject to the approval of the city manager or his authorized representatives. Sewer permits may not be issued if the city manager has determined that the nature of the wastewater can have detrimental effects on the treatment works. [Ord. 796 § 6, 2015; Ord. 767 § 8, 2011; Ord. 624 § 11, 1994.]

13.20.120 Sewer renovation.

Any customer's building sanitary sewer connected to the sewer system outside of the city's right-of-way and within the bounds of the customer's property which may be determined by the city to be causing infiltration of surface, storm or groundwater into the sewer system shall be repaired within 60 days after the date of official notice to the legal property owner to do so. All costs for said repair shall be borne by the customer.

Before being covered, each repair must be inspected and approved in writing by a state-certified plumbing inspector and by the city.

All storm sewers, including building storm sewers, which are on private property that connect directly to the building sanitary sewer shall be disconnected and properly capped upon receiving a 30-day notice from the city.

The city reserves the right to enter private property for the purpose of testing the building sanitary sewer and/or building drain outside of the city's right-of-way. Damage to landscaping, etc., that is caused during the testing of the building sanitary sewer and building drain shall be repaired by the city at the city's expense.

If the customer fails to correct such infiltration, be it surface, storm or groundwater, within the prescribed time limit, the building sanitary sewer and/or building drainpipe shall be declared nonconforming and five times the monthly use charge shall be assessed until the building sanitary sewer and/or building drainpiping is brought into compliance. The city may also elect to enter such property and make the necessary repair or correction and cause such expenses to become a lien upon the property, which lien shall become due and payable upon entry in the lien docket. It shall be the duty of the city to attempt to serve, by certified or registered mail, in person or by door hanger, a written notice upon the owner of the property at the time said lien is entered on the city lien docket, which notice shall state the amount of the lien and give the property owner notice that said lien will be deemed delinquent if not paid within 60 days after the date the lien was entered on the city lien docket. If the owner fails to pay the lien within 60 days after entry of the lien on the lien docket, the city shall have the right to enforce or foreclose the lien in the manner prescribed for by ORS 223.510 or 223.610, or in any other manner provided by law or city ordinance. The property owner shall bear all costs associated with the filing of the lien. [Ord. 796 § 7, 2015; Ord. 767 § 9, 2011; Ord. 624 § 12, 1994.]

13.20.130 The use of the public sewers.

A. No sewer user shall discharge or cause to be discharged any stormwater, surface water, ground-

water, roof runoff, cooling water or unpolluted industrial process waters into any sanitary sewer.

B. Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as storm sewers or to a natural outlet approved by the city.

C. Except as hereinafter provided, no customer shall discharge or cause to be discharged any of the following discharge waters or wastes into any public sewer:

1. Any liquid vapor having a temperature higher than 150 degrees Fahrenheit.

2. Any water or waste which may contain more than 200 parts per million by weight, fat, oil, or grease.

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

4. Any garbage that has not been properly shredded.

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 sewage works.

6. Any waters or wastes having a 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 system.

7. Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant.

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 solids, liquids or ashes which may, by themselves, or by interaction with other substances, cause fire or explosive hazards, or in any other way be injurious to person, property or the operation of the plant sewage system or sewage disposal plant.

11. Any waters or wastes having a five-day biochemical oxygen demand greater than 240 mg/l.

D. To ensure that industrial wastes are not discharged to the city's sewer system that may produce an unusual or deleterious effect on the sewer system or sewer treatment plant, review and approval by the city of Philomath shall be obtained prior to the discharge to the sewer system of said wastes by an industrial user.

E. When required by the city, the sewer users served by the city's sewer system whose building sanitary sewer carries industrial wastes shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sanitary sewer to facilitate observation, sampling and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located and shall be constructed in accordance with plans approved by the city. The manhole shall be installed by the sewer user at their expense and shall be maintained by the user so as to be safe and accessible at all times.

F. All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this chapter shall be determined in accordance with the latest edition of "Standard Methods for the Examination of Water and Wastewater," published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at said control manhole.

In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sewer to the point at which the service lateral is connected.

G. If any waters or wastes are discharged, or are proposed to be discharged to the sewer system, which waters contain the substances or possess the characteristics enumerated in subsection (C) of this section and which in the judgment of the city, or in the judgment of any other government agency with jurisdiction over such waters, substances or discharges, may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the city may:

1. Reject the wastes;

2. Require pretreatment to an acceptable condition of discharge to the public sewers;

3. Require control over the quantities and rates of discharge; and/or

4. Require additional sewer use charges to cover the added cost of handling and treating the wastes not covered by the sewer use charges established by the city.

If the city permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the city, and subject to the requirements of all applicable codes, ordinances and laws. All costs of any kind associated with the city or any contractor or consultant of the city performing tasks, obtaining equipment, altering or adding to the city system or facilities that are related to monitoring, sampling, testing, regulating or evaluating pretreatment or equalization of waste flows as required by the city, or any other government agency with jurisdiction over such waters, substances or wastes, shall be entirely the responsibility of the sewer user required to pretreat or equalize flows and shall be immediately due and owing the city.

H. Where preliminary treatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the sewer user at the user's expense.

I. No statement contained in this section shall be construed as preventing any special agreement or arrangement between the city and an industrial concern whereby an industrial waste of unusual strength or character may be accepted by the city for treatment, subject to payment therefor, by the industrial concern. [Ord. 796 §§ 8 – 10, 2015; Ord. 767 § 10, 2011; Ord. 624 § 13, 1994.]

13.20.140 Powers and authority of inspector.

A. Duly authorized employees of the city shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling and testing and enforcement in accordance with the provisions of this chapter.

B. All entry and subsequent work, if any, shall be done observing all safety rules applicable to the individual situation and shall not infringe upon the rights or privileges of a person, corporation, firm, association, or partnership which owns the property which uses and receives the benefit of the city's sewer system. [Ord. 624 § 14, 1994.]

13.20.150 Unauthorized connections.

No person shall construct, use, maintain, or allow the continued existence of an unauthorized connection to the sewer system. Existing unauthorized connections are expressly prohibited, without limitation, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. [Ord. 796 § 11, 2015.]

13.20.160 Requirement to eliminate unauthorized connections.

The director may require, by written notice, that a person responsible for an unauthorized connection to the sewer system immediately, or by a specified date, comply with the requirements of this chapter to eliminate the connection, regardless of whether or not the connection or discharges to it had been established or approved prior to the effective date of the ordinance codified in this chapter.

If, subsequent to eliminating a connection found to be in violation of this chapter, the responsible person can demonstrate that an illegal discharge will no longer occur, said person may request city approval to reconnect. The reconnection or reinstallation of the connection shall be at the responsible person's expense. [Ord. 796 § 11, 2015.]

13.20.170 Notice of violation.

Whenever the director finds that a person has violated a provision of this chapter, the director may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

A. The elimination of unauthorized connections or illegal discharges; and

B. That violating discharges, practices, or operations cease and desist. [Ord. 796 § 11, 2015.]

13.20.180 Appeal.

Notwithstanding the provisions of PMC 13.20.210, any person receiving a notice of violation under PMC 13.20.170 may appeal the determination of the director. The appeal must be in writing and must be received by the city manager within seven days of receipt of the notice of violation. If requested in writing, a hearing on the appeal

shall be scheduled before the city council of the city of Philomath within 30 days of the receipt of the appeal. Thereafter, the city council may render its decision based upon the record of the hearing on the notice of violation, grant an additional hearing to take additional evidence, or conduct a de novo hearing.

The city council, in consultation with the city attorney, shall establish rules and procedures for the conduct of the appeal in order to accord the discharger minimum due process. The burden of proof, on appeal, shall remain with the city by a preponderance of the evidence. The city council shall affirm, reverse, or modify the findings, conclusions, and requirements of the notice of violation and shall serve its decision, in writing, upon the discharger. The decision of the city council shall be final. [Ord. 796 § 11, 2015.]

13.20.190 Abatement by city.

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or in the event of an appeal under PMC 13.20.180, within 10 days of the decision of the city council upholding the decision of the director, then the city or a contractor designated by the director is authorized to enter upon the subject private property and take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent, or person in possession of any premises to refuse to allow the city or designated contractor to enter upon the premises for the purposes set forth above. [Ord. 796 § 11, 2015.]

13.20.200 Recovery of abatement costs.

A. Within 30 days after abatement of the condition by city, the director or his designee shall prepare a recap of all costs incurred to abate the condition, including administrative costs.

B. A summary of costs shall be mailed by registered or certified mail to the same person or persons to whom the notice of violation was sent per PMC 13.20.170, or their successors in title, and shall advise of the city's intent to assess said costs against the real property and shall further advise the owner/owners of their right to a hearing before the city council prior to assessment upon receipt by the director, within 15 days of the date of mailing, of a written request for a hearing.

C. If the costs of abatement are not paid to the city within 30 days from the date of the mailing of the summary of costs, said summary shall be presented to the city council and, if the council finds said costs to be reasonable, the council shall pass a resolution directing that the amount of said costs be entered in the docket of city liens; and upon such entry being made, said costs shall constitute a lien upon the property in question.

D. The lien shall be enforced and shall bear interest at a rate to be determined by the council at the time of the resolution referred to in subsection (C) of this section. The interest shall commence from the date of entry of the lien in the lien docket and shall have priority over all other liens and assessments to the maximum extent permitted by law. The costs of filing the lien shall be included in the total cost of the lien.

E. An error in the name of the property owner/owners/agents 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. [Ord. 796 § 11, 2015.]

13.20.210 Summary abatement.

The director is authorized to require summary abatement of any violation of this chapter that constitutes an immediate threat to the environment or the health, safety or well-being of the public. If any such violation is not abated immediately as directed by the director, the city of Philomath is authorized to enter onto private property and to take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the city of Philomath shall be fully reimbursed by the property owner and/or responsible party. Any relief obtained under this section shall not prevent the city from seeking other and further relief authorized under this chapter. [Ord. 796 § 11, 2015.]

13.20.220 Penalties.

A. Any person violating any provision of this chapter shall be served by the city with written notice stating the nature of the violation and providing a reasonable time limit for satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

B. Any customer who shall continue any violation beyond the time limit provided for in subsection (A) of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not exceeding $2,500 for each violation. Each day in which any such violation shall continue shall be deemed a separate offense.

C. Any sewer user violating any of the provisions of this chapter shall become liable to the city for any expense, loss or damage occasioned the city by reason of such violation.

D. Any remedy, including collection, requirement to enter into special contracts, requirements to pay special account deposits, or any other action authorized by any local, state or federal law, is cumulative and not exclusive. [Ord. 796 § 12, 2015; Ord. 767 § 11, 2011; Ord. 624 § 15, 1994. Formerly 13.20.150.]

13.20.230 Violations deemed a public nuisance.

In addition to the enforcement processes and penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter that is a threat to the environment, public health, safety, or welfare, and is declared and deemed a nuisance, may be summarily abated or restored by the city at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the city. [Ord. 796 § 13, 2015.]

13.20.240 Severability.

The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter. [Ord. 796 § 13, 2015.]

13.20.250 Ultimate responsibility of the discharger.

The standards set forth within this code and promulgated pursuant to the provisions of this code are minimum standards; therefore, these code provisions are not intended and do not imply that compliance with these code provisions by any person or owner/operator of a premises will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the state, caused by said person. These code provisions shall not create liability on the part of the city of Philomath, nor any agent, officer or employee thereof, for any damages that result from any discharger's reliance on these code provisions or any decision lawfully made. [Ord. 796 § 13, 2015.]

Chapter 13.30

WATER SYSTEM

Sections:

13.30.010 Companion ordinance.
13.30.020 Definition of terms.
13.30.030 Service area.
13.30.040 Description of service.
13.30.050 Application for service.
13.30.060 Public policy.
13.30.070 Bills and payment.
13.30.080 Delinquent accounts.
13.30.090 Notices.
13.30.100 Discontinuance of service.
13.30.110 Service connections and meters.
13.30.120 Multiple units.
13.30.130 Meter error.
13.30.140 Fire protection service.
13.30.150 Temporary service.
13.30.160 Pools and tanks.
13.30.170 Fire hydrants.
13.30.180 Responsibility for equipment.
13.30.190 Damage to city's property.
13.30.200 Control valves.
13.30.210 Cross connection.
13.30.220 Water waste.
13.30.230 Inspections.
13.30.240 Interruptions in service.
13.30.250 Resale of water.
13.30.260 Penalty.
13.30.270 Constitutionality and savings clause.
13.30.280 Unauthorized connections.
13.30.290 Requirement to eliminate unauthorized connections.
13.30.300 Notice of violation.
13.30.310 Appeal.
13.30.320 Abatement by city.
13.30.330 Recovery of abatement costs.
13.30.340 Summary abatement.
13.30.350 Penalties.
13.30.360 Violations deemed a public nuisance.
13.30.370 Remedies not exclusive.
13.30.380 Severability.
13.30.390 Ultimate responsibility of user.

13.30.010 Companion ordinance.

This chapter is a companion ordinance to Chapter 14.15 PMC.

A. The city council has adopted Chapter 14.15 PMC requiring new development to pay system development charges. PMC 14.15.050(C) requires adoption of an SDC methodology by ordinance.

B. It has been determined that the existing methodology for water systems development charges needs to be updated to reflect current and future needs of the city water system. The Philomath city council therefore adopts the Capital Improvement Plan and Methodology for Water SDCs, attached to the ordinance codified in this section. [Ord. 733 §§ 1, 2, 2004; Ord. 625 § 1, 1994.]

13.30.020 Definition of terms.

Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

"Applicant" means a person, corporation, association or agency applying for water service.

"Approved backflow prevention assembly" or "backflow assembly" or "assembly" means an assembly to counteract backpressure and/or prevent back-siphonage. This assembly must appear on the list of approved assemblies issued by the Oregon Department of Human Services – Health Services.

"Auxiliary supply" means any water source or system other than the city of Philomath water system.

"Backflow" means the flow in the direction opposite to the normal flow or the introduction of any foreign liquids, gases or substances into the city of Philomath water system.

"Certified backflow assembly tester" shall mean a person who has successfully completed and maintains all requirements as established by the Department of Human Services – Health Services to be a tester in the state of Oregon.

"Certified cross connection control specialist" shall mean a person who has successfully completed and maintains all requirements as established by the Department of Human Services – Health Services to be a specialist in the state of Oregon.

"City" means the city of Philomath, a municipal corporation of the state of Oregon.

"City water system" shall refer to and mean the city of Philomath water system, which shall include wells, treatment mechanisms or processes,

pumping stations, reservoirs, supply trunk or feeder lines, service lines, meters and all other appurtenances, device lines and items necessary to the operation of the system and to supply water service to individual property or premises and shall include the city of Philomath's potable water with which the system is supplied.

"Commercial service" means provision of water to premises which include mercantile establishments, stores, offices, public buildings, governmental agencies, public and private hospitals, schools, churches and mercantile establishments combined with residences, except those in which each unit is metered separately, but not an industrial user.

"Contamination" means the entry into or presence in a public water supply system of any substance which may be deleterious to health and/or quality of the water.

"Cross connection" means any physical arrangement where a potable water supply is connected, directly or indirectly, with any other non-drinkable water system or auxiliary system, sewer, drain conduit, swimming pool, storage reservoir, plumbing fixture, swamp coolers or any other device which contains, or may contain, contaminated water, sewage or other liquid of unknown or unsafe quality which may be capable of imparting contamination to the public water system as a result of backflow. Bypass arrangements, jumper connections, removable sections, swivel or changeover devices or other temporary or permanent devices through which or because of which backflow may occur are considered to be cross connections.

"Council" means the city council of the city of Philomath.

"Customer" means a property owner of record, agent of the owner or tenant who receives service from the city and is responsible for payment of charges/fees.

"Customer line" means the piping from the meter to the property served.

"Date of presentation" means the date upon which a bill or notices are mailed or delivered personally to the customer or his designee.

"Degree of hazard" means the non-health hazard or health hazard or high hazard classification that shall be assigned to all actual or potential cross connections.

"DHS" means the State of Oregon Department of Human Services – Health Services.

Director. See "Public works director."

"Double check detector assembly" or "DCDA" means an assembly which consists of two independently operating check valves which are spring loaded or weighted. The assembly comes complete with a shutoff valve on each side of the checks, as well as test cocks to test the checks for tightness. It shall also be provided with a factory bypass arrangement with a meter and a minimum of an approved double check assembly.

"Double check valve backflow prevention assembly," "double check assembly," "double check" or "DCVA" means an assembly which consists of two independently operating check valves which are spring loaded or weighted. The assembly comes complete with a resilient seated shutoff valve on each side of the checks, as well as test cocks to test the checks for tightness.

"Fire protection service" means provision of water to premises for automatic fire protection.

"Fluoride" means any fluoride compound added to the city water supply to promote dental health.

"Health hazard" means an actual or potential threat of contamination of a physical, chemical or biological nature to the public potable water system or the consumer's potable water system that would be a danger to health.

"Industrial service" means the provision of water to a customer for use in manufacturing or processing activities.

"Main extensions" means extensions of distribution pipelines, exclusive of service connections, beyond existing facilities.

"Mains" means distribution pipelines located in streets, highways, public ways or private rights-of-way which are used to serve the general public.

"Meter rate service" means provision for supplying water in measured quantities.

"Mobile units" shall mean units that are temporary in nature, connecting to the water system through a hydrant, hosebib, or other appurtenance of a permanent nature that is part of the city water system or a permanent water service to a premises. Examples can include but are not limited to the following: water trucks, pesticide applicator vehicles, chemical mixing units or tanks, waste or septage hauler's trucks or units, sewer cleaning equipment, carpet or steam cleaning equipment other than

homeowner use, rock quarry or asphalt/concrete batch plants or any other mobile equipment or vessel that poses a threat of backflow in the city water system. Uses that are excluded from this definition are recreational vehicles at assigned sites or parked in accordance with other policies pertaining to recreational vehicles and homeowner devices that are used by the property owner in accordance with other provisions of this, or other, city policies pertaining to provision of water service to premises.

"Municipal use" means provision for supplying water to departments of the city.

"Non-health hazard" shall mean the classification assigned to an actual or potential cross connection that could allow a substance that may be objectionable, but not hazardous to one's health, to backflow into the potable water supply.

"OAR" shall mean Oregon Administrative Rules.

"Person" means any individual, company, enterprise, partnership, corporation, association, society or group; the singular term shall include the plural.

"Point of use isolation" means the appropriate backflow prevention within the consumer's water system at or near the point at which the actual or potential cross connection exists.

"Pollution hazard" means an actual or potential threat to the physical properties of the water system or the potability of the public or the consumer's potable water system, but which would not constitute a health or system hazard, as defined. The maximum intensity of pollution to which the potable water system could be degraded under this definition would cause minor damage to the system or its appurtenances.

"Premises" means the integral property or area, including improvements thereon, to which water service is or will be provided.

"Premises isolation" means the appropriate backflow prevention at the service connection between the public water system and the premises. This location will be at or near the property line and downstream from the service connection meter.

"Public works director" means the public works director for the city of Philomath or the city's authorized representative.

"Rate schedules" means the entire body of effective rates, rentals, charges and fees as established by the city council.

"Reduced pressure detector assembly" or "RPDA" shall mean an approved assembly consisting of two approved reduced pressure backflow assemblies, set in parallel, equipped with a meter on the bypass line to detect small amounts of water leakage or use.

"Reduced pressure principle backflow prevention assembly" or "reduced pressure principle assembly" or "RP assembly" shall mean an assembly containing two independently acting approved check valves together with a hydraulically operated, mechanically independent pressure differential relief valve located between the check valves, and at the same time, below the first check valve. The assembly shall include properly located test cocks and two tightly closing shut-off valves.

"Resident" means a person or persons living within the area(s) served by the city water system.

"Residential service" means provision of water for household residential purposes, including water for sprinkling lawns, gardens and shrubbery, watering livestock, washing vehicles and other similar and customary purposes.

"Retrofitting" means to furnish a service connection with parts or equipment made available after the time of construction or assembly installation.

"RFP" shall mean request for proposals.

"Service charge (user charge)" means a charge on users of the treatment works for the user's proportionate share of the cost of operation and maintenance (including replacement) of such works.

"Service connection" means the pipe, valves and other facilities by means of which the city conducts water from its distribution mains to and through the meter, but does not include the piping from the meter to the property, structure or facility served.

"Specialist" means a DHS-certified cross connection specialist, either employed with or contracted by the city.

"Submerged heads" mean irrigation sprinkling or delivery devices that are located below the surface of the landscaped area in which they are installed.

"Supervisor" shall mean the city of Philomath public works operations supervisor.

"Temporary service" means a service for circuses, bazaars, fairs, construction work and other

uses that, because of their nature, will not be used steadily or permanently.

"Thermal expansion" means the pressure created by the expansion of heated water.

"Unauthorized connection" is defined as any of the following:

1. Any connection to the city water system that has not been documented in drawings, maps, or equivalent records and approved by the city.

2. Any connection to the city water system that requires a plumbing permit or permission from city made without the permit or permission.

3. Any connection to the water system that the city has required to be disconnected and has not been disconnected. [Ord. 797 § 1, 2015; Ord. 780 § 1, 2012; Ord. 761 § 1, 2010; Ord. 625 § 2, 1994.]

13.30.030 Service area.

The area in which service may be furnished at the city's option includes all that territory within the corporate limits of the city and certain areas adjacent to or in reasonable proximity thereto. [Ord. 625 § 3, 1994.]

13.30.040 Description of service.

A. Supply. The city will exercise reasonable diligence and care to deliver a continuous and sufficient supply of water to the customer in accordance with state and federal standards.

B. Pressure and Supply. The city assumes no responsibility for loss or damage because of lack of water pressure or excess water pressure and merely agrees to furnish such quantities and pressures as are available in its general distribution system. The customer is responsible for the purchase, installation, maintenance and ownership of a pressure reducing/regulating valve (PRV). The service may be subject to shutdowns and variations in pressure incidental to the operation of the system.

C. Quality. The city will exercise reasonable diligence to supply potable water in accordance with state and federal standards.

D. Classes of Service. All services installed by the city will be classified as follows:

1. Single-Family Residential. Single-family or multifamily units serviced by separate meters.

2. Multifamily Residential. Multifamily units serviced by one meter.

3. Commercial.

4. Industrial.

5. Contract service.

6. Fire protection.

E. Service Charges. A service (user) charge shall be set by the city council upon all customers using the city water system.

F. Financial Self-Sufficiency. The user charges shall be fixed at such amounts to assure the financial self-sufficiency of the water system, and thereafter amended as necessary by resolution of the city council.

G. Review and Revision of Rates. The water user charges established in subsection (E) of this section shall, at a minimum, be reviewed annually by the city council of the city of Philomath and shall be revised periodically to reflect actual costs of operation, maintenance, and replacement of the treatment works, and to maintain the equitability of the user charge with respect to distribution of the costs of operation and maintenance proportional to each user's contribution to the total demand of the treatment works.

H. Fee Schedule. The city council shall periodically adopt a fee schedule for administrative and regulatory fees required for the efficient and fair administration of the city water system. [Ord. 797 § 2, 2015; Ord. 768 § 1, 2011; Ord. 625 § 4, 1994.]

13.30.050 Application for service.

A. Application. Each applicant for water service shall be required to complete an application for service either in person or over the phone.

B. Special Contracts. Contracts, other than applications, may be required prior to service where, in the opinion of the city, special circumstances warrant special consideration.

The city may require a special contracts provision requiring the owner of rental property to agree to be responsible for new or continued service at any address where service has been discontinued due to delinquency more than two times in the prior calendar year, or where more than one account has been abandoned with a delinquency due or pending in the prior calendar year. Such a special contract shall include language making any delinquent amount a lien against the property.

C. Security Deposits. A deposit as specified in the rate schedule may be required of any person desiring service. A security deposit need not be made if the applicant has promptly paid all

accounts due the city for a reasonable time in the past.

D. Water Service Account Fee. Any new application for water shall be charged a nonrefundable new account fee in an amount as specified in the rate schedule in effect at the time of the application for service.

E. Prior delinquent accounts for any applicant must be brought current before that applicant may have service in that applicant's name.

F. Special Water Service Account Deposit. A refundable deposit, as set in the rate schedule, per account will be required for service at any property where an account has been involuntarily discontinued more than two times in the prior calendar year, or where any account has been abandoned with any delinquency due or pending in the prior calendar year, or where any account requiring a special water service account deposit has had delinquencies charged against the deposit in the prior calendar year. Once the special water service deposit has been made, service can be activated. If there is any delinquency in the account, those charges will be deducted from the deposit. [Ord. 768 § 2, 2011; Ord. 625 § 5, 1994.]

13.30.060 Public policy.

A. Prior to commencing any work on a building water system or public water system, all applicable permits from the city of Philomath and other agencies must be secured and all associated permit fees paid in full. The permits necessary may include, but are not limited to, a plumbing permit, a permit to construct public facilities, and an encroachment permit. The permit shall set forth at what point the connection is to be made, the location, size of facility, type of construction, and other details as the director or his/her designee may reasonably require. Under no circumstances shall any person cut, tap, extend or in any way alter any city-owned and operated water line, fire hydrant, meter, or any other appurtenance without first obtaining a permit to do so.

B. No Use Outside City without Contract. No use or benefits of the water system or water treatment plant of the city shall be extended to or made available to any property not within the corporate limits of the city, except under a contractual agreement. Consistent with Philomath City Charter, no new contract to use or connect to the water system, except as is required by state law for health hazard annexations, may be extended unless it is first approved by a majority of voters of the city of Philomath.

C. Water Main Extensions.

1. Service within the City Limits. Water mains may be extended inside the city limits upon petition to and acceptance by the city council by the following method: Water mains shall be constructed in accordance with the city's standards and specifications, and subject to inspection by the city, with all necessary easements, rights-of-way and permits, as required, obtained in the city of Philomath's name prior to construction. After completion, and if accepted by the city, the water main, free of all liens and encumbrances, shall be transferred, along with all necessary easements, rights-of-way and permits, to the city. The city will then own, operate and maintain the water main. The water mains shall be constructed of pipe not smaller than eight inches in diameter, unless the city finds that engineering considerations determine that a larger or smaller pipe should be installed. Where the city has determined that a water main larger or smaller than eight inches in diameter is required or desirable, the city shall have the right to require the installation of the larger or smaller pipe. The developer or contractor may be required to pay all additional costs for the installation and materials for the increased size of the water main, where the city requires installation of larger pipe.

2. Fire Flow Standards. In the event new construction occurs in the area of an existing water main and it is determined by the city that fire flow requirements require a larger water main, the city shall have the right to reject the new construction or to require installation of a water main to meet fire flow requirements.

3. Service Outside City Limits. The city is not required to construct or provide service to water mains specifically residential, commercial, industrial or combined residential, commercial and industrial uses outside the city limits. Individual service connections may be permitted by option of the city on those mains owned and operated by the city outside the city limits.

a. Discontinuation of Service and Guarantee of Supply. All water delivered outside the city limits shall be considered as a special service and

not provided by the city as a common utility service. The quantity of water supplied may be reduced or the service entirely discontinued at any time at the discretion of the city and for any reason. The city shall have no liability in any way to customers for failure to provide service or any failure of the system.

b. Rules and Regulations.

i. All customers outside the city receiving water from the city shall comply with and be bound by the rules and regulations of the city.

ii. Individuals shall cooperate to a reasonable and practicable extent with other customers in the extension and/or enlargement of common facilities.

iii. No customer shall interconnect between water furnished by the city and water from another source. Upon discovery by the city that such an interconnection has been made, the city will discontinue service and may assess a penalty for illegal service connection.

D. Fluoridation of Water Supply.

1. The city will add fluoride to the city water supply in sufficient quantities to maintain a level of 0.7 parts per million in the potable water supply.

2. Addition of fluoride to the city water supply system, maintenance of equipment, selection of fluoride compound, concentration of fluoride and other substances in the water, and training of water treatment plant operators shall be subject to review and approval by the Oregon Health Authority – Public Health Division. [Ord. 797 § 3, 2015; Ord. 780 § 2, 2012; Ord. 768 § 3, 2011; Ord. 625 § 6, 1994.]

13.30.070 Bills and payment.

A. Responsibility for Payment of Bills. The customer who applied for service shall be responsible for payment of all charges prescribed in this chapter and set in the rate schedule. The customer who applied for service shall also be responsible for payment of all administrative fees authorized by the city council. All water service charges shall be mailed to the premises where water service is furnished unless the customer provides an alternate mailing address.

B. Rendering of Bills.

1. Meters will be read at regular intervals for the preparation of billings and as required for the preparation of opening, closing and special bills.

2. Bills for water service will be rendered at the intervals provided in the rate and fee schedule.

C. Payment of Bills.

1. All bills shall be due and payable on presentation. An account becomes delinquent if unpaid 16 days after date of billing. Late fees may be charged and collected on delinquent accounts as set forth in the rate schedule.

2. Closing bills will be collected at the time of discontinuance of service.

3. When bills are delinquent, the city will follow the procedure outlined in PMC 13.30.080.

4. Any change in water user shall result in the new user paying the water use charges commencing from the date of change. Any new water service user shall commence paying the water use charges from the time of connection. The water base charges shall be prorated on a daily basis.

D. Separate Meter Billings. Each meter on customer's property will be read separately and the readings of two or more meters will not be combined. [Ord. 797 § 4, 2015; Ord. 768 § 4, 2011; Ord. 625 § 7, 1994.]

13.30.080 Delinquent accounts.

A. Shutoff Notice. All customer charges levied in accordance with this chapter shall be a debt due the city. A notice shall be sent to each account which has not been paid by the forty-fifth day after presentation of bill. All delinquent accounts may be collected in any lawful manner. Reasonable costs of collection may be added to the delinquent account.

B. Shutoff Date. Said notice shall state a turnoff date, seven days from the date the shutoff notice is mailed.

C. Disputed Billing. If the customer disputes the accuracy of the billing, the customer shall present the objection within 15 days after the date of presentation of the bill. Failure to file a notice of objection to the billing as specified above shall constitute a waiver of any defects in the bill and of the customer's right to object.

D. Discontinue Service. On the shutoff date, the meter reader or other agent of the city shall turn off the service. Service will not be restored until payment arrangements have been made.

E. Prior to the city reestablishing service after turning off due to nonpayment of bills, customers may be required to enter into special contracts

and/or customers may be required to pay a special water service deposit consistent with PMC 13.30.050(C) and (F). [Ord. 768 § 5, 2011; Ord. 625 § 8, 1994.]

13.30.090 Notices.

A. Notices to Customers. Notices required to be given by the city to a customer will be given in writing and may be mailed to the billing address of record, hung on the front door or personally delivered to the customer. The city is not responsible for lost, stolen or nondeliverable mail. Any defect in a notice of delinquency or other violation of these provisions shall not prevent enforcement of these provisions.

B. Notice from Customers. Notice from a customer to the city shall be given by the customer or their authorized representative in writing at the office of the city finance department.

C. Notice Fees. The city council has determined that some notices required by this chapter cause unreasonable burdens on the public and the city water system. Of particular concern to the city council are the administrative costs associated with second notices for inspection of backflow prevention assembly devices. The fee schedule adopted by the city council includes a fee the customer receiving such a second notice must pay in order to maintain service. [Ord. 797 § 5, 2015; Ord. 768 § 6, 2011; Ord. 625 § 9, 1994.]

13.30.100 Discontinuance of service.

A. Nonpayment of Bills. A customer's water service may be discontinued if the service bill is not paid in accordance with the procedures as listed in PMC 13.30.080.

B. Unsafe Apparatus.

1. The city may refuse to furnish water and may discontinue service to any premises where apparatus, appliances or equipment using water are dangerous, unsafe or are in violation of laws, ordinances or legal regulations. The city reserves the right of inspection if there is reason to believe that unsafe or illegal apparatus is in use.

2. Except for cross connection control, the city does not assume responsibility for inspecting apparatus on customer's property.

C. 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.

D. Fraud and Abuse. The city shall have the right to refuse or to discontinue water service to any premises to protect itself against fraud and abuse.

E. Noncompliance. The city may, unless otherwise provided, discontinue water service to a customer for noncompliance with any of these regulations if the customer fails to comply with said regulations within seven days after the city delivers written notice of the city's intention to discontinue service. If such noncompliance affects matters of health or safety or other conditions that warrant such action, the city may discontinue service immediately. The expense of such discontinuance, as well as the expense of restoring service, shall be a debt due to the city and may be recovered by any lawful means. Any remedies, including collection, requirement to enter into special contracts, requirements to pay special water service account deposits, or any other action authorized by any local, state or federal law, are cumulative and not exclusive.

F. Customer's Request for Service Discontinuance.

1. A customer may have the water service discontinued by notifying the city at least five days in advance of the desired date of discontinuance. The customer will be required to pay all water charges until the date of such discontinuance.

2. If notice is not given, the customer will be required to pay for water service until the date the city has learned that the customer has vacated the premises or otherwise has discontinued service.

G. Shutoff Charge. In all instances where the city provides a notice for noncompliance and water has been turned off, a reconnection fee shall be charged in accordance with the rate and fee schedule for the restoration of service.

H. Reconnection Charge. In all instances where water has been turned off because of a delinquent account, a reconnection fee shall be charged in accordance with the rate and fee schedule for the restoration of service.

I. After-Hours Reconnect. An after-hours fee will be added for restoration of service requests that are outside of regular business hours. Payment of minimum balance due plus the after-hours fee must be submitted to the utility billing department

by noon of the next business day or water will be shut off and not reconnected until total bill plus fees are paid in full.

J. Penalty for Turning on Water without Authority. Should the water be turned on by any water customer or other person without authority from the city, the water may be turned off by the city and the customer will be required to pay the minimum account balance plus any penalty fees before the water is turned back on.

K. Damage Resulting from Turning on Water without Authority. If the city locks the meter and the lock is subsequently removed by any person, without authorization from the city, or should any damages occur to the city's infrastructure or property by any customer or other person who attempts to turn water on without authority from the city, the customer will be charged the actual cost to repair such damages and be subject to possible criminal charges or fines. Water shall not again be furnished to such premises until said charges and the cost of the water used are paid. [Ord. 797 §§ 6, 7, 2015; Ord. 768 § 7, 2011; Ord. 625 § 10, 1994.]

13.30.110 Service connections and meters.

The city may furnish and install a service of such size and at such location as the applicant requests, provided:

A. Such requests are reasonable.

B. The location is such that the utility has in place a distribution main of sufficient size adequate to provide service to this location without detriment to existing customers. In all cases, the final location of the proposed meter shall be subject to city approval.

C. That such a distribution main is adjacent to and extends along the full length of the property frontage along the right-of-way.

The service will be installed from its water distribution main to the curb line or property line of the premises which may abut on the street, on other thoroughfares or on the city right-of-way or easement, as set forth in the Philomath public works design standards. Charges for new services shall be paid for in advance and shall be in accordance with the rate and fee schedule in effect at the time the new service is installed. The city council may, by resolution, change the fee schedule to reflect changing conditions.

D. Meters.

1. The applicant shall provide and maintain an accessible, unflooded vault of a size as specified for all meters larger than two inches.

2. Owner/customer shall maintain an area of at least 24 inches on each side of meter at all times to enable reading and maintenance to the meter. Vehicles, equipment, trash, firewood, lumber or any other objects shall not be situated over or around the meter box in any way that would obstruct access to the meter. If the meter cannot be read, the meter reading will be estimated and an additional fee, as set forth in the fee schedule, may be charged. If maintenance cannot be performed on the meter, the cost of moving such obstructions may result in additional fees, and shall be billed to the owner/customer.

3. No rent or other charge will be paid by the city for a meter or other facility, including housing and connections, located on a customer's premises.

4. Meters will be furnished and installed by the city after all applicable fees have been paid and when the service has passed inspection.

5. Included in the charges are all meters and necessary appurtenances for installation and continued operation of the service.

6. All meters shall be sealed by the city at the time of installation, and no seal shall be altered or broken except by an authorized employee or agent of the city.

E. Change in Location of Meter or Service. Meters or services moved for the convenience of the customer will be relocated only at the customer's expense.

F. Change in Size of Meter or Service. If for any reason a change in size of a meter or service or both is required, the charges shall be paid for in advance and shall be in accordance with the rate and fee schedule in effect at the time the change is made.

G. Ownership. Meters shall be owned by the city and will be maintained at its expense. The service connection, whether located on public or private property, is the property of the city, and the city reserves the right to repair, replace and maintain it, as well as to remove it upon discontinuance of service. Fire service water lines shall be owned by the city up to the point of connection to the backflow prevention device in instances where the backflow prevention device is located at the prop-

erty line. In instances where the backflow prevention device is located inside of a building, the property owner shall own and maintain the fire service water line from the valve at the point of connection to the city's water main. A permit shall be required by the property owner to perform maintenance and/or repairs in the city right-of-way.

H. Charges for Service Pipes Connected Without a Permit. If premises are connected without the application prescribed in this chapter, such premises shall be immediately disconnected. Before a new connection is made, the applicant shall pay double the new connection fee. A new connection shall only be made upon compliance with provisions of this chapter.

I. Changes in Customer's Equipment. Customers making any material change in the size, character or extent of the equipment or operation utilizing water service shall immediately give the city written notice of the nature of the change.

J. Abandoned and Nonrevenue-Producing Services. Where a service connection to any premises has been abandoned or not used for a period of three months or more, the city may remove said service connection at its discretion. New service shall be placed only upon an application being made for service and payment for a new connection at the rate in effect at the time the new connection is made. If the service connection has not been removed, it may be reconnected upon application and payment of the fee set forth in the rate and fee schedule. An abandoned service being used without written permission from the city is an unauthorized connection and is subject to PMC 13.30.280.

K. Abandoned and Nonrevenue-Producing Meters. Where a meter to any premises has been abandoned or not used for a period of three months or more, the city may remove said meter. A new meter shall be placed only upon an application being made for service and payment for a meter at the rate in effect at the time the new meter is installed. If the meter has not been removed, it may be reconnected upon application and payment of the fee set forth in the rate and fee schedule.

L. Leaking Services. Where there is a leak between the main and the meter, or in the meter itself, the city shall make all repairs free of charge. If the leak is after the meter, it shall be the responsibility of the customer to repair. Adjustments for leaking services will be made in accordance with PMC 13.30.130(B)(4). Before the city will make any adjustments for a leaking service, the leak must be repaired and a leak adjustment form must be submitted to the utility billing department. The city will not adjust more than four full months prior to the date the leak adjustment form was submitted. [Ord. 797 §§ 8, 9, 2015; Ord. 768 § 8, 2011; Ord. 625 § 11, 1994.]

13.30.120 Multiple units.

A. Number of Services to Separate Premises. Separate premises under single control or management will each be supplied through individual service connections unless the city elects otherwise.

B. Service to Multiple Units. Separate houses, buildings, living or business quarters on the same premises, under a single control or management, may be served at the option of the customer by either of the following methods:

1. Through a separate service connection to each or any unit; provided, the pipeline system from each service is independent of the others and is not interconnected.

2. Through a single service connection to the entire premises on which only one minimum charge will be applied. The responsibility for payment of charges for all water furnished to combined units supplied through a single service connection of approved capacity must be assumed by the customer. [Ord. 625 § 12, 1994.]

13.30.130 Meter error.

A. Meter Test. On customer request:

1. A customer may, giving not less than one week's notice, request the city to test the meter serving the premises.

2. The city may require the customer to deposit an amount as set forth in the rate and fee schedule to cover the reasonable cost of the test.

3. The city will replace the meter and have the meter in question tested. The test deposit will be returned if the meter is found to register more than two percent fast.

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

B. Adjustment of Bills for Meter Error.

1. Fast Meters. When, upon test, a meter is found to be registering more than two percent fast under conditions of normal operation, the city will

refund to the customer the full amount of the overcharge based on estimated average readings for a period of not exceeding three months that the meter was in use.

2. Slow Meters.

a. When, upon test, a meter used for domestic or residential service is found to be registering more than 10 percent slow, the city may bill the customer for the amount of the undercharge based upon estimated average readings for a period not exceeding three months that the meter was in use.

b. When, upon test, a meter used for other than domestic service is found to be registering more than five percent slow, the city may bill the customer for the amount of the undercharge based upon estimated average readings for a period not exceeding six months that the meter was in use.

3. Nonregistering Meter. The city may bill the customer for water consumed while the meter was not registering. The bill will be at a 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.

4. Adjustment of Bills for Underground Leaks. Where a leak exists underground between the meter and the building and the same is repaired within 10 days after the customer, agent or the occupant of the premises discovers or has been notified of the possibility of such leakage, the city may allow an adjustment of up to 50 percent of the estimated excess consumption. [Ord. 797 § 10, 2015; Ord. 768 § 9, 2011; Ord. 625 § 13, 1994.]

13.30.140 Fire protection service.

Fire protection connections will be allowed inside and outside buildings under the following conditions:

A. When the owner of a property or building desires such service and a main of sufficient size and volume is present, adjacent to or may be extended to the property (main extensions) in such a manner as to provide the service required.

B. The owner or agent of such a building shall agree in writing that no water may be used from the system except for extinguishing fires or periodic testing. Before any water for testing can be used, the owner or agent must receive written permission from the public works director.

C. If at any time it is found that any unauthorized connections have been added to the system or that registration is recorded on the detector check meter, the immediate installation of an approved meter, as mentioned in PMC 13.30.110, or the removal of the service may be required by the city. Such water registered shall be charged for at double the regular meter rates and possible criminal charges or fines may be imposed.

D. All fire systems and private hydrants, wet or dry, shall be equipped with the appropriate backflow prevention assemblies as set forth in PMC 13.30.210.

E. In the case of existing fire services which do not meet the conditions of subsection (C) of this section, the hydrants or hose connection may be sealed in such a manner as to indicate use thereof. If the seal is found to be broken, it will be assumed that water is being used from the fire service which is a violation of these rules and which results in action being taken as outlined in subsection (F) of this section.

F. Where any violation of any of the above subsections exists, service may be immediately discontinued. In the case where no detector or proportional meter exists, then one will be required before service is restored. In cases where there is a detector or proportional meter, then the owner or agent must provide satisfactory assurances that the use of water will cease or appropriate means are provided to ensure payment for all the water used. The customer will also be required to pay for all water used. The utility shall estimate this amount in cases where it cannot be determined. The bill must be paid prior to service being restored.

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

H. The cost of all detector checks, proportional meters, backflow devices, and related appurtenances, including installation and testing costs, shall be borne by the customer. The customer shall provide drawings to the public works director for approval of devices and installation. Customer shall obtain a backflow permit from the city prior to beginning work.

I. Standby Charges for Automatic Fire Service. The standby charges for automatic fire service are based on wet or dry sprinkling systems without hose or other connections and are set forth in the rate schedule. Combined systems will pay the regular service meter minimums and the regular meter rates.

J. 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 in advance and an approved means of measurement is available. The rates for general use will apply. The anticipated quantity of water shall be paid for in advance.

K. Ownership of Service Connections and Equipment. Ownership of service connection, meter and all equipment appurtenant thereto shall be the sole property of the city, and no part of the cost thereof will be refunded to the applicant.

L. Pressure and Supply. The city assumes no responsibility for loss or damage because of lack of water pressure and merely agrees to furnish such quantities and pressures as are available in its general distribution system. The service is subject to shutdowns and variations required by the operation of the system. There will be no reimbursement or prorating of the water bill due to shutdowns or other variations. [Ord. 797 §§ 11 – 13, 2015; Ord. 768 § 10, 2011; Ord. 625 § 14, 1994.]

13.30.150 Temporary service.

A. Time Limit. Temporary service connections shall be disconnected and terminated within six months after installation unless an extension of time is granted in writing by the city.

B. Charges for Water Served. Charges for water furnished through a temporary service connection shall be at the established rates for other customers.

C. Installation Charges and Deposits. The applicant for temporary service will be required:

1. To pay the city, in advance, the estimated cost of installing and removing all facilities necessary, as determined by the public works director, to furnish such service or, at the city's option, if service is supplied through a fire hydrant, the applicant will be charged the applicable fee set forth in the rate and fee schedule.

2. To deposit an amount sufficient to cover estimated bills for water during the entire period such temporary service may be used or to establish credit approved by the city.

3. To deposit with the city an amount equal to the value of any equipment loaned by the city to such applicant for use on temporary service. This deposit is refundable under terms of subsection (D) of this section.

D. Responsibility for Meters and Installation. The customer shall use all possible care to prevent damage to the meter or any loaned facilities of the city which are involved in furnishing the temporary service from the time of installation until removal. If the meter or other facilities are damaged, the cost of making repairs shall be paid by the customer. [Ord. 768 § 11, 2011; Ord. 625 § 15, 1994.]

13.30.160 Pools and tanks.

When an abnormally large quantity of water is desired for filling a swimming pool, log pond or for other purposes, arrangements must be made with the city prior to taking such water. Permission to take water in unusual quantities will be given only if it can be delivered safely through the city's facilities and if other consumers are not inconvenienced. [Ord. 625 § 16, 1994.]

13.30.170 Fire hydrants.

A. Use of and Damage to Fire Hydrants. No person or persons, other than those designated and authorized by the proper authority, or by the city, shall open any fire hydrant, attempt to draw water from it or in any manner damage or tamper with it. Any violation of this regulation will be prosecuted.

B. Moving of Fire Hydrants. When a fire hydrant has been installed in the location specified by the proper authority, the city has fulfilled its obligation. If a property owner or other party desires a change in the size, type or location of the hydrant, the property owner shall bear all costs of such changes. Any change in the location of a fire hydrant must be approved by the city. [Ord. 768 § 12, 2011; Ord. 625 § 17, 1994.]

13.30.180 Responsibility for equipment.

The customer shall, at their own risk and expense, furnish, install and keep in good and safe condition all equipment which may be required for receiving, controlling, applying and utilizing water. The city shall not be responsible for any loss or damage caused by the improper installation of

such water equipment, or the negligence, want of proper care or wrongful act of the customer, property owner, agents or any tenants in installing, maintaining, using, operating or interfering with such equipment.

The city shall not be responsible for damage to property caused by spigots, faucets, valves or other equipment which are open when water is turned on at the meter, either when turned on originally or when turned on after a temporary shutdown. [Ord. 625 § 18, 1994.]

13.30.190 Damage to city's property.

The customer shall be liable for any damage to a meter or other equipment or property owned by the city which is caused by an act of the customer, their tenants or agents. Such damage shall include the breaking or destruction of locks by the customer or others on or near a meter and any damage to a meter which may result from hot water or steam from a boiler or heater on the customer's premises. The city shall be reimbursed by the customer for any such damage promptly on presentation of a bill. [Ord. 625 § 19, 1994.]

13.30.200 Control valves.

The customer shall install a suitable valve, as close to the meter location as practicable, the operation of which will control the entire water supply from the service. The customer is not permitted to operate the curb stop on the meter box. [Ord. 625 § 20, 1994.]

13.30.210 Cross connection.

This section applies throughout the city water system and to every premises and property served by the city water system. It applies to all premises, regardless of date of connection to the city water system. Every owner, occupant or person in control of any concerned premises is responsible for the terms and provisions contained in this section.

A. Cross Connections Regulated.

1. No cross connections shall be created, installed, used or maintained within the area(s) served by the city water system, except in accordance with this section.

2. The specialist shall carry out or cause surveys to be carried out to determine if any actual or potential cross connection exists. If found necessary, an assembly commensurate with the degree of hazard will be installed at the service connection.

3. The owner, occupant or person in control of any given premises is responsible for all cross connection control within the premises.

4. All premises designated as health hazards as stipulated by the OAR shall install a reduced pressure backflow assembly at the service connection in accordance with this chapter.

5. It is the responsibility of the property owner/occupant to purchase, install, test, repair and maintain all backflow assemblies.

B. Backflow Prevention Assembly Requirements. A specialist employed by or under contract with the city shall determine the type of backflow assemblies to be installed within the city water system. All assemblies shall be installed at the service connection unless it is determined by the specialist and approved by the supervisor that it should be installed at the point of use or at an alternate location. An approved assembly shall be required in each of the following circumstances, but the specialist is in no way limited to the following circumstances:

1. In the case of any premises where there is any material dangerous to health which is handled in such a fashion as to permit entry into the potable water system, the potable water system shall be protected by an approved air gap separation or an approved reduced pressure principle backflow prevention assembly.

2. When the nature and extent of any activity at a premises, or the materials used in connection with any activity at a premises, or materials stored at a premises, could contaminate or pollute the potable water system.

3. When any premises has one or more cross connections, as that term is defined in PMC 13.30.020.

4. When internal cross connections are present that are not correctable.

5. When intricate plumbing arrangements are present making it impractical to ascertain whether cross connections exist.

6. When the premises has a repeated history of cross connections being established or reestablished.

7. When entry to the premises is restricted so that surveys for cross connections cannot be made

with sufficient frequency to assure cross connections do not exist.

8. When materials are being used such that, if backflow should occur, a health hazard could result.

9. When an appropriate cross connection survey report form has not been filed with the supervisor.

10. Any and all used water return systems.

11. If a point-of-use assembly has not been tested or repaired as required by this section, the installation of a reduced pressure principle assembly will be required at the service connection.

12. There is piping or equipment for conveying liquids other than potable city of Philomath water and that piping or other equipment is under pressure and installed and operated in a manner that could cause a cross connection.

13. When installation of an approved backflow prevention assembly is deemed by a specialist to be necessary to accomplish the purchase of this section.

14. The use of any type of chemical spray attachment connected to the premises plumbing, including garden hose fertilizers and pesticide applicators, is not allowed within the city water system without proper protection from the potential of backflow occurring.

15. The use of any type of radiator flush kits attached to the premises plumbing is not allowed within the city water system without proper protection from backflow occurring.

16. Wherever reclaimed water is used on premises.

17. Where there is a premises with an auxiliary water supply which is connected directly to the city supply.

18. When a service has been inactive for six months or longer, a survey will be required by the specialist and it is determined a cross connection exists.

19. Wherever required by the current Oregon Administrative Rules.

C. New Construction.

1. On all new nonresidential construction an approved backflow assembly shall be installed at the service connection. The type of assembly will be commensurate with the degree of hazard as determined by a specialist.

2. When a building is constructed on commercial premises, and the end use of the building is not determined or could change, a reduced pressure principle backflow prevention assembly shall be installed at the service connection to provide protection of the public water supply in the event of the most hazardous use of the building.

D. Retrofitting. Retrofitting shall be required at all service connections where an actual or potential cross connection exists, and wherever else the city deems retrofitting necessary to comply with the OAR, this section, and the most current edition of the city of Philomath's written program plan.

E. Irrigation Systems. All irrigation systems shall be protected according to plumbing code regulations. In the event any system is equipped with an injector system, a reduced pressure principle assembly will be required.

F. Thermal Expansion. It is the responsibility of the property owner, the occupant, or the person in control of the property to eliminate the possibility of damage from thermal expansion, if a closed system has been created by the installation of a backflow prevention assembly or other appurtenances.

G. Mobile Units. Any mobile unit or apparatus as defined in PMC 13.30.020 which uses the water from any premises within the city water system shall first obtain a permit from the city and undergo inspection to assure an approved air gap or reduced pressure principle assembly is installed on the unit.

H. Installation Requirements. All backflow prevention assembly installations shall follow the requirements as stipulated by the city.

The type of backflow prevention assembly required shall be commensurate with the degree of hazard that exists and must, at all times, meet the standards of the DHS. All backflow prevention assemblies required under this section shall be of a type and model approved by the DHS.

I. Pressure Loss. Any decrease in water pressure caused by the installation of a backflow assembly shall not be the responsibility of the city.

J. Fire Systems. An approved double check backflow prevention assembly shall be the minimum protection on all new fire sprinkler systems using piping material that is not approved for potable water use and/or does not provide for periodic flow-through. A reduced pressure principle backflow prevention assembly must be installed if any solution other than the potable water can be intro-

duced into the sprinkler system. Retrofitting on fire sprinkler systems will be required in each of the following circumstances:

1. Where improper maintenance has occurred;

2. On all high hazard systems;

3. Wherever a specialist deems necessary; and

4. Wherever required by the OAR.

In the event an assembly is installed on a designated lateral, a detector assembly commensurate with the degree of hazard will be required.

K. Temporary Meters and Hydrant Valves. Backflow protection will be required on all temporary meters and hydrant valves before any use. The type of assembly will be commensurate with the degree of hazard and will be determined on a case-by-case basis by a city of Philomath specialist.

L. Plumbing Code. As a condition of water service, customers shall install, maintain, and operate their piping and plumbing systems in accordance with the Oregon Specialty Plumbing Code, or as amended, and, if applicable, in accordance with this section. If there is a conflict between this section and the plumbing code, the more stringent supersedes.

M. Right-of-Way Encroachment.

1. No person shall install or maintain a backflow prevention assembly upon or within any city right-of-way except as provided in this section.

2. The city reserves the right to have an assembly installed in the right-of-way.

3. A backflow prevention assembly required by the city may be installed upon or within any city right-of-way only if the owner proves to the city that there is no other feasible location for installing the assembly and that installation in the right-of-way will not interfere with traffic or utilities. The city retains the right to approve the location, height, depth, enclosure, and other requisites of the assembly prior to its installation.

4. All permits required by the city to perform work in the right-of-way shall be obtained.

5. A property owner shall, at the request of the city and at the owner's expense, relocate a backflow prevention assembly which encroaches upon any city right-of-way, when such relocation is necessary for street or utility construction or repairs for purposes of public safety.

N. Access to Premises. Authorized personnel of the city, with proper identification and sufficient notice, shall have access during reasonable hours to all parts of a premises and within the structure to which water is supplied. However, if any owner, occupant or person in control refuses authorized personnel access to a premises or to the interior of a structure during those hours for inspection, a reduced pressure principle assembly must be installed at the service connection to that premises.

O. Annual Testing and Repairs. All backflow prevention assemblies installed within the area(s) served by the city shall be tested immediately upon installation, and at least annually thereafter, by a DHS-certified backflow assembly tester. All such assemblies found not functioning properly shall be promptly repaired or replaced at the expense of the owner, occupant or person in control of the premises. In the event an assembly is moved, repaired or replaced, it must be retested immediately.

It is the responsibility of the persons who own the assemblies to have the assemblies tested by a certified backflow assembly tester.

If a backflow assembly has been installed prior to the effective date of the ordinance codified in this section and it is determined by the specialist that the assembly is not required to meet the conditions of this enforcement document, testing of the assembly will not be required. If the plumbing conditions ever change and the assembly is required to meet the conditions stipulated in this enforcement document, it will be the responsibility of the property owner to test and maintain the assembly as stipulated by this enforcement document.

P. Maintenance of Assemblies. Backflow prevention assemblies shall be maintained in accordance with the requirements set out in the OAR, or as amended, and this section. The assembly owner is responsible for protecting their assembly from freezing and vandalism.

Q. Responsibilities of Backflow Prevention Assembly Testers.

1. All backflow assembly testers operating within the city water system service area shall be certified in accordance with all applicable regulations of the DHS.

2. Persons certified as backflow assembly testers shall agree to abide by all requirements of the United States Occupational Safety and Health Administration ("OSHA") and Oregon Occupa-

tional Safety and Health Administration ("OR-OSHA"); and have completed confined space entry training to enter any confined space on behalf of the city water system.

3. It is the responsibility of backflow assembly testers to submit records of all backflow assembly test repairs to the city within 10 days of completing the test.

R. Costs of Compliance. All costs associated with purchase, installation, surveys, testing, replacement, maintenance, parts and repairs of the backflow prevention assembly, and all costs associated with the enforcement of this chapter, are the financial responsibility of the property owner, occupant, or other person in control of the premises.

S. Recovery of Costs. Any water customer violating any of the provisions of this section and who causes damage to or impairs the city water system, including but not limited to allowing contamination, pollution, any other solution or used water to enter the city water system, shall be liable to the city for any expense, loss or damage caused by such violation. The city shall collect the cost incurred by the city for any cleaning, purifying, repair or replacement work or any other expenses caused by the violation from the violator. Refusal to pay the assessed costs shall constitute a violation of this section and shall result in the termination of service.

All costs associated with any disconnect fees resulting from the enforcement of this section are the sole responsibility of the property owner.

T. Termination of Service. Failure on the part of any owner, occupant or person in control of the premises to install a required assembly, have it tested annually and/or to discontinue the use of all cross connections and to physically separate cross connections in accordance with this section is sufficient cause for the discontinuance of public water service to the premises pursuant to OAR 333-061-0070, or as amended. In the case of an extreme emergency or where an immediate threat to life or public health is found to exist, discontinuance or termination of public water service to the premises shall be immediate.

U. Falsifying Information. Any person who knowingly makes any false statement, representation, record, report or other document filed or required to be maintained pursuant to this section, or who falsifies, tampers with, or knowingly renders inaccurate any backflow assembly, device or method required under this section shall (in addition to civil and/or criminal penalties provided by state law) be subject to the general penalty clause of the city of Philomath's written program plan. [Ord. 797 §§ 14, 15, 2015; Ord. 761 § 2, 2010; Ord. 625 § 21, 1994.]

13.30.220 Water waste.

Where water is wastefully or negligently used on a customer's premises, seriously affecting the general service, the city may discontinue the service if such conditions are not corrected within five days after giving the customer written notice. [Ord. 625 § 22, 1994.]

13.30.230 Inspections.

Any inspection or recommendations made by the city or its agents on plumbing or appliances or use of water on the customer's premises, either as the result of a complaint or otherwise, will be made or offered without charge. [Ord. 625 § 23, 1994.]

13.30.240 Interruptions in service.

The city shall not be liable for damage resulting from an interruption in service. Temporary shutdowns may be resorted to by the city for improvements and repairs. Whenever possible, as time permits, all customers affected will be notified prior to such shutdowns. The city will not be liable for interruption, shortage or insufficiency of supply, or for any loss or damage occasioned thereby, if caused by accident, act of God, fire, strikes, riots, war or any other cause not within its control. There will be no reimbursement or prorating of the water bill due to shutdowns or other variations. [Ord. 797 § 16, 2015; Ord. 625 § 24, 1994.]

13.30.250 Resale of water.

Except by special agreement with the city, no customer shall resell any of the water received from the city, nor shall water be delivered to premises other than those specified in the application for service. [Ord. 625 § 25, 1994.]

13.30.260 Penalty.

Any person violating any of the provisions of this chapter shall, upon conviction thereof, be punished by a fine not exceeding $500.00, or by

imprisonment in jail for a period not exceeding 100 days, or by both such fine and imprisonment. [Ord. 625 § 26, 1994.]

13.30.270 Constitutionality and savings clause.

Should any provision, section, sentence, clause or phrase of this chapter, or the application of the same to any person or set of circumstances, be for any reason held to be unconstitutional, void, invalid, or for any reason unenforceable, the validity of the remaining portions of this chapter or its application to any other persons or circumstances shall not be affected thereby, it being the intent of the city in adopting and approving this chapter that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any other portion, provision, or regulation. [Ord. 761 § 3, 2010.]

13.30.280 Unauthorized connections.

No person shall construct, use, maintain, or allow the continued existence of an unauthorized connection to the water system. Existing unauthorized connections are expressly prohibited, without limitation, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. [Ord. 797 § 17, 2015.]

13.30.290 Requirement to eliminate unauthorized connections.

The director may require, by written notice, that a person responsible for an unauthorized connection to the water system immediately, or by a specified date, comply with the requirements of this chapter to eliminate the connection, regardless of whether or not the connection to it had been established or approved prior to the effective date of the ordinance codified in this chapter.

The removal of the connection shall be at the user's expense. [Ord. 797 § 17, 2015.]

13.30.300 Notice of violation.

Whenever the director finds that a person has violated a provision of this chapter, the director may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

A. The elimination of unauthorized connections; and

B. That violating practices or operations cease and desist. [Ord. 797 § 17, 2015.]

13.30.310 Appeal.

Notwithstanding the provisions of PMC 13.30.340, any person receiving a notice of violation under PMC 13.30.300 may appeal the determination of the director. The appeal must be in writing and must be received by the city manager within seven days of receipt of the notice of violation. If requested in writing, a hearing on the appeal shall be scheduled before the city council of the city of Philomath within 30 days of the receipt of the appeal. Thereafter, the city council may render its decision based upon the record of the hearing on the notice of violation, grant an additional hearing to take additional evidence, or conduct a de novo hearing.

The city council, in consultation with the city attorney, shall establish rules and procedures for the conduct of the appeal in order to accord the user minimum due process. The burden of proof, on appeal, shall remain with the city by a preponderance of the evidence. The city council shall affirm, reverse, or modify the findings, conclusions, and requirements of the notice of violation and shall serve its decision, in writing, upon the user. The decision of the city council shall be final. [Ord. 797 § 17, 2015.]

13.30.320 Abatement by city.

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or in the event of an appeal under PMC 13.30.310, within three days of the decision of the city council upholding the decision of the director, then the city or a contractor designated by the director is authorized to enter upon the subject private property and take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent, or person in possession of any premises to refuse to allow the city or designated contractor to enter upon the premises for the purposes set forth above. [Ord. 797 § 17, 2015.]

13.30.330 Recovery of abatement costs.

A. Within 30 days after abatement of the condition by city, the director or his designee shall prepare a recap of all costs incurred to abate the condition, including administrative costs.

B. A summary of costs shall be mailed by registered or certified mail to the same person or persons to whom the notice of violation was sent per PMC 13.30.300, or their successors in title, and shall advise of the city's intent to assess said costs against the real property and shall further advise the owner/owners of their right to a hearing before the city council prior to assessment upon receipt by the director, within 15 days of the date of mailing, of a written request for a hearing.

C. If the costs of abatement are not paid to the city within 30 days from the date of the mailing of the summary of costs, said summary shall be presented to the city council and, if the council finds said costs to be reasonable, the council shall pass an ordinance directing that the amount of said costs be entered in the docket of city liens, and upon such entry being made, said costs shall constitute a lien upon the property in question.

D. The lien shall be enforced and shall bear interest at a rate to be determined by the council at the time of the ordinance referred to in subsection (C) of this section. The interest shall commence from the date of entry of the lien in the lien docket and shall have priority over all other liens and assessments to the maximum extent permitted by law. The costs of filing the lien shall be included in the total cost of the lien.

E. An error in the name of the property owner/owners/agents 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. [Ord. 797 § 17, 2015.]

13.30.340 Summary abatement.

The director is authorized to require summary abatement of any violation of this chapter that constitutes an immediate threat to the environment or the health, safety or well-being of the public. If any such violation is not abated immediately as directed by the director, the city of Philomath is authorized to enter onto private property and to take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the city of Philomath shall be fully reimbursed by the property owner and/or responsible party. Any relief obtained under this section shall not prevent the city from seeking other and further relief authorized under this chapter. [Ord. 797 § 17, 2015.]

13.30.350 Penalties.

A. Any person violating any provision of this chapter shall be served by the city with written notice stating the nature of the violation and providing a reasonable time limit for satisfactory correction thereof. The offender shall, within the period of time stated in such notice, permanently cease all violations.

B. Any customer who shall continue any violation beyond the time limit provided for in subsection (A) of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not exceeding $2,500 for each violation. Each day in which any such violation shall continue shall be deemed a separate offense.

C. Any water user violating any of the provisions of this chapter shall become liable to the city for any expense, loss or damage occasioned the city by reason of such violation.

D. Any remedy, including collection, requirement to enter into special contracts, requirements to pay special account deposits, or any other action authorized by any local, state or federal law, is cumulative and not exclusive. [Ord. 797 § 17, 2015.]

13.30.360 Violations deemed a public nuisance.

In addition to the enforcement processes and penalties hereinbefore provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter that is a threat to the environment, public health, safety, or welfare, and is declared and deemed a nuisance, may be summarily abated or restored by the city at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the city. [Ord. 797 § 17, 2015.]

13.30.370 Remedies not exclusive.

Notwithstanding any provision of this chapter to the contrary, the remedies for violations of this

chapter are not exclusive and the city may enforce violations of this chapter and pursue any other legal remedy authorized in this code, or may enforce violations of this chapter through seeking any other legal or equitable remedy. [Ord. 797 § 17, 2015.]

13.30.380 Severability.

The provisions of this chapter are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter. [Ord. 797 § 17, 2015.]

13.30.390 Ultimate responsibility of user.

The standards set forth within this code and promulgated pursuant to the provisions of this code are minimum standards; therefore, these code provisions are not intended and do not imply that compliance with these code provisions by any person or owner/operator of a premises will ensure that devices will function in a manner so that there will be no contamination, cross connection, nor pollution, caused by said person. The owner/operator of a premises has the ultimate responsibility for properly maintaining their plumbing systems and to ensure that cross connections are not created and that backflow prevention devices are tested and maintained in good working order. These code provisions shall not create liability on the part of the city of Philomath, nor any agent, officer or employee thereof, for any damages that result from any cross connection despite reliance on these code provisions or any decision lawfully made. [Ord. 797 § 17, 2015.]

Chapter 13.35

WATER USAGE CURTAILMENT PLAN

Sections:

13.35.010 Purpose.
13.35.020 Statement of purpose.
13.35.030 Water usage curtailment plan.
13.35.040 Stage 1 – Short-term supply or distribution system disruptions.
13.35.050 Stage 2 – Loss of storage capacity or excessive usage demands.
13.35.060 Stage 3 – Prolonged drought conditions.
13.35.070 Stage 4 – Total loss of surface water source or systemic catastrophe.
13.35.080 Water usage curtailment plan summary.
13.35.090 Violation – Penalty.

13.35.010 Purpose.

The city council has adopted a water master plan which recommends that the city prepare a water management and conservation plan. Said plan includes specific actions the city will take to limit water consumption in the event of water shortages or water service difficulties. [Ord. 735 § 1, 2006.]

13.35.020 Statement of purpose.

The 20-year water master plan adopted by the city council during the 2005 session recommended the development of a water conservation and management plan. This water usage curtailment plan is an integral part of that overall conservation and management plan, and is subject to compliance with various state administrative rules. [Ord. 735 § 2, 2006.]

13.35.030 Water usage curtailment plan.

In order to safeguard public health, ensure continued water service to all citizens and to further the effort to preserve the Mary's River Watershed, the city has prepared this water usage curtailment plan. The plan includes four stages of implementation based on the nature and severity of the emergency condition.

The four types of emergency conditions identified for action are: (A) short term supply or distribution system disruptions; (B) loss of storage capacity or excessive usage demands on the system; (C) prolonged drought conditions; and (D) total loss of surface water as a source of supply or catastrophic system debilitation.

The following sections shall serve as guidelines for the determination of the significance of various potential emergency conditions, provide for appropriate citywide action in response to the condition level and place the responsibility for any call to action at the appropriate level of authority.

Notification of the existence of any emergency condition, and the response level called for, shall be provided for based on the timeliness of the need for the action called. Said notice may be communicated via any or all of the following forms: local radio broadcast, publication in local papers, by direct mailing, telephone, website or direct canvassing as necessary.

Failure to comply with any emergency response implementation shall result in civil penalties commensurate with the magnitude of the violation and in accordance with city ordinances. [Ord. 735 § 2, 2006.]

13.35.040 Stage 1 – Short-term supply or distribution system disruptions.

A. Definition. Stage 1 water alerts are prompted by any short-term shortage or limitation of water supply, storage or delivery due to a temporary water system failure, mechanical or hydraulic breakdown, major firefighting event or water main break. These may be of either a localized or citywide nature.

B. Duration. Stage 1 alerts generally shall last for a duration of five days or less, depending upon the time needed to correct the problem and/or replenish the reserves.

C. Authority. The public works director and/or public works operations supervisor may issue a Stage 1 water alert upon the determination that a water system condition exists that satisfies the conditions of this stage.

D. Actions.

1. Upon public notification that a short-term Stage 1 water alert exists, city water customers are required to limit water consumption to normal household and drinking water uses only. No car washing or lawn/yard irrigation shall be permitted.

2. Municipal use of water, such as parks and grounds irrigation, water fountains, ornamental use, street cleanings and other extraneous uses

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shall be limited "in like fashion" until the alert is lifted.

E. Termination. Suspension of a Stage 1 water alert shall be at the total discretion of the public works director and/or public works operations manager and shall be based on reservoir water level recovery, correction of the cause, and/or any other factors deemed to be relevant. [Ord. 735 § 2, 2006.]

13.35.050 Stage 2 – Loss of storage capacity or excessive usage demands.

A. Definition. Stage 2 water alerts are prompted by significant losses of available stored water due to prolonged high water system demands. Said demands may typically be caused by periods of extreme water consumption as a result of several consecutive days of extreme high temperatures and/or partial loss of treatment plant production. Extreme water consumption may also be the result of high usage during an extreme cold weather event as water customers allow water flow to occur continuously to prevent freeze damage to piping.

B. Duration. Stage 2 events will (typically) be limited to a period of seven days or less and can usually be lifted once storage reservoirs are refilled and/or the condition causing the high demand abates.

C. Authority. The public works director and/or public works operations supervisor may issue a Stage 2 water alert upon the determination that a water system condition exists that satisfies the conditions of this stage.

D. Actions.

1. All Stage 1 actions shall be required herein.

2. Institutional and commercial water users shall be requested to implement voluntary curtailment of water usage except as is necessary to support ongoing operations.

3. The usage of water to clean, fill and maintain decorative fountains or ponds is prohibited unless the water is reclaimed for said purpose. Swimming pools shall not be filled during Stage 2 water alerts.

4. The use of water for construction, dust control, street or parking lot sweeping, or building wash-down is prohibited.

E. Termination. Suspension of a Stage 2 water alert shall be at the total discretion of the public works director and/or public works operations manager and shall be based on reservoir water level recovery, correction of the cause, and/or any other factors deemed to be relevant. [Ord. 735 § 2, 2006.]

13.35.060 Stage 3 – Prolonged drought conditions.

A. Definition. Stage 3 water alerts are prompted by a shortage of surface water due to prolonged dry weather conditions resulting in a sustained period of below average surface water flow. Typically, such periods also exhibit a corresponding high water usage demand by consumers. Additionally, upstream contamination of surface water may render surface water unusable by the city for unknown periods of time and may also cause a Stage 3 alert.

B. Duration. Stage 3 events can last from as little as one to two days up to several months.

C. Authority. The public works director and/or public works operations supervisor may issue a Stage 3 water alert upon the determination that a water system condition exists that satisfies the conditions of this stage only after consultation with, and approval by, the city manager. Extension of Stage 3 alerts beyond one month must be approved by the city council.

D. Actions.

1. All Stage 1 and Stage 2 actions shall be required herein.

2. Irrigation of landscaping, turf, and ornamental plants for residences shall only be performed if the event duration is determined to last beyond five days and shall be on a rotating basis based on the last digit of the site address. Addresses that are odd-numbered shall water only on odd-numbered days, and even-numbered addresses shall water only on even-numbered days.

E. Termination. Suspension of a Stage 3 water alert shall be at the discretion and judgment of the public works director and/or public works operations manager, with concurrence by the city manager, and shall be based on reservoir water level recovery, impending weather conditions, and/or any other relevant factors. [Ord. 735 § 2, 2006.]

13.35.070 Stage 4 – Total loss of surface water source or systemic catastrophe.

A. Definition. Stage 4 water alerts represent the greatest level of threat to the city and are prompted by a short- or long-term total loss of surface water as a source for any reason and/or a total loss of treatment plant production. Stage 4 water alerts are used to preserve and ration our limited water supply for domestic and drinking water purposes.

B. Duration. Stage 4 events can last from as little as a week up to several months or longer.

C. Authority. The public works director and/or public works operations supervisor may call for a Stage 4 water alert upon the determination that a water system condition exists that satisfies the conditions of this stage only after emergency consultation with, and approval by, the city manager and the city council.

D. Actions.

1. All Stage 1, Stage 2 and Stage 3 actions shall be required herein. Residential metered water rationing may also be implemented if necessary.

2. The use of water from fire hydrants for any use other than fire protection is prohibited.

3. All irrigation of landscape, turf or ornamental plants shall be summarily prohibited for all classes, groups, and types of water users without exception.

4. Commercial, industrial and institutional water users shall be limited to only such water use as is necessary for basic operations on a mandatory basis.

E. Termination. Suspension of a Stage 4 water alert shall be at the discretion and judgment of the public works director and/or public works operations manager, with concurrence by the city manager and council, and shall be based on alternatives to, or resumption of, surface water supply, reservoir water level recovery, and/or any other relevant factors. [Ord. 735 § 2, 2006.]

13.35.080 Water usage curtailment plan summary.

The foregoing is not intended as an exhaustive description of all possible calamities that may be encountered by the city regarding water supply, storage, distribution or use. It is meant to serve as a guideline for how the city and its citizens are expected to respond in emergency situations.

The effort to enumerate various levels of threat is not meant to rank or categorize the importance of any one event over another. All situations and events must be evaluated based on the nature of their respective impact, not only upon the citizenry, but also on the effects to the viability of the watershed as well.

Catastrophic events such as major earthquakes, floods, significant terrorist activity or highly uncharacteristic weather occurrences are beyond the scope of this chapter and shall be dealt with in accordance to county and state emergency management planning.

Actions called for herein may not be the only steps to be undertaken in a crisis situation and other alternatives may be identified as the need is foreseen. Cooperation between the city and citizens will be paramount to the success of this plan and to facilitate an expedient return to our accustomed norms. [Ord. 735 § 2, 2006.]

13.35.090 Violation – Penalty.

Any person violating any provision of this chapter, upon conviction thereof, shall be punished by a fine not exceeding $300.00. [Ord. 735 § 3, 2006.]

Chapter 13.40

STORM SEWER UTILITY

Sections:

13.40.010 Definitions.
13.40.015 Abbreviations.
13.40.020 Intent and purpose.
13.40.022 Applicability.
13.40.024 Responsibility for administration.
13.40.030 Establishment of a storm sewer utility fee.
13.40.040 Use of storm sewer utility fee.
13.40.050 Calculation of storm sewer utility fee.
13.40.060 Billings and collection.
13.40.070 Enforcement.
13.40.080 Permits required.
13.40.090 Approval of drawings.
13.40.100 Construction to conform to standards.
13.40.110 Inspection, approval of construction.
13.40.120 Connection to stormwater mains.
13.40.130 Extension of stormwater systems.
13.40.140 Tapping of manholes.
13.40.150 Illegal discharges.
13.40.160 Illicit connections.
13.40.170 Waste disposal prohibitions.
13.40.180 Discharges in violation of industrial or construction activity NPDES stormwater discharge permit.
13.40.190 Notification of spills.
13.40.200 Requirement to eliminate illegal discharges.
13.40.210 Requirement to eliminate illicit connections.
13.40.220 Requirement to monitor and analyze.
13.40.230 Suspension of access.
13.40.240 Damage to the stormwater system.
13.40.250 Notice of violation.
13.40.260 Appeal.
13.40.270 Abatement by city.
13.40.280 Recovery of abatement costs.
13.40.290 Immediate abatement.
13.40.300 Penalties for violations.
13.40.310 Violations deemed a public nuisance.
13.40.320 Severability.
13.40.330 Ultimate responsibility of the discharger.

13.40.010 Definitions.

A. "City" means the city of Philomath, a municipal corporation of the state of Oregon.

B. "City manager" means the person chosen by the Philomath city council to meet the requirements of Section 5.3 of the Philomath Charter or such person as may be designated by the city manager to act in his/her name and capacity.

C. "Clean Water Act" means the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and any subsequent amendments thereto.

D. "Developed property" shall mean any property which has been altered from its natural condition to now include buildings or other structures, private storm drainage facilities, mining, dredging, filling, grading, paving, excavation or drilling operations.

E. "Director" shall mean the city public works director or the person designated by the director.

F. "Discharger" means any person who discharges or causes to be discharged any pollutant into the stormwater system.

G. "Floodplain" means the relatively flat or lowland area adjoining a river, stream, watercourse, lake, or other water body that has been, or may be, inundated temporarily by floodwater.

H. "Impervious surfaces" are those surface areas which either prevent or retard saturation of water into the land surface and cause water to run off the land surface in greater quantities or at an increased rate of flow from that present under natural conditions preexistent to development. Examples of impervious surfaces include, but are not limited to, rooftops, concrete or asphalt sidewalks, walkways, patio areas, driveways, parking lots or storage areas and gravel, oil, macadam or other surfaces which similarly impact the natural saturation or runoff patterns which existed prior to development.

I. "Hazardous materials" means any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause or significantly contribute to a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

J. "Illegal discharge" means any direct or indirect nonstormwater discharge to the stormwater system, except as exempted by PMC 13.40.150.

K. "Illicit connection" is defined as either of the following:

1. Any drain or conveyance, whether on the surface or subsurface, that allows an illegal discharge to enter the stormwater system including but not limited to any conveyances that allow any nonstormwater discharge including sewage, process wastewater, and wash water to enter the stormwater system and any connections to the stormwater system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by a government agency; or

2. Any drain or conveyance connected from a commercial or industrial land use to the stormwater system that has not been documented in drawings, maps, or equivalent records and approved by the city.

L. "Nonpoint source" means causes of water pollution that are not associated with point sources. Examples include: fertilizer/pesticide runoff; sediment runoff from construction; materials from deicing activities (salt or sand). Nonpoint sources may enter a discrete conveyance system and become a point source.

M. "Nonstormwater discharge" means any discharge to the stormwater system that is not composed entirely of stormwater.

N. "Person" means any individual, partnership, copartnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity, or any other legal entity, or their legal representatives, agents, or assigns. The masculine gender shall include the feminine; the singular shall include the plural where indicated by the context.

O. "Point source" means any discernible, confined, and discrete conveyance, including but not limited to pipes, ditches, channels, tunnels, or conduits, from which pollutants are or may be discharged to a receiving water.

P. "Pollutant" means anything that causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oils; automotive fluids; nonhazardous liquid and solid wastes and yard wastes; any liquid having a temperature that could have an adverse effect on the receiving streams; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal bacteria and pathogens; dissolved and particulate metals; animal wastes; residues that result from constructing a building or a structure (including but not limited to sediments, slurries, and concrete rinsates); and noxious or offensive matter of any kind.

Q. "Pollution" means the human-made or human-induced alteration of the quality of waters by waste to a degree that unreasonably affects or has the potential to unreasonably affect the waters of the state.

R. "Premises" means any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

S. "Runoff control" shall mean any measure approved by the director that eliminates stormwater runoff from land surfaces on which development exists.

T. "Stormwater systems" are defined as those natural or manmade facilities used to convey stormwater from public or private places to appropriate destinations with minimal adverse impact. Included in the storm sewer system are drainage ditches, culverts, manholes, pipes, detention ponds, streams, creeks, sumps, storage facilities, curbs, gutters, catchment basins, pump stations and any other facility necessary for the conveyance or treatment of stormwater.

U. "Stormwater" shall mean water from precipitation, surface or subterranean water from any source, drainage and nonseptic wastewater.

V. "Water or waters of the state" means any lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Pacific Ocean within the territorial limits of the state of Oregon and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), which are wholly or partially within or bordering the state or within its jurisdiction.

W. "Watercourse" means a channel in which a flow of water occurs, either continuously or intermittently, and if the latter, with some degree of regularity. Watercourses may be either natural or artificial. [Ord. 753 § 1, 2009.]

13.40.015 Abbreviations.

"NPDES" means National Pollutant Discharge Elimination System. [Ord. 753 § 1, 2009.]

13.40.020 Intent and purpose.

A. The intent and purpose of this chapter is to provide for the health, safety, and general welfare of the citizens of the city of Philomath through the formation of a storm sewer utility in order to protect and enhance the water quality and natural functions of watercourses and water bodies through the regulation of stormwater discharges; to set forth uniform requirements for direct and indirect contributors to the stormwater system; and to enable the city of Philomath to comply with applicable state and federal laws.

B. In order to fulfill its intent, the city, pursuant to the statutes of the state of Oregon and the powers granted in the charter of the city, the council declares its intent to acquire, own, construct, reconstruct, improve, equip, operate, maintain, and repair storm sewer systems within the city limits and outside the city limits when consistent with city policy, intergovernmental agreements, and in accordance with federal and state law. [Ord. 753 § 1, 2009.]

13.40.022 Applicability.

This chapter shall apply to all water entering the stormwater system generated on any developed and undeveloped lands unless explicitly exempted by PMC 13.40.150. [Ord. 753 § 1, 2009.]

13.40.024 Responsibility for administration.

The director shall administer, implement, and enforce the provisions of this chapter. Any powers granted or duties imposed upon the director may be delegated in writing by the director to persons or entities acting in the beneficial interest of or in the employ of the city. [Ord. 753 § 1, 2009.]

13.40.030 Establishment of a storm sewer utility fee.

There is hereby established a storm sewer utility fee for each developed property within the corporate limits of the city. Such fee shall not be imposed in amounts greater than that which is necessary, in the judgment of the council, to provide sufficient funds to properly acquire, construct, equip, operate, maintain, extend and repair the city's stormwater systems. Fees for users shall be based upon impervious surface area and individual mitigation efforts, if any. The council, by resolution, shall establish the amount and effective date of the fee and may, from time to time by resolution, change the amount of the fee. [Ord. 753 § 1, 2009.]

13.40.040 Use of storm sewer utility fee.

Storm sewer utility fees shall be used for the acquisition, construction, operation, maintenance, and repair (including renewal, replacement, and improvement) of the city's storm sewer system. To the extent that the fees collected may not be sufficient to properly meet the expenses of the stormwater system, the cost of same may be paid from other city funds as may be determined by the council. The fees collected by virtue of this chapter shall not be used for general or other governmental purposes of the city except to pay for the equitable share of the cost of accounting, management, and other administrative costs attributable to the stormwater system. [Ord. 753 § 1, 2009.]

13.40.050 Calculation of storm sewer utility fee.

A. The amount of the monthly storm sewer utility fee shall be determined by resolution approved by the council based upon classifications of impervious surface area.

B. Whenever a property owner takes measures to eliminate stormwater runoff from an impervious surface, the director shall, upon written request, determine the percent of stormwater flow which has been eliminated. The director shall authorize a proportional reduction in the storm sewer utility fee for approved runoff control measures. If the property owner establishes, to the satisfaction of the director, that all runoff from a property is disposed of without utilizing public storm drainage facilities either directly or indirectly, there will be

no fees charged under the provisions of this chapter.

C. The storm sewer utility fee shall not be imposed for impervious surfaces for city-owned facilities or for a public street, road, or highway.

D. The person responsible for payment of the storm sewer utility fee may request in writing that the director confirm the calculation of impervious surfaces in the event of a dispute over the amount of the storm sewer utility fee. [Ord. 753 § 1, 2009.]

13.40.060 Billings and collection.

A. The storm sewer utility fee shall be billed and collected with the monthly city utility bill. The bill shall become due and payable at the same time as other city utility fees.

B. Partial payments on utility bills shall be allocated on a prorated basis to each utility balance due.

C. The person responsible for payment of the storm sewer utility fee shall be the person who uses the storm sewer services and, unless otherwise determined, shall be the same person as is responsible for payment of other city utilities. If there are no other city utilities, the person(s) having the right to occupy the property shall be responsible for the payment of the storm sewer utility fee.

D. The finance director shall be responsible for the billing and collection of funds. [Ord. 753 § 1, 2009.]

13.40.070 Enforcement.

Any fee due which is not paid when due, together with interest at the maximum statutory rate from the due date, may be recovered in an action at law by the city. In addition to any other remedies or penalties provided by this chapter or any other city ordinance, failure of any person responsible to pay fees promptly when due shall subject the person responsible to discontinuance of any utility services provided by the city, and the city manager is empowered and directed to enforce this provision against such delinquent users. The employees of the city shall, at all reasonable times, have access to any improved property served by the city for inspection, repair, or the enforcement of the provisions of this chapter. [Ord. 753 § 1, 2009.]

13.40.080 Permits required.

Prior to commencing any work on a building storm drain or public stormwater system, all applicable permits from the city of Philomath and other agencies must be secured and all associated permit fees paid in full. The permits necessary may include, but are not limited to, a plumbing permit, a permit to construct public facilities, and an encroachment permit. The permit shall set forth at what point the connection is to be made, the location, size of facility, type of construction, and other details as the director or his/her designee may reasonably require. [Ord. 753 § 1, 2009.]

13.40.090 Approval of drawings.

Drawings for all public stormwater systems shall be approved by the director or his/her designee prior to construction. Unless otherwise approved by the director, such drawings shall conform to applicable stormwater system master plans as well as city of Philomath public works design standards. Such approval shall be required in addition to any other approval required by state law. [Ord. 753 § 1, 2009.]

13.40.100 Construction to conform to standards.

All public stormwater systems, whether publicly or privately constructed, shall conform to city of Philomath public works design standards requirements, materials, and workmanship. Failure to meet tests for performance and workmanship shall be grounds for refusal of acceptance by the city. Permits to connect to stormwater systems that have not been accepted will not be issued until the system has been approved and accepted. [Ord. 753 § 1, 2009.]

13.40.110 Inspection, approval of construction.

Reasonable notice and access shall be given to allow inspection of all work in connection with the construction or reconstruction of any public stormwater facilities. Use of the stormwater facilities will not be allowed until the building storm sewer and the public improvement receive final approval. [Ord. 753 § 1, 2009.]

13.40.120 Connection to stormwater mains.

Piped storm drain connections shall be made only to the single wye branch designated for use by the connecting property. If no wye is available, connection shall be made by tapping the stormwater main line in accordance with city of Philomath public works design standards and only after securing all necessary permits and paying all required permit fees. [Ord. 753 § 1, 2009.]

13.40.130 Extension of stormwater systems.

The following rules shall apply to all stormwater system extensions:

A. The minimum size of stormwater mains or other stormwater system components to be installed shall be in conformance with the most recent version of the city of Philomath public works design standards where a larger size is not needed to provide an adequate system, conform with the size of the existing system, meet future needs, or conform to the size specified by the city of Philomath's stormwater system facility plan.

B. All stormwater system facilities serving more than one property shall be public, installed in public rights-of-way or public utility easements. The normal routing for stormwater system extensions shall be in a dedicated right-of-way.

C. All stormwater system extensions shall extend to the extreme property line of the development or lot. If the property has excess frontage on the right-of-way and only partial development is to occur, then some consideration may be given to shortening the initial extension, provided sufficient assurance is given to ensure the completion of the extension at the time other development occurs. Where systems are being extended into the interior of a property or development, the systems shall be extended through to the boundaries of the property at all such points as shall be needed to provide current or future service to adjacent properties. [Ord. 753 § 1, 2009.]

13.40.140 Tapping of manholes.

Tapping of building storm drains directly into manholes is prohibited except where shown in construction drawings that have been approved by the director or his/her designee. [Ord. 753 § 1, 2009.]

13.40.150 Illegal discharges.

No person shall cause any pollutant to be discharged to any waters of the state or cause any pollutant to be placed in a location where such pollutant is likely to escape or be carried into the stormwater system and by said stormwater systems into the waters of the state.

The commencement, conduct, or continuance of any illegal discharge is prohibited except as described as follows:

The prohibition shall not apply to any nonstorm discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered by the state of Oregon under the authority of the Federal Environmental Protection Agency; provided, that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided the written approval has been granted by the city of Philomath for any discharge to the stormwater system. [Ord. 753 § 1, 2009.]

13.40.160 Illicit connections.

No person shall construct, use, maintain, or allow the continued existence of an illicit connection to the stormwater system. Existing illicit connections are expressly prohibited, without limitation, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection. [Ord. 753 § 1, 2009.]

13.40.170 Waste disposal prohibitions.

No person shall throw, deposit, leave, maintain, keep, or permit to be thrown, deposited, left, maintained, or kept in or upon any public or private property, driveway, parking area, street, alley, sidewalk, component of the stormwater system, or waters of the state, any refuse, rubbish, garbage, litter, or other discarded or abandoned objects, articles, and accumulations, so that the same may cause or contribute to pollution. [Ord. 753 § 1, 2009.]

13.40.180 Discharges in violation of industrial or construction activity NPDES stormwater discharge permit.

Any person subject to an industrial or construction activity NPDES stormwater discharge permit

shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the director prior to or as a condition of a subdivision map, site plan, building permit, or development or improvement plan; upon inspection of the facility; during any enforcement proceeding or action; or for any other reasonable cause. [Ord. 753 § 1, 2009.]

13.40.190 Notification of spills.

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation, has information of any known or suspected release of materials that is resulting in or may result in illegal discharges or pollutants discharging into stormwater, the stormwater system, or waters of the state, said person shall take all necessary steps to ensure the discovery, immediate notification, containment, and cleanup of such release.

A. In the event of such a release of hazardous materials, said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of nonhazardous materials, said person shall notify the public works department immediately in person or by telephone. Notification of the emergency response agencies or the public works department does not relieve the discharger of their responsibility to also notify appropriate state and federal agencies. The public works director or his/her designee shall be permitted access to the property where the spill originated at any time he/she feels is appropriate to monitor and inspect the progress being made to eliminate the illegal discharge.

Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the city of Philomath public works director within five business days of the original notice. The notice shall include a detailed written statement submitted by the discharger describing the causes of the discharge, measures taken to mitigate the spill, and the measures taken to prevent any future occurrence.

If the discharge emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

B. The person responsible for the discharge of pollutants or hazardous materials to the environment shall be responsible for all cleanup costs. All related city expenses including, but not limited to, costs for identification, hazard assessment, and containment shall also be fully reimbursed.

C. In general, reimbursement costs are those incident costs that are eligible, reasonable, necessary, and allocable to the incident. Costs allowable for reimbursement may include, but are not limited to:

1. Disposable materials and supplies provided, consumed and expended specifically for the purpose of mitigating the incident for which reimbursement is being requested;

2. Compensation of the employees for the time devoted specifically to the incident;

3. Rental or leasing of equipment used specifically for the incident;

4. Replacement costs for equipment or property owned by the city that is contaminated or damaged beyond reuse or repair;

5. Decontamination of equipment that was used during the incident;

6. Special technical services required for the incident; and

7. Laboratory expenses for the purpose of analyzing samples taken during the incident. [Ord. 753 § 1, 2009.]

13.40.200 Requirement to eliminate illegal discharges.

The director may require, by written notice, that a person responsible for an illegal discharge immediately, or by a specified date, discontinue the discharge and, if necessary, take measures to eliminate the source of the discharge to prevent the occurrence of future illegal discharges. [Ord. 753 § 1, 2009.]

13.40.210 Requirement to eliminate illicit connections.

The director may require, by written notice, that a person responsible for an illicit connection to the stormwater system immediately, or by a specified date, comply with the requirements of this chapter to eliminate the connection, regardless of whether or not the connection or discharges to it had been

established or approved prior to the effective date of the ordinance codified in this chapter.

If, subsequent to eliminating a connection found to be in violation of this chapter, the responsible person can demonstrate that an illegal discharge will no longer occur, said person may request city approval to reconnect. The reconnection or reinstallation of the connection shall be at the responsible person's expense. [Ord. 753 § 1, 2009.]

13.40.220 Requirement to monitor and analyze.

The director may require, by written notice, that any person engaged in any activity and/or owning or operating any facility that may cause or contribute to stormwater pollution, illegal discharges, and/or nonstormwater discharges to the stormwater system or waters of the state, to undertake at said person's expense such monitoring and analyses and furnish such reports to the city of Philomath as deemed necessary to determine compliance with this chapter. [Ord. 753 § 1, 2009.]

13.40.230 Suspension of access.

The city of Philomath may, without prior notice, suspend access to the stormwater system when such suspension is necessary to stop an actual or threatened discharge that presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, to the stormwater system, or waters of the state.

If the violator fails to comply with a suspension order, the city of Philomath may take such steps as deemed necessary to prevent or minimize damage to the stormwater system, prevent or minimize danger to the environment, or to prevent or minimize danger to persons. [Ord. 753 § 1, 2009.]

13.40.240 Damage to the stormwater system.

When a discharge causes obstruction, damage, or other impairment to the stormwater system, the director may assess a charge against the discharger for the work required to clean or repair the facility. If the discharger fails to pay said charge, the costs to clean or repair the facility may be assessed against the property pursuant to PMC 13.40.280. [Ord. 753 § 1, 2009.]

13.40.250 Notice of violation.

Whenever the director finds that a person has violated a provision of this chapter, the director may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

A. The performance of monitoring, analyses, and reporting;

B. The elimination of illicit connections or illegal discharges;

C. That violating discharges, practices, or operations cease and desist; and

D. The implementation of source controls or treatment best management practices. [Ord. 753 § 1, 2009.]

13.40.260 Appeal.

Notwithstanding the provisions of PMC 13.40.290, any person receiving a notice of violation under PMC 13.40.250 may appeal the determination of the director. The appeal must be in writing and must be received by the city manager within seven days of receipt of the notice of violation. If requested in writing, a hearing on the appeal shall be scheduled before the city council of the city of Philomath within 30 days of the receipt of the appeal. Thereafter, the city council may render its decision based upon the record of the hearing on the notice of violation, grant an additional hearing to take additional evidence, or conduct a de novo hearing.

The city council, in consultation with the city attorney, shall establish rules and procedures for the conduct of the appeal in order to accord the discharger minimum due process. The burden of proof, on appeal, shall remain with the city by a preponderance of the evidence. The city council shall affirm, reverse, or modify the findings, conclusions, and requirements of the notice of violation and shall serve its decision, in writing, upon the discharger. The decision of the city council shall be final. [Ord. 753 § 1, 2009.]

13.40.270 Abatement by city.

If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or in the event of an appeal under PMC 13.40.260, within 10 days of the decision of the city council upholding the decision of the director, then the city or a contractor designated by the

director is authorized to enter upon the subject private property and take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent, or person in possession of any premises to refuse to allow the city or designated contractor to enter upon the premises for the purposes set forth above. [Ord. 753 § 1, 2009.]

13.40.280 Recovery of abatement costs.

A. Within 30 days after abatement of the condition by city, the director or his designee shall prepare a recap of all costs incurred to abate the condition, including administrative costs.

B. A summary of costs shall be mailed by registered or certified mail to the same person or persons to whom the notice of violation was sent per PMC 13.40.250, or their successors in title, and shall advise of the city's intent to assess said costs against the real property and shall further advise the owner/owners of their right to a hearing before the city council prior to assessment upon receipt by the director, within 15 days of the date of mailing, of a written request for a hearing.

C. If the costs of abatement are not paid to the city within 30 days from the date of the mailing of the summary of costs, said summary shall be presented to the city council and, if the council finds said costs to be reasonable, the council shall pass an ordinance directing that the amount of said costs be entered in the docket of city liens; and upon such entry being made, said costs shall constitute a lien upon the property in question.

D. The lien shall be enforced and shall bear interest at a rate to be determined by the council at the time of the ordinance referred to in subsection (C) of this section. The interest shall commence from the date of entry of the lien in the lien docket and shall have priority over all other liens and assessments to the maximum extent permitted by law. The costs of filing the lien shall be included in the total cost of the lien.

E. An error in the name of the property owner/owners/agents 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. [Ord. 769 § 1, 2010; Ord. 753 § 1, 2009.]

13.40.290 Immediate abatement.

The director is authorized to require immediate abatement of any violation of this chapter that constitutes an immediate threat to the environment or the health, safety or well-being of the public. If any such violation is not abated immediately as directed by the director, the city of Philomath is authorized to enter onto private property and to take any and all measures required to remediate the violation. Any expense related to such remediation undertaken by the city of Philomath shall be fully reimbursed by the property owner and/or responsible party. Any relief obtained under this section shall not prevent the city from seeking other and further relief authorized under this chapter. [Ord. 753 § 1, 2009.]

13.40.300 Penalties for violations.

A. Any person violating any of the provisions of this chapter shall upon conviction thereof be punished by a fine of not less than $50.00 or more than $250.00 for each offense. A separate offense shall be deemed committed on each day or part of each day during which a violation occurs or continues.

B. The city may commence an action for appropriate legal and/or equitable relief in the appropriate local court to enforce the penalty or remedy imposed by the city hereunder. [Ord. 753 § 1, 2009.]

13.40.310 Violations deemed a public nuisance.

In addition to the enforcement processes and penalties herein before provided, any condition caused or permitted to exist in violation of any of the provisions of this chapter that is a threat to the environment, public health, safety, or welfare, and is declared and deemed a nuisance, may be summarily abated or restored by the city at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the city. [Ord. 753 § 1, 2009.]

13.40.320 Severability.

The provisions of this chapter are hereby declared to be severable. If any provision, clause,

sentence, or paragraph of the chapter or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this chapter. [Ord. 753 § 1, 2009.]

13.40.330 Ultimate responsibility of the discharger.

The standards set forth herein and promulgated pursuant to this chapter are minimum standards; therefore this chapter does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants into the waters of the state caused by said person. This chapter shall not create liability on the part of the city of Philomath, or any agent or employee thereof for any damages that result from any discharger's reliance on this chapter or any administrative decision lawfully made thereunder. [Ord. 753 § 1, 2009.]

Title 14

PUBLIC IMPROVEMENTS

Chapters:

14.10 Public Improvement Procedure
14.15 System Development Charges
14.20 Road Maintenance Fee
14.25 Reimbursement Districts

Chapter 14.10

PUBLIC IMPROVEMENT PROCEDURE

Sections:

14.10.010 Initiation of proceedings and report from the city engineer.
14.10.020 Council's action on report.
14.10.030 Resolution and notice of hearing.
14.10.040 Manner of doing work.
14.10.050 Hearing.
14.10.060 Call for bids.
14.10.070 Assessment ordinance.
14.10.080 Method of assessment and alternative methods of filing.
14.10.090 Remedies.
14.10.100 Notice of assessment.
14.10.110 Lien records and foreclosure proceedings.
14.10.120 Errors in assessment calculations.
14.10.130 Deficit assessment.
14.10.140 Rebates.
14.10.150 Abandonment of proceedings.
14.10.160 Curative provisions.
14.10.170 Reassessment.

14.10.010 Initiation of proceedings and report from the city engineer.

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

A. A map or plat showing the general nature, location and extent of the proposed improvement and the land to be assessed for the payment of any part of the cost thereof.

B. Plans, specifications and estimates of the work to be done; provided however, that where the proposed project is to be carried out in cooperation with any other governmental agency, the report may adopt the plans, specifications and estimates of such agency.

C. An estimate of the probable cost of the improvement, including any legal, administrative and engineering costs attributable thereto.

D. An estimate of the unit cost of the improvement to the specially benefited properties.

E. A recommendation as to the method of assessment to be used to arrive at a fair apportionment of the whole or any portion of the cost of the improvement to the properties specially benefited.

F. The description and assessed value of each lot, parcel of land or portion thereof to be specially benefited by the improvement, with the names of the record owners thereof and, when readily available, the names of the contract purchasers thereof.

G. A statement of outstanding assessments against property to be assessed. [Ord. 425 § 1, 1981.]

14.10.020 Council's action on report.

After the report shall have been filed with the city recorder, the council may thereafter by motion approve the report, modify the report and approve it as modified, require additional or different information for such improvement, or it may abandon the improvement. [Ord. 425 § 2, 1981.]

14.10.030 Resolution and notice of hearing.

After the city council shall have received the report as submitted or modified, the council shall by resolution declare its intention to make such improvement, provide the manner and method of carrying out the improvement and shall direct the city recorder to give notice of such improvement as follows:

A. By two publications one week apart in a newspaper of general circulation in the city of Philomath, and such notice shall state:

1. That the city has by resolution declared its intention to make such improvement.

2. The general description of the area in which such improvements shall be made.

3. The date on which the city council shall hold the public hearing, which date shall not be earlier than 10 days following the first publication of notice.

4. The place that the public hearing will be held.

5. That such public hearings, objections and remonstrance to the improvement will be heard by the city council.

6. That action on the proposed public improvement, except a sidewalk or an improvement unanimously declared by the council to be needed at once because of an emergency, shall be suspended for six months upon a remonstrance thereto by the owners of two-thirds of the property to be specially assessed therefor.

7. The total cost of the improvement.

8. That a written report on the improvement containing a description of the owners to be specially benefited by the improvement, and names of the owners of such property, and the estimate of the unit cost of the improvement to the property is on file in the office of the city recorder and is subject to public examination.

B. By mailing copies of the following notice by registered or certified mail to the owners of the property to be assessed for the costs of such improvement. For the purposes of this section, "owner" shall mean the record holder of legal title to the land, except that if there is a purchaser of the land according to a recorded land sale contract or according to a verified writing by the record holder of legal title to the land filed with the city recorder, the said purchaser shall be deemed the owner.

1. That a written report on the improvement is on file in the office of the city recorder and is subject to public examination.

2. That the city council will hold a public hearing on the proposed improvement and the date and place of the public hearing.

3. That the public hearing, objections and remonstrances to such improvement shall be heard by the city council.

4. That action on any proposed public improvement, except a sidewalk or an improvement unanimously declared by the council to be needed at once because of an emergency, shall be suspended for six months upon a remonstrance thereto by the owners of two-thirds of the property to be specially assessed therefor.

5. A description of the property to be specially benefited by the improvement, the owners of such property, and the estimate of the unit cost of the improvement to the property to be specially benefited, and the total cost of the improvement to be paid for by special assessments to benefited properties. [Ord. 425 § 3, 1981.]

14.10.040 Manner of doing work.

The city council may provide in the improvement resolution that the construction work may be done in whole or in part by the city of Philomath, by a contract, or by any other governmental agency, or by any combination thereof. [Ord. 425 § 4, 1981.]

14.10.050 Hearing.

At the time of the public hearing on the proposed improvement, action on any proposed public improvement, except a sidewalk or an improvement unanimously declared by the council to be needed at once because of an emergency, shall be suspended for six months upon a remonstrance thereto by the owners of two-thirds of the property to be specially assessed therefor. For the purposes of this section, "owner" shall mean the record holder of legal title to the land, except that if there is a purchaser of the land according to a recorded land sale contract or according to a verified writing by the record holder of legal title to the land filed with the city recorder, the said purchaser shall be deemed the owner. If the required number of owners do not remonstrate against the public improvement, the city council may, by motion at the time of said hearing or within 60 days thereafter, order said improvement to be carried out in accordance with the resolution or the city council may on its own motion abandon the improvement. [Ord. 425 § 5, 1981.]

14.10.060 Call for bids.

The city council may, in its discretion, direct the city recorder to advertise for bids for construction of all, or any part of, the improvement project on the basis of the council-approved report and before the passage of the resolution, or after the passage of the resolution and before the public hearing on the proposed improvement, or at any time after said public hearing; provided, however, that no contract shall be let until after the public hearing has been held to hear remonstrances and oral objections to the proposed improvement. In the event that any part of the work of the improvement is to be done under contract bids, then the council shall follow its bid solicitation process as specified in the city's

public contracting procedures, and the contracts may be let to the responsible bidder whose bid is in the best interests of the city as determined in the sole discretion of the city council; provided, that the council shall have the right to reject any or all bids when they are deemed unreasonable or unsatisfactory in the city council's discretion. The city shall provide for the bonding of all contractors for the faithful performance of any contract let under its authority, and the provisions thereof in case of default shall be enforced by action in the name of the city of Philomath.

If the city council finds, upon opening bids for the work of such improvement, that the bid in the best interest of the city is substantially in excess of the estimate, it may, in its discretion, provide for holding a special hearing of objections to the proceeding with the improvement on the basis of such bid; and it may direct the city recorder to publish one notice thereof in a newspaper of general circulation in the city of Philomath. [Ord. 738 § 4, 2006; Ord. 425 § 6, 1981.]

14.10.070 Assessment ordinance.

If the city council determines that the local improvement shall be made, when the estimated cost thereof is ascertained on the basis of the contract award of city departmental cost, or after the work is done and the cost thereof has been actually determined, the city council shall determine whether the property benefited shall bear all or a portion of the cost. The city recorder or other person designated by the council shall prepare the proposed assessment to the respective lots within the assessment district and file it in the appropriate city office. Notice of such proposed assessment shall be mailed by registered or certified mail to the owner of each lot proposed to be assessed, which notice shall state as follows:

A. The amount of assessment proposed on that property.

B. The date by which time such objections shall be filed with the city recorder.

C. That any such objection shall be in writing and shall state the grounds of the objection.

D. The time and place that the city council shall consider any such objections.

The city council shall consider such objections and may adopt, correct, modify or revise the proposed assessments, and shall determine the amount of assessment to be charged against each lot within the district, according to the special and peculiar benefits accruing thereto from the improvement, and shall by ordinance spread the assessments. [Ord. 425 § 7, 1981.]

14.10.080 Method of assessment and alternative methods of filing.

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

A. Use any just and reasonable method of determining the extent of any improvement district consistent with the benefits derived.

B. Use any method of apportioning the sum to be assessed as is just and reasonable between the properties determined to be specially benefited.

C. Authorize payment by the city of all, or any part of, the cost of any such improvement when, in the opinion of the city council, the topographical or physical conditions, or unusual or excessive public travel, or other character of the work involved warrants only a partial payment or no payment by the benefited property of the costs of improvement.

Nothing contained in this chapter shall preclude the council from using any other available means of financing improvements, including federal or state grants-in-aid, sewer charges or fees, revenue bonds, general obligation bonds, or any other legal means of finance. In the event that such other means of financing improvements are used, the city council may, in its discretion, levy special assessments according to the benefits derived to cover any remaining part of the costs of the improvement. [Ord. 425 § 8, 1981.]

14.10.090 Remedies.

Subject to the curative provisions of PMC 14.10.160 and the rights of the city to reassess as provided in PMC 14.10.170, proceedings for writs of review and suits in equity may be filed no later than 60 days after the passage by the city council of the ordinance spreading the assessment; providing that the property owner shall have filed a written objection to the proposed assessment as provided in PMC 14.10.070. A property owner who has filed a written objection with the city recorder, as required by PMC 14.10.070, shall have the right to apply for a writ of review based on the grounds that the council, in the exercise of judicial functions, has exercised such functions erroneously or arbi-

trarily, or has exceeded its jurisdiction to the injury of some substantial right of such owner, if the facts supporting said ground have been specifically set forth in the written objection as required in PMC 14.10.070. A property owner who has filed a written objection with the city recorder, as required by PMC 14.10.070, may commence a suit for equitable relief based on a total lack of jurisdiction on the party of the city; and if notice of the improvement shall not have been sent to the owner, and if the owner did not have actual knowledge of the proposed improvement prior to the hearing, then the owner may file written objections alleging lack of jurisdiction with the city recorder within 30 days after receiving notice of knowledge of the improvement. No provision of this section shall be construed so as to lengthen any period of redemption or so as to affect the running of any statute of limitation or equitable defense, including laches. Any proceeding on a writ of review or suit in equity shall be abated if proceedings are commenced and diligently pursued by the city council to remedy or cure the alleged errors or defects. [Ord. 425 § 9, 1981.]

14.10.100 Notice of assessment.

A. Within 10 days after the ordinance levying assessment has been passed, the city recorder shall send by registered or certified mail a notice of assessment to the owner of the assessed property. Such notice shall contain the following:

1. The date of the assessment ordinance.
2. A copy of the assessment ordinance.
3. That upon the failure of the owner of the property assessed to make application to pay the assessment in installments within 10 days from the date of the first publication or notice or upon the failure of the owner to pay the assessment in full within 30 days from the date of the assessment ordinance, then interest will commence to run on the assessment and that the property assessed will be subject to foreclosure.
4. The description of the property assessed and the name of the owner of the property.
5. The amount of each assessment.

B. The city recorder shall also publish notice of such assessment twice in a newspaper of general circulation in the city of Philomath, the first publication of which shall be made not later than 10 days after the date of the assessment ordinance. This notice shall contain the following information:

1. The date and number of the assessment ordinance.
2. The names and addresses of the owners of the property assessed.
3. That the engineering report and the ordinance spreading assessments containing the description of the property assessed and the amount of each assessment is on file at the office of the city recorder and is available for public inspection.
4. That upon the failure of the owner of the property assessed to make application to pay the assessment in installments within 10 days from the date of the first publication or notice or upon the failure of the owner to pay the assessment in full within 30 days from the date of the assessment ordinance, then interest will commence to run on the assessment and that the property assessed will be subject to foreclosure.
5. The total amount of the assessment cost for the project. [Ord. 425 § 10, 1981.]

14.10.110 Lien records and foreclosure proceedings.

After passage of the assessment ordinance by the city council, the city recorder shall enter into the docket of city liens a statement of the amounts assessed upon each particular lot, parcel of land or portions thereof which have been assessed for such improvements. All assessment liens of the city of Philomath shall be superior and prior to all other liens or encumbrances on property insofar as the laws of the state of Oregon permit. Interest shall be charged at a rate to be set by the city council in the ordinance spreading the assessment but not to exceed the rate of 14 percent per annum until paid on all amounts not paid within 30 days from the date of the assessment ordinance; and after expiration of 30 days from the date of such assessment ordinance, the city may proceed to foreclose or enforce collection of the assessment liens in the manner provided by the general law of the state of Oregon; provided however, that the city may, at its option, enter a bid for the property being offered at a foreclosure sale, which bid shall be prior to all bids except those made by persons who would be entitled under the laws of the state of Oregon to

redeem such property. [Ord. 445 § 1, 1981; Ord. 425 § 11, 1981.]

14.10.120 Errors in assessment calculations.

Claimed errors in the calculation of assessments shall be called to the attention of the city recorder who shall determine whether there has been an error in fact. If the city recorder shall find that there has been an error in fact, he shall recommend to the council an amendment to the assessment ordinance to correct such error; and upon enactment of such amendment, the city recorder shall make the necessary correction in the docket of city liens and send a corrected notice of assessment by registered or certified mail. [Ord. 425 § 12, 1981.]

14.10.130 Deficit assessment.

In the event that an assessment shall be made before the total cost of the improvement is ascertained, and if it is found that the amount of the assessment is insufficient to defray the expenses of the improvement, the council may by motion declare such deficit and prepare a proposed deficit assessment. The procedures for setting the deficit assessment shall be those procedures set forth in this chapter as provide for the passage of the ordinance spreading the assessments, the notice of the ordinance spreading the assessments, the docketing in the lien dockets of the ordinance spreading the assessments and all other related procedures. [Ord. 425 § 13, 1981.]

14.10.140 Rebates.

If, upon completion of the improvement project, it is found that the assessment previously levied upon any property is more than sufficient to pay the costs of such improvements, then the council must ascertain and declare the same by ordinance; and, when so declared, the excess amounts must be entered on the lien docket as a credit upon the appropriate assessment. In the event that any assessment has been paid, the person who paid the same, or his legal representative, shall be entitled to the repayment of such rebate credit or the portion thereof which exceeds the amount unpaid on the original assessment. [Ord. 425 § 14, 1981.]

14.10.150 Abandonment of proceedings.

The city council shall have full power and authority to abandon and rescind proceedings for improvements made under this chapter at any time prior to the final completion of such improvements; and if liens have been assessed upon any property under such procedure, they shall be canceled; and any payments made on such assessments shall be refunded to the person paying the same, his assigns or legal representatives. [Ord. 425 § 15, 1981.]

14.10.160 Curative provisions.

No improvement assessment shall be rendered invalid by reason of a failure of the report to contain all of the information required by PMC 14.10.010; or by reason of a failure to have all of the information required to be in the improvement resolution, the assessment ordinance, the lien docket, or notices required to be published and mailed; nor by the failure to list the name of, or mail notice to, the owner of any property as required by this chapter; or by reason of any other error, mistake, delay, omission, irregularity, or other act, jurisdictional or otherwise, in any of the proceedings or steps herein specified, unless it appears that the assessment is unfair or unjust in its effect upon the person complaining; and the city council shall have the power and authority to remedy and correct all such matters by suitable action and proceedings. [Ord. 425 § 16, 1981.]

14.10.170 Reassessment.

Whenever any assessment, deficit, or reassessment for any improvement which has been made by the city has been, or shall be, set aside, annulled, declared or rendered void, or its enforcement restrained by any court of this state, or any federal court having jurisdiction thereof, or when the council shall be in doubt as to the validity of such assessment, deficit assessment, or reassessment, or any part thereof, then the council may make a reassessment in the manner provided by the laws of the state of Oregon. [Ord. 425 § 17, 1981.]

Chapter 14.15

SYSTEM DEVELOPMENT CHARGES

Sections:

14.15.010 Purpose.
14.15.020 Scope.
14.15.030 Definitions.
14.15.040 System development charge established.
14.15.050 Methodology.
14.15.060 Authorized expenditures.
14.15.070 Expenditure restrictions.
14.15.080 Improvement plan.
14.15.090 Collection of charge.
14.15.100 Installment payment.
14.15.110 Exemptions.
14.15.120 Credits.
14.15.130 Notice.
14.15.140 Segregation and use of revenue.
14.15.150 Appeal procedure.
14.15.160 Prohibited connection.
14.15.170 Penalty.
14.15.180 Construction.
14.15.190 Classification.

14.15.010 Purpose.

The purpose of the system development charge is to impose a portion of the cost of capital improvements for water, wastewater drainage, streets, flood control, and parks upon those developments that create the need for or increase the demands on capital improvements. [Ord. 678 § 1, 1999.]

14.15.020 Scope.

The system development charge imposed by this chapter is separate from and in addition to any applicable tax, assessment, charge, or fee otherwise provided by law or imposed as a condition of development. [Ord. 678 § 2, 1999.]

14.15.030 Definitions.

For purposes of this chapter, the following mean:

"Capital improvements" means facilities or assets used for:

1. Water supply, treatment and distribution;
2. Wastewater collection, transmission, treatment and disposal;
3. Drainage and flood control;
4. Transportation; or
5. Parks and recreation.

"Development" means conducting a building or mining operation, making a physical change in the use or appearance of a structure or land, dividing land into two or more parcels (including partitions and subdivisions), and creating or terminating a right of access.

"Improvement fee" means a fee for costs associated with capital improvements to be constructed after the date the fee is adopted pursuant to PMC 14.15.040.

"Land area" means the area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane with the exception of a portion of the parcel within a recorded right-of-way or easement subject to a servitude for a public street or scenic or preservation purpose.

"Owner" means the owner or owners of record title or the purchaser or purchasers under a recorded sales agreement, and other persons having an interest of record in the described real property.

"Parcel of land" means a lot, parcel, block or other tract of land that is occupied or may be occupied by a structure or structures or other use, and that includes the yards and other open spaces required under the zoning, subdivision, or other development ordinances.

"Permittee" means the person to whom a building permit, development permit, a permit or plan approval to connect to the sewer or water system, or right-of-way access permit is issued.

"Qualified public improvements" means a capital improvement that is:

1. Required as a condition of residential development approval;
2. Identified in the plan adopted pursuant to PMC 14.15.080; and either
3. Not located on or contiguous to a parcel of land that is the subject of the development approval; or
4. Located in whole or in part on or contiguous to property that is the subject of development approval and required to be built larger or with greater capacity than is necessary for the particular development project to which the improvement fee is related.

5. For purposes of this definition, "contiguous" means in a public way which abuts the parcel.

"Reimbursement fee" means a fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to PMC 14.15.040.

"System development charge" means a reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a capital improvement, at the time of issuance of a development permit or building permit, or at the time of connection to the capital improvement. "System development charge" includes that portion of a sewer or water system connection charge that is greater than the amount necessary to reimburse the city for its average cost of inspecting and installing connections with water and sewer facilities. "System development charge" does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by a land use decision. [Ord. 678 § 3, 1999.]

14.15.040 System development charge established.

A. System development charges shall be established and may be revised by resolution of the council. The resolution shall set the amount of the charge, the type of permit to which the charge applies, and, if the charge applies to a geographic area smaller than the entire city, the geographic area subject to the charge.

B. Unless otherwise exempted by the provisions of this chapter or other local or state law, a system development charge is hereby imposed upon all development within the city, upon the act of making a connection to the city water or sewer system within the city, and upon all development outside the boundary of the city that connects to or otherwise uses the sewer facilities, storm sewers, or water facilities of the city. [Ord. 678 § 4, 1999.]

14.15.050 Methodology.

A. The methodology used to establish the reimbursement fee shall consider the cost of then-existing facilities, prior contributions by then-existing users, the value of unused capacity, rate-making principals employed to finance publicly owned capital improvements, and other relevant factors identified by the council. The methodology shall promote the objective that future systems users shall contribute no more than an equitable share of the cost of then-existing facilities.

B. The methodology used to establish the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related.

C. The methodology used to establish the improvement fee or the reimbursement fee, or both, shall be contained in an ordinance adopted by the council. [Ord. 678 § 5, 1999.]

14.15.060 Authorized expenditures.

A. Reimbursement fees shall be applied only to capital improvements associated with the systems for which the fees are assessed, including expenditures relating to repayment of indebtedness.

B. Improvement fees shall be spent only on capacity-increasing capital improvements, including expenditures relating to repayment of future debt for the improvements. An increase in system capacity occurs if a capital improvement increases the level of performance or service provided by existing facilities or provides new facilities. The portion of the capital improvements funded by improvement fees must be related to demands by current or projected development.

C. A capital improvement being funded wholly or in part from revenues derived from the improvement fee shall be included in the plan adopted by the city pursuant to PMC 14.15.080.

D. Notwithstanding subsections (A) and (B) of this section, system development charge revenues may be expended on the direct costs of complying with the provisions of this chapter, including the costs of developing system development charge methodologies and providing an annual accounting of system development charge expenditures. [Ord. 678 § 6, 1999.]

14.15.070 Expenditure restrictions.

A. System development charges shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.

B. System development charges shall not be expended for costs of the operation or routine

maintenance of capital improvements. [Ord. 678 § 7, 1999.]

14.15.080 Improvement plan.

The council shall adopt a plan that:

A. Lists the capital improvements that may be funded with improvement fee revenues; and

B. Lists the estimated cost and time of construction of each improvement.

In adopting this plan, the council may incorporate by reference all or a portion of any public facilities plan, master plan, capital improvements plan or similar plan that contains the information required by this section. [Ord. 678 § 8, 1999.]

14.15.090 Collection of charge.

A. The system development charge is payable upon issuance of:

1. A building permit;
2. A development permit;
3. A development permit for development not requiring the issuance of a building permit;
4. A permit or approval to connect to the water system;
5. A permit or approval to connect to the sewer system; or
6. A right-of-way access permit.

B. If no building, development, or connection permit is required, the system development charge is payable at the time the usage of the capital improvement is increased.

C. If development is commenced or connection is made to the water or sewer systems without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required.

D. The city manager or the city manager's designee shall collect the applicable system development charge from the permittee when a permit that allows building or development of a parcel is issued or when a connection to the water or sewer system of the city is made.

E. The city manager or the city manager's designee shall not issue such permit or allow such connection until the charge has been paid in full, or until provision for installment payments has been made pursuant to PMC 14.15.100, or unless an exemption is granted pursuant to PMC 14.15.110. [Ord. 678 § 9, 1999.]

14.15.100 Installment payment.

A. When a system development charge of $25.00 or more is due and collectible, the owner of the parcel of land subject to the development charge may apply for payment in 20 semi-annual installments, to include interest on the unpaid balance, in accordance with ORS 223.208.

B. The city finance director 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 payments shall have the burden of demonstrating the applicant's authority to assent to the imposition of a lien on the parcel and that the interest of the applicant is adequate to secure payment of the lien.

D. The city manager or city manager's designee shall report to the city finance director the amount of the system development charge, the dates on which the payments are due, the name of the owner, and the description of the parcel.

E. The city finance director shall docket the lien in the lien docket. From that time the city shall have a lien upon the described parcel for the amount of the system development charge, together with interest on the unpaid balance at the rate established by the council. The lien shall be enforceable in the manner provided in ORS Chapter 223. [Ord. 678 § 10, 1999.]

14.15.110 Exemptions.

A. Structures and uses established and existing on or before the effective date of the ordinance codified in this chapter are exempt from a system development charge, except water and sewer charges, to the extent of the structure or use then existing and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this subsection shall pay the water or sewer charges pursuant to the terms of this chapter upon the receipt of a permit to connect to the water or sewer system.

B. Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the State Uniform Building Code, are exempt from all portions of the system development charge.

C. An alteration, addition, replacement or change in use that does not increase the parcel's or

structure's use of the public improvement facility are exempt from all portions of the system development charge.

D. A project financed by city revenues is exempt from all portions of the system development charge. [Ord. 678 § 11, 1999.]

14.15.120 Credits.

A. When development occurs that is subject to a system development charge, the system development charge for the existing use, if applicable, shall be calculated and if it is less than the system development charge for the use that will result from the development, the difference between the system development charge for the existing use and the system development charge for the proposed use shall be the system development charge. However, under no circumstances shall a credit be allowed where the property involved has never paid a systems development charge. If the change in the use results in the system development charge for the proposed use being less than the system development charge for the existing use, no system development charge shall be required. No refund or credit shall be given unless provided for by another subsection of this section.

B. A credit shall be given to the permittee for the cost of a qualified public improvement upon acceptance by the city of the public improvement. The credit shall not exceed the improvement fee even if the cost of the capital improvement exceeds the applicable improvement fee and shall only be for the improvement fee charged for the type of improvement being constructed.

C. If a qualified public improvement is located in whole or in part on or contiguous to the property that is the subject of 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 for credit shall be filed in writing no later than 60 days after acceptance of the improvement by the city.

D. When the 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.

E. Notwithstanding subsections (C) and (D) of this section, when establishing a methodology for a system development charge, the city may provide for a credit against the improvement fee, the reimbursement fee, or both, for capital improvements constructed as part of the development which reduce the development's demand upon existing capital improvements and/or the need for future capital improvements, or a credit based upon any other rationale the council finds reasonable.

F. Credits shall not be transferable from one development to another.

G. Credits shall not be transferable from one type of system development charge to another.

H. Credits shall be used within 10 years from the date the credit is given. [Ord. 679 § 1, 1999; Ord. 678 § 12, 1999.]

14.15.130 Notice.

A. The city shall maintain a list of persons who have made a written request for notification prior to adoption or amendment of a methodology for any system development charge. Written notice shall be mailed to persons on the list at least 45 days prior to the first hearing to adopt or amend a system development charge. The methodology supporting the adoption or amendment shall be available at least 30 days prior to the first hearing to adopt or amend a system development charge. The failure of a person on the list to receive a notice that was mailed shall 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. [Ord. 678 § 13, 1999.]

14.15.140 Segregation and use of revenue.

A. All funds derived from a particular type of system development charge are to be segregated by accounting practices from all other funds of the city. That portion of the system development charge calculated and collected on account of a specific facility system shall be used for no purpose other than those set forth in PMC 14.15.060.

B. The finance director shall provide the city council with an annual accounting, based on the city's fiscal year, for system development charges showing the total amount of system development charge revenues collected for each type of facility and the projects funded from each account. [Ord. 678 § 14, 1999.]

14.15.150 Appeal procedure.

A. A person challenging the propriety of an expenditure of system development charge revenues may appeal the decision or the expenditure to the city council by filing a written request with the city recorder describing with particularity the decision of the city manager and the expenditure from which the person appeals. An appeal of an 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 chapter must be filed within 10 days of the date of the decision.

C. After providing notice to the appellant, the council shall determine whether the city manager's decision or the expenditure is in accordance with this chapter and the provisions of ORS 223.297 through 223.314 and may affirm, modify, or overrule the decisions. If the council determines that there has been an improper expenditure of system development charge revenues, the council shall direct that a sum equal to the misspent amount shall be deposited within one year to the credit of the account or fund from which it was spent. The decision of the council shall be reviewed only as provided in ORS 34.010 through 34.100, and not otherwise.

D. A legal action challenging the methodology adopted by the council pursuant to PMC 14.15.050 shall not be filed later than 60 days after the adoption. A person shall contest the methodology used for calculating a system development charge only as provided in ORS 34.010 through 34.100, and not otherwise. [Ord. 678 § 15, 1999.]

14.15.160 Prohibited connection.

No person may connect to the water or sewer systems of the city unless the appropriate system development charge has been paid or the lien or installment payment method has been applied for and approved. [Ord. 678 § 16, 1999.]

14.15.170 Penalty.

Violation of PMC 14.15.160 is punishable by a fine not to exceed $750.00. [Ord. 678 § 17, 1999.]

14.15.180 Construction.

The rules of statutory construction contained in ORS Chapter 174 are adopted and by this reference made a part of this chapter. [Ord. 678 § 18, 1999.]

14.15.190 Classification.

The city council determines that any fee, rates or charges imposed by this chapter are not a tax subject to the property tax limitations of Article XI, Section 11(b) of the Oregon Constitution. [Ord. 678 § 20, 1999.]

Chapter 14.20

ROAD MAINTENANCE FEE

Sections:

14.20.010 Definitions.
14.20.020 Regulatory program.
14.20.030 Administrative policies.
14.20.040 Road maintenance user fee.
14.20.050 Enforcement.
14.20.060 General provisions

14.20.010 Definitions.

The following words and phrases, as used within this chapter, have the following definitions and meanings:

"Developed property" means a parcel or portion of real property on which an improvement exists. Improvement on developed property includes, but is not limited to, buildings, parking lots, and outside storage.

"Gross square footage" means the calculated area of all structures located on a site, measured along the exterior walls of such structures, including but not limited to enclosed courtyards, stairwells, and square footage on each level of multistory structures, but not including fences and parking areas which are not enclosed within a building.

"ITE manual" means the Institute of Transportation Engineers Trip Generation Manual, Fifth Edition.

"Multifamily residential" means residential property consisting of two or more dwelling units. For purposes of this chapter, condominiums and individual mobile home units are also classified as multifamily residences.

"Nonresidential" means a use of property which is primarily not for personal, domestic accommodation.

"Single-family residential" means a residential structure which is occupied by one or more persons of which there shall be only one dwelling unit per lot and which provides complete, independent living facilities for one or more persons including, but not limited to, permanent provisions for living, sleeping, eating, cooking and sanitation. For purposes of this chapter, manufactured homes are considered single-family residential.

"Street" or "road" means a public road or right-of-way within the city which is under the jurisdiction or control of the city. For purposes of this chapter, county, state and federal roads are excluded.

"Truck" means a motor vehicle having six or more tires in contact with the pavement surface. [Ord. 721 § 1, 2003.]

14.20.020 Regulatory program.

A. There is hereby created a road maintenance regulatory program for the purpose of maintaining a safe, functioning city street system.

B. Revenues collected pursuant to this chapter shall be collected in the street fund and used exclusively to fund a street maintenance/regulatory program to provide for a safe, functioning street system. In the event that road maintenance fees collected are insufficient to properly regulate the maintenance of city streets, additional funding may be allocated by the city council from other nondedicated city funds. [Ord. 721 § 2, 2003.]

14.20.030 Administrative policies.

A. The use of the city's streets and roads involves a complex mixture of interdependent uses between categories of residentially developed property and nonresidentially developed property. As a predominantly residential community with a limited commercial and industrial base, the city's street and roads system exists to support the transportation needs of its residents. It therefore follows that the most reasonable apportionment is approximately 75 percent use attributable to residential development and approximately 25 percent use to nonresidential development. In keeping with this division, approximately 75 percent of the total revenues needed to be generated by the road maintenance program fee on an annualized basis shall come from residential developments and approximately 25 percent shall come from nonresidential developments.

B. The city's public works director is authorized and directed to review the operation of this chapter and where appropriate recommend changes to the city council. Council action on such changes shall be by resolution. Such procedures if adopted by the council shall be given full force and effect and unless clearly inconsistent with this chapter shall apply uniformly throughout the city.

C. The initial road maintenance billing rates shall not be increased until after June 2005. During the second year of this program and every year thereafter, the public works committee shall annually review the road maintenance billing rates and advise the city council of changes, if any, that are deemed advisable.

D. The provisions of this chapter may be appealed by writ of review within 60 days of its effective date. The amount of a road maintenance billing rate may be appealed in accordance with the criteria and procedures specified in the resolution which implements this chapter. [Ord. 721 § 3, 2003.]

14.20.040 Road maintenance user fee.

A. A road maintenance fee is hereby established and shall be assessed to street users as defined herein by development category and classification. Billing shall be as a line item on the city's utility bill.

B. Undeveloped properties shall not be charged a road maintenance fee.

C. Each residential developed property within the city limits will be assigned to one of two billing categories: single-family dwelling unit or multifamily dwelling unit. The road maintenance fee for a single-family dwelling unit shall be greater than the corresponding fee for a multifamily dwelling unit. This difference in fee levels shall be proportionate to trip generation rates as established in the ITE manual.

D. Each nonresidential developed property within the city limits shall be assigned to a road maintenance billing category based on the following three factors associated with road usage:

1. Intensity of vehicle trips generated per 1,000 (gross) square feet of developed area, or equivalent. Statistical data from the ITE manual is to be used to establish levels of intensity.

2. Magnitude of development as measured by gross square feet of developed area, or equivalent.

3. Trucks per day serving the development.

E. The methodology for classification of the categories of residential and nonresidential developed property, the fair apportionment to each classification, and the amount of the road maintenance fee shall be initially established by city council resolution. Changes shall also be adopted by resolution. [Ord. 721 § 4, 2003.]

14.20.050 Enforcement.

A. In addition to other lawful enforcement procedures, the city may enforce the collection of charges required by this chapter by withholding delivery of water to any premises where road maintenance fees are delinquent or unpaid.

B. Notwithstanding any provision herein to the contrary, the city may institute any necessary legal proceedings to enforce the provisions of this chapter including, but not limited to, injunctive relief and collection of charges owing. The city's enforcement rights shall be cumulative. [Ord. 721 § 5, 2003.]

14.20.060 General provisions.

A. In the event any section, subsection, paragraph, sentence or phrase of this chapter or resolution adopted herein is determined by a court of competent jurisdiction to be invalid or unenforceable, the validity of the remainder of this chapter shall continue to be effective.

B. Nothing contained herein shall be construed as limiting the city's authority to levy special assessments in connection with public improvements pursuant to applicable law.

C. The fees and charges herein are not intended to be taxes, nor are they subject to the property tax limitations of Article XI, Section 11b, of the Oregon Constitution.

D. The city council has adopted Chapter 14.15 PMC requiring new development to pay system development charges. PMC 14.15.050(C) requires adoption of an SDC methodology by ordinance.

E. It has been determined that the existing street capital improvement plan and methodology for street systems development charges needs to be updated to reflect current and future needs of the city street system. The Philomath city council therefore adopts the "Capital Improvement Plan and Methodology for Street SDCs," attached to the ordinance codified in this section. [Ord. 722 §§ 1, 2, 2004; Ord. 721 § 6, 2003.]

Chapter 14.25

REIMBURSEMENT DISTRICTS

Sections:

14.25.010 Purpose.
14.25.020 Definitions.
14.25.030 Application for a reimbursement district.
14.25.040 City planning official's report.
14.25.050 Amount to be reimbursed.
14.25.060 Public hearing.
14.25.070 Notice of public hearing.
14.25.080 City council action.
14.25.090 Notice of adoption of resolution.
14.25.100 Recording the resolution.
14.25.110 Administration.
14.25.120 Prohibited conduct.

14.25.010 Purpose.

A. The city of Philomath requires developers to construct and install water, sanitary sewer, storm sewer, and street improvements necessary to serve proposed developments. These improvements are constructed in accordance with city design and construction standards and later dedicated to the city as "public improvements." Often these street, water, sewer, and storm sewer improvements, particularly those constructed off-site, can and will benefit other property owners when they develop their property. Therefore, these improvements represent a benefit to those property owners.

B. The purpose of this chapter is to provide a mechanism where owners of property which benefits from the construction of public improvements by another property owner will share in the cost of those improvements through payment of a reimbursement charge at the time the benefited property is developed and/or the improvements are utilized.

C. Owners of property which would be subject to a reimbursement charge will be provided an opportunity to review and comment on pertinent information prior to the city establishing a reimbursement district pursuant to this chapter. The city will collect the reimbursement charges and, upon receipt, will forward the funds to the person who constructed the improvements.

D. The reimbursement charges established under this chapter are intended to become due and payable upon development of benefited property. Such charges are fees for service because they contemplate a development's receipt of essential municipal services based upon the nature of that development. The timing and extent of any development are within the control and discretion of the developer. The reimbursement charges imposed under this chapter are not intended to be a tax 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.

E. The reimbursement charges established in this chapter are in addition to, and not in lieu of, other charges which may be required for developers. [Ord. 639 § 1, 1995.]

14.25.020 Definitions.

As used in this chapter:

A. "City public works director" or "director" means the person holding the position of city public works director or any officer or employee designated by that person to perform duties stated within this section.

B. "City" means the city of Philomath.

C. "Person" means a natural person, the person's heirs, executors, administrators, or assigns; a firm, partnership, corporation, association or legal entity, its or their successors or assigns; and any agent, employee or any representative thereof.

D. "Applicant" means a person, as defined in subsection (C) of this section, who is required or chooses to finance some or all of the cost of a street, water or sewer improvement which is available to provide service to property, other than property owned by the person, and who applies to the city for reimbursement for the expense of the improvement. The "applicant" may be the city.

E. "Street improvement" means a street or street improvement conforming with standards adopted by the city through ordinance or policy, or required through approval of an application for a land use decision, and 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.

F. "Water improvement" means a water or water line improvement conforming with standards adopted by the city through ordinance or policy, or required through approval of an application

for a land use decision, and including, but not limited to, extending a water line to property, other than property owned by the applicant, so that water service can be provided for such other property without further extension of the line.

G. "Sewer improvement" means a sewer or sewer line improvement conforming with standards adopted by the city through ordinance or policy, or required through approval of an application for a land use decision, and including, but not limited to, extending a sewer line to property, other than property owned by the applicant, so that sewer service can be provided for such other property without further extension of the line.

H. "Reimbursement district" means the area which is determined by the city council to derive a benefit from the construction of street, water or sewer improvements, financed in whole or in part by the applicant and includes property which has the opportunity to utilize such an improvement.

I. "Reimbursement fee" means the fee required to be paid by a resolution of the city council and the reimbursement agreement. 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. [Ord. 639 § 2, 1995.]

14.25.030 Application for a reimbursement district.

A. Any person who is required to or chooses to finance some or all of the cost of a street, water or sewer improvement which is available to provide service to property, other than property owned by the person, may, by written application filed with the city planning official, request that the city establish a reimbursement district. The street, water and sewer improvements must include improvements in addition to or in a size greater than those which would otherwise ordinarily be required in connection with an application for permit approval or must be available to provide service to property other than property owned by the applicant. Examples include, but shall not be limited to, full street improvements instead of half street improvements, off-site sidewalks, connection of street sections for continuity, extension of water lines and extension of sewer lines. The city may also initiate formation of a reimbursement district. The application shall be accompanied by a fee, as established by resolution, sufficient to cover the cost of administrative review and notice pursuant to this section.

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. Postconstruction: the actual cost of the improvements as evidenced by receipts, invoices or other similar documents, not to exceed the prevailing market rates for a similar project as determined by the city public works director. Preconstruction: 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 planning official.

4. Postconstruction: the date the city accepted the public improvements. Preconstruction: the estimated date of completion of the public improvements.

C. Application for formation of a reimbursement district may be made at any time but shall be made no later than three months after completion and acceptance of the street, water or sewer improvements. However, the city planning official may waive this requirement upon the showing by the applicant of good cause for the delay, that the delay was not created by the applicant, and that the delay was unavoidable due to unanticipated or unforeseen circumstances [Ord. 639 § 3, 1995.]

14.25.040 City planning official's report.

The city planning official shall review the application for the establishment of a reimbursement district and evaluate whether a district should be established. The planning official may request the submittal of other relevant information from the applicant in order to assist in the evaluation. The planning official shall prepare a written report for

the city council, considering and making recommendations concerning the following factors:

A. Whether the applicant will finance or has financed some or all of the cost of a street, water or sewer improvement, thereby making service available to property, other than property owned by the applicant;

B. The area to be included in the reimbursement district;

C. The actual or estimated cost of the street, water or sewer improvements within the area of the proposed reimbursement district and the portion of the cost for which the applicant should be reimbursed;

D. A methodology for spreading the cost among the parcels within the reimbursement district and, where appropriate, defining a "unit" for applying the reimbursement fee to property which may, with city approval, be partitioned, altered, modified, or subdivided at some future date. The methodology should include consideration of the cost of the improvements, prior contributions by property owners, the value of the unused capacity, rate-making principles employed to finance public improvements, and other factors deemed relevant by the city planning official. Prior contributions by property owners will only be considered if the contribution was for the same type of improvement and at the same location (example: a sewer-related contribution in the same location as a sewer improvement would be considered, a water-related contribution in the same location as a sewer improvement would not be considered);

E. The reimbursement fee shall be adjusted annually beginning on the first anniversary of the date of the reimbursement agreement as a return on the investment for the person or the city. The annual fee adjustment shall be fixed and determined by the council and computed against the reimbursement fee as simple interest and will not compound. The city planning official may take into account the documented cost of any financing, including prepayment points, prepayment penalties, loan fees, and the actual percentage rate of interest being paid by the applicant, when recommending the annual fee adjustment to the city council;

F. The city may charge a fee for administration of the agreement. The administration fee shall be fixed by the council and will be included in the resolution approving and forming the reimbursement district. The administration fee is due and payable to the city at the time the agreement in PMC 14.25.080(B) is signed.

G. The period of time that the right to reimbursement exists if the period is less than 15 years. [Ord. 639 § 4, 1995.]

14.25.050 Amount to be reimbursed.

A. The cost to be reimbursed to the applicant shall be limited to the cost of construction, including the acquisition and condemnation costs of acquiring additional right-of-way, the cost of permits, engineering and legal expenses, and the annual fee adjustment fixed and determined by the council.

B. A reimbursement fee shall be computed by the city for all properties which have the opportunity to utilize the improvements, including the property of the applicant, for formation of a reimbursement district. The applicant for formation of the reimbursement district shall not be reimbursed for the portion of the reimbursement fee computed for the property of the applicant. [Ord. 639 § 5, 1995.]

14.25.060 Public hearing.

A. Within a reasonable time after the city planning official has completed the report required in PMC 14.25.040, the city council shall hold an informational public hearing in which any person shall be given the opportunity to comment on the proposed reimbursement district. Because formation of the reimbursement district does not result in an assessment against property or lien against property, the public hearing is for informational purposes only and is not subject to mandatory termination because of remonstrances. The city council has the sole discretion after the public hearing to decide whether a resolution approving and forming the reimbursement district shall be adopted.

B. If a reimbursement district is formed prior to construction of the improvement(s), a second public hearing shall be held after the improvement has been accepted by the city. At that time, the city council may modify the resolution to reflect the actual cost of the improvement(s). [Ord. 639 § 6, 1995.]

14.25.070 Notice of public hearing.

Not less than 10 nor more than 30 days prior to any public hearing held pursuant to this chapter, the applicant and all owners of property within the proposed district shall be notified of such hearing and the purpose thereof. Such notification shall be accomplished by either regular mail or personal service. If notification is accomplished by mail, notice shall be mailed not less than 13 days prior to the hearing. Notice shall be deemed effective on the date that the letter of notification is mailed. Failure of the applicant or any affected property owner to be so notified shall not invalidate or otherwise affect any reimbursement district resolution or the city council's action to approve the same. [Ord. 639 § 7, 1995.]

14.25.080 City council action.

A. After the public hearing held pursuant to PMC 14.25.060, the city council shall approve, reject or modify the recommendations contained in the city planning official's report. The city council's decision shall be embodied in a resolution. If a reimbursement district is established, the resolution shall include the city planning official's report as approved or modified, and specify that payment of the reimbursement fee, as designated for each parcel, is a precondition of receiving city permits applicable to development of that parcel as provided for in PMC 14.25.100(C).

B. When the applicant is other than the city, the resolution shall instruct the city manager to enter into an agreement with the applicant pertaining to the reimbursement district improvements. If the agreement is entered into prior to construction, the agreement shall be contingent upon the improvements being accepted by the city. The agreement, at a minimum, shall contain the following provisions:

1. The public improvement(s) shall meet all applicable city standards or comply with specific requirements imposed by the planning official, planning commission, or city council.

2. The total amount of potential reimbursement to the applicant.

3. The annual fee adjustment set by the city council.

4. The applicant shall guarantee the public improvement(s) for a period of 12 months after the date of installation.

5. 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.

6. The applicant shall acknowledge that the city is not obligated to collect the reimbursement fee from affected property owners.

7. Other provisions as the city council determines necessary and proper to carry out the provisions of this chapter.

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 [Ord. 639 § 8, 1995.]

14.25.090 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. [Ord. 639 § 9, 1995.]

14.25.100 Recording the resolution.

A. The city recorder shall cause notice of the formation and nature of the reimbursement district to be filed in the office of county records 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.

B. 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.

C. Obligation to Pay Reimbursement Fee. The applicant for a permit related to property within any reimbursement district shall pay to the city, in addition to any other applicable fees and charges, the reimbursement fee established by the council, together with the annual fee adjustment, 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, which exceed 25 percent 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 subsection shall not apply to repairs made necessary due to accidental damage to the structure beyond the owner's control or 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 parking spaces required under the Philomath zoning ordinance in effect at the time of permit application;

4. Connection to or use of a water improvement, if the reimbursement district is based on the water improvement;

5. Connection to or use of a sewer improvement, if the reimbursement district is based on the sewer improvement; or

6. Connection to or use of a street improvement, if the reimbursement district is based on the street improvement.

D. The city's determination of who shall pay the reimbursement fee is final. Neither the city nor any officer or employee of the city shall be liable for payment of any reimbursement fee, annual fee adjustment, or portion thereof as a result of this determination.

E. A permit applicant 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 chapter is intended to modify or limit the authority of the city to provide or require access management.

F. No person shall be required to pay the reimbursement fee on an application or upon property for which the reimbursement fee has been previously paid, unless such payment was for a different type of improvement. No permit shall be issued for any of the activities listed in subsection (C) of this section unless the reimbursement fee, together with the annual fee adjustment, has been paid in full. Where approval is given as specified in subsection (C) of this section, but no permit is requested or issued, then the requirement to pay the reimbursement fee lapses if the underlying approval lapses.

G. The date when the right of reimbursement ends shall not extend beyond 15 years from the district formation date. [Ord. 639 § 10, 1995.]

14.25.110 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. Upon 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 not intended to replace or limit, and is in addition to, any other existing fees or charges collected by the city. [Ord. 639 § 11, 1995.]

14.25.120 Prohibited conduct.

A. No person may cause, maintain or use a connection to a utility improvement for which a reimbursement district has been established and for which a reimbursement charge is due and payable, unless such charge has first been paid or financed with installment payments.

B. Violation of this section is a civil infraction, punishable by a fine not to exceed $500.00. Each day that a prohibited connection or use exists constitutes a separate violation.

C. The remedies provided under this section are cumulative to any other remedies provided by law. [Ord. 639 § 12, 1995.]

Title 15

BUILDINGS AND CONSTRUCTION

Chapters:

15.10 Numbering System for Buildings
15.15 Building Codes

Chapter 15.10

NUMBERING SYSTEM FOR BUILDINGS

Sections:

15.10.010 Uniform numbering system established.
15.10.020 Numbering base line.
15.10.030 Method of determining number.
15.10.040 Recorder to assign numbers.
15.10.050 Placement of numbers.
15.10.060 When numbers required.
15.10.070 Penalty.
15.10.080 Council power to provide numbers.

15.10.010 Uniform numbering system established.

There is hereby established a uniform numbering system for all houses, stores and buildings now or hereafter established within the city limits of the city of Philomath as now or hereafter constructed. The owners and tenants of such structures shall number the same in accordance with the provisions of this chapter. [Ord. 188 § 1, 1965.]

15.10.020 Numbering base line.

The base line or street for starting said numbering system shall be Main Street (U.S. Highway 20) for all streets running north and south; and the base line for all streets running east and west shall be Seventh Street (formerly "A Street"), as the beginning of the 700 block. [Ord. 188 § 2, 1965.]

15.10.030 Method of determining number.

Commencing with the number "1" and extending north and south from Main Street there shall be assigned a number to each house or building located in the city of Philomath, one number for each 12 and one-half feet of frontage on each street and running consecutively with a new hundred commencing at each succeeding intersection of a block or at the place where an intersection would exist if streets were continued and constructed there. Streets running east and west shall be numbered in the same manner using Seventh Street as the beginning of the 700 block and numbering eastward. The area west of Seventh Street to be graduated in a reverse pattern (Sixth, Fifth, Fourth, Third, Second, First) to the Y junction of Highways 20 and 34. The even numbers shall be assigned to the southerly side of the streets running east and west, and on the westerly side of streets running north and south, and the odd numbers on the opposite sides. [Ord. 188 § 3, 1965.]

15.10.040 Recorder to assign numbers.

The city recorder shall assign numbers to all structures and his determination shall be final, except upon a showing that he has acted in an arbitrary or capricious manner. [Ord. 188 § 4, 1965.]

15.10.050 Placement of numbers.

All house numbers herein provided for shall be placed on the front door or door frame of the main entrance to the said house or building, or as near thereto as practicable. Such numbers shall be of such type and design as shall be designated by the city council. [Ord. 188 § 5, 1965.]

15.10.060 When numbers required.

Numbers in accordance with the provisions of this chapter shall be placed on each and every building, subject to the provisions of this chapter, at the expense of the property owners, 60 days after the ordinance codified in this chapter becomes effective. All buildings hereafter erected within the city limits shall have a number assigned before the final inspection is made by the building inspector, and said number shall be affixed thereto within 10 days of the date of the completion of the same. Failure to use the assigned number or to comply with any provision of this chapter shall constitute a violation of the same. [Ord. 188 § 6, 1965.]

15.10.070 Penalty.

Any owner or tenant of any building now erected or hereafter erected within the city of Philomath, or other person having the control thereof, who shall refuse or neglect to comply with the terms of this chapter as to numbering, or any person who shall take down, alter or deface any number that has been assigned and put up as aforesaid, or any person who shall attach and display upon a building an improper number or one different than that which this chapter provides for, shall be fined by a sum of not less than $5.00, nor more than $50.00. [Ord. 188 § 7, 1965.]

15.10.080 Council power to provide numbers.

In addition to the penalties prescribed elsewhere in this chapter, the city council may, upon refusal or neglect of the owner or person having custody of any house or building to obtain and affix a number thereto, to cause the number of said house or building to be procured and placed thereon as herein provided for and the cost thereof, including a reasonable labor charge for the attaching of the numbers and the costs and expenses of perfecting the lien, shall constitute a lien upon the property and be assessed and collected in the manner that other liens are assessed. [Ord. 188 § 8, 1965.]

Chapter 15.15

BUILDING CODES

Sections:

15.15.010 Enforcement of state code – Oregon State Structural Specialty Code.
15.15.020 Enforcement of state code – Oregon State Mechanical Specialty Code.
15.15.030 Enforcement of state code – Oregon State Plumbing Specialty Code.
15.15.040 Enforcement of state code – Oregon Electrical Specialty Code.
15.15.050 Enforcement of state code – Oregon Residential Specialty Code.
15.15.060 Adoption of Uniform Code for the Abatement of Dangerous Buildings.
15.15.070 Enforcement of state standards – Oregon Manufactured Dwelling Installation Specialty Code.
15.15.080 Enforcement of state standards – Park Trailer and Parks and Organized Camp Standards.
15.15.090 Violations and penalties.

15.15.010 Enforcement of state code – Oregon State Structural Specialty Code.

Current edition of the Oregon State Structural Specialty Code and all schedules, appendices, schedules of fees, and other administrative rules of the Oregon Structural Specialty Code are adopted as the structural specialty code of the city of Philomath. [Ord. 789 § 1, 2014; Ord. 693 § 1, 2000.]

15.15.020 Enforcement of state code – Oregon State Mechanical Specialty Code.

Current edition of the Oregon State Mechanical Specialty Code and all schedules, appendices, schedules of fees, and other administrative rules of the Oregon Mechanical Specialty Code are adopted as the mechanical specialty code of the city of Philomath. [Ord. 789 § 1, 2014; Ord. 693 § 2, 2000.]

15.15.030 Enforcement of state code – Oregon State Plumbing Specialty Code.

Current edition of the Oregon State Plumbing Specialty Code and all schedules, appendices, schedules of fees, and other administrative rules of the Oregon Plumbing Specialty Code are adopted

as the plumbing specialty code of the city of Philomath. [Ord. 789 § 1, 2014; Ord. 693 § 3, 2000.]

15.15.040 Enforcement of state code – Oregon Electrical Specialty Code.

Current edition of the Oregon Electrical Specialty Code, as amended by Oregon Building Codes Division, and all schedules, appendices, schedules of fees, and other administrative rules of the Oregon Electrical Specialty Code, with Oregon amendments, are adopted as the electrical code of the city of Philomath. [Ord. 789 § 1, 2014; Ord. 693 § 4, 2000.]

15.15.050 Enforcement of state code – Oregon Residential Specialty Code.

The current edition of the Oregon Residential Specialty Code with Oregon amendments and all schedules, appendices, schedules of fees, and other administrative rules of the Oregon Residential Specialty Code with Oregon amendments are adopted as the one- and two-family dwelling code of the city of Philomath. [Ord. 789 § 1, 2014; Ord. 718, 2003; Ord. 693 § 5, 2000.]

15.15.060 Adoption of Uniform Code for the Abatement of Dangerous Buildings.

The 1997 Edition of the ICBO Uniform Code for the Abatement of Dangerous Buildings is hereby adopted as the code for the abatement of dangerous buildings for the city of Philomath. [Ord. 789 § 1, 2014; Ord. 729 § 1, 2005; Ord. 693 § 6, 2000.]

15.15.070 Enforcement of state standards – Oregon Manufactured Dwelling Installation Specialty Code.

The current edition of the Manufactured Dwelling Installation Specialty Code, and all schedules, appendices, schedules of fees, and other administrative rules of the Oregon Manufactured Dwelling Installation Specialty Code, are adopted as the manufactured dwelling standards of the city of Philomath. [Ord. 789 § 1, 2014; Ord. 693 § 7, 2000.]

15.15.080 Enforcement of state standards – Park Trailer and Parks and Organized Camp Standards.

The current Oregon Park Trailer and Parks and Organized Camp Standards and all schedules, appendices, schedules of fees, and other administrative rules of the Park Trailer and Parks and Organized Camp Standards are adopted as the park trailer and parks and organized camp standards of the city of Philomath. [Ord. 789 § 1, 2014; Ord. 693 § 8, 2000.]

15.15.090 Violations and penalties.

Any person violating any of the provisions herein for which a special penalty has not been expressly provided shall, upon conviction thereof, be punished by a fine not to exceed $1,000 per violation. Each day that a violation exists is a separate offense. [Ord. 789 § 1, 2014; Ord. 693 § 11, 2000.]

Title 16

(Reserved)

Title 17

(Reserved)

Title 18

ZONING

Chapters:

Division 1. Introduction

18.05 How to Use the Development Code
18.10 General Administration
18.15 Definitions
18.20 Enforcement
18.25 Establishment of Zones

Division 2. Land Use Districts

18.30 Land Use District Administration
18.35 Residential Districts
18.40 Commercial Districts
18.45 Industrial Districts
18.50 Public Districts
18.55 Overlay Districts

Division 3. Design Standards

18.60 Design Standard Administration
18.65 Access and Circulation
18.70 Landscaping and Street Trees
18.72 Fences, Hedges and Walls
18.75 Vehicle and Bicycle Parking
18.80 Public Facilities Standards
18.85 Hillside and Erosion Control Overlay
18.90 Other Standards
18.95 Regulating Placement of Signs

Division 4. Applications and Review Procedures

18.100 Introduction
18.105 Types of Applications and Review Procedures
18.110 Development Review and Site Design Review
18.115 Land Divisions and Lot Line Adjustments
18.120 Conditional Use Permits
18.125 Master Planned Developments
18.130 Modifications to Approved Plans and Conditions of Approval
18.135 Annexation

18.140 Code Interpretations
18.145 Miscellaneous Permits

Division 5. Exceptions to Code Standards

18.150 Introduction
18.155 Variances
18.160 Nonconforming Uses and Developments

Division 1. Introduction

Chapter 18.05

HOW TO USE THE DEVELOPMENT CODE

Sections:

18.05.010 How to use the development code.

18.05.010 How to use the development code.

Welcome to the city of Philomath development code. This is a comprehensive land use and development code that governs all of the land within the incorporated limits of the city of Philomath and its urban growth boundary. The five divisions of the code are used together to review land use applications. They are organized as follows:

A. Division 1. In addition to this brief introduction, Division 1 provides definitions for selected terms and information on the legal construct of the title. It also explains the city's authority to enforce this title.

B. Division 2. Every parcel, lot, and tract of land within the city's incorporated boundaries is also within a "land use district." (Land use districts are shown on the city's official zoning map.) Division 2 identifies the land uses that are permitted within each district and the standards that apply to each type of land use (e.g., lot standards, setbacks, and use-specific design standards). As required by state law, the zones or "land use districts" conform to the city of Philomath comprehensive plan. The districts reserve land for planned land uses, provide compatibility between different uses, and implement planned housing densities.

C. Division 3. The design standards contained in Division 3 apply throughout the city. They are used in preparing development plans, and reviewing applications, to ensure compliance with city standards for access and circulation, landscaping, parking, public facilities, surface water management, housing densities, and sensitive lands.

D. Division 4. Division 4 provides all of the application requirements and procedures for obtaining permits required by this title. Four types of permit procedures are covered: Type I (nondiscretionary, "ministerial" decision); Type II (discretionary, "administrative" decision); Type III (discretionary, administrative decision with public hearing); and Type IV ("legislative" decision by city council).

E. Division 5. Division 5 provides standards and procedures for variances and nonconforming situations (i.e., existing uses or development that do not comply with the code). This title cannot provide standards to fit every potential development situation. The city's varied geography, and complexities of land development, requires flexibility. Division 5 provides that flexibility while maintaining the purposes and intent of this title. [Ord. 720 § 7[1.1], 2003.]

Chapter 18.10

GENERAL ADMINISTRATION

Sections:

18.10.010 Severability.
18.10.020 Compliance and scope.
18.10.030 Consistency with plan and laws.
18.10.040 Use of a development.
18.10.050 Preexisting approvals.
18.10.060 Building permit and certificate of occupancy.
18.10.070 Official action.

18.10.010 Severability.

The provisions of this title are severable. If a court of competent jurisdiction adjudges any section, sentence, clause or phrases of this title to be invalid, that decision shall not affect the validity of the remaining portion of this title. [Ord. 720 § 7[1.2.1], 2003.]

18.10.020 Compliance and scope.

A. Land and structures may be used or developed by construction, reconstruction, alteration, occupancy, use or otherwise, only as this title or any amendment thereto permits. No plat shall be recorded or no building permit shall be issued without compliance with the provisions of this title.

B. The requirements of this title apply to the owner(s) of record, persons undertaking the development or the use of land, and to those persons' successors in interest.

C. Where this title imposes greater restrictions than those imposed or required by other rules or regulations, the most restrictive or that imposing the higher standard shall govern.

D. The provisions of Chapter 18.155 PMC shall govern variances.

E. No lot area, yard or other open space or off-street parking or loading area which is required by this title for one use shall be a required lot area, yard or other open space or off-street parking or loading area for another use, except as otherwise specifically allowed by this title.

F. When this title provides for a specific use in a particular district, such a use shall only be made in such district where it is expressly permitted by the code. A specific use identified in one or more specific district(s) shall not be allowed in any other district, notwithstanding that another district might describe the same general type of use. [Ord. 812 § 1, 2016; Ord. 734 § 1, 2005; Ord. 720 § 7[1.2.2], 2003.]

18.10.030 Consistency with plan and laws.

Each development and use application and other procedure initiated under this title shall be consistent with the adopted comprehensive plan of the city of Philomath as implemented by this title, and with applicable state and federal laws and regulations. All provisions of this title shall be construed in conformity with the adopted comprehensive plan. [Ord. 734 § 1, 2005; Ord. 720 § 7[1.2.3], 2003.]

18.10.040 Use of a development.

A development shall be used only for a lawful use. A lawful use of a development is one that is permitted by this title (including nonconforming uses subject to Chapter 18.160 PMC) and is not prohibited by law. [Ord. 734 § 1, 2005; Ord. 720 § 7[1.2.4], 2003.]

18.10.050 Preexisting approvals.

A. Developments, including subdivisions, projects requiring development review or site design review approval, or other development applications for which approvals were granted prior to the effective date of the ordinance codified in this title, may occur pursuant to such approvals; except that modifications to development approvals shall comply with Chapter 18.130 PMC, Modifications to Approved Plans and Conditions of Approval.

B. All development proposals received by the city after the adoption of this title shall be subject to review for conformance with the standards under this title or as otherwise provided by state law. [Ord. 734 § 1, 2005; Ord. 720 § 7[1.2.5], 2003.]

18.10.060 Building permit and certificate of occupancy.

A. A building permit shall not be issued until the planning official has issued a development permit in accordance with the provisions of Division 4, Applications and Review Procedures, or other-

wise found that a development permit is not required.

B. To ensure completion of a development or use in the manner approved, a development shall not be occupied and a use shall not begin until the building official has issued a certificate of occupancy or other approval following completion of the work in substantial conformance to the applicable land use and building permits.

C. Prior to the final completion of all work, a certificate of occupancy may be issued for a portion of the structure conditioned upon further work being completed by a date certain. [Ord. 737 § 1, 2006; Ord. 734 § 1, 2005; Ord. 720 § 7[1.2.6], 2003.]

18.10.070 Official action.

A. All officials, departments, employees (including contractors) of the city vested with authority to issue permits or grant approvals shall adhere to and require conformance with this title, and shall issue no permit or grant approval for any development or use which violates or fails to comply with conditions or standards imposed to carry out this title.

B. Any permit or approval issued or granted in conflict with the provisions of this title shall be void.

C. The failure of any person to receive mailed notice or failure to post a notice shall not invalidate any actions pursuant to this title. [Ord. 734 § 1, 2005; Ord. 720 § 7[1.2.7], 2003.]

Chapter 18.15

DEFINITIONS

Sections:

18.15.010 Definitions.

18.15.010 Definitions.

"Abutting" means contiguous or adjoining. It shall include the terms "adjacent," "adjoining" and "contiguous."

"Access easement" means an easement recorded for the purpose of providing vehicle, bicycle, and/or pedestrian access from a public street to a parcel across intervening property under separate ownership from the parcel being provided access.

"Access management" means the control of street (or highway) access for the purpose of improving the efficiency, safety and/or operation of the roadway for vehicles; may include prohibiting, closing, or limiting direct vehicle access to a roadway from abutting properties, either with physical barriers (curbs, medians, etc.) or by land dedication or easement. See also PMC 18.65.020.

"Accessible" means approachable and usable by people with disabilities. Complies with the Americans with Disabilities Act.

"Accessory dwelling" means a small, secondary housing unit on a single-family lot. See PMC 18.35.100(B).

"Accessory use" or "accessory structure" means a use or structure which is incidental or subordinate to the primary use of the property. See PMC 18.35.100(J).

Adjacent. See "Abutting."

"Administrative" means a discretionary action or permit decision made without a public hearing, but requiring public notification and an opportunity for appeal.

"Adverse impact" means negative effect of development that can be measured (e.g., noise, air pollution, vibration, dust, etc.).

"Affordable" means housing affordable to a certain percentage of the population earning a specified level of income and spending no more than 30 percent of their income on housing expenses.

"Agriculture," as used in this title, is the same as "farm use." See also ORS 215.203(2)(a).

"Alley" means a public or private right-of-way designed and intended to serve as alternate access to the side or rear of properties.

"Ambient" means something that surrounds, as in the level of light, dust or noise.

"Arcade" means an arched or covered passageway, often along building fronts or between streets.

"Arterial" means those roads or streets that interconnect and support the arterial highway system and link major commercial, residential, industrial, and institutional areas.

"Articulate" or "articulation" means the jointing and interrelating of building spaces through offsets, projections, overhangs, extensions and similar features.

"Automobile-oriented use" means a use or activity where automobiles and/or other motor vehicles are an integral part of the use, including repair shops and drive-through services.

"Bed and breakfast inn" provides overnight accommodations on a daily or weekly basis in an owner-occupied home that is primarily used for this purpose. This use is operated as a commercial enterprise, encourages direct bookings from the public, and is intended to provide a major source of income to the proprietors.

"Berm" means a small rise or hill in a landscape that is intended to buffer sound or visually screen certain developments, such as parking areas.

"Beveled building corner" means a rounded or flat edge on a building, usually at a street corner; may include an entrance, windows, pillars, or other architectural details and ornamentation.

"Block" means a parcel of land or group of lots bounded by intersecting streets. See also PMC 18.65.020(J).

"Boarding house" means any structure, other than a "residential facility" or "residential treatment home" as those terms are defined in ORS 443.400, where rooms for sleeping and dwelling, along with common, shared or joint living and/or sanitation and/or eating and/or cooking facilities, are provided for hire or by separate rental agreement or separate lease, sublease or contractual assignment to more than three people. Children and adults are counted to determine whether there are more than three people. A house in which family members jointly share and contribute to the costs of the home under a single tenancy is not a boarding house. A structure with separate sleeping, bathroom and kitchen facilities for each dwelling unit is not a boarding house.

"Bollard" means a post of metal, wood or masonry that is used to separate or direct traffic (vehicles, pedestrians and/or bicycles). Bollards are usually decorative and may contain sidewalk or pathway lighting.

"Boulevard" means a street with broad open space areas; typically with planted medians.

"Building footprint" means the outline of a building, as measured around its foundation.

"Building mass" means the aggregate size of a building or the total height, width, and depth of all its parts.

"Building pad" means a vacant building site on a lot with other building sites.

"Building scale" means the dimensional relationship of a building and its component parts to other buildings.

"Bulkhead" means the wall below ground-floor windows on a building (i.e., may be differentiated from other walls by using different materials or detailing).

"Capacity" means the maximum holding or service ability, as used for transportation, utilities, parks and other public facilities.

"Centerline radius" means the radius of a centerline of a street right-of-way.

"Child care center" and "family child care" means facilities that provide care and supervision of minor children for periods of less than 24 hours. "Family child care providers" provide care for not more than 12 children in a home. See also ORS Chapter 657A for certification requirements.

"City" means the city of Philomath, Oregon.

"Civic center" means a building or complex of buildings that house municipal offices and services, and which may include cultural, recreational, athletic, convention and entertainment facilities owned and/or operated by a governmental agency.

"Clear and objective" relates to decision criteria and standards that do not involve substantial discretion or individual judgment in their application.

"Club" means a group of people organized for a common purpose to pursue common goals, interests or activities and usually characterized by certain membership qualifications, payment of fees and dues, regular meetings, and a constitution and bylaws.

"Commercial" means land uses involving buying/selling of goods or services as the primary activity.

"Common area" means land commonly owned to include open space, landscaping or recreation facilities (e.g., typically owned by homeowners associations).

"Conservation easement" means an easement that protects identified conservation values of the land, such as wetlands, woodlands, significant trees, floodplains, wildlife habitat, and similar resources.

"Corner radius" means the radius of a street corner, as measured around the curb or edge of pavement.

"Cornice" means the projecting horizontal element that tops a wall or flat roof. See PMC 18.40.070.

"Cottage" means a small house that may be used as an accessory dwelling in conformance with PMC 18.35.100(B).

"Courtyard" means a court or enclosure adjacent to a building, which usually provides amenities such as gardens, planters, seating, or art.

"Criteria" are the elements required to comply with a particular standard.

"Curb cut" means a driveway opening where a curb is provided along a street.

"Day care facility" means any facility that provides day care to adults or children, including a child day care center, group day care home, home of a family day care provider, including those known under a descriptive name such as nursery school, preschool, or kindergarten.

"Day care home" means a day care facility located in a building constructed as a single-family dwelling that is certified to care for no more than 12 adults or children at any given time.

"Deciduous" means a tree or shrub that sheds its leaves seasonally.

"Dedication" means the designation of land by its owner for any public use as shown on a subdivision plat or deed. The term may also be used for dedications to a private homeowners association.

"Density(ies)" means a measurement of the number of dwelling units in relationship to a specified amount of land. As used in this title, density does not include land devoted to street right-of-way. Density is a measurement used generally for residential uses.

"Developable" means buildable land, as identified by the city's comprehensive plan. Includes both vacant land and land likely to be redeveloped, per ORS 197.295(1).

"Development" means all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, grading, and areas devoted to exterior display, storage, or activities. "Development" includes improved open areas such as plazas and walkways, but does not include natural geologic forms or landscapes.

"Discontinued/abandoned use" means a use that has ceased to be used for its legally intended purpose for a period of greater than six months. See Chapter 18.160 PMC.

"Discretionary" describes a permitted action or decision that involves substantial judgment or discretion.

"Drip-line" means an imaginary line around a tree or shrub at a distance from the trunk equivalent to the canopy (leaf and branch) spread.

"Drive lane" or "travel lane" means an improved (e.g., paved) driving surface for one-line vehicles.

"Driveway" means areas that provide vehicular access to a site, except for public and private streets. A driveway begins at the property line and extends into the site. Driveways do not include parking, maneuvering, or circulation areas in parking space areas.

"Driveway apron/approach" means the edge of a driveway where it abuts a public way; usually constructed of concrete.

Drought-Tolerant/Drought-Resistant Plants. Refer to Sunset Western Garden Book (latest edition).

"Duplex" means a building with two attached housing units on one lot or parcel that need not have a common wall.

"Dwelling unit" means a living facility that includes provisions for sleeping, eating, cooking and sanitation, as required by the Uniform Building Code, for not more than one family or a congregate residence for three or less persons.

"Easement" means a right of usage of real property granted by an owner to the public or to specific persons, firms, and corporations.

"Elevation" refers to a building face, or scaled drawing of the same, from grade to roof ridgeline.

"Enhancement" means an activity that improves one or more specific functions or values of an existing wetland.

"Environmentally sensitive areas" means land areas that have some potential development constraint normally associated with riparian corridors, wetlands, critical habitat, or slope. See "Sensitive lands."

"Evidence" means application materials, plans, data, testimony and other factual information used to demonstrate compliance or noncompliance with a code standard or criterion.

"Family" means a group of individuals related by blood, marriage or legal document recognized by the state of Oregon that live in a single-family dwelling; or four or more unrelated persons living in a single-family dwelling that can attest to the fact that they all: share the entire house, excluding private sleeping quarters; and live and cook together as a single housekeeping unit the majority of the time; and jointly contribute and share expenses for food, rent, utilities or other household expenses; and do not expect to dissolve the relationship within the next six months; and have at least one primary person living on site who is responsible for the tenant's duties under the lease, including paying rent, utilities, etc.; and jointly have a single tenancy under a single lease, without any separate leases, subleases or contractual assignments of rooms and space within the dwelling.

"Family day care" or "babysitting" means care of 12 or fewer children, including resident family members, as accessory to any residential use. Family day care is not subject to the definition of "home occupation." See "Child care center."

"Fish habitat" means those areas upon which fish depend in order to meet their requirements for spawning, rearing, food supply, and migration.

"Flag lot" means a lot or parcel that has access to a road, street or easement by means of a narrow strip of lot or easement.

"Frontage" means the dimension of a property line abutting a public or private street.

"Frontage street or road" means a minor street that parallels an arterial street in order to provide access to abutting properties and minimize direct access onto the arterial.

"Functions" and "values" means the environmental roles served by wetlands and buffer areas including, but not limited to, water quality protection and enhancement, fish and wildlife habitat, flood storage, nutrient attenuation, and sediment trapping. "Values" refers to the qualities ascribed to a wetland such as educational and recreational opportunities, open space, and visual aesthetic qualities.

"Functional classification" means the classification given to streets (e.g., "local/collector/arterial") by the city's comprehensive plan and transportation system plan.

"Garage, private" means an accessory building or portion of a main building used for the parking or temporary storage of vehicles owned or used by occupants of the main building.

"Garage, public" means a building other than a private garage used for the care and repair of motor vehicles where such vehicles are owned or used or stored for compensation, hire or sale.

"Grade" means the average of the finished ground level at the center of all walls of the building. In case walls are parallel to and within five feet of a sidewalk, the above ground level should be measured at the sidewalk.

"Ground cover" means a plant material or nonplant material (e.g., mulch, bark chips/dust) that is used to cover bare ground. See also Chapter 18.70 PMC, Landscaping, Street Trees, Fences and Walls.

"Hardscape" means nonplant landscape materials, including pathways, decorative pavers, benches, drinking fountains, arbors, pergolas, playgrounds, plazas, and similar amenities.

"Height" means the vertical distance of a structure measured from the original grade to the highest point of the structure.

"Home occupation" or "home occupation site" means the incidental use of a residential dwelling for commercial purposes subject to the provisions of PMC 18.145.020.

"Human-scale design/development" means site and building design elements that are dimensionally related to pedestrians such as: small building spaces with individual entrances (e.g., as is typical of downtown and main street developments); larger buildings which have articulation and detailing to break up large masses; narrower streets with tree canopies; smaller parking areas or parking areas broken up into small components with landscaping; and pedestrian amenities such as side-

walks, plazas, outdoor seating, lighting, weather protection (e.g., awnings or canopies), and similar features. These features are all generally smaller in scale than those that are primarily intended to accommodate automobile traffic.

"Impervious surface" means development which does not allow for water infiltration (e.g., pavement, roofs, etc.).

"Incidental and subordinate to" means a use or portion of a development that is secondary to and less apparent than the primary use or other portion of the development.

"Industry" means those fields of economic activity related to forestry, fishing, hunting and trapping; mining; construction; manufacturing; transportation, communication, electric, gas, and sanitary services; and wholesale trade.

"Infill" means the development of vacant, bypassed lands located in an area that is mainly developed.

"Jail or correction facility" means any building or other facility used permanently or temporarily by city, county, state, or federal law enforcement or similar or related entities to detain, confine, or incarcerate individuals after arrest, pending trial, or after conviction of any alleged or actual crime.

"Junk" means old or scrap copper, brass, rope, rags, batteries, paper, trash, rubber, debris, waste or junked, dismantled, wrecked, scrapped or ruined motor vehicles, or motor vehicle parts, iron, steel or other old or scrap ferrous or nonferrous material, metal or nonmetal materials.

"Junkyard" means any establishment or place of business where there is accumulated on the premises eight or more motor vehicles or an equivalent volume of junk that is maintained, operated or used for storing, keeping, buying or selling of junk and the term includes automobile graveyards, wrecking yards, and salvage yards.

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"Land division" means the process of dividing land to create parcels or lots.

"Land use" means the main activity that occurs on a piece of land or the structure in which the activity occurs (e.g., residential, commercial, mixed-use, industrial, open space, recreation, street rights-of-way, vacant, etc.).

"Land use district" as used in this title is the same as a zone district.

"Landing" means a level part of a staircase, as at the end of a flight of stairs.

"Landscaping" means any combination of living plants such as trees, shrubs, plants, vegetative ground cover or turf grasses, and may include structural features such as walkways, fences, benches, plazas, works of art, reflective pools, fountains or the like. Landscaping also includes inanimate materials such as bark, rock, irrigation systems, mulches, and topsoil.

"Lane" or "mid-block lane" means a narrow, limited-use roadway facility usually used to access a limited number of dwelling units. Similar to an alley in design. See PMC 18.35.050(A).

Legislative. A legislative action or decision is the making of law, as opposed to the application of existing law to a particular use (e.g., adoption of, or amendment to, a comprehensive plan or development regulation). See PMC 18.105.060.

"Level of service" means, for transportation, a standard of a street's carrying capacity based upon prevailing roadway, traffic and traffic control conditions during a given time period. The level of service range, from LOS A (free flow) to LOS F (forced flow), describes operational conditions within a traffic stream and their perception by motorists/passengers. Level of service is normally measured for the peak traffic hour at intersections (signalized or unsignalized) or street segments (between signalized intersections).

"Livestock" means domestic animal types customarily raised or kept on farms.

"Lot" means a unit of land that is created by a subdivision of land (ORS 92.010(3)). See also Chapter 18.115 PMC.

"Lot area" means the total surface area (measured horizontally) within the lot lines of a lot.

"Lot, corner" means a lot abutting on two intersecting streets other than an alley; provided, that the streets do not intersect at an angle greater than 135 degrees.

"Lot coverage" means the area of a lot covered by a building or buildings expressed as a percentage of the total lot area.

"Lot depth" means the horizontal distance ordinarily measured from the midpoint of the front lot line to the midpoint of the rear lot line.

"Lot, interior" means a lot other than a corner lot.

"Lot line" means the property line bounding a lot.

"Lot line, front" means, in the case of an interior lot, the lot line separating the lot from the street other than an alley, and in the case of a corner or through lot, the lot line along a street other than an alley over which the primary vehicular access to the property is gained.

"Lot line, rear" means the lot line that is opposite and most distant from the front lot line. Where a rear lot line cannot be determined, it shall be developed by striking a cord 10 feet in length within the lot parallel to and at a maximum distance from the front lot line.

"Lot line, side" means any lot line not a front or rear lot line.

"Lot width" means the horizontal distance between the side lot lines ordinarily measured at the front lot line.

"Lot line adjustment" means the adjustment of a property line by the relocation of a common line where no additional lots are created. This development code also defines the consolidation of lots (i.e., resulting in fewer lots) as a lot line adjustment.

"Maneuvering area/aisle" refers to the driving area in a parking lot where motor vehicles are able to turn around and access parking spaces.

"Manufactured home" means a transportable single-family dwelling conforming to the Manufactured Housing Construction and Safety Standards Code of the U.S. Department of Housing and Urban Development, but is not regulated by the Oregon State Structural Specialty Code and Fire Life Safety Regulations and is intended for permanent occupancy.

"Manufactured home park" means any tract, lot, or parcel of land maintained, offered or used for the purpose of parking four or more mobile homes as dwelling units.

"Manufacturing" means establishments engaged in the mechanical or chemical transforma-

tion of materials or substances into new products including the assembling of component parts, the manufacturing of products, and the blending of materials such as lubricating oils, plastics, resins or liquors.

"Mini-warehouse" means a structure containing separate storage spaces of varying sizes leased or rented on an individual basis.

"Ministerial" means a routine governmental action or decision that involves little or no discretion. The issuance of a building permit is such an action. See also PMC 18.105.030.

"Mitigation" means to avoid, rectify, repair, or compensate for negative impacts which result from other actions (e.g., improvements to a street may be required to mitigate for transportation impacts resulting from development).

"Multifamily housing" means three or more dwelling units on the same parcel. See PMC 18.35.100(F).

"Natural hazard" means natural areas that can cause dangerous or difficult development situations. For example, natural hazard areas include steep slopes, unstable soils, landslides, and flood areas.

"Neighborhood" means a geographic area lived in by neighbors and usually having distinguishing character.

"Neighborhood-scale design" means site and building design elements that are dimensionally related to housing and pedestrians, such as narrower streets with tree canopies, smaller parking areas, lower building heights (as compared to downtown areas) and similar neighborhood characteristics. These features are generally smaller in scale than those that are primarily intended to accommodate automobile traffic.

"Nonconforming use or development" means a land use or structure lawfully existing at the effective date of adoption or amendment of this title that could not be built or used under the terms of this title by reason of restrictions on use, lot area, lot coverage, height, yard, equipment, its location on the lot or other requirements concerning the structure or use. See Chapter 18.160 PMC.

Non-Native Invasive Plants. See Oregon State University Extension Service Bulletin (latest edition) for Philomath area.

"Off-street parking" means all off-street areas designed, used, required or intended to be used for the parking of motor vehicles. Off-street parking areas shall conform to the requirements of Chapter 18.75 PMC.

"On-street parking" means parking in the street right-of-way, typically in parking lanes or bays. Parking may be parallel or angled in relation to the edge of the right-of-way or curb. See also Chapter 18.75 PMC.

"Open space (common/private/active/passive)" means land within a development that has been dedicated in common to the ownership within the development or to the public specifically for the purpose of providing places for recreation, conservation or similar use.

"Orientation" means to cause to face toward a particular point of reference (e.g., a building oriented to the street).

"Outdoor commercial use" means a use supporting a commercial activity that provides goods or services that are stored or displayed outside of an enclosed structure. Examples of outdoor commercial uses include automobile sales or services, nurseries, lumberyards and equipment rental businesses.

"Overlay zone/district" means additional zoning to that of the underlying base zone that provide regulations that address specific subjects that may be applicable in more than one land use district such as flooding or wetlands. See also Chapter 18.55 PMC.

"Parcel" means a unit of land that is created by a partitioning of land (ORS 92.010(6)).

"Parking lot perimeter" means the boundary of a parking lot area that usually contains a landscaped buffer area.

Parking versus Storage. "Parking" is the area used for leaving motor vehicles for a temporary time. "Storage" is to place or leave in a location for maintenance, repair, sale, rental, or future use.

"Partition" means to divide an area or tract of land into two or three parcels within a calendar year when such area or tract of land exists as a unit or contiguous units of land under single ownership at the beginning of such year. (See also ORS 92.010(8)).

Pathway/Walkway/Access Way. A pathway or multi-use pathway may be used to satisfy the requirements for access ways in the Transportation Planning Rule (OAR 660-012-045). See PMC 18.65.030(A).

"Pier" means exterior vertical building element that frame each side of a building or its ground-floor windows (usually decorative).

"Planter strip, tree cutout" means a landscape area for street trees and other plantings within the public right-of-way, usually between the street and a sidewalk.

"Plat" means a map of subdivision, prepared as specified in ORS 92.080 and recorded with the Benton County assessor's office. All plats shall also conform to Chapter 18.115 PMC, Land Divisions and Lot Line Adjustments.

"Plaza" means a public square or extra-wide sidewalk (e.g., as on a street corner) that allows for special events, outdoor seating, sidewalk sales, and similar pedestrian activity. See PMC 18.40.080.

"Primary" means the largest or most substantial element on the property, as in primary use, residence, entrance, etc. All other similar elements are secondary in size or importance.

"Property line" means a legal boundary for a lot or parcel.

"Property line, front" means that property line abutting a street, other than an alley, over which primary vehicular access is gained.

"Property line, rear" means that property line that is opposite and most distant from the front property line.

"Property line, side" means that property line other than a front or rear.

"Property line, side street" means that property line adjacent to a street other than the front property line.

"Quasi-judicial" refers to an action or decision that requires substantial discretion or judgment in applying the standards or criteria of this title and usually involves a public hearing. See PMC 18.105.050.

"Recreational vehicle" means a vehicular type portable structure without permanent foundation, which can be towed, hauled or driven and primarily designed as temporary living accommodation for recreational, camping and travel use and including, but not limited to, travel trailers, truck campers, camping trailers and self-propelled motor homes.

"Residential care facility" means a facility licensed by or under the authority of the Department of Human Resources under ORS 443.400 through 443.460, which provides residential care alone or in conjunction with treatment or training or a combination thereof for six to 15 individuals who need not be related.

"Residential care home" means a home licensed by or under the authority of the Department of Human Resources under ORS 443.400 through 443.825, which provides residential care alone or in conjunction with treatment or training or a combination thereof for five or fewer individuals who need not be related.

"Residential caretaker unit" means a dwelling of generally a temporary nature providing security for an existing land use activity.

"Restoration" means to improve a disturbed wetland by returning wetland parameters that may be missing; adding soils, water, or plants. The restoration may return a missing or damaged wetland function to achieve a desired outcome.

"Ridgeline (building)" means the top of a roof at its highest elevation.

"Right-of-way" means land that is owned in fee simple by the public, usually for transportation facilities.

"Riparian area" means the area adjacent to a river, lake, or stream, consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem.

"Riparian corridor" means a Goal 5 resource that includes the water areas, fish habitat, adjacent riparian areas, and wetlands within the riparian area boundary.

"Riparian corridor boundary" means an imaginary line that is a certain distance upland from the top bank, for example, as specified in PMC 18.55.020(B).

"Roof pitch" means the slope of a roof, usually described as ratio (e.g., one foot of rise per two feet of horizontal distance).

"Rooftop garden" means a garden on a building terrace or at the top of a building with a flat roof (usually on a portion of a roof).

"Rubbish" means a general term for solid waste, excluding food waste and ashes, taken from residences, commercial establishments and institutions.

"Scrap" means discarded or rejected materials that result from manufacturing or fabricating operations.

"Screening" means a method of visually shielding or obscuring one abutting or nearby structure or

use from another by fencing, walls, berms or densely planted vegetation.

"Senior housing" means housing designated and/or managed for persons over the age of 55. (Specific age restrictions vary.)

"Sensitive lands" means wetlands, significant trees, steep slopes, floodplains and other natural resource areas designated for protection or conservation by the comprehensive plan.

"Setback" means the distance between the property line and the building foundation, excluding uncovered steps.

"Shared driveway" means when land uses on two or more lots or parcels share one driveway. An easement or tract (owned in common) may be created for this purpose.

"Shared parking" means off-street parking utilized by two or more separate entities. See PMC 18.75.030(C)(4).

"Single-family attached housing (townhomes)" means two or more single-family dwellings with common end-walls. See also PMC 18.35.020 and 18.35.100.

"Single-family detached house" means a single-family dwelling that does not share a wall with any other building. See also PMC 18.35.020.

"Single-family detached zero lot line house" means a single-family detached house with one side yard setback equal to zero. See also PMC 18.35.020 and 18.35.100.

"Site" means a property (or group of adjacent parcels or lots under the same ownership) that is subject to a permit application under this title.

"Spot zoning" means rezoning of a lot or parcel of land to benefit an owner for a use incompatible with surrounding uses and not for the purpose or effect of furthering the comprehensive zoning plan.

"Standards" are code requirements. Criteria are the elements required to comply with a particular standard.

"Steep slopes" means slopes of greater than 25 percent.

"Storefront character" means the character expressed by buildings placed close to the street with ground-floor display windows, weather protection (e.g., awnings or canopies), corner building entrances or recessed entries, and similar features.

"Stormwater facility" means a detention and/or retention pond, swale, or other surface water feature that provides storage during high-rainfall events and/or water quality treatment.

"Story" means that portion of building included between the upper surface of any floor and the upper surface of the floor next above, except that the top story shall be that portion of a building included between the upper surface of the top floor and the ceiling above. If the finished floor level directly above a basement or cellar is more than six feet above grade, such basement or cellar shall be considered a story.

"Stream" means a channel such as a river or creek that carries flowing surface water, including perennial streams and intermittent streams with defined channels, and excluding manmade irrigation and drainage channels.

"Street" means any vehicular way which is an existing state, county or municipal roadway and is shown on a plat duly filed and recorded in the office of the county recording officer and includes the land between the street lines, whether improved or unimproved, which meets the city standards in PMC 18.80.020.

"Street, arterial" means a street with signals at important intersections and stop signs on the side streets, and which collects and distributes traffic to and from collector streets.

"Street, collector" means a street that collects traffic from local streets and connects with minor and major arterials.

"Street connectivity" means the number of street connections within a specific geographic area. Higher levels of connectivity provide for more direct transportation routes and better dispersion of traffic, resulting in less traffic on individual streets and potentially slower speeds through neighborhoods.

"Street, cul-de-sac" means a street with a single common ingress and egress and with a turnaround at the end.

"Street furniture/furnishings" means benches, lighting, bicycle racks, drinking fountains, mailboxes, kiosks, and similar pedestrian amenities located within a street right-of-way. See also PMC 18.40.080.

"Street, local" means a street designed to provide vehicular access to abutting property and to discourage through traffic.

"Street stub" means a temporary street ending (i.e., where the street will be extended through

adjacent property in the future as those properties develop). Not a permanent street end or dead-end street.

"Street tree" means a tree planted in a planter strip or tree cutout.

"Structural alteration" means a change to the supporting members of a structure including the supporting parts of foundations, bearing walls or partitions, columns, beams, girders or the roof.

"Structure" means that which is built or constructed. An edifice or building of any kind or any piece of work artificially built up or composed of parts joined together in some definite manner and which requires location on the ground or which is attached to something having a location on the ground.

"Subdivision" means to divide land into four or more lots within a single calendar year. (ORS 92.010(13)).

"Swale" means a type of stormwater facility. Usually a broad, shallow depression with plants that filter and process contaminants.

"Tangent" means meeting a curve or surface in a single point.

"Terrace" means a porch or promenade supported by columns, or a flat roof or other platform on a building.

"Top of bank" shall have the same meaning as "bankfull stage" defined in OAR 141-085-0010(11).

"Topographical constraint" means where existing slopes prevent conformance with a code standard.

"Tract, private/public" means a piece of land set aside in a separate area for dedication to the public, a homeowner's association, or other entity (e.g., open space, recreation facilities, sensitive lands, etc.).

"Transportation facilities" means the physical improvements used to move people and goods from one place to another (i.e., streets, sidewalks, pathways, bike lanes, airports, transit stations and bus stops, etc.).

"Transportation mode" means the method of transportation (e.g., automobile, bus, walking, bicycling, etc.).

"Triplex" means a building with three attached housing units on one lot or parcel.

"Unstable soil" means soil types that pose severe limitations upon development or create a groundwater pollution hazard due to poor filtration, high water table and/or cemented hardpan as defined by the U.S. Soil Conservation Service.

"Use" means the purpose for which land or a structure is designed, arranged or intended, or for which it is occupied or maintained.

"Variance" means an administrative or quasi-judicial decision to lessen or otherwise modify the requirements of this title. See Chapter 18.155 PMC.

"Vision clearance area" means a triangular area on a lot at the intersection of two streets or a street and an alley, driveway, other point of vehicular access or railroad, two sides of which are lot lines measured from the corner intersection of the lot lines to a distance specified in these regulations. The third side of the triangle is a line across the corner of the lot adjoining the ends of the other two sides. Where the lot lines at intersections have rounded corners, the lot lines will be extended in a straight line to a point of intersection. The vision clearance area contains no plantings, walls, structures, or temporary or permanent obstructions exceeding three and one-half feet in height measured from the grade of the street centerline.

"Water area" means the area between the banks of a lake, pond and log pond, river, perennial or fish-bearing intermittent stream, excluding man-made farm ponds.

"Wetlands" are land areas where water is the dominant factor determining the nature of soil development and the types of plant and animal communities. The Federal Clean Water Act (Section 404) and Oregon Administrative Rules (OAR 141-85-010) define them more specifically. For more information, contact the Oregon Division of State Lands.

"Wildlife habitat" means an area upon which wildlife depend in order to meet their requirements for food, water, shelter, and reproduction. Examples include wildlife migration corridors, big game winter range and nesting and roosting sites.

"Wireless communication equipment" includes cell towers, antennas, monopoles, and related facilities used for radio signal transmission and receiving.

"Yard" means an open space on a lot that is unobstructed with buildings from the ground upward, except as otherwise provided in this title.

"Yard, front" means a yard between side lot lines and measured horizontally at right angles to the front lot line from the front lot line to the nearest point of the foundation of a building.

"Yard, rear" means a yard extending between side lot lines and measured horizontally at right angles to the rear lot line from the rear lot line to the nearest point of the foundation of a building.

"Yard, side" means a yard between the front and rear yards measured horizontally and at right angles to the side lot lines from the side lot line to the nearest point of the foundation of a building.

Zero Lot Line House. See PMC 18.35.100(A). [Ord. 812 § 2, 2016; Ord. 799 § 1, 2015; Ord. 737 § 1, 2006; Ord. 720 § 7[1.3], 2003.]

Chapter 18.20

ENFORCEMENT

Sections:

18.20.010 Provisions of this title declared to be minimum requirements.
18.20.020 Violation of code prohibited.
18.20.030 Penalty.
18.20.040 Complaints regarding violations.
18.20.050 Inspection and right of entry.
18.20.060 Abatement of violations.
18.20.070 Stop-order hearing.

18.20.010 Provisions of this title declared to be minimum requirements.

A. In their interpretation and application, the provisions of this title shall be held to be minimum requirements adopted for the protection of the public health, safety, and general welfare.

B. When the requirements of this title vary from other provisions of this title or with other applicable standards, the most restrictive or that imposing the highest standard shall govern. [Ord. 720 § 7[1.4.1], 2003.]

18.20.020 Violation of code prohibited.

No person shall erect, construct, alter, maintain or use any building or structure or shall use, divide or transfer any land in violation of this title or any amendment thereto. [Ord. 720 § 7[1.4.2], 2003.]

18.20.030 Penalty.

A. A violation of this title shall constitute a Class 1 civil infraction that shall be processed accordingly.

B. Each violation of a separate provision of this title shall constitute a separate infraction and each day that a violation of this title is committed or permitted to continue shall constitute a separate infraction.

C. A finding of a violation of this title shall not relieve the responsible party of the duty to abate the violation. The penalties imposed by this section are in addition to and not in lieu of any remedies available to the city.

D. If a firm or corporation violates a provision of this title, the officer or officers, or person or persons responsible for the violation shall be subject

to the penalties imposed by this section. [Ord. 720 § 7[1.4.3], 2003.]

18.20.040 Complaints regarding violations.

A. Whenever a violation of this title occurs, or is alleged to have occurred, any person may file a signed, written complaint.

B. Such complaints, stating fully the causes and basis thereof, shall be filed with the planning official. The planning official shall properly record such complaints, investigate and take action thereon as provided by this title. [Ord. 720 § 7[1.4.4], 2003.]

18.20.050 Inspection and right of entry.

The planning official or designee may enter upon land subject to a land use application or to enforce any provision of this title to make examination and surveys in the performance of their functions. [Ord. 720 § 7[1.4.5], 2003.]

18.20.060 Abatement of violations.

Any development or use that occurs contrary to the provisions of this title or contrary to any permit or approval issued or granted under this title is unlawful, and may be abated by appropriate proceedings. [Ord. 720 § 7[1.4.6], 2003.]

18.20.070 Stop-order hearing.

A. Whenever any work is being done in violation of the provisions of this title or a condition of any permit or other approval granted pursuant hereto, the planning or building official may order the work stopped by notice in writing served on persons engaged in doing such work or causing such work to be done. All work under the permit or approval shall cease until it is authorized to continue.

B. The planning or building official shall schedule a hearing if requested on the stop order for the earliest practicable date, but not more than seven days after the effectiveness of any required notice. At the discretion of the city manager, such hearing may be:

1. Part of a hearing on revocation of the underlying development approval; or

2. Solely to determine whether a violation has occurred. The city manager shall hold this hearing and shall make written findings as to the violation within 15 days. Upon a finding of no violation, the city manager shall require the issuance of a resume work order. Upon finding a violation, the stop order shall continue to be effective until the violating party furnishes sufficient proof to the city manager that the violation has been abated. The city manager's decision is subject to review under PMC 18.105.050, Type III procedure (quasi-judicial). [Ord. 720 § 7[1.4.7], 2003.]

Chapter 18.25

ESTABLISHMENT OF ZONES

Sections:

18.25.010 Classification of zones.
18.25.020 Location of zones.

18.25.010 Classification of zones.

For the purposes of this title, the following zones are hereby established:

R-1	Low-Density Residential
R-2	Medium-Density Residential
R-3	High-Density Residential
C-1	Downtown Commercial
C-2	General Commercial
O-R	Office Residential
P	Public
LI	Light Industrial
HI	Heavy Industrial
IP	Industrial Park
/PUD	Planned Unit Development
/HEC	Hillside and Erosion Control Overlay
/NH	Sensitive Lands and Natural Resources Overlay
/FH	Flood Hazard Overlay

[Ord. 720 § 7[1.5.1], 2003.]

18.25.020 Location of zones.

The zones listed in this title are applied to areas within the city as shown on the city of Philomath zoning map of 2002, which is hereby adopted by reference. The boundaries of these zones may be modified in accordance with the legislative provisions of this title. A print of the adopted zoning map, with amendments, shall be maintained in the office of the city recorder. [Ord. 720 § 7[1.5.2], 2003.]

Division 2. Land Use Districts

Chapter 18.30

LAND USE DISTRICT ADMINISTRATION

Sections:

18.30.010 Classification of land use districts.
18.30.020 Land use district map.
18.30.030 Determination of land use district boundaries.

18.30.010 Classification of land use districts.

All areas within the corporate limits of the city of Philomath are divided into land use districts. The use of each lot, parcel and tract of land is limited to the uses allowed by the applicable land use district. The applicable land use district shall be determined based on the land use district map, and the provisions of this division. [Ord. 720 § 7[2.0.1], 2003.]

18.30.020 Land use district map.

A. The boundaries of each of the land use districts contained within this division shall coincide with the land use district boundaries identified on the city's official zoning map, retained by the city recorder. Said map, by this reference, is made a part of this title. The city shall maintain a certified print of the adopted land use district map and any map amendments.

B. Each lot, tract and parcel of land or portion thereof within the land use district boundaries as designated and marked on the zoning map is classified, zoned and limited to the uses as hereinafter specified and defined for the applicable district classification.

C. All amendments to the city land use district (zoning) map shall be made in accordance with the provisions of Chapter 18.135 PMC.

1. Copies of all map amendments shall be dated with the effective date of the ordinance adopting the map amendment and shall be maintained without change together with the adopting documents, on file at the city; and

2. The city shall make available for public inspection an up-to-date copy of the revised land use district map, so that it accurately portrays changes of zone boundaries or classification, as applicable. [Ord. 720 § 7[2.0.2], 2003.]

18.30.030 Determination of land use district boundaries.

Where due to the scale, lack of scale, lack of detail or illegibility of the city zoning district map, or due to any other reason, there is uncertainty, contradiction or conflict as to the intended location of district boundary lines, the boundary lines shall be determined by the planning official in accordance with the following:

A. Boundaries indicated as approximately following the center lines of streets, highways, railroad tracks or alleys shall be constructed to follow such center lines;

B. Boundaries indicated as approximately following the boundaries of a parcel, lot, or tract shall be constructed as following such boundaries;

C. Boundaries indicated as approximately following a city boundary, or the urban growth boundary, shall be constructed as following said boundary;

D. Boundaries indicated as approximately following river, stream and/or drainage channels or basins shall be constructed as following river, stream and/or drainage channels or basins, as applicable; and

E. Whenever any public right-of-way is lawfully vacated, the lands formerly within the vacated right-of-way shall automatically be subject to the same land use district designation that is applicable to lands abutting the vacated area. In cases where the right-of-way formerly served as a land use district boundary, the lands formerly within the vacated right-of-way shall be allocated proportionately between the subject land use districts. [Ord. 720 § 7[2.0.3], 2003.]

Chapter 18.35

RESIDENTIAL DISTRICTS

Sections:

18.35.010 Purpose.
18.35.020 Allowed uses.
18.35.030 Building setbacks.
18.35.040 Lot standards.
18.35.050 Flag lots and lots accessed by mid-block lanes.
18.35.060 Maximum lot coverage.
18.35.070 Building height.
18.35.080 Building orientation.
18.35.090 Architectural standards.
18.35.100 Special standards for certain uses.

18.35.010 Purpose.

The residential district is intended to promote the livability, stability and improvement of the city's neighborhoods. This chapter provides standards for the orderly expansion and improvement of neighborhoods based on the following principles:

A. Make efficient use of land and public services and implement the comprehensive plan by providing minimum and maximum density standards for housing.

B. Accommodate a range of housing needs, including owner-occupied and rental housing.

C. Provide for compatible building and site design at an appropriate neighborhood scale.

D. Reduce reliance on the automobile for neighborhood travel and provide options for walking, bicycling and transit use.

E. Provide direct and convenient access to schools, parks and neighborhood services.

F. Maintain and enhance the city's historic architecture and uses. [Ord. 720 § 7[2.1.100], 2003.]

18.35.020 Allowed uses.

The land uses listed in Table 18.35.020 are allowed in the residential districts subject to the provisions of this chapter. Only land uses that are specifically listed in Table 18.35.020, and land uses that are approved as "similar" to those in Table 18.35.020, may be allowed.

Table 18.35.020
Land Uses and Building Types Allowed in the Residential Districts

R-1 Residential	**R-2 Residential**	**R-3 Residential**
A. Allowed Uses 1) Accessory uses and structures.* 2) Duplex, on corner lots only with a minimum of 10,000 square feet. 3) Family day care home. 4) Governmental structure or use of land that do not receive the public.* 5) Home occupations; subject to PMC 18.145.020. 6) Manufactured dwelling.* 7) Residential care home.* 8) Single-family dwelling. 9) Zero lot line dwelling.*	A. Allowed Uses 1) R-1 allowed uses. 2) Accessory dwelling.* 3) Duplexes. 4) Single-family attached (townhomes) and triplexes.* 5) Zero lot line houses.*	A. Allowed Uses 1) R-2 allowed uses. 2) Multifamily dwelling.* 3) Residential care home.* 4) Residential care facility.* 5) Church, nonprofit religious or philanthropic institution. 6) Day care facility. 7) Nursery school, day nursery, kindergarten, or similar facility. 8) Manufactured home park.*
B. Conditional Uses The planning commission may grant a conditional use permit for the following uses: 1) Accessory dwelling. 2) Church, nonprofit religious or philanthropic institution. 3) Community center. 4) Day care facility. 5) Golf course or country club, but excluding golf driving range, miniature golf course, or similar facility. 6) Governmental structure or use of land, including park, playground, fire station or library.* 7) Nursery school, day nursery, kindergarten, or similar facility. 8) Nursing or retirement home. 9) Professional office, except veterinarian. 10) Public and private schools. 11) Recreational club such as tennis, swimming, or archery club, but excluding commercial amusement enterprise. 12) Residential care facility. 13) Single-family attached (townhomes), duplexes and triplexes.*	B. Conditional Uses The planning commission may grant a conditional use permit for the following uses: 1) R-1 conditional uses unless allowed above. 2) Bed and breakfast. 3) Manufactured home parks.* 4) Neighborhood commercial. 5) Fourplex.*	B. Conditional Uses The planning commission may grant a conditional use permit for the following uses: 1) R-2 conditional uses unless allowed above.

Uses marked with an asterisk (*) are subject to the standards in PMC 18.35.100, Special standards for certain uses. Home occupations and temporary uses are subject to the standards in Chapter 18.145 PMC. [Ord. 737 § 1, 2006; Ord. 734 § 1, 2005; Ord. 720 § 7[2.1.110], 2003.]

18.35.030 Building setbacks.

Building setbacks provide space for private yards and building separation for fire protection/security, building maintenance, sunlight and air circulation. This section is also intended to promote human-scale design and traffic calming by downplaying the visual presence of garages along the street and encouraging the use of extra-wide sidewalks and pocket parks in front of markets and other nonresidential uses. The standards encourage placement of residences close to the street for public safety and neighborhood security.

Building setbacks are measured from the foundation wall to the respective property line. Setbacks for decks and porches requiring building permits are measured from the front edge of the deck or porch to the property line. The setback standards apply to primary structures and accessory structures.

A. Front Yard Setbacks.

1. Residential Uses (Single-Family, Duplex and Triplex, Multifamily Housing Types).

a. A minimum setback of 15 feet is required, except that an unenclosed porch may be within 10 feet, as long as it does not encroach into a public utility easement. See also subsection (F) of this section, which provides standards for setbacks for established residential areas.

b. Garages and carports shall be accessed from alleys or otherwise set back 20 feet.

c. Multifamily housing shall also comply with the building orientation standards in PMC 18.35.080.

2. Public, Institutional, and Conditional Uses. The standards in subsection (A)(1) of this section shall not be required for buildings that do not receive the public (e.g., buildings used solely for storage or housing mechanical equipment, and similar uses).

B. Rear Yard Setbacks. The minimum rear yard setback shall be 15 feet for street-access lots and six feet for alley-access lots (all structures). For structures higher than one story, the rear yard setback shall be increased one foot for each additional foot in height over 25 feet, but not to exceed a 25-foot rear setback.

C. Side Yard Setbacks. The minimum side yard setback shall be five feet on interior side yards and 15 feet on street side yards; or when zero lot line development is allowed, the minimum side yard setbacks shall be 10 feet minimum on one side of the dwelling unit. (See standards for zero lot line housing in PMC 18.35.100.)

D. Setback Exceptions. The following architectural features are allowed to encroach into the setback yards no more than two feet: eaves, chimneys, bay windows, overhangs, uncovered or unenclosed porches and decks less than 30 inches in height and similar architectural features. Walls and fences may be placed on property lines, subject to the standards in Chapter 18.72, Fences, Hedges and Walls. Walls and fences within front yards shall additionally comply with the vision clearance standards in PMC 18.65.020(N).

E. Special Yards – Distance Between Buildings on the Same Lot. To provide usable yard area and allow air circulation and light, the minimum distance between buildings on the same lot shall be at least one-half the sum of the height of both buildings; provided however, that in no case shall the distance be less than 10 feet. This requirement shall also apply to portions of the same buildings separated from each other by a court, landscape yard, or other open space.

F. Setbacks for Infill Housing in Established Residential Areas. “Established residential area” means an area within the residential district that was platted prior to the effective date of the ordinance codified in this chapter. In such areas, the following setback standards shall apply:

1. When an existing single-family residence on the same street is located within 20 feet of the subject site, a front yard setback similar to that of the nearest single-family residence may be used. “Similar” means the setback is within 10 feet of the setback provided by the nearest single-family residence on the same street. For example, if the existing single-family residence has a front yard setback of 25 feet, then the new building may have a front yard setback between 15 feet and 35 feet. If the new building is to be located between two existing residences, then the setback for the new building

may be based on the average setback of both adjacent residences, plus or minus 10 feet.

2. In no case shall a front yard setback be less than 15 feet. Zero lot line houses shall comply with the standards for zero lot line housing in PMC 18.35.100. [Ord. 799 § 2, 2015; Ord. 734 § 1, 2005; Ord. 720 § 7[2.1.120], 2003.]

18.35.040 Lot standards.

Table 18.35.040 – Lot Standards

Land Use District	Lot Area	Lot Width/Depth	Related Standards
R-1 Single-Family Residential	Minimum: 7,000 square feet. 10,000 square feet for duplex dwellings. Maximum: 150 percent of minimum.	Minimum width: 16 feet. Maximum depth: Three times the lot width; except as may be required by this title (e.g., to protect sensitive lands, etc.).	Lot coverage: 35 percent. Building height: 30 feet.
R-2 Duplex-Residential	Minimum: 6,000 square feet. 8,000 square feet for duplex dwellings and 3,600 square feet for each additional dwelling. Maximum: 150 percent of minimum.	Minimum width: 16 feet. Maximum depth: Three times the lot width; except as required to protect sensitive lands, etc.	Lot coverage: 40 percent. Building height: 30 feet.
R-3 Multifamily Residential Housing (More than Three Units)	Minimum: 5,000 square feet. 7,200 square feet for duplex dwellings and 2,500 square feet for each additional dwelling. High Density Development*: Studio/1 BD – 1,500 SF 2 BD – 1,800 SF 3 BD – 2,100 SF 4+ BD – 2,400 SF Maximum area: None.	Minimum width: 16 feet. Maximum depth: None.	Lot coverage: 80 percent – inclusive of impervious vehicular surfaces. Building height: 40 feet.
Manufactured Home Parks	See PMC 18.35.100 for manufactured home park standards.		

Table 18.35.040 – Lot Standards (Continued)

Land Use District	Lot Area	Lot Width/Depth	Related Standards
Allowed Public, Institutional, or Conditional Uses	Minimum area: None. Maximum area: None.	Minimum width: None. Maximum depth: None.	Lot coverage: Underlying zone. Building height: Underlying zone.

* Restricted to properties adjacent to collector and arterial streets as identified in the city's transportation system plan (TSP).

[Ord. 806 § 1, 2016; Ord. 799 § 3, 2015; Ord. 720 § 7[2.1.130], 2003.]

18.35.050 Flag lots and lots accessed by mid-block lanes.

Some lots in existing neighborhoods may have standard widths but may be unusually deep compared to other lots in the area. Essentially unused space at the back of a lot may provide room for one or more lots for infill housing. Infill lots may be developed as "flag lots" or "mid-block developments" as defined below:

A. Mid-Block Lanes. Lots may be developed without frontage onto a public street when lot access is provided by a series of mid-block lanes. Mid-block lanes shall be required whenever practicable as an alternative to approving flag lots.

B. Flag Lots. Flag lots may be created only when mid-block lanes or alleys cannot be extended to serve future development. A flag lot must have at least 16 feet of frontage on a public way and may serve no more than two dwelling units, including accessory dwellings and dwellings on individual lots or other commercial or industrial uses. A minimum width of 12 feet of frontage for each lot shall be required when three or more flag lots are using a shared access. In no instance may more than four parcels utilize a joint access; in such instances the properties shall be served by a public or private street as the case may dictate.

C. Dedication of Shared Drive Lane. A drive serving more than one lot shall have a reciprocal access and maintenance easement recorded for all lots. No fence, structure or other obstacle shall be placed within the drive area. The owner shall record an easement from each property sharing a drive for vehicle access similar to an alley. Dedication or recording, as applicable, shall be so indicated on the face of the subdivision or partition plat.

D. Maximum Drive Lane Length. The maximum drive lane length is subject to requirements of the Uniform Fire Code, but shall not exceed 150 feet for a shared drive, and 400 feet for a shared rear lane.

E. Future Street Plans. Building placement and alignment of shared drives shall be designated so that future street connections can be made as surrounding properties develop. [Ord. 799 § 4, 2015; Ord. 778 § 1, 2011; Ord. 720 § 7[2.1.140], 2003.]

18.35.060 Maximum lot coverage.

See Table 18.35.040. [Ord. 737 § 1, 2006; Ord. 720 § 7[2.1.160], 2003.]

18.35.070 Building height.

See Table 18.35.040.

The following building height standards are intended to promote land use compatibility and support the principle of neighborhood-scale design:

A. Building Height Standard. Buildings within the residential districts shall be no more than 30 feet in height; except buildings within the multi-family subdistrict may be up to 40 feet. Building height may be restricted to less than these maximums to comply with the building height transition standard in subsection (C) of this section.

B. Method of Measurement. Building height shall be measured from the average original grade at the building foundation to the highest point of the roof.

C. Building Height Transition. To provide compatible building scale and privacy between developments, taller buildings shall "step down" to create a building height transition to adjacent single-story building(s).

1. This standard applies to new and vertically expanded buildings within 20 feet (as measured horizontally) of an existing single-story building with a height of 20 feet or less.

2. The building height transition standard is met when the height of the taller building ("x") does not exceed ("y"), the distance between the buildings. [Ord. 799 § 5, 2015; Ord. 737 § 1, 2006; Ord. 720 § 7[2.1.170], 2003.]

18.35.080 Building orientation.

A. Purpose. The following standards are intended to orient buildings close to streets to promote human-scale development, slow traffic down, and encourage walking in neighborhoods. Placing residences and other buildings close to the street also encourages security and safety by having more "eyes on the street."

B. Applicability. This section applies to: single-family attached townhomes that are subject to site design review (three or more attached units); multifamily housing; neighborhood commercial buildings; and public and institutional buildings, which receive the public.

C. Building Orientation Standards. All developments listed in subsection (B) of this section shall be oriented to a street. The building orientation standard is met when all of the following criteria are met:

1. Compliance with the setback standards in PMC 18.35.030.

2. All buildings shall have their primary entrance(s) oriented to the street. Multifamily and neighborhood commercial building entrances may include entrances to individual units, lobby entrances, or breezeway/courtyard entrances (i.e., to a cluster of units or commercial spaces). Alternatively, a building may have its entrance oriented to a side yard when a direct pedestrian walkway is provided between the building entrance and the street in accordance with the standards in Chapter 18.65 PMC, Access and Circulation. In this case, at least one entrance shall be provided not more than 20 feet from the closest sidewalk or street.

3. Off-street parking, drives or other vehicle areas shall not be placed between buildings and streets unless otherwise required. [Ord. 737 § 1, 2006; Ord. 720 § 7[2.1.180], 2003.]

18.35.090 Architectural standards.

A. Purpose. The architectural standards are intended to provide detailed, human-scale design while affording flexibility to use a variety of building styles.

B. Applicability. This section applies to all of the following types of buildings and shall be applied during site design review:

1. Single-family attached townhomes that are subject to site design review (three or more attached units);

2. Multifamily housing; and

3. Public and institutional buildings.

C. Standards. All buildings that are subject to this section shall comply with all of the following standards. The graphics provided with each standard are intended to show examples of how to comply. Other building styles and designs can be used to comply, so long as they are consistent with the text of this section. An architectural feature may be used to comply with more than one standard.

D. Building Form. The continuous horizontal distance (i.e., as measured from end-wall to end-wall) of individual buildings shall not exceed 80 feet. All buildings shall incorporate design features such as offsets, balconies, projections, window reveals, or similar elements to preclude large expanses of uninterrupted building surfaces, as shown in the above figure. Along the vertical face of a structure, such features shall occur at a minimum of every 40 feet, and on each floor shall contain at least two of the following features:

1. Recess (e.g., deck, patio, courtyard, entrance or similar feature) that has a minimum depth of four feet;

2. Extension (e.g., floor area, deck, patio, entrance, or similar feature) that projects a minimum of two feet and runs horizontally for a minimum length of four feet; and/or

3. Offsets or breaks in roof elevation of two feet or greater in height.

E. Eyes on the Street. All building elevations visible from a street right-of-way shall provide doors, porches, balconies, and/or windows. A minimum of 40 percent of front (i.e., street-facing) elevations and a minimum of 30 percent of side and rear building elevations, as applicable, shall meet this standard. "Percent of elevation" is measured as the horizontal plane (lineal feet) containing doors, porches, balconies, terraces and/or windows. The

standard applies to each full and partial building story.

F. Detailed Design. All buildings shall provide detailed design along all elevations (i.e., front, rear and sides). Detailed design shall be provided by using at least three of the following architectural features on all elevations, as appropriate for the proposed building type and style (may vary features on rear/side/front elevations):

1. Dormers.
2. Gables.
3. Recessed entries.
4. Covered porch entries.
5. Cupolas or towers.
6. Pillars or posts.
7. Eaves (minimum six-inch projection).
8. Offsets in building face or roof (minimum 16 inches).
9. Window trim (minimum four inches wide).
10. Bay windows.
11. Balconies.

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12. Decorative patterns on exterior finish (e.g., scales/shingles, wainscoting, ornamentation, and similar features).

13. Decorative cornices and roof lines (e.g., for flat roofs).

14. An alternative feature providing visual relief, similar to subsections (F)(1) through (F)(13) of this section. [Ord. 720 § 7[2.1.190], 2003.]

18.35.100 Special standards for certain uses.

This section supplements the standards contained in PMC 18.35.010 through 18.35.090. It provides standards for the following land uses in order to control the scale and compatibility of those uses within the residential district:

A. "Zero Lot Line" (Single-Family Courtyard Home). "Zero lot line" houses are subject to the same standards as single-family housing, except that a side yard setback is not required on one side of a typical lot (as shown below). This type of housing is allowed to allow development on smaller (i.e., narrower) lots and still provide usable outdoor living area in side-oriented courtyards. The following standards are intended to promote compatibility and privacy between adjacent buildings and allow for building maintenance:

1. Setbacks Adjacent to Non-Zero Lot Line Development. When a zero lot line house shares a side property line with a non-zero lot line development, the zero lot line building shall be set back from the common property line by a minimum of 10 feet.

2. Construction and Maintenance Easement. Prior to building permit approval, the applicant shall submit a copy of a recorded easement for every zero lot line house that guarantees rights for the purpose of construction and maintenance of structures and yards. The easement shall stipulate that no fence or other obstruction shall be placed in a manner that would prevent maintenance of structures on the subject lot.

B. Accessory Dwelling (Attached, Separate, Cottage, or Above Detached Garage). An accessory dwelling is a small, secondary housing unit on a single-family lot. The additional unit can be a detached cottage, a unit attached to a garage, or in a portion of an existing house. The housing density standard of the residential district does not apply to accessory dwellings, due to the small size and low occupancy level of the use. The following standards are intended to control the size and number of accessory dwellings on individual lots, so as to promote compatibility with adjacent land uses. Accessory dwellings shall comply with all of the following standards:

1. Oregon Structural Specialty Code. The structure complies with the Oregon Structural Specialty Code;

2. Owner-Occupied. The primary or accessory dwelling shall be owner-occupied. Alternatively, the owner may appoint a family member as a resident caretaker of the principal house and manager of the accessory dwelling;

3. One Unit. A maximum of one accessory dwelling unit is allowed per lot;

4. Floor Area. The maximum floor area of the accessory dwelling shall not exceed 600 square feet;

5. Building Height. The building height of new detached accessory dwellings (i.e., separate cottages) shall not exceed 25 feet or the height of primary dwelling, whichever is less; and

6. Buffering. A minimum four-foot hedge or fence may be required to buffer a detached accessory dwelling from dwellings on adjacent lots, when buffering is necessary for the privacy and enjoyment of yard areas by either the occupants or adjacent residents.

C. Manufactured Homes on Individual Lots. Manufactured homes are allowed on individual lots, subject to all of the following design standards consistent with ORS 197.307(5).

1. Floor Plan. The manufactured home shall be multisectional and have an enclosed floor area of not less than 1,000 square feet.

2. Roof. The manufactured home shall have a pitched roof with a slope not less than three feet in height for each 12 feet in width (14 degrees).

3. Residential Building Materials. The manufactured home shall have exterior siding and roofing, which in color, material and appearance are similar or superior to the exterior siding and roof material used on nearby residences (e.g., horizontal wood or wood-appearance siding is considered superior to metal siding and roofing).

4. Garages and Carports. The manufactured home shall have a garage or carport constructed of like materials when nearby residences within 200 feet of the property have carports or garages. The city may require an attached or detached garage

where that would be consistent with the predominant construction of immediately surrounding residences.

5. Thermal Envelope. The manufactured home shall be certified by the manufacturer to meet the thermal envelope requirements equivalent to those for a single-family dwelling constructed under the State Building Code. Evidence demonstrating that the manufactured home meets "Super Good Cents" energy efficiency standards is deemed to satisfy the exterior thermal envelope certification requirement. Additional manufacturers certification shall not be required.

6. Placement. The manufactured home shall be placed on an excavated and back-filled foundation and enclosed at the perimeter such that the manufactured home is located not more than 16 inches above grade, and complies with the minimum setup standards of the adopted state Administrative Rules for Manufactured Dwellings, Chapter 918. Where the building site has a sloped grade, no more than 16 inches of the enclosing material shall be exposed on the uphill side of the home.

7. Foundation Skirt. The foundation area of the manufactured home shall be fully skirted.

8. Prohibited. The manufactured home shall not be located in a designated historic district.

D. Manufactured Home Park. Manufactured home parks are allowed on parcels of one acre or larger, subject to compliance with subsections (D)(1) through (D)(5) of this section:

1. Allowed Uses. Single-family residences, manufactured home park manager's office, home occupations, and accessory structures which are necessary for the operation and maintenance of the manufactured home park (e.g., landscape maintenance).

2. Space. The minimum size pad or space for each home is 2,500 square feet; provided, that the overall density of the park does not exceed 12 units per acre. Each space shall be at least 30 feet wide and 40 feet long, in accordance with ORS 446.100(1)(c).

3. Setbacks and Building Separation. The minimum setback between park structures and abutting properties is 10 feet. The minimum setback between park structures and public street right-of-way is 15 feet. At least a 10-foot separation shall be provided between all dwellings. Dwellings shall be placed a minimum of 14 feet apart where flammable or combustible fuel is stored between units. Park structures shall be placed no closer than five feet to a park street or sidewalk/pathway. An accessory structure shall not be located closer than six feet to any other structure or dwelling, except that a double carport or garage may be built which serves two dwellings. When a double carport/garage is built, the carport/garage shall be separated from all adjacent structures by at least three feet.

4. Perimeter Landscaping. When manufactured homes are oriented with their back or side yards facing a public right-of-way, the city may require installation of fencing and planting of a six-foot wide landscape buffer between the right-of-way and a manufactured home park for the privacy and security of residents or aesthetics of the streetscape.

5. House Design (Parks Smaller Than Three Acres). Manufactured homes in parks smaller than 3 acres shall meet the following design standards, consistent with ORS 197.314(6):

a. The manufactured home shall have a pitched roof with a slope not less than three feet in height for each 12 feet in width (14 degrees); and

b. The manufactured home shall have exterior siding and roofing which in color, material and appearance are similar or superior to the exterior siding and roof material used on nearby residences (e.g., horizontal wood or wood-appearance siding is considered superior to metal siding and roofing).

E. Single-Family Attached (Townhomes), Duplexes and Triplexes. Single-family attached housing (townhomes on individual lots), duplex and triplex developments shall comply with the standards in subsections (E)(1) through (E)(4) of this section. The standards are intended to control development scale; avoid or minimize impacts associated with traffic, parking, and design compatibility; and ensure management and maintenance of common areas.

1. Building Mass Supplemental Standard. Within the residential district, the maximum number and width of consecutively attached townhomes (i.e., with attached walls at property line) shall not exceed four units, or 80 feet (from end-wall to end-wall), whichever is less. Within the multifamily subdistrict, the number and width of

consecutively attached townhome units shall not exceed eight units, or 120 feet, whichever is less.

2. Alley Access. Townhomes, duplex and triplex subdivisions (four or more lots) shall receive vehicle access only from a rear alley. Alley(s) shall be created at the time of subdivision approval, in accordance with PMC 18.80.020, Transportation improvements, and Chapter 18.115 PMC, Land Divisions and Lot Line Adjustments. Alleys are not required when existing development patterns or topography make construction of an alley impracticable (see subsection (E)(3) of this section for standards). As necessary, the city shall require dedication of rights-of-way or easements and construction of pathways between townhomes lots (e.g., between building breaks) to implement the standards in Chapter 18.65 PMC, Access and Circulation).

3. Street Access Developments. Townhomes, duplexes and triplexes receiving access directly from a public or private street shall comply with all of the following standards in order to minimize interruption of adjacent sidewalks by driveway entrances, slow traffic, improve appearance of the streets, and minimize paved surfaces for better stormwater management.

a. When garages face the street, they shall be recessed behind the front elevation (i.e., living area or covered front porch) by a minimum of four feet.

b. The maximum combined garage width per unit is 50 percent of the total building width. For example, a 24-foot-wide unit may have one 12-foot-wide recessed garage facing the street.

c. Two adjacent garages shall share one driveway when individual driveways would otherwise be separated by less than 20 feet (i.e., the width of one on-street parking space). When a driveway serves more than one lot, the developer shall record an access and maintenance easement/agreement to benefit each lot prior to building permit issuance.

4. Common Areas. “Common areas” (e.g., landscaping in private tracts, shared driveways, private alleys, and similar uses) shall be maintained by a homeowner’s association or other legal entity. A homeowner’s association may also be responsible for exterior building maintenance. A copy of any applicable covenants, restrictions and conditions shall be recorded and provided to the city prior to building permit approval.

F. Multifamily Housing. Multifamily housing is allowed within the R-3 multifamily district. Multifamily housing means housing that provides three or more dwellings on an individual lot (e.g., multiplexes, apartments, condominiums, etc.). New multifamily developments shall comply with all of the following standards:

1. Building Mass Supplemental Standard. Within the residential districts, the maximum width or length of a multiple-family building shall not exceed 80 feet (from end-wall to end-wall). Within the R-3 multifamily subdistrict, the width or length shall not exceed 120 feet.

2. Common Open Space Standard. Inclusive of required setback yards, a minimum of 20 percent of the site area shall be designated and permanently reserved as usable common open space in all multiple family developments. The site area is defined as the lot or parcel on which the development is planned, after subtracting any required dedication of street right-of-way and other land for public purposes (e.g., public park or school grounds, etc.). Sensitive lands and historic buildings or landmarks open to the public and designated by the comprehensive plan may be counted toward meeting the common open space requirements.

3. Private Open Space Standard. Private open space areas shall be required for ground-floor and upper-floor housing units based on all of the following standards:

a. All ground-floor housing units shall have front or rear patios or decks measuring at least 48 square feet. Ground-floor housing means the housing unit entrance (front or rear) is within five feet of the finished ground elevation (i.e., after grading and landscaping);

b. A minimum of 50 percent of all upper-floor housing units shall have balconies or porches measuring at least 24 square feet. Upper-floor housing means housing units which are more than five feet above the finished grade; and

c. Private open space areas shall be oriented toward common open space areas and away from adjacent single-family residences, trash receptacles, parking and drives to the greatest extent practicable.

4. Exemptions. Exemptions to the common open space standard may be granted for multi-unit

developments of up to 10 units. Exemptions may be granted for the first 20 units of a larger project when these developments are within one-quarter mile (measured walking distance) of a public park, and there is a direct, accessible (i.e., Americans with Disabilities Act-compliant), lighted, and maintained pedestrian trail or sidewalk between the site and the park. An exemption shall be granted only when the nearby park provides active recreation areas such as play fields, children's play areas, sports courts, walking/fitness courses, or similar facilities.

5. Trash Receptacles. Trash receptacles shall be oriented away from adjacent residences and shall be screened with an evergreen hedge or solid fence or wall of not less than five feet in height.

G. Residential Care Homes and Facilities. Residential care homes are residential treatment or training homes or adult foster homes licensed by the state of Oregon. They may provide residential care alone, or in conjunction with treatment and/or training for five or fewer individuals (homes) or six to 15 individuals (facilities) who need not be related. Staff persons required to meet state licensing requirements shall not be counted in the number of facility residents and need not be related to each other or the residents. Residential care homes and facilities shall comply with the following standards, consistent with ORS 197.660 through 197.670:

1. Licensing. All residential care homes shall be duly licensed by the state of Oregon.

2. Parking. A minimum of one parking space shall be provided for each employee and typical number of visitors, in accordance with Chapter 18.75 PMC, Vehicle and Bicycle Parking.

3. Development Review. Development review shall be required for new structures to be used as residential care homes or facilities, and for conversion of an existing residence to be used as a residential care home, to ensure compliance with the licensing, parking, and other requirements of this title.

H. Agriculture, Horticulture and Livestock. The city allows for agriculture, horticulture and livestock uses, subject to the following standards which are intended to provide buffering between these uses and residences:

1. Prohibited Areas. Livestock shall not be kept within multifamily complexes or manufactured housing parks, due to the higher intensity living environments of these areas.

2. Minimum Lot Size. No livestock shall be kept on any lot less than one acre in area.

3. Density. No more than two head of livestock over the age of six months may be maintained per acre. No more than five fowl may be maintained per acre. No more than one swine may be maintained per two acres.

4. Farm Structures. New barns, stables, and other buildings or structures used to house livestock shall not be developed closer than 40 feet to any property line.

I. Public and Institutional Land Uses. Public and institutional land uses (as listed in Table 18.35.020) are allowed in the residential district, subject to the following land use standards, which are intended to control the scale of these developments and their compatibility with nearby residences:

1. Development Site Area. The maximum development site area shall be four acres, except that this standard shall not apply to parks and open space uses. Larger developments may be approved as a conditional use, in accordance with Chapter 18.120 PMC, Conditional Use Permits, or as part of a master planned development, in accordance with Chapter 18.125 PMC.

2. Building Mass. The maximum width or length of a building shall not exceed 120 feet (from end-wall to end-wall), except that this standard may be increased through the approval of a conditional use permit, or as part of a master planned development.

3. Vehicle Areas and Trash Receptacles. All vehicle areas (i.e., parking, drives, storage, etc.) and trash receptacles shall be oriented away from adjacent residences to the greatest extent practicable, and shall be screened with an evergreen hedge or solid fence or wall of not less than six feet in height.

J. Accessory Uses and Structures. Accessory uses and structures are of a nature customarily incidental and subordinate to the principal use or structure on the same lot. Typical accessory structures in the residential district include detached garages, sheds, workshops, greenhouses and similar structures. (For standards applicable to accessory dwellings, please refer to subsection (B) of this section.)

All accessory structures shall comply with all of the following standards:

1. Primary Use Required. An accessory structure shall not be allowed without another allowed use.

2. Restrictions. A structure shall not be placed over an easement that prohibits such placement. No structure shall encroach into the public right-of-way without approval of the city.

3. Compliance with Land Division Standards. The owner may be required to remove an accessory structure as a condition of land division approval when removal of the structure is necessary to comply with setback standards.

4. Floor Area. The maximum floor area of the accessory structure shall not exceed 1,000 square feet unless otherwise approved via the conditional use permit process.

5. Building Height. The building height of a detached accessory structure shall not exceed 25 feet or the height of the primary structure, whichever is less.

6. Buffering. The city may require a hedge or fence to screen the accessory structure from dwellings on adjacent lots, unless a similar screen is provided or the distance to adjacent dwelling(s) is greater than 50 feet.

K. Neighborhood Commercial Land Use. Small-scale neighborhood commercial uses are allowed within the residential districts. All neighborhood commercial uses shall comply with the following standards, which are intended to promote land use compatibility and transition between neighborhood commercial and residential uses:

1. Vertical and Horizontal Use. Residential and neighborhood commercial uses may be mixed "vertically," meaning that a residential use is developed above the commercial use (i.e., ground-floor retail/office with upper-story apartments, townhomes, or condominiums), or may be mixed "horizontally," meaning commercial and residential uses both occupy ground-floor space. Automobile-oriented uses, as defined in Chapter 18.15 PMC, are expressly prohibited.

2. Dispersion of Neighborhood Commercial Development. A neighborhood commercial site shall be located no closer than one-half mile from another neighborhood commercial site within the city. A "neighborhood commercial site" means a lot or parcel (or combination of adjacent lots or parcels), zoned residential and containing commercial uses.

3. Location and Access. Neighborhood commercial developments shall have frontage onto a collector or arterial street and shall conform to the building orientation and parking location standards in PMC 18.35.080.

4. Building Mass Supplemental Standard. The maximum width or length of a neighborhood commercial or mixed-use (residential and commercial) building shall not exceed 120 feet (from end-wall to end-wall).

5. Floor Area Supplemental Standards. The maximum commercial floor area shall not exceed 4,000 square feet total per neighborhood commercial site within the residential districts and the neighborhood commercial district. Floor area is measured by totaling the interior floor area of all building stories, except crawl spaces (i.e., with less than seven and one-half feet of vertical clearance).

6. Hours of Operation. Neighborhood commercial land uses shall be limited to the following hours of operation: 7:00 a.m. to 10:00 p.m. [Ord. 799 § 6, 2015; Ord. 778 § 2, 2011; Ord. 720 § 7[2.1.200], 2003.]

Chapter 18.40

COMMERCIAL DISTRICTS

Sections:

18.40.010 Purpose.
18.40.020 Allowed land uses.
18.40.030 Building setbacks.
18.40.040 *Reserved.*
18.40.040 Block layout and building orientation.
18.40.050 Building height.
18.40.060 Large scale buildings and developments.
18.40.070 Pedestrian and transit amenities.
18.40.080 Special standards for certain uses.

18.40.010 Purpose.

A city goal is to strengthen commercial centers of the city. Commercial districts are intended to support this goal through elements of design and appropriate mixed-use development. This chapter provides standards for the orderly improvement of the commercial districts based on the following principles:

A. Efficient use of land and urban services;

B. A mixture of land uses to encourage walking as an alternative to driving, and provide more employment and housing options;

C. There is a distinct storefront character which identifies the central commercial district;

D. The commercial districts are connected to neighborhoods and other employment areas;

E. Provide visitor accommodations and tourism amenities; and

F. Transit-oriented development reduces reliance on the automobile and reduces parking needs in and along Main Street. [Ord. 720 § 7[2.2.100], 2003.]

18.40.020 Allowed land uses.

The land uses listed in Table 18.40.020 are allowed in the commercial district, subject to the provisions of this chapter. Only land uses that are specifically listed in Table 18.40.020 and land uses that are approved as “similar” to those in Table 18.40.020 may be allowed. The land uses identified under conditional uses require conditional use permit approval prior to development or a change in use, in accordance with Chapter 18.120 PMC.

Table 18.40.020
Land Uses and Building Types Allowed in the Commercial Districts

C-1 Central Commercial	C-2 General Commercial	O-R Office/Residential
Allowed Uses (A) Bank or financial institution. (B) Church. (C) Day care centers, including family day care homes. (D) Drive-in or drive-through facilities.* (E) Funeral parlor. (F) Fraternal lodge. (G) Membership club. (H) Multifamily and row housing. (I) Retail sales and service establishments that do not require the outside storage of goods, supplies or equipment not otherwise identified in this section. (J) Offices. (K) Professional offices. (L) Public buildings and uses including public park, post office, public office, fire station, public community center, public parking lot, and public library. (M) Residences, provided they are in conjunction with another use that is allowed or allowed by an approved conditional use permit. Residences must be located above the allowed use. (N) Recreation vehicles, including travel trailers, camping trailers, fifth-wheel trailers, motor homes, and/or other vehicles designed for temporary occupancy may not be stored or occupied in the zone. (O) Residential care facility. (P) Restaurants including takeout only establishments. (Q) Taverns. (R) Sidewalk displays.	Allowed Uses (A) All uses allowed in the C-1 zone. (B) Assembly of products. (C) Automobile or trailer sales and service. (D) Car wash. (E) Motels. (F) Service station and vehicle repair shop. Conditional Uses (A) Light manufacturing.	Allowed Uses (A) Church, nonprofit religious or philanthropic institution. (B) Office. (C) Home occupation; subject to PMC 18.145.020. (D) Multifamily dwelling.** (E) Family day care home or facility. (F) Parking lot. (G) Residential or child care home or facility. Conditional Uses The planning commission may grant a conditional use permit for the following uses: (A) Research laboratories. (B) Tower, water tank, or similar structure in conjunction with a building or buildings on the same lot. (C) Funeral parlor. (D) Pharmacy. (E) Community center. (F) Governmental structure or use of land, including park, playground, fire or police station, library, or City Hall. (G) Nursing home, rest home, retirement home, residential care facility, convalescent hospital or similar facility. (H) Membership club. (I) Public and private schools.

Uses marked with an asterisk (*) are subject to the standards in PMC 18.40.090, Special standards for certain uses. Home occupations and temporary uses are subject to the standards in Chapter 18.145 PMC.

** Multifamily dwellings in the O-R zone are subject to the standards of the R-3 zone in Chapter 18.35 PMC. [Ord. 799 § 7, 2015; Ord. 737 § 1, 2006; Ord. 734 § 1, 2005; Ord. 720 § 7[2.2.110], 2003.]

18.40.030 Building setbacks.

In the commercial districts, buildings are placed close to the street to create a vibrant pedestrian environment, to slow traffic down, provide a storefront character to the street, and encourage walking. The setback standards are flexible to encourage public spaces between sidewalks and building entrances (e.g., extra-wide sidewalks, plazas, squares, outdoor dining areas, and pocket parks). The standards also encourage the formation of solid blocks of commercial and mixed-use buildings for a walkable community.

Building setbacks are measured from the nearest vertical wall or foundation to the respective property line. Setbacks for porches are measured from the edge of the deck or porch to the property line. The setback standards, as listed in this section, apply to primary structures as well as accessory structures. The standards may be modified only by approval of a variance, in accordance with Chapter 18.155 PMC.

A. Front Yard Setbacks.

1. Minimum Setback. There is no minimum front yard setback required, except in the O-R zone that shall be a minimum of 10 feet.

2. Maximum Setback. There is no maximum front yard setback required, except in the C-1 zone that shall be a maximum of 20 feet. This standard is met when a minimum of 50 percent of the front building elevation is placed no more than 20 feet back from the front property line. On parcels with more than one building, this standard applies to the building closest to the street. The setback standard may be increased when a usable public space with pedestrian amenities (e.g., extra-wide sidewalk, plaza, pocket park, outdoor dining area or town square with seating) is provided between the building and front property line. (See also pedestrian amenities standards in PMC 18.40.080, and architectural standards in PMC 18.40.070 for related building entrance standards.)

B. Rear Yard Setbacks.

1. Minimum Setback. The minimum rear yard setback for all structures shall be zero feet for street-access lots, and six feet for alley-access lots (distance from building to rear property line or alley easement) in order to provide space for parallel parking. However, for those properties abutting a residential zone or separated by only an alley, the setback shall be 25 feet.

2. Through-Lots. For buildings on through-lots (lots with front and rear frontage onto a street), the front yard setbacks in subsection (A) of this section shall apply.

C. Side Yard Setbacks. There is no minimum side yard setback required, except that buildings shall conform to the vision clearance standards in Chapter 18.65 PMC and the applicable fire and building codes for attached structures, firewalls, and related requirements. However, for those properties abutting a residential zone, the setback shall be 10 feet.

D. Setback Exceptions. Eaves, chimneys, bay windows, overhangs, cornices, awnings, canopies, porches, decks, pergolas, and similar architectural features may encroach into setbacks by no more than four feet, subject to compliance with applicable standards of the Uniform Building Code and Uniform Fire Code. Walls and fences may be placed on the property line, subject to the requirements of Chapter 18.72 PMC, Fences, Hedges and Walls. [Ord. 799 § 8, 2015; Ord. 737 § 1, 2006; Ord. 720 § 7[2.2.120], 2003.]

18.40.040 Reserved.

Reserved for future use. [Ord. 720 § 7[2.2.130], 2003.]

18.40.050 Block layout and building orientation.

This section is intended to promote the walkable, storefront character of the commercial districts by forming short blocks and orienting buildings close to streets. Placing buildings close to the street also slows traffic down and provides more "eyes on the street," increasing the safety of public places. The standards, as listed in this section, complement the front yard setback standards in PMC 18.40.030.

A. Applicability. This section applies to new land divisions and all of the following types of development (i.e., subject to site design review):

1. Three or more single-family row houses on their own lots (i.e., townhomes subject to site design review);

2. Multifamily housing;

3. Public and institutional buildings, except that the standard shall not apply to buildings which are not subject to site design review or those that do not receive the public (e.g., buildings used solely to

house mechanical equipment, and similar uses); and

4. Commercial and mixed-use buildings subject to site design review.

Compliance with all of the provisions of subsections (B) through (D) of this section shall be required.

B. Block Layout Standard. New land divisions and developments that are subject to site design review shall be configured to provide an alley or interior parking court. Blocks (areas bound by public street right-of-way) shall have a length not exceeding 400 feet and a depth not exceeding 400 feet. Pedestrian pathways shall be provided from the street right-of-way to interior parking courts between buildings, as necessary, to ensure reasonably safe, direct, and convenient access to building entrances and off-street parking. Exceptions to this standard may be approved when all of the provisions of subsection (C) of this section, Superblock Developments, are met.

C. Superblock Developments. Commercial and mixed-use developments may exceed the block width and depth standards in subsection (B) of this section when the total floor area of those developments (i.e., one or more buildings on one or more lots) exceeds 60,000 square feet on the ground floor. These "superblock developments" require conditional use permit approval and shall conform to all of the standards in subsections (C)(1) and (C)(2) of this section.

1. Create a "Shopping Street." Each development has at least one street or drive designed with the basic elements of a good pedestrian-oriented shopping street: buildings oriented (placed) close to both sides of a "main street," which may be public or private; on-street parking; wide sidewalks (e.g., eight to 12 feet typical); street trees; and pedestrian-scale lighting and other similar enhancements.

2. Provide Usable Pedestrian Space. "Pedestrian space" means a plaza or extra-wide pathway/sidewalk near one or more building entrances. Each development provides street trees or planters, space for outdoor seating, canopies or awnings, and on-street parking (in selected areas) to improve the pedestrian environment along internal private drives.

D. Building Orientation Standard. All of the developments listed in subsection (A) of this section shall be oriented to a street. The building orientation standard is met when all of the following criteria are met:

1. The minimum and maximum setback standards in PMC 18.40.030.

2. Buildings have their primary entrance(s) oriented to (facing) the street. Building entrances may include entrances to individual units, lobby entrances, entrances oriented to pedestrian plazas, or breezeway/courtyard entrances (i.e., to a cluster of units or commercial spaces). Alternatively, a building may have its entrance facing a side yard when a direct pedestrian walkway not exceeding 20 feet in length is provided between the building entrance and the street right-of-way.

3. Off-street parking, driveways or other vehicular circulation shall not be placed between a building and the street that is used to comply with subsection (B) of this section. On corner lots, buildings and their entrances shall be oriented to the street corner; parking, driveways and other vehicle areas shall be prohibited between buildings and street corners. [Ord. 799 § 9, 2015; Ord. 720 § 7[2.2.140], 2003.]

18.40.060 Building height.

A. All buildings in the commercial districts shall comply with the following building height standards. The standards are intended to allow for development of appropriately scaled buildings with a storefront character.

B. Maximum Height. Buildings shall be no more than three stories or 40 feet in height, whichever is greater. The maximum height may be increased by 10 feet when housing is provided above the ground floor ("vertical mixed-use"). The building height increase for housing shall apply only to a building that contains housing. [Ord. 799 § 10, 2015; Ord. 720 § 7[2.2.150], 2003.]

18.40.070 Large scale buildings and developments.

A. Design of Large-Scale Buildings and Developments. The standards in subsection (A)(3) of this section shall apply to large-scale buildings and developments, as defined in subsections (A)(1) and (A)(2) of this section:

1. Buildings with greater than 20,000 square feet of enclosed ground-floor space (i.e., large-scale). Multitenant buildings shall be counted as

the sum of all tenant spaces within the same building shell.

2. Multiple-building developments with a combined ground-floor space (enclosed) greater than 40,000 square feet (e.g., shopping centers, public/institutional campuses, and similar developments).

3. All large-scale buildings and developments, as defined in subsections (A)(1) and (A)(2) of this section, shall provide human-scale design by conforming to all of the following criteria:

a. Incorporate changes in building direction (i.e., articulation) and divide large masses into varying heights and sizes. Such changes may include building offsets; projections; changes in elevation or horizontal direction; sheltering roofs; terraces; a distinct pattern of divisions in surface materials; use of windows, screening trees; small-scale lighting (e.g., wall-mounted lighting or up-lighting); and similar features.

b. Every building elevation adjacent to a street with a horizontal dimension of more than 100 feet, as measured from end-wall to end-wall, shall have a building entrance; except that building elevations that are unable to provide an entrance due to the internal function of the building space (e.g., mechanical equipment, areas where the public or employees are not received, etc.) may not be required to meet this standard. Pathways shall connect all entrances to the street right-of-way, in conformance with Chapter 18.65 PMC, Access and Circulation. [Ord. 720 § 7[2.2.160], 2003.]

18.40.080 Pedestrian and transit amenities.

A. Purpose and Applicability. This section is intended to complement the building orientation standards in PMC 18.40.050, and the street standards in Chapter 18.65 PMC, by providing comfortable and inviting pedestrian spaces within the commercial districts. Pedestrian amenities serve as informal gathering places for socializing, resting, and enjoyment of the city and contribute to a walkable district. This section applies to all of the following types of buildings:

1. Three or more single-family attached townhomes on their own lots (i.e., townhomes subject to site design review) and multifamily dwellings;

2. Public and institutional buildings, except that the standard shall not apply to buildings which are not subject to site design review or those that do not receive the public (e.g., buildings used solely to house mechanical equipment and similar uses); and

3. Commercial and mixed-use buildings subject to site design review.

B. Guidelines and Standards. Every development shall provide pedestrian amenities such as but not limited to the following listed in subsections (B)(1) through (B)(5) of this section. Pedestrian amenities may be provided within a public right-of-way when approved by the applicable jurisdiction.

1. A plaza, courtyard, square or extra-wide sidewalk next to the building entrance with a minimum width of 10 feet.

2. Sitting space (i.e., dining area, benches or ledges) between the building entrance and sidewalk (minimum of 16 inches in height and 30 inches in width).

3. Building canopy, awning, pergola, or similar weather protection (minimum projection of four feet over a sidewalk or other pedestrian space).

4. Public art that incorporates seating (e.g., fountain, sculpture, etc.).

5. Transit amenity, such as bus shelter or pullout, in accordance with the city's transportation plan. [Ord. 799 § 11, 2015; Ord. 720 § 7[2.2.170], 2003.]

18.40.090 Special standards for certain uses.

A. Residential Uses. Higher density residential uses, such as multifamily buildings and attached townhomes, are allowed to encourage housing near employment, shopping and services. All residential developments shall comply with the standards in subsections (A)(1) through (A)(6) of this section, which are intended to require mixed-use development; conserve the community's supply of commercial land for commercial uses; provide for designs which are compatible with a storefront character; avoid or minimize impacts associated with traffic and parking; and ensure proper management and maintenance of common areas. Residential uses that existed prior to the effective date of the ordinance codified in this title are exempt from this section.

1. Mixed-Use Development Required. Residential uses shall be allowed only when part of a mixed-use development (residential with commercial or public/institutional use). Both vertical mixed-use (housing above the ground floor), and horizontal mixed-use (housing on the ground floor) developments are allowed, subject to the standards in subsections (A)(2) through (A)(6) of this section.

2. Limitation on Street-Level Housing. No more than 50 percent of a single street frontage may be occupied by residential uses. This standard is intended to reserve storefront space for commercial uses and public/institutional uses; it does not limit residential uses above the street level on upper stories or behind street-level storefronts. For parcels with street access at more than one level (e.g., sloping sites with two street frontages), the limitation on residential building space shall apply to all street frontages.

3. Density. There is no minimum or maximum residential density standard. Density shall be controlled by the applicable lot coverage and building height standards.

4. Parking, Garages, and Driveways. All off-street vehicle parking, including surface lots and garages, shall be oriented to alleys, placed underground, or located in parking areas located behind or to the side of the building; except that side yards facing a street (i.e., corner yards) shall not be used for surface parking. On corner lots, garage entrances shall be oriented to a side street or lower classification street when access cannot be provided from an alley.

5. Creation of Alleys. When a subdivision (e.g., four or more townhome lots) is proposed, a public or private alley shall be created for the purpose of vehicle access. Alleys are not required when existing development patterns or topography makes construction of an alley impracticable. As part of a subdivision, the city may require dedication of right-of-way or easements and construction of pathways between townhome lots (e.g., between building breaks) to provide pedestrian connections through a development site, in conformance with Chapter 18.65 PMC, Access and Circulation.

6. Common Areas. All common areas (e.g., walkways, drives, courtyards, private alleys, parking courts, etc.) and building exteriors shall be maintained by a homeowner's association or other legal entity. Copies of any applicable covenants, restrictions and conditions shall be recorded and provided to the city prior to building permit approval.

B. (Reserved.)

C. Public and Institutional Uses. Public and institutional uses as listed in Table 18.40.020 are allowed in the commercial districts, except that automobile-oriented uses shall comply with the standards in subsection (E) of this section. Typical automobile oriented uses in this category include public works yards, equipment storage and repair, school bus companies, and similar facilities that store, repair or service automobiles, trucks, buses, heavy equipment and construction materials.

D. Accessory Uses and Structures. Accessory uses and structures are of a nature customarily incidental and subordinate to the principal use or structure on the same lot. Typical accessory structures in the commercial districts include small workshops, greenhouses, studios, storage sheds, and similar structures. Accessory uses and structures are allowed for all permitted land uses within the commercial districts, as identified in Table 18.40.020. Accessory structures shall comply with the following standards:

1. Primary Use Required. An accessory structure shall not be allowed before or without a primary use, as identified in Table 18.40.020.

2. Setback Standards. Accessory structures shall comply with the setback standards in PMC 18.40.030, except that the maximum setback provisions shall not apply.

3. Design Guidelines. Accessory structures shall comply with the commercial district design guidelines, as provided in PMC 18.40.070.

4. Restrictions. A structure shall not be placed over an easement that prohibits such placement. No structure shall encroach into the public right-of-way unless otherwise approved by the city in writing.

5. Compliance with Subdivision Standards. The owner may be required to remove an accessory structure as a condition of land division approval when removal of the structure is necessary to comply with setback standards.

E. Automobile-Oriented Uses and Facilities. Automobile-oriented uses and facilities, as defined below, shall conform to all of the following standards in the central commercial district. The stan-

dards are intended to provide a vibrant storefront character, slow traffic down, and encourage walking.

1. Parking, Garages, and Driveways. All off-street vehicle parking, including surface lots and garages, shall be accessed from alleys, placed underground, placed in structures above the ground floor, or located in parking areas located behind or to the side of a building; except that side yards on corner lots shall not be used for surface parking. All garage entrances facing a street (e.g., underground or structured parking) shall be recessed behind the front elevation by a minimum of six feet. On corner lots, garage entrances shall be oriented to a side or lower classified street when vehicle access cannot be provided from an alley. Individual surface parking lots shall not exceed a total of one-half city block. Larger parking areas shall be in multiple story garages.

2. Automobile-Oriented Uses. "Automobile-oriented use" means automobiles and/or other motor vehicles are an integral part of the use. These uses are restricted because, when unrestricted, they detract from the pedestrian-friendly, storefront character of the district and can consume large amounts of land relative to other allowed uses. Automobile-oriented uses shall comply with the following standards:

a. Vehicle Repair. Businesses that repair or service automobiles, trucks, motorcycles, buses, recreational vehicles/boats, construction equipment, and similar vehicles and equipment are allowed when the use is contained within an enclosed building.

b. Drive-Up, Drive-In, and Drive-Through Facilities. Drive-up, drive-in, and drive-through facilities (e.g., associated with restaurants, banks, car washes, and similar uses) shall conform to the following standards:

i. None of the drive-up, drive-in or drive-through facilities (e.g., driveway queuing areas, windows, teller machines, service windows, drop-boxes, and similar facilities) are located within 20 feet of a street and shall not be oriented to a street corner.

F. Sidewalk Displays. Sidewalk display of merchandise and vendors shall be limited to cards, plants, gardening/floral products, food, books, newspapers, bicycles, and similar small items for sale or rental to pedestrians (i.e., non-automobile oriented). A minimum clearance of six feet shall be maintained. Display of larger items, such as automobiles, trucks, motorcycles, buses, recreational vehicles/boats, construction equipment, building materials, and similar vehicles and equipment, is prohibited.

G. Light Manufacture. Light manufacture uses are allowed in the C-2 district. "Light manufacture" means production or manufacturing of small-scale goods, such as crafts, electronic equipment, bakery products, printing and binderies, furniture, and similar goods. Light manufacture uses shall conform to all of the following standards, which are intended to protect the pedestrian-friendly, storefront character of these districts:

1. Retail or Service Use Required. Light manufacture is allowed only when it is in conjunction with an allowed retail or service use.

2. Location. The light manufacture use shall be enclosed within a building or shall be located within a rear yard not adjacent to a street or visible to the general public. [Ord. 734 § 1, 2005; Ord. 720 § 7[2.2.180], 2003.]

Chapter 18.45

INDUSTRIAL DISTRICTS

Sections:

18.45.010 Purpose.
18.45.020 Allowed land uses.
18.45.030 Development setbacks.
18.45.040 Lot coverage.
18.45.050 Development orientation.
18.45.060 Building height.
18.45.070 Special standards for certain uses.

18.45.010 Purpose.

The industrial districts accommodate a range of light and heavy industrial land, as well as industrial park uses. It is intended to segregate less compatible developments from other districts while providing a high-quality business environment for employees and residents. This chapter guides the orderly development of industrial areas based on the following principles:

A. Provide for efficient use of land and public services;

B. Provide transportation options for employees and customers;

C. Locate business and industrial services close to major employment centers;

D. Ensure compatibility between industrial uses and nearby commercial and residential areas; and

E. Provide appropriate design standards to accommodate a range of industrial users, in conformance with the comprehensive plan. [Ord. 720 § 7[2.3.100], 2003.]

18.45.020 Allowed land uses.

The land uses listed in Table 18.45.020 are allowed in the industrial zones, subject to the provisions of this chapter and Chapter 18.110 PMC, Development Review and Site Design Review. Only land uses that are specifically listed in Table 18.45.020 and land uses that are approved as "similar" to those in Table 18.45.020 may be allowed.

Table 18.45.020
Land Uses and Building Types Allowed in the Industrial Districts

LI – Light Industrial	HI – Heavy Industrial	IP – Industrial Park
Allowed Uses (A) Accessory uses. (B) Automobile and equipment repair, sales, rental, storage and service. (C) Caretaker dwelling. (D) Freight and trucking. (E) Government facilities (e.g., public safety, utilities, school district bus facilities, public works yards, transit and transportation, and similar facilities). (F) Light manufacture (e.g., electronic equipment, printing, bindery, furniture, and similar goods). (G) Mini-warehouse and storage. (H) Outdoor commercial uses, storage, and sales. (I) Repair services. (J) Research facilities. (K) RV park facilities. (L) Special district facilities (e.g., irrigation district, and similar facilities). (M) Utility facilities, including distribution plant, substation, and service yard. (N) Vocational schools. (O) Warehousing and distribution. (P) Wholesale trade and services. (Q) Wireless communication equipment. Conditional Uses The planning commission may grant a conditional use permit for the following uses: (A) Auction house (nonlivestock). (B) Private heliport. (C) Horse riding or training facilities or clubs.	Allowed Uses (A) Uses allowed in the LI zone. Conditional Uses The planning commission may grant a conditional use permit for the following uses: (A) Manufacturing, assembly, and processing of raw materials. (B) Cement, lime or similar products manufacture. (C) Chemical manufacture. (D) Explosive storage or processing. (E) Livestock auction. (F) Mineral extraction or processing. (G) Rendering plant, tannery, or slaughter house. (H) Solid waste transfer station.	Allowed Uses (A) Uses allowed in the LI zone when conducted within a building. (B) Commercial uses incidental to and directly related to allowed or conditional uses. (C) Indoor and outdoor recreation facilities. (D) Offices. (E) RV park facilities. Conditional Uses The planning commission may grant a conditional use permit for the following uses: (A) Community center. (B) Governmental structure or use of land, including playground, park, fire or police station, library, or City Hall. (C) Membership club. (D) Public and private schools. (E) Private or nonprofit education facilities.

Industrial uses shall require a conditional use permit when they generate significant noise, light/glare, dust and vibration impacts, or traffic; or when they include resource extraction. The standards for determining "significant" are provided in PMC 18.45.070(A), Uses with Significant Noise, Light/Glare, Dust, Vibration, or Traffic Impacts. Conditional use permits shall be subject to the procedure and standards in Chapter 18.120 PMC, Conditional Use Permits. [Ord. 737 § 1, 2006; Ord. 720 § 7[2.3.110], 2003.]

18.45.030 Development setbacks.

Development setbacks provide separation between industrial and nonindustrial uses for fire protection/security, building maintenance, sunlight and air circulation, noise buffering, and visual separation.

A. Front Yard Setbacks. The minimum front yard setback shall be 20 feet. The setback standard shall increase by one foot for every one foot of building height in excess of 30 feet.

B. Rear Yard Setbacks. There is no required rear yard setback, except that industrial development (i.e., buildings, parking, outdoor storage and industrial activities) shall be set back from residential districts by a minimum of 40 feet, and from other nonindustrial districts by a minimum of 20 feet; the rear setback in this case shall increase by one foot for every one foot of building height in excess of 30 feet.

C. Side Yard Setbacks. There are no required side yard setbacks, except that industrial development (i.e., buildings, parking, outdoor storage and industrial activities) shall be set back from residential districts by a minimum of 40 feet and from other nonindustrial districts by a minimum of 20 feet; the side setback in this case shall increase by one foot for every one foot of building height in excess of 30 feet.

D. Other Yard Requirements.

1. Buffering. The city may require landscaping, walls or other buffering in setback yards to mitigate adverse noise, light, glare, and aesthetic impacts to adjacent nonindustrial zoned properties.

2. Neighborhood Access. Construction of pathway(s) within setback yards may be required to provide pedestrian connections to adjacent neighborhoods or other districts, in accordance with Chapter 18.65 PMC, Access and Circulation. [Ord. 734 § 1, 2005; Ord. 720 § 7[2.3.120], 2003.]

18.45.040 Lot coverage.

The maximum allowable lot coverage in the heavy industrial district is 90 percent; in the light industrial district, 80 percent; and in the industrial park, 60 percent. The maximum allowable lot coverage is computed by calculating the total area covered by buildings and impervious (paved) surfaces, including accessory structures. Compliance with other sections of this title may preclude development of the maximum lot coverage for some land uses. [Ord. 720 § 7[2.3.130], 2003.]

18.45.050 Development orientation.

Industrial developments shall be oriented on the site to minimize adverse impacts (e.g., noise, glare, smoke, dust, exhaust, vibration, etc.), protect the privacy of adjacent uses to the greatest extent possible, and encourage alternative modes of transportation, such as walking, bicycling and use of transit. The following standards shall apply to all development in the industrial districts:

A. Building Entrances. All buildings shall have a primary entrance oriented to a street. “Oriented to a street” means that the building entrance faces the street or is connected to the street by a direct and convenient pathway. Streets used to comply with this standard may be public streets, or private streets that contain sidewalks and street trees, in accordance with the design standards in Division 3.

B. Pathway Connections. Pathways shall be placed through yard setbacks as necessary to provide direct and convenient pedestrian circulation between developments and neighborhoods. Pathways shall conform to the standards in Division 3.

C. Arterial Streets. When the only street abutting a development is an arterial street, the building’s entrance(s) may be oriented to an internal drive. The internal drive shall provide a raised pathway connecting the building entrances to the street right-of-way. The pathway shall conform to the standards in Division 3.

D. Buffers. The city may require a 40-foot landscape buffer between development in the industrial district and adjacent residential district(s) to reduce light, glare, noise, and aesthetic impacts.

E. Commercial Developments. Commercial buildings and uses comprising more than 40,000 square feet of total ground-floor building space shall additionally conform to the block layout and building orientation standards for commercial zones as contained in PMC 18.40.050.

F. Outside Activities and Facilities. Mechanical equipment, lights, emissions shipping/receiving areas and other components of an industrial use that are outside enclosed buildings shall be located away from residential areas, schools, parks, and other nonindustrial areas to the maximum extent practicable. [Ord. 720 § 7[2.3.140], 2003.]

18.45.060 Building height.

The following building height standards are intended to promote land use compatibility and flexibility for industrial development at an appropriate community scale:

A. Base Requirement. Buildings shall be no more than 50 feet in height and shall comply with the building setback/height standards in PMC 18.45.030.

B. Performance Option. The allowable building height may be increased to 80 feet, when approved as part of a conditional use permit. The development approval may require additional setbacks, stepping-down of building elevations, visual buffering, screening, and/or other appropriate measures to provide a height transition between industrial development and adjacent nonindustrial development. Smokestacks, cranes, roof equipment, and other similar features that are necessary to the industrial operation may not exceed 75 feet in height without approval of a conditional use permit. [Ord. 734 § 1, 2005; Ord. 720 § 7[2.3.150], 2003.]

18.45.070 Special standards for certain uses.

A. Uses with Significant Noise, Light/Glare, Dust, Vibration, or Traffic Impacts. It is anticipated that uses in the light industrial and industrial park zones will not cause significant impacts beyond the subject property. However, in all zones the following uses shall require conditional use permit approval, in addition to development review or site design review:

1. Uses with Significant Noise, Light/Glare, Dust and Vibration Impacts. Uses that are likely to create significant adverse impacts beyond the industrial district boundaries, such as noise, light/glare, dust, or vibration, shall require conditional use approval, in conformance with Chapter 18.120 PMC. The following criteria shall be used in determining the adverse impacts of a use likely to be "significant":

a. Noise. The noise level beyond the property line exceeds 55 dBA in the industrial park; 65 dBA in the light industrial; and 75 dBA in the heavy industrial districts (24-hour average) on a regular basis.

b. Light/Glare. Lighting and/or reflected light from the development exceeds ordinary ambient light and glare levels (i.e., levels typical of the surrounding area).

c. Dust and/or Exhaust. Dust and/or exhaust emissions from the development exceeds ambient dust or exhaust levels, or levels that existed prior to development.

d. Vibration. Vibration (e.g., from mechanical equipment) is sustained and exceeds ambient vibration levels (i.e., from adjacent roadways and existing land uses in the surrounding area).

2. Traffic. Uses that are likely to generate unusually high levels of vehicle traffic due to shipping and receiving. "Unusually high levels of traffic" means that the average number of daily trips on any existing street would increase by 15 percent or more as a result of the development. The city may require a traffic impact analysis prepared by a qualified professional prior to deeming a land use application complete, and determining whether the proposed use requires conditional use approval. Applicants may be required to provide a traffic analysis for review by ODOT for developments that increase traffic on state highways.

3. Resource extraction, such as the operation of mineral and aggregate quarries and similar uses, shall require a conditional use permit. The applicant shall also be required to prepare a site reclamation plan for review and approval by the city and other affected agencies prior to commencing resource extraction. The required scope of the reclamation plan shall be identified by the conditional use permit, and shall comply with applicable requirements of state natural resource regulatory agencies.

B. Wireless Communication Equipment. Wireless communication equipment, including radio, cellular, television and similar types of transmission and receiving facilities are allowed, subject to the applicable setbacks of the zone. [Ord. 737 § 1, 2006; Ord. 720 § 7[2.3.160], 2003.]

Chapter 18.50

PUBLIC DISTRICTS

Sections:

18.50.010 Purposes.
18.50.020 Allowed uses.
18.50.030 Site plan review.
18.50.040 Property development standards.

18.50.010 Purposes.

The public zone is intended to be applied to publicly owned lands in order to guide the public development of these lands in an appropriate manner that is compatible with adjacent uses. [Ord. 720 § 7[2.4.100], 2003.]

18.50.020 Allowed uses.

The publicly owned or operated land uses listed in Table 18.50.020 are allowed in the public zone, subject to the provisions of this chapter. Only land uses that are specifically listed in Table 18.50.020 and land uses that are approved as similar to those in Table 18.50.020 may be allowed.

Table 18.50.020
Land Uses and Building Types Allowed in the Public District

Allowed Uses	Conditional Uses
The following uses are permitted in this district, subject to site plan review per PMC 18.105.040. (a) Community center. (b) Library. (c) Museum. (d) Offices. (e) Park, including active recreation activities. (f) Performing arts center. (g) Police station. (h) Swimming pool. (i) Shops, motor pool, vehicular maintenance. (j) Water and wastewater treatment or collection facility.	The planning commission may grant a conditional use permit for the following uses: (a) Jail or correction facility. (b) Fire station.

[Ord. 720 § 7[2.4.110], 2003.]

18.50.030 Site plan review.

Any allowed development proposal in this district shall be subject to site plan review in accordance with Chapter 18.110 PMC. [Ord. 720 § 7[2.4.120], 2003.]

18.50.040 Property development standards.

A. Minimum Lot Size and Dimensions. No minimum; provided, all applicable standards of this title are met.

B. Minimum Setbacks. The minimum setback shall conform to that of the abutting property zone requirements. Where two or more different zones are applicable the most restrictive shall apply. There is no maximum setback.

C. Lot Coverage. In the public zone, buildings may occupy 100 percent of the lot area; provided, all applicable standards of this title are met.

D. Building Height. The maximum height shall conform to that of the abutting property zone requirements. Where two or more different zones are applicable the most restrictive shall apply. There shall be no windows or doors in walls facing a residential zone unless greater than 15 feet of separation is provided, except emergency exit doors.

E. Access. Every newly created lot shall have a legal access. No street frontage shall be required by this or any other provision of this title.

F. Exterior Lighting. Exterior lighting shall be located in such a manner as not to face directly, shine or reflect glare onto an adjacent street or property. [Ord. 720 § 7[2.4.130], 2003.]

Chapter 18.55

OVERLAY DISTRICTS

Sections:

Article I. General Provisions

18.55.010 Purpose.
18.55.020 Natural resource overlay zone.
18.55.030 State and federal standards applicable.
18.55.040 Preexisting development.
18.55.050 Procedures.
18.55.060 Regulated uses.
18.55.070 Appeals.
18.55.080 Variances.
18.55.090 Restoration and enhancement exceptions.
18.55.100 *Repealed*.

Article II. Flood Damage Prevention

18.55.110 Authorization, findings of fact, purpose and objectives.
18.55.120 Definitions.
18.55.130 General provisions.
18.55.140 Administration.
18.55.150 Provisions for flood hazard reduction.

Article I. General Provisions

18.55.010 Purpose.

The flood hazard overlay and natural resources overlay zones are created to establish a process and standards that will protect the public health and safety in areas subject to periodic flooding and that contain natural resources. These zones will minimize the degradation and destruction of significant natural resources, and conserve wetland and riparian corridor resources and their functions and values. This title is intended to protect and enhance local water quality; to preserve fish and wildlife habitat; and to provide flood storage capacity, nutrient attenuation, and sediment trapping within the city of Philomath. Therefore, the city has chosen to restrict the filling, grading, excavation, or development of natural resource areas for their protection. [Ord. 720 § 7[2.5.100], 2003.]

18.55.020 Natural resource overlay zone.

A. Significant Wetlands. Significant wetland regulations contained in this chapter apply to those areas identified as significant wetlands on the city of Philomath local wetland inventory map and includes riparian corridors. Precise boundaries may vary from that shown on the local inventory maps. The city may require an on-site delineation or other DSL-approved documentation to indicate more accurate boundaries.

B. Riparian Corridors. The riparian protection zone consists of two component areas: the area within the channel banks and the protective zone. The two components of the riparian protection zone are defined as:

1. The area within the channel limits of a water area (from top of one bank to top of the opposite bank) identified in subsection (B) of this section. For a given stream, river, or channel the top of bank is the same as the "bankfull stage." The "bankfull stage" is defined as the stage or elevation at which water overflows the natural banks of streams or other waters of this state and begins to inundate the upland.

2. The protection zone measured 50 feet horizontally upland from the top of bank along those sections of Newton Creek and Mary's River and designated as significant riparian corridors on the city of Philomath local riparian inventory map.

C. Wildlife Habitat. Wildlife habitat under this chapter is defined as areas upon which wildlife depend in order to meet their requirements for food, water, shelter, and reproduction. The city has inventoried and determined significant wildlife habitat by following the safe harbor methodology. Public disclosure of certain threatened and endangered species inventory information may be limited through procedures to allow limited review by property owners and other specified parties. At a minimum, these inventories include:

1. Threatened, endangered, and sensitive wildlife species habitat information;

2. Sensitive bird site inventories; and

3. Wildlife species of concern and/or habitats of concern identified and mapped by ODFW.

D. Unidentified Natural Resources. Newly identified natural resources, including wildlife and wildlife habitat sites, shall be addressed in the following manner:

1. The site shall be inventoried, incorporating the use of experts, for specific location, quantity and quality. This inventory shall be done in a timely manner. Constraints on access to private lands, availability of qualified experts, and the difficulty of identifying the suspected natural resource at certain times of the year may require an extended time period for the study.

2. Upon completion of the preliminary inventory, the city shall determine whether the identified resource is significant and adopt supporting findings. Significance will be determined on a case-by-case basis, according to whether the resource is on a federal, state, or local listing, and based on the uniqueness or scarcity of the resource locally. If necessary to protect the site, the city

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shall apply interim protection measures. The city shall then notify any interested parties of the decision and any interim protection measures to be undertaken.

3. If a resource is determined significant, the city shall within one year initiate a Goal 5 Environmental, Social, Economic, and Energy (ESEE) conflict resolution analysis. The city will then release a draft working paper with recommendations that will be reviewed by the planning commission and city council.

4. Staff will coordinate with affected property owners and interested parties throughout the process. [Ord. 720 § 7[2.5.200], 2003.]

18.55.030 State and federal standards applicable.

A. The provisions of the natural resources overlay zone do not exempt persons or property from state or federal laws that regulate protected land, water, wetlands, or habitat areas. In addition to the restrictions and requirements of this section, all proposed development activities wholly or partially within areas identified as wetlands are also subject to DSL standards and approval.

B. The city shall provide notice to the Division of State Lands (DSL), the applicant, and the owner of record within five working days of the acceptance of any complete application for subdivisions, building permits for new structures, other development permits and approvals that allow physical alteration of land. This includes excavation and grading, permits for removal or fill or both, or development in floodplains and floodways. This provision does not apply if a permit from DSL has been issued for the proposed activity.

C. No action can be taken on a proposed development until such notification is provided and the action approved by DSL or a response provided from DSL indicating no permit is required until specific proposals are submitted. City approval may be given if DSL fails to respond within 30 days of notice, subject to written notice being provided the applicant and owner of record that the proposed action may require state or federal permits. [Ord. 720 § 7[2.5.201], 2003.]

18.55.040 Preexisting development.

Areas developed prior to adoption of this title are acknowledged as preexisting conditions and are allowed to be maintained in their status at the time of adoption of this title. For the purposes of this section, "development" means buildings and any other development requiring a building permit, or any alteration of the overlay zone by grading or construction of an impervious surface, including paved or gravel parking areas. [Ord. 720 § 7[2.5.202], 2003.]

18.55.050 Procedures.

A. The procedure for reviewing any development within the natural resources overlay zone is as follows:

1. Any development or regulated vegetation removal proposal within the natural resources overlay zone shall be submitted to the planning official. Such development or vegetation removal shall be conducted in a fashion to require minimal exposure of soil during development and designed to mitigate runoff and limit impervious surfaces in or near riparian areas.

2. Depending on the action requested, the planning official may provide an administrative decision on permitted uses, request additional documentation from a qualified expert, or forward the proposal to the planning commission for a decision.

3. The applicant shall be responsible for the preparation of a quality map showing the precise location of the top-of-bank, 100-year flood elevation, wetland edge (if present), riparian setback, significant vegetation, site improvements or other relevant primary features. The specific features to be indicated on the map will differ according to application type; and therefore, the specific information to be provided by the applicant will be identified by the planning official.

4. For any proposed development within 50 feet of identified significant wetlands, the applicant shall be required to have a wetland delineation conducted to determine the precise wetland boundary, and if applicable, the nature and extent of development impacts on adjacent wetlands. The more precise boundaries obtained through a wetland delineation can be identified, mapped, and used for review and development without a change in the comprehensive plan wetlands map. All developments proposed within or adjacent to a designated wetland area shall be subject to the provisions of

this title and development plan reviews pursuant to this title or other applicable codes.

B. At the time of application, the planning official may request that the applicant submit supplemental information, which may include the following:

1. A grading plan that includes information on terrain, drainage, location of proposed and existing structures, and finished elevations.

2. A vegetation report that consists of a survey by a qualified individual of existing native vegetation and proposed alterations. Where the removal of native vegetation is proposed, measures for revegetation and enhancement with native plant species will be included. The city shall have and maintain a list of native vegetation species. [Ord. 720 § 7[2.5.203], 2003.]

18.55.060 Regulated uses.

The following uses are regulated within natural resource overlay areas identified as locally significant, as provided below.

Table 18.55.060
Land Uses and Activities Allowed in the NR Overlay District

Allowed Uses	Conditional Uses	Prohibited Uses
1) All uses permitted outright as provided for in the underlying zone. 2) Filling, grading, and/or excavating wetland areas consistent with state of Oregon removal-fill regulations. 3) Maintenance, repair, or replacement of existing public facilities. 4) Removal of vegetation or invasive plant species or planting or replanting with native plants outside a riparian corridor, except as provided for below. 5) Removal of vegetation from the riparian zone is prohibited, except for the following uses after planning official approval: (a) Non-native or native vegetation removal unless replaced with native riparian plant species. (b) Water-related or water-dependent uses; provided, they are designed and constructed to minimize impact on the existing riparian vegetation. (c) Emergent in-channel vegetation removal which has the potential to cause flooding. (d) Excess debris removal when deposited by a flood event. (e) Vegetation removal demonstrated to be a potential hazard to property or human life. (f) Hazardous tree removal that poses an obvious and immediate health, safety, or welfare threat to persons or property, except in emergency circumstances, is required to be reviewed by city staff. Any tree removed is required to be replaced by like native species equal in diameter to the removed tree, though not necessarily exceeding two inches in diameter at four feet above grade. Such trees shall be replaced as soon as practical, but in no case longer than 150 days after removal. (g) In-channel erosion or flood control measures that have been approved by the Oregon Department of State Lands (DSL), the U.S. Army Corps of Engineers or other state or federal regulatory agency.	1) All uses permitted conditionally as provided for in the underlying zone. 2) Nature interpretive centers and wetland research facilities, when specified in or consistent with adopted plans or policies. 3) Maintenance facilities for storage of equipment and materials used exclusively for maintenance of wetlands and other natural resources. 4) Trails, boardwalks, viewing platforms, information kiosks, and trail signs. 5) Realignments and reconfigurations of channels and pond banks, including the restoration and enhancement of natural functions and values which involve displacement, excavation or relocation of more than 50 cubic yards of earth and which carry out the objectives of this title. 6) Access road construction for maintenance of channels, wetlands and other natural resource areas. 7) Bikeways and other paved pathways. 8) Stormwater quality treatment facilities that use biofiltration methods.	1) Removal or destruction of rare, threatened or endangered plant species or animal habitat of sensitive or threatened species as found on a list determined by the Oregon Natural Heritage Program and kept on file at Philomath City Hall. 2) Storage or use of chemical pesticides, fertilizers, or other hazardous or toxic materials not associated with an approved use. 3) Within riparian corridors, the placement of structures or impervious surfaces, including grading and the placement of fill is prohibited, except replacement of existing structures with structures located on the original building footprint that do not disturb additional riparian surface area. 4) Property line adjustments or land divisions, which would result in lots or parcels that cannot be developed in conformance with the underlying and natural resources overlay zone regulations.

Table 18.55.060 (Continued)
Land Uses and Activities Allowed in the NR Overlay District

Allowed Uses	Conditional Uses	Prohibited Uses
(h) Routine maintenance of existing site improvements including lawns, natural and planted vegetation and landscaping, and structures. Maintenance trimming of existing trees shall be kept at a minimum and under no circumstances can the trimming maintenance be so severe as to compromise the tree's health, longevity, and resource functions. (i) Site management and maintenance practices, whose purpose is to maintain or improve natural functions and values or protect public health and safety, and which are consistent with adopted plans and policies including, but not limited to, perimeter mowing and other cutting necessary for hazard prevention. (j) Wetland and riparian corridor restoration and enhancement of natural functions and values which involve displacement, excavation or relocation of less than 50 cubic yards of earth, and which carry out the objectives of this title and are consistent with adopted policies and plans. (k) Water-related and water-dependent uses, including drainage facilities, water and sewer utilities, flood control projects, and drainage pumps.		

[Ord. 734 § 1, 2005; Ord. 720 § 7[2.5.204], 2003.]

18.55.070 Appeals.

Any decision by the planning official concerning the wetland protection requirements herein may be appealed to the planning commission and city council pursuant to this title governing appeals. [Ord. 720 § 7[2.5.205], 2003.]

18.55.080 Variances.

The property owner may apply for a hardship variance for waiver of land development limitations found under this chapter for any lot or parcel existing at the time of this chapter and demonstrated to have been rendered not buildable by application of this chapter. A decision regarding hardship variances will follow the procedures and standards of Chapter 18.155 PMC, Variances.

The provisions of this section may be waived and no variance required in those instances where the Division of State Lands verifies claims of map error of a wetland area. [Ord. 720 § 7[2.5.206], 2003.]

18.55.090 Restoration and enhancement exceptions.

Permanent alteration of the riparian area by placement of structures or impervious surfaces may be permitted upon demonstration that equal or better protection for the remaining on-site riparian protection overlay zone area will be ensured through restoration of riparian areas, enhanced buffer treatment or similar measures. In no case shall such alterations occupy more than 50 percent

of the width of the riparian area measured from the upland edge of the corridor. [Ord. 720 § 7[2.5.207], 2003.]

18.55.100 Flood hazard overlay (/FH).

Repealed by Ord. 771. [Ord. 734 § 1, 2005; Ord. 720 § 7[2.5.300], 2003.]

Article II. Flood Damage Prevention

18.55.110 Authorization, findings of fact, purpose and objectives.

A. Authorization. The state of Oregon has delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

B. Findings of Fact.

1. The flood hazard areas of the city of Philomath are subject to periodic inundation which results 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.

2. These flood losses are caused by the cumulative effect of obstructions in areas of special flood hazard which increase flood heights and velocities, and when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to the flood loss.

C. Statement of Purpose. It is the purpose of this article to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

1. To protect human life and health;

2. To minimize expenditure of public money and costly flood control projects;

3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

4. To minimize prolonged business interruptions;

5. To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;

6. To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;

7. To ensure that potential buyers are notified that property is in an area of special flood hazard; and

8. To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

D. Methods of Reducing Flood Losses. In order to accomplish its purposes, this article includes methods and provisions for:

1. Restricting or prohibiting uses which are 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;

2. Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

3. Controlling the alteration of natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;

4. Controlling filling, grading, dredging, and other development which may increase flood damage;

5. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or may increase flood hazards in other areas;

6. Coordinating and supplementing the provisions of the State Building Code with local land use and development ordinances. [Ord. 771 § 2, 2011.]

18.55.120 Definitions.

Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

"Appeal" means a request for a review of the interpretation of any provision of this article or a request for a variance.

"Area of special flood hazard" means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given

year. Designation on maps always includes the letter A or V.

"Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the "100-year flood." Designation on maps always includes the letter A or V.

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Below-grade crawlspace" means an enclosed area below the base flood elevation in which the interior grade is not more than two feet below the lowest adjacent exterior grade and the height, measured from the interior grade of the crawlspace to the top of the crawlspace foundation, does not exceed four feet at any point.

"Breakaway wall" means 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.

"Critical facility" means a facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to, schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

"Development" means any manmade 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.

"Elevated building" means, for insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

"Existing manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the adopted floodplain management regulations.

"Expansion to an existing manufactured home park or subdivision" means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

"Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters; and/or

2. The unusual and rapid accumulation of runoff of surface waters from any source.

"Flood insurance rate map (FIRM)" means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"Flood insurance study" means the official report provided by the Federal Insurance Administration that includes flood profiles, the flood boundary-floodway map, and the water surface elevation of the base flood.

"Floodway" means the channel of a river or other watercourse 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 one foot.

"Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for 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 nonelevation design requirements of this article found at PMC 18.55.150(B)(1)(b).

"Manufactured home" means 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 home" does not include a "recreational vehicle."

"Manufactured home park or subdivision" means a parcel (or contiguous parcels) of land

divided into two or more manufactured home lots for rent or sale.

"New construction" means structures for which the "start of construction" commenced on or after the effective date of the ordinance codified in this article.

"New manufactured home park or subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of adopted floodplain management regulations.

"Recreational vehicle" means a vehicle which is:

1. Built on a single chassis;
2. Four hundred square feet or less when measured at the largest horizontal projection;
3. Designed to be self-propelled or permanently towable by a light duty truck; and
4. Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"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 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; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a 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.

"State Building Code" means the combined specialty codes.

"Structure" means a walled and roofed building including a gas or liquid storage tank that is principally above ground.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its original condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial improvement" means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either:

1. Before the improvement or repair is started; or
2. 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:

1. 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
2. Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

"Variance" means a grant of relief from the requirements of this article which permits construction in a manner that would otherwise be prohibited by this article.

"Water dependent" means a structure for commerce or industry which cannot exist in any other location and is dependent on the water by reason of the intrinsic nature of its operations. [Ord. 771 § 3, 2011.]

18.55.130 General provisions.

A. Lands to Which This Article Applies. This article shall apply to all areas of special flood hazards within the jurisdiction of the city of Philomath.

B. Basis for Establishing the Areas of Special Flood Hazard. The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for Benton County, Oregon and incorporated areas," dated June 2, 2011, with the accompanying flood insurance maps, are hereby adopted by reference and declared to be a part of this article. The flood insurance study is on file at Philomath City Hall. The best available information for flood hazard area identification as outlined in PMC 18.55.140(C)(2) shall be the basis for regulation until a new FIRM is issued which incorporates the data utilized under PMC 18.55.140(C)(2).

C. Penalties for Noncompliance. No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this article and other applicable regulations. Violations of the provisions of this article by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this article or fails to comply with any of its requirements shall upon conviction thereof be fined not more than $500.00 for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the city of Philomath from taking such other lawful action as is necessary to prevent or remedy any violation.

D. Abrogation and Greater Restrictions. This article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article and another ordinance, State Building Code, easement, covenant, or deed restriction conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

E. Severability. If any section, clause, sentence, or phrase of this article is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this article.

F. Interpretation. In the interpretation and application of this article, all provisions shall be:

1. Considered as minimum requirements;

2. Liberally construed in favor of the governing body; and

3. Deemed neither to limit nor repeal any other powers granted under state statutes and rules, including the State Building Code.

G. Warning and Disclaimer of Liability. The degree of flood protection required by this article 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 article 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. This article shall not create liability on the part of the city of Philomath, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this article or any administrative decision lawfully made hereunder. [Ord. 771 § 4, 2011.]

18.55.140 Administration.

A. Establishment of Development Permit.

1. Development Permit Required. A development permit shall be obtained before construction or development begins within any area of special flood hazard established in PMC 18.55.130(B). The permit shall be for all structures, including manufactured homes, as set forth in PMC 18.55.120, and for all development including fill and other activities, also as set forth in PMC 18.55.120.

2. Application for Development Permit. Application for a development permit shall be made on forms furnished by the city of Philomath 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:

a. Elevation in relation to mean sea level of the lowest floor (including basement) of all structures;

b. Elevation in relation to mean sea level of floodproofing in any structure;

c. Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the

floodproofing criteria in PMC 18.55.150(B)(2); and

d. Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.

B. Designation of the Local Administrator. The city manager is hereby appointed to administer and implement this article by granting or denying development permit applications in accordance with its provisions.

C. Duties and Responsibilities of the Local Administrator. Duties of the local administrator shall include, but not be limited to:

1. Permit Review.

a. Review all development permits to determine that the permit requirements and conditions of this article have been satisfied.

b. Review all development permits to determine that all necessary permits have been obtained from those Federal, State, or local governmental agencies from which prior approval is required.

c. Review all development permits to determine if the proposed development is located in the floodway. If located in the floodway, assure that the encroachment provisions of PMC 18.55.150(D)(1) are met.

2. Use of Other Base Flood Data (In A and V Zones). When base flood elevation data has not been provided (A and V zones) in accordance with PMC 18.55.130(B), Basis for Establishing the Areas of Special Flood Hazard, the local administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, in order to administer PMC 18.55.150(B), Specific Standards, and 18.55.150(D), Floodways.

3. Information to Be Obtained and Maintained.

a. Where base flood elevation data is provided through the flood insurance study, FIRM, or as required in subsection (C)(2) of this section, obtain and record the actual elevation (in relation to mean sea level) of the lowest floor (including basements and below-grade crawlspaces) of all new or substantially improved structures, and whether or not the structure contains a basement.

b. For all new or substantially improved floodproofed structures where base flood elevation data is provided through the flood insurance study, FIRM, or as required in subsection (C)(2) of this section:

i. Verify and record the actual elevation (in relation to mean sea level); and

ii. Maintain the floodproofing certifications required in subsection (A)(2)(c) of this section.

c. Maintain for public inspection all records pertaining to the provisions of this article.

4. Alteration of Watercourses.

a. Notify adjacent communities, the Department of Land Conservation and Development and other appropriate state and federal agencies prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

b. Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capacity is not diminished.

5. Interpretation of FIRM Boundaries. Make interpretations, where needed, as to exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in subsection (D) of this section.

6. Appeals of FIRM Boundaries. An appeal from a decision of the administrator regarding a FIRM boundary pursuant to subsection (C)(5) of this section shall be taken to the planning commission. An appeal from the decision of the planning commission regarding a FIRM boundary shall be taken to the city council. Appeals under this section shall be conducted according to the order of procedure set out for discretionary land use decisions. The burden of proof for such an appeal shall be on the applicant. The city manager shall report any such decision to the Federal Insurance Administration upon request.

D. Variance Procedure.

1. Appeal Board.

a. The Philomath planning commission shall hear and decide appeals and requests for variances from the requirements of this article.

b. The Philomath planning commission shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or

determination made by the city of Philomath in the enforcement or administration of this article.

c. Those aggrieved by the decision of the Philomath planning commission, or any taxpayer, may appeal such decision to the city council.

d. In passing upon such applications, the city shall consider all technical evaluations, all relevant factors, standards specified in other sections of this article, and:

i. The danger that materials may be swept onto other lands to the injury of others;

ii. The danger to life and property due to flooding or erosion damage;

iii. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

iv. The importance of the services provided by the proposed facility to the community;

v. The necessity to the facility of a waterfront location, where applicable;

vi. The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;

vii. The compatibility of the proposed use with existing and anticipated development;

viii. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

ix. The safety of access to the property in times of flood for ordinary and emergency vehicles;

x. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and

xi. The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

e. Upon consideration of the factors of subsection (D)(1)(d) of this section and the purposes of this article, the planning commission may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.

f. The city manager shall maintain the records of all appeal actions and report any variances to the Federal Insurance Administration upon request.

2. Conditions for Variances.

a. Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected 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, providing the items in subsections (D)(1)(d)(i) through (xi) have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.

b. Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the Statewide Inventory of Historic Properties, without regard to the procedures set forth in this section.

c. Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.

d. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

e. Variances shall only be issued upon:

i. A showing of good and sufficient cause;

ii. A determination that failure to grant the variance would result in exceptional hardship to the applicant;

iii. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in subsection (D)(1)(d) of this section, or conflict with existing local laws or ordinances.

f. Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.

g. Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be deter-

mined that such action will have low damage potential, complies with all other variance criteria except subsection (D)(2)(a) of this section, and otherwise complies with PMC 18.55.150(A)(1) and (A)(2).

h. Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. [Ord. 771 § 5, 2011.]

18.55.150 Provisions for flood hazard reduction.

A. General Standards. In all areas of special flood hazards, the following standards are required:

1. Anchoring.

a. All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure.

b. All manufactured homes must likewise be anchored to prevent flotation, collapse, or lateral movement, and shall be installed using methods and practices that minimize flood damage. 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).

2. AH Zone Drainage. Adequate drainage paths are required around structures on slopes to guide floodwaters around and away from proposed structures.

3. 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 and substantial improvements shall be constructed using methods and practices that minimize flood damage.

c. Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be designed and/or otherwise elevated or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

4. Utilities.

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 systems and discharge from the systems into 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 the Oregon Department of Environmental Quality.

5. Subdivision Proposals.

a. All subdivision proposals shall be consistent with the need to minimize flood damage;

b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage;

c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage; and

d. Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision proposals and other proposed developments which contain at least 50 lots or five acres (whichever is less).

6. Review of Building Permits. Where elevation data is not available either through the flood insurance study, FIRM, or from another authoritative source (PMC 18.55.140(C)(2)), applications for building permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past flooding, etc., where available. Failure to elevate the lowest floor at least two feet above grade in these zones may result in higher insurance rates.

B. Specific Standards. In all areas of special flood hazards where base flood elevation data has been provided (Zones A1 – 30, AH, and AE) as set forth in PMC 18.55.130(B), Basis for Establishing the Areas of Special Flood Hazard, or PMC 18.55.140(C)(2), Use of Other Base Flood Data (In A and V Zones), the following provisions are required:

1. Residential Construction.

a. New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to a minimum of one foot above the base flood elevation.

b. Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:

i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.

ii. The bottom of all openings shall be no higher than one foot above grade.

iii. Openings may be equipped with screens, louvers, or other coverings or devices; provided, that they permit the automatic entry and exit of flood waters.

2. Nonresidential Construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated at or above the base flood 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 official as set forth in PMC 18.55.140(C)(3)(b);

d. Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in subsection (B)(1)(b) of this section;

e. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g., a building floodproofed to the base flood level will be rated as one foot below).

3. Manufactured Homes.

a. All manufactured homes to be placed or substantially improved on sites:

i. Outside of a manufactured home park or subdivision;

ii. In a new manufactured home park or subdivision;

iii. In an expansion to an existing manufactured home park or subdivision; or

iv. In an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood;

shall be elevated on a permanent foundation such that the finished floor of the manufactured home is elevated to a minimum 18 inches (46 cm) above the base flood elevation and be securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral movement.

b. Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within Zones A1 – 30, AH, and AE on the community's FIRM that are not subject to the above manufactured home provisions be elevated so that either:

i. The finished floor of the manufactured home is elevated to a minimum of 18 inches (46 cm) above the base flood elevation; or

ii. The manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately designed foundation system to resist flotation, collapse, and lateral movement.

4. Recreational Vehicles. Recreational vehicles placed on sites are required to either:

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, be attached to the site only by quick disconnect type utilities and security devices, and have no permanently attached additions; or

c. Meet the requirements of subsection (B)(3) of this section and the elevation and anchoring requirements for manufactured homes.

5. Below-Grade Crawlspaces. Below-grade crawlspaces are allowed subject to the following standards as found in FEMA Technical Bulletin 11-01, Crawlspace Construction for Buildings Located in Special Flood Hazard Areas:

a. The building must be designed and adequately anchored to resist flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy. Hydrostatic loads and the effects of buoyancy can usually be addressed through the required openings stated in subsection (B)(5)(b) of this section. Because of hydrodynamic loads, crawlspace construction is not allowed in areas with flood velocities greater than five feet per second unless the design is reviewed by a qualified design professional, such as a registered architect or professional engineer. Other types of foundations are recommended for these areas.

b. The crawlspace is an enclosed area below the base flood elevation (BFE) and, as such, must have openings that equalize hydrostatic pressures by allowing the automatic entry and exit of flood waters. The bottom of each flood vent opening can be no more than one foot above the lowest adjacent exterior grade.

c. Portions of the building below the BFE must be constructed with materials resistant to flood damage. This includes not only the foundation walls of the crawlspace used to elevate the building, but also any joists, insulation, or other materials that extend below the BFE. The recommended construction practice is to elevate the bottom of joists and all insulation above BFE.

d. Any building utility systems within the crawlspace must be elevated above BFE or designed so that flood waters cannot enter or accumulate within the system components during flood conditions. Ductwork, in particular, must either be placed above the BFE or sealed from flood waters.

e. The interior grade of a crawlspace below the BFE must not be more than two feet below the lowest adjacent exterior grade.

f. The height of the below-grade crawlspace, measured from the interior grade of the crawlspace to the top of the crawlspace foundation wall, must not exceed four feet at any point. The height limitation is the maximum allowable unsupported wall height according to the engineering analyses and building code requirements for flood hazard areas.

g. There must be an adequate drainage system that removes flood waters from the interior area of the crawlspace. The enclosed area should be drained within a reasonable time after a flood event. The type of drainage system will vary because of the site gradient and other drainage characteristics, such as soil types. Possible options include natural drainage through porous, well-drained soils and drainage systems such as perforated pipes, drainage tiles or gravel or crushed stone drainage by gravity or mechanical means.

h. The velocity of flood waters at the site should not exceed five feet per second for any crawlspace. For velocities in excess of five feet per second, other foundation types should be used.

For more detailed information refer to FEMA Technical Bulletin 11-01.

C. Before Regulatory Floodway. In areas where a regulatory floodway has not been designated, no new construction, substantial improvements, or other development (including fill) shall be permitted within Zones A1 – 30 and AE on the community's FIRM, 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.

D. Floodways. Located within areas of special flood hazard established in subsection (B) of this section are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

1. Except as provided in subsection (D)(3) of this section, prohibit encroachments, including fill, new construction, substantial improvements, and other development unless certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

2. If subsection (D)(1) of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of this section.

3. Projects for stream habitat restoration may be permitted in the floodway, provided:

a. The project qualifies for a Department of the Army, Portland District, Regional General Permit for Stream Habitat Restoration (NWP-2007-1023); and

b. A qualified professional (a registered professional engineer; or staff of NRCS; the county; or fisheries, natural resources, or water resources agencies) has provided a feasibility analysis and certification that the project was designed to keep any rise in 100-year flood levels as close to zero as practically possible given the goals of the project; and

c. No structures would be impacted by a potential rise in flood elevation; and

d. An agreement to monitor the project, correct problems, and ensure that flood carrying capacity remains unchanged is included as part of the local approval.

4. New installation of manufactured dwellings is prohibited (2002 Oregon Manufactured Dwelling and Park Specialty Code). Manufactured dwellings may only be located in floodways according to one of the following conditions:

a. If the manufactured dwelling already exists in the floodway, the placement was permitted at the time of the original installation, and the continued use is not a threat to life, health, property, or the general welfare of the public; or

b. A new manufactured dwelling is replacing an existing manufactured dwelling whose original placement was permitted at the time of installation and the replacement home will not be a threat to life, health, property, or the general welfare of the public and it meets the following criteria:

i. As required by 44 CFR Chapter 1, Subpart 60.3(d)(3), it must be demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the manufactured dwelling and any accessory buildings, accessory structures, or any property improvements (encroachments) will not result in any increase in flood levels during the occurrence of the base flood discharge;

ii. The replacement manufactured dwelling and any accessory buildings or accessory structures (encroachments) shall have the finished floor elevated a minimum of 18 inches (46 cm) above the BFE as identified on the flood insurance rate map;

iii. The replacement manufactured dwelling is placed and secured to a foundation support system designed by an Oregon professional engineer or architect and approved by the authority having jurisdiction;

iv. The replacement manufactured dwelling, its foundation supports, and any accessory buildings, accessory structures, or property improvements (encroachments) do not displace water to the degree that it causes a rise in the water level or diverts water in a manner that causes erosion or damage to other properties;

v. The location of a replacement manufactured dwelling is allowed by the local planning department's ordinances; and

vi. Any other requirements deemed necessary by the authority having jurisdiction.

E. Critical Facility. Construction of new critical facilities shall be, to the extent possible, located outside the limits of the special flood hazard area (SFHA) (100-year floodplain). Construction of new critical facilities shall be permissible within the SFHA if no feasible alternative site is available. Critical facilities constructed within the SFHA shall have the lowest floor elevated three feet above BFE or to the height of the 500-year flood, whichever is higher. Access to and from the critical facility should also be protected to the height utilized above. Floodproofing and sealing measures must be taken to ensure that toxic substances will not be displaced by or released into flood waters. Access routes elevated to or above the level of the base flood elevation shall be provided to all critical facilities to the extent possible. [Ord. 771 § 6, 2011.]

Division 3. Design Standards

Chapter 18.60

DESIGN STANDARD ADMINISTRATION

Sections:

18.60.010 Applicability.
18.60.020 Types of design standards.

18.60.010 Applicability.

All developments within the city must comply with the provisions of Chapters 18.60 through 18.90 PMC. Some developments, such as major projects requiring land division and/or site design review approval, may require detailed findings demonstrating compliance with each chapter of the code. For smaller, less complex projects, fewer code provisions may apply. [Ord. 734 § 1, 2005; Ord. 720 § 7[3.0.1], 2003.]

18.60.020 Types of design standards.

The city's development design standards are contained in both Division 2 and Division 3. It is important to review both divisions, and all relevant code sections within the divisions, to determine which standards apply. The city may prepare checklists to assist property owners and applicants in determining which sections apply.

A. The following design standards apply throughout the city for all land use types:

Chapter 18.65 PMC, Access and Circulation.

Chapter 18.70 PMC, Landscaping, Street Trees, Fences and Walls.

Chapter 18.75 PMC, Automobile and Bicycle Parking.

Chapter 18.80 PMC, Public Facilities Standards.

Chapter 18.85 PMC, Hillside and Erosion Control Overlay.

Chapter 18.90 PMC, Other Design Standards.

B. Each land use district (Division 2) provides design standards that are specifically tailored to the district. For example, the residential district contains building design guidelines that are different than those provided in the commercial district, due to differences in land use, building types, and compatibility issues. In addition, each district provides special standards that are meant to address the impacts or characteristics of certain land uses. [Ord. 720 § 7[3.0.2], 2003.]

Chapter 18.65

ACCESS AND CIRCULATION

Sections:

18.65.010 Purpose.
18.65.020 Vehicular access and circulation.
18.65.030 Pedestrian access and circulation.

18.65.010 Purpose.

The purpose of this chapter is to ensure that developments provide safe and efficient access and circulation for pedestrians and vehicles. PMC 18.65.020 provides standards for vehicular access and circulation. PMC 18.65.030 provides standards for pedestrian access and circulation. Standards for transportation improvements are provided in PMC 18.80.020. [Ord. 720 § 7[3.1.1], 2003.]

18.65.020 Vehicular access and circulation.

A. Intent and Purpose. The intent of this section is to manage vehicle access to development through a connected street system, while preserving the flow of traffic in terms of safety, roadway capacity, and efficiency. Access shall be managed to maintain an adequate level of service and to maintain the functional classification of roadways as required by the city's transportation system plan. Major roadways, including highways, arterials, and collectors, serve as the primary system for moving people and goods. Access management is a primary concern on these roads. Local streets and alleys provide access to individual properties. If vehicular access and circulation are not properly designed, these roadways will be unable to accommodate the needs of development and serve their transportation function. This section attempts to balance the right of reasonable access to private property with the right of the citizens of the city and the state of Oregon to safe and efficient travel. It also requires all developments to construct planned streets (arterials and collectors) and to extend local streets.

To achieve this policy intent, state and local roadways have been categorized in the comprehensive plan by function and classified for access purposes based upon their level of importance and function. (See PMC 18.80.020.) Regulations have been applied to these roadways for the purpose of

reducing traffic accidents, personal injury, and property damage attributable to access systems, and to thereby improve the safety and operation of the roadway network. This will protect the substantial public investment in the existing transportation system and reduce the need for expensive remedial measures. These regulations also further the orderly layout and use of land, protect community character, and conserve natural resources by promoting well-designed road and access systems and discouraging the unplanned subdivision of land.

B. Applicability. This chapter shall apply to all public streets within the city and to all properties that abut these streets.

C. Access Permit Required. Access to a public street requires an access permit in accordance with the following procedures:

1. Permits for access to city streets shall be subject to review and approval by the public works director based on the standards contained in this chapter, and the provisions of PMC 18.80.020, Transportation improvements. An access permit may be in the form of a letter to the applicant, or it may be attached to a land use decision notice as a condition of approval.

2. Permits for access to state highways shall be subject to review and approval by Oregon Department of Transportation (ODOT), except when ODOT has delegated this responsibility to the city. In that case, the city shall determine whether access is granted based on its adopted standards.

3. Permits for access to county roads shall be subject to review and approval by Benton County, except where the county has delegated this responsibility to the city, in which case the city shall determine whether access is granted based on adopted county standards.

D. Traffic Study Requirements. The city or other agency with access jurisdiction may require a traffic study prepared by a qualified professional to determine access, circulation and other transportation requirements. (See also PMC 18.80.020, Transportation improvements.)

E. Conditions of Approval. The city or other agency with access permit jurisdiction may require the closing or consolidation of existing curb cuts or other vehicle access points, recording of reciprocal access easements (i.e., for shared driveways), development of a frontage street, installation of traffic control devices, and/or other mitigation as a condition of granting an access permit, to ensure the safe and efficient operation of the street and highway system. Access to and from off-street parking areas shall not permit backing onto a public street, excepting for single-family or duplex residential uses.

F. Access Options. When vehicle access is required for development (i.e., for off-street parking, delivery, service, drive-through facilities, etc.), access shall be provided by one of the following methods (a minimum of 10 feet per lane is required). These methods are "options" to the developer/subdivider, unless one method is specifically required by Division 2 (i.e., under Special Standards for Certain Uses).

1. Option 1. Access is from an existing or proposed alley or mid-block lane. If a property has access to an alley or lane, direct access to a public street is not permitted.

2. Option 2. Access is from a private street or driveway connected to an adjoining property that has direct access to a public street (i.e., "shared driveway"). A public access easement covering the driveway shall be recorded in this case to assure access to the closest public street for all users of the private street/drive.

3. Option 3. Access is from a public street adjacent to the development parcel. If practicable, the owner/developer may be required to close or consolidate an existing access point as a condition of approving a new access. Street accesses shall comply with the access spacing standards in subsection (G) of this section.

4. Subdivisions Fronting Onto an Arterial Street. New residential land divisions fronting onto an arterial street shall be required to provide alleys or secondary (local or collector) streets for access to individual lots. When alleys or secondary streets cannot be constructed due to topographic or other physical constraints, access may be provided by consolidating driveways for clusters of two or more lots (e.g., includes flag lots and mid-block lanes).

5. Double-Frontage Lots. When a lot has frontage onto two or more streets, access shall be provided first from the street with the lowest classification. For example, access shall be provided from a local street before a collector or arterial street. Except for corner lots, the creation of new

double-frontage lots shall be prohibited in the residential district, unless topographic or physical constraints require the formation of such lots. When double-frontage lots are permitted in the residential district, a landscape buffer with trees and/or shrubs and ground cover not less than 10 feet wide shall be provided between the backyard fence/wall and the sidewalk or street; maintenance shall be assured by the owner (i.e., through homeowner's association, etc.).

6. Important Cross-References to Other Code Sections. Divisions 2 and 3 may require buildings placed at or near the front property line and driveways and parking areas to be oriented to the side or rear yard. The city may require the dedication of public right-of-way and construction of a street (e.g., frontage road, alley or other street) when the development impact is proportionate to the need for such a street and the street is identified by the comprehensive plan or an adopted local streets plan. (Please refer to PMC 18.80.020, Transportation improvements.)

G. Access Spacing. Driveway accesses shall be separated from street intersections in accordance with the following standards and procedures:

1. Local Streets. A minimum of 35 feet separation as measured from the sides of the driveway to a parallel street shall be required, except as provided in subsection (G)(3) of this section.

2. Arterial and Collector Streets. Access spacing on collector and arterial streets and at controlled intersections (i.e., with four-way stop sign or traffic signal) shall be determined based on the policies and standards contained in the city's transportation system plan or Manual for Uniform Traffic Control Devices. Access to Highway 20/34 shall be subject to the applicable standards and policies contained in the ODOT Highway Corridor Plan.

3. Special Provisions for All Streets. Direct street access may be restricted for some land uses, in conformance with the provisions of Division 2, Land Use Districts. For example, access consolidation, shared access, and/or access separation greater than that specified by subsections (G)(1) and (G)(2) of this section, may be required by the city, county or ODOT for the purpose of protecting the function, safety and operation of the street for all users. (See subsection (I) of this section.) Where no other alternatives exist, the permitting agency may allow construction of an access connection along the property line farthest from an intersection. In such cases, directional connections (i.e., right in/out, right in only, or right out only) may be required.

H. Number of Access Points. For single-family dwellings, one street access point is permitted per lot, when alley access cannot otherwise be provided. Two access points may be permitted for duplex or multifamily housing (i.e., no more than one access per street), subject to the access spacing standards in subsection (G) of this section. The number of street access points for multiple family, commercial, industrial, and public/institutional developments shall be minimized to protect the function, safety and operation of the street(s) and sidewalk(s) for all users. Shared access may be required, in conformance with subsection (I) of this section, in order to maintain the required access spacing and minimize the number of access points.

I. Shared Driveways. The number of driveway and private street intersections with public streets shall be minimized by the use of shared driveways with adjoining lots where feasible. The city shall require shared driveways as a condition of land division or site design review, as applicable, for traffic safety and access management purposes in accordance with the following standards:

1. Shared driveways and frontage streets may be required to consolidate access onto a collector or arterial street. When shared driveways or frontage streets are required, they shall be stubbed to adjacent developable parcels to indicate future extension. "Stub" means that a driveway or street temporarily ends at the property line, but may be extended in the future as the adjacent parcel develops. "Developable" means that a parcel is either vacant or it is likely to receive additional development (i.e., due to infill or redevelopment potential).

2. Access easements (i.e., for the benefit of affected properties) shall be recorded for all shared driveways, including pathways, at the time of final plat approval (Chapter 18.115 PMC) or as a condition of site development approval (Chapter 18.110 PMC).

3. Exception. Shared driveways are not required when existing development patterns or physical constraints (e.g., topography, parcel configuration, and similar conditions) prevent extending the street/driveway in the future.

J. Street Connectivity and Formation of Blocks Required. In order to promote efficient vehicular and pedestrian circulation throughout the city, land divisions and large site developments shall produce complete blocks bounded by a connecting network of public and/or private streets, bicycle or pedestrian pathways, in accordance with the following standards:

1. Block Length and Perimeter. The maximum block length and perimeter shall not exceed:

a. Six hundred feet length and 1,600 feet perimeter in the residential districts;

b. Four hundred feet length and 1,200 feet perimeter in the commercial districts, except as provided by PMC 18.40.040, Block layout and building orientation;

c. Not applicable to the industrial districts.

2. Street Standards. Public and private streets shall also conform to PMC 18.80.020, Transportation improvements, PMC 18.65.030, Pedestrian access and circulation, and applicable Americans with Disabilities Act (ADA) design standards.

3. Exception. Exceptions to the above standards may be granted when blocks are divided by one or more pathway(s), in conformance with the provisions of PMC 18.65.030(A). Pathways shall be located to minimize out-of-direction travel by pedestrians and may be designed to accommodate bicycles.

K. *Repealed by Ord. 778.*

L. Fire Access and Parking Area Turnarounds. A fire equipment access drive that conforms to the local requirements shall be provided for any portion of an exterior wall of the first story of a building that is located more than 150 feet from an existing public street or approved fire equipment access drive. Parking areas shall provide adequate aisles or turnaround areas for service and delivery vehicles so that all vehicles may enter the street in a forward manner. For requirements related to cul-de-sacs, please refer to PMC 18.80.020(J).

M. Vertical Clearances. Driveways, private streets, aisles, turnaround areas and ramps shall have a minimum vertical clearance of 13 feet, six inches for their entire length and width.

N. Vision Clearance. No signs, structures or vegetation in excess of three feet in height shall be placed in "vision clearance areas." The minimum vision clearance area may be increased by the city manager upon finding that more sight distance is required (i.e., due to traffic speeds, roadway alignment, etc.). [Ord. 778 § 3, 2011; Ord. 734 § 1, 2005; Ord. 720 § 7[3.1.2], 2003.]

18.65.030 Pedestrian access and circulation.

A. Pedestrian Access and Circulation. To ensure safe, direct and convenient pedestrian circulation, all developments, except single-family detached housing (i.e., on individual lots), shall provide a continuous pedestrian and/or multi-use pathway system. (Pathways only provide for pedestrian circulation. Multi-use pathways accommodate pedestrians and bicycles.) The system of pathways shall be designed based on the standards in subsections (A)(1) through (A)(3) of this section:

1. Continuous Pathways. The pathway system shall extend throughout the development site and connect to all future phases of development, adjacent trails, public parks and open space areas whenever possible. The developer may also be required to connect or stub pathway(s) to adjacent streets and private property, in accordance with the provisions of PMC 18.65.020, Vehicular access and circulation, and PMC 18.80.020, Transportation improvements.

2. Safe, Direct, and Convenient Pathways. Pathways within developments shall provide safe, reasonably direct and convenient connections between primary building entrances and all adjacent streets, based on the following definitions:

a. Reasonably Direct. A route that does not deviate unnecessarily from a straight line or a route that does not involve a significant amount of out-of-direction travel for likely users.

b. Safe and Convenient. Bicycle and pedestrian routes that are reasonably free from hazards and provide a reasonably direct route of travel between destinations.

c. For commercial, industrial, mixed-use, public, and institutional buildings, the "primary entrance" is the main public entrance to the building. In the case where no public entrance exists, street connections shall be provided to the main employee entrance.

d. For residential buildings the "primary entrance" is the front door (i.e., facing the street). For multifamily buildings in which each unit does

not have its own exterior entrance, the "primary entrance" may be a lobby, courtyard or breezeway which serves as a common entrance for more than one dwelling.

3. Connections within Development. For all developments subject to site design review, pathways shall connect all building entrances to one another. In addition, pathways shall connect all parking areas, storage areas, recreational facilities and common areas, and adjacent developments to the site, as applicable.

4. Street Connectivity. Pathways (for pedestrians and bicycles) shall be provided at or near mid-block where the block length exceeds the length required by PMC 18.65.020. Pathways shall also be provided where cul-de-sacs or dead-end streets are planned to connect the ends of the streets together, to other streets, and/or to other developments, as applicable. Pathways used to comply with these standards shall conform to all of the following criteria:

a. Multi-use pathways (i.e., for pedestrians and bicyclists) are no less than 10 feet wide and located within a public right-of-way or easement that allows access for emergency vehicles;

b. If the streets within the subdivision or neighborhood are lighted, the pathways shall also be lighted;

c. Stairs or switchback paths using a narrower right-of-way/easement may be required in lieu of a multi-use pathway where grades are steep;

d. The city may require landscaping within the pathway easement/right-of-way for screening and the privacy of adjoining properties; and

e. The hearings body or planning official may determine, based upon facts in the record, that a pathway is unnecessary given the proximity of other pathways or access route. The pathway may prove impracticable due to: physical or topographic conditions on adjacent properties that physically prevent a connection now or in the future, considering the potential for redevelopment; recorded leases, easements, covenants, restrictions, or other agreements recorded as of the effective date of this title prohibit the pathway connection.

B. Design and Construction. Pathways shall conform to all of the standards in subsections (B)(1) through (B)(5) of this section:

1. Vehicle/Pathway Separation. Where pathways are parallel and adjacent to a driveway or street (public or private), they shall be raised six inches and curbed, or separated from the driveway/street by a five-foot minimum strip with bollards, a landscape berm, or other physical barrier. If a raised path is used, the ends of the raised portions must be equipped with curb ramps.

2. Housing/Pathway Separation. Pedestrian pathways shall be separated a minimum of five feet from all residential living areas on the ground floor, except at building entrances. Separation is measured from the pathway edge to the closest dwelling unit. The separation area shall be landscaped in conformance with the provisions of Chapter 18.75 PMC. No pathway/building separation is required for commercial, industrial, public, or institutional uses.

3. Crosswalks. Where pathways cross a parking area, driveway, or street ("crosswalk"), they shall be clearly marked with contrasting paving materials, humps/raised crossings, or painted striping. An example of contrasting paving material is the use of a concrete crosswalk through an asphalt driveway. If painted striping is used, it shall consist of thermoplastic striping or similar type of durable application.

4. Pathway Surface. Pathway surfaces shall be concrete, asphalt, brick/masonry pavers, or other durable surface, at least six feet wide, and shall conform to ADA requirements. Multi-use paths (i.e., for bicycles and pedestrians) shall be the same materials, at least 10 feet wide. (See also PMC 18.80.020.)

5. Accessible Routes. Pathways shall comply with the Americans with Disabilities Act, which requires accessible routes of travel. [Ord. 737 § 1, 2006; Ord. 720 § 7[3.1.3], 2003.]

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Chapter 18.70

LANDSCAPING AND STREET TREES

Sections:

18.70.010 Purpose.
18.70.020 Landscape conservation.
18.70.030 New landscaping.
18.70.040 Street trees.
18.70.050 *Repealed.*

18.70.010 Purpose.

The purpose of this chapter is to promote community health, safety and welfare by protecting natural vegetation, and setting development standards for landscaping, street trees, fences and walls. Together, these elements of the natural and built environment contribute to the visual quality, environmental health and character of the community. Trees provide climate control through shading during summer months and wind screening during winter. Trees and other plants can also buffer pedestrians from traffic. Walls, fences, trees and other landscape materials also provide vital screening and buffering between land uses. Landscaped areas help to control surface water drainage and can improve water quality, as compared to paved or built surfaces.

This chapter is organized into the following sections:

PMC 18.70.020, Landscape conservation, prevents the indiscriminate removal of significant trees and other vegetation, including vegetation associated with streams, wetlands and other protected natural resource areas. This section cross-references Chapter 18.55 PMC, which regulates development of sensitive lands.

PMC 18.70.030, New landscaping, sets standards for and requires landscaping of all development sites that require site design review. This section also requires buffering for parking and maneuvering areas, and between different land use districts. Note that other landscaping standards are provided in Division 2, Land Use Districts, for specific types of development.

PMC 18.70.040, Street trees, sets standards for and requires planting of trees along all streets for shading, comfort and aesthetic purposes. [Ord. 779 § 2, 2012; Ord. 734 § 1, 2005; Ord. 720 § 7[3.2.1], 2003.]

18.70.020 Landscape conservation.

A. Applicability. All development sites containing significant vegetation, as defined in subsection (B) of this section, shall comply with the standards of this section. The purpose of this section is to incorporate significant native vegetation into the landscapes of development and protect vegetation that is subject to requirements for sensitive lands (Chapter 18.55 PMC). The use of mature, native vegetation within developments is a preferred alternative to removal of vegetation and replanting. Mature landscaping provides summer shade and wind breaks, and allows for water conservation due to larger plants having established root systems.

B. Significant Vegetation. "Significant vegetation" means:

1. Significant Trees and Shrubs. Individual trees and shrubs with a trunk diameter of six inches or greater, as measured four feet above the ground (DBH), and all plants within the drip-line of such trees and shrubs, shall be deemed significant. Other trees may be deemed significant when nominated by the property owner and designated by the city council as heritage trees (i.e., by virtue of site, rarity, historical significance, etc.).

2. Sensitive Lands. Trees and shrubs on sites that have been designated as sensitive lands, in accordance with Chapter 18.55 PMC (e.g., due to slope, natural resource areas, wildlife habitat, etc.) and Chapter 18.85 PMC (hillside and erosion control) shall be protected.

3. Exception. Protection shall not be required for plants listed as non-native, invasive plants by the Oregon State University Extension Service in the applicable OSU bulletins for Benton County.

C. Mapping and Protection Required. Significant vegetation shall be mapped as required by Chapter 18.110 PMC, Development Review and Site Design Review, and Chapter 18.55 PMC, Overlay Districts. Significant trees shall be mapped individually and identified by species and size (diameter at four feet above grade, or DBH). A protection area shall be defined around the edge of all branches (drip-line) of each tree (drip-lines may overlap between trees). The city also may require an inventory, survey, or assessment prepared by a qualified professional when necessary to determine vegetation boundaries, building setbacks, and

other protection or mitigation requirements.

D. Protection Standards. All of the following protection standards shall apply to significant vegetation areas:

1. Protection of Significant Trees (subsection (B)(1) of this section). Significant trees identified as meeting the criteria in subsection (B)(1) of this section shall be retained whenever practicable. Preservation may become impracticable when it would prevent reasonable development of public streets, utilities, or land uses permitted by the applicable land use district.

2. Sensitive Lands (subsection (B)(2) of this section). Sensitive lands shall be protected in conformance with the provisions of Chapter 18.55 PMC.

3. Conservation Easements and Dedications. When necessary to implement the comprehensive plan, the city may negotiate dedication of land or recordation of a conservation easement to protect sensitive lands, including groves of significant trees.

E. Construction. All areas of significant vegetation shall be protected prior to, during, and after construction. Grading and operation of vehicles and heavy equipment is prohibited within significant vegetation areas, except as approved by the city for installation of utilities or streets. Such approval shall only be granted after finding that there is no other reasonable alternative to avoid the protected area, and any required mitigation is provided in conformance with Chapter 18.55 PMC, Overlay Districts.

F. Exemptions. The protection standards in subsection (D) of this section shall not apply in the following situations:

1. Dead, Diseased, and/or Hazardous Vegetation. Vegetation that is dead or diseased, or poses a hazard to personal safety, property or the health of other trees, may be removed. Prior to tree removal, the applicant shall provide a report from a certified arborist or other qualified professional to determine whether the subject tree is diseased or poses a hazard, and any possible treatment to avoid removal, except as provided by subsection (F)(2) of this section.

2. Emergencies. Significant vegetation may be removed in the event of an emergency without land use approval pursuant to Division 4, when the vegetation poses an immediate threat to life or safety, as determined by the planning official. The city official shall prepare a notice or letter of decision within 21 days of the tree(s) being removed. The decision letter or notice shall explain the nature of the emergency and be on file and available for public review at City Hall. [Ord. 799 § 12, 2015; Ord. 734 § 1, 2005; Ord. 720 § 7[3.2.2], 2003.]

18.70.030 New landscaping.

A. Applicability. This section shall apply to all developments requiring site design review, and other developments with required landscaping.

B. Landscaping Plan Required. A landscape plan is required. All landscape plans shall conform to the requirements in PMC 18.110.050(B)(4), Landscape Plan.

C. Landscape Area Standards. The minimum percentage of required landscaping equals:

1. Residential districts: 20 percent of the site.

2. Commercial districts: 10 percent of the site.

3. Industrial districts: A minimum of 20 percent of the site shall be landscaped.

4. Public and other districts: 70 percent of setback adjacent to public street.

D. Landscape Materials. Landscape materials include trees, shrubs, ground cover plants, non-plant ground covers, and outdoor hardscape features, as described below:

1. Natural Vegetation. Natural vegetation shall be preserved or planted where practicable.

2. Plant Selection. A combination of deciduous and evergreen trees, shrubs and ground covers shall be used for all planted areas, the selection of which shall be based on local climate, exposure, water availability, and drainage conditions. As necessary, soils shall be amended to allow for healthy plant growth.

3. Non-native, invasive plants, as per PMC 18.70.020(B), shall be prohibited.

4. Hardscape features (i.e., patios, decks, plazas, etc.) may cover up to 60 percent of the required landscape area, except in the central and general commercial and all industrial districts, where hardscape features may cover up to 80 percent of the landscape area. Swimming pools, sports courts and similar active recreation facilities may not be counted toward fulfilling the landscape requirement.

5. Nonplant Ground Covers. Bark dust, chips, aggregate or other nonplant ground covers

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may be used, but shall cover no more than 50 percent of the area to be landscaped. Coverage is measured based on the size of plants at maturity or after four years of growth, whichever comes sooner.

6. Tree Size. Trees shall have a minimum caliper size of one and one-half inches or greater, or be eight feet or taller, at time of planting.

7. Shrub Size. Shrubs shall be planted from one gallon containers or larger.

8. Ground Cover Size. Ground cover plants shall be sized and spaced so that they grow together to cover a minimum of 100 percent of the underlying soil within four years.

9. Significant Vegetation. Significant vegetation preserved in accordance with PMC 18.70.020 may be credited toward meeting the minimum landscape area standards. Credit shall be granted on a per-square-foot basis. The street tree standards of PMC 18.70.040 may be waived when trees preserved within the front yard provide the same or better shading and visual quality as would otherwise be provided by street trees.

10. Stormwater Facilities. Stormwater facilities (e.g., detention/retention ponds and swales) shall be landscaped with water tolerant, native plants.

E. Landscape Design Standards. All yards, parking lots and required street tree planter strips shall be landscaped in accordance with the provisions of this chapter (PMC 18.70.010 through 18.70.050). Landscaping shall be installed with development to provide erosion control, visual interest, buffering, privacy, open space and pathway identification, shading and wind buffering, based on the following standards:

1. Yard Setback Landscaping. Landscaping shall satisfy the following criteria:

a. Provide visual screening and privacy within side and rear yards, while leaving front yards and building entrances mostly visible for security purposes;

b. Use shrubs and trees as wind breaks, as appropriate;

c. Retain natural vegetation, as practicable;

d. Define pedestrian pathways and open space areas with landscape materials;

e. Provide focal points within a development, such as signature trees (i.e., large or unique trees), hedges and flowering plants;

f. Use trees to provide summer shading within common open space areas, and within front yards when street trees cannot be provided;

g. Use a combination of plants for year-long color and interest; and

h. Use landscaping to screen outdoor storage and mechanical equipment areas, and to enhance graded areas such as berms, swales and detention/retention ponds.

2. Parking Areas. A minimum of five percent of the combined area of all parking areas, as measured around the perimeter of all parking spaces and maneuvering areas, shall be landscaped. Such landscaping shall consist of an evenly distributed mix of shade trees with shrubs and/or ground cover plants. “Evenly distributed” means that the trees and other plants are distributed around the parking lot perimeter and between parking bays to provide a partial canopy. At a minimum, one tree per five parking spaces total shall be planted to create a partial tree canopy over and around the parking area. All parking areas with more than 20 spaces shall include landscape islands with trees to break up the parking area into rows of not more than 12 contiguous parking spaces. All landscaped areas shall have minimum dimensions of four feet by four feet to ensure adequate soil, water, and space for healthy plant growth.

3. Buffering and Screening Required. Buffering and screening are required under the following conditions:

a. Parking/Maneuvering Area Adjacent to Streets and Drives. Where a parking or maneuvering area is adjacent and parallel to a street or driveway, a decorative wall (masonry or similar quality material), arcade, trellis, evergreen hedge, landscaped berm or similar screen shall be established parallel to the street or driveway to the greatest extent practical, excluding vision clearance areas.

The required screening device shall be no less than 36 inches in height within one year of development and not exceed 42 inches in height unless the street grade dictates otherwise to buffer the parking area. The design of the wall or screening shall also allow for visual surveillance of the site for security. Evergreen hedges used to comply with this standard shall be of such species, number and spacing to provide the required screening within one year after planting. Any areas between the wall/hedge and the street/driveway line shall be

landscaped with plants or other ground cover. All walls shall be maintained in good condition or otherwise replaced by the owner.

b. Parking/Maneuvering Area Adjacent to Building. Where a parking or maneuvering area, or driveway, is adjacent to a building, the area shall be separated from the building by a raised pathway, plaza, or landscaped buffer no less than five feet in width. Raised curbs, bollards, wheel stops, or other design features shall be used to protect buildings from being damaged by vehicles. When parking areas are located adjacent to residential ground-floor living space, a landscape buffer is required to fulfill this requirement.

c. Screening of Mechanical Equipment, Outdoor Storage, Service and Delivery Areas, and Automobile-Oriented Uses. All mechanical equipment, outdoor storage and manufacturing, and service and delivery areas, shall be screened from view from all public streets and residential districts. Screening shall be provided by one or more of the following: decorative wall (i.e., masonry or similar quality material), evergreen hedge, non see-through fence, or a similar feature that provides a non see-through barrier. Walls, fences, and hedges shall comply with the vision clearance requirements and provide for pedestrian circulation, in accordance with Chapter 18.65 PMC, Access and Circulation. (See PMC 18.70.050 for standards related to fences and walls.)

F. Maintenance and Irrigation. The use of drought-tolerant plant species is encouraged and may be required when irrigation is not available. Irrigation shall be provided for plants that are not drought-tolerant. If the plantings fail to survive, the property owner shall replace them with an equivalent specimen. All other landscape features required by this title shall be maintained in good condition or otherwise replaced by the owner.

G. Additional Requirements. Additional buffering and screening may be required for specific land uses, as identified by Division 2, and the city may require additional landscaping through the conditional use permit process (Chapter 18.120 PMC). [Ord. 720 § 7[3.2.3], 2003.]

18.70.040 Street trees.

Street trees should be planted for all developments that are subject to land division or site design review. Requirements for street tree planting strips are provided in PMC 18.80.020, Transportation improvements. Planting of unimproved streets shall be deferred until the construction of curbs and sidewalks. Street trees shall conform to the following standards and guidelines:

A. Growth Characteristics. Trees shall be selected based on growth characteristics and site conditions, including available space, overhead clearance, soil conditions, exposure, and desired color and appearance. The following should guide tree selection:

1. Provide a broad canopy where shade is desired.
2. Use low-growing trees for spaces under utility wires.
3. Select trees that can be “limbed-up” where vision clearance is a concern.
4. Use narrow or “columnar” trees where awnings or other building features limit growth, or where greater visibility is desired between buildings and the street.
5. Use species with similar growth characteristics on the same block for design continuity.
6. Avoid using trees that are susceptible to insect damage, and avoid using trees that produce excessive seeds or fruit.
7. Select trees that are well adapted to the environment, including soil, wind, sun exposure, and exhaust. Drought-resistant trees should be used in areas with sandy or rocky soil.
8. Select trees for their seasonal color, as desired.
9. Use deciduous trees for summer shade and winter sun.

B. Caliper Size. The minimum caliper size at planting shall be one and one-half inches, based on the American Association of Nurserymen Standards.

C. Spacing and Location. Street trees shall be planted within existing and proposed planting strips, and in sidewalk tree wells on streets without planting strips. Street tree spacing shall be based upon the type of tree(s) selected and the canopy

size at maturity. In general, trees shall be spaced no more than 30 feet apart, except where planting a tree would conflict with existing trees, retaining walls, utilities and similar physical barriers.

D. Soil Preparation, Planting and Care. The developer shall be responsible for planting street trees, including soil preparation, ground cover material, staking, and temporary irrigation for two years after planting. The developer shall also be responsible for tree care (pruning, watering, fertilization, and replacement as necessary) during the first two years after planting.

E. Assurances. As an alternative the city may accept a fee or performance bond in accordance with the adopted fee schedule for each required street tree. The fee shall cover the city's expense for planting and the first two years of care. [Ord. 720 § 7[3.2.4], 2003.]

18.70.050 Fences and walls.

Repealed by Ord. 779. [Ord. 720 § 7[3.2.5], 2003.]

Chapter 18.72

FENCES, HEDGES AND WALLS

Sections:

18.72.010 Purpose.
18.72.020 Definitions.
18.72.030 General provisions.

18.72.010 Purpose.

It is the purpose of this chapter to establish the standards and provisions wherein fences, hedges and walls may be constructed within the city of Philomath. Emphasis has been placed on preserving the health, safety and general welfare of citizens; to provide for preservation of land values through the development of an aesthetic community environment; and to balance these goals without undue hardship to private property owners' rights. [Ord. 779 § 1, 2012.]

18.72.020 Definitions.

For purposes of this chapter, all definitions found in PMC 18.15.010 are hereby incorporated and deemed effective. Additional definitions are as follows:

"Arbors" shall refer to a separate attached or freestanding structure with open or lattice style roof and walls typically found surrounding gates or entrances.

"Back" refers to that area of property falling predominantly behind the structure and typically opposite to the face or front side. "Yard, front" and "Yard, rear" are defined in PMC 18.15.010.

"Fence" shall be any barrier, naturally grown or constructed, for the purposes of confinement, as a means of protection or use as a boundary.

"Front" of a structure shall be defined as that side which faces in the direction of the physical address of the property as recognized by the U.S. Postal Service and/or contains the primary driveway by which vehicular access is obtained. On corner lots the primary front is determined by vehicle access and the secondary front is the adjacent side. "Yard, front" and "Yard, rear" are defined in PMC 18.15.010.

"Gateways" and/or "gates" are those openings found in any wall or fence positioned for use as a passage through the wall or fence whether open or controlled.

"Hedges" are typically vegetation planted for the purpose of serving as a boundary, buffer or divider between areas, or for landscaping or privacy.

"Lattice" or "latticework" is defined as a framework of cross wood or metal strips, predominantly open sighted, and designed for decorative or landscaping purposes.

"Open sighted" shall refer to fences or materials providing for 50 percent or less vision obstruction.

"Privacy screens" are a section of solid fencing that blocks direct vision into or out of a door or window, or that surrounds a deck or patio.

"Sight obscuring" shall be any material of a nature such that visibility is blocked by greater than 50 percent of the area covered or appearing opaque when viewed from any angle at a point 25 feet away.

"Trellis" is a structure of open lattice design intended for use to support the growth of vegetation or for decorative purposes. [Ord. 779 § 1, 2012.]

18.72.030 General provisions.

A. Permits.

1. No permit shall be required for placement of fences or hedges that comply with the provisions of this chapter.

2. Retaining walls shall be subject to permitting requirements when greater than four feet in height.

3. Owners intending to place fences, walls or hedges within any public utility easement or right-of-way shall be required to secure an encroachment permit from the city council prior to the commencement of the project.

B. Locations.

1. Fences, hedges and walls may be located within required yard setbacks; provided, that they comply with the provisions contained herein.

2. Corner lots may have side yard fencing out to the sidewalk, within six feet of the curb, or property line where neither a curb nor sidewalk exists.

3. Fences, hedges and walls may be placed within vision clearance areas up to a height of four feet where such features comply with the open sighted provision defined in this chapter. For purposes of this chapter vision clearance areas shall be as defined in PMC 18.15.010 with the two side dimensions being not less than seven and one-half feet for drives and where the back yard of any property abuts the front yard of an adjacent property.

4. Privacy screens may be situated anywhere within the back or side yard areas of any property where a setback of at least 10 feet from the property line is observed. When situated in any residential front yard the setback shall be not less than 15 feet from the street property line, but in no event shall the privacy screen be greater than 10 feet from the front of the residence. Front privacy screens may not extend more than two feet beyond either side of the obscured doorway or window.

5. Fences, hedges and walls shall be located not less than five feet in radius from any fire hydrant or street sign.

6. Sight obscuring fences, walls or hedges may be required to screen activities such as garbage collection, recycling or for mechanical fixtures as part of the city's review and approval process.

7. For any industrial or public zone fences, walls or hedges may be located or maintained in any yard except for the front and/or where vision clearance areas must be observed.

C. Heights.

1. Back and Side Yards.

a. Heights, including privacy screens, shall be limited to six feet where placement is across a back, interior or side of the lot up to the front face of the dwelling.

b. Lattice and/or trellis may be placed up to 18 inches over the top of the wall, fence or privacy screen across a back, interior or side provided it meets the definition of open sighted construction, and does not exceed seven and one-half feet in total height.

c. When facing any public right-of-way, pedestrian gates and trellises used as entry features shall not exceed eight feet in height or five feet in width. No entry feature may extend more than three feet in depth.

d. Where back or side yards are adjacent to nonresidential property or railways, hedges may be allowed to grow to a height of 10 feet from grade for privacy or noise abatement purposes.

2. Front Yards.

a. When placed in front areas or front yards, heights shall be limited to four feet except

for front privacy screens which shall not exceed six feet in total height.

b. When facing any public right-of-way, pedestrian gates and trellises used as entry features shall not exceed eight feet in height or five feet in width. No entry feature may extend more than three feet in depth.

3. Corner Lots. Where a rear yard is abutting the adjacent property's front yard, the fence, wall or hedge shall be placed and sized to provide for a vision clearance area. The rear yard fence, hedge or wall may be no higher than four feet above the sidewalk or grade.

4. Fences on Retaining Walls. Fences located atop retaining walls may follow the height requirements above where the top of the retaining wall is at grade on at least one side. Where the grade on either side of the wall is below the top of the wall, the overall height of the fence/wall combination shall be measured from the higher of the grades on either side.

5. Berms.

a. Fences, walls, or hedges to be placed atop berms shall have their overall height determined based on the grade in effect prior to construction of the berm.

b. In front yards, vision obscuring fences and berms shall not exceed a total overall height of four feet from the lower of the original grade or the center of the adjacent street.

c. Berms may not be greater than 18 inches in height over the preconstruction or natural grade.

6. Fences, walls or hedges located in any industrial or public zones shall not exceed eight feet in height except for designated sports fields where additional heights may be required to provide for public safety.

D. Materials and Styles.

1. Fences and walls in front yards and/or vision clearance areas may be of a chain-link or picket style and must meet the definition of open sighted for purposes of this chapter. This open sighted provision applies to hedges and landscaping as well.

2. Walls or fences shall not be constructed of, or contain any, materials that could do bodily harm including, but not limited to, broken glass, spikes, razor wire or any other hazardous or dangerous materials.

3. Hedges adjacent to any street or sidewalk, alley or other pedestrian right-of-way shall not be of a type consisting of sharp thorns, leaves or needles that could prove harmful when contacted. Examples include holly, blackberry, or cactus.

4. Fences shall be constructed from materials customarily used for such purposes, typically chain link, decorative wrought iron, synthetics, pressure treated lumber, cedar, redwood or similar. Fences and walls shall not be constructed from materials not originally intended for that purpose. Prohibited materials include, but are not limited to, pallets, tarps, tires, wheel rims, drywall, plywood, firewood stacks, plastic sheeting, and corrugated sheet stock.

5. Walls may be constructed of stone, rock, masonry, concrete, boulders, brick or other similar material.

6. Berms shall be of earthen type capable of supporting vegetation and shall be constructed such that no erosion of the materials shall transfer onto adjacent streets or sidewalks.

7. A hedge or other dense landscaping may be used to satisfy a requirement for a sight obscuring fence where required, subject to height restrictions specified for the location.

E. Restricted Fences.

1. Barbed or razor wire fences are allowed only in agricultural areas where little chance of inadvertent contact by humans could occur or in nonresidential areas where barbs or razor wire shall be not less than six and one-half feet above grade and situated on top of otherwise approved fencing.

2. Electrified fences are allowed only where said fence is completely enclosed inside a property boundary by a barrier type fence that satisfies the provisions of this chapter, or on the outer boundary of the city limits bordering county zoning districts; or in approved agricultural areas where no chance of inadvertent contact by humans could occur. All electrified fencing shall be conspicuously marked as being such.

3. All wire, twine, rope, plastic or other flexible mesh style fencing is prohibited in residential areas within four feet of any sidewalk or public right-of-way. However, fencing of a temporary nature for use around construction sites and such may consist of appropriate forms of these materials.

F. Maintenance. Fences and walls shall be structurally maintained in a safe condition of repair and shall not be allowed to become and/or remain in a condition of disrepair including, but not limited to, noticeable leaning, broken supports or framing and growth of noxious vegetation.

G. Other Provisions.

1. In no event shall any gate, door or portion of said fencing be allowed to open outward across any sidewalk, curb, street or other public right-of-way.

2. Fences, walls or hedges on the back of through lots, except corner lots, that would otherwise be considered back yard features shall be treated in accordance with front yard provisions for portions of the lot 10 feet or closer to any sidewalk, curb, street or other public right-of-way.

3. Where fencing is adjacent to any street or sidewalk, the exposed framing side of the fence shall face inward toward the lot.

4. Where fencing or wall designs use pickets or points as ornamental or architectural features, said features shall be rounded or otherwise blunted to provide for public safety.

5. Swimming pools, hot tubs, ponds and similar water features greater than one foot deep shall be surrounded and screened with a minimum four-foot-high secured fence or wall or be equipped with a functional latching cover. The fence or wall must have a self-latching gate in accordance with Chapter 15.15 PMC.

H. Variances. Variances to any requirements of this code shall be processed in accordance with Chapter 18.155 PMC, Variances. [Ord. 799 § 13, 2015; Ord. 779 § 1, 2012.]

Chapter 18.75

VEHICLE AND BICYCLE PARKING

Sections:

18.75.010 Purpose.
18.75.020 Applicability.
18.75.030 Vehicle parking standards.
18.75.040 Bicycle parking requirements.

18.75.010 Purpose.

The purpose of this chapter is to provide basic and flexible standards for development of vehicle and bicycle parking. The design of parking areas is critically important to the viability of some commercial areas, pedestrian and driver safety, the efficient and safe operation of adjoining streets, and community image and livability. Historically, some communities have required more parking than is necessary for some land uses, paving extensive areas of land that could be put to better use. Because vehicle parking facilities can occupy large amounts of land, they must be planned and designed carefully to use the land efficiently while maintaining the visual character of the community. This chapter recognizes that each development has unique parking needs by providing a flexible approach for determining parking space requirements (i.e., “minimum” and “performance-based” standards). This chapter also provides standards for bicycle parking because many people use bicycles for recreation, commuting, and general transportation. Children, as well as adults, need safe and adequate spaces to park their bicycles throughout the community. [Ord. 720 § 7[3.3.1], 2003.]

18.75.020 Applicability.

All developments subject to site design review (Chapter 18.110 PMC), including development of parking facilities, shall comply with the provisions of this chapter. [Ord. 720 § 7[3.3.2], 2003.]

18.75.030 Vehicle parking standards.

The minimum number of required off-street vehicle parking spaces (i.e., parking that is located in parking lots and garages and not in the street right-of-way) shall be determined based on the standards in subsection (A) of this section. The number of required off-street vehicle parking spaces shall be determined in accordance with the

following standards. Off-street parking spaces may include spaces in garages, carports, parking lots, and/or driveways if vehicles are not parked in a vehicle travel lane (including emergency or fire access lanes), public right-of-way, pathway or landscape area. Credit shall be allowed for "on-street parking," as provided in subsection (B) of this section.

In the C-1, central commercial zone, any building or structure constructed prior to January 1, 2015, shall be exempt from the off-street parking standards if the owner signs and records on the property a non-remonstrance agreement against the formation of a future parking district. Such buildings or structures may be modified internally, allow for a change of use, or expand the use provided the gross building volume is not increased. If an increase in gross building floor area is requested, off-street parking will only be required for that incremental increase.

A. Vehicle Parking – Minimum Standards.

1. Residential Uses.

a. Accessory Dwelling. None required.

b. Manufactured Home Parks. Same as for single-family detached housing.

c. Multifamily and Single-Family Attached Housing.

i. Studio units or one-bedroom units less than 500 square feet: one space/unit.

ii. One-bedroom units 500 square feet or larger: one and one-half spaces/unit.

iii. Two-bedroom units: one and three-quarters spaces/unit.

iv. Three-bedroom or greater units: two spaces/unit.

v. Retirement complexes: one space per unit.

d. Senior Housing. Same as for retirement complexes.

e. Single-Family and Duplex Housing. Two parking spaces shall be provided for each detached single-family dwelling or manufactured home on an individual lot.

2. Commercial Uses.

a. Auto, Boat or Trailer Sales, Retail Nurseries and Similar Bulk Retail Uses. One space per 1,000 square feet of the first 10,000 square feet of gross land area, plus one space per 5,000 square feet for the excess over 10,000 square feet of gross land area; and one space per two employees.

b. Business, General Retail, Personal Services. General: One space for 350 square feet of gross floor area. Furniture and appliances: One space per 750 square feet of gross floor area.

c. Chapels and Mortuaries. One space per four fixed seats in the main chapel.

d. Hotels and Motels. One space for each guest room, plus one space for the manager.

e. Offices. Medical and dental offices, one space per 350 square feet of gross floor area; general offices, one space per 450 square feet of gross floor area.

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f. Restaurants, Bars, Ice Cream Parlors and Similar Uses. One space per four seats or one space per 100 square feet of gross leasable floor area, whichever is less.

g. Theaters, Auditoriums, Stadiums, Gymnasiums, Similar Uses. One space per four seats.

3. Industrial Uses.

a. Industrial Uses, Except Warehousing. One space per two employees on the largest shift or for each 700 square feet of gross floor area, whichever is less, plus one space per company vehicle.

b. Public Utilities (Gas, Water, Telephone, etc.), Not Including Business Offices. One space per two employees on the largest shift, plus one space per company vehicle; a minimum of two spaces is required.

c. Warehousing. One space per 1,000 square feet of gross floor area or for each two employees, whichever is greater, plus one space per company vehicle.

4. Public and Institutional Uses.

a. Child Care Centers Having 13 or More Children. One space per two employees; a minimum of two spaces is required.

b. Churches and Similar Places of Worship. One space per four seats.

c. Colleges, Universities and Trade Schools. One and one-half spaces per classroom, plus one space per five students the school is designed to accommodate, plus requirements for on-campus student housing.

d. Golf Courses, except Miniature. Eight spaces per hole, plus additional spaces for auxiliary uses set forth in this section. Miniature golf courses: four spaces per hole.

e. Hospitals. Two spaces per patient bed.

f. Nursing and Convalescent Homes. One space per three patient beds.

g. Public Assembly Areas. One space for each eight lineal feet of bench length, four seats, or four persons as defined by occupancy loads.

h. Rest Homes, Homes for the Aged, or Assisted Living. One space per two patient beds or one space per apartment unit.

i. Schools, Elementary, Junior High and High. One and one-half space per classroom, or the requirements for public assembly areas as set forth herein, whichever is greater, for elementary and junior high schools. For high schools, one and one-half spaces per classroom, plus one space per 10 students the school is designed to accommodate, or the requirements for public assembly as set forth herein, whichever is greater.

5. Unspecified Uses. Where a use is not specifically listed in this section, parking requirements shall be determined by finding that a use is similar to those listed in terms of parking needs.

B. Credit for On-Street Parking. The amount of off-street parking required shall be reduced by one off-street parking space for every on-street parking space adjacent to the development, which would not obstruct a required clear vision area, nor any other parking that violates any law or street standard. On-street parking shall follow the established configuration of existing on-street parking, except that angled parking may be allowed for some streets, where permitted by city, ODOT and/or county standards. The following constitutes an on-street parking space:

1. Parallel parking, each 24 feet of uninterrupted curb;

2. Forty-five/sixty degree diagonal, each 16 feet of uninterrupted curb;

3. Ninety degree (perpendicular) parking, each 10 feet of uninterrupted curb;

4. Curb space must be connected to the lot which contains the use;

5. 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 spaces is permitted unless otherwise approved by the city.

C. Parking Location and Shared Parking.

1. Location. Vehicle parking is allowed only on approved parking shoulders (streets), within garages, carports and other structures, or on driveways or parking lots that have been developed in conformance with this title. Specific locations for parking are indicated in Division 2 for some land uses (e.g., the requirement that parking be located to side or rear of buildings, with access from alleys, for some uses). (See also Chapter 18.65 PMC, Access and Circulation.)

2. Off-Site Parking. Except for residential dwellings, the vehicle parking spaces required by this chapter may be located on another parcel of land, provided the parcel is within 500 feet of the use it serves. The distance from the parking area to

the use shall be measured from the nearest parking space to a building entrance, following a sidewalk or other pedestrian route. The right to use the off-site parking must be evidenced by a recorded deed, lease, easement, or similar written instrument.

3. Mixed-Uses. If more than one type of land use occupies a single structure or parcel of land, the total requirements for off-street automobile parking shall be the sum of the requirements for all uses, unless it can be shown that the peak parking demands are actually less (i.e., the uses operate on different days or at different times of the day). In that case, the total requirements shall be reduced accordingly.

4. Shared Parking. Required parking facilities for two or more uses, structures, or parcels of land may be satisfied by the same parking facilities used jointly, to the extent that the owners or operators show that the need for parking facilities does not materially overlap (e.g., uses primarily of a daytime versus nighttime nature); provided, that the right of joint use is evidenced by a recorded deed, lease, contract, or similar written instrument establishing the joint use.

D. Maximum Number of Parking Spaces. The number of parking spaces provided by any particular use in ground surface parking lots shall not exceed the required minimum number of spaces provided by this section by more than 10 percent. Spaces provided on-street, or within the building footprint of structures, such as in rooftop parking, or under-structure parking, or in multilevel parking above or below surface lots, may not apply towards the maximum number of allowable spaces. Parking spaces provided through shared parking also do not apply toward the maximum number.

E. Parking Stall Standard Dimensions and Compact Car Parking. All off-street parking stalls shall be improved to conform to city standards for surfacing, stormwater management and striping, and provide dimensions in accordance with the following table. (Disabled person parking shall be provided in conformance with subsection (F) of this section.)

Figure 18.75.030(E) – Parking Stall Dimensions.

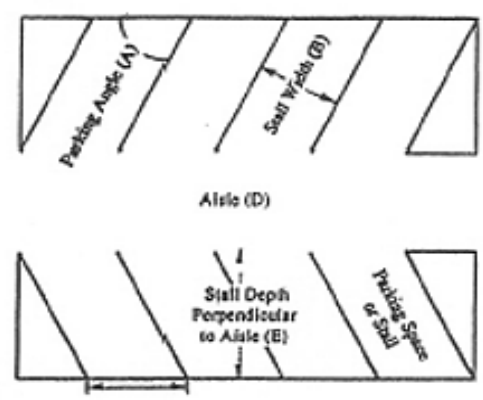

Table 18.75.030(E)
Minimum Parking Space and Aisle Dimensions

Angle (A)	Type	Width (B)	Curb Length (C)	1-Way Aisle Width (D)	2-Way Aisle Width (D)	Stall Depth (E)
0° (Parallel)	Standard	8 ft.	22 ft. 6 in.	12 ft.	24 ft.	8 ft.
	Compact	7 ft. 6 in.	19 ft. 6 in.	12 ft.	24 ft.	7 ft. 6 in.
30°	Standard	9 ft.	18 ft.	12 ft.	24 ft.	17 ft.
	Compact	7 ft. 6 in.	15 ft.	12 ft.	24 ft.	14 ft.
45°	Standard	9 ft.	12 ft. 6 in.	12 ft.	24 ft.	19 ft.
	Compact	7 ft. 6 in.	10 ft. 6 in.	12 ft.	24 ft.	16 ft.
60°	Standard	9 ft.	10 ft. 6 in.	18 ft.	24 ft.	20 ft.
	Compact	7 ft. 6 in.	8 ft. 6 in.	15 ft.	24 ft.	16 ft. 6 in.
90°	Standard	9 ft.	9 ft.	24 ft.	24 ft.	19 ft.
	Compact	7 ft. 6 in.	7 ft. 6 in.	22 ft.	24 ft.	15 ft.

F. Disabled Person Parking Spaces. Parking shall be provided for disabled persons, in conformance with the Americans with Disabilities Act.

Table 18.75.030(F)
Minimum Number of Accessible Parking Spaces
ADA Standards of Accessible Design 4.1.2(5)

Total Number of Parking Spaces Provided (per lot)	Total Minimum Number of Accessible Parking Spaces (60″ and 96″ aisles)	Van-Accessible Parking Spaces with Min. 96″ Wide Access Aisle	Accessible Parking Spaces with Min. 60″ Wide Access Aisle
	Column A		
1 to 25	1	1	0
26 to 50	2	1	1
51 to 75	3	1	2
76 to 100	4	1	3
101 to 150	5	1	4
151 to 200	6	1	8
201 to 300	7	1	6
301 to 400	8	1	7
401 to 500	9	2	7
501 to 1000	2% of total parking provided in each lot	1/8 of Column A*	7/8 of Column A**
1001 and over	20 plus 1 for each 100 over 1000	1/8 of Column A*	7/8 of Column A**
* one out of every 8 accessible spaces		** 7 out of every 8 accessible parking spaces	

[Ord. 799 § 14, 2015; Ord. 737 § 1, 2006; Ord. 720 § 7[3.3.3], 2003.]

18.75.040 Bicycle parking requirements.

All uses which are subject to site design review shall provide bicycle parking, in conformance with the following standards, which are evaluated during site design review:

A. Number of Bicycle Parking Spaces. A minimum of two bicycle parking spaces per use for all uses with greater than 10 vehicle parking spaces. The following additional standards apply to specific types of development:

1. Multifamily Residences. Every residential use of three or more dwelling units provides at least one accessible, sheltered bicycle parking space for each dwelling unit. Sheltered bicycle parking spaces may be located within a garage, storage shed, basement, utility room or similar area. In those instances in which the residential complex has no garage or other easily accessible storage unit, the bicycle parking spaces may be sheltered from sun and precipitation under an eave, overhang, an independent structure, or similar cover.

2. Parking Lots. All public and commercial parking lots and parking structures provide a minimum of one bicycle parking space for every 10 motor vehicle parking spaces.

3. Schools. Elementary and middle schools, both private and public, provide one bicycle parking space for every 10 students and employees. High schools provide one bicycle parking space for every five students and employees. At least one-half of the spaces shall be sheltered under an eave, overhang, independent structure, or similar cover.

4. Colleges and trade schools shall provide one bicycle parking space for every 10 motor vehicle spaces, plus one space for every dormitory unit. At least one-half of the bicycle parking spaces shall be sheltered under an eave, overhang, independent structure, or similar cover.

5. Commercial Districts. Within the commercial districts, bicycle parking for customers shall be provided at a rate of at least one space per use. Individual uses may provide their own parking, or spaces may be clustered to serve up to six bicycles. Bicycle parking spaces should be located in front of the stores along the street, either on the sidewalks or in specially constructed areas such as pedestrian curb extensions. Bicycle parking shall not interfere with pedestrian passage, leaving a clear area of at least 48 inches between bicycles and other existing and potential obstructions. Customer spaces may or may not be sheltered. When provided, sheltered parking (within a building, or under an eave, overhang, or similar structure) should be provided at a rate of one space per 10 employees, with a minimum of one space per store.

6. Multiple Uses. For buildings with multiple uses (such as a commercial or mixed-use center), bicycle parking standards shall be calculated by using the total number of motor vehicle parking spaces required for the entire development. A minimum of one bicycle parking space for every 10 motor vehicle parking spaces is required.

B. Exemptions. This section does not apply to single-family and two-family housing (attached, detached or manufactured housing), home occupations, agriculture and livestock uses, or other developments with fewer than 10 vehicle parking spaces.

C. Location. Bicycle parking shall be conveniently located with respect to both the street right-of-way and at least one building entrance (e.g., no farther away than the closest parking space). It should be incorporated whenever possible into building design and coordinated with the design of street furniture when it is provided. Street furniture includes benches, streetlights, planters and other pedestrian amenities.

D. Design. “Inverted U” or “staple” style racks are recommended. Bicycle racks shall provide a secure point of contact so that both the frame and wheel of a bicycle may be locked to the rack using a standard U lock. Bicycle racks are recommended to provide two points of contact between the rack and the bicycle in order to hold the bicycle securely and prevent pivoting or tipping. Individual “inverted U” or “staple” style racks shall be placed to encourage bicycles to be parked parallel to the rack and achieve maximum capacity. Where multiple racks are placed together, racks shall be placed parallel to each other spaced on four-foot centers to allow access to both sides of each rack. Racks shall be placed so that a six-foot bicycle may be parked without interference from nearby walls or fixed objects.

E. Visibility and Security. Bicycle parking shall be visible to cyclists from street sidewalks or building entrances, so that it provides sufficient security from theft and damage.

F. Options for Storage. Bicycle parking requirements for long-term and employee parking can be met by providing a bicycle storage room, bicycle lockers, racks, or other secure storage space inside or outside of the building.

G. Lighting. Bicycle parking should be as well lit as vehicle parking for security.

H. Hazards. Bicycle parking shall not impede or create a hazard to pedestrians. Parking areas shall be located to not conflict with vision clearance standards (Chapter 18.65 PMC, Access and Circulation). [Ord. 777 § 1, 2011; Ord. 720 § 7[3.3.4], 2003.]

Chapter 18.80

PUBLIC FACILITIES STANDARDS

Sections:

18.80.010 Purpose and applicability.
18.80.020 Transportation improvements.
18.80.030 Public use areas.
18.80.040 Sanitary sewer and water service improvements.
18.80.050 Storm drainage.
18.80.060 Utilities.
18.80.070 Easements.
18.80.080 Construction plan approval and assurances.
18.80.090 Installation.

18.80.010 Purpose and applicability.

A. Purpose. The purpose of this chapter is to provide planning standards for public and private transportation facilities and utilities. 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 transit, and bicycling. This chapter is also intended to implement the city's transportation system plan.

Important cross-reference to other standards: The city requires that streets provide direct and convenient access, including regular intersections. Chapter 18.65 PMC, Access and Circulation, provides standards for intersections and blocks, and requires pedestrian access ways to break up long blocks.

B. When Standards Apply. Unless otherwise provided, the standard specifications for construction, reconstruction or repair of transportation facilities, utilities and other public improvements within the city shall occur in accordance with the standards of this chapter. No development may occur unless the public facilities related to development comply with the public facility requirements established in this chapter.

C. Standard Specifications. The city shall establish standard construction specifications consistent with the planning standards of this chapter and application of engineering principles. They are incorporated in this title by reference. Where a conflict should occur, the design specifications shall prevail.

D. Conditions of Development Approval. No development may occur unless required public facilities are in place or guaranteed, in conformance with the provisions of this title. Improvements required as a condition of development approval, when not voluntarily accepted by the applicant, shall be roughly proportional to the impact of development. Findings in the development approval shall indicate how the required improvements are roughly proportional to the impact. [Ord. 720 § 7[3.4.0], 2003.]

18.80.020 Transportation improvements.

A. Development Standards. No development shall occur unless the development has frontage or approved access to a public street, in conformance with the provisions of Chapter 18.65 PMC, Access and Circulation, and the following standards are met:

1. Streets within or adjacent to a development shall be improved in accordance with the comprehensive plan, transportation system plan and the provisions of this chapter;

2. Development of new streets, and additional street width or improvements planned as a portion of an existing street, shall be improved in accordance with this section, and public streets shall be dedicated to the applicable city, county or state jurisdiction;

3. New streets and drives shall be paved; and

4. The city may accept a future improvement guarantee (e.g., owner agrees not to object against the formation of a local improvement district in the future) in lieu of street improvements if one or more of the following conditions exist:

a. A partial improvement may create a potential safety hazard to motorists or pedestrians;

b. Due to the developed condition of adjacent properties, it is likely 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;

c. The improvement would be in conflict with an adopted capital improvement plan; or

d. The improvement is associated with an approved land partition on property zoned residential and the proposed land partition does not create any new streets.

B. Variances. Variances to the transportation design standards in this section may be granted by means of a Class B variance, as governed by Chapter 18.155 PMC, Variances.

C. Creation of Rights-of-Way for Streets and Related Purposes. Streets shall be created through the approval and recording of a final subdivision or partition plat, except the city may approve the creation of a street by acceptance of a deed; provided, that the street is deemed essential by the city council and the deeded right-of-way conforms to the standards of this title. All deeds of dedication shall be in a form prescribed by the city and shall name "the public," as grantee.

D. Creation of Access Easements. The city may approve an access easement established by deed when the easement is necessary to provide for access and circulation in conformance with Chapter 18.65 PMC, Access and Circulation. Access easements shall be created and maintained in accordance with the applicable provisions of the Uniform Fire Code.

E. Street Location, Width and Grade. Except as noted below, the location, width and grade of all streets shall conform to the TSP and design specifications, as applicable, and an approved street plan or subdivision plat. 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.

Where the location of a street is not shown in an existing street plan, the location of streets in a development shall either:

1. Provide for the continuation and connection of existing streets in the surrounding areas, conforming to the street standards of this chapter; or

2. Conform to a street plan approved by the city, if it is impractical to connect with existing street patterns because of particular topographical or other existing conditions of the land. Such a plan shall be based on the type of land use to be served, the volume of traffic, the capacity of adjoining streets and the need for public convenience and safety.

F. Extension Preclusion. Any development that would preclude the logical extension of an existing street may be modified or rejected by the planning official.

G. Minimum Rights-of-Way and Street Sections. Street rights-of-way and improvements shall conform to the applicable design specification. Where a range of width is indicated, the width shall be determined by the decision-making authority based upon the following factors:

1. Street classification in the comprehensive plan and/or transportation system plan;

2. Anticipated traffic generation;

3. On-street parking needs;

4. Sidewalk and bikeway requirements based on anticipated level of use;

5. Requirements for placement of utilities;

6. Street lighting;

7. Minimize drainage, slope, and sensitive lands impacts, as identified in Chapter 18.55 PMC and/or the comprehensive plan;

8. Street tree location, as provided for in Chapter 18.70 PMC;

9. Protection of significant vegetation, as provided for in Chapter 18.70 PMC;

10. Safety and comfort for motorists, bicyclists, and pedestrians;

11. Street furnishings (e.g., benches, lighting, bus shelters, etc.), when provided;

12. Access needs for emergency vehicles; and

13. Transition between different street widths (i.e., existing streets and new streets), as applicable.

Traffic signals shall be required with development when traffic signal warrants are met, in conformance with the Highway Capacity Manual and Manual of Uniform Traffic Control Devices. The location of traffic signals shall be noted on approved street plans. Where a proposed street intersection will result in an immediate need for a traffic signal, a signal meeting approved specifications shall be installed. The developer's cost and the timing of improvements shall be included as a condition of development approval.

H. Future Street Plan and Extension of Streets.

1. A future street plan shall be filed by the applicant in conjunction with an application for a

subdivision or partition in order to facilitate orderly development of the street system. The plan shall show the pattern of existing and proposed future streets from the boundaries of the proposed land division and shall include other parcels within 100 feet surrounding and adjacent to the proposed land division. The street plan is not binding; rather, it is intended to show potential future street extensions with future development.

2. Streets shall be extended to the boundary lines of the parcel or tract to be developed to permit a satisfactory future division of adjoining land. The point where the streets temporarily end shall conform to subsections (H)(2)(a) through (H)(2)(c) of this section:

a. These extended streets or street stubs to adjoining properties are not considered to be cul-de-sacs since they are intended to continue as through-streets when the adjoining property is developed.

b. A barricade (e.g., fence, bollards, boulders or similar vehicle barrier) shall be constructed at the end of the street by the subdivider and shall not be removed until authorized by the city or other applicable agency with jurisdiction over the street. The cost of the barricade shall be included in the street construction cost.

c. Temporary turnarounds (e.g., hammerhead or bulb-shaped configuration) shall be constructed for stub streets over 150 feet in length.

3. All local and collector streets that abut a development site shall be extended within the site to provide through-circulation, unless prevented by environmental or topographical constraints, existing development patterns or compliance with other standards in this title. This exception applies when it is not possible to redesign or reconfigure the street pattern to provide required extensions. Land is considered topographically constrained if the slope is greater than 15 percent for a distance of 250 feet or more. In the case of environmental or topographical constraints, the mere presence of a constraint is not sufficient to show that a street connection is not possible. The applicant must show why the environmental or topographical constraint precludes some reasonable street connection.

4. Proposed streets or street extensions shall be located to provide direct access to existing or planned commercial services and other neighborhood facilities, such as schools, shopping areas and parks and transit facilities.

I. Sidewalks, Planter Strips, Bicycle Lanes. Sidewalks, planter strips, and bicycle lanes shall be installed in conformance with the applicable provisions of the transportation system plan, the comprehensive plan, and adopted street plans. Maintenance of sidewalks, curbs, and planter strips is the continuing obligation of the adjacent property owner.

J. Cul-de-Sacs. A dead-end street shall be no more than 600 feet long and shall only be used when environmental or topographical constraints, existing development patterns, or compliance with other standards in this title preclude street extension and through-circulation.

K. *Repealed by Ord. 778.*

L. Streets Adjacent to Railroad Right-of-Way. Wherever the proposed development contains or is adjacent to a railroad right-of-way, a street approximately parallel to and on each side of such right-of-way at a distance suitable for the appropriate use of the land shall be created. New railroad crossings and modifications to existing crossings are subject to review and approval by Oregon Department of Transportation.

M. Development Adjoining Arterial Streets. Where a development adjoins or is crossed by an existing or proposed arterial street, the development design shall separate residential access and through-traffic, and shall minimize traffic conflicts. The design shall include one or more of the following:

1. A parallel access street along the arterial with a landscape buffer separating the two streets;

2. Deep lots abutting the arterial or major collector to provide adequate buffering with frontage along another street. Double-frontage lots shall conform to the buffering standards in PMC 18.60.020(F);

3. Screen planting at the rear or side property line to be contained in a nonaccess reservation (e.g., public easement or tract) along the arterial; or

4. Other treatment suitable to meet the objectives of this subsection;

5. If a lot has access to two streets with different classifications, primary access shall be from the lower classification street, in conformance with PMC 18.65.020.

N. Alleys, Public or Private. Alleys shall conform to the design specifications. While alley intersections and sharp changes in alignment shall be avoided, the corners of necessary alley intersections shall have a radius of not less than 12 feet.

O. Private Streets. Private streets shall not be used to avoid connections with public streets. Gated communities (i.e., where a gate limits access to a development from a public street) are prohibited. Design standards for private streets shall conform to the provisions established by the city.

P. Street Names. No street name shall be used which will duplicate or be confused with the names of existing streets in Benton County, except for extensions of existing streets. Street names, signs and numbers shall conform to the established pattern in the surrounding area, except as requested by emergency service providers.

Q. Survey Monuments. Upon completion of a street improvement and prior to acceptance by the city, it shall be the responsibility of the developer's registered professional land surveyor to provide certification to the city that all boundary and interior monuments shall be reestablished and protected.

R. Street Signs. Street signs shall be installed according to the applicable city, county or state standards with jurisdiction for traffic control and street names. The cost of signs required for new development shall be the responsibility of the developer. Street name signs shall be installed at all street intersections. Stop signs and other signs may be required.

S. Mailboxes. Plans for mailboxes to be used shall be approved by the United States Postal Service. Where mailboxes are installed in the sidewalk, a radius shall be provided around the structure to maintain the minimum sidewalk width.

T. Streetlight Standards. Streetlights shall be installed in accordance with city standards.

U. Street Cross-Sections. The final lift of asphalt or concrete pavement shall be placed on all new constructed public roadways prior to final city acceptance of the roadway and within one year of the conditional acceptance of the roadway unless otherwise approved by the city. The final lift shall also be placed no later than when 20 percent of the structures in the new development are completed or two years from the commencement of initial construction of the development, whichever is less. [Ord. 778 § 4, 2011; Ord. 734 § 1, 2005; Ord. 720 § 7[3.4.1], 2003.]

18.80.030 Public use areas.

A. Dedication Requirements.

1. Where a proposed park, playground or other public use shown in a plan adopted by the city is located, in whole or in part, in a subdivision, the city may require the dedication or reservation of this area on the final plat for the subdivision.

2. If determined by the city to be in the public interest, in accordance with adopted comprehensive plan policies, and where an adopted plan of the city does not indicate proposed public use areas, the city may require the dedication or reservation of areas within the subdivision of a character, extent and location suitable for the development of parks and other public uses.

3. All required dedications of public use areas shall conform to PMC 18.80.010(D), Conditions of development approval.

B. Acquisition by Public Agency. If the developer is required to reserve land area for a park, playground, or other public use, the land shall be acquired by the appropriate public agency within 24 months following final plat approval, at a price agreed upon prior to approval of the plat, or the reservation shall be released to the property owner.

C. System Development Charge Credit. Dedication of land to the city for public use areas shall be eligible as a credit toward any required system development charge for parks. [Ord. 720 § 7[3.4.2], 2003.]

18.80.040 Sanitary sewer and water service improvements.

A. Sewers and Water Mains Required. Sanitary sewers and water mains shall be installed to serve each new development and to connect developments to existing mains, in accordance with the city's construction specifications and the applicable comprehensive plan policies.

B. Sewer and Water Plan Approval. Development permits for sewer and water improvements shall not be issued until the city engineer has approved all sanitary sewer and water plans in conformance with city standards.

C. Oversizing. Proposed sewer and water systems shall be sized to accommodate additional development within the area as designed in the master facility plans. The developer may be entitled to system development charge credits for the oversizing.

D. Permits Denied. Development permits may be restricted by the city where a deficiency exists in the existing water or sewer system which cannot be rectified by the development and which if not rectified, will result in a threat to public health or safety, surcharging of existing mains, or violations of state or federal standards pertaining to operation of domestic water and sewerage treatment systems. Building moratoriums shall conform to the criteria and procedures contained in ORS 197.505. [Ord. 720 § 7[3.4.3], 2003.]

18.80.050 Storm drainage.

A. General Provisions. The city shall issue a development permit only where adequate provisions for stormwater and floodwater runoff have been made in conformance with Chapter 18.85 PMC, Hillside and Erosion Control Overlay.

B. Accommodation of Upstream Drainage. Culverts and other drainage facilities shall be large enough to accommodate potential runoff from the entire upstream drainage area, whether inside or outside the development or city. Such facilities shall be subject to review and approval by the city engineer.

C. Effect on Downstream Drainage. Where it is anticipated by the city engineer that the additional runoff resulting from the development will overload an existing drainage facility, the city shall withhold approval of the development until provisions have been made for improvement of the potential condition or until provisions have been made for storage of additional runoff caused by the development in accordance with city standards.

D. Easements. Where a development is traversed by a watercourse, drainage way, channel or stream, there shall be provided a stormwater easement or drainage right-of-way conforming substantially with the lines of such watercourse and such further width as will be adequate for conveyance and maintenance. [Ord. 720 § 7[3.4.4], 2003.]

18.80.060 Utilities.

A. Underground Utilities. All utility lines including, but not limited to, those required for electric, communication, lighting and cable television services and related facilities shall be placed underground, except for surface-mounted transformers, surface-mounted connection boxes and meter cabinets which may be placed above ground, temporary utility service facilities during construction, and high capacity electric lines operating at 50,000 volts or above. The following additional standards apply to all new subdivisions, in order to facilitate underground placement of utilities:

1. The developer shall make all necessary arrangements with the serving utility to provide the underground services. Care shall be taken to ensure that all above-ground equipment does not obstruct vision clearance areas for vehicular traffic (Chapter 18.65 PMC);

2. The city reserves the right to approve the location of all surface-mounted facilities;

3. All underground utilities, including sanitary sewers and storm drains installed in streets by the developer, shall be constructed prior to the surfacing of the streets; and

4. Stubs for service connections shall be long enough to avoid disturbing the street improvements when service connections are made.

B. Easements. Easements shall be provided for all underground utility facilities.

C. Exception to Undergrounding Requirement. The standard applies only to proposed subdivisions. An exception to the undergrounding requirement may be granted due to physical constraints, such as steep topography, sensitive lands (Chapter 18.55 PMC), or existing development conditions. [Ord. 720 § 7[3.4.5], 2003.]

18.80.070 Easements.

Easements for sewers, storm drainage and water quality facilities, water mains, electric lines or other public utilities shall be dedicated on a final plat, or provided for in the deed restrictions. See also Chapter 18.110 PMC, Development Review and Site Design Review, and Chapter 18.115 PMC, Land Divisions and Lot Line Adjustments. The developer or applicant shall make arrangements with the city, the applicable district and each utility franchise for the provision and dedication of utility easements necessary to provide full services to the

development. The city's standard width for public main line utility easements shall be 15 feet unless otherwise specified by the utility company, applicable district, or city engineer. [Ord. 720 § 7[3.4.6], 2003.]

18.80.080 Construction plan approval and assurances.

No public improvements, including sanitary sewers, storm sewers, streets, sidewalks, curbs, lighting, parks, or other requirements shall be undertaken until the plans have been approved by the city, permit fee paid, and permit issued. The permit fee is required to defray the cost and expenses incurred by the city for construction and other services in connection with the improvement. The permit fee shall be set by city council. The city may require the developer or subdivider to provide bonding or other performance guarantees to ensure completion of required public improvements. See also PMC 18.110.040, Site design review, and PMC 18.115.090, Performance guarantee. [Ord. 720 § 7[3.4.7], 2003.]

18.80.090 Installation.

A. Conformance Required. Improvements installed by the developer either as a requirement of these regulations or at his/her own option, shall conform to the requirements of this chapter, approved construction plans, and to improvement standards and specifications adopted by the city.

B. Adopted Installation Standards. The standard specifications for public works construction, Oregon Chapter A.P.W.A., shall be a part of the city's adopted installation standard(s); other standards may also be required upon recommendation of the city engineer.

C. Commencement. Work shall not begin until the city has been notified in advance.

D. Resumption. If work is discontinued for more than one month, it shall not be resumed until the city is notified.

E. City Inspection. Improvements shall be constructed under the inspection and to the satisfaction of the city. The city may require minor changes in typical sections and details if unusual conditions arising during construction warrant such changes in the public interest. Modifications requested by the developer shall be subject to land use review under Chapter 18.130 PMC, Modifications to Approved Plans and Conditions of Approval. Any monuments that are disturbed before all improvements are completed by the subdivider shall be replaced prior to final acceptance of the improvements.

F. Engineer's Certification and As-Built Plans. A registered civil engineer shall provide written certification in a form required by the city that all improvements, workmanship and materials are in accord with current and standard engineering and construction practices, conform to approved plans and conditions of approval, and are of high grade, prior to city acceptance of the public improvements, or any portion thereof, for operation and maintenance. The developer's engineer shall also provide one set(s) of "as-built" plans, in conformance with the city engineer's specifications, for permanent filing with the city. [Ord. 720 § 7[3.4.8], 2003.]

Chapter 18.85

HILLSIDE AND EROSION CONTROL OVERLAY

Sections:

18.85.010 Purpose.
18.85.020 Areas of application.
18.85.030 Uses.
18.85.040 Hillside development standards.
18.85.050 Approval procedure – Type II.
18.85.060 Approval procedure – Type III.

18.85.010 Purpose.

The purpose of this overlay district is to promote the public health, safety, water quality and general welfare. Provisions under this section are designed to:

A. Restrict or prohibit uses, activities or development which is damage-prone or damage-inducing to the land or to water quality.

B. Require uses vulnerable to landslides, including public facilities which serve such uses, to be protected at the time of initial construction.

C. Allow the development of land only for those uses which are suitable on steep slopes.

D. Maintain land and water quality by minimizing erosion and sedimentation, and by restricting or prohibiting development, excavation and vegetation removal in areas with constrained or steep slopes.

E. Comply with Statewide Planning Goals 6 (Air, Water and Land Resources Quality) and 7 (Natural Hazards). [Ord. 720 § 7[3.5.100], 2003.]

18.85.020 Areas of application.

The hillside and erosion control overlay district shall apply to land on slopes of 20 percent or greater.

A. Delineation of Boundaries. The hillside and erosion control overlay district shall be mapped generally by the city of Philomath, and shall consist of steep slope and constrained slope areas.

1. Steep slope areas include all areas in the city of Philomath where the slope of the land is 30 percent or greater.

2. Constrained slope areas include all areas where the slope of the land is between 20 and 30 percent.

3. Specific determination of steep slope and constrained slope areas shall be made at the time of a development proposal by the applicant for alteration or development for the respective properties within the hillside and erosion control overlay district, based on the topographic map and field survey.

4. Areas subject to the restrictions and prohibitions of this overlay district are generally indicated on the map entitled, "City of Philomath Slope Map," on file with the city of Philomath.

a. Where development, excavation or vegetation removal is proposed for areas with 20 percent or greater slope, a licensed land surveyor shall prepare an on-the-ground topographical survey for the entire site. The survey shall show trees or tree clusters and two-foot contours, and shall be provided by the property owner or applicant for development approval.

b. Areas with constrained slopes and areas with steep slopes shall be specifically indicated on the required survey maps.

B. Warning and Disclaimer of Liability. The degree of landslide protection required by this title is considered reasonable for regulatory purposes, and is based on common engineering and scientific practices. Landslides may occur on rare occasions in areas outside of the delineated steep slope and constrained slope boundaries. This title does not imply that areas outside the hillside and erosion control overlay district boundaries, or land use permitted within such boundaries, will be free from significant mass movement or landslide damage. This section shall not create city of Philomath liability for damage resulting from reliance on the provisions of this section or any administrative decision lawfully made thereunder. [Ord. 720 § 7[3.5.200], 2003.]

18.85.030 Uses.

A. Uses Allowed – Steep Slopes.

1. Open space and trails provided they are constructed consistent with standards on file with the city of Philomath.

2. Removal of refuse and unauthorized fill.

3. Removal of nuisance or invasive plant species, or planting of approved vegetation species on the native plant list kept on file at the city of Philomath.

4. Removal of dead or dying trees that are an imminent danger to public safety as determined by the planning official.

5. Construction of roads designated in the transportation system plan and public utilities necessary to support permitted development on slopes of 20 percent or less, subject to construction standards on file at the city of Philomath.

6. Expansion of existing roadways and public utility facilities necessary to support permitted development on slopes of 20 percent or less, subject to construction standards on file at the city of Philomath.

B. Prohibited Uses. Prohibited uses on slopes of 30 percent or greater, unless specifically permitted under PMC 18.85.040:

1. Manmade structures, except as described in PMC 18.85.040(C)(4).

2. Vegetation removal not specifically allowed under subsection (A) of this section.

3. Road construction not specifically allowed under subsection (A) of this section.

4. Excavation.

C. Uses Allowed – Constrained Slope.

1. Open space.

2. Any use in the underlying district; provided, the standards of PMC 18.85.040 are met.

3. Removal of nuisance or invasive plant species, or planting of approved vegetation species on the native plant list and kept on file at the city of Philomath. [Ord. 737 § 1, 2006; Ord. 720 § 7[3.5.300], 2003.]

18.85.040 Hillside development standards.

A. Standards.

1. The property shall have access to a public street. All streets shall be built to a width and street improvement standard acceptable to the city of Philomath. The parcel can be adequately served by the city water supply and sanitary sewer systems, or meets applicable state standards for individual sewage disposal systems.

2. Where slopes are 30 percent or greater, grading, approved vegetation removal, site preparation and construction shall be prohibited, except where necessary to provide access or utilities to buildable lots with slopes of 30 percent or less.

a. Land with slopes of 30 percent or greater shall be conserved and maintained as open space. This may occur through private ownership, through private conditions, covenants and restrictions, through conservation easements enforceable by the city of Philomath or other public or private nonprofit agency, or where approved by the city, dedication to the city of Philomath or donation to other appropriate public or private nonprofit agency.

b. Disturbed areas shall be replanted in approved native vegetation and tree cover by October 15th following any disturbance regulated by this title.

3. Where development is proposed on slopes of 20 percent or greater:

a. The impervious surface area of any residential lot or commercial or industrial site (including driveways, sidewalks, structures, swimming pools, and any other area not covered by vegetation) shall not exceed 30 percent of the constrained slope area;

b. Development shall not result in cuts or fills in excess of three feet, except for basement construction, unless specifically approved by the planning official.

c. At least half the constrained slope area shall remain in or be planted in approved native vegetation. The existing tree canopy shall be retained wherever possible and shall be considered in meeting this standard.

d. If development is proposed on constrained or steep slope areas, a mitigation plan for disturbed areas on constrained or steep slope areas shall be prepared and implemented. This plan shall provide for the replanting and maintenance of approved native plant species designed to achieve predisturbance conditions.

4. The applicant's engineer shall provide a construction erosion control plan and water quality plan, consistent with the provisions of this title and consistent with the state or federal stormwater control programs.

5. The applicant's engineering plans shall certify that runoff and sedimentation from the site will not be greater than conditions present on the site as of the effective date of the ordinance codified in this chapter.

B. Submission Requirements. For the purpose of minimizing landslide hazards, and where development is proposed on slopes of 20 percent or greater, the planning official shall require submis-

sion of the following special reports, prepared by professionals in their respective fields:

1. Hydrology and Geology Report. This report is required for subdivisions of two acres or more. This report shall include information on the hydrological activities of the site, the effect of hydrologic conditions on the proposed development, and any hydrological or erosion hazards. This report shall also include geological characteristics of the site, its suitability for development, its carrying capacity, and any geological hazard that might present a hazard to life and property, or adversely affect the use or stability of a public facility or utility.

2. Soils Report. A soils report is required for all new development. This report shall include information on the nature, distribution and strength of existing soils, the adequacy of the site for development purposes, and an assessment of grading procedures required to impose the minimum disturbance to the natural state.

3. Grading Plan. The grading shall be specific to a proposed physical structure or use. It shall include information on terrain (two-foot contours), drainage, direction of drainage flow, location of proposed structures and existing structures which may be affected by the proposed grading operations, water quality facilities, finished contours or elevations, including all cut and fill slopes and proposed drainage channels. Project designs, including but not limited to, locations of surface and subsurface devices, walls, dams, sediment basins, storage reservoirs, and other protective devices shall form part of the submission. The grading plan shall also include a construction phase erosion control plan and a schedule of operations and shall be prepared by a professional engineer registered in Oregon.

4. Vegetation Report. This report shall consist of a survey of vegetative cover, whether it is native or introduced, and how it will be altered by the proposed development. Measures for revegetation with approved native plant species will be clearly stated, as well as methods for immediate and long-term stabilization of slopes and control of soil erosion. The vegetation report shall be prepared by a landscape architect, landscape designer, botanist, arborist, or natural resource planner with specific knowledge of native plant species, planting and maintenance methods, survival rates, and their ability to control erosion and sedimentation. The applicant will be responsible for replacing any native plant species that do not survive the first two years after planting.

5. Design Standards. The required reports shall include design standards necessary for the engineer and landscape expert to certify that development on slopes of 20 percent or greater, when combined with impacts from development of lesser slopes, will not increase runoff, sedimentation to affected streams or wetlands, erosion, or landslide potential above base conditions. These requirements shall be incorporated as conditions into the final decision approving the proposed development.

C. Residential Density Allowance and Transfer Provisions.

1. Constrained Slopes. The maximum residential density allowed in constrained slopes areas shall be 70 percent of the average density otherwise permitted in the underlying residential zoning district.

2. Steep Slopes. Density may be transferred to buildable portions of the site (i.e., where slopes are less than 15 percent and outside the floodplain) at a rate of one unit per steeply sloped acre.

3. The net increase in density as a result of density transfer shall not exceed 50 percent of the base density that would otherwise be allowed on buildable portions of the lot.

4. Exception: Each lot of record that has received planning approval from city of Philomath may have one dwelling unit; provided, that the siting, engineering, erosion control, water quality and revegetation standards of this section have been fully satisfied. No new lot shall be approved for development that is exclusively on slopes of 30 percent or greater. [Ord. 720 § 7[3.5.400], 2003.]

18.85.050 Approval procedure – Type II.

A. The planning official shall approve new development for a single-family or two-family dwelling under the Type II procedure within the hillside and erosion control overlay district only if the proposed use or structure meets all of these conditions:

1. Development standards are met as prescribed under PMC 18.85.040.

2. Adequate protection is utilized to minimize landslide and erosion hazards consistent with this title.

3. The applicant provides assurances that development impacts will be minimized on slopes greater than 30 percent; provided however, that a property owner shall not be denied the right to construct a single-family home on a residentially zoned lot of record approved by the city of Philomath prior to the effective date of the ordinance codified in this chapter.

4. Notwithstanding the provisions on variance, an adjustment of up to 50 percent from any dimensional standard in the underlying zoning district may be approved under Type I procedure, where necessary, to avoid construction on slopes of 30 percent or greater or to meet the standards of PMC 18.85.040.

5. It is in conformance with the provisions of the city of Philomath development code.

B. The planning official shall determine the final boundaries of constrained slope and steep slope areas based on topographical information provided by an engineer or surveyor registered in Oregon. The applicant shall be responsible for submitting such information. [Ord. 720 § 7[3.5.500], 2003.]

18.85.060 Approval procedure – Type III.

The planning commission may approve new developments for more than one single-family or two-family dwelling within the hillside and erosion control overlay district under a Type III procedure; provided, that the proposed use or structure meets all of these conditions:

A. Development standards are met as prescribed under PMC 18.85.040.

B. Adequate protection is utilized to minimize landslide and erosion hazards, consistent with this title. [Ord. 734 § 1, 2005; Ord. 720 § 7[3.5.600], 2003.]

Chapter 18.90

OTHER STANDARDS

Sections:

18.90.010 Density transfers.

18.90.010 Density transfers.

A. Purpose. The purpose of this chapter is to implement the comprehensive plan and encourage the protection of open spaces through the allowance of housing density transfers. “Density transfers” are the authorized transfer of allowed housing units (per Division 2) from one portion of a property to another portion of the same property, or from one property to another property with the same zone designation.

B. Determination of Allowable Housing Units. The number of allowed housing units on a property is based on the surface area of the property (acres) times the maximum allowed housing density in Division 2, less 20 percent for streets and public ways.

C. Density Transfer Authorized. Allowed housing units may be transferred from one portion of a property to another portion of the same property, or from one property to another property. A density transfer shall not be approved unless it meets one or more of the criteria in subsections (C)(1) through (C)(3) of this section, and it conforms to subsections (D) and (E) of this section:

1. Protection of sensitive land areas as defined in Chapter 18.55 PMC (and listed below) either by dedication to the public or a land trust, or by a nonrevocable conservation easement. Sensitive land areas include:

a. Land within the 100-year floodplain;
b. Land or slopes exceeding 15 percent;
c. Drainage ways; and
d. Wetlands;

2. Dedication of land to the public for park or recreational purposes; or

3. The density transfer is used to develop a mix of single-family and multifamily housing on the same property or development site.

D. Prohibited Density Transfers. Density shall not be transferred from: land proposed for street right-of-way, stormwater detention facilities, private streets, and similar areas that do not provide open space or recreational values to the public.

E. Density Transfer Rules. All density transfers shall conform to all of the following rules:

1. Allowed housing units shall be transferred only to buildable lands (receiving areas). The number of allowed housing units shall be reduced on properties from which density is transferred (sending areas) based on the number of housing units transferred. The new number of housing units allowed on the sending area shall be recorded on a deed for the property that runs with the land. The deed shall state that the number of allowed housing units is subject to review and approval by the city, in accordance with current zoning and development codes;

2. The number of units which can be transferred is limited to the number of units which would have been allowed on 50 percent of the unbuildable area if not for these regulations; and

3. The total number of housing units per property or development site shall not exceed 100 percent of the maximum number of units per gross acre permitted under the applicable comprehensive plan designation, except as otherwise permitted through the master planned development process (Chapter 18.125 PMC).

4. All density transfer development proposals shall comply with the development standards of the applicable land use district, except as otherwise allowed by the master planned development process (Chapter 18.125 PMC). [Ord. 720 § 7[3.6.1], 2003.]

Chapter 18.95

REGULATING PLACEMENT OF SIGNS

Sections:

18.95.010 Purpose.
18.95.020 Definitions.
18.95.030 Requirements, fees, and enforcement.
18.95.040 Zoning district requirements.
18.95.050 Nonconforming signs.

18.95.010 Purpose.

This comprehensive sign code has been prepared by and for the citizens of Philomath in order to provide equitable methods of business identification, increase the aesthetic value and economic vitality of the city, and a safe, consistent, and legal system of signing. The regulations of such factors as size, location, construction, etc., will encourage the communication of information and orientation for both visitors and citizens, motorist and pedestrians; provide for the effective identification and advertisement of business establishments; eliminate visual blight; and provide standards to safeguard life, health, property and public welfare. Although the provisions of this comprehensive sign code are physically located within the development code, it is not intended to be a land use ordinance, nor is it intended to implement comprehensive plan or state land use planning goal provisions. [Ord. 731, 2005; Ord. 720 § 7[3.7.100], 2003.]

18.95.020 Definitions.

As used in this chapter, the following words and terms shall have the meanings ascribed to them in this section:

1. "Building frontage" means the linear frontage of a building measured along a street or alley between two lines projecting perpendicular from the street to the corners of the building.

2. "Canopy" means a structure made of cloth, metal or other material with frames affixed to a building.

3. "Construction sign" means any information sign which identifies the architect, engineers, contractors, and other individuals or firms involved with the construction of a building, or announcing the character of the building or enterprise, which is erected during the building construction period.

4. "Daily display sign" means a nonpermanent sign, normally associated with a business activity, that is placed out-of-doors during business hours for display and returned indoors during off-hours. For example, daily display signs may be constructed in a sandwich board (A-frame) style, mounted on a single pedestal, or other similar construction, and are typically unlit and easily moved. Refer to PMC 18.95.030(A)(7).

5. "Electronic changing sign" means an electronic sign upon which all or part of the copy, graphics or message may appear, or change, periodically. This definition includes all forms of alterable display mediums such as LED, LCD, incandescent, moving placard or other display or illumination technologies similar to time and temperature displays, which, by its nature and intensity, shall not be considered a flashing sign.

6. "Flashing sign" means any sign that contains or is illuminated by a light source which produces a brilliant flash followed by dramatically reduced intensity or darkness on an alternating or random basis, which results in a pulsating effect designed primarily to attract attention.

7. "Freestanding sign" means any sign set apart with no structural attachments to a building structure and is meant to include ground-mounted or pole-affixed signs for the purpose of these regulations.

8. "Grade" means the relative finished ground level within a 20-foot radius of the sign.

9. "Ground sign" means a sign that is affixed to the ground and or supported by one or more uprights, poles, lanyards or braces in or upon the ground where substantially all of the sign is at or about ground grade. Refer to PMC 18.95.030(A)(8).

10. "Height" or "height of sign" means the vertical distance from the surface of the grade to the highest point of a sign or any vertical projection thereof, including its supporting columns.

11. "Incidental sign" means small signs, intended primarily for the convenience of the public. Included are signs designating restrooms, address numbers, hours of operation, entrances to buildings, directions, help wanted, public telephone, etc. Also included in this group of signs are those designed to guide or direct pedestrians or vehicular traffic to an area or place on the premises of a business, building or development by means of a directory designating names and addresses. Refer to PMC 18.95.030(A)(9).

12. "Lighting, indirect or internal" means any illuminated sign constructed such that the source of said illumination is not directly visible when the sign is lighted. Refer to PMC 18.95.030(A)(12).

13. "Moving sign" means any sign which produces apparent motion of the visual image, including but not limited to illusion of moving objects, moving patterns or bands of light, expanding or contracting shapes, rotation or any similar effect of animation which is designed or operated in a manner primarily to attract attention. This definition includes methodologies wherein the sign itself may also be physically moving.

14. "Pole sign" means a single- or multiple-faced sign, supported by one or more uprights in the ground and detached from any building or structure where the preponderance of the sign is typically well above grade level. Refer to PMC 18.95.030(A)(10).

15. "Portable sign" means any sign not meeting the anchorage requirements of the Uniform Sign Code.

16. "Projecting sign" means a single- or multiple-faced sign which is designed and constructed to be mounted to the wall of a building and which will extend outward from the wall surface.

17. "Property line" means the line denoting the limits of legal ownership of property.

18. "Readerboard" means a sign or part of a sign on which the letters are readily manually replaceable such that the copy can be changed from time to time at will. An electronic "readerboard" falls under the definition of electronically changing signs above.

19. "Roof sign" means any sign erected upon, against, or directly above a roof or on top of or above the parapet of a building, including a sign affixed to any equipment attached to the building.

20. "Sandwich style ("A") boards" means any double-faced sign hinged or connected at the top that is spread for stabilization and set upon the ground.

21. "Seasonal signs" means any sign typically used for temporary businesses, such as Christmas tree or fireworks sales.

22. "Sign" means any medium, including its structure and component parts, other than paint on a building, which is used or intended to be used to

attract attention to the subject matter for communication purposes.

23. "Sign area" means the surface contained within a single continuous perimeter which encloses the entire sign medium, but excluding any support or framing structure that does not convey a message. Where signs are of a three-dimensional, round, or other solid shape, the largest cross-section viewed as a flat projection shall be used for the purpose of determining the sign area. Signs visible from more than one direction or without clearly defined sign faces shall be considered as having two faces and each face calculated in the total allowable area.

24. "Street frontage" means street(s), alley(s), or public right(s)-of-way parallel to the property line used to compute the area of sign(s) intended to be located in such a manner as to have primary exposure on that street or right-of-way.

25. "Temporary sign" means any sign, banner, pendant, valance, or other advertising display constructed of cloth, canvas, light fabric, cardboard, wallboard, or other light material intended to be displayed for short or intermittent periods. Refer to PMC 18.95.030(A)(11).

26. "Traffic control device" means any form of communication medium customary for the purpose of regulating the flow of traffic or pedestrians at or about a given intersection.

27. "Vision clearance area" means a triangular area on a lot at the intersection of two public rights-of-way, a street and or a railroad, or point of vehicular access to a public right-of-way, two sides of which are lines measured from the corner intersection (apex) parallel to their respective rights-of-way, with the third side of said triangle (hypotenuse) being a line across the corner of the lot connecting the lines of the other two sides. Refer to PMC 18.95.030(A)(13).

28. "Wall sign" means a single-faced sign generally mounted flat against a given exterior building wall wherein the copy runs generally parallel to the wall upon which it is attached. Refer to PMC 18.95.030(A)(6).

29. "Window sign" means a sign which is applied to, attached to or located in the proximity of the interior of a window, and where said sign is intended to, or may be, seen through the window from the exterior of the structure. [Ord. 755 § 1, 2009; Ord. 731, 2005; Ord. 720 § 7[3.7.200], 2003.]

18.95.030 Requirements, fees, and enforcement.

A. General Sign Regulations. No sign governed by the provisions of this chapter shall be erected, structurally altered, or relocated without first receiving a sign permit from the city of Philomath. Where federal and/or state regulations or ODOT jurisdiction applies, said regulations or jurisdiction shall supersede this chapter.

1. Installation Requirements. All signs shall comply with the following requirements and those specified by zoning district:

a. Construction shall satisfy the requirements of the Uniform Sign Code.

b. The National Electrical Code and Oregon Electrical Specialty Code Amendments shall govern electrical requirements for signs.

c. Except for exempt signs and approved daily display signs, all signs shall be securely attached to a building or the ground.

d. All signs shall conform to all vision clearance requirements.

e. All signs, together with their supports, braces, and guys, shall be maintained in a safe and secure manner.

f. All illuminated signs shall be internally or indirectly illuminated.

g. Unless otherwise permitted, all signs shall be erected and maintained entirely on private property with the consent of the owner and occupant of the premises. No signs shall be erected or maintained on utility poles or other naturally occurring features. Signs shall not be placed in the public right-of-way or vision clearance areas except as required for traffic control purposes.

2. Exempt Signs. The following signs shall be exempt from the application, permit and fee requirements of this chapter:

a. Directional, warning or information signs or structures required or authorized by law, or by federal, state, county or city authority;

b. Incidental signs;

c. Official and legal notices issued by any court, public body, person or officer in performance of a public duty or in giving any legal notice;

d. On-premises signs not generally intended to be readable from the public right-of-way (i.e., menu boards, etc.);

e. Seasonal signs for temporary businesses provided such signs do not exceed 32 square feet in area and are limited to only one sign per street frontage. Such signs shall be limited to a display period of not more than 30 days prior and five days following the seasonal event;

f. Incidental structures intended for a separate use such as phone booths, Goodwill containers, recycling containers, etc.;

g. Temporary signs;

h. Window signs affixed to, and displayed from, the inside of the building.

3. Prohibited Signs. The following signs are prohibited:

a. Flashing and moving signs;

b. Portable signs, except as allowed under provisions for daily display signs;

c. Roof signs unless specifically requested of, and approved by, the city council;

d. Signs attached to utility, streetlight, or traffic control standard poles or otherwise located in the public right-of-way without a permit or vision clearance area;

e. Signs in a dilapidated or hazardous condition;

f. Signs on doors, windows, or fire escapes that restrict free ingress or egress;

g. Signs which purport to be, are an imitation of, or resemble an official traffic sign or signal, could cause confusion with any official sign, or that make use of the words such as “STOP,” “LOOK,” or “DANGER,” or which obstruct the visibility of any traffic control device.

4. Freestanding Signs. All freestanding signs shall comply with the following provisions:

a. One freestanding sign shall be permitted along each street frontage, or each 300 feet of street frontage, with one additional freestanding sign allowed on the property.

b. A freestanding sign shall be placed behind the property line and no closer than 10 feet to any adjacent private property line.

c. Freestanding signs may project over the public right-of-way, excepting the state highway right-of-way, unless otherwise approved; provided, they conform to the standards established for projecting signs.

d. Freestanding signs shall not obstruct the flow of pedestrian or vehicular traffic when otherwise allowed and shall conform to all federal or state rules pertaining to said placements including, but not limited to, ADA accessibility requirements.

5. Projecting Signs. All projecting signs shall comply with the following provisions:

a. No projecting sign shall extend above the highest structural component of the building from which it is attached.

b. Signs over the public right-of-way, including freestanding signs, shall conform to the following standards:

CLEARANCE	MAXIMUM PROJECTION
Less than 8 feet.	Not permitted.
8 feet.	1 foot.
9 feet and above.	2 feet for every foot above 8 feet in height, but no more than 9 feet.

c. No sign shall project within two feet of a curb line.

d. In addition, no sign or sign structure shall project into any public alley below a height of 14 feet above grade, nor project more than 12 inches where the sign structure is located 14 feet to 16 feet above grade. The sign or sign structure may project not more than 36 inches into the public alley where the sign or sign structure is located more than 16 feet above grade.

6. Wall Signs. All wall signs shall conform to the following provisions:

a. Wall signs may be attached flat to or pinned away from the wall, but shall not project more than 12 inches from the wall where the bottom of the sign is higher than eight feet from grade level, and shall not project more than four inches from the wall where any portion of said sign is lower than eight feet from grade level.

b. For purposes of this chapter, wall signs shall be exempt from the permitting process and allowable area; provided, they do not exceed 50 percent of the total allowable area or more than three signs per building.

c. Wall signs shall not extend above the height of the wall to which they are attached.

7. Daily Display Signs in Public Right-of-Way or Off-Premises.

a. In zoning districts that permit daily display signs, a daily display sign may be allowed within the public right-of-way in front of the premises with which it is associated; provided, all of the following conditions are met:

i. A city sign permit is obtained that shows location of daily display sign in the right-of-way. This permit shall be revocable in case of condition of noncompliance.

ii. The sign is to be set back behind the curb so as not to interfere with on-street parking, or a minimum of 10 feet from the edge of the nearest street travel lane where curbs are not in place.

iii. The sign is to be placed so as to allow at least five feet of unimpeded pedestrian sidewalk maneuvering space, such maneuvering space being located as close as possible to the building frontage.

iv. The sign meets vision clearance requirements.

v. The sign is properly maintained as required by subsection (A)(1) of this section.

vi. The applicant shall assume all liability for incidents involving the sign, and execute documents satisfactory to the city, releasing and indemnifying the city for all liability arising from claims pertaining to the sign and/or its placement.

vii. Sign dimension shall not exceed a maximum width of two feet or a maximum aboveground level height of four and one-half feet.

viii. One sign per business is allowed.

b. Daily display signs may be allowed off the premises, or within the public right-of-way in front of a business with which the sign is not associated, subject to the following conditions:

i. All applicable standards of subsection (A)(7)(a) of this section.

ii. Both the sign owner and owner of the business where the sign is placed must sign city liability exemption documents as provided in subsection (A)(7)(a)(vi) of this section.

iii. The off-premises daily display sign will take the place of the daily display sign allowance for both the business site where it is placed and the business placing the sign.

iv. The off-premises daily display sign will count towards the square footage requirements for both the business where it is placed and the business placing the sign.

8. Ground Signs. The top of such signs shall be no higher than four feet above grade level.

9. Incidental Signs. These signs shall be less than four square feet in sign area.

10. Pole Sign Height. Pole signs shall not have any sign area lower than eight feet above grade. Public information signs are exempt from this standard.

11. Temporary Signs. Temporary signs shall be allowed to be displayed for a period of less than 90 consecutive days in any calendar year, or as is customary for the nature of the sign's purpose.

12. The intensity of sign lighting shall not exceed that necessary to illuminate and make legible a sign from the adjacent travel way or closest right-of-way; and the illumination of a sign shall not be obtrusive to the surrounding area.

13. Vision Clearance Areas. The triangular vision clearance area is limited to a side distance of 30 feet from the intersection apex in residential districts, 15 feet in commercial districts and 10 feet at all alleys. The vision clearance area shall contain no signs higher than 22 feet or lower than eight feet measured from the grade of the street centerline. Signs meeting these height requirements that employ a single pole having a diameter of 18 inches or less are permitted within the vision clearance area provided no part of the sign or pole obstructs any traffic control device.

14. Sign Permits. A property owner or his authorized agent is required to apply to the city for a sign permit by filing an application with the city using forms prescribed for the purpose. A site plan and construction drawing shall accompany the application. The city may require other drawings or information necessary to determine compliance with this chapter. The applicant shall pay any fee established by resolution or ordinance of the city council and in effect at the time said application is filed.

Prior to being issued a sign permit, the applicant shall pay, in addition to the fee established by the city council, any costs incurred by the building official/engineer in reviewing the proposed sign permit request.

15. Code Violations and Enforcement. Any sign which is not in compliance with all the provi-

sions of this chapter is an unlawful sign and declared to be a public nuisance.

a. The city may order the removal of any sign erected or maintained in violation of this chapter. It shall give 24 hours' notice in writing to the owner of such sign, or of the building structure, or premises on which the sign is located, to remove the sign or bring it into compliance.

b. The city may remove a sign immediately and without notice if, in its opinion, conditions pertinent to any sign installation or placement are found to present an immediate threat to the safety of the public, and is hereby authorized to take such steps as may be necessary to remove said sign and or mitigate the impending threat. Neither the city nor any of its agents shall be liable for any damage to the sign, or any fixtures used in the placement of said sign.

c. The violation of or failure to comply with any of the provisions of this chapter or the erection, use, or display or the allowing of, the permitting of, or the suffering of the erection, use or display of any sign not in compliance with all the provisions of this chapter is unlawful and upon conviction, the violator may be punished by a fine of not more than $250.00 and shall be required to remove such sign or to take such other action as shall be determined by the court to be necessary to bring such sign into full compliance with the provisions of this chapter.

d. The remedies provided in this section for violations of, or failure to comply with, provisions of this chapter shall be cumulative and shall be in addition to any other remedy provided by law. [Ord. 755 § 2, 2009; Ord. 731, 2005; Ord. 720 § 7[3.7.300], 2003.]

18.95.040 Zoning district requirements.

A. Residential Zones.

1. General. This subsection shall apply to all residential districts.

2. Size and Height. A total sign area not exceeding 16 square feet per face per dwelling unit is permitted. Multiple-family dwellings, other allowed uses (excluding home occupations), and conditional uses may be allowed to erect one sign per street frontage not to exceed 32 square feet. In no event shall any sign exceed five feet in height.

3. Location. Signs permitted outright in the R-1 and R-2 districts may be located anywhere on the premises except within a vision clearance area; however, no freestanding sign may exceed five feet in height or project beyond any property line. Building-mounted signs shall be wall-mounted and shall not be erected on any building roof.

B. Commercial and Industrial Zones.

1. General. This subsection shall apply to all commercial and industrial zones.

2. Size. The size of allowable area of signs shall be as follows:

a. A total sign area of two square feet for each lineal foot of building frontage or one square foot for each lineal foot of lot frontage, whichever results in the larger sign area.

b. Freestanding or projecting signs shall be limited to 150 square feet per face. Such signs shall not exceed 30 feet in height from grade to the highest element of such signs unless otherwise restricted.

c. One daily display sign per business, for which the maximum permitted area shall be eight square feet per display surface and 16 square feet overall.

3. Location. Except as otherwise provided, and in conformance with vision clearance areas specified, permitted signs may be located anywhere on the premises.

a. Where frontage is on more than one street, only the signs computed with the frontage of that street shall be located on that street.

C. Signs in Neighborhood and Regional Shopping Centers.

1. Signs of Individual Businesses. Within neighborhood and regional shopping centers, each individual business shall be allowed a total sign area as calculated in accordance with the underlying zone.

2. Shopping Center Sign. In addition to the sign area allowed for individual businesses, shopping centers with more than 40,000 square feet of floor area shall be allowed one double-faced indirectly lighted sign on each street right-of-way. Such signs shall neither extend beyond the property line nor be placed in the right-of-way. These signs shall not exceed 300 square feet per face and shall not exceed 30 feet in height from grade to the highest element of the sign. [Ord. 755 § 3, 2009; Ord. 731, 2005; Ord. 720 § 7[3.7.400], 2003.]

18.95.050 Nonconforming signs.

A. Grandfather Clause. If, at the time of passage of the ordinance codified in this chapter, a sign does not conform to the provisions of this chapter, said sign may be continued and maintained in reasonable repair. This grandfather status, however, shall not prevent the city from taking action where a clear and immediate threat to the public safety and welfare exists.

B. Alteration, Relocation or Replacement. Nonconforming signs that are structurally altered, relocated or replaced shall comply immediately with all provisions of this chapter.

C. Destruction of a Nonconforming Sign. If a nonconforming sign is destroyed by any cause to the extent of more than 60 percent of its value, then and without further action by the city, the sign shall be subject to all applicable regulations of this chapter. For the purpose of this chapter, the value of any sign shall be the estimated cost to replace the sign in kind, as determined by the building inspector. [Ord. 731, 2005; Ord. 720 § 7[3.7.500], 2003.]

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Division 4. Applications and Review Procedures

Chapter 18.100

INTRODUCTION

Sections:

18.100.010 Introduction.

18.100.010 Introduction.

Division 4 provides all of the application requirements and procedures for obtaining permits required by this title. Please refer to Table 18.105.020 in Chapter 18.105 PMC for a key to determining which land use permits and procedures are required, and the decision-making body for a particular type of permit application. [Ord. 720 § 7[4.0.1], 2003.]

Chapter 18.105

TYPES OF APPLICATIONS AND REVIEW PROCEDURES

Sections:

18.105.010 Purpose.
18.105.020 Description of permit/decision-making procedures.
18.105.030 Type I procedure (ministerial).
18.105.040 Type II procedure (administrative).
18.105.050 Type III procedure (quasi-judicial).
18.105.060 Type IV procedure (legislative).
18.105.070 General provisions.
18.105.080 Special procedures.
18.105.090 Neighborhood meetings.

18.105.010 Purpose.

The purpose of this chapter is to establish standard decision-making procedures that will enable the city, the applicant, and the public to reasonably review applications and participate in the local decision-making process in a timely and effective way. [Ord. 720 § 7[4.1.1], 2003.]

18.105.020 Description of permit/decision-making procedures.

All land use and development permit applications, except building permits, shall be decided by using the procedures contained in this chapter. General procedures for all permits are contained in PMC 18.105.070. Specific procedures for certain types of permits are contained in PMC 18.105.020 through 18.105.060. The procedure type assigned to each permit governs the decision-making process for that permit. There are four types of permit/decision-making procedures: Type I, II, III, and IV. These procedures are described in subsections (A) through (D) of this section. In addition, Table 18.105.020 lists all of the city's land use and development applications and their required permit procedure(s).

A. Type I Procedure (Ministerial). Type I decisions are made by the planning official, or someone he or she officially designates, without public notice and without a public hearing. The Type I procedure is used when there are clear and objective approval criteria, and applying city standards and criteria requires no use of discretion;

B. Type II Procedure (Administrative). Type II decisions are made by the planning official with public notice and an opportunity for a public hearing. The appeal of a Type II decision is heard by the planning commission;

C. Type III Procedure (Quasi-Judicial). Type III decisions are made by the planning commission after a public hearing, with appeals reviewed by the city council. Type III decisions generally use discretionary approval criteria; and

D. Type IV Procedure (Legislative). Type IV procedures apply to legislative matters. Legislative matters involve the creation, revision, or large-scale implementation of public policy (e.g., adoption of land use regulations, zone changes, and comprehensive plan amendments that apply to entire districts). Type IV matters are considered initially by the planning commission with final decisions made by the city council.

Table 18.105.020
Summary of Development Decisions/Permit by Type of Decision-Making Procedure*

Access Permit (Public Street)	Type I	Chapters 18.65, 18.110 and 18.115 PMC
Annexation	Type IV	Comprehensive plan and city/county intergovernmental agreement(s)
Building Permit	N/A	Building code
Code Interpretation	Type II	Chapter 18.140 PMC
Code Amendment	Type IV	Chapter 18.135 PMC
Comprehensive Plan Amendment	Type IV	Comprehensive plan
Conditional Use Permit	Type III	Chapter 18.120 PMC
Floodplain Permit	Type I	Building code (requires sensitive land development permit first)
Home Occupation Permit	Type I	Chapter 18.145 PMC
Master Planned Development	Type III	Chapter 18.125 PMC
Modification to Approval	Type II/III	Chapter 18.130 PMC
Land Use District Map Change	Type IV	Chapter 18.135 PMC
Lot Line Adjustment	Type I	Chapter 18.115 PMC
Nonconforming Use	Type I	Chapter 18.160 PMC
Partition	Type II	Chapter 18.115 PMC
Sensitive Lands Permit	Type III	Chapter 18.85 PMC
Sign Permit	Type I	Chapter 18.95 PMC
Development Review	Type I	Chapter 18.110 PMC, building code
Site Design Review		
Type II	Type II	Chapter 18.110 PMC
Type III	Type III	Chapter 18.110 PMC
Subdivision	Type II/III	Chapter 18.115 PMC
Temporary Use Permit	Type II/III	Chapter 18.145 PMC
Tree Removal	Type I/II	Chapter 18.70 PMC (may require sensitive land development permit first)

Table 18.105.020 (Continued)
Summary of Development Decisions/Permit by Type of Decision-Making Procedure*

Variance		
Class A	Type I	Chapter 18.155 PMC
Class B	Type II	Chapter 18.155 PMC
Class C	Type III	Chapter 18.155 PMC

*Note: The chapters referenced above in the right-hand column describe the types of land uses and development activity that require permits under each type of decision-making procedure.

[Ord. 720 § 7[4.1.2], 2003.]

18.105.030 Type I procedure (ministerial).

A. Application Requirements.

1. Application Forms. Type I applications shall be made on forms provided by the city.

2. Application Requirements. Type I applications shall:

a. Include the information requested on the application form;

b. Address the criteria in sufficient detail for review and action; and

c. Be filed with the required fee.

B. Administrative Decision Requirements. The planning official's decision shall address all of the approval criteria. Based on the criteria and the facts contained within the record, the planning official shall approve, approve with conditions, or deny the requested permit or action. A written record of the decision shall be provided to the applicant and kept on file at City Hall.

C. Final Decision. The decision shall be final on the date it is mailed or otherwise provided to the applicant, whichever occurs first. The decision is the final decision of the city. It cannot be appealed to city officials.

D. Effective Date. The decision is effective the day after it is final. [Ord. 720 § 7[4.1.3], 2003.]

18.105.040 Type II procedure (administrative).

A. Preapplication Conference. A preapplication conference is required for Type II applications. Preapplication conference requirements and procedures are in PMC 18.105.070.

B. Application Requirements.

1. Application Forms. Type II applications shall be made on forms provided by the city.

2. Submittal Information. The application shall:

a. Include the information requested on the application form;

b. Be filed with a narrative statement that explains how the application satisfies each and all of the relevant criteria and standards in sufficient detail for review and decision-making;

c. Be accompanied by the required fee; and

d. Include an impact study for all land division applications. The impact study shall quantify/assess the effect of the development on public facilities and services. The study shall address, at a minimum, the transportation system, including pedestrian ways and bikeways, the drainage system, the parks system, the water system, the sewer system, and the noise impacts of the development. For each public facility system and type of impact, the study shall propose improvements necessary to meet city standards and to minimize the impact of the development on the public at large, public facilities systems, and affected private property users. In situations where this title requires the dedication of real property to the city, the applicant shall either specifically agree to the dedication requirement, or provide evidence that shows that the real property dedication requirement is not roughly proportional to the projected impacts of the development.

C. Notice of Application for Type II Administrative Decision.

1. Before making a Type II administrative decision, the planning official shall mail notice to:

a. All owners of record of real property within 250 feet of the subject site;

b. All city-recognized neighborhood groups or associations whose boundaries include the site;

c. Any person who submits a written request to receive a notice; and

d. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the city. The city may notify other affected agencies, as appropriate, for review of the application.

2. The purpose of the notice is to give nearby property owners and other interested people the opportunity to submit written comments about the application before the Type II decision is made. The goal of this notice is to invite people to participate early in the decision-making process.

3. Notice of a pending Type II administrative decision shall:

a. Provide a 14-day period for submitting written comments before a decision is made on the permit;

b. List the relevant approval criteria by name and number of code sections;

c. State the place, date and time the comments are due, and the person to whom the comments should be addressed;

d. Include the name and telephone number of a contact person regarding the administrative decision;

e. Identify the specific permits or approvals requested;

f. Describe the street address or other easily understandable reference to the location of the site;

g. State that if any person fails to address the relevant approval criteria with enough detail, they may not be able to appeal to the land use board of appeals or circuit court on that issue. Only comments on the relevant approval criteria are considered relevant evidence;

h. State that all evidence relied upon by the planning official to make this decision is in the public record, available for public review. Copies of this evidence can be obtained at a reasonable cost from the city;

i. State that after the comment period closes, the planning official shall issue a Type II administrative decision. The decision shall be mailed to the applicant and to anyone else who submitted written comments or who is otherwise legally entitled to notice; and

j. Contain the following notice: "Notice to mortgagee, lienholder, vendor, or seller: The city of Philomath development code requires that if you receive this notice it shall be promptly forwarded to the purchaser."

D. Administrative Decision Requirements. The planning official shall make Type II written decisions addressing all of the relevant approval criteria and standards. Based upon the criteria and standards, and the facts contained within the record, the planning official shall approve, approve with conditions, or deny the requested permit or action.

E. Notice of Decision.

1. Within five days after the planning official signs the decision, a notice of decision shall be posted on the property and sent by mail to:

a. Any person who submits a written request to receive notice, or provides comments during the application review period;

b. The applicant and all owners or contract purchasers of record of the site which is the subject of the application;

c. Any city-recognized neighborhood group or association whose boundaries include the site;

d. Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the city, and other agencies that were notified or provided comments during the application review period.

2. The planning official shall cause an affidavit of mailing and posting of the notice to be prepared and made a part of the file. The affidavit shall show the date the notice was mailed and posted, and shall demonstrate that the notice was mailed to the people and within the time required by law.

3. The Type II notice of decision shall contain:

a. A description of the applicant's proposal and the city's decision on the proposal (i.e., may be a summary);

b. The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area, where applicable;

c. A statement of where the city's decision can be obtained;

d. The date the decision shall become final, unless appealed;

e. A statement that all persons entitled to notice or who are otherwise adversely affected or aggrieved by the decision may appeal the decision;

f. A statement briefly explaining how an appeal can be filed, the deadline for filing an appeal, and where further information can be obtained concerning the appeal process; and

g. A statement that unless appellant (the person who files the appeal) is the applicant, the hearing on the appeal shall be limited to the specific issues identified in the written comments submitted during the comment period. Additional evidence related to the notice of appeal (see subsection (G)(2)(a) of this section) may be submitted by any person during the appeal hearing, subject to any rules of procedure adopted by the planning commission.

F. Final Decision and Effective Date. A Type II administrative decision is final for purposes of appeal when it is mailed by the city. A Type II administrative decision is effective on the day after the appeal period expires. If an appeal is filed, the decision is effective when the appeal is decided.

G. Appeals. A Type II administrative decision may be appealed to the planning commission as follows:

1. The following people have legal standing to appeal a Type II administrative decision:

a. The applicant; or

b. Any other person who participated in the proceeding by submitting written comments.

2. Appeal Procedure.

a. Any person with standing to appeal, as provided in subsection (G)(1) of this section, may appeal a Type II administrative decision by filing a notice of appeal according to the following procedures:

i. A notice of appeal shall be filed with the planning official within 14 days of the date the notice of decision was mailed;

ii. The notice of appeal shall contain:

(A) An identification of the decision being appealed, including the date of the decision;

(B) A statement demonstrating the person filing the notice of appeal has standing to appeal;

(C) A statement explaining the specific issues raised on appeal;

(D) If the appellant is not the applicant, a statement demonstrating that the appeal issues were raised during the comment period; and

(E) Filing fee.

3. The city shall establish the amount of the filing fee. The maximum fee for an initial hearing shall be the city's cost for preparing and for conducting the hearing, or the statutory maximum, whichever is less.

a. The appeal of a Type II administrative decision by a person with standing shall be limited to the specific issues raised during the written comment period, as provided under subsection (C) of this section, unless the planning commission allows additional evidence or testimony concerning any other relevant issue. The planning commission may allow such additional evidence if it determines that such evidence is necessary to resolve the case. The purpose of this requirement is to limit the scope of Type II administrative appeals by encouraging persons with standing to submit their specific concerns in writing during the comment period. The written comments received during the comment period will usually limit the scope of issues on appeal. Only in extraordinary circumstances should new issues be considered by the planning commission on appeal of a Type II administrative decision.

b. Type III notice and hearing procedures shall be used for all Type II administrative appeals, as provided in PMC 18.105.050(C) through (G).

H. Appeal to City Council. The decision of the planning commission regarding an appeal of a Type II administrative decision is the final decision of the city unless appealed to city council. An appeal to city council shall follow the same notification and hearing procedures as for the planning commission appeal. [Ord. 720 § 7[4.1.4], 2003.]

18.105.050 Type III procedure (quasi-judicial).

A. Preapplication Conference. A preapplication conference is required for all Type III applications. The requirements and procedures for a preapplication conference are described in PMC 18.105.070(C).

B. Application Requirements.

1. Application Forms. Type III applications shall be made on forms provided by the planning official;

2. Content. Type III applications shall:

a. Include the information requested on the application form;

b. Be filed with copies of a narrative statement that explains how the application satisfies each and all of the relevant criteria in sufficient detail for review and action;

c. Be accompanied by the required fee; and

d. Include an impact study for all Type III applications. The impact study shall quantify/assess the effect of the development on public facilities and services. The study shall address, at a minimum, the transportation system, including pedestrian ways and bikeways, the drainage system, the parks system, the water system, the sewer system, and the noise impacts of the development. For each public facility system and type of impact, the study shall propose improvements necessary to meet city standards and to minimize the impact of the development on the public at large, public facilities systems, and affected private property users. In situations where this title requires the dedication of real property to the city, the applicant shall either specifically agree to the dedication requirement, or provide evidence that shows that the real property dedication requirement is not roughly proportional to the projected impacts of the development.

C. Notice of Hearing.

1. Mailed Notice. Notice of a Type III application hearing or Type II appeal hearing shall be given by the planning official in the following manner:

a. At least 20 days before the hearing date, notice shall be mailed to:

i. The applicant and all owners or contract purchasers of record of the property which is the subject of the application;

ii. All property owners of record within 250 feet of the site;

iii. Any governmental agency that has entered into an intergovernmental agreement with the city which includes provision for such notice, or who is otherwise entitled to such notice;

iv. Any neighborhood or community organization recognized by the city council and whose boundaries include the property proposed for development;

v. Any person who submits a written request to receive notice;

vi. For appeals, the appellant and all persons who provided testimony; and

vii. For a land use district change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.

b. The planning official shall have an affidavit of notice be prepared and made a part of the file. The affidavit shall state the date that the notice was posted on the property and mailed to the persons who must receive notice.

c. At least 10 business days before the hearing, the city shall post notice of the hearing on the property per subsection (C)(2) of this section. The applicant shall prepare and submit an affidavit of posting of the notice that shall be made part of the administrative record.

2. Content of Notice. Notice of appeal of a Type II administrative decision or a Type III hearing to be mailed, posted and published per subsection (C)(1) of this section shall contain the following information:

a. The nature of the application and the proposed land use or uses which could be authorized for the property;

b. The applicable criteria and standards from the development code(s) that apply to the application;

c. The street address or other easily understood geographical reference to the subject property;

d. The date, time, and location of the public hearing;

e. A statement that the failure to raise an issue in person, or by letter at the hearing, or failure to provide statements or evidence sufficient to afford the decision-maker an opportunity to respond to the issue, means that an appeal based on that issue cannot be filed with the State Land Use Board of Appeals;

f. The name of a city representative to contact and the telephone number where additional information on the application may be obtained;

g. A statement that a copy of the application, all documents and evidence submitted by or for the applicant, and the applicable criteria and standards can be reviewed at City Hall at no cost and that copies shall be provided at a reasonable cost;

h. A statement that a copy of the city's staff report and recommendation to the planning commission shall be available for review at no cost at least seven days before the hearing, and that a copy shall be provided on request at a reasonable cost;

i. A general explanation of the requirements to submit testimony and the procedure for conducting public hearings; and

j. The following notice: "Notice to mortgagee, lienholder, vendor, or seller: The city of Philomath development code requires that if you receive this notice it shall be promptly forwarded to the purchaser."

D. Conduct of the Public Hearing.

1. At the commencement of the hearing, the planning commission shall state to those in attendance that:

a. The applicable approval criteria and standards that apply to the application or appeal;

b. A statement that testimony and evidence shall concern the approval criteria described in the staff report, or other criteria in the comprehensive plan or land use regulations which the person testifying believes to apply to the decision;

c. A statement that failure to raise an issue with sufficient detail to give the planning commission and the parties an opportunity to respond to the issue, means that no appeal may be made to the State Land Use Board of Appeals on that issue; and

d. Before the conclusion of the initial evidentiary hearing, any participant may ask the planning commission for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing. The planning commission shall grant the request by scheduling a date to finish the hearing (a continuance) per subsection (D)(2) of this section, or by leaving the record open for additional written evidence or testimony per subsection (D)(3) of this section.

2. If the planning commission grants a continuance, the completion of the hearing shall be continued to a date, time, and place at least seven days after the date of the first evidentiary hearing. An opportunity shall be provided at the second hearing for persons to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the second hearing, any person may request, before the conclusion of the second hearing, that the record be left open for at least seven days, so that they can submit additional written evidence or testimony in response to the new written evidence.

3. If the planning commission leaves the record open for additional written evidence or testimony, the record shall be left open for at least seven days after the hearing. Any participant may ask the city in writing for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the planning commission shall reopen the record per subsection (E) of this section;

a. When the planning commission or hearings officer re-opens the record to admit new evidence or testimony, any person may raise new issues which relates to that new evidence or testimony;

b. An extension of the hearing or record granted pursuant to subsection (D) of this section is subject to the limitations of ORS 227.178 (120-day rule), unless the continuance or extension is requested or agreed to by the applicant;

c. If requested by the applicant, the city shall allow the applicant at least seven days after the record is closed to all other persons to submit final written arguments in support of the application, unless the applicant expressly waives this right. The applicant's final submittal shall be part of the record but shall not include any new evidence.

4. The Record.

a. The record shall contain all testimony and evidence that is submitted to the city and the planning commission and not rejected;

b. The planning commission may take official notice of judicially cognizable facts under the applicable law. If the review authority takes official notice, it must announce its intention and allow persons participating in the hearing to present evidence concerning the noticed facts;

c. The review authority shall retain custody of the record until the city issues a final decision.

5. Participants in the appeal of a Type II administrative decision or a Type III hearing are entitled to an impartial review authority as free from potential conflicts of interest and prehearing ex parte contacts (see subsection (D)(6) of this section) as reasonably possible. However, the public

has a countervailing right of free access to public officials. Therefore:

a. At the beginning of the public hearing, planning commission members shall disclose the substance of any prehearing ex parte contacts (as defined in subsection (D)(6) of this section) concerning the application or appeal. He or she shall state whether the contact has impaired their impartiality or their ability to vote on the matter and shall participate or abstain accordingly;

b. A member of the planning commission shall not participate in any proceeding in which they, or any of the following, has a direct or substantial financial interest: Their spouse, brother, sister, child, parent, father-in-law, mother-in-law, partner, any business in which they are then serving or have served within the previous two years, or any business with which they are negotiating for or have an arrangement or understanding concerning prospective partnership or employment. Any actual or potential interest shall be disclosed at the hearing where the action is being taken;

c. Disqualification of a member of the planning commission due to contacts or conflict may be ordered by a majority of the members present and voting. The person who is the subject of the motion may not vote on the motion to disqualify;

d. If all members abstain or are disqualified, those members present who declare their reasons for abstention or disqualification shall be requalified to make a decision;

e. If a member of the planning commission abstains or is disqualified, the city shall provide a substitute in a timely manner subject to the impartiality rules in subsection (D)(6) of this section;

f. Any member of the public may raise conflict of interest issues prior to or during the hearing, to which the members of the planning commission shall reply in accordance with this section.

6. Ex Parte Communications.

a. Members of the planning commission shall not:

i. Communicate, directly or indirectly, with any applicant, appellant, other party to the proceedings, or representative of a party about any issue involved in a hearing, except upon giving notice, per subsection (D)(5) of this section; or

ii. Take official notice of any communication, report, or other materials outside the record prepared by the proponents or opponents in connection with the particular case, unless all participants are given the opportunity to respond to the noticed materials.

b. No decision or action of the planning commission shall be invalid due to ex parte contacts or bias resulting from ex parte contacts, if the person receiving contact:

i. Places in the record the substance of any written or oral ex parte communications concerning the decision or action; and

ii. Makes a public announcement of the content of the communication and of all participants' right to dispute the substance of the communication made. This announcement shall be made at the first hearing following the communication during which action shall be considered or taken on the subject of the communication.

c. A communication between city staff and the planning commission is not considered an ex parte contact.

7. Presenting and Receiving Evidence.

a. The planning commission may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant or personally derogatory testimony or evidence;

b. No oral testimony shall be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing, only as provided in subsection (D) of this section;

c. Members of the planning commission may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is disclosed at the hearing and an opportunity is provided to dispute the evidence. In the alternative, a member of the planning commission may visit the property to familiarize him or herself with the site and surrounding area, but not to independently gather evidence. In the second situation, at the beginning of the hearing, he or she shall disclose the circumstances of the site visit and shall allow all participants to ask about the site visit.

E. The Decision Process.

1. Basis for Decision. Approval or denial of an appeal of a Type II administrative decision or a

Type III application shall be based on standards and criteria in the development code. The standards and criteria shall relate approval or denial of a discretionary development permit application to the development regulations and, when appropriate, to the comprehensive plan for the area in which the development would occur and to the development regulations and comprehensive plan for the city as a whole.

2. Findings and Conclusions. Approval or denial shall be based upon the criteria and standards considered relevant to the decision. The written decision shall explain the relevant criteria and standards, state the facts relied upon in rendering the decision, and justify the decision according to the criteria, standards, and facts.

3. Form of Decision. The planning commission shall issue a final written order containing the findings and conclusions stated in subsection (E)(2) of this section, which either approves, denies, or approves with specific conditions. The planning commission may also issue appropriate intermediate rulings when more than one permit or decision is required.

4. Decision-Making Time Limits. A final order for any Type II administrative appeal or Type III action shall be filed with the planning official within 10 business days after the close of the deliberation.

F. Notice of Decision. Written notice of a Type II administrative appeal decision or a Type III decision shall be mailed to the applicant and to all participants of record within five business days after the planning commission decision. Failure of any person to receive mailed notice shall not invalidate the decision; provided, that a good faith attempt was made to mail the notice.

G. Final Decision and Effective Date. The decision of the planning commission on any Type II appeal or any Type III application is final for purposes of appeal on the date it is mailed by the city. The decision is effective on the day after the appeal period expires. If an appeal is filed, the decision becomes effective on the day after the appeal is decided by the city council. The notification and hearings procedures for Type III applications on appeal to the city council shall be the same as for the initial hearing. [Ord. 720 § 7[4.1.5], 2003.]

18.105.060 Type IV procedure (legislative).

A. Preapplication Conference. A preapplication conference is required for all Type IV applications. The requirements and procedures for a preapplication conference are described in PMC 18.105.070(C).

B. Timing of Requests. The planning official shall review proposed Type IV actions no more than twice yearly, based on the city's approved schedule for such actions.

C. Application Requirements.

1. Application Forms. Type IV applications shall be made on forms provided by the city.

2. Submittal Information. The application shall contain:

a. The information requested on the application form;

b. A map and/or plan addressing the appropriate criteria and standards in sufficient detail for review and decision (as applicable); and

c. The required fee and a letter or narrative statement that explains how the application satisfies each and all of the relevant approval criteria and standards.

D. Notice of Hearing.

1. Required Hearings. A minimum of two hearings, one before the planning commission and one before the city council, are required for all Type IV applications.

2. Notification Requirements. Notice of public hearings for the request shall be given by the planning official in the following manner:

a. At least 20 days, but not more than 40 days, before the date of the first hearing on an ordinance that proposes to amend the comprehensive plan or any element thereof, or to adopt an ordinance that proposes to rezone property, a notice shall be prepared in conformance with ORS 227.175 and mailed to:

i. Each owner whose property would be rezoned in order to implement the ordinance (i.e., owners of property subject to a comprehensive plan amendment shall be notified if a zone change would be required to implement the proposed comprehensive plan amendment);

ii. Any affected governmental agency;

iii. Recognized neighborhood groups or associations affected by the ordinance;

iv. Any person who requests notice in writing; and

v. For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.

b. At least 10 days before the scheduled planning commission public hearing date, and 10 days before the city council hearing date, notice shall be published in a newspaper of general circulation in the city.

c. The planning official shall:

i. For each mailing of notice, file an affidavit of mailing in the record as provided by subsection (D)(2)(a) of this section; and

ii. For each published notice, file in the record the affidavit of publication in a newspaper that is required in subsection (D)(2)(b) of this section.

d. The Department of Land Conservation and Development (DLCD) shall be notified in writing of proposed comprehensive plan and development code amendments at least 35 days before the first public hearing at which public testimony or new evidence will be received.

e. Notice shall also be posted at six public places within the city not less than five days or more than 15 days prior to the date of the public hearings.

f. In those instances where an approved annexation would create an island of unincorporated property, those affected property owners shall be notified of this potential.

3. Content of Notices. The mailed and published notices shall include the following information:

a. The number and title of the file containing the application, and the address and telephone number of the city office where additional information about the application can be obtained;

b. A description of the location of the proposal reasonably calculated to give notice of the location of the geographic area;

c. A description of the proposal in enough detail for people to determine that a change is proposed, and the place where all relevant materials and information may be obtained or reviewed;

d. The time(s), place(s), and date(s) of the public hearing(s); a statement that public oral or written testimony is invited; and a statement that the hearing will be held under this title and rules of procedure adopted by the council and available at City Hall (see subsection (E) of this section); and

e. Each mailed notice required by subsection (D) of this section shall contain the following statement: "Notice to mortgagee, lienholder, vendor, or seller: The city of Philomath development code requires that if you receive this notice it shall be promptly forwarded to the purchaser."

4. Failure to Receive Notice. The failure of any person to receive notice shall not invalidate the action, providing:

a. Personal notice is deemed given where the notice is deposited with the United States Postal Service;

b. Published notice is deemed given on the date it is published.

E. Hearing Process and Procedure.

1. Unless otherwise provided in the rules of procedure adopted by the city council:

a. The presiding officer of the planning commission and of the city council shall have the authority to:

i. Regulate the course, sequence, and decorum of the hearing;

ii. Direct procedural requirements or similar matters; and

iii. Impose reasonable time limits for oral presentations.

b. No person shall address the commission or the council without:

i. Receiving recognition from the presiding officer; and

ii. Stating their full name and residence address.

c. Disruptive conduct such as applause, cheering, or display of signs shall be cause for expulsion of a person or persons from the hearing, termination or continuation of the hearing, or other appropriate action determined by the presiding officer.

2. Unless otherwise provided in the rules of procedures adopted by the council, the presiding officer of the commission and of the council shall conduct the hearing as follows:

a. The presiding officer shall begin the hearing with a statement of the nature of the matter before the body, a general summary of the procedures, a summary of the standards for decision-making, and whether the decision that will be made

is a recommendation to the city council or the final decision of the council;

b. The staff report shall be presented;

c. The public shall be invited to testify;

d. The public hearing may be continued to allow additional testimony or it may be closed; and

e. The body's deliberation may include questions to the staff, comments from the staff, and inquiries directed to any person present.

F. Continuation of the Public Hearing. The planning commission or the city council may continue any hearing, and no additional notice of hearing shall be required if the matter is continued to a specified place, date, and time.

G. Decision-Making Considerations. The recommendation by the planning commission and the decision by the city council shall be based on consideration of the following factors:

1. The Statewide Planning Goals and Guidelines adopted under ORS Chapter 197 (for comprehensive plan amendments only);

2. Comments from any applicable federal or state agencies regarding applicable statutes or regulations;

3. Any applicable intergovernmental agreements; and

4. Any applicable comprehensive plan policies and provisions of this title that implement the comprehensive plan. Compliance with Chapter 18.135 PMC shall be required for comprehensive plan amendments and land use district map and text amendments.

H. Approval Process and Authority.

1. The planning commission shall, after notice and a public hearing, vote on and prepare a recommendation to the city council to approve, approve with modifications, approve with conditions, deny the proposed change, or adopt an alternative.

2. Any member of the planning commission who votes in opposition to the planning commission's majority recommendation may file a written statement of opposition with the planning official before the council public hearing on the proposal. The planning official shall send a copy to each council member and place a copy in the record.

3. If the planning commission fails to adopt a recommendation to approve, approve with modifications, approve with conditions, deny the proposed change, or adopt an alternative proposal within 75 days of its first public hearing on the proposed change, the planning official shall:

a. Report the failure together with the proposed change to the city council; and

b. Provide notice, and put the matter on the city council's agenda, of a public hearing to be held. The commission shall take no further action.

4. The city council shall:

a. Approve, approve with modifications, approve with conditions, deny, or adopt an alternative to an application for legislative change, or remand the application to the planning commission for rehearing and reconsideration on all or part of the application;

b. Consider the recommendation of the planning commission; however, it is not bound by the commission's recommendation; and

c. Act by ordinance, which shall be signed by the mayor after the council's adoption of the ordinance.

I. Vote Required for a Legislative Change.

1. A vote by a majority of the qualified voting members of the planning commission present is required for a recommendation for approval, approval with modifications, approval with conditions, denial or adoption of an alternative.

2. A vote by a majority of the qualified members of the city council present is required to decide any motion made on the proposal.

a. Notice of a Type IV decision shall be mailed to the applicant, all participants of record, and the Department of Land Conservation and Development, within five business days after the city council decision is filed with the planning official. The city shall also provide notice to all persons as required by other applicable laws.

b. A Type IV decision, if approved, shall take effect and shall become final as specified in the enacting ordinance, or if not approved, upon mailing of the notice of decision to the applicant.

J. Record of the Public Hearing.

1. A verbatim record of the proceeding shall be made by stenographic, mechanical, or electronic means. It is not necessary to transcribe an electronic record. The minutes and other evidence presented as a part of the hearing shall be part of the record.

2. All exhibits received and displayed shall be marked to provide identification and shall be part of the record.

3. The official record shall include:

a. All materials considered by the planning commission;

b. All materials submitted by the planning official to the planning commission regarding the application;

c. The verbatim record made by the stenographic, mechanical, or electronic means; the minutes of the hearing; and other documents considered;

d. The final ordinance;

e. All correspondence; and

f. A copy of the notices that were given as required by this chapter. [Ord. 799 § 15, 2015; Ord. 720 § 7[4.1.6], 2003.]

18.105.070 General provisions.

A. One-Hundred-Twenty-Day Rule. The city shall take final action on permit applications that are subject to this chapter, including resolution of all appeals, within 120 days from the date the application is deemed as complete. Any exceptions to this rule shall conform to the provisions of ORS 227.178. (The 120-day rule does not apply to Type IV legislative decisions under ORS 227.178.)

B. Time Computation. In computing any period of time prescribed or allowed by this chapter, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday or legal holiday, including Sunday, in which event, the period runs until the end of the next day which is not a Saturday or legal holiday.

C. Preapplication Conferences.

1. Participants. When a preapplication conference is required, the applicant shall meet with the planning official or his/her designee(s).

2. Information Provided. At such conference, the planning official shall:

a. Cite the comprehensive plan policies and map designations applicable to the proposal;

b. Cite the ordinance provisions, including substantive and procedural requirements applicable to the proposal;

c. Provide available technical data and assistance that will aid the applicant;

d. Identify other governmental policies and regulations that relate to the application; and

e. Reasonably identify other opportunities or constraints concerning the application.

3. Disclaimer. Failure of the planning official or his/her designee to provide any of the information required by this subsection (C) shall not constitute a waiver of any of the standards, criteria or requirements for the application.

4. Changes in the Law. Due to possible changes in federal, state, regional, and local law, the applicant is responsible for ensuring that the application complies with all applicable laws on the day the application is deemed complete.

D. Applications.

1. Initiation of applications:

a. Applications for approval under this chapter may be initiated by:

i. Order of city council;

ii. Resolution of the planning commission;

iii. The planning official;

iv. A record owner of property (person(s) whose name is on the most recently recorded deed) or contract purchaser with written permission from the record owner.

b. Any person authorized to submit an application for approval may be represented by an agent authorized in writing to make the application on their behalf.

2. Consolidated Proceedings. When an applicant applies for more than one type of land use or development permit (e.g., Type II and III) for the same one or more parcels of land, the proceedings shall be consolidated for review and decision.

a. If more than one approval authority would be required to decide on the applications if submitted separately, then the decision shall be made by the approval authority having original jurisdiction over one of the applications in the following order of preference: the council, the commission, or the planning official.

b. When proceedings are consolidated:

i. The notice shall identify each application to be decided;

ii. The decision on a plan map amendment shall precede the decision on a proposed land use district change and other decisions on a proposed development. Similarly, the decision on a zone map amendment shall precede the decision on a proposed development and other actions; and

iii. Separate findings and decisions shall be made on each application.

3. Check for Acceptance and Completeness. In reviewing an application for completeness, the following procedure shall be used:

a. Acceptance. When the city receives an application, the planning official shall immediately determine whether the following essential items are present. If the following items are not present, the application shall not be accepted and shall be immediately returned to the applicant:

i. The required form;

ii. The required fee;

iii. The signature of the applicant on the required form and signed written authorization of the property owner of record if the applicant is not the owner.

b. Completeness.

i. After the application is accepted, the planning official shall review the application for completeness. If the application is incomplete, the planning official shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant 180 days to submit the missing information.

ii. When Application Deemed Complete for Review. In accordance with the application submittal requirements of this chapter, the application shall be deemed complete upon the receipt by the planning official of all required information. The applicant shall have the option of withdrawing the application, or refusing to submit information requested by the planning official in (D)(3)(b)(i) of this section. For the refusal to be valid, the refusal shall be made in writing and received by the planning official no later than 14 days after the date on the city's letter of incompleteness. If the applicant refuses in writing to submit the missing information, the application shall be deemed complete on the thirty-first day after the planning official first accepted the application.

iii. Standards and Criteria that Apply to the Application. Approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first accepted.

4. Changes or Additions to the Application During the Review Period. Once an application is deemed complete:

a. All documents and other evidence relied upon by the applicant shall be submitted to the planning official at least seven days before the notice of action or hearing is mailed, if possible. Documents or other evidence submitted after that date shall be received by the planning official, and transmitted to the planning commission, but may be too late to include with the staff report and evaluation;

b. When documents or other evidence are submitted by the applicant during the review period, but after the application is deemed complete, the assigned review person or body shall determine whether or not the new documents or other evidence submitted by the applicant significantly change the application;

c. If the assigned reviewer determines that the new documents or other evidence significantly change the application, the reviewer shall include a written determination that a significant change in the application has occurred as part of the decision. In the alternate, the reviewer may inform the applicant either in writing, or orally at a public hearing, that such changes may constitute a significant change (see subsection (D)(4)(d) of this section), and allow the applicant to withdraw the new materials submitted, in order to avoid a determination of significant change;

d. If the applicant's new materials are determined to constitute a significant change in an application that was previously deemed complete, the city shall take one of the following actions, at the choice of the applicant:

i. Continue to process the existing application and allow the applicant to submit a new second application with the proposed significant changes. Both the old and the new applications will proceed, but each will be deemed complete on different dates and may therefore be subject to different criteria and standards and different decision dates;

ii. Suspend the existing application and allow the applicant to submit a new application with the proposed significant changes. Before the existing application can be suspended, the applicant must consent in writing to waive the 120-day rule (subsection (A) of this section) on the existing application. If the applicant does not consent, the city shall not select this option;

iii. Reject the new documents or other evidence that has been determined to constitute a significant change, and continue to process the existing application without considering the materials that would constitute a significant change. The city will complete its decision-making process without considering the new evidence;

e. If a new application is submitted by the applicant, that application shall be subject to a separate check for acceptance and completeness and will be subject to the standards and criteria in effect at the time the new application is accepted.

E. Planning Official's Duties. The planning official shall:

1. Prepare application forms based on the criteria and standards in applicable state law, the city's comprehensive plan, and implementing ordinance provisions;

2. Accept all development applications that comply with this section;

3. Prepare a staff report that summarizes the application(s) and applicable decision criteria, and provides findings of conformance and/or nonconformance with the criteria. The staff report should also provide a recommended decision of approval, denial, or approval with specific conditions that ensure conformance with the approval criteria;

4. Prepare a notice of the proposal decision:

a. In the case of an application subject to a Type I or II review process, the planning official shall make the staff report and all case file materials available at the time that the notice of the decision is issued;

b. In the case of an application subject to a hearing (Type III or IV process), the planning official shall make the staff report available to the public at least seven days prior to the scheduled hearing date, and make the case file materials available when notice of the hearing is mailed, as provided by PMC 18.105.040(C) (Type II), 18.105.050(C) (Type III), or 18.105.060(D) (Type IV);

5. Administer the hearings process;

6. File notice of the final decision in the city's records and mail a copy of the notice of the final decision to the applicant, all persons who provided comments or testimony, persons who requested copies of the notice, and any other persons entitled to notice by law;

7. Maintain and preserve the file for each application for the time period required by law. The file shall include, as applicable, a list of persons required to be given notice and a copy of the notice given; the affidavits of notice; the application and all supporting information; the staff report; the final decision including the findings, conclusions and conditions, if any; all correspondence; minutes of any meeting at which the application was considered; and any other exhibit, information or documentation which was considered by the decision-maker(s) on the application; and

8. Administer the appeals and review process.

F. Amended Decision Process.

1. The purpose of an amended decision process is to allow the planning official to correct typographical errors, rectify inadvertent omissions and/or make other minor changes that do not materially alter the decision.

2. The planning official may issue an amended decision after the notice of final decision has been issued, but before the appeal period has expired. If such a decision is amended, the decision shall be issued within 10 business days after the original decision would have become final, but in no event beyond the 120-day period required by state law. A new 10-day appeal period shall begin on the day the amended decision is issued.

3. Notice of an amended decision shall be given using the same mailing and distribution list as for the original decision notice.

4. Modifications to approved plans or conditions of approval requested by the applicant shall follow the procedures contained in Chapter 18.130 PMC. All other requested changes to decisions that do not qualify as minor or major modifications shall follow the appeal process.

G. Resubmittal of Application Following Denial. An application that has been denied, or an application that was denied and, which on appeal or review has not been reversed by a higher authority, may not be resubmitted as the same or a substantially similar proposal for the same land for a period of at least 12 months from the date the final city action is made denying the application unless there is substantial change in the facts or a change in city policy which would change the outcome, as

determined by the planning official. [Ord. 720 § 7[4.1.7], 2003.]

18.105.080 Special procedures.

A. Expedited Land Divisions. An expedited land division (ELD) shall be defined and may be used as in ORS 197.360 which is expressly adopted and incorporated by reference here.

1. Selection. An applicant who wishes to use an ELD procedure for a partition, subdivision or planned development instead of the regular procedure type assigned to it, must request the use of the ELD in writing at the time the application is filed, or forfeit his/her right to use it;

2. Review Procedure. An ELD shall be reviewed in accordance with the procedures in ORS 197.365;

3. Appeal Procedure. An appeal of an ELD shall be in accordance with the procedures in ORS 197.375. [Ord. 720 § 7[4.1.8], 2003.]

18.105.090 Neighborhood meetings.

Applicants are encouraged to meet with adjacent property owners and neighborhood representatives prior to submitting their application in order to solicit input and exchange information about the proposed development. In some cases, the planning official may require the applicant to meet with a city-recognized neighborhood association or group prior to accepting an application as complete. A neighborhood meeting is required for the following types of applications:

A. Subdivisions;

B. Site design review applications within the residential land use district;

C. Other development applications that are likely to have neighborhood or community-wide impacts (e.g., traffic, parking, noise, or similar impacts), as determined by the planning official. [Ord. 720 § 7[4.1.9], 2003.]

Chapter 18.110

DEVELOPMENT REVIEW AND SITE DESIGN REVIEW

Sections:

18.110.010 Purpose.
18.110.020 Applicability.
18.110.030 Development review approval criteria.
18.110.040 Site design review – Application review procedure.
18.110.050 Site design review – Application submission requirements.
18.110.060 Approval criteria.
18.110.070 Bonding and assurances.
18.110.080 Development in accordance with permit approval.

18.110.010 Purpose.

The purpose of this chapter is to:

A. Provide rules, regulations and standards for efficient and effective administration of site development review;

B. Carry out the development pattern and plan of the city and its comprehensive plan policies;

C. Promote the public health, safety and general welfare;

D. Lessen or avoid congestion in the streets, and secure safety from fire, flood, pollution and other dangers;

E. Provide adequate light and air, prevent overcrowding of land, and facilitate adequate provision for transportation, water supply, sewage and drainage;

F. Encourage the conservation of energy resources;

G. Encourage efficient use of land resources, full utilization of urban services, mixed-uses, transportation options, and detailed, human-scaled design. [Ord. 720 § 7[4.2.1], 2003.]

18.110.020 Applicability.

Development review or site design review shall be required for all new developments and modifications of existing developments, except that regular maintenance, repair and replacement of materials (e.g., roof, siding, awnings, etc.), parking resurfacing, and similar maintenance and repair shall be exempt. The criteria for each type of review are as follows:

A. Site Design Review. Site design review is a discretionary review conducted by the planning official without a public hearing. (See Chapter 18.105 PMC for review procedure.) It applies to all developments in the city, except those specifically listed under subsection (B) of this section, Development Review. Site design review ensures compliance with the basic development standards of the land use district (e.g., building setbacks, lot coverage, maximum building height), as well as the more detailed design standards and public improvement requirements in Divisions 2 and 3.

B. Development Review. Development review is a nondiscretionary or ministerial review conducted by the planning official without a public hearing. (See Chapter 18.105 PMC for review procedure.) It is for less complex developments and land uses that do not require site design review approval. Development review is based on clear and objective standards and ensures compliance with the basic development standards of the land use district, such as building setbacks, lot coverage, maximum building height, and similar provisions of Division 2. Development review is required for all of the types of development listed in subsections (B)(1) through (B)(8) of this section, except that all developments in sensitive land areas and historic districts shall also use the development review procedures for those districts:

1. Single-family detached dwelling (including manufactured homes), when required by a condition of land division approval;

2. A single duplex, up to two single-family attached (townhome) units, or a single triplex that is not being reviewed as part of any other development, and accessory parking on the same lot;

3. Building additions of not more than 500 square feet, and minor modifications to development approvals as defined by Chapter 18.130 PMC;

4. Any proposed development that has a valid conditional use permit and is less than 25 percent of the approved floor area. Major modifications exceeding 25 percent of the gross floor area to a development with a conditional use permit shall require review and approval in accordance with Chapter 18.120 PMC, Conditional Use Permits;

5. Home occupation, subject to review under Chapter 18.145 PMC;

6. Temporary use, except that temporary uses shall comply with the procedures and standards for temporary uses as contained in Chapter 18.145 PMC;

7. Accessory structures with less than 1,000 square feet of floor area, including accessory dwellings; and

8. Other developments, when required by a condition of approval. [Ord. 720 § 7[4.2.2], 2003.]

18.110.030 Development review approval criteria.

A. Development review shall be conducted only for the developments listed in PMC 18.110.020(B) and it shall be conducted as a Type I procedure, as described in PMC 18.105.030. Prior to issuance of building permits, the following standards shall be met:

1. The proposed land use is permitted by the underlying land use district (Division 2);

2. The land use, building/yard setback, lot area, lot dimension, density, lot coverage, building height and other applicable standards of the underlying land use district are met (Division 2);

3. All applicable building and fire code standards are met; and

4. The approval shall lapse and a new application shall be required if a building permit has not been issued within one year of site review approval, or if development of the site is in violation of the approved plan or other applicable codes. [Ord. 720 § 7[4.2.3], 2003.]

18.110.040 Site design review – Application review procedure.

A. Site Design Review – Determination of Type II and Type III Applications. Applications for site design review shall be subject to Type II or Type III review, based on the following criteria:

1. Residential buildings with eight or fewer dwelling units shall be reviewed as a Type II application, except when development review is allowed under PMC 18.110.030. Residential buildings with greater than eight units shall be reviewed as a Type III application.

2. Commercial, industrial, public/semi-public, and institutional buildings with 40,000 square feet of gross floor area or smaller shall be reviewed as a Type II application, except when development review is allowed under PMC 18.110.030. Com-

mercial, industrial, public/semi-public, and institutional buildings with greater than 40,000 square feet of gross floor area shall be reviewed as a Type III application.

3. Developments with more than one building (e.g., two duplex buildings or an industrial building with accessory workshop) shall be reviewed as Type II applications, notwithstanding the provisions contained in subsections (A)(1) and (A)(2) of this section.

4. Developments involving the clearing and/or grading of five acres or a larger area shall be reviewed as Type II applications; notwithstanding the provisions contained in subsections (A)(1) through (A)(3) and (A)(5) of this section.

5. All developments in designated sensitive lands and historic overlay districts shall be reviewed as Type II applications. [Ord. 720 § 7[4.2.4], 2003.]

18.110.050 Site design review – Application submission requirements.

All of the following information is required for site design review application submittal:

A. General Submission Requirements. The applicant shall submit an application containing all of the general information required by PMC 18.105.040 (Type II application) or 18.105.050 (Type III application), as applicable. The type of application shall be determined in accordance with PMC 18.110.040(A).

B. Site Design Review Information. An application for site design review shall include the following information, as deemed applicable by the planning official:

1. Site Analysis Map. At a minimum, the site map shall contain the following:

a. The applicant's entire property and the surrounding property to a distance sufficient to determine the location of the development in the city, and the relationship between the proposed development site and adjacent property and development. The property boundaries, dimensions and gross area shall be identified;

b. Topographic contour lines at intervals determined by the city;

c. Identification of slopes greater than 20 percent;

d. The location and width of all public and private streets, drives, sidewalks, pathways, rights-of-way, and easements on the site and adjoining the site;

e. Potential natural hazard areas, including any areas identified as subject to a 100-year flood, areas subject to high water table, and areas mapped by the city, county, or state as having a potential for geologic hazards;

f. Resource areas, including marsh and wetland areas, streams, wildlife habitat identified by the city or any natural resource regulatory agencies as requiring protection:

i. Site features, including existing structures, pavement, large rock outcroppings, areas having unique views, and drainage ways, canals and ditches;

ii. Locally or federally designated historic and cultural resources on the site and adjacent parcels or lots;

iii. The location, size and species of trees and other vegetation having a caliper (diameter) of six inches or greater at DBH;

g. North arrow, scale, names and addresses of all persons listed as owners on the most recently recorded deed;

h. Name and address of project designer, engineer, surveyor, and/or planner, if applicable;

i. Other information, as determined by the planning official. The city may require studies or exhibits prepared by qualified professionals to address specific site features;

j. Proposed Site Plan. The site plan shall contain the following information, if applicable:

i. The proposed development site, including boundaries, dimensions, and gross area;

ii. Features identified on the existing site analysis map, which are proposed to remain on the site.

iii. Features identified on the existing site map, if any, which are proposed to be removed or modified by the development;

iv. The location and dimensions of all proposed public and private streets, drives, rights-of-way, and easements;

v. The location and dimensions of all existing and proposed structures, utilities, pavement and other improvements on the site. Setback dimensions for all existing and proposed buildings shall be provided on the site plan;

vi. The location and dimensions of entrances and exits to the site for vehicular, pedestrian, and bicycle access;

vii. The location and dimensions of all parking and vehicle circulation areas (show striping for parking stalls and wheel stops as applicable);

viii. Pedestrian and bicycle circulation areas, including sidewalks, internal pathways, pathway connections to adjacent properties, and any bicycle lanes or trails;

ix. Loading and service areas for waste disposal, loading and delivery;

x. Outdoor recreation spaces, common areas, plazas, outdoor seating, street furniture, and similar improvements, as applicable;

xi. Location, type, and height of outdoor lighting;

xii. Location of mail boxes, if known;

xiii. Name and address of project designer, if applicable;

xiv. Location of bus stops and other public or private transportation facilities;

xv. Locations, sizes, and types of signs;

xvi. The city may require studies or exhibits prepared by qualified professionals to address specific site features (e.g., traffic, noise, environmental features, natural hazards, etc.), in conformance with this title.

2. Architectural Drawings. Architectural drawings shall be submitted showing:

a. Building elevations with building height and width dimensions;

b. The name of the architect or designer.

3. Preliminary Grading Plan. A preliminary grading plan prepared by a registered engineer shall be required for developments which would result in the grading (cut or fill) of 1,000 cubic yards or greater. The preliminary grading plan shall show the location and extent to which grading will take place, indicating general changes to contour lines, slope ratios, slope stabilization proposals, and location and height of retaining walls, if proposed. Surface water detention and treatment plans may also be required.

4. Landscape Plan. A landscape plan is required and shall show the following:

a. The location and height of existing and proposed fences and other buffering or screening materials;

b. The location of existing and proposed terraces, retaining walls, decks, patios, shelters, and play areas;

c. The location, size, and species of the existing and proposed plant materials (at time of planting);

d. Existing and proposed building and pavement outlines;

e. Specifications for soil at time of planting, irrigation if plantings are not drought-tolerant (may be automatic or other approved method of irrigation) and anticipated planting schedule;

f. Other information as deemed appropriate by the planning official. An arborist's report may be required for sites with mature trees that are protected under Chapter 18.70 PMC.

5. Sign drawings shall be required in conformance with the city's sign code.

6. Copies of all existing and proposed restrictions or covenants.

7. Letter or narrative report documenting compliance with the applicable approval criteria contained in PMC 18.110.060. [Ord. 720 § 7[4.2.5], 2003.]

18.110.060 Approval criteria.

The review authority shall make written findings with respect to all of the following criteria when approving, approving with conditions, or denying an application:

A. The application is complete, as determined in accordance with Chapter 18.105 PMC, Types of Applications and Review Procedures, and PMC 18.110.050.

B. The application complies with the all of the applicable provisions of the underlying land use district (Division 2), including: building and yard setbacks, lot area and dimensions, density and floor area, lot coverage, building height, building orientation, architecture, and other special standards as may be required for certain land uses.

C. The applicant shall be required to upgrade any existing development that does not comply with the applicable land use district standards, in conformance with Chapter 18.160 PMC, Nonconforming Uses and Development.

D. The application complies with the design standards contained in Division 3. All of the following standards shall be met:

1. Chapter 18.65 PMC, Access and Circulation;

2. Chapter 18.70 PMC, Landscaping, Street Trees, Fences and Walls;

3. Chapter 18.75 PMC, Vehicle and Bicycle Parking;

4. Chapter 18.80 PMC, Public Facilities Standards;

5. Chapter 18.85 PMC, Hillside and Erosion Control Overlay;

6. Chapter 18.90 PMC, Other Standards (telecommunications facilities, solid waste storage, environmental performance), as applicable.

E. Conditions required as part of a land division, Chapter 18.115 PMC; conditional use permit, Chapter 18.120 PMC; master planned development, Chapter 18.130 PMC; specific area plan, Chapter 18.55 PMC; or other approval shall be met.

F. Exceptions to criteria in subsections (D)(1) through (D)(6) of this section may be granted only when approved as a variance, Chapter 18.155 PMC. [Ord. 720 § 7[4.2.6], 2003.]

18.110.070 Bonding and assurances.

A. Performance Bonds for Public Improvements. On all projects where public improvements are required, the city shall require a bond in an amount not greater than 125 percent or other adequate assurances as a condition of site development approval in order to guarantee the public improvements.

B. Release of Performance Bonds. The bond or assurance shall be released when the planning official finds the completed project conforms to the site development approval, including all conditions of approval.

C. Completion of Landscape Installation. Landscaping shall be installed prior to issuance of occupancy permits, unless security equal to the cost of the landscaping, as determined by the planning official or a qualified landscape architect, is filed with the city recorder assuring such installation within six months after occupancy. If the installation of the landscaping is not completed within the six-month period, the security may be used by the city to complete the installation. [Ord. 720 § 7[4.2.7], 2003.]

18.110.080 Development in accordance with permit approval.

Development shall not commence until the applicant has received all of the appropriate land use a development approvals (i.e., site design review approval) and building permits. Construction of public improvements shall not commence until the city has approved all required public improvement plans (e.g., utilities, streets, public land dedication, etc.). The city may require the applicant to enter into a development agreement (e.g., for phased developments and developments with required off-site public improvements), and may require bonding or other assurances for improvements, in accordance with PMC 18.110.070. Development review and site design review approvals shall be subject to all of the following standards and limitations:

A. Modifications to Approved Plans and Developments. Minor modifications of an approved plan or existing development, as defined in Chapter 18.130 PMC, shall be processed as a Type I procedure and require only site review. Major modifications, as defined in Chapter 18.130 PMC, shall be processed as a Type II or Type III procedure and shall require site design review. For information on Type I, Type II and Type III procedures, please refer to Chapter 18.105 PMC. For modifications approval criteria, please refer to Chapter 18.130 PMC.

B. Approval Period. Development review and site design review approvals shall be effective for a period of one year from the date of approval. The approval shall lapse if:

1. A building permit has not been issued within a one-year period; or

2. Construction on the site is in violation of the approved plan.

C. Extension. The planning official may, upon written request by the applicant, grant an extension of the approval period not to exceed one year; provided, that:

1. No changes are made on the original approved site design review plan;

2. The applicant can show intent of initiating construction on the site within the one-year extension period;

3. There have been no changes to the applicable code provisions on which the approval was based. If there have been changes to the applicable

code provisions and the expired plan does not comply with those changes, then the extension shall not be granted; in this case, a new site design review shall be required;

4. The applicant demonstrates that failure to obtain building permits and substantially begin construction within one year of site design approval was beyond the applicant's control; and

5. The request is filed prior to the permit expiration.

D. Phased Development. Phasing of development may be approved with the site design review application, subject to the following standards and procedures:

1. A phasing plan shall be submitted with the site design review application.

2. The reviewing authority shall approve a time schedule for developing a site in phases, but in no case shall the total time period for all phases be greater than five years without reapplying for site design review.

3. Approval of a phased site design review proposal requires satisfaction of all of the following criteria:

a. The public facilities required to serve each phase are constructed in conjunction with or prior to each phase;

b. The development and occupancy of any phase dependent on the use of temporary public facilities shall require city council approval. Temporary facilities shall be approved only upon city receipt of bonding or other assurances to cover the cost of required public improvements, in accordance with PMC 18.110.040. A temporary public facility is any facility not constructed to the applicable city or district standard, subject to review by the city engineer;

c. The phased development shall not result in requiring the city or other property owners to construct public facilities that were required as part of the approved development proposal; and

d. An application for phasing may be approved after site design review approval as a modification to the approved plan, in accordance with the procedures for minor modifications (Chapter 18.130 PMC). [Ord. 720 § 7[4.2.8], 2003.]

Chapter 18.115

LAND DIVISIONS AND LOT LINE ADJUSTMENTS

Sections:

18.115.010 Purpose.
18.115.020 General requirements.
18.115.030 Approvals process.
18.115.040 Preliminary plat submission requirements.
18.115.050 Approval criteria – Preliminary plat.
18.115.060 Variances authorized.
18.115.070 Final plat submission requirements and approval criteria.
18.115.080 Public improvements.
18.115.090 Performance guarantee.
18.115.100 Filing and recording.
18.115.110 Replatting and vacation of plats.
18.115.120 Lot line adjustments.

18.115.010 Purpose.

The purpose of this chapter is to:

A. Provide rules, regulations and standards governing the approval of subdivisions, partitions and lot line adjustments;

B. Carry out the city's development pattern, as envisioned by the comprehensive plan;

C. Encourage efficient use of land resources, full utilization of urban services, and transportation options;

D. Promote the public health, safety and general welfare through orderly and efficient urbanization;

E. Lessen or avoid traffic congestion, and secure safety from fire, flood, pollution and other dangers;

F. Provide adequate light and air, prevent overcrowding of land, and facilitate adequate provision for transportation, water supply, sewage and drainage; and

G. Encourage the conservation of energy resources. [Ord. 720 § 7[4.3.100], 2003.]

18.115.020 General requirements.

A. Subdivision and Partition Approval Through Two-Step Process. Applications for subdivision or partition approval shall be processed through a two-step process: the preliminary plat and the final plat.

1. The preliminary plat shall be approved before the final plat can be submitted for approval consideration; and

2. The final plat shall include all conditions of approval of the preliminary plat.

B. Compliance with ORS Chapter 92. All subdivision and partition proposals shall be in conformance to state regulations set forth in ORS Chapter 92, Subdivisions and Partitions.

C. Future Redivision Plan. When subdividing or partitioning tracts into large lots (i.e., greater than two times or 200 percent of the minimum lot size allowed by the underlying land use district), the city may require that the lots be of such size, shape, and orientation as to facilitate future redivision, in accordance with the requirements of the land use district and this title. A redivision plan shall be submitted which identifies:

1. Potential future lot division(s) in conformance with the housing and density standards of Division 2;

2. Potential street right-of-way alignments to serve future development of the property and connect to adjacent properties, including existing or planned rights-of-way;

3. A disclaimer that the plan is a conceptual plan intended to show potential future development. It shall not be binding on the city or property owners, except as may be required through conditions of land division approval. For example, dedication and improvement of rights-of-way within the future plan area may be required to provide needed secondary access and circulation.

D. Lot Size Averaging, Single-family residential lot size may be averaged to allow lots less than the minimum lot size in the residential district, as long as the average area for all lots is not less than allowed by the district. No lot created under this provision shall be less than 80 percent of the minimum lot size allowed in the underlying district.

E. Temporary Sales Office. A temporary sales office in conjunction with a subdivision may be approved as set forth in PMC 18.145.010, Temporary use permits.

F. Minimize Flood Damage. All subdivisions and partitions shall be designed based on the need to minimize the risk of flood damage. No new building lots shall be created entirely within a floodway. All new lots shall be buildable without requiring development within the floodway. Development in a 100-year floodplain shall comply with Federal Emergency Management Agency requirements, including filling to elevate structures above the base flood elevation. The applicant shall be responsible for obtaining such approvals from the appropriate agency before city approval of the final plat.

G. Determination of Base Flood Elevation. Where a development site consists of, is located in, or near areas prone to inundation, and the base flood elevation has not been provided or is not available from another authoritative source, it shall be prepared by a licensed professional engineer or surveyor.

H. Need for Adequate Utilities. All lots created through land division shall have adequate public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to prevent or minimize flood damage to the extent practicable.

I. Need for Adequate Drainage. All subdivision and partition proposals shall have adequate surface water drainage provided to reduce exposure to flood damage. Water quality or quantity control improvements may be required.

J. Floodplain, Park, and Open Space Dedications. Where land filling and/or development is allowed within or adjacent to the 100-year floodplain outside the zero-foot rise floodplain, and the park master plan designates the subject floodplain for park, open space, or trail use, the city may require the dedication of sufficient open land area for a greenway adjoining or within the floodplain. When practicable, this area shall include portions at a suitable elevation for the construction of a pedestrian/bicycle pathway within the floodplain in accordance with the city's adopted trail plan or pedestrian and bikeway plans, as applicable. The city shall evaluate individual development proposals and determine whether the dedication of land is justified based on the development's impact to the park and/or trail system, consistent with Chapter 18.80 PMC, and PMC 18.80.020(D) in particular. [Ord. 737 § 1, 2006; Ord. 720 § 7[4.3.110], 2003.]

18.115.030 Approvals process.

A. Review of Preliminary Plat. Review of a preliminary plat for a partition shall be processed by means of a Type II procedure, as governed by PMC 18.105.040. Preliminary plats for a subdivi-

sion shall be processed with a Type III procedure under PMC 18.105.050. All preliminary plats shall be reviewed using approval criteria contained in PMC 18.115.050. An application for subdivision may be reviewed concurrently with an application for a master planned development under Chapter 18.125 PMC.

B. Review of Final Plat. Review of a final plat for a subdivision or partition shall be processed by means of a Type II procedure under PMC 18.105.040, using the approval criteria in PMC 18.115.070.

C. Preliminary Plat Approval Period. Preliminary plat approval shall be effective for a period of two years from the date of approval, after which time the preliminary plat shall lapse.

D. Modifications and Extensions. The applicant may request changes to the approved preliminary plat or conditions of approval following the procedures and criteria provided in Chapter 18.130 PMC, Modifications to Approved Plans and Conditions of Approval. The planning official may, upon written request by the applicant and payment of the required fee, grant one extension of the approval period not to exceed one year; provided, that:

1. Any changes to the preliminary plat follow the procedures in Chapter 18.130 PMC;

2. The applicant has submitted written intent to file a final plat within the one-year extension period;

3. An extension of time will not prevent the lawful development of abutting properties;

4. There have been no changes to the applicable code provisions on which the approval was based. If such changes have occurred, a new preliminary plat application shall be required; and

5. The extension request is made before expiration of the original approved plan.

E. Phased Development.

1. The city may approve a time schedule for developing a subdivision in phases, but in no case shall the actual construction time period (i.e., for required public improvements, utilities, streets) for any subdivision phase be greater than two years without reapplying for a preliminary plat;

2. The criteria for approving a phased land division proposal are:

a. Public facilities shall be constructed in conjunction with or prior to each phase;

b. The development and occupancy of any phase dependent on the use of temporary public facilities shall require city council approval. Temporary facilities shall be approved only upon city receipt of bonding or other assurances to cover the cost of required permanent public improvements, in accordance with PMC 18.115.090. A temporary public facility is any facility not constructed to the applicable city or district standard;

c. The phased development shall not result in requiring the city or a third party (e.g., owners of lots) to construct public facilities that were required as part of the approved development proposal; and

d. The application for phased development approval shall be reviewed concurrently with the preliminary plat application and the decision may be appealed in the same manner as the preliminary plat. [Ord. 720 § 7[4.3.120], 2003.]

18.115.040 Preliminary plat submission requirements.

A. General Submission Requirements. For Type II partitions, the applicant shall submit an application containing all of the information required for a Type II procedure under PMC 18.105.040. For Type III subdivisions, the application shall contain all of the information required for a Type III procedure under PMC 18.105.050, except as required for master planned neighborhood developments:

1. Master Planned Neighborhood Development. Submission of a master plan shall be required for:

a. Parcels, and development sites with more than one parcel, in the residential district which are 10 acres or larger; and

b. Development sites in the residential district that is planned in accordance with the procedures in Chapter 18.55 PMC, Overlay Districts.

2. The neighborhood master plan shall be approved either prior to, or concurrent with, the preliminary plat application.

B. Preliminary Plat Information. In addition to the general information described in subsection (A) of this section, the preliminary plat application shall consist of drawings and supplementary written material (i.e., on forms and/or in a written narrative) adequate to provide the following information:

1. General Information.

a. Name of subdivision (not required for partitions). This name must not duplicate the name of another subdivision in the county in which it is located (please check with county surveyor);

b. Date, north arrow, and scale of drawing;

c. Location of the development sufficient to define its location in the city, boundaries, and a legal description of the site;

d. Names, addresses and telephone numbers of the owners, designer, and engineer or surveyor if any, and the date of the survey; and

e. Identification of the drawing as a "preliminary plat."

2. Site analysis.

3. Proposed Improvements.

a. Public and private streets, tracts, driveways, open space and park land; location, names, right-of-way dimensions, approximate radius of street curves; and approximate finished street center line grades. All streets and tracts that are being held for private use and all reservations and restrictions relating to such private tracts shall be identified;

b. Easements: location, width and purpose of all easements;

c. Lots and private tracts (e.g., private open space, common area, or street): approximate dimensions, area calculation (e.g., in square feet), and identification numbers for all lots and tracts;

d. Proposed uses of the property, including all areas proposed to be dedicated to the public or reserved as open space for the purpose of surface water management, recreation, or other use;

e. Proposed improvements, as required by Division 3, Design Standards, and timing of improvements (e.g., in the case of streets, sidewalks, street trees, utilities, etc.);

f. The proposed source of domestic water;

g. The proposed method of sewage disposal, and method of surface water drainage and treatment if required;

h. The approximate location and identity of other utilities, including the locations of street lighting fixtures;

i. Proposed railroad crossing or modifications to an existing crossing, if any, and evidence of contact with Oregon Department of Transportation related to proposed railroad crossing(s);

j. Changes to navigable streams or other watercourses. Provision or closure of public access to these areas shall be shown on the preliminary plat, as applicable;

k. Identification of the base flood elevation. Evidence of contact with the Federal Emergency Management Agency to initiate a floodplain map amendment shall be required when development is proposed to modify a designated 100-year floodplain;

l. Evidence of contact with Oregon Department of Transportation (ODOT) for any development requiring access to a highway under the state's jurisdiction; and

m. Evidence of contact with the applicable natural resource regulatory agency(ies) for any development within or adjacent to jurisdictional wetlands and other sensitive lands, as identified in Chapter 18.85 PMC. [Ord. 720 § 7[4.3.130], 2003.]

18.115.050 Approval criteria – Preliminary plat.

A. General Approval Criteria. The city may approve, approve with conditions or deny a preliminary plat based on the following approval criteria:

1. The proposed preliminary plat complies with all of the applicable development code sections and other applicable ordinances and regulations. At a minimum, the provisions of this chapter, and the applicable sections of Chapter 18.30 PMC, Land Use District Administration, and Chapter 18.60 PMC, Design Standards Administration, shall apply. Where a variance is necessary to receive preliminary plat approval, the application shall also comply with the relevant sections of Division 5;

2. The proposed plat name is not already recorded for another subdivision, and satisfies the provisions of ORS Chapter 92;

3. The proposed streets, roads, sidewalks, bicycle lanes, pathways, utilities, and surface water management facilities are laid out so as to conform or transition to the plats of subdivisions and maps of major partitions already approved for adjoining property as to width, general direction and in all other respects. All proposed public improvements and dedications are identified on the preliminary plat; and

4. All proposed private common areas and improvements (e.g., homeowner association property) are identified on the preliminary plat.

B. Housing Density. The subdivision meets the city's housing standards of Division 2.

C. Block and Lot Standards. All proposed blocks (i.e., one or more lots bound by public streets), lots and parcels conform to the specific requirements below:

1. All lots shall comply with the lot area, setback, and dimensional requirements of the applicable land use district (Division 2), and the standards of PMC 18.65.020(J), Street connectivity and formation of blocks required.

2. Setbacks shall be as required by the applicable land use district, Division 2.

3. Each lot shall conform to the standards of Chapter 18.65 PMC, Access and Circulation.

4. Landscape or other screening may be required to maintain privacy for abutting uses. See also, Division 2, Land Use Districts, and Chapter 18.70 PMC, Landscaping, Street Trees, Fences and Walls.

5. In conformance with the Uniform Fire Code, a fire apparatus access drive shall be provided to serve all portions of a building that are located more than 150 feet from a public right-of-way or approved access drive. See also Chapter 18.65 PMC, Access and Circulation.

6. Where a common drive is to be provided to serve more than one lot, a reciprocal easement that will ensure access and maintenance rights shall be recorded with the approved subdivision or partition plat.

D. Conditions of Approval. The city may attach such conditions as are necessary to carry out provisions of this title, and other applicable ordinances and regulations, and may require reserve strips be granted to the city for the purpose of controlling access to adjoining undeveloped properties. See also PMC 18.80.020(D), Conditions of development approval. [Ord. 720 § 7[4.3.140], 2003.]

18.115.060 Variances authorized.

Adjustments to the standards of this chapter shall be processed in accordance with Chapter 18.155 PMC, Variances. Applications for variances shall be submitted at the same time an application for land division or lot line adjustment is submitted. [Ord. 720 § 7[4.3.150], 2003.]

18.115.070 Final plat submission requirements and approval criteria.

A. Submission Requirements. Final plats shall be reviewed and approved by the city prior to recording with Benton County. The applicant shall submit the final plat within two years of the approval of the preliminary plat as provided by PMC 18.115.030. Specific information about the format and size of the plat, number of copies and other detailed information can be obtained from the planning official.

B. Approval Criteria. By means of a Type II procedure, the planning official shall review the final plat and shall approve or deny the final plat based on findings regarding compliance with the following criteria:

1. The final plat complies with the approved preliminary plat, and all conditions of approval have been satisfied;

2. All public improvements required by the preliminary plat have been installed and approved by the public works director. Alternatively, the developer has provided a performance guarantee in accordance with PMC 18.115.090.

3. The streets and roads for public use are dedicated without reservation or restriction other than reversionary rights upon vacation of any such street or road and easements for public utilities;

4. The streets and roads held for private use have been approved by the city as conforming to the preliminary plat;

5. The plat contains a dedication to the public of all public improvements, including but not limited to streets, public pathways and trails, access reserve strips, parks, sewage disposal, storm drainage and water supply systems;

6. The applicant has provided copies of all recorded homeowners association codes, covenants, and restrictions (CC&Rs); deed restrictions; private easements and agreements (e.g., for access, common areas, parking, etc.); and other recorded documents pertaining to common improvements recorded and referenced on the plat;

7. The plat complies with the applicable sections of this title (i.e., there have been no changes in land use or development resulting in a code violation since preliminary plat approval);

8. Certification by the city or service district, as applicable, that water and sanitary sewer service is available to each and every lot depicted on the

plat; or bond, contract or other assurance has been provided by the subdivider to the city that such services will be installed in accordance with Chapter 18.80 PMC, Public Facilities Standards, and the bond requirements of PMC 18.115.090. The amount of the bond, contract or other assurance by the subdivider shall be determined by a registered professional engineer, subject to review and approval by the city;

9. The plat contains an affidavit by the surveyor who surveyed the land, represented on the plat to the effect the land was correctly surveyed and marked with proper monuments as provided by ORS Chapter 92, and indicating the initial point of the survey, and giving the dimensions and kind of such monument, and its reference to some corner established by the U.S. Geological Survey or giving two or more permanent objects for identifying its location. [Ord. 720 § 7[4.3.160], 2003.]

18.115.080 Public improvements.

The following procedures apply to subdivisions and partitions when public improvements are required as a condition of approval:

A. Public Improvements Required. Before city approval is certified on the final plat, all required public improvements shall be installed, inspected, and approved. Alternatively, the subdivider shall provide a performance guarantee, in accordance with PMC 18.115.090. [Ord. 720 § 7[4.3.170], 2003.]

18.115.090 Performance guarantee.

A. Performance Guarantee Required. When a performance guarantee is required under PMC 18.115.080, the subdivider shall file an assurance of performance with the city supported by one of the following:

1. An irrevocable letter of credit executed by a financial institution authorized to transact business in the state of Oregon;

2. A surety bond executed by a surety company authorized to transact business in the state of Oregon which remains in force until the surety company is notified by the city in writing that it may be terminated; or

3. Cash.

B. Determination of Sum. The assurance of performance shall be for a sum determined by the city as required to cover the cost of the improvements and repairs, including related engineering and incidental expenses.

C. Itemized Improvement Estimate. The developer shall furnish to the city an itemized improvement estimate, certified by a registered civil engineer, to assist the city in calculating the amount of the performance assurance.

D. Agreement. An agreement between the city and developer shall be recorded with the final plat that stipulates all of the following:

1. Specifies the period within which all required improvements and repairs shall be completed;

2. A provision that if work is not completed within the period specified, the city may complete the work and recover the full cost and expenses from the applicant;

3. Stipulates the improvement fees and deposits that are required;

4. (Optional.) Provides for the construction of the improvements in stages and for the extension of time under specific conditions therein stated in the contract;

5. The agreement may be prepared by the city, or in a letter prepared by the applicant. It shall not be valid until it is signed and dated by both the applicant and planning official.

E. When Developer Fails to Perform. In the event the developer fails to carry out all provisions of the agreement the city may call on the bond, cash deposit or letter of credit to complete such provisions or for reimbursement.

F. Termination of Performance Guarantee. The developer shall not cause termination of nor allow expiration of the guarantee without having first secured written authorization from the city. [Ord. 720 § 7[4.3.180], 2003.]

18.115.100 Filing and recording.

A. Filing Plat with County. Within 60 days of the city approval of the final plat, the applicant shall submit the final plat to Benton County for signatures of county officials as required by ORS Chapter 92.

B. Proof of Recording. Upon final recording with the county, the applicant shall submit to the city a mylar copy and three paper copies of all sheets of the recorded final plat. This shall occur prior to the issuance of building permits for the newly created lots.

C. Prerequisites to Recording the Plat.

1. No plat shall be recorded unless all ad valorem taxes and all special assessments, fees, or other charges required by law to be placed on the tax roll have been paid in the manner provided by ORS Chapter 92;

2. No plat shall be recorded until it is approved by the county surveyor in the manner provided by ORS Chapter 92. [Ord. 720 § 7[4.3.190], 2003.]

18.115.110 Replatting and vacation of plats.

A. Replatting and Vacations. Any plat or portion thereof may be replatted or vacated upon receiving an application signed by all of the owners as appearing on the deed.

B. Procedure. All applications for a replat or vacation shall be processed in accordance with the procedures and standards for a subdivision or partition (i.e., the same process used to create the plat shall be used to replat or vacate the plat). The same appeal rights provided through the subdivision and partition process shall be afforded to the plat vacation process. (See Chapter 18.105 PMC, Types of Applications and Review Procedures.)

C. Basis for Denial. A replat or vacation application may be denied if it abridges or destroys any public right in any of its public uses, improvements, streets or alleys; or if it fails to meet any applicable criteria.

D. Recording of Vacations. All approved plat vacations shall be recorded in accordance with PMC 18.115.100 and the following procedures:

1. Once recorded, a replat or vacation shall operate to eliminate the force and effect of the plat prior to vacation; and

2. Vacations shall also divest all public rights in the streets, alleys and public grounds, and all dedications laid out or described on the plat.

E. After Sale of Lots. When lots have been sold, the plat may be vacated only in the manner herein, and provided that all of the owners of lots within the platted area consent in writing to the plat vacation.

F. Vacation of Streets. All street vacations shall comply with the procedures and standards set forth in ORS Division 271. [Ord. 720 § 7[4.3.200], 2003.]

18.115.120 Lot line adjustments.

Lot line adjustments include the consolidation of lots, and the modification of lot boundaries, when no new lots are created. The application submission and approvals process is as follows:

A. Submission Requirements. All applications for lot line adjustment shall be made on forms provided by the city and shall include information required for a Type I application, as governed by PMC 18.105.030. The application shall include a preliminary lot line map identifying:

1. All existing and proposed lot lines and dimensions;

2. Footprints and dimensions of existing structures (including accessory structures);

3. Location and dimensions of driveways and public and private streets within or abutting the subject lots;

4. Location of significant vegetation as defined and mapped in PMC 18.70.020(B) and (C);

5. Existing fences and walls; and

6. Any other information deemed necessary by the planning official for ensuring compliance with city codes.

B. Approval Process.

1. Decision-Making Process. Lot line adjustments shall be reviewed by means of a Type I procedure, as governed by PMC 18.105.030, using approval criteria contained in subsection (C) of this section.

2. Time Limit on Approval. The lot line adjustment approval shall be effective for a period of one year from the date of approval, during which time it must be recorded.

3. Lapsing of Approval. The lot line adjustment approval shall lapse if:

a. The lot line adjustment is not recorded within the time limit in subsection (B)(2) of this section;

b. The lot line adjustment has been improperly recorded with Benton County without the satisfactory completion of all conditions attached to the approval; or

c. The final recording is a departure from the approved plan.

C. Approval Criteria. The planning official shall approve or deny a request for a lot line adjustment in writing based on findings that all of the following criteria are satisfied:

1. No additional parcel or lot is created by the lot line adjustment; however, the number of lots or parcels may be reduced;

2. Lot Standards. All lots and parcels comply with the applicable lot standards of the land use district (Division 2) including lot area and dimensions;

3. Access. All lots and parcels comply with the standards or requirements of Chapter 18.65 PMC, Access and Circulation; and

4. Setbacks. The resulting lots, parcels, tracts, and building locations comply with the standards of the land use district (Division 2).

D. Exemptions from Dedications and Improvements. A lot line adjustment is not considered a development action for purposes of determining whether right-of-way dedication or improvement is required.

E. Recording Lot Line Adjustments. The applicant shall submit the copy of the recorded lot line adjustment survey map to the city within 15 days of recording and prior to the issuance of any building permits on the reconfigured lots.

F. Extension. The city shall, upon written request by the applicant and payment of the required fee, grant an extension of the approval period not to exceed one year; provided, that:

1. No changes are made on the original plan as approved by the city;

2. The applicant can show intent of recording the approved partition or lot line adjustment within the one-year extension period;

3. There have been no changes in the applicable code or plan provisions on which the approval was based. In the case where the lot line adjustment conflicts with a code change, the extension shall be denied; and

4. The extension request is made before expiration of the original approved plan. [Ord. 720 § 7[4.3.210], 2003.]

Chapter 18.120

CONDITIONAL USE PERMITS

Sections:

18.120.010 Purpose.
18.120.020 Approvals process.
18.120.030 Application submission requirements.
18.120.040 Criteria, standards and conditions of approval.
18.120.050 Additional development standards for conditional use types.

18.120.010 Purpose.

There are certain uses that, 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" in Division 2, Land Use Districts. The purpose of this chapter is to provide standards and procedures under which a conditional use may be permitted, enlarged or altered if the site is appropriate and if other appropriate conditions of approval can be met. [Ord. 720 § 7[4.4.1], 2003.]

18.120.020 Approvals process.

A. Initial Application. An application for a new conditional use shall be processed as a Type III procedure (PMC 18.105.050). The application shall meet submission requirements in PMC 18.120.030, and the approval criteria contained in PMC 18.120.040.

B. Modification of Approved or Existing Conditional Use. Modifications to approved or existing conditional uses shall be processed in accordance with Chapter 18.130 PMC, Modifications to Approved Plans and Conditions of Approval. [Ord. 720 § 7[4.4.2], 2003.]

18.120.030 Application submission requirements.

In addition to the submission requirements required in Chapter 18.105 PMC, an application for conditional use approval must include the following information (subsections (A) through (H) of this section), as applicable. For a description of each item, please refer to PMC 18.110.050, Site design review – Application submission requirements:

A. Existing site conditions;

B. Site plan;

C. Preliminary grading plan;

D. A landscape plan;

E. Architectural drawings of all structures;

F. Drawings of all proposed signs;

G. A copy of all existing and proposed restrictions or covenants;

H. Narrative report or letter documenting compliance with all applicable approval criteria in PMC 18.120.040. [Ord. 720 § 7[4.4.3], 2003.]

18.120.040 Criteria, standards and conditions of approval.

The city shall approve, approve with conditions, or deny an application for a conditional use or to enlarge or alter a conditional use based on findings of fact with respect to each of the following standards and criteria:

A. Use Criteria.

1. The site size, dimensions, location, topography and access are adequate for the needs of the proposed use, considering the proposed building mass, parking, traffic, noise, vibration, exhaust/emissions, light, glare, erosion, odor, dust, visibility, safety, and aesthetic considerations;

2. The negative impacts of the proposed use on adjacent properties and on the public can be mitigated through application of other code standards, or other reasonable conditions of approval; and

3. All required public facilities have adequate capacity to serve the proposal.

B. Site Design Standards. The criteria for site design review approval (PMC 18.110.060) shall be met.

C. Conditions of Approval. The city may impose conditions that are found necessary to ensure that the use is compatible with other uses in the vicinity, and that the negative impact of the proposed use on the surrounding uses and public facilities is minimized. These conditions include, but are not limited to, the following:

1. Limiting the hours, days, place and/or manner of operation;

2. Requiring site or architectural design features which minimize environmental impacts such as noise, vibration, exhaust/emissions, light, glare, erosion, odor and/or dust;

3. Requiring larger setback areas, lot area, and/or lot depth or width;

4. Limiting the building height, size or lot coverage, and/or location on the site;

5. Designating the size, number, location and/or design of vehicle access points or parking areas;

6. Requiring street right-of-way to be dedicated and street(s), sidewalks, curbs, planting strips, pathways, or trails to be improved;

7. Requiring landscaping, screening, drainage, water quality facilities, and/or improvement of parking and loading areas;

8. Limiting the number, size, location, height and/or lighting of signs;

9. Limiting or setting standards for the location, design, and/or intensity of outdoor lighting;

10. Requiring berms, screening or landscaping and the establishment of standards for their installation and maintenance;

11. Requiring and designating the size, height, location and/or materials for fences;

12. Requiring the protection and preservation of existing trees, soils, vegetation, watercourses, habitat areas, drainage areas, historic resources, cultural resources, and/or sensitive lands (Chapter 18.85 PMC);

13. Requiring the dedication of sufficient land to the public, and/or construction of pedestrian/bicycle pathways in accordance with the adopted plans. [Ord. 737 § 1, 2006; Ord. 720 § 7[4.4.4], 2003.]

18.120.050 Additional development standards for conditional use types.

A. Concurrent Variance Application(s). A conditional use permit shall not grant variances to regulations otherwise prescribed by the development code. Variance application(s) may be filed in conjunction with the conditional use application and both applications may be reviewed at the same hearing.

B. Additional Development Standards. Development standards for specific uses are contained in Division 2, Land Use Districts. [Ord. 720 § 7[4.4.5], 2003.]

Chapter 18.125

MASTER PLANNED DEVELOPMENTS

Sections:

18.125.010 Purpose.
18.125.020 Applicability.
18.125.030 Review and approvals process.
18.125.040 Allowed uses.
18.125.050 Applicability of land use district standards (Division 2).
18.125.060 Applicability of design standards (Division 3).
18.125.070 Overlay zone and concept plan submission.
18.125.080 Overlay zone and concept plan approval criteria.
18.125.090 Administrative procedures.
18.125.100 Detailed development plan submission requirements.
18.125.110 Detailed development plan approval criteria.
18.125.120 Development review and building permit approvals.

18.125.010 Purpose.

A. Purpose. The purposes of this chapter are to:

1. Implement the development standards of Division 2 of this title, by providing a means for master planning large development sites;

2. Encourage innovative planning that results in more mixed-use development, improved protection of open spaces, and greater housing and transportation options;

3. Encourage developments that recognize the relationship between buildings, their use, open space, and transportation options, providing varied opportunities for innovative and diversified living environments;

4. Facilitate the efficient use of land;

5. Promote an economic arrangement of land use, buildings, circulation systems, open space, and utilities;

6. Preserve to the greatest extent possible the existing landscape features and amenities that may not otherwise be protected through conventional development;

7. Encourage energy conservation and improved air and water quality. [Ord. 737 § 1, 2006; Ord. 720 § 7[4.5.100], 2003.]

18.125.020 Applicability.

The master planned development designation is an overlay zone that may be applied over any of the city's land use districts. An applicant may elect to develop a project as a master planned development in compliance with the requirements of this chapter. In addition, the city may require that the following types of development be processed using the provisions of this chapter:

A. Subdivisions required to conform to the master planned neighborhood development standards of PMC 18.35.100. [Ord. 737 § 1, 2006; Ord. 720 § 7[4.5.110], 2003.]

18.125.030 Review and approvals process.

A. Review Steps. There are three required steps to planned development approval:

1. The approval of a planned development overlay zone and concept plan;

2. The approval of a detailed development plan; and

3. The approval of a preliminary subdivision plat(s) and/or site design review application(s).

B. Approval Process.

1. The master planned development (PD) overlay zone and concept plan shall be reviewed together using the Type III procedure in PMC 18.105.050, the submission requirements in PMC 18.125.070, and the approval criteria in PMC 18.125.080.

2. The detailed development plan shall be reviewed using the Type III procedure in PMC 18.105.050, to ensure substantial compliance with the approved concept plan.

3. Preliminary subdivision plats and site design review applications for approved planned developments shall be reviewed using a Type II procedure, as governed by PMC 18.105.040.

4. The steps in subsections (B)(1) through (B)(3) of this section may be combined in any manner, so long as the decision-making sequence follows that in subsection (A) of this section. Notification and hearings may be combined. [Ord. 720 § 7[4.5.120], 2003.]

18.125.040 Allowed uses.

A. Residential District(s). In the residential district the following uses are allowed outright when they are included in an approved master planned development:

1. All uses allowed outright in the underlying land use district (Division 2);

2. Single-family detached and attached residential units;

3. Duplex and triplex residential units;

4. Multifamily residential units;

5. Manufactured homes;

6. Neighborhood commercial uses;

7. Public uses, as determined during master plan review;

8. Indoor recreation facility; athletic club, fitness center, racquetball court, swimming pool, tennis court or similar use;

9. Outdoor recreation facility, golf course, golf driving range, swimming pool, tennis court, or similar use; and

10. Recreational vehicle storage area;

11. Conditional uses shall require a conditional use permit, in accordance with Chapter 18.120 PMC.

B. Commercial Districts. In the commercial district, all of the uses permitted outright in the district are allowed within a master planned development. In addition, the ground-floor restriction on residential uses on individual city blocks shall not apply if ground floor residential uses occupy no more than 50 percent of the ground-floor space in the entire development (i.e., all blocks).

C. Industrial Districts. In industrial districts, a planned development shall contain only those uses allowed outright in the underlying district. [Ord. 720 § 7[4.5.130], 2003.]

18.125.050 Applicability of land use district standards (Division 2).

A. Land Use District Standards. Master planned developments shall conform to the provisions of the underlying land use district, except as modified by this chapter.

B. More Than One Overlay Zone. When more than one overlay zone applies to the development, and standards conflict between the overlay zones, the more restrictive standards shall apply (i.e., those which afford the greatest protection to identified resources and amenities, compatibility between land uses, etc.). [Ord. 720 § 7[4.5.140], 2003.]

18.125.060 Applicability of design standards (Division 3).

The design standards of Division 3 apply to all master planned developments. Variances shall conform to the standards and procedures of Chapter 18.155 PMC, Variances. [Ord. 720 § 7[4.5.150], 2003.]

18.125.070 Overlay zone and concept plan submission.

A. General Submission Requirements. The applicant shall submit an application containing all of the general information required for a Type III procedure, as governed by PMC 18.105.050. In addition, the applicant shall submit the following:

1. A statement of planning objectives to be achieved by the planned development through the particular approach proposed by the applicant. This statement should include a description of the character of the proposed development and the rationale behind the assumptions and choices made by the applicant.

2. A development schedule indicating the approximate dates when construction of the planned development and its various phases are expected to be initiated and completed.

3. A statement of the applicant's intentions with regards to the future selling or leasing of all or portions of the planned development.

4. Narrative report or letter documenting compliance with the applicable approval criteria contained in PMC 18.125.080.

Special studies prepared by qualified professionals may be required by the planning official, planning commission or city council to determine potential traffic, geologic, noise, environmental, natural resource and other impacts, and required mitigation.

B. Additional Information. In addition to the general information described in subsection (A) of this section, the concept plan, data, and narrative shall include the following exhibits and information:

1. Existing conditions map, as defined in PMC 18.110.050, Site design review – Application submission requirements;

2. Conceptual site plan (e.g., general land use, building envelopes, circulation, open space, utility connections, and other information necessary to convey the concept plan);

3. Grading concept (for hillside or sloping properties, or where extensive grading is anticipated);

4. Landscape concept (e.g., shows retention of existing vegetation and general planting areas);

5. Architectural concept (e.g., information sufficient to describe architectural styles, building heights, and general materials);

6. Sign concept (e.g., locations, general size, style and materials of signs);

7. Copy of all existing covenants and restrictions, and general description of proposed restrictions or covenants (e.g., for common areas, access, parking, etc.). [Ord. 720 § 7[4.5.160], 2003.]

18.125.080 Overlay zone and concept plan approval criteria.

The city shall make findings that all of the following criteria are satisfied when approving, or approving with conditions, the overlay zone and concept plan. The city shall make findings that all of the criteria are not satisfied when denying an application:

A. Comprehensive Plan. All relevant provisions of the comprehensive plan are met;

B. Land Division Chapter. All of the requirements for land divisions, as applicable, shall be met (Chapter 18.115 PMC);

C. Division 2 Land Use and Design Standards. All of the land use and design standards contained in Division 2 are met, except as modified in PMC 18.125.050 and the following provisions for density bonuses:

1. Density Bonus. The housing density standards shall be determined based on the densities in Division 2. When allowed by the comprehensive plan, the city may authorize a density bonus above the density allowed by Division 2, as an incentive to increase or enhance open space, protect sensitive lands, provide unique architectural character, and/or accomplish other purposes of the district, as identified in PMC 18.125.010. The density bonus shall not result in the allowable density exceeding 25 percent of the allowable density in Division 2. The criteria in subsections (C)(1)(a) through (C)(1)(d) of this section shall be used in granting density bonuses. The percentage of density bonus granted shall be proportional to the land area used to meet the criteria in subsections (C)(1)(a) through (C)(1)(d) of this section.

a. A maximum of 115 percent of the density allowed by the district may be approved for the provision of public open space, or protection of natural features in common open space;

b. A maximum of 105 percent of the density allowed by the district may be approved for streetscape (e.g., parkways or landscaped boulevard) development; plazas, pathways or other pedestrian amenities; or recreation area development;

c. A maximum of 105 percent of the density allowed by the district may be approved for the protection or enhancement of community views and vistas (e.g., by providing a public view point, parkway, plaza, or open space);

d. A maximum of 115 percent of the density allowed by the district may be approved for development of affordable housing. Affordable housing is defined as housing affordable to households earning 80 percent of the median household income in Benton County, or less. Such households, on average, do not spend more than 30 percent of their income on housing. Housing prices and/or rents shall be limited to that level through deed restriction for up to 10 years.

D. Requirements for Common Open Space. Where common open space is designated, the following standards apply:

1. The open space area shall be shown on the final plan and recorded with the final plat or separate instrument; and

2. The open space shall be conveyed in accordance with one of the following methods:

a. By dedication to the city as publicly owned and maintained open space. Open space proposed for dedication to the city must be acceptable to the city council with regard to the size, shape, location, improvement, environmental condition (i.e., the applicant may be required to provide a level one environmental assessment), and budgetary and maintenance abilities;

b. By leasing or conveying title (including beneficial ownership) to a corporation, home association or other legal entity, with the city retaining the development rights to the property. The terms of such lease or other instrument of conveyance must include provisions (e.g., maintenance, property tax payment, etc.) suitable to the city. [Ord. 720 § 7[4.5.170], 2003.]

18.125.090 Administrative procedures.

A. Land Use District Map Designation. After a planned development overlay zone has been approved, the land use district map shall be amended in accordance with Chapter 18.130 PMC, to indicate the approved planned development designation for the subject development site. The approval of the planned development overlay zone shall conform to the same time frames as established for all subdivisions.

B. Time Limit on Filing of Detailed Development Plan. Within one and one-half years after the date of approval of the concept plan, the applicant or his or her successor shall prepare and file with the city a detailed development plan, in conformance with PMC 18.125.100.

C. Extension. The city shall, upon written request by the applicant and payment of the required fee, grant an extension of the approval period not to exceed one year; provided, that:

1. No changes have been made on the original conceptual development plan as approved;

2. The applicant can show intent of applying for detailed development plan review within the one-year extension period;

3. There have been no changes to the applicable comprehensive plan policies and ordinance provisions on which the approval was based; and

4. The extension request is made before expiration of the original approval period. [Ord. 720 § 7[4.5.180], 2003.]

18.125.100 Detailed development plan submission requirements.

The contents of the detailed development plan shall be determined based on the conditions of approval for the concept plan. At a minimum, the detailed development plan shall identify the final proposed location of all lots, tracts, parcels, open space, rights-of-way, building envelopes and other features, prior to approval of a development permit (e.g., land division, development review, site design review, etc.). The detailed development plan shall be reviewed using a Type III procedure. [Ord. 720 § 7[4.5.190], 2003.]

18.125.110 Detailed development plan approval criteria.

The city shall approve the detailed development plan upon finding that the final plan conforms with the concept plan and required conditions of approval. Minor changes to the approved concept plan may be approved with the detailed plan, consistent with the following criteria:

A. Increased residential densities by no more than 10 percent, when such change conforms to the comprehensive plan;

B. A reduction to the amount of open space or landscaping by no more than 10 percent;

C. An increase in lot coverage by buildings or changes in the amount of parking by no more than 10 percent. Greater changes require a major modification (Chapter 18.130 PMC);

D. No change in land use shall be permitted without approving a major modification to the concept plan (Chapter 18.130 PMC);

E. No change which places development within environmentally sensitive areas or areas subject to a potential hazard shall be approved without approving a major modification to the concept plan (Chapter 18.130 PMC); and

F. The location of buildings, proposed streets, parking lot configuration, utility easements, landscaping or other site improvements shall be as proposed on the concept plan, or as modified through conditions of approval. Changes in the location or alignment of these features by more than 30 feet shall require approval of a major modification, in conformance with Chapter 18.130 PMC.

G. Other substantial modifications made to the approved conceptual development plan shall require approval of either a minor modification or major modification, in conformance with Chapter 18.130 PMC. [Ord. 720 § 7[4.5.200], 2003.]

18.125.120 Development review and building permit approvals.

Upon receiving detailed development plan approval, the applicant may apply for development review (e.g., land division, development review, site design review, etc.). Building permits shall not be issued until all required development permits have been issued and appeal periods have ended.

A. Chapter 18.110 PMC applies to developments requiring development review or site design review.

B. Chapter 18.115 PMC applies to land divisions.

C. Streamlined Review Option. Preliminary subdivision plats and site design review applica-

tions for approved master planned developments may be reviewed using a Type II procedure, rather than the conventional Type III procedure. This shall be the applicant's option. The variation from the standard procedures of Chapter 18.110 PMC, Development Review and Site Design Review, and Chapter 18.115 PMC, Land Divisions and Lot Line Adjustments, is intended to streamline review of projects that have received planned development approvals, since those projects have previously been subject to public review and hearings. [Ord. 720 § 7[4.5.210], 2003.]

Chapter 18.130

MODIFICATIONS TO APPROVED PLANS AND CONDITIONS OF APPROVAL

Sections:

18.130.010 Purpose.
18.130.020 Applicability.
18.130.030 Major modifications.
18.130.040 Minor modifications.

18.130.010 Purpose.

The purpose of this chapter is to provide an efficient process for modifying land use decisions and approved development plans, in recognition of the cost and complexity of land development and the need to conserve city resources. [Ord. 720 § 7[4.6.1], 2003.]

18.130.020 Applicability.

A. This chapter applies to all development applications approved through the provisions of Division 4, including:

1. Site design review approvals;
2. Subdivisions, partitions, and lot line adjustments;
3. Conditional use permits;
4. Master planned developments; and
5. Conditions of approval on any of the above application types.

B. This chapter does not apply to land use district changes, text amendments, temporary use permits, or other permits. [Ord. 720 § 7[4.6.2], 2003.]

18.130.030 Major modifications.

A. Major Modification Defined. The planning official shall determine that a major modification(s) is required if one or more of the changes listed below are proposed:

1. A change in land use;
2. An increase in the number of dwelling units;
3. A change in the type and/or location of access ways, drives or parking areas that affect off-site traffic;
4. An increase in the floor area proposed for nonresidential use by more than 10 percent where previously specified;

5. A reduction of more than 10 percent of the area reserved for common open space and/or usable open space;

6. A reduction to specified setback requirements by more than 10 percent, or to a degree that the minimum setback standards of the land use district cannot be met; or

7. Changes similar to those listed in subsections (A)(1) through (A)(6) of this section, which are likely to have an adverse impact on adjoining properties.

B. Major Modification Request. An applicant may request a major modification as follows:

1. When the planning official determines that the proposed modification is a major modification, the applicant shall submit an application for the major modification.

2. The modification request shall be subject to the same review procedure (Type I, II, or III) and approval criteria used for the initial project approval, however, the review shall be limited in scope to the modification request. For example, a request to modify a parking lot shall require site design review only for the proposed parking lot and any changes to associated pathways, lighting and landscaping. Notice shall be provided in accordance with the applicable review procedure. [Ord. 720 § 7[4.6.3], 2003.]

18.130.040 Minor modifications.

A. Minor Modification Defined. Any modification to a land use decision or approved development plan which is not within the description of a major modification as provided in PMC 18.130.030, or provides for reduced impacts, shall be considered a minor modification.

B. Minor Modification Request. An application for approval of a minor modification is reviewed using Type II procedure in PMC 18.105.040. A minor modification shall be approved, approved with conditions, or denied by the planning official based on written findings on the following criteria:

1. The proposed development is in compliance with all applicable requirements of the development code; and

2. The modification is not a major modification as defined in PMC 18.130.030. [Ord. 734 § 1, 2005; Ord. 720 § 7[4.6.4], 2003.]

Chapter 18.135

ANNEXATION

Sections:

18.135.010 Purpose.
18.135.020 Legislative amendments.
18.135.030 Annexations.
18.135.040 Record of amendments.
18.135.050 Transportation planning rule compliance.

18.135.010 Purpose.

The purpose of this chapter is to provide standards and procedures for legislative and quasi-judicial amendments to this title and the land use district map. These will be referred to as "map and text amendments." Amendments may be necessary from time to time to reflect changing community conditions, needs and desires, to correct mistakes, or to address changes in the law. [Ord. 720 § 7[4.7.1], 2003.]

18.135.020 Legislative amendments.

Legislative amendments are policy decisions made by city council. They are reviewed using the Type IV procedure in PMC 18.105.060. [Ord. 720 § 7[4.7.2], 2003.]

18.135.030 Annexations.

A. Process. The process of annexation of land to the city allows for orderly expansion of the city and for the adequate provision of public facilities and services. The City Charter requires that annexation, and/or extension of city services beyond city boundaries may only be approved by a majority vote of the electorate.

B. Annexation Filing Deadlines.

1. Unless mandated by state law, all annexation requests approved by the city council shall be referred to the voters in accordance with the requirements of this title and ORS Division 222.

2. Annexation elections are scheduled for May and November. Applications for annexation shall be filed with the planning department before 5:00 p.m. on the second Thursday of November for a ballot election in May and before 5:00 p.m. on the second Thursday of May for a ballot election in November.

C. Requirements for Applications. Applications to the city for initiation of annexation proceedings made by individuals shall be on forms provided by the planning official and shall include the following material:

1. Written consent to the annexation signed by the requisite number of affected property owners, electors, or both, to dispense with an election within the territory to be annexed, as provided by state law.

2. A legal description of the property to be annexed.

3. A map of the area to be annexed, including adjacent city territory.

4. Sufficient information for city staff to allow for the completion of an impact analysis on existing water supply and facilities, and existing sewer, drainage, transportation, park and school facilities. In addition, city staff shall project what additional facilities will be required to serve the development described in the conceptual plan and, if necessary, how such facilities will need to be phased n over time. The application shall provide evidence of the need of the proposal by citing data and statistics that support the annexation.

5. A statement outlining the method and source of financing required to provide additional facilities.

6. A conceptual development plan shall be provided by the applicant and shall include the following:

i. A scale drawing of the site showing: the types and intensities of proposed development; existing streets that will be used for access and those streets that may need to be developed for access; the location of watercourses and other significant natural features; location of existing and necessary extension of public water, sanitary sewer, and storm drain facilities; and, existing uses and zoning on adjacent properties.

ii. The conceptual development plan shall contain sufficient detail on the actual or proposed site uses to allow city staff the opportunity to analyze the development's demand for new public infrastructure systems, as well as assess the impact on existing systems. Staff may develop hypothetical site design scenarios or model development at densities other than those proposed by the applicant to assess impact on public infrastructure.

7. A statement indicating the type and nature of any comprehensive plan text or map amendments or zoning ordinance or zoning map amendments that may be required to complete the planned development.

8. The application fee established by the city. In addition to the application fee, the planning official shall require a deposit that is adequate to cover any and all election costs.

D. Review of Application. City staff shall review the application and it shall be deemed complete if it contains the material required under this section.

E. Staff Evaluation. City Staff shall prepare a report that considers information submitted by the applicant as well as other sources of relevant information including but not limited to master utility plans, regional and local transportation system plans, and population studies. The report shall include an updated land use inventory with the development status of all other similarly zoned properties. From this information, a finding shall be made that the city has the capacity to provide required utility services in light of commitments already made to other approved developments. The staff evaluation of the application will endeavor to present a report for the public and review bodies that factually evaluate the proposal and may or may not agree with response information provided by the applicant. An annexation request including a future residential development shall be evaluated by city staff at its maximum possible density.

F. Review Criteria. Annexations shall be reviewed by city staff to assure consistency with the purposes of this chapter, policies of the comprehensive plan, and other applicable policies and standards adopted by the city council and state of Oregon. In addition, a finding shall be made that the city is capable of providing services to the subject property(ies) commensurate with the needs of existing approved and proposed developments.

G. Concurrent Application for comprehensive plan map or zoning map amendments. Application(s) for comprehensive plan map and/or zoning map amendments may be made concurrent with an application for annexation of territory. City approval of map amendments may be made contingent upon approval of the annexation.

H. Annexation by Consent of All Owners of Land. When all the owners of land in the territory

to be annexed consent in writing to the annexation of their land in the territory and file a statement of their consent with the city, the following procedures shall apply:

1. The planning commission shall hold at least one public hearing on the annexation request.

2. Application for said annexation must be filed, with payment of the appropriate fee, not less than 30 days prior to the date of the public hearing.

3. Notice of the public hearing shall be published in a newspaper of general circulation in the city not less than five days or more than 15 days prior to the date of the public hearing. Notice shall also be posted at six public places within the city not less than five days or more than 15 days prior to the date of the public hearing.

4. Written notice of a requested annexation shall be mailed to all owners of the property not less than 20 days prior to the date of the hearing. If the property to be annexed is less than five acres, notice shall be mailed to all owners within 200 feet of the exterior boundary of the subject property. If the property to be annexed is greater than five acres, notice shall be mailed to all owners within 400 feet of the exterior boundary of the subject property. In those instances where an approved annexation would create an island of unincorporated property, those affected property owners shall be notified of this potential.

5. The public hearing shall be conducted according to the requirements established for Type IV applications.

6. Should the public hearing be continued to a specific date by oral pronouncement prior to the closing of such hearing, and such pronouncement shall serve as sufficient notice of such continuance to all applicants, adverse parties, and interested persons.

7. Within 45 days following the public hearing, unless a continuance is announced, the commission shall make specific findings of fact. Based on the findings, the commission shall render a decision which shall recommend either that the application be approved and submitted to the voters at the next available election according to the requirements above, or be denied.

a. If the commission recommends that the application be granted and set for the election, the commission shall transmit to the council a copy of the application, a scale drawing of the site, the minutes of the public hearing, a tape recording of the meeting, the decision and findings of the commission, and any other materials deemed necessary for a decision by the council.

b. If the commission recommends that the application be denied, no further proceedings shall be held by either the commission or council, unless an appeal of the commission's decision is filed by the applicant or by an interested party within 15 calendar days of the commission's decision.

8. Upon receipt of the commission's recommendation of approval, the council shall call for a public hearing on the proposed subject to the notice requirements for a Type IV application.

9. In the event of an appeal of a planning commission decision, the council shall hold a public hearing following the procedures in a Type IV application.

I. Annexation by Non-Unanimous Triple Majority Consent Petition. When more than half, but not all, of the owners of land in the territory to be annexed who also own more than half of the land in the contiguous territory and of real property therein representing more than half of the assessed value of all real property in the contiguous territory consent in writing to the annexation of their land in the territory, the following procedures shall apply:

1. The planning commission shall hold at least one public hearing on the annexation request.

2. Application for the annexation must be filed, with payment of the appropriate fee, not less than 30 days prior to the date of the public hearing.

3. Notice of the public hearing shall be published in a newspaper of general circulation in the city not less than five days or more than 15 days prior to the date of the public hearing. Notice shall also be posted at six public places within the city not less than five days or more than 15 days prior to the date of the public hearing.

4. Written notice of a requested change shall be mailed to all owners of the property not less than 20 days prior to the date of the hearing. If the property to be annexed is less than five acres, notice shall be mailed to all owners within 200 feet of the exterior boundary of the subject property. If the property to be annexed is greater than five acres, notice shall be mailed to all owners within 400 feet of the exterior boundary of the subject property. In those instances where an approved annexation would create an island of unincorporated property,

those affected property owners shall be notified of this potential.

5. The public hearing shall be conducted according to the requirements established for a Type IV application.

6. Should the public hearing be continued to a specific date by oral pronouncement prior to the close of such hearing, and such pronouncement shall serve as sufficient notice of such continuance to all applicants, adverse parties, and interested persons.

7. Within 45 days following the public hearing, unless a continuance is announced, the commission shall make specific findings of fact. Based on the findings, the commission shall render a decision that shall recommend either that the application be approved and submitted to the voters at the next available election according to the requirements of subsection (H)(7)(b) of this section, or denied.

8. If the commission recommends that the application be granted and set for the election, the commission shall transmit to the council a copy of the application, a scale drawing of the site, the minutes of the public hearing, a tape recording of the meeting, the decision and findings of the commission, and any other materials deemed necessary for a decision by the council.

9. If the commission recommends that the application be denied, no further proceedings shall be held by either the commission or council, unless an appeal of the commission's decision is filed by the applicant or by an interested party within 15 calendar days of the commission's decision.

10. Upon receipt of the commission's recommendation of approval, the council shall call for a public hearing on the proposed subject to the notice requirements stated for a Type IV application.

11. In the event of an appeal of a planning commission decision, the council shall hold a public hearing following the procedures for a Type IV application.

J. Findings and Decision. In the event the city council holds a public hearing on an annexation request, the city council may adopt the planning commission findings for approval or denial of the annexation, supplement the record as appropriate in the circumstances, or reject the findings of the planning commission and adopt new findings.

K. Health Hazard Annexation. The city shall annex those areas constituting a health hazard in accordance with Oregon Revised Statutes, taking into consideration the ability of the city to provide necessary services. Annexation of areas constituting a health hazard are not subject to voter approval.

L. Island Annexation. The following policies are adopted for island annexations:

1. The city shall attempt not to create islands of unincorporated territory within the corporate limits of the city. If such an island is created, the city council may set a time for a public hearing for the purpose of determining if the annexation should be submitted to the voters.

2. Written notice to property owners by first class mail will be made prior to annexation to allow for property owner responses. Failure to receive notice shall not in any way invalidate the annexation procedure that may be subsequently undertaken by the city.

3. Annexation of an island shall be by ordinance, subject to approval by the voting majority of the electorate.

M. Comprehensive Plan and Zoning Designations.

1. The comprehensive plan map designation of the property at the time of annexation shall be used as a criterion to determine whether or not the proposed request complies with the Philomath comprehensive plan. A redesignation of the comprehensive plan map may be requested concurrent with annexation. The proposed redesignation shall then be used to determine compliance with the Philomath comprehensive plan.

2. Simultaneous application for annexation and a zone change is allowed; provided, that the zone change ordinance does not take effect until and unless the property is properly annexed to the city and incorporated within the city limits.

N. Information on Proposed Annexation. The city newsletter shall be used to present an applicant's conceptual plan along with a summary of the city staff's analysis of the development's impact on public infrastructure. Other information to be presented shall include a vicinity map, size of the property, its current zoning and zoning upon annexation, a description of any comprehensive plan text or map amendment or zoning ordinance text or map amendment that is required and any

other information that may assist in the explanation of the proposal. Annexation information in the city newsletter and on the election ballot shall include the following disclaimer statement:

> The conceptual plan associated with this annexation request may change. Any development proposal on this property shall require review and approval by the planning commission at a public hearing. Any future owner of this property who may propose a different development plan must pass through the same plan review process and public hearing. The city is not speaking in favor or against this conceptual plan.

Annexation requests submitted by the city are not required to contain a disclaimer statement.

O. Election Procedures.

1. Pursuant to ORS 222.130(1), the statement of chief purpose in the ballot title for a proposal for annexation shall contain a general description of the boundaries of each territory proposed to be annexed. The description shall use streets and other generally recognized features. Notwithstanding ORS 250.035, the statement of chief purpose shall not exceed 150 words.

2. Pursuant to ORS 222.130(2), the notice of an annexation election shall be given as provided in ORS 254.095 and 254.205, except that in addition the notice shall contain a map indicating the boundaries of each territory proposed to be annexed.

3. Pursuant to ORS 222.111(7), two or more proposals for annexation of territory may be voted upon simultaneously; however, each proposal shall be stated separately on the ballot and voted on separately.

P. Setting of Boundaries and Proclamation of Annexation. If the annexation is approved, the city council, by resolution or ordinance, shall set the final boundaries of the area to be annexed by a legal description and proclaim the annexation (ORS 222.170(3)).

Q. Submission of Annexation Reports. The city shall report all changes in the boundaries of the city to the county clerk, county assessor, and the state of Oregon as required by Oregon Revised Statutes.

R. Exceptions. The city council may authorize an exception to any of the requirements of this section. An exception shall require a favorable vote of six or more council members and findings that indicate the basis for the exception. Any exception so approved shall not be in violation of state law or any applicable provisions of the City Charter.

S. Zoning of Annexed Areas. The city council shall designate all areas annexed to the city with a zone or zones. The city council shall provide notice in accordance with a Type IV application and conduct a public hearing prior to designating city zoning for annexed property. Designation of areas annexed by the city shall be subject to one of the following procedures:

1. If the proposed zoning designation corresponds to the comprehensive plan map designation for the property being annexed, the city council shall conduct a public hearing on the proposed zoning designation for the affected property. Notice for the hearing shall be provided for in accordance with a Type IV application, except all published and mailed notice shall be provided 20 days in advance of the hearing. Following the public hearing, the city council shall adopt an ordinance that assigns the zoning designation for the affected property.

2. If the proposed zoning designation does not correspond to the comprehensive plan map designation for the property being annexed, the proposal shall be reviewed by the planning commission as a comprehensive plan map amendment and zoning map designation pursuant to a Type IV application. Following planning commission review, the city council shall conduct a public hearing. Following the hearing, the city shall adopt an ordinance that designates the zoning of the affected properties, adopts approved amendments to the comprehensive plan map, if necessary.

3. The city may approve a comprehensive plan map amendment and/or zone designation for property prior to annexation and may specify that the plan map amendment and zone designation shall not become final unless the property is annexed to the city within a specified time. [Ord. 720 § 7[4.7.3], 2003.]

18.135.040 Record of amendments.

The planning official shall maintain a record of amendments to the text of this title and the land use districts map in a format convenient for public use. [Ord. 720 § 7[4.7.4], 2003.]

18.135.050 Transportation planning rule compliance.

A. When a development application includes a proposed comprehensive plan amendment or land use district change, the proposal shall be reviewed to determine whether it significantly affects a transportation facility, in accordance with OAR 660-012-0060. Significant means the proposal would:

1. Change the functional classification of an existing or planned transportation facility. This would occur, for example, when a proposal causes future traffic to exceed the capacity of "collector" street classification, requiring a change in the classification to an "arterial" street, as identified by the comprehensive plan/transportation system plan; or

2. Change the standards implementing a functional classification system; or

3. Allow types or levels of land use that would result in levels of travel or access what are inconsistent with the functional classification of a transportation facility; or

4. Reduce the level of service of the facility below the minimum acceptable level identified in the comprehensive plan/transportation system plan.

B. Amendments to the comprehensive plan and land use standards which significantly affect a transportation facility shall assure that allowed land uses are consistent with the function, capacity, and level of service of the facility identified in the transportation system plan. This shall be accomplished by one of the following:

1. Limiting allowed land uses to be consistent with the planned function of the transportation facility;

2. Amending the transportation system plan to ensure that existing, improved, or new transportation facilities are adequate to support the proposed land uses consistent with the requirement of the transportation planning rule; or

3. Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes of transportation. [Ord. 720 § 7[4.7.5], 2003.]

Chapter 18.140

CODE INTERPRETATIONS

Sections:

18.140.010 Purpose.
18.140.020 Code interpretation procedure.

18.140.010 Purpose.

Some terms or phrases within the code may have two or more reasonable meanings. This section provides a process for resolving differences in the interpretation of the code text. [Ord. 720 § 7[4.8.1], 2003.]

18.140.020 Code interpretation procedure.

A. Requests. A request for a code interpretation shall be made in writing to the planning official, specifying the issue in question and providing the applicant's understanding of that provision.

B. Decision to Issue Interpretation. The planning official shall have the authority to review a request for an interpretation. The planning official shall advise the requester in writing within 14 days after the request is made on whether or not the city will issue the requested interpretation.

C. Declining Requests for Interpretations. The planning official is authorized to issue or decline to issue a requested interpretation. Basis for declining may include, but is not limited to, a finding that the subject code section affords only one reasonable interpretation and the interpretation does not support the request. The planning official's decision to issue or decline to issue an interpretation is final when the decision is mailed to the party requesting the interpretation and the decision is not subject to any further local appeal.

D. Written Interpretation. If the planning official decides to issue an interpretation, it shall be issued in writing and shall be mailed or delivered to the person requesting the interpretation and any other person who specifically requested a copy of the interpretation. The written interpretation shall be issued within 14 days after the city advises the requester that an interpretation shall be issued. The decision shall become effective 14 days later, unless an appeal is filed in accordance with subsections (E) through (G) of this section.

E. Appeals. The applicant and any party who received such notice or who participated in the pro-

ceedings through the submission of written or verbal evidence of an interpretation may appeal the interpretation to the planning commission within 14 days after the interpretation was mailed or delivered to the applicant. The appeal may be initiated by filing a notice of appeal with the planning official on appropriate form and payment of the applicable fee.

F. Appeal Procedure. City council shall hear all appeals of a planning commission interpretation as a Type III action pursuant to PMC 18.105.050, except that written notice of the hearing shall be provided to the applicant, any other party who has filed a notice of appeal, and any other person who requested notice.

G. Final Decision/Effective Date. The decision of the city council on an appeal of an interpretation shall be final and effective when it is mailed to the applicant. If an appeal of the city council's decision is filed, the decision remains effective unless or until it is modified by the land use board of appeals or a court of competent jurisdiction.

H. Interpretations on File. The planning official shall keep on file a record of all code interpretations. [Ord. 720 § 7[4.8.2], 2003.]

Chapter 18.145

MISCELLANEOUS PERMITS

Sections:

18.145.010 Temporary use permits.
18.145.020 Home occupation permits.

18.145.010 Temporary use permits.

Temporary uses are characterized by their short-term or seasonal nature and by the fact that permanent improvements are not made to the site. Temporary uses include, but are not limited to: construction trailers, leasing offices, temporary carnivals and fairs, parking lot sales, retail warehouse sales, and seasonal sales such as Christmas tree sales and vegetable stands. Three types of temporary uses require permit approval (See subsections (A) through (C) of this section):

A. Seasonal and Special Events. These types of uses occur only once in a calendar year and for no longer a period than 30 days. Using the Type II procedure under PMC 18.105.040, the city shall approve, approve with conditions or deny a temporary use permit based on findings that all of the following criteria are satisfied:

1. The use is permitted in the underlying land use district and does not violate any conditions of approval for the property (e.g., prior development permit approval);

2. The applicant has proof of the property owner's permission to place the use on his/her property;

3. No parking will be utilized by customers and employees of the temporary use which is needed by the property owner to meet their minimum parking requirement under Chapter 18.75 PMC, Vehicle and Bicycle Parking;

4. The use provides adequate vision clearance, as required by PMC 18.65.020, and shall not obstruct pedestrian access on public streets;

5. Ingress and egress are safe and adequate when combined with the other uses of the property; as required by PMC 18.65.020, Vehicular access and circulation;

6. The use does not create adverse off-site impacts including vehicle traffic, noise, odors, vibrations, glare or lights that affect an adjoining use in a manner which other uses allowed outright in the district do not affect the adjoining use; and

7. The use is adequately served by sewer or septic system and water, if applicable. (The applicant shall be responsible for obtaining any related permits.)

B. Temporary Sales Office or Model Home. Using a Type II procedure under PMC 18.105.040, the city may approve, approve with conditions or deny an application for the use of any real property within the city as a temporary sales office, offices for the purpose of facilitating the sale of real property, or model home in any subdivision or tract of land within the city, but for no other purpose, based on the following criteria:

1. Temporary Sales Office.

a. The temporary sales office shall be located within the boundaries of the subdivision or tract of land in which the real property is to be sold; and

b. The property to be used for a temporary sales office shall not be permanently improved for that purpose.

2. Model House.

a. The model house shall be located within the boundaries of the subdivision or tract of land where the property to be sold is situated; and

b. The model house shall be designed as a permanent structure that meets all relevant requirements of this title.

C. Temporary Building. Using a Type II procedure, as governed by PMC 18.105.040, the city may approve, approve with conditions or deny an application for a temporary trailer or prefabricated building for use on any real commercial or industrial property within the city as a temporary commercial or industrial office or space associated with the primary use on the property, but for no other purpose, based on following criteria:

1. The temporary trailer or building shall be located within the boundaries of the parcel of land on which it is located;

2. The primary use on the property to be used for a temporary trailer is already developed;

3. Ingress and egress are safe and adequate when combined with the other uses of the property; as required by PMC 18.65.020, Vehicular access and circulation;

4. There is adequate parking for the customers or users of the temporary use as required by Chapter 18.75 PMC, Bicycle and Vehicle Parking.

5. The use will not result in vehicular congestion on streets;

6. The use will pose no hazard to pedestrians in the area of the use;

7. The use does not create adverse off-site impacts including vehicle traffic, noise, odors, vibrations, glare or lights that affect an adjoining use in a manner which other uses allowed outright in the district do not affect the adjoining use; and

8. The building complies with applicable building codes;

9. The use can be adequately served by sewer or septic system and water, if applicable. (The applicant shall be responsible for obtaining any related permits); and

10. The length of time that the temporary building will be used does not exceed six months. When a temporary building exceeds this time frame, the applicant shall be required to remove the building, or renew the temporary use permit. [Ord. 720 § 7[4.9.1], 2003.]

18.145.020 Home occupation permits.

The purpose of this section is to encourage those who are engaged in small commercial ventures that could not necessarily be sustained if it were necessary to lease commercial quarters or which, by the nature of the venture, are appropriate in scale and impact to be operated within a residence. Home occupations are encouraged for their contribution in reducing the number of vehicle trips often generated by conventional businesses. They are permitted by right in all residential dwellings, subject to the following standards:

A. Appearance of Residence.

1. The home occupation shall be restricted to lawfully built enclosed structures and be conducted in such a manner as not to give an outward appearance of a business.

2. The home occupation shall not result in any structural alterations or additions to a structure that will change its primary use or building code occupancy classification.

3. The home occupation shall not violate any conditions of development approval (i.e., prior development permit approval).

4. No products and or equipment produced or used by the home occupation may be displayed to be visible from outside any structure.

B. Storage.

1. Outside storage, visible from the public right-of-way or adjacent properties, is prohibited.

2. On-site storage of hazardous materials (including toxic, explosive, noxious, combustible or flammable) beyond those normally incidental to residential use is prohibited.

3. Storage of inventory or products and all other equipment, fixtures, and activities associated with the home occupation shall be allowed in any structure.

C. Employees.

1. Other than family members residing within the dwelling located on the home occupation site, there shall be no more than one full-time equivalent employee at the home occupation site at any given time. As used in this chapter, the term "home occupation site" means the lot on which the home occupation is conducted.

2. Additional individuals may be employed by or associated with the home occupation, so long as they do not report to work or pick up/deliver at the home.

3. The home occupation site shall not be used as a headquarters for the assembly of employees for instruction or other purposes, including dispatch to other locations.

D. Advertising and Signs. Signs shall comply with PMC 18.95.030. In no case shall a sign exceed the residential district standards.

E. Vehicles, Parking and Traffic.

1. One commercially licensed vehicle associated with the home occupation is allowed at the home occupation site. It shall be of a size that would not overhang into the public right-of-way when parked in the driveway or other location on the home occupation site.

2. There shall be no more than three commercial vehicle deliveries to or from the home occupation site daily. There shall be no commercial vehicle deliveries during the hours of 10:00 p.m. to 7:00 a.m.

3. There shall be no more than one client or customer vehicle at any one time and no more than eight per day at the home occupation site.

F. Business Hours. There shall be no restriction on business hours, except that clients or customers are permitted at the home occupation from 7:00 a.m. to 10:00 p.m. only, subject subsections (A) and (E) of this section.

G. Prohibited Home Occupation Uses.

1. Any activity that produces radio or TV 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.

2. Any activity involving on-site retail sales is prohibited, except that the sale of items that are incidental to a permitted home occupation is allowed. For example, the sale of lesson books or sheet music from music teachers, art or craft supplies from arts or crafts instructors, computer software from computer consultants, and similar incidental items for sale by home business are allowed subject to subsections (A) through (F) of this section.

3. Any uses described in this section or uses with similar objectionable impacts because of motor vehicle traffic, noise, glare, odor, dust, smoke or vibration, such as, but not limited to:

a. Ambulance service;

b. Animal hospital, veterinary services, kennels or animal boarding;

c. Auto and other vehicle repair, including auto painting;

d. Repair, reconditioning or storage of motorized vehicles, boats, recreational vehicles, airplanes or large equipment on-site;

H. Enforcement. The planning official or designee may visit and inspect the site of home occupations in accordance with this chapter periodically to insure compliance with all applicable regulations, during normal business hours, and with reasonable notice. Code violations shall be processed in accordance with Chapter 18.20 PMC, Enforcement. [Ord. 737 § 1, 2006; Ord. 734 § 1, 2005; Ord. 720 § 7[4.9.2], 2003.]

Division 5. Exceptions to Code Standards

Chapter 18.150

INTRODUCTION

Sections:
18.150.010 Introduction.

18.150.010 Introduction.

This division provides standards and procedures for variances and nonconforming situations (i.e., existing uses or development that do not comply with the code). This title cannot provide standards to fit every potential development situation. The city's varied geography, and complexities of land development, require flexibility. Division 5 provides that flexibility, while maintaining the purposes and intent of the code. The variance procedures provide relief from specific code provisions when they have the unintended effect of preventing reasonable development in conformance with all other codes. The standards for nonconforming uses and development are intended to provide some relief from code requirements for older developments that do not comply. [Ord. 720 § 7[5.0], 2003.]

Chapter 18.155

VARIANCES

Sections:
18.155.010 Purpose.
18.155.020 Class A variances.
18.155.030 Class B variances.
18.155.040 Class C variance.
18.155.050 Variance application and appeals.

18.155.010 Purpose.

The purpose of this chapter is to provide flexibility to development standards, in recognition of the complexity and wide variation of site development opportunities and constraints. The variance procedures are intended to provide flexibility while ensuring that the purpose of each development standard is met. Because some variances are granted using "clear and objective standards," they can be granted by means of a Type I procedure. Other variances, as identified below, require a Type II or III procedure because they involve discretionary decision-making. [Ord. 720 § 7[5.1.1], 2003.]

18.155.020 Class A variances.

A. Class A Variances. The following variances are reviewed using a Type II procedure, as governed by Chapter 18.105 PMC, except notice shall be provided abutting property owners, using the approval criteria in subsection (B) of this section:

1. Front Yard Setbacks. Up to a 10 percent change to the front yard setback standard in the land use district.

2. Interior Setbacks. Up to a 10 percent reduction of the dimensional standards for the side and rear yard setbacks required in the base land use district.

3. Lot Coverage. Up to 10 percent increase of the maximum lot coverage required in the base zone.

4. Landscape Area. Up to 10 percent reduction in landscape area (overall area or interior parking lot landscape area).

B. Class A Variance Approval Criteria. A Class A variance shall be granted if the applicant demonstrates compliance with all of the following criteria:

1. There is no opposition from adjacent property owners.

2. The variance requested is required due to the lot configuration, or other conditions of the site;

3. The variance does not result in the removal of trees, or it is proposed in order to preserve trees, if trees are present in the development area;

4. The variance will not result in violation(s) of Division 3, or other design standards. [Ord. 720 § 7[5.1.2], 2003.]

18.155.030 Class B variances.

A. Class B Variances. Due to their discretionary nature, the following types of variances shall be reviewed using a Type II procedure, in accordance with Chapter 18.105 PMC:

1. Variance to Minimum Housing Density Standard (Division 2). The city may approve a variance after finding that the minimum housing density provided in Division 2 cannot be achieved due to physical constraints that limit the division of land or site development. "Physical constraint" means steep topography, sensitive lands (Chapter 18.55 PMC), unusual parcel configuration, or a similar constraint. The variances approved shall be the minimum variance necessary to address the specific physical constraint on the development.

2. Variance to Vehicular Access and Circulation Standards (Chapter 18.65 PMC). Where vehicular access and circulation cannot be reasonably designed to conform to code standards within a particular parcel, shared access with an adjoining property shall be considered. If shared access in conjunction with another parcel is not feasible, the city may grant a variance to the access requirements after finding the following:

a. There is not adequate physical space for shared access, or the owners of abutting properties do not agree to execute a joint access easement;

b. There are no other alternative access points on the street in question or from another street;

c. The access separation requirements cannot be met;

d. The request is the minimum adjustment required to provide adequate access;

e. The approved access or access approved with conditions will result in a safe access; and

f. The visual clearance requirements of Chapter 18.65 PMC will be met.

3. Variances to Street Tree Requirements (Chapter 18.70 PMC). The city may approve, approve with conditions, or deny a request for a variance to the street tree requirements in Chapter 18.70 PMC, after finding the following:

a. Installation of the tree would interfere with existing utility lines;

b. The tree would cause visual clearance problems; or

c. There is not adequate space in which to plant a street tree; and

d. Replacement landscaping is provided elsewhere on the site (e.g., parking lot area trees).

4. Variance to Parking Standards (Chapter 18.75 PMC).

a. The city may approve variances to the minimum or maximum standards for off-street parking in PMC 18.75.010 upon finding the following:

i. The individual characteristics of the use at that location require more or less parking than is generally required for a use of this type and intensity;

ii. The need for additional parking cannot reasonably be met through provision of on-street parking or shared parking with adjacent or nearby uses; and

iii. All other parking design and building orientation standards are met, in conformance with the standards in Divisions 2 and 3.

b. The city may approve a reduction of required bicycle parking per PMC 18.75.020, if the applicant can demonstrate that the proposed use by its nature would be reasonably anticipated to generate a lesser need for bicycle parking.

c. The city may allow a reduction in the amount of vehicle stacking area required in for drive-through facilities if such a reduction is deemed appropriate after analysis of the size and location of the development, limited services available and other pertinent factors.

5. Variance to Maximum or Minimum Yard Setbacks to Reduce Tree Removal or Impacts to Wetlands (Division 2 and Chapter 18.70 PMC). The city may grant a variance to the applicable setback requirements of this title for the purpose of preserving a tree or trees on the site of proposed development or avoiding wetland impacts. Modifi-

cation shall not be more than is necessary for the preservation of trees on the site.

6. Variances to Transportation Improvement Requirements (PMC 18.80.020). The city may approve, approve with conditions, or deny a variance to the transportation improvement standards of PMC 18.80.020, based on the criteria for granting variances provided in PMC 18.80.020(B). When the provisions of that chapter cannot support a variance request, then the request shall be reviewed as a Class C variance.

7. Extension of Nonconforming Structure. Where a nonconforming structure exists, such nonconformity may be extended, upon finding the following:

a. The extension complies with all applicable fire and life safety codes;

b. The extension will not adversely impact adjacent property; and

c. The extension does not create any additional nonconformities. [Ord. 720 § 7[5.1.3], 2003.]

18.155.040 Class C variance.

A. Purpose. The purpose of this section is to provide standards for variances that exceed the Class A and Class B variance criteria in PMC 18.155.020 and 18.155.030. Class C variances may be granted if the applicant shows that, owing to special and unusual circumstances related to a specific property, the literal application of the standards of the applicable land use district would create a hardship to development which is peculiar to the lot size or shape, topography, sensitive lands (Chapter 18.55 PMC), or other similar circumstances related to the property over which the applicant has no control, and which are not applicable to other properties in the vicinity (e.g., the same land use district); except that no variances to "permitted uses" shall be granted.

B. Applicability.

1. The variance standards are intended to apply to individual platted and recorded lots only.

2. An applicant who proposes to vary a specification standard for lots yet to be created through a subdivision process may not utilize the Class C variance procedure.

3. A variance shall not be approved which would vary the "permitted uses" of a land use district (Division 2).

C. Approvals Process and Criteria.

1. Class C variances shall be processed using a Type III procedure, as governed by PMC 18.105.050, using the approval criteria in subsection (C)(2) of this section. In addition to the application requirements contained in PMC 18.105.050, the applicant shall provide a written narrative or letter describing his/her reasoning for the variance, why it is required, alternatives considered, and compliance with the criteria in subsection (C)(2) of this section.

2. The city shall approve, approve with conditions, or deny an application for a variance based on finding that all of the following criteria are satisfied:

a. The proposed variance will not be materially detrimental to the purposes of this title, to any other applicable policies and standards, and to other properties in the same land use district or vicinity;

b. A hardship to development exists which is peculiar to the lot size or shape, topography, sensitive lands (Chapter 18.55 PMC), or other similar circumstances related to the property over which the applicant has no control, and which are not applicable to other properties in the vicinity (e.g., the same land use district);

c. The use proposed will be the same as permitted under this title and city standards will be maintained to the greatest extent that is reasonably possible while permitting reasonable economic use of the land;

d. Existing physical and natural systems, such as but not limited to traffic, drainage, natural resources, and parks will not be adversely affected any more than would occur if the development occurred as specified by the subject code standard;

e. The hardship is not self-imposed; and

f. The variance requested is the minimum variance that would alleviate the hardship. [Ord. 720 § 7[5.1.4], 2003.]

18.155.050 Variance application and appeals.

The variance application shall conform to the requirements for Type I, II, or III applications (PMC 18.105.030, 18.105.040 and 18.105.050), as applicable. In addition, the applicant shall provide a narrative or letter explaining the reason for his/her request, alternatives considered, and why the subject standard cannot be met without the

variance. Appeals to variance decisions shall be processed in accordance with the provisions of Chapter 18.105 PMC. [Ord. 720 § 7[5.1.5], 2003.]

Chapter 18.160

NONCONFORMING USES AND DEVELOPMENTS

Sections:

18.160.010 Nonconforming uses.
18.160.020 Nonconforming structure.
18.160.030 Residential exemptions.

18.160.010 Nonconforming uses.

It is the intent of this section to permit pre-existing structures and uses that do not conform to the standards of this title to continue and to expand under certain conditions. A nonconforming structure is a structure that complied with existing laws when it was built, but does not conform to current height, setback or other property development standards. A nonconforming use is a use that complied with existing laws at the time it was established, but no longer is a permitted use. A use that is currently listed as a conditional use, for which no conditional use permit has been granted is also deemed a nonconforming use. Where at the time of adoption of this title a use of land or structure exists which would not be permitted by the regulations imposed by this title and was lawful at the time it was established, the use may be continued as long as it remains otherwise lawful, provided:

A. Expansion of Use Prohibited. No such nonconforming use is enlarged, increased or extended to occupy a greater area of land or space than was occupied at the effective date of adoption or amendment of this title. No additional structure, building or sign shall be constructed on the lot in connection with such nonconforming use of land;

B. Location. No such nonconforming use shall be moved in whole or in part to any portion of the lot other than that occupied by such use at the effective date of adoption or amendment of this title;

C. Discontinuation or Abandonment. The nonconforming use of land is not discontinued for any reason for a period of more than six months. For purposes of calculating the six-month period, a use is discontinued or abandoned upon the occurrence of the first of any of the following events:

1. On the date when the use of land is physically vacated;

2. On the date the use ceases to be actively involved in the sale of merchandise or the provision of services;

3. On the date of termination of any lease or contract under which the nonconforming use has occupied the land; or

4. On the date a request for final reading of water and power meters is made to the applicable utility districts.

D. Application of Code Criteria and Standards. If the use is discontinued or abandoned for any reason for a period of more than six months, any subsequent use of land shall conform to the applicable standards and criteria specified by this title for the land use district in which such land is located;

E. Restoration of Abandoned Nonconforming Use. The planning commission may permit the restoration of a use for which the structure was originally designed or similar thereto, through the conditional use Type III process.

1. When reviewing any request to alter or restore a nonconforming use, in addition to the conditional use criteria, it shall be determined that all of the following are found to exist:

a. The nature and character of the proposed use are substantially the same as that for which the structure was originally designed;

b. There is no material difference in the quality, character, or degree of use; and

c. The proposed use will not prove materially adverse to surrounding properties. [Ord. 720 § 7[5.2.1], 2003.]

18.160.020 Nonconforming structure.

Where a structure exists at the effective date of adoption or amendment of this title that could not be built under the terms of this title by reason of restrictions on lot area, lot coverage, height, yard, equipment, its location on the lot or other requirements concerning the structure; and the structure was lawful when constructed, the structure may remain on the site so long as it remains otherwise lawful, subject to the following provisions:

A. No such nonconforming structure may be enlarged or altered in a way that increases its nonconformity, but any structure or portion thereof may be enlarged or altered in a way that satisfies the current requirements of the development code or will decrease its nonconformity;

B. Should such nonconforming structure or nonconforming portion of structure be destroyed by any means to an extent more than 50 percent of its current value as assessed by the Benton County assessor, it shall be reconstructed only in conformity with the development code; and

C. Should such structure be moved for any reason and by any distance, it shall thereafter conform to the regulations of the development code;

D. A nonconforming structure due to setbacks may be extended along that line of the, upon written concurrence of the property owner adjacent to the nonconformity. In no instance may the degree of nonconformity be increased without a city approval via a Type II variance. [Ord. 720 § 7[5.2.2], 2003.]

18.160.030 Residential exemptions.

It is recognized that residential uses of property or development, while nonconforming will not generally have a deleterious affect on surrounding properties. Furthermore, the strict adherence to eliminate nonconforming single-family residential structures would likely work a hardship on many individuals living in dwellings that are nonconforming. Therefore, the following exemptions are provided for single-family residential structures.

A. In any industrial or commercial zone a nonconforming dwelling may be altered or expanded provided the construction and siting complies with the property development and building code standards of the underlying zone.

B. Any nonconforming dwelling that is destroyed or damaged to any extent may be replaced provided the owner has applied for a building permit within six months of such destruction or damage.

C. Any nonconforming dwelling that is not occupied for any length of time shall be allowed to be continued as residential use. [Ord. 720 § 7[5.2.3], 2003.]

ORDINANCE TABLE

1	Licensing of theaters and shows (Repealed by 738)
2	Construction of sidewalks, curbs (Repealed by 209)
3	Fire limit established (Repealed by 23, 286)
4	Prohibits building barns, sheds on street line (Repealed by 286)
5	Building permits (Repealed by 83)
6	Prohibits staking of animals on streets, alleys (Repealed by 17)
7	Prohibits sale of certain items on Sunday (Repealed by 82)
8	Segregation of city funds (Repealed by 33)
9	Loafing of minors (Repealed by 82)
10	Street improvement (Special)
11	Construction of sidewalks, curbs (Repealed by 209)
12	Licensing of billiards, pool (Repealed by 321)
13	Fixes the recorder's salary (Repealed by 538)
14	Salary of the marshall (Repealed by 538)
15	Licensing of billiards, pool (Repealed by 321, 329)
16	Oregon Power Co. contract (Special)
17	Regulation of alley, street, sidewalk use (Repealed by 321)
18	Regulation of bicycles (Repealed by 321)
19	Street improvements (Special)
20	Charter amendment, special election (Charter)
21	Prohibition of exploding, detonating devices (Repealed by 321)
22	Street repairs (Special)
23	Salary of city treasurer (Repealed by 321)
24	Street repairs (Special)
25	Street repairs (Special)
26	Presentation of bills (Repealed by 82)
27	Street repairs (Special)
28	Licensing theaters, etc. (Repealed by 738)
29	Satisfies liens by sale of real property (Special)
30	Drunkenness, disorderly conduct (Repealed by 99)
31	Street repairs (Special)
32	Repeals Ord. 7, sales on Sundays (Vetoed)
33	Use of alleys, streets, sidewalks (Repealed by 321)
34	Street repairs (Special)
35	Construction of wooden sidewalks (Repealed by 209)
36	Wooden sidewalks (Repealed by 209)
37	Peddling (Repealed by 530)
38	Traffic control, speed law (Repealed by 321)
39	Use of sidewalks for parking (Repealed by 321)
40	Trespass (Repealed by 82)
41	Oregon Power contract (Special)
42	Construction of sidewalks (Repealed by 29)
43	Charter amendment (Charter)
44	Segregation of funds (Repealed by 82)
45	Overloads prohibited on streets (Repealed by 82)
46	Street improvements (Special)
47	Street improvements (Special)
48	Initiative and referendum (Repealed by 101)
49	Special election for new charter (Special)
50	Street repair (Special)
51	Refunds bonds (Special)
52	Billiards, pool, games of chance (Repealed by 84)
53	Refunds bonds (Special)
54	Billiards, etc. (Repealed by 84)
55	Street repairs (Special)
56	Street improvement (Special)
57	Rebate on street improvement (Special)
58	Traffic control, speed (Repealed by 82)
59	Assessment for wooden sidewalk (Special)
60	Fire chief and fire protection (Repealed by 330)
61	Drunkenness, disorderly conduct (Repealed by 99)
62	Possession of liquor prohibited (Repealed by 82)
63	Charter amendment changing corporate limits of city (Charter)
64	Sidewalk assessment (Special)
65	Sidewalk assessment (Special)

66	Regulation of trees, shrubs, vines, bushes (Repealed by 98)
67	Wooden sidewalks (Repealed by 209)
68	Livestock grazing on street or alley (Repealed by 321)
68a	Assessment of wooden sidewalk (Special)
68b	Assessment of wooden sidewalk (Special)
69	Soil, rocks in ditch or drain (Repealed by 321)
70	Fire limit (Repealed by 134 and 286)
71	Sewer bonds (Special)
72	Assessment of wooden sidewalk (Special)
73	Sewer drain (Repealed by 321)
74	Public auction for sale of property (Special)
75	Signs along street regulated (Repealed by 321)
76	Special election for construction of City Hall (Special)
77	Bicycles (Repealed by 321)
78	Licensing of pinball machines (Repealed by 84)
79	Construction of City Hall (Special)
80	Bonds for construction of City Hall (Special)
81	Parking regulation and crosswalks (Repealed by 321)
82	Repeals Ords. 7, 9, 26, 40, 44, 45, 58 and 62 (Repealer)
83	Building regulations (Repealed by 286)
84	Regulation of pinball machines, etc.; repeals Ords. 52, 54 and 78 (Repealed by 321)
85	Salary of city recorder (Repealed by 538)
86	Salary of city marshall and street supervisor (Special)
87	Changes street name, Myrtle and Alice (Special)
88	Misdemeanors and penalties (Repealed by 321)
89	Garbage franchise (Special)
90	Coast telephone franchise (Repealed by 211)
91	Mt. States power franchise (Special)
92	Numbering system for buildings (Repealed by 148)
93	Property purchase for Albertsen (Special)
94	Bonds for fire fighting equipment (Special)
95	Increasing numbers of councilmen (later declared void) (Repealed by 321)
96	Street vacation (Special)
97	Special election for annexation (Special)
98	Nuisance defined and prohibited (Repealed by 331)
99	Public peace, safety, morals (Repealed by 312)
100	Traffic control (Repealed by 168)
101	Initiative and referendum (Repealed by 750)
102	Special election for sewer bonds (Special)
103	Sale of sewer bonds (Special)
104	Prohibits hogs or goats (Repealed by 321)
105	City of Corvallis water franchise (Special)
106	Construction of sewers (Special)
107	Construction of sewer treatment plant (Special)
108	Regulation of keeping animals and fowl (Repealed by 574)
109	Rats (8.10)
110	Probable cost of sewer (Special)
111	Amends Ord. 106, construction of sewers (Special)
112	Sewer, surplus declared (Special)
113	Sewer bonds (Special)
113a	Special election for water system purchase (Special)
113a	Term of office for city officials (Special)
113a	Candidates filing date (Not codified)
113a	Tax levy (Special)
114	Sewer bonds (Special)
115	Regulation of use of sewer (Repealed by 279)
116	Sewer operation and charges (Repealed by 236A, 279)
117	Discounts of sewer use charges (Repealed by 236a)
118	Exemption of certain properties from Ord. 116, sewers (Repealed by 236a)
119	Building fund and fire equipment (Repealed by 236a)
120	Cancellation of Ords. 1 and 30, sewer bonds (Special)
121	Alley vacation (Special)

122	Reduces sewer charges (Repealed by 279)
122a	Street vacation, Sunset Park (Special)
123	Alley vacation, block 3, Sunset Park (Special)
124	Alley vacation (Special)
125	Alley vacation, error in minutes (Special)
126	Television, radio masts and towers (Repealed by 597)
127	Alley vacation, block 38 (Special)
128	Alley vacation, block 38 (Special)
129	Planning commission established (Repealed by 272)
130	Regulating sale and storage of explosives (Repealed by 321)
131	Intent to annex, Gee addition (Special)
132	Alley vacation, block 24 (Special)
133	Soliciting, peddling (Repealed by 169)
134	Building code (Repealed by 286)
135	Special tax levy on street and sidewalk grade, and fire equipment (Special)
136	Construction of sewer in District No. 1 (Special)
136a	Construction of sewer in District No. 2 (Special)
137	Building codes, zoning ordinance (Repealed by 264, 304)
138	(Not used)
139	Intent to annex (Special)
140	Repeals Ord. in conflict, curfew (Repealed by 190)
141	Disposal and rates for garbage collection (13.10)
142	Street improvement (Special)
143	Alley vacation, block 6 (Special)
144	Alley vacation, block 10, Rose Park (Special)
145	Trailer houses (Repealed by 329)
146	Dangerous buildings (Repealed by 286)
147	(Not used)
148	(Not used)
149	(Not used)
150	Tax base election (Special)
151	Special election for charter amendments (Special)
152	Special election for water system (Special)
153	Block vacation, Gee's addition (Special)
154	Trailers (Repealed by 329)
155	Water system purchase (Special)
156	Regulation and operation of water department (Repealed by 329)
157	Bonds for water system (Special)
158	Pacific Power franchise (Repealed by 321)
159	Water Commission established (Repealed by 389)
160	Proposes annexation of a portion of Neabeack Hill (Special)
161	Declares annexation of a portion of Neabeack Hill (Special)
162	Pacific Power franchise (Repealed by 386)
163	Sewer user rates amended (Repealed by 236A, 279)
164	Burning of combustible materials (Repealed by 321)
165	Proposes annexation of Bennett property (Special)
166	Declares annexation of Bennett property (Special)
167	Special election for charter amendment (Charter)
168	Traffic control (Repealed by 221)
169	Solicitors, peddlers (Repealed by 464)
170	(Not used)
171	Pubic improvements, method, procedure (Repealed by 324)
172	Pacific Power contract (Special)
173	Establishes of District 1962-1, street paving (Special)
174	Alley vacation, block 35 (Special)
175	Establishes of District 1963-1, street paving (Special)
176	Assessment District 1962-1, street paving (Special)
177	Northwest Natural Gas franchise (Special)
178	Assessment District 1963-1, street paving (Special)
179	Bond issue for street paving assessments (Special)
180	Fleeing police officer or traffic (Repealed by 235)
181	Corvallis Disposal franchise (Special)
182	Bond issue for street paving assessment (Special)
183	(Not used)
184	Jury trials (Repealed by 321)
185	Proposes annexation (Special)

186 Public dances (Repealed by 738)
187 Change street names (Special)
188 Numbering system for buildings (15.10)
189 Proposes annexation (Special)
190 Curfew (Repealed by 704)
191 Special election for annexation of Flegal, Gray, and Christner properties (Special)
192 Special election for new fire hall (Defeated)
193 Adoption of fire prevention code (Repealed by 321)
194 Coaxial Cable Television Subscriber franchise (Void)
195 Special election for fire hall (Special)
196 Establishes District 1966-1, Rose Park, street paving (Special)
197 Establishes District 1966-2, Applegate, street paving (Special)
198 Annexation, Cecil Young property (Special)
199 Amends Ord. 168, traffic control (Repealed by 235)
200 Assessment District 1966-2, Applegate, paving (Special)
201 District 1966-2 bond issue (Repealed by 203)
202 Bond issue (Repealed by 203)
203 Bond issue (Repealed by 204)
204 District 1966-2 bond issue (Special)
205 Corvallis TV Cable Co. franchise (Special)
206 Assessment District 1966-1, Rose Park, paving (Special)
207 Rose Park Street, paving assessment (Special)
208 District 1966-1 bond issue (Special)
209 Sidewalk construction requirements (Repealed by 608)
210 Requiring property owners to construct sidewalks (Repealed by 608)
211 Pioneer Telephone 20-year franchise (Special)
212 Establishes District 1967-1, 9th Street paving (Special)
213 Assessment District 1967-1, 9th Street paving (Special)
214 Amends water use rates (Repealed by 329)
215 Amends sewer use rates (Repealed by 236A, 279)
216 Alley vacation, block 23, Old Town (Special)
217 Minor partition (Repealed by 321)
218 Water, sewer facilities requirement before building permit (Repealed by 321)
219 Establishes District 1968-1, Gee's Addition, paving (Special)
220 Bicycle registration, licensing, control (Repealed by 235)
221 Traffic control (Repealed by 597)
222 Repassing Ord. 171 (Repealed by 321)
223 Corvallis disposal franchise (Special)
224 Assessment District 1968-1 Gee's Revised Addition, street improvements (Special)
225 Bond issue for District 1968-1 Gee's Revised Addition (Special)
226 Amends Ord. 156 § 9, water deptartment regulation, operation (Repealed by 329)
227 Liquor (Repealed by 315)
228 Vehicles abandoned on private property (Repealed by 582A)
229 Vehicles abandoned on streets (Repealed by 544)
230 Bicycle regulation; repeals Ord. 220 § 10 (Repealed by 235)
231 Repeals Ord. 220 §§ 18 and 20, bicycle regulation (Repealed by 235)
232 Amends Ord. 221, traffic control on school property (Repealed by 597)
233 Establishes Paving District 1969-1, 10th Street (Special)
234 Assessment District 1969-1 (Special)
235 Amends Ord. 101, special elections; passed 4/27/70 (Repealed by 750)
235A Philomath Uniform Traffic Ordinance; passed 10/26/70 (Repealed by 313)
236 Amends Ord. 129, board of adjustment (Repealed by 272)
236A Unknown (Repealed by 321)
237 Amends Ord. 215, regulations for operation, maintenance of sewer system (Repealed by 279)
238 Amends Ord. 226, regulations, operation of water department (Repealed by 329)
239 Advance water, sewer service deposit required (Repealed by 329)
240 Amends Ord. 184, jury trial fee (Repealed by 321)

241	Establishes District 1970-2, Applegate paving (Special)
242	Assessment District 1970-2 (Special)
243	Public hearing on proposed annexation of 26 acres on N. 13th Street (Special)
244	Litter, penalties (Repealed by 312)
245	Provides for the issue and sale of sewer bonds 1971 (Repealed by 312)
246	Alley vacation, between lots 177 and 178, and 191 and 192, Bevans (Special)
247	Fixes interest rates on sewer bond series 1971 (Special)
248	Sets juror trial fees (Repealed by 705)
249	Amends Ord. 236 § 6, raising sewer connection charge (Repealed by 279)
250	Amends Ord. 137, zoning (Repealed by 264, 291)
251	(Not used)
252	Proposes annexation of 28.75 acres, Clemens to school (Special)
253	Declares annexation of 28.75 acres, noncontiguous, Section 258 (Special)
254	Proposes annexation of 2.43 acres, Neabeack home and grounds (Special)
255	Declares annexation, Neabeack (Special)
256	Proposes annexation of Mola-School District, approximately 10 acres (Special)
257	Declares annexation of Mola-School District (Special)
258	Declares annexation of 28.75 acres (Special)
259	Proposes annexation of city park (Special)
260	Declares annexation of city park (Special)
261	Water department regulation and operation (Repealed by 515)
262	Creates 12th Street paving District 1973-1 (Special)
263	Creates 17th Street paving District 1973-2 (Special)
264	Amends Ord. 137 § 5(9), etc., signs (Repealed by 494)
265	Uniform Subdivision Ordinance; repeals Ord. 217 (Repealed by 344)
266	Amends Ord. 137 § 11, auto space regulations (Repealed by 304)
267	Creates and establishes 25th Street paving project (Special)
268	Expiration dates for building permits (Repealed by 321)
269	(Not used)
270	Assesses 12th and Applegate Improvement District 1973-1 (Special)
271	Assesses N. 17th Street Improvement District 1973-2 (Special)
272	Establishes planning commission per 1973 legislation (Repealed by 547)
273	Procedure for conduct of planning commission hearings (Repealed by 634)
274	Declares annexation, pursuant to Ord. 185, Neabeack (Special)
275	Adopts Uniform Mechanical Code 1973 Edition (Repealed by 286)
276	Adopts Uniform Building Code, 1973 Edition (Repealed by 286)
277	Parks systems development charge (Repealed by 556)
278	Water systems development charge (Repealed by 556)
279	Sewer use regulations, fees (Repealed by 413)
280	Corvallis Disposal franchise; amends Ords. 181 and 223 (Special)
281	Adopt Uniform Code for Abatement of Dangerous Buildings (Repealed by 693)
282	Creates and establishes S. 13th Street paving project (Special)
283	Proposes annexation, sets public hearing, Parkwood (Special)
284	Adopts Uniform Fire Code, 1973 Edition (Repealed by 609)
285	Creates sidewalk improvement district, S. 19th Street (Special)
286	Adopts Oregon Structural Specialty Code, Fire and Life Safety Code, 1973 Edition; repeals Ord. 3, 4, 83, 134, 146, 275 (Repealed by 461)
287	26th Street paving assessment (Special)
288	Creates 13th Street improvement district (Special)
289	Implements minor partition provision of subdivision ordinance (Repealed by 344)
290	Assesses 1974-1, S. 13th Street (Special)
291	Repeals Ord. 250; amends Ord. 137 (Repealed by 304)
292	Amends sewer SDC for existing structures (Repealed by 413)

293	Amends water SDC for existing structures (Repealed by 556)
294	Amends park SDC for existing structures, (Repealed by 556)
295	Amends Ord. 279 §§ 9(c) and 10(b), sewer charge (Repealed by 413)
296	Authorizes bond sale for $64,225, 13th Street improvements (Special)
297	Amends Ord. 296 §§ 1, 3, 4 and 7, bond sale (Special)
298	Adds § 10(e) to Ord. 137, mobile homes (Repealed by 304)
299	Amends Ord. 235, traffic control (Repealed by 313)
300	Amends Ord. 261 § 11; adopts charges and rates for water (Repealed by 515)
301	Amends Ord. 261 § 11 and Ord. 300 § 2, water use rates (Repealed by 515)
302	Authorizes issuance of $275,000 firehall bonds; amends Charter (Charter)
303	Adopts Uniform Plumbing Code (Repealed by 462)
304	Repeals Ords. 137, 266, 291 and 298, zoning (Repealed by 494)
305	Creates Newton Street and Jeffery Place improvement project (Special)
306	Newton Street and Jeffery Place assessment (Special)
307	Establishes local contract review board for bids (Repealed by 730)
308	Amends Ord. 261 § 5, size of water mains (Repealed by 515)
309	Amends park SDC rates; repeals Ord. 277 § 3 (Repealed by 333, 556)
310	Amends water SDC rates; Repeals Ord. 278 § 3 (Repealed by 333)
311	Amends sewer SDC rates, Ord. 279 (Repealed by 334)
312	Proscribes general offenses, disorderly conduct; repeals Ords. 99 and 244 (Repealed by 464)
313	Controls vehicular and pedestrian traffic; repeals Ords. 235 and 299 (Repealed by 544)
314	Amends Ord. 288, discarded vehicles (Repealed by 544)
315	Repeals Ord. 227, alcohol (Repealed by 464)
316	Restricts vehicular and horse traffic within city (Repealed by 544)
317	Creates the Ashbrook Estates No. 3 improvement project (Special)
318	Authorizes issuance of $100,625.17 in Bancroft Bonds (Special)
319	Amends Ord. 229, abandoned vehicles (Repealed by 544)
320	Amends Ord. 248, jury trials (Repealed by 705)
321	General repealer (Repealer)
322	Amends Ord. 108, animal control (Repealed by 574)
323	Establishes leash law (Repealed by 379)
324	Methods for public improvements (Repealed by 425)
325	Amends Ord. 101, powers of initiative and referendum (Repealed by 750)
326	Tax base election, establishing a new tax base (Special)
327	Amends Ord. 220, bike license fee (Repealed by 338)
328	Amends lot area in R-2 zone, zoning (Repealed by 494)
329	Repeals Ords. 15, 139, 145, 154, 156, 214, 226, 238 (Repealer)
330	Creates office of fire chief; repeals Ord. 60 (Repealed by 534)
331	Defines nuisances, provides for their abatement; repeals Ord. 98 (Repealed by 582A)
332	Amends Ord. 227 § 3, parks SDC (Repealed by 556)
333	Amends water SDC and Ord. 278; repeals Ord. 310 (Repealed by 556)
334	Amends 279, sewer SDC; repeals 311, amends 279 (Repealed by 354, 413)
335	Sewer user charge, repeals Section 2, Ord. 279, increasing basic sewer rate charge from $4 to $6 (Repealed by 413)
336	Enforcement of motor vehicle laws on school property (Repealed by 544)
337	Water service connections; repeals Ord. 261 § 9(A), increasing charges for meters (Repealed by 515)
338	Amends Ord. 313; repeals Ord. 327, bike license fee (Repealed by 544)
339	(Not used)
340	Repeals Ord. 261 § 13, fee for meter testing (Repealed by 360, 515, 597)
341	Declares election to receive State revenue (Special)

342 Street Vacation, Cedar Street between 13th and 15th Street (Special)
343 Establishes Green Street Improvement, 24th to Highway 20, 34 (Special)
344 Repeals Ord. 265, subdivision ordinance (Repealed by 622)
345 Proposes annexation, Cladwood or Publishers Paper (Special)
346 Proposes annexation, S. 9th Street for well site (Special)
347 Declares annexation, Cladwood or Publishers Paper (Special)
348 Declares annexation, S. 9th Street for well site (Special)
349 Establishes office of City Administrator (Repealed by 542)
350 Annexation Cladwood, heavy industrial; amends zoning map (Special)
351 Establishes street SDC (Repealed by 556)
352 Amends water SDC rate and Ord. 278; repeals Ord. 332 (Repealed by 556)
353 Amends park SDC rate and Ord. 279; repeals Ord. 334 (Repealed by 556)
354 Amends sewer SDC rate and Ord. 279; repeals Ord. 334 (Repealed by 413, 556)
355 Amends Ord. 349, city administrator (Repealed by 542)
356 Declares annexation, 2101 Main Street; Bancroft Bonds (Special)
357 Property improvement for Ashbrook III assessment (Special)
358 Repeals, adding sections of Ord. 304 (Repealed by 494)
359 Declares election to receive State revenue (Special)
360 New rate schedule for water department; repeals Section 2, Ord. 261, 300 and 301 (Repealed by 515)
361 Repeals Ord. 279 § 6 (Repealed by 413)
362 Adding subparagraph of Section 5, Ord. 279 (Repealed by 413)
363 Repeals Ord. 279 § 9, sewage disposal rate schedule (Repealed by 413)
364 Declares annexation, Howard, Shroyer property (Special)
365 Withdraws annexation for PRFPD, Publishers (Special)
366 Amends Ord. 366 § 1, relating to traffic control (Repealed by 544)
367 Withdraws annexed property from PRFPD, S. 9th Street (Special)
368 Withdraws annexed property from PRFPD, 2101 Main Street (Special)
369 Withdraws annexed property from PRFPD, Howard, Shroyer (Special)
370 Authorizes bond sale for Ashbrook III (Repealed by 371)
371 Repeals Ord. 370 (Repealer)
372 Amends Ord. 278, water SDC (Repealed by 556)
373 Amends Ord. 277, park SDC (Repealed by 556)
374 Amends Ord. 351, street SDC (Repealed by 556)
375 Amends Ord. 279, sewer SDC (Repealed by 413, 556)
376 Corvallis Disposal franchise (Repealed by 509)
377 Alley vacation, block 10, between College and Pioneer (Special)
378 Green Street improvement assessment (Special)
379 Animal control; repeals Ord. 323 (Repealed by 574)
380 Amends schedule of prohibited parking, Schedule C and Ord. 313 (Repealed by 544)
381 Amends Ord. 313, weight restrictions on portions of 13th and 15th Streets (Repealed by 544)
382 Amends Ord. 376, exemptions to Corvallis Disposal franchise (Repealed by 509)
383 Election to receive State revenue (Special)
384 Alley vacation, south half of north-south alley between lots 165 and 166, block 43, Browns Addition (Special)
385 Amends Ord. 261, setting new water rate schedule (Repealed by 515)
386 Granting Pacific Power 20 yr. Franchise (Repealed by 675A)
387 Granting Corvallis Disposal rate increase (Repealed by 597)
388 Declares annexation, N. 11th Street well site (Special)
389 Establishes water, sewer commission (Repealed by 455)
390 Creates and establishes S. 18th Street improvement district (Special)

391	Creates and establishes Canberra Addition Phase I improvement district (Special)
392	Zone change R-1 to Commercial, 26th and Main (Special)
393	PUD plan major modification, Ashbrook Estates (Special)
394	Amends Ord. 313, stop street schedule (Repealed by 544)
395	Amends Ord 378 § 2 (Special)
396	Withdraws property from PRFPD (Special)
397	Creates and establishes Cedar Addition improvement district (Special)
398	Creates and establishes Southwood Park, 1st Addition, LID (Special)
399	Southwood Park LID assessment (Special)
400	Creates and establishes LID Applegate Street (Special)
401	Amends Ord. 351, Street SDCs rates (Repealed by 556)
402	Amends Ord. 279, sewer SDC rates (Repealed by 413)
403	Amends Ord. 278, Water SDC rates (Repealed by 556)
404	Amends Ord. 277, Park SDC rates (Repealed by 556)
405	Amends Ord. 324, assessment rates (Repealed by 425)
406	Alley vacation, block 46, Browns' Addition (Special)
407	Amends Ord. 399, Southwood Park assessment (Special)
408	GO improvement bonds, Southwood Park (Special)
409	Creates College, Pioneer Street LID (Special)
410	State revenue share (Special)
411	Sewer use charges (Repealed by 540)
412	Sewer SDC – system expansion (Repealed by 556)
413	Sewage disposal (Repealed by 541)
414	Reduces Southwood Park LID interest (Special)
415	Applegate LID assessment (Special)
416	College, Pioneer LID assessment (Special)
417	S. 18th LID assessment (Special)
418	Corvallis TV Cable franchise (Repealed by 561)
419	Alley vacation, north-south alley between Maple and Ash (Special)
420	GO improvement bonds (Special)
421	Creates Housing, Community Development Committee (Repealed by 692)
422	Creates N. 19th improvement district (Special)
423	GO improvement bonds (Special)
424	Abandoned property disposition (2.25)
425	Public improvement procedure (14.10)
426	Cedar Addition LID assessment (Special)
427	Establish Light Industrial zone (Repealed by 494)
428	Establish Heavy Industrial zone (Repealed by 494)
429	Establish Industrial Park zone (Repealed by 494)
430	Amends 1975 Zoning Ord. 304 (Repealed by 494)
431	Street SDCs (Repealed by 556)
432	Sewer SDCs (Repealed by 556)
433	Water SDC fees (Repealed by 556)
434	Park SDC fees (Repealed by 556)
435	Cedar Addition assessment (Special)
436	Water rates (Repealed by 515)
436A	Creates Southwood II LID (Special)
437	Creates Industrial Site LID (Special)
438	Repeals 1974 comprehensive plan; approves 1981 comprehensive plan (Repealed by 493)
439	Annexation (Special)
440	Adopts 1981 comprehensive plan (Repealed by 493)
441	Southwood II LID assessment (Special)
442	Canberra Addition LID assessment (Special)
443	Industrial site LID assessment (Special)
444	Amends R-1 zoning (Repealed by 494)
445	Amends public improvement procedure (14.10)
446	State revenue share (Special)
447	Creates N. 12th St, Houser Lane LID (Special)
448	Sewer use charges on N. 12th, Houser Lane (Special)
449	GO Improvement Bonds (Repealed by 450)
450	Re-authorizes GO Bonds (Special)

451	Revises Applegate LID assessments (Special)
452	Establish Rules of Council (Repealed by 456)
453	Final College, Pioneer LID assessment (Special)
454	Final S. 18th Street LID assessment (Special)
455	Establishes water, sewer commission (Repealed by 546)
456	Establishes Rules of Council (Repealed by 557)
457	Adopts Motor Vehicles Laws, 1981 (Repealed by 544)
458	Creates light industrial district (Special)
459	Creates industrial park district (Special)
460	Methodology for industrial SDC fees (Repealed by 556)
461	1979 Oregon Structural Specialty Code, Fire, Life-Safety Code (Repealed by 569)
462	1980 Oregon State Plumbing Specialty Code (Repealed by 693)
463	Amends Comprehensive Plan (Repealed by 493)
464	Criminal misdemeanor, violation ordinance (9.10)
465	Increase sewer rates (Repealed by 540)
466	Increase sewer permit, inspection fee (Repealed by 541)
467	Increase water reconnection fee (Repealed by 541)
468	Withdraws .14 acres from PRFPD, Southwood Dr. (Special)
469	Increases street SDC charge (Repealed by 556)
470	Increases sewer SDC charges (Repealed by 556)
471	Increases water SDC charges (Repealed by 556)
472	Increases park SDC charges (Repealed by 556)
473	Council chambers use fee (Repealed by 636)
474	Establish city administrator office (Repealed by 542)
475	Amends Ord. 464, criminal misdemeanor, violation (9.10)
476	Assess N. 19th Street LID (Special)
477	Street vacation, S. 18th Street (Special)
478	Park reservation rules and fees (Repealed by 585)
479	Library board (Repealed by 545)
480	Amends prohibited parking schedule (Repealed by 544)
481	Land, building, equipment capital fund (Special)
482	911 emergency system fund (Special)
483	Regulates amusement permits (Repealed by 503)
484	Amends Zoning Ord. 304 (Repealed by 494)
485	Amends Ord 376, prohibit theft of resource recoverable solid waste (Repealed by 504, 509)
486	State revenue share (Special)
487	Amends Ord. 441, Southwood Park II LID (Special)
488	Amends Ord. 442, Canberra Addition LID (Special)
489	N. 12th Street, Houser Lane LID, sewer (Special)
490	GO Improvement Bonds (Special)
491	GO Improvement Bonds (Special)
492	Amends Rules of Council (Repealed by 557)
493	Adopts 1983 comprehensive plan (Special)
494	Adopts 1983 zoning ordinance (Repealed by 720)
495	Amends Ord. 313, 10 minute load zone (Repealed by 544)
496	Cooper Lane LID (Special)
497	Amends Ord. 481, land, building and equipment capital fund (Special)
498	Assessment in addition to fine or bail (3.10)
499	Amends Ord. 464, misdemeanor, violations (9.10)
500	One year sewer surcharge (Repealed by 624, 625)
501	Amends Ord. 313, weight restriction on College Street (Repealed by 544)
502	State revenue share (Special)
503	Arcade license and permits (Repealed by 774)
504	Amends Ord. 313, schedule of prohibited parking (Repealed by 544)
505	Adopt Oregon Motor Vehicle Laws (Repealed by 544)

506	Amends Ord. 464, misdemeanor, violations (Repealed by 623)
506A	NW Natural Gas franchise (Special)
507	Amends Ord. 413, sewage disposal (Repealed by 541)
508	Amends Ord. 313, weight restrictions (Repealed by 544)
509	Corvallis Disposal franchise (Repealed by 568)
510	Adopts procedures in Oregon Motor Vehicle laws (Repealed by 603)
511	State revenue share (Special)
512	GO Bonds, improvement to water, sewer system (Special)
513	Amends Ord. 494, zoning ordinance (Repealed by 720)
514	Amends Ord. 493, comprehensive plan (Special)
515	Rules, regulations for water department (Repealed by 625)
516	Final LID assessment, industrial site (Special)
517	Cooper Lane LID assessment (Special)
518	Amends Ord. 494, zoning ordinance (Repealed by 720)
519	Amends Ord. 411, sewer charges (Repealed by 540)
520	Truck traffic on certain streets (Repealed by 544)
521	GO improvement bonds, Cooper Lane LID (Special)
522	GO Bond sale and issuance (Special)
523	State revenue sharing (Special)
524	Amends Ord. 522, sale of a bond to FmHA (Special)
525	Amends Ord. 503, arcades, games of amusement (Repealed by 774)
526	Amends Ord. 493, 1983 comprehensive plan (Special)
527	Alley vacation (Special)
528	Amends Ord. 515, water system (Repealed by 625)
529	Amends Ord. 313, Uniform Traffic Ord. (Repealed by 544)
530	Repeals Ord. 37, peddling without a license (Repealer)
531	Amends Ord. 190, curfew (Repealed by 704)
532	Amends Ord. 464, Philomath criminal ordinance (9.10)
533	Adopt Oregon Vehicle Code (Repealed by 544)
534	Repeal Ord. 330, fire chief (Repealer)
535	Amends Ord. 503, arcades operation (Repealed by 774)
536	Amends Ord. 455, sewer and water commission (Repealed by 546)
537	State revenue share (Special)
538	Repeals Ords. 13, 14 and 85 (Repealer)
539	Refund bonds, series 1981-2 (Special)
540	Monthly sewer service charge (Repealed by 624)
541	Sewage disposal rules, regulations (Repealed by 624)
542	Repeal Ord. 349, city administrator (Repealer)
543	Amends Ord. 540, sewer service charge (Repealed by 624)
544	Vehicle, pedestrian traffic; repeals Ords. 229, 313, 316, 319, 336, 338, 366, 380, 381, 394, 457, 480, 495, 501, 504, 505, 508, 520, 529 and 533 (10.10)
545	Repeals Ord. 479, library board (Repealer)
546	Repeals Ord. 455, water and sewer commission (Repealed by 692)
547	Repeals Ord. 272, planning commission (2.30)
548	State revenue share (Special)
549	Amends Ord. 494, zoning ordinance (Repealed by 720)
550	Amends Ord. 540, sewer charges (Repealed by 624)
551	Amends Ord. 544, Uniform Traffic (Repealed by 587)
552	Amends Ord. 464, criminal misdemeanor (9.10)
553	Amends Ord. 540, sewer charges (Repealed by 624)
554	Nominating petitions for city offices (2.15)
555	Alley vacation (Special)
556	SDCs; repeals Ords. 277, 278, 293, 294, 309, 332, 333, 351, 352, 353. 354, 372, 373, 374, 375, 401, 403, 404, 412, 431, 432, 433, 434, 460, 469, 470, 471 and 472 (Repealed by 601)
557	Rules of council; repeals Ords. 456 and 492 (2.10)

558 Amends Ord. 464, misdemeanor, violation (9.10)
559 Amends Ord. 503, amusement games, arcades (Repealed by 774)
560 Amends Ord. 540, sewer charges (Repealed by 624)
561 TCI Cablevision franchise (Repealed by 614)
562 State revenue share (Special)
563 Proposed annexation hearing, Diamond B (Repealed by 564)
564 Annexation; repeals Ord. 563 (Special)
565 Amends Ord. 540, sewer charges (Repealed by 624)
566 Pioneer Telephone franchise (Repealed by 757)
567 Annexation (Special)
568 Corvallis Disposal franchise, repeals Ord. 509 (Repealed by 786)
569 Adopts 1985 edition building code; repeals Ord. 461 (Repealed by 633)
570 Amends Ord. 556, SDC ordinance (Repealed by 601)
571 Amends Ord. 464, peddling (9.10)
572 Liquor license application procedures (5.25)
573 State revenue share (Special)
574 Repeals Ords. 108 and 379, animal control; amends Ords. 331, 464, 316 and 544; and adopts ORS chapters 133, 156, 161, 167 and 475 (6.10, 9.10, 10.10)
575 Consumer Power franchise (Repealed by 676A)
576 Amends Ord. 494, zoning (Repealed by 720)
577 Annexation (Special)
578 Traffic safety commission (Repealed by 658)
579 Amends Ord. 190, curfew (Repealed by 704)
580 State revenue share (Special)
581 Amends Ord. 566, Pioneer Telephone franchise (Repealed by 757)
582 State revenue share (Special)
582A Nuisance ordinance (9.10, 9.15)
583 Urban renewal agency creation (2.35)
584 Adopts urban renewal plan
585 Amends park reservation ordinance (Repealed by 640)
586 Amends Ord. 493, comprehensive plan, Ord. 494, zoning ordinance (Special)
587 Amends Ord. 544, uniform traffic code (10.10)
588 Amends comprehensive plan (Special)
589 Annexation (Special)
590 Annexation (Special)
591 Annexation (Special)
592 Amends zoning map, Marys River Park (Repealed by 720)
593 Amends zoning map, Wolfe Manufacturing (Repealed by 720)
594 Traffic enforcement on school, public property (10.15)
595 Amends zoning ordinance #494 (Repealed by 720)
596 Amends Ord. 503, arcades (Repealed by 774)
597 Repeal Ords. 126, 221, 232, 340, 387 (Repealer)
598 Amends Ord. 515, water (Repealed by 625)
599 Amends Ord. 540, sewer (Repealed by 624)
600 Amends Ord. 541, sewer permits (Repealed by 624)
601 Establishes SDCs (Repealed by 678)
602 Amends Ord. 273, public hearings for land use matters (Repealed by 633)
603 Amends Ord. 544, traffic ordinance; repeals Ord. 510 (10.10)
604 Amends Ord. 464, criminal misdemeanors (9.10)
605 Amends Ord. 503, arcades (Repealed by 774)
606 Utility easement vacation (Special)
607 Amends zoning map (Special)
608 Sidewalk maintenance, construction (Repealed by 702)
609 Repeals Ord. 284 (Repealer)
610 Sidewalk repeals – 1530 Main Street (Special)
611 Rezone (Repealed by 720)
612 Street vacation (Special)
613 Special public works fund loan (Special)
614 TCI franchise (Repealed by 719)
615 Amends economic transportation, comprehensive plan (Special)
616 Amends zoning ordinance, manufactured homes (Repealed by 720)

617 Amends zoning ordinance, manufactured home siting (Repealed by 720)
618 Tree advisory board (2.40)
619 Utility easement, lot 20, Southwood III (Special)
620 Annexation (Special)
621 Amends Ord. 464, criminal misdemeanor, violation (9.10)
622 Amends Ord. 494 article 24; repeals Ord. 344, subdivisions (Repealed by 720)
623 Northwest gas franchise (Special)
624 Sewer ordinance (13.20)
625 Water ordinance (13.30)
626 Amends Zoning Ord. 494 (Repealed by 720)
627 Valiant policy board, intergovernmental agreement (Special)
628 Amends Ords. 1, 141, 186, 473, 503 and 608, fees (13.10)
629 Amends Ord. 554, nominating petitions (2.15)
630 Employees' contribution to PERS (Special)
631 Election on referring annexations to voters (Special)
632 State revenue share (Special)
633 Adopts 1991 State Structural Specialty Code, and Fire and Life Safety Code (Repealed by 693)
634 Repeals Ord. 273, planning commission hearings procedure (10.20)
635 Amends Ord. 307, public contract law (Repealed by 730)
636 Repeal Ord. 473, council chamber use (Repealer)
637 Amends Ord. 554, nominating petitions (2.15)
638 OEDD loan, chlorine contact chamber (Special)
639 Reimbursement district (14.25)
640 Rules for park use (12.10)
641 Rezone (Repealed by 720)
642 Amends comprehensive plan, historic register (Repealed by 720)
643 Amends zoning ordinance, annexation, Rock Creek waterline, exterior lighting (Repealed by 720)
644 Rezone (Repealed by 720)
645 Rezone (Repealed by 720)
646 Amends Ord. 464 (9.10)
647 Amends Ord. 544 (10.10)
648 Amends zoning ordinance, office, residential zone (Repealed by 720)
649 Amends zoning and subdivision ordinance (Repealed by 720)
650 Alley vacation (Special)
651 Amends Ord. 568, Corvallis Disposal franchise (Special)
652 Alley vacation (Special)
653 Ratify COG articles of agreement (Special)
654 Amends Corvallis Disposal franchise (Special)
655 Amends noxious vegetation ordinance (9.15)
656 Amends Ord. 574, pooper-scooper law (6.10)
657 Amends Ord. 544, vehicular traffic (10.10)
658 Transportation, Traffic Safety Commission (2.45)
659 Public rights-of-way (12.15)
660 Rezone (Special)
661 Amends zoning ordinance, condos in R-2 and R-3 (Special)
662 Rezone (Special)
663 Municipal Court procedures for costs, assessments (Not adopted)
664 Annexation (Special)
665 Sidewalks construction assessment (Special)
666 Amends Ord. 557, group recognition requirement (2.10)
667 Amends Ord. 618, tree advisory board (2.40)
668 Annexations and utility extensions (Repealed by 720)
669 Amends Ord. 664, correcting legal description of annexed property (Special)
670 Adopt urban renewal plan taxing option 1 (Special)
671 Annexation (Special)
672 Annexation (Special)
673 Storm drain utility (Repealed by 753)
674 Annexation (Special)
675 Amends Ord. 674, correcting legal description for Neabeack Hill Subdivision (Special)
675A PacificCorp franchise (Repealed by 756)

676 Consumers Power franchise (Repealed by 758)
677 Pioneer Telephone franchise (Repealed by 757)
678 SDCs (14.15)
679 Amends Ord. 678 (14.15)
680 Marijuana possession (9.20)
681 Historic Resources Commission (2.50)
682 Annexation (Special)
683 Sale of tobacco products (5.30)
684 Smoking in public places (8.15)
685 Hazard waste response, cleanup (8.20)
686 Annexation (Special)
687 Sidewalk assessments (Special)
688 Amends Ord. 640, skatepark regulations (12.10)
689 Street SDCs methodology (Repealed by 722)
690 Land use compensation (Repealed by 715)
691 Annexation (Special)
692 Repeals Ords. 421 and 546 (Repealer)
693 Amends building codes; repeals Ords. 281, 462 and 633 (15.15)
694 Amends fine, bail forfeiture ordinance, criminal misdemeanor, violation ordinance and traffic ordinance (3.10, 9.10, 10.10)
695 Sidewalk construction assessment (Special)
696 Annexation (Special)
697 Sidewalk construction (Special)
698 Amends animal control ordinance (6.10)
699 Annexation (Special)
700 Annexation (Special)
701 Amends comprehensive plan to include TSP (Special)
702 Sidewalk construction (12.20)
703 Recording municipal liens (3.15)
704 Curfew regulations (9.25)
705 Jury trial processes (2.20)
706 Amends Ord. 544, fire lanes (10.10)
707 Amends Ord. 702, sidewalk construction (12.20)
708 Annexation (Special)
709 Annexation (Special)
710 Annexation (Special)
711 Annexation (Special)
712 Annexation (Special)
713 Annexation (Special)
714 Ratify the IGA for the Corvallis Area MPO (Special)
715 Repeals Ord. 690, compensation under BM7 (Repealer)
716 Amends urban renewal area boundary and plan (Special)
717 Alley vacation (Special)
718 Amends Ord. 693, building codes, standards (15.15)
719 Comcast franchise agreement (Special)
720 Adopts development code and zoning map; repeals Ords. 494 and 622 (18.05, 18.10, 18.15, 18.20, 18.25, 18.30, 18.35, 18.40, 18.45, 18.50, 18.55, 18.60, 18.65, 18.70, 18.75, 18.80, 18.85, 18.90, 18.95, 18.100, 18.105, 18.110, 18.115, 18.120, 18.125, 18.130, 18.135, 18.140, 18.145, 18.150, 18.155, 18.160)
721 Road maintenance fee (14.20)
722 Street SDC rates and methodology (14.20)
723 Establishes park advisory board (2.55)
724 Void
725 Adopts sanitary sewer SDC rates and methodology (13.20)
726 Northwest Natural Gas franchise agreement (Special)
727 Street vacation (Special)
728 Rezone (Special)
729 Amends Ord. 693, 1997 ICBO Code for Abatement of Dangerous Buildings (15.15)
730 Public contracting procedures; repeals Ord. 307 (3.20)
731 Sign regulations (18.95)
732 Amends Ord. 557, committee term limitations (2.10)
733 Adopts SDC rates and methodology for the water system (13.30)
734 Amends Ord. 720, zoning (18.10, 18.35, 18.40, 18.45, 18.55, 18.60, 18.65, 18.70, 18.80, 18.85, 18.130, 18.145)
735 Adopts city water usage curtailment plan (13.35)
736 Amends Ords. 464 and 544, criminal misdemeanor and traffic regulations (9.10, 10.10)
737 Amends Ord. 720, zoning (18.10, 18.15, 18.35, 18.40, 18.45, 18.65, 18.75, 18.85, 18.115, 18.120, 18.125, 18.145)

738 Amends Ords. 425, 544, 582 and 618; repeals Ords. 1 and 186 (2.40, 9.15, 10.10, 14.10)
739 Annexation (Special)
740 Amends Ord. 544, bicycle licensing (10.10)
741 Street vacation (Special)
742 Adds Ch. 1.01, code adoption (1.01)
743 Sidewalk construction cost assessment (Special)
744 Amends §§ 5.25.040, 5.25.050, 5.25.060 and 5.25.090, liquor license (5.25)
745 Amends § 12.10.120, dogs (12.10)
746 Rezone (Special)
747 Rezone (Special)
748 Amends § 10.10.060(A)(1), parking regulations (10.10)
749 Rezone (Special)
750 Initiative and referendum; repeals Ords. 101 and 325 (1.10)
751 Adds Ch. 6.11, wildlife control (6.11)
752 Adds § 8.15.110, hiatus on enforcement (8.15)
753 Amends Ch. 13.40; repeals Ord. 673, storm drain utility (13.40)
754 Annexation (Special)
755 Amends §§ 18.95.020, 18.95.030 and 18.95.040, placement of signs (18.95)
756 PacificCorp franchise; repeals Ord. 675A (Special)
757 Pioneer Telephone franchise; repeals Ords. 566, 581 and 677 (Special)
758 Consumers Power franchise; repeals Ord. 676 (Special)
759 Rezone (Special)
760 Annexation (Special)
761 Adds § 13.30.270; amends §§ 13.30.020 and 13.30.210, cross connections (13.30)
762 Rezone (Special)
763 Rezone (Special)
764 Amends urban renewal plan (Special)
765 Amends § 12.10.160, parks (12.10)
766 Amends §§ 12.20.020, 12.20.030, 12.20.050, 12.20.060, 12.20.070, 12.20.080, 12.20.110(E) and 12.20.130; repeals § 12.20.040, sidewalk construction (12.20)
767 Adds § 13.20.150(D); amends §§ 13.20.040, 13.20.050, 13.20.060, 13.20.070, 13.20.080, 13.20.090, 13.20.100, 13.20.110, 13.20.120 and 13.20.130(I), sewer system (13.20)
768 Amends §§ 13.30.040, 13.30.050, 13.30.060, 13.30.070, 13.30.080, 13.30.090, 13.30.100, 13.30.110, 13.30.130, 13.30.140, 13.30.150(C) and 13.30.170(B), water system (13.30)
769 Amends § 13.40.280, storm sewer utility (13.40)
770 (Did not pass)
771 Adds §§ 18.55.110, 18.55.120, 18.55.130, 18.55.140 and 18.55.150, flood damage prevention; repeals § 18.55.100 (18.55)
772 Annexation (Special)
773 Amends [adds] § 1.15.010, criminal penalties (1.15)
774 Amends § 9.10.080(B)(4), restricted activities; repeals Ch. 5.20 (9.10)
775 Rezone (Special)
776 Adds § 9.15.055, piling of leaves and debris (9.15)
777 Amends comprehensive plan and § 18.75.040, bicycle parking requirements (18.75)
778 Amends §§ 18.35.050 and 18.35.100(E)(3)(b); repeals §§ 18.65.020(K) and (O) and 18.80.020(K), flag lots and driveways (18.35, 18.65, 18.180)
779 Adds Ch. 18.72; amends § 18.70.010; repeals § 18.70.050, fences, hedges and walls (18.70, 18.72)
780 Adds § 13.30.060(D); amends § 13.30.020, fluoridation (13.30)
781 Amends § 9.15.070(A), trees, bushes and vision clearance (9.15)
782 Amends § 12.10.100, parks (12.10)
783 Adds § 9.15.135, graffiti (9.15)
784 Comcast franchise (Special)
785 Amends §§ 3.20.020 and 3.20.030, public contracting procedures (3.20)
786 Republic Services of Corvallis franchise; repeals Ord. 568 (Special)
787 Amends § 12.20.010, sidewalk construction (12.20)
788 Adds § 9.20.040, marijuana possession (Expired)
789 Amends Ch. 15.15, building codes (15.15)

790	Amends §§ 9.10.030, 9.10.040, 9.10.050 and 9.10.090, criminal offenses (9.10)
791	Amends §§ 2.40.020, 2.40.040, 2.40.050 and 2.40.080, tree advisory board (2.40)
792	Amends § 6.10.050, animal control (6.10)
793	Adds § 9.15.025, nuisances (9.15)
794	Amends § 12.10.120, parks (12.10)
795	Adds § 12.15.060, rights-of-way (12.15)
796	Adds §§ 13.20.150, 13.20.160, 13.20.170, 13.20.180, 13.20.190, 13.20.200, 13.20.210, 13.20.230, 13.20.240 and 13.20.250; amends §§ 13.20.020, 13.20.040(A) and (H), 13.20.060(B), 13.20.090(A), 13.20.110(B), 13.20.120 and 13.20.130; renumbers § 13.20.150 as 13.20.220, sewer system (13.20)
797	Adds §§ 13.30.040(H), 13.30.090(C), 13.30.280, 13.30.290, 13.30.300, 13.30.310, 13.30.320, 13.30.330, 13.30.340, 13.30.350, 13.30.360, 13.30.370, 13.30.380 and 13.30.390; amends §§ 13.30.020, 13.30.060(B), 13.30.070(A), 13.30.100, 13.30.110(G) and (J), 13.30.130(A), 13.30.140, 13.30.210(B)(19) and (R) and 13.30.240, water system (13.30)
798	Adds Ch. 5.40, medical marijuana (5.40)
799	Amends §§ 18.15.010, 18.35.030(D), 18.35.040, 18.35.050(D) and (E), 18.35.070(C), 18.35.100(J), 18.40.020, 18.40.030, 18.40.050, 18.40.060(B), 18.40.080(B), 18.70.020(B), 18.72.030(G), 18.75.030, 18.105.060(D)(2)(d), zoning (18.15, 18.35, 18.40, 18.70, 18.72, 18.75, 18.105)
800	Rezone (Special)
801	Adds Ch. 12.08, public works construction (12.08)
802	Street vacation (Special)
803	Street vacation (Special)
804	Annexation (Special)
805	Amends Exh. 1 of Ord. 802, street vacation (Special)
806	Amends § 18.35.040, zoning (18.35)
807	Rezone (Special)
808	(Number not used)
809	Amends Ch. 9.20, marijuana (9.20)
810	Amends Ch. 5.40, marijuana facilities (5.40)
811	Adds Ch. 5.70, marijuana tax (Pending 11/8 election)
812	Adds § 18.10.020(F); amends § 18.15.010, zoning (18.10, 18.15)

INDEX PREFACE

The index to the code is primarily for assisting the code user to find provisions not readily accessible through the table of contents. An index entry has been created for each section of the code. Additional entries have been made for the following topics:

License. Any section requiring a license is also indexed under **Licenses**.

Permit. Any section requiring a permit is also indexed under **Permits**.

CROSS-REFERENCES

Cross-references have been included to assist the user in finding code provisions indexed under another heading. If the index does not appear to list a topic, the code may not regulate the provision.

The following kinds of cross-references appear in the index:

Entry	***Purpose/Description***
Weeds *See* **Nuisances**	Specific nuisances are indexed under **Nuisances**.
See also **Zoning**	Additional entries on the subject may appear in **Zoning.**
Airport *See* **Zoning**	The entry for Airport appears as a subheading under Zoning.
Animal control officer *See under* **Animal**	The entry appears as a subheading under a different heading.
See also definitions *under* Character generators.	There are additional, and related, entries under a separate subheading under the same main heading.
Cafe *See* **Cabaret**	No entry for **Cafe**, but refers user to a related subject.

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– A –

Accessory dwellings *See* **Zoning**
Accessory uses *See* **Zoning**
Alcoholic beverages *See* **Criminal offenses; Liquor**
Animals
See also **Rats**
Adoption of state statutes 6.10.040
Applicability of county provisions 6.10.030
At large 6.10.090
Dangerous 6.10.100
Definitions
animal 6.10.020
city 6.11.020
domestic animal 6.10.020
keeper of an animal 6.10.020
keeping an animal 6.10.020
person 6.10.020
police officers 6.10.020
songbird 6.11.020
waterfowl 6.11.020
wildlife 6.11.020
Dogs
at large 6.10.050
feral 6.10.110
Feral cats 6.10.110
Noisy 6.10.060
Restrictions on keeping certain animals, fowl 6.10.080
Riding in city 6.10.070
Severability 6.11.060
Short title 6.10.010, 6.11.010
Trapping in city 6.10.120
Violation, penalty 6.10.130, 6.11.050
Wildlife
abatement 6.11.040
feeding prohibited 6.11.030
Annexations *See* **Zoning**
Appliance sales *See* **Zoning**
Assisted living homes *See* **Zoning**
Auditoriums *See* **Zoning**
Automobile sales, service *See* **Zoning**

– B –

Bail/fine assessments
Deposit with bail 3.10.020
Designated 3.10.010
Forfeiture 3.10.030
Bed and breakfasts *See* **Zoning**
Begging *See under* **Criminal offenses**
Bicycles *See under* **Traffic**
Boat sales *See* **Zoning**
Building codes
See also Specific Code; **Buildings**
Violations, penalties 15.15.090
Buildings
See also **Building codes**
Numbering
assigning 15.10.040
base line 15.10.020
council power to provide, affix 15.10.080
method of determining 15.10.030
placement 15.10.050
system established 15.10.010
violation, penalty 15.10.070
when required 15.10.060
Bulk retail uses *See* **Zoning**

– C –

Caretaker dwellings *See* **Zoning**
Cats *See* **Animals**
Child care centers *See* **Zoning**
Churches *See* **Zoning**
Code
Adoption
adoption, amendment, repeal 1.01.010
prosecution reservation 1.01.020
severability 1.01.030
Violation, penalty 1.15.010
Commercial uses *See* **Zoning**
Community centers *See* **Zoning**
Council
Committees, commissions, boards establishment 2.10.060
Committee, representative assignments 2.10.050
Consent agenda 2.10.030
Hearings, impartiality 2.10.040
Order of business 2.10.020
Procedural matters 2.10.070
Purpose 2.10.010
Criminal offenses
Alcoholic beverages in public places 9.10.060
Begging 9.10.060
Classes of offenses, penalties 9.10.090
Definitions
arcade 9.10.080
games of amusement 9.10.080
hinder 9.10.030
interfere 9.10.030
obstruct 9.10.030
occult arts 9.10.080
Disorderly conduct at fires 9.10.060
Endangering welfare of minor 9.10.070
False reports 9.10.060

Interference with police, fire communications 9.10.060
Lawful hours of sale of liquor 9.10.060
Misrepresentation of age, status 9.10.070
Nuisance abatement 9.10.090
Obstructing a police officer 9.10.060
Obstruction, tampering with fire hydrants 9.10.060
Outside city limits 9.10.090
Posted notices 9.10.060
Procedures 9.10.040
Providing false information to police officer 9.10.060
Public indecency 9.10.070
Purpose 9.10.010
Restricted activities 9.10.080
Selling, pledging property of intoxicated persons 9.10.060
Separate violations 9.10.090
State criminal misdemeanor offenses, violations adopted 9.10.050
Title 9.10.020
Unlawful communication 9.10.070
Unlawful discharge of weapons 9.10.070
Vending goods on streets, sidewalks 9.10.060
Violating privacy of another 9.10.070

Curfew
Designated 9.25.010
Evening hours
minors age 14 and over 9.25.060
minors under age 14 9.25.050
Parental responsibility 9.25.080
School hours
city parks 9.25.040
minors age 14 and over 9.25.030
minors under age 14 9.25.020
Violation
defense 9.25.070
penalty 9.25.090

– D –

Dangerous buildings code
See also **Building codes**
Adopted 15.15.060

Day care centers *See* **Zoning**
Day nurseries *See* **Zoning**
Disorderly conduct at fires *See under* **Criminal offenses**
Dogs *See under* **Animals**
Duplexes *See* **Zoning**

– E –

Education facilities *See* **Zoning**

Electrical code
See also **Building codes**
Adopted 15.15.040

– F –

False reports *See under* **Criminal offenses**
Family day care facilities *See* **Zoning**
Fees *See* Specific Fee
Fences, walls *See* **Zoning**
Flood damage prevention *See* **Zoning**
Fowl *See* **Animals**
Funeral parlors *See* **Zoning**

– G –

Garbage collection
Accumulation of garbage 13.10.080
Containers required 13.10.030
Definitions
corporation 13.10.010
firm 13.10.010
garbage 13.10.010
person 13.10.010
Exclusivity of provisions 13.10.110
License
application, fee 13.10.050
conditions 13.10.060
exception 13.10.090
required 13.10.040
Manner of hauling 13.10.100
Rates 13.10.070
Regulation 13.10.020
Violation, penalty 13.10.120

Golf courses *See* **Zoning**
Governmental structures, uses *See* **Zoning**
Gymnasiums *See* **Zoning**

– H –

Hazardous waste
Billing period 8.20.030
Definitions 8.20.040
Liability for spill, relief 8.20.010
Response 8.20.020

Heliports, private *See* **Zoning**
Historic resources commission
Membership 2.50.020
Powers, duties 2.50.030
Purpose 2.50.010

Home occupations *See* **Zoning**
Hospitals *See* **Zoning**
Hotels *See* **Zoning**

– I –

Indoor recreation facilities *See* **Zoning**
Industrial uses *See* **Zoning**
Initiative, referendum
Ballot title, appeal 1.10.030
Elections
notice, results 1.10.080
procedures generally 1.10.010
Measure referred by council 1.10.060
Petitions
filing, percentage requirements, verification 1.10.050
prospective 1.10.020
requirements, circulation 1.10.040
withdrawal, adoption, election 1.10.070
Interference with police, fire communications *See under* **Criminal offenses**

– J –

Jails, correction facilities *See* **Zoning**
Jury trial
Exemption from service 2.20.050
Jurors
additional 2.20.130
compensation 2.20.170
disqualification 2.20.110
failure to appear 2.20.180
nomination 2.20.070
selection 2.20.100, 2.20.150
summons 2.20.120
Jury box 2.20.090
Jury list
certification 2.20.060
creation 2.20.040
return 2.20.080
Jury terms 2.20.030
Request 2.20.020
Reuse of ballots 2.20.140
Right 2.20.010
Verdicts 2.20.160

– K –

Kindergartens *See* **Zoning**

– L –

Land divisions *See* **Zoning**
Landscaping *See* **Zoning**
Libraries *See* **Zoning**
Licenses
Garbage collection 13.10.040
Tobacco products 5.30.020
Liens *See* **Municipal liens**
Light manufacturing *See* **Zoning**
Liquor
See **Criminal offenses**
Hearing
conduct 5.25.060
notice 5.25.090
License
application
approval procedure 5.25.050
conditions 5.25.020
investigation 5.25.030
temporary 5.25.040
Purpose 5.25.010
Recommendation
conditional 5.25.080
criteria 5.25.070

– M –

Manufactured dwellings
See also **Zoning**
Code
See also **Building codes**
adopted 15.15.070
Manufactured homes *See* **Zoning**
Manufacturing *See* **Zoning**
Marijuana
Definitions
juvenile party 9.20.020
marijuana 9.20.020
marijuana extract 9.20.020
marijuana items 9.20.020
marijuana products 9.20.020
public place 9.20.020
Diversion 9.20.100
Hosting party for minors 9.20.080
Odor 9.20.090
Prohibited
homegrown in public view 9.20.060
providing to certain persons 9.20.070
purchase by person under twenty-one 9.20.040
unlawful possession 9.20.030
use in public place 9.20.050
Purpose 9.20.010
Marijuana facilities
Administrative remedies 5.40.090
Background checks 5.40.070
Confidentiality 5.40.100
Definitions
controlled substances 5.40.020
manager 5.40.020
marijuana 5.40.020

marijuana facility 5.40.020
marijuana processing site 5.40.020
marijuana processor 5.40.020
marijuana producer 5.40.020
marijuana retailer 5.40.020
marijuana wholesaler 5.40.020
medical marijuana 5.40.020
medical marijuana facility 5.40.020
operator 5.40.020
recreational marijuana facility 5.40.020
Purpose 5.40.010
Records 5.40.080
Registration
application 5.40.040
conditions 5.40.060
renewal, termination 5.40.050
required 5.40.030
Severability 5.40.110
Marijuana, medical *See* **Marijuana facilities**
Master planned developments *See* **Zoning**
Mechanical code
See also **Building codes**
Adopted 15.15.020
Mineral extraction, processing *See* **Zoning**
Mini-warehouses *See* **Zoning**
Minors *See* Endangering welfare of minor *under* **Criminal offenses; Curfew**
Motels *See* **Zoning**
Municipal liens
Definitions
city lien docket 3.15.020
county clerk lien record 3.15.020
municipal lien 3.15.020
municipal lien docket 3.15.020
Purpose 3.15.010
Recording 3.15.030

– N –

Neighborhood commercial uses *See* **Zoning**
Nominating petitions
Contents 2.15.010
Signatures required 2.15.020
Time for filing 2.15.030
Nonconforming uses, developments *See* **Zoning**
Nonprofit religious, philanthropic institutions *See* **Zoning**
Notices, posted *See under* **Criminal offenses**
Nuisances
Abandoned vehicles 9.15.130
Abatement *See under* **Criminal offenses**
Affecting public health 9.15.020
Attractive nuisances 9.15.030
Debris, piling 9.15.055
Definitions
discarded 9.15.130
graffiti 9.15.135
junk 9.15.110
person 9.15.010
person in charge of property 9.15.010
person responsible 9.15.010
unreasonable noise 9.15.120
vehicle 9.15.130
Fences 9.15.080
Graffiti 9.15.135
Junk 9.15.110
Leaves, piling 9.15.055
Noxious vegetation, tall grass 9.15.050
Radio, television interference 9.15.100
Recreational vehicle as dwelling 9.15.025
Scattering rubbish 9.15.060
Snow, ice 9.15.040
Summary abatement 9.15.150
Surface waters, drainage 9.15.090
Trees, bushes, vision clearance 9.15.070
Unenumerated 9.15.140
Unnecessary noise 9.15.120
Violation
penalties 9.15.160
separate 9.15.170
Nursery schools *See* **Zoning**
Nursing homes *See* **Zoning**

– O –

Obstruction *See* **Criminal offenses**
Offices *See* **Zoning**
One- and two-family dwelling code *See* **Residential specialty code**
Outdoor recreation facilities *See* **Zoning**

– P –

Parades, processions *See under* **Traffic**
Park advisory board
Composition 2.55.020
Duties 2.55.030
Established 2.55.010
Park trailer, parks, organized camp standards
See also **Building codes**
Adopted 15.15.080
Parking *See* **Traffic; Vehicles; Zoning**
Parks
See also **Zoning**
Alcoholic beverage permits 12.10.080
Cleaning, damage deposit 12.10.050
Cleanup responsibility 12.10.040
Dogs 12.10.120

Fires 12.10.130
Horses 12.10.110
Open, close times 12.10.100
Overnight camping 12.10.090
Purpose 12.10.010
Reservations
groups over 200 persons 12.10.070
multiple 12.10.060
nonresident 12.10.030
procedure 12.10.020
Skatepark regulations 12.10.150
Speed limit 12.10.140
Vehicles 12.10.110
Violation, penalty 12.10.160
Permits
See also **Zoning**
Sidewalk construction 12.20.020
Tree advisory board 2.40.050
Planning commission
Building, improvements 2.30.090
Conflict of interest 2.30.120
Duties, powers 2.30.060
Expenditures 2.30.110
Hearings 2.30.130
Members, terms 2.30.020
Officers, meetings 2.30.050
Public facilities 2.30.080
Purpose 2.30.010
Qualifications 2.30.030
Recommendations in writing 2.30.100
Vacancies 2.30.040
Zoning 2.30.070
Playgrounds *See* **Zoning**
Plumbing code
See also **Building codes**
Adopted 15.15.030
Police stations *See* **Zoning**
Professional offices *See* **Zoning**
Property
See also **Public contracting procedures**
Disposition of unclaimed
applicability 2.25.070
dangerous, perishable 2.25.050
personal property in police custody 2.25.010
reclamation by owner 2.25.020
sale at public auction
certificate of sale 2.25.040
procedure 2.25.030
reclamation 2.25.060
Public buildings, uses *See* **Zoning**
Public contracting procedures
Adoption of code, rules 3.20.080
Contract review board 3.20.010
Definitions
formal quote 3.20.020
informal quote 3.20.020
personal services contract 3.20.020
Disposition of personal property 3.20.070
Offeror disqualification 3.20.050
Public contracts for goods, services 3.20.030
Public improvements contracts 3.20.040
Public services contracts 3.20.060
Public improvements
Alternative methods of filing 14.10.080
Assessment
deficit 14.10.130
errors in calculations 14.10.120
method 14.10.080
notice 14.10.100
ordinance 14.10.070
Call for bids 14.10.060
Curative provisions 14.10.160
Hearing 14.10.050
Lien records, foreclosure proceedings 14.10.110
Manner of doing work 14.10.040
Proceedings
abandonment 14.10.150
initiation 14.10.010
Reassessment 14.10.170
Rebates 14.10.140
Remedies 14.10.090
Report
council's action 14.10.020
from city engineer 14.10.010
Resolution, notice of hearing 14.10.030
Public indecency *See under* **Criminal offenses**
Public uses *See* **Zoning**
Public works construction
Adoption, conformance 12.08.010
Violation, penalty 12.08.900
Public works yards *See* **Zoning**

– R –

Rats
See also **Animals**
Accumulation
garbage 8.10.090
rubbish 8.10.100
Applicability 8.10.020
Definitions
building 8.10.010
health officer 8.10.010
occupant 8.10.010
owner 8.10.010
person 8.10.010
rat eradication 8.10.010

rat-harborage 8.10.010
rat-proofing 8.10.010
Duty to maintain 8.10.050
Future construction 8.10.140
Inspections by health officer 8.10.110
Notice, eradication 8.10.030
Protective measures 8.10.070
Rat-proofing
notice 8.10.040
removal 8.10.060
Rules, regulations adopted 8.10.120
Storage of food 8.10.080
Violation, penalties 8.10.130
Recreational vehicles *See under* **Nuisance; Zoning**
Referendum *See* **Initiative, referendum**
Refuse *See* **Garbage collection**
Reimbursement districts
Administration 14.25.110
Application 14.25.030
City council action, decision 14.25.080
City planning official's report 14.25.040
Definitions
applicant 14.25.020
city 14.25.020
city public works director 14.25.020
director 14.25.020
person 14.25.020
reimbursement district 14.25.020
reimbursement fee 14.25.020
sewer improvement 14.25.020
street improvement 14.25.020
water improvement 14.25.020
Prohibited conduct 14.25.120
Public hearing
conduct 14.25.060
notice 14.25.070
Purpose 14.25.010
Reimbursement amount 14.25.050
Resolution
notice of adoption 14.25.090
recording 14.25.100
Repair services *See* **Zoning**
Residential care facilities *See* **Zoning**
Residential specialty code
See also **Building codes**
Adopted 15.15.050
Restaurants *See* **Zoning**
Retail uses *See* **Zoning**
Retirement homes *See* **Zoning**
Rights-of-way
City obligations 12.15.050
City permission 12.15.040
Definitions
city 12.15.010
person 12.15.010
public rights-of-way 12.15.010
within the city 12.15.010
Jurisdiction 12.15.020
Property owner obligations 12.15.060
Scope of regulatory control 12.15.030
Road maintenance fee
Administrative policies 14.20.030
Definitions
developed property 14.20.010
gross square footage 14.20.010
ITE manual 14.20.010
multifamily residential 14.20.010
nonresidential 14.20.010
road 14.20.010
single-family residential 14.20.010
street 14.20.010
truck 14.20.010
Enforcement 14.20.050
General provisions 14.20.060
Regulatory program 14.20.020
User fee 14.20.040
Roller skates *See* **Traffic**
RV park facilities *See* **Zoning**

– S –

Schools *See* **Zoning**
Senior housing *See* **Zoning**
Service stations *See* **Zoning**
Sewer system
See also **Water system**
Bills, payment 13.20.070
Companion provisions 13.20.010
Connections
generally 13.20.110
unauthorized *See* Unauthorized connections
Definitions
applicant 13.20.020
BOD (biochemical oxygen demand) 13.20.020
building drain 13.20.020
building sanitary sewer 13.20.020
building storm sewer 13.20.020
city 13.20.020
city engineer 13.20.020
city of Philomath 13.20.020
collection system 13.20.020
combined sewer 13.20.020
commercial service/user 13.20.020
council 13.20.020
customer 13.20.020
domestic sewage 13.20.020
dwelling unit 13.20.020
garbage 13.20.020

grab sample 13.20.020
industrial user 13.20.020
industrial wastewater 13.20.020
infiltration 13.20.020
inflow 13.20.020
lateral sewer 13.20.020
maintenance 13.20.020
may 13.20.020
natural outlet 13.20.020
operation 13.20.020
person 13.20.020
pH 13.20.020
pollutant 13.20.020
pollution 13.20.020
private collection system 13.20.020
properly shredded garbage 13.20.020
public sewer 13.20.020
public works director 13.20.020
rate schedules 13.20.020
replacement 13.20.020
residential user 13.20.020

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sanitary sewer 13.20.020
service charge (user charge) 13.20.020
sewage 13.20.020
sewer 13.20.020
sewerage system 13.20.020
shall 13.20.020
side sewers 13.20.020
storm drain 13.20.020
storm sewer 13.20.020
suspended solids (SS) 13.20.020
unauthorized connection 13.20.020
wastewater 13.20.020
water course 13.20.020
water user 13.20.020
Delinquent accounts 13.20.080
Discharger responsibility 13.20.250
Inspector powers, authority 13.20.140
Notices 13.20.090
Renovation 13.20.120
Service
application 13.20.050
area 13.20.030
description 13.20.040
discontinuance 13.20.100
Severability 13.20.240
Unauthorized connections
elimination 13.20.160
prohibited 13.20.150
Use of public sewers 13.20.060, 13.20.130
Use outside city 13.20.060
Violations
abatement
by city 13.20.190
costs 13.20.200
summary 13.20.210
notice
appeal 13.20.180
issuance 13.20.170
nuisance declared 13.20.230
penalties 13.20.220
Shops *See* **Zoning**
Sidewalk construction
Appeal
option, waiver 12.20.120
procedure 12.20.130
Liens 12.20.110
Notice of costs 12.20.100
Notice to construct, alter, repair
contents 12.20.080
required 12.20.050
service process 12.20.060
time of service 12.20.070
Performance of work by city 12.20.090
Permit required 12.20.020
Property owner
liability 12.20.140
responsibility 12.20.010
Widths 12.20.030
Sidewalk displays *See* **Zoning**
Signs *See* **Zoning**
Skateboards *See* **Traffic**
Smoking in public places
Definitions
bar 8.15.010
business 8.15.010
employee 8.15.010
employer 8.15.010
enclosed area 8.15.010
place of employment 8.15.010
public place 8.15.010
restaurant 8.15.010
retail tobacco store 8.15.010
service line 8.15.010
smoking 8.15.010
sports arena 8.15.010
tobacco product 8.15.010
Enforcement hiatus 8.15.110
In or near entrances to publicly owned buildings 8.15.080
Nonretaliation 8.15.070
Other laws 8.15.100
Places where not regulated 8.15.050
Posting “no smoking” signs 8.15.060
Prohibited
in places of employment 8.15.030
in public places 8.15.020
outside entrances 8.15.040
Violations, penalties 8.15.090
Storage *See* **Zoning**
Storm sewer utility
Administration 13.40.024
Applicability 13.40.022
Connections
elimination 13.40.210
illicit 13.40.160
to stormwater mains 13.40.120
Construction
conformance to standards 13.40.100
inspection, approval 13.40.110
Damage to system 13.40.240
Definitions
city 13.40.010
city manager 13.40.010
Clean Water Act 13.40.010
developed property 13.40.010
director 13.40.010
discharger 13.40.010
floodplain 13.40.010

hazardous materials 13.40.010
illegal discharge 13.40.010
illicit connection 13.40.010
impervious surfaces 13.40.010
nonpoint source 13.40.010
nonstormwater discharge 13.40.010
NPDES 13.40.015
person 13.40.010
point source 13.40.010
pollutant 13.40.010
pollution 13.40.010
premises 13.40.010
runoff control 13.40.010
stormwater 13.40.010
stormwater systems 13.40.010
water or waters of the state 13.40.010
watercourse 13.40.010
Discharges
elimination 13.40.200
illegal 13.40.150
in violation of NPDES permit 13.40.180
Drawing approval 13.40.090
Extension of stormwater systems 13.40.130
Fee
billings, collection 13.40.060
calculation 13.40.050
enforcement 13.40.070
established 13.40.030
use 13.40.040
Liability 13.40.330
Monitoring, analyzing required 13.40.220
Permits required 13.40.080
Purpose 13.40.020
Severability 13.40.320
Spill notification 13.40.190
Suspension of access 13.40.230
Tapping of manholes 13.40.140
Violation
abatement
by city 13.40.270
immediate 13.40.290
recovery of costs 13.40.280
appeal 13.40.260
notice 13.40.250
penalties 13.40.300
public nuisance 13.40.310
Waste disposal prohibitions 13.40.170
Street trees *See* **Zoning**
Structural specialty code
See also **Building codes**
Adopted 15.15.010
Swimming pools *See* **Zoning**
System development charges
Appeal 14.15.150
Classification 14.15.190
Collection 14.15.090
Credits 14.15.120
Definitions
capital improvements 14.15.030
contiguous 14.15.030
development 14.15.030
improvement fee 14.15.030
land area 14.15.030
owner 14.15.030
parcel of land 14.15.030
permittee 14.15.030
qualified public improvements 14.15.030
reimbursement fee 14.15.030
system development charge 14.15.030
Established 14.15.040
Exemptions 14.15.110
Expenditures
authorized 14.15.060
restrictions 14.15.070
Improvement plan 14.15.080
Installment payment 14.15.100
Methodology 14.15.050
Notice 14.15.130
Prohibited connection 14.15.160
Purpose 14.15.010
Rules of construction 14.15.180
Scope 14.15.020
Segregation, use of revenue 14.15.140
Violation, penalty 14.15.170

– T –

Taverns *See* **Zoning**
Theaters *See* **Zoning**
Tobacco products
Definitions
license 5.30.010
licensee 5.30.010
minor 5.30.010
self-service displays 5.30.010
tobacco product 5.30.010
vendor-assisted 5.30.010
Hearing 5.30.110
License
fees 5.30.030, 5.30.120
required 5.30.020
selling without, penalties 5.30.090
suspension, penalties 5.30.080
transferability 5.30.040
Nonretaliation 5.30.070
Notice 5.30.100
Sales to minors 5.30.050
Vendor-assisted sales 5.30.060

Towers *See* **Zoning**
Trade schools *See* **Zoning**
Traffic
See also **Rights-of-way; Vehicles**
Administration, standards, authority 10.10.040
Bicycles 10.10.070
Crossing private property 10.10.050
Damaging sidewalks, curbs 10.10.050
Definitions
bus stop 10.10.030
highway 10.10.030
loading zone 10.10.030
person 10.10.030
road 10.10.030
street 10.10.030
taxicab stand 10.10.030
traffic lane 10.10.030
Enforcement on public property 10.15.010
Existing control devices, markings 10.10.120
General regulations 10.10.050
Impoundment 10.10.100
Motor truck traffic 10.10.050
Obstructing public ways 10.10.050
Parades, processions 10.10.080
Parking
citations, owner responsibility 10.10.090
regulations 10.10.060
Play streets 10.10.050
Roller skates, skateboards, sleds 10.10.050
Short title 10.10.010
State law applicability 10.10.020
Storage of vehicles, personal property on public property 10.10.050
Unlawful riding 10.10.050
Vehicles in park 10.10.050
Violation, penalties 10.10.110
Transit, transportation *See* **Zoning**
Transportation and traffic safety commission
Established, membership 2.45.010
Powers, duties 2.45.040
Quorum 2.45.030
Reports 2.45.050
Rules, regulations 2.45.030
Term, vacancies 2.45.020
Trash *See* **Garbage collection**
Travel trailers *See* **Zoning**
Tree advisory board
Composition 2.40.020
Duties 2.40.040
Established 2.40.010
Notice 2.40.080
Nuisance definition 2.40.070
Permit required, requirements 2.40.050
Prohibited acts 2.40.060
Terms, vacancies 2.40.030
Violation, penalty 2.40.090
Trucking *See* **Zoning**

– U –

Universities *See* **Zoning**
Urban renewal agency
Advisory commission 2.35.060
Agency title 2.35.020
Declaration of blight 2.35.010
Limitations 2.35.050
Membership 2.35.030
Powers 2.35.040
Savings clause 2.35.070
Utilities *See* **Zoning**

– V –

Vehicle repair shops *See* **Zoning**
Vehicles
See also **Traffic**
Inventory of impounded 10.20.010
Vending goods on streets, sidewalks *See under* **Criminal offenses**
Vocational schools *See* **Zoning**

– W –

Warehousing *See* **Zoning**
Water system
See also **Sewer system**
Bills, payment 13.30.070
Companion provisions 13.30.010
Connections *See* Cross connections; Unauthorized connections
Constitutionality, savings clause 13.30.270
Control valves 13.30.200
Cross connections 13.30.210
Damage to city's property 13.30.190
Definitions
applicant 13.30.020
approved backflow prevention assembly 13.30.020
assembly 13.30.020
auxiliary supply 13.30.020
backflow 13.30.020
backflow assembly 13.30.020
certified backflow assembly tester 13.30.020
certified cross connection control specialist 13.30.020
city 13.30.020
city water system 13.30.020
commercial service 13.30.020

contamination 13.30.020
cross connection 13.30.020
council 13.30.020
customer 13.30.020
customer line 13.30.020
date of presentation 13.30.020
DCDA 13.30.020
DCVA 13.30.020
degree of hazard 13.30.020
DHS 13.30.020
double check 13.30.020
double check assembly 13.30.020
double check detector assembly 13.30.020
double check valve backflow prevention assembly 13.30.020
fire protection service 13.30.020
fluoride 13.30.020
health hazard 13.30.020
industrial service 13.30.020
main extensions 13.30.020
mains 13.30.020
meter rate service 13.30.020
mobile units 13.30.020
municipal use 13.30.020
non-health hazard 13.30.020
OAR 13.30.020
person 13.30.020
point of use isolation 13.30.020
pollution hazard 13.30.020
premises 13.30.020
premises isolation 13.30.020
public works director 13.30.020
rate schedules 13.30.020
reduced pressure detector assembly 13.30.020
reduced pressure principle assembly 13.30.020
reduced pressure principle backflow assembly 13.30.020
resident 13.30.020
residential service 13.30.020
retrofitting 13.30.020
RFP 13.30.020
RP assembly 13.30.020
RPDA 13.30.020
service charge (user charge) 13.30.020
service connection 13.30.020
specialist 13.30.020
submerged heads 13.30.020
supervisor 13.30.020
temporary service 13.30.020
thermal expansion 13.30.020
unauthorized connection 13.30.020
Delinquent accounts 13.30.080
Fire hydrants 13.30.170
Fluoridation 13.30.060
Inspections 13.30.230
Meters
error 13.30.130
requirements 13.30.110
Multiple units 13.30.120
Notices 13.30.090
Pools, tanks 13.30.160
Resale of water 13.30.250
Responsibility for equipment 13.30.180
Service
application 13.30.050
area 13.30.030
connections 13.30.110
description 13.30.040
discontinuance 13.30.100
fire protection 13.30.140
interruptions 13.30.240
temporary 13.30.150
Severability 13.30.380
Unauthorized connections
elimination 13.30.290
prohibited 13.30.280
Use outside city 13.30.060
User responsibility 13.30.390
Violations
abatement
by city 13.30.320
costs 13.30.330
summary 13.30.340
notice
appeal 13.30.310
issuance 13.30.300
nuisance declared 13.30.360
penalties
designated 13.30.260
generally 13.30.350
remedies not exclusive 13.30.370
Water main extensions 13.30.060
Water waste 13.30.220
Water usage curtailment plan
Designated 13.35.030
Purpose 13.35.010, 13.35.020
Stage 1, short-term supply, distribution system disruptions 13.35.040
Stage 2, loss of storage capacity, excessive usage demands 13.35.050
Stage 3, prolonged drought conditions 13.35.060
Stage 4, total loss of surface water sources, systemic catastrophe 13.35.070
Summary 13.35.080
Violation, penalty 13.35.090
Water/wastewater treatment, collection facilities *See* **Zoning**

Weapons *See* Unlawful discharge of weapons *under* **Criminal offenses**
Wholesale trade, services *See* **Zoning**
Wireless communication equipment *See* **Zoning**

– Z –

Zoning
Accessory dwellings
off-street parking 18.75.030
R-1 district 18.35.020
R-2 district 18.35.020
Accessory structures
R-1 district 18.35.020
Accessory uses
LI district 18.45.020
R-1 district 18.35.020
Access, circulation
pedestrian 18.65.030
purpose 18.65.010
vehicular 18.65.020
Allowed uses
commercial districts 18.40.020
hillside and erosion control overlay district 18.85.030
industrial districts 18.45.020
master planned developments 18.125.040
overlay districts 18.55.060
public districts 18.50.020
residential districts 18.35.020
Annexations
legislative amendments 18.135.020
process 18.135.030
purpose 18.135.010
record of amendments 18.135.040
transportation planning rule compliance 18.135.050
Appliance sales
off-street parking 18.75.030
Archery clubs
R-1 district 18.35.020
Assembly
C-2 district 18.40.020
HI district 18.45.020
Assisted living homes
off-street parking 18.75.030
Athletic clubs
master planned developments 18.125.040
Auction houses
LI district 18.45.020
Auditoriums
off-street parking 18.75.030
Automobile repair, rental, storage
LI district 18.45.020
Automobile sales, service
C-2 district 18.40.020
LI district 18.45.020
off-street parking 18.75.030
Banks
C-1 district 18.40.020
Bars
off-street parking 18.75.030
Bed and breakfasts
R-2 district 18.35.020
Bindery
LI district 18.45.020
Boat sales
off-street parking 18.75.030
Building height
commercial districts 18.40.060
industrial districts 18.45.060
residential districts 18.35.070
Building permits 18.10.060
Bulk retail uses
off-street parking 18.75.030
Business
off-street parking 18.75.030
C-1 district
See also Commercial districts
established 18.25.010
C-2 district
See also Commercial districts
established 18.25.010
Camping trailers
C-1 district 18.40.020
Car washes
C-2 district 18.40.020
Caretaker dwellings
LI district 18.45.020
Cement, lime manufacture
HI district 18.45.020
Certificate of occupancy 18.10.060
Chapels
off-street parking 18.75.030
Chemical manufacture
HI district 18.45.020
Child care centers
off-street parking 18.75.030
Child care facilities
O-R district 18.40.020
Child care homes
O-R district 18.40.020
Churches
C-1 district 18.40.020
off-street parking 18.75.030
O-R district 18.40.020
R-1 district 18.35.020
R-3 district 18.35.020

City Hall
IP district 18.45.020
O-R district 18.40.020
Code interpretation
procedure 18.140.020
purpose 18.140.010
Colleges
off-street parking 18.75.030
Commercial districts
See also C-1 district; C-2 district; O-R district
allowed uses 18.40.020
block layout 18.40.050
building
height 18.40.060
orientation 18.40.050
setbacks 18.40.030
large scale buildings, developments 18.40.070
pedestrian, transit amenities 18.40.080
purpose 18.40.010
special standards 18.40.090
Commercial uses
IP district 18.45.020
Community centers
C-1 district 18.40.020
IP district 18.45.020
O-R district 18.40.020
P district 18.50.020
R-1 district 18.35.020
Compliance, scope 18.10.020
Conditional use permits
additional standards 18.120.050
application submission 18.120.030
approval
criteria, standards, conditions 18.120.040
process 18.120.020
purpose 18.120.010
Conditional uses
master planned developments 18.125.040
Consistency with plan, laws 18.10.030
Convalescent homes, hospitals
off-street parking 18.75.030
O-R district 18.40.020
Country clubs
R-1 district 18.35.020
Day care centers
C-1 district 18.40.020
Day care facilities
R-1 district 18.35.020
R-3 district 18.35.020
Day nurseries
R-1 district 18.35.020
R-3 district 18.35.020
Definitions
abutting 18.15.010
access easement 18.15.010
access management 18.15.010
accessible 18.15.010
accessory dwelling 18.15.010
accessory structure 18.15.010
accessory use 18.15.010
adjacent 18.15.010
administrative 18.15.010
adverse impact 18.15.010
affordable 18.15.010
agriculture 18.15.010
alley 18.15.010
ambient 18.15.010
arcade 18.15.010
arterial 18.15.010
articulate 18.15.010
articulation 18.15.010
automobile-oriented use 18.15.010
babysitting 18.15.010
bed and breakfast inn 18.15.010
berm 18.15.010
beveled building corner 18.15.010
block 18.15.010
boarding house 18.15.010
bollard 18.15.010
boulevard 18.15.010
building footprint 18.15.010
building mass 18.15.010
building pad 18.15.010
building scale 18.15.010
bulkhead 18.15.010
capacity 18.15.010
centerline radius 18.15.010
child care center 18.15.010
city 18.15.010
civic center 18.15.010
clear and objective 18.15.010
club 18.15.010
commercial 18.15.010
common area 18.15.010
conservation easement 18.15.010
corner radius 18.15.010
cornice 18.15.010
cottage 18.15.010
courtyard 18.15.010
criteria 18.15.010
curb cut 18.15.010
day care facility 18.15.010
day care home 18.15.010
deciduous 18.15.010
dedication 18.15.010
density(ies) 18.15.010
developable 18.15.010
development 18.15.010

discontinued/abandoned use 18.15.010
discretionary 18.15.010
drip-line 18.15.010
drive lane 18.15.010
driveway 18.15.010
driveway apron/approach 18.15.010
drought-tolerant/drought-resistant plants 18.15.010
duplex 18.15.010
dwelling unit 18.15.010
easement 18.15.010
elevation 18.15.010
enhancement 18.15.010
environmentally sensitive areas 18.15.010
evidence 18.15.010
family 18.15.010
family child care 18.15.010
family day care 18.15.010
fish habitat 18.15.010
flag lot 18.15.010
frontage 18.15.010
frontage street or road 18.15.010
functional classification 18.15.010
functions 18.15.010
garage, private 18.15.010
garage, public 18.15.010
grade 18.15.010
ground cover 18.15.010
hardscape 18.15.010
height 18.15.010
home occupation 18.15.010
home occupation site 18.15.010
human-scale design/development 18.15.010
impervious surface 18.15.010
incidental and subordinate to 18.15.010
industry 18.15.010
infill 18.15.010
jail, correction facility 18.15.010
junk 18.15.010
junkyard 18.15.010
land division 18.15.010
land use 18.15.010
land use district 18.15.010
landing 18.15.010
landscaping 18.15.010
lane 18.15.010
legislative 18.15.010
level of service 18.15.010
livestock 18.15.010
lot 18.15.010
lot area 18.15.010
lot coverage 18.15.010
lot depth 18.15.010
lot line 18.15.010
lot line adjustment 18.15.010
lot line, front 18.15.010
lot line, rear 18.15.010
lot line, side 18.15.010
lot width 18.15.010
lot, corner 18.15.010
lot, interior 18.15.010
maneuvering area/aisle 18.15.010
manufactured home 18.15.010
manufactured home park 18.15.010
manufacturing 18.15.010
mid-block lane 18.15.010
ministerial 18.15.010
mini-warehouse 18.15.010
mitigation 18.15.010
multifamily housing 18.15.010
natural hazard 18.15.010
neighborhood 18.15.010
neighborhood-scale design 18.15.010
nonconforming use or development 18.15.010
non-native invasive plants 18.15.010
off-street parking 18.15.010
on-street parking 18.15.010
open space (common/private/active/passive) 18.15.010
orientation 18.15.010
outdoor commercial use 18.15.010
overlay zone/district 18.15.010
parcel 18.15.010
parking 18.15.010
parking lot perimeter 18.15.010
partition 18.15.010
pathway/walkway/access way 18.15.010
pier 18.15.010
planter strip, tree cutout 18.15.010
plat 18.15.010
plaza 18.15.010
primary 18.15.010
property line 18.15.010
property line, front 18.15.010
property line, rear 18.15.010
property line, side 18.15.010
property line, side street 18.15.010
quasi-judicial 18.15.010
recreational vehicle 18.15.010
residential care facility 18.15.010
residential care home 18.15.010
residential caretaker unit 18.15.010
restoration 18.15.010
ridgeline (building) 18.15.010
right-of-way 18.15.010
riparian area 18.15.010
riparian corridor 18.15.010
riparian corridor boundary 18.15.010

roof pitch 18.15.010
rooftop garden 18.15.010
rubbish 18.15.010
scrap 18.15.010
screening 18.15.010
senior housing 18.15.010
sensitive lands 18.15.010
setback 18.15.010
shared driveway 18.15.010
shared parking 18.15.010
single-family attached housing (townhomes) 18.15.010
single-family detached house 18.15.010
single-family detached zero lot line house 18.15.010
site 18.15.010
spot zoning 18.15.010
standards 18.15.010
steep slopes 18.15.010
storage 18.15.010
storefront character 18.15.010
stormwater facility 18.15.010
story 18.15.010
stream 18.15.010
street 18.15.010
street connectivity 18.15.010
street furniture/furnishings 18.15.010
street stub 18.15.010
street tree 18.15.010

street, arterial 18.15.010
street, collector 18.15.010
street, cul-de-sac 18.15.010
street, local 18.15.010
structural alteration 18.15.010
structure 18.15.010
subdivision 18.15.010
swale 18.15.010
tangent 18.15.010
terrace 18.15.010
top of bank 18.15.010
topographical constraint 18.15.010
tract, private/public 18.15.010
transportation facilities 18.15.010
transportation mode 18.15.010
travel lane 18.15.010
triplex 18.15.010
unstable soil 18.15.010
use 18.15.010
values 18.15.010
variance 18.15.010
vision clearance area 18.15.010
water area 18.15.010
wetlands 18.15.010
wildlife habitat 18.15.010
wireless communication equipment 18.15.010
yard 18.15.010
yard, front 18.15.010
yard, rear 18.15.010
yard, side 18.15.010
zero lot line house 18.15.010
Density transfers 18.90.010
Design standards
applicability 18.60.010
types 18.60.020
Development code use 18.05.010
Development, site design review
applicability 18.110.020
application
review procedure 18.110.040
submission requirements 18.110.050
approval criteria 18.110.030, 18.110.060
bonds, assurances 18.110.070
purpose 18.110.010
with permit approval 18.110.080
Distribution
LI district 18.45.020
Distribution plants
LI district 18.45.020
Districts
See also Zones
boundaries 18.30.030
classification 18.30.010
map 18.30.020
Downtown commercial district *See* C-1 district
Drive-in, drive-through facilities
C-1 district 18.40.020
Duplexes
master planned developments 18.125.040
off-street parking 18.75.030
R-1 district 18.35.020
R-2 district 18.35.020
Education facilities
IP district 18.45.020
Electronic equipment
LI district 18.45.020
Equipment repair, sales, rental, storage, service
LI district 18.45.020
Explosive storage, processing
HI district 18.45.020
Family day care facilities
O-R district 18.40.020
Family day care homes
C-1 district 18.40.020
O-R district 18.40.020
R-1 district 18.35.020
Fences, walls
definitions
arbors 18.72.020
back 18.72.020
fence 18.72.020
front 18.72.020
gateways, gates 18.72.020
hedges 18.72.020
lattice, latticework 18.72.020
open sighted 18.72.020
privacy screens 18.72.020
sight obscuring 18.72.020
trellis 18.72.020
purpose 18.70.010, 18.72.010
requirements 18.72.030
/FH district
established 18.25.010
Fifth-wheel trailers
C-1 district 18.40.020
Financial institutions
C-1 district 18.40.020
Fire stations
C-1 district 18.40.020
IP district 18.45.020
O-R district 18.40.020
P district 18.50.020
R-1 district 18.35.020
Fitness centers
master planned developments 18.125.040
Flood damage prevention
administration 18.55.140
authorization 18.55.110

definitions
100-year flood 18.55.120
actual start 18.55.120
actual start of construction 18.55.120
appeal 18.55.120
area of special flood hazard 18.55.120
base flood 18.55.120
basement 18.55.120
below-grade crawlspace 18.55.120
breakaway wall 18.55.120
critical facility 18.55.120
development 18.55.120
elevated building 18.55.120
existing manufactured home park or subdivision 18.55.120
expansion to an existing manufactured home park or subdivision 18.55.120
flood 18.55.120
flood insurance rate map (FIRM) 18.55.120
flood insurance study 18.55.120
flooding 18.55.120
floodway 18.55.120
lowest floor 18.55.120
manufactured home 18.55.120
manufactured home park or subdivision 18.55.120
new construction 18.55.120
new manufactured home park or subdivision 18.55.120
recreational vehicle 18.55.120
start of construction 18.55.120
State Building Code 18.55.120
structure 18.55.120
substantial damage 18.55.120
substantial improvement 18.55.120
variance 18.55.120
water dependent 18.55.120
findings 18.55.110
general provisions 18.55.130
provisions for flood hazard reduction 18.55.150
purpose, objectives 18.55.110
Flood hazard overlay district *See* /FH district
Fourplexes
R-2 district 18.35.020
Fraternal lodges
C-1 district 18.40.020
Freight
LI district 18.45.020
Funeral parlors
C-1 district 18.40.020
O-R district 18.40.020
Furniture sales
LI district 18.45.020
off-street parking 18.75.030
General commercial district *See* C-2 district
Golf courses
master planned developments 18.125.040
off-street parking 18.75.030
R-1 district 18.35.020
Golf driving ranges
master planned developments 18.125.040
Government facilities
LI district 18.45.020
Governmental structures, uses
IP district 18.45.020
O-R district 18.40.020
R-1 district 18.35.020
Gymnasiums
off-street parking 18.75.030
Heavy industrial district *See* HI district
/HEC district
See also Hillside and erosion control overlay district
established 18.25.010
Heliports, private
LI district 18.45.020
HI district
See also Industrial districts
established 18.25.010
High-density residential district *See* R-3 district
Hillside and erosion control overlay district
See also /HEC district
applicability 18.85.020
approval procedure
Type II 18.85.050
Type III 18.85.060
purpose 18.85.010
standards 18.85.040
uses allowed 18.85.030
Home occupations
O-R district 18.40.020
permits 18.145.020
R-1 district 18.35.020
Homes for the aged
off-street parking 18.75.030
Horse riding
LI district 18.45.020
Hospitals
off-street parking 18.75.030
Hotels
off-street parking 18.75.030
Ice cream parlors
off-street parking 18.75.030
Indoor recreation facilities
IP district 18.45.020
master planned developments 18.125.040

Industrial districts
See also HI district; IP district; LI district
allowed uses 18.45.020
building height 18.45.060
development
orientation 18.45.050
setbacks 18.45.030
lot coverage 18.45.040
purpose 18.45.010
special standards 18.45.070
Industrial park district *See* IP district
Industrial uses
off-street parking 18.75.030
Inspection, right of entry 18.20.050

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IP district
See also Industrial districts
established 18.25.010
Jails, correction facilities
P district 18.50.020
Kindergartens
R-1 district 18.35.020
R-3 district 18.35.020
Land divisions
approval process 18.115.030
filing, recording 18.115.100
final plats 18.115.070
general requirements 18.115.020
lot line adjustments 18.115.120
performance guarantee 18.115.090
preliminary plat
approval criteria 18.115.050
submission requirements 18.115.040
public improvements 18.115.080
purpose 18.115.010
replatting, plat vacations 18.115.110
variances 18.115.060
Landscaping
conservation 18.70.020
new 18.70.030
purpose 18.70.010
LI district
See also Industrial districts
established 18.25.010
Libraries
C-1 district 18.40.020
IP district 18.45.020
O-R district 18.40.020
P district 18.50.020
R-1 district 18.35.020
Light industrial district *See* LI district
Light manufacturing
C-2 district 18.40.020
LI district 18.45.020
Livestock auction
HI district 18.45.020
Lot coverage
industrial districts 18.45.040
residential districts 18.35.060
Low-density residential district *See* R-1 district
Manufactured dwellings
R-1 district 18.35.020
Manufactured home parks
off-street parking 18.75.030
R-2 district 18.35.020
R-3 district 18.35.020
Manufactured homes
master planned developments 18.125.040
Manufacturing
HI district 18.45.020
Master planned developments
allowed uses 18.125.040
applicability
design standards 18.125.060
land use district standards 18.125.050
master planned developments 18.125.020
development plan
approval criteria 18.125.110
submission requirements 18.125.100
extension of approval period 18.125.090
filing time limit 18.125.090
map designation 18.125.090
overlay zone, concept plan
approval criteria 18.125.080
submission 18.125.070
purpose 18.125.010
review, approval process
building permits 18.125.120
designated 18.125.030
Medium-density residential district *See* R-2 district
Membership clubs
C-1 district 18.40.020
IP district 18.45.020
O-R district 18.40.020
Mineral extraction, processing
HI district 18.45.020
Miniature golf courses
off-street parking 18.75.030
Minimum requirements 18.20.010
Mini-warehouses
LI district 18.45.020
Modifications
applicability 18.130.020
major 18.130.030
minor 18.130.040
purpose 18.130.010
Mortuaries
off-street parking 18.75.030
Motels
C-2 district 18.40.020
off-street parking 18.75.030
Motor homes
C-1 district 18.40.020
Motor pools
P district 18.50.020
Multifamily dwellings, housing
C-1 district 18.40.020
off-street parking 18.75.030
O-R district 18.40.020
R-3 district 18.35.020
Multifamily residential units
master planned developments 18.125.040

Museums
P district 18.50.020
Neighborhood commercial uses
master planned developments 18.125.040
R-2 district 18.35.020
/NH district
established 18.25.010
Nonconforming uses, developments
introduction 18.150.010
residential exemptions 18.160.030
structures 18.160.020
uses 18.160.010
Nonprofit religious, philanthropic institutions
O-R district 18.40.020
R-1 district 18.35.020
R-3 district 18.35.020
Nursery schools
R-1 district 18.35.020
R-3 district 18.35.020
Nursing homes
off-street parking 18.75.030
O-R district 18.40.020
R-1 district 18.35.020
Office residential district *See* Commercial districts; O-R district
Offices
C-1 district 18.40.020
IP district 18.45.020
off-street parking 18.75.030
O-R district 18.40.020
P district 18.50.020
Official action 18.10.070
Off-street parking *See* Parking
O-R district
established 18.25.010
Outdoor commercial uses, storage, sales
LI district 18.45.020
Outdoor recreation facilities
IP district 18.45.020
master planned developments 18.125.040
Overlay districts
appeals 18.55.070
natural resource 18.55.020
preexisting development 18.55.040
purpose 18.55.010
restoration, enhancement 18.55.090
review procedures 18.55.050
state, federal standards applicability 18.55.030
uses 18.55.060
variances 18.55.080
P district
See also Public district
established 18.25.010
Parking
applicability 18.75.020
lots
C-1 district 18.40.020
O-R district 18.40.020
purpose 18.75.010
standards
bicycles 18.75.040
vehicles 18.75.030
Parks
C-1 district 18.40.020
IP district 18.45.020
O-R district 18.40.020
P district 18.50.020
R-1 district 18.35.020
Performing arts centers
P district 18.50.020
Permits
application, review procedures
description/decision-making 18.105.020
general provisions 18.105.070
neighborhood meetings 18.105.090
purpose 18.105.010
special procedures 18.105.080
Type III, quasi-judicial 18.105.050
Type II, administrative 18.105.040
Type IV, legislative 18.105.060
Type I, ministerial 18.105.030
introduction 18.100.010
Personal services
off-street parking 18.75.030
Pharmacies
O-R district 18.40.020
Places of worship
off-street parking 18.75.030
Planned unit development district *See* /PUD district
Playgrounds
IP district 18.45.020
O-R district 18.40.020
R-1 district 18.35.020
Police stations
IP district 18.45.020
O-R district 18.40.020
P district 18.50.020
Post offices
C-1 district 18.40.020
Preexisting approvals 18.10.050
Printing
LI district 18.45.020
Professional offices
C-1 district 18.40.020
R-1 district 18.35.020
Public assembly areas
off-street parking 18.75.030

Public buildings, uses
C-1 district 18.40.020
Public district
See also P district
allowed uses 18.50.020
property development standards 18.50.040
purpose 18.50.010
site plan review 18.50.030
Public facilities standards
construction plan approval, assurances 18.80.080
easements 18.80.070
improvements
installation 18.80.090
sanitary sewer, water service 18.80.040
transportation 18.80.020
public use areas 18.80.030
purpose, applicability 18.80.010
storm drainage 18.80.050
utilities 18.80.060
Public offices
C-1 district 18.40.020
Public safety uses
LI district 18.45.020
Public uses
master planned developments 18.125.040
Public utilities
off-street parking 18.75.030
Public works yards
LI district 18.45.020
/PUD district
established 18.25.010
R-1 district
See also Residential districts
established 18.25.010
R-2 district
See also Residential districts
established 18.25.010
R-3 district
See also Residential districts
established 18.25.010

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Racquetball courts
master planned developments 18.125.040
Raw materials processing
HI district 18.45.020
Recreational clubs
R-1 district 18.35.020
Recreational vehicle storage areas
master planned developments 18.125.040
Recreational vehicles
C-1 district 18.40.020
Rendering plants
HI district 18.45.020
Repair services
LI district 18.45.020
Research laboratories, facilities
LI district 18.45.020
O-R district 18.40.020
Residences
C-1 district 18.40.020
Residential care facilities
C-1 district 18.40.020
O-R district 18.40.020
R-1 district 18.35.020
R-3 district 18.35.020
Residential care homes
O-R district 18.40.020
R-1 district 18.35.020
R-3 district 18.35.020
Residential districts
See also R-1 district; R-2 district; R-3 district
allowed uses 18.35.020
architectural standards 18.35.090
building
height 18.35.070
orientation 18.35.080
setbacks 18.35.030
flag lots 18.35.050
lots
accessed by mid-block lanes 18.35.050
coverage 18.35.060
standards 18.35.040
purpose 18.35.010
special standards 18.35.100
Rest homes
off-street parking 18.75.030
O-R district 18.40.020
Restaurants
C-1 district 18.40.020
off-street parking 18.75.030
Retail nurseries
off-street parking 18.75.030
Retail sales, service establishments
C-1 district 18.40.020
Retail uses
off-street parking 18.75.030
Retirement homes
O-R district 18.40.020
R-1 district 18.35.020
Row housing
C-1 district 18.40.020
RV park facilities
IP district 18.45.020
LI district 18.45.020
School district bus facilities
LI district 18.45.020
Schools
IP district 18.45.020
off-street parking 18.75.030
O-R district 18.40.020
R-1 district 18.35.020
Senior housing
off-street parking 18.75.030
Sensitive lands and natural resources overlay district
See /NH district
Service stations
C-2 district 18.40.020
Service yards
LI district 18.45.020
Setbacks
commercial districts 18.40.030
industrial districts 18.45.030
residential districts 18.35.030
Severability 18.10.010
Shops
P district 18.50.020
Sidewalk displays
C-1 district 18.40.020
Signs
definitions
building frontage 18.95.020
canopy 18.95.020
construction sign 18.95.020
daily display sign 18.95.020
electronic changing sign 18.95.020
flashing sign 18.95.020
freestanding sign 18.95.020
grade 18.95.020
ground sign 18.95.020
height 18.95.020
height of sign 18.95.020
incidental sign 18.95.020
lighting, indirect or internal 18.95.020
moving sign 18.95.020
pole sign 18.95.020
political sign 18.95.020
portable sign 18.95.020
projecting sign 18.95.020

property line 18.95.020
readerboard 18.95.020
roof sign 18.95.020
sandwich style (“A”) boards 18.95.020
seasonal signs 18.95.020
sign 18.95.020
sign area 18.95.020
street frontage 18.95.020
temporary sign 18.95.020
traffic control device 18.95.020
vision clearance area 18.95.020
wall sign 18.95.020
window sign 18.95.020
district regulations 18.95.040
nonconforming 18.95.050
purpose 18.95.010
regulations 18.95.030
Single-family attached townhomes
R-1 district 18.35.020
R-2 district 18.35.020
Single-family detached, attached residential units
master planned developments 18.125.040
Single-family dwellings, housing
attached
off-street parking 18.75.030
off-street parking 18.75.030
R-1 district 18.35.020
Slaughterhouses
HI district 18.45.020
Solid waste transfer stations
HI district 18.45.020
Special district facilities
LI district 18.45.020
Special standards
commercial districts 18.40.090
industrial districts 18.45.070
residential districts 18.35.100
Stadiums
off-street parking 18.75.030
Stop-order hearing 18.20.070
Storage
LI district 18.45.020
Street trees
purpose 18.70.010
requirements 18.70.040
Substations
LI district 18.45.020
Swimming clubs
R-1 district 18.35.020
Swimming pools
master planned developments 18.125.040
P district 18.50.020
Tanneries
HI district 18.45.020
Taverns
C-1 district 18.40.020
Temporary use permits 18.145.010
Tennis clubs
R-1 district 18.35.020
Tennis courts
master planned developments 18.125.040
Theaters
off-street parking 18.75.030
Towers
O-R district 18.40.020
Trade schools
off-street parking 18.75.030
Trailer sales, service
C-2 district 18.40.020
off-street parking 18.75.030
Training facilities, clubs
LI district 18.45.020
Transit, transportation
LI district 18.45.020
Travel trailers
C-1 district 18.40.020
Triplexes
master planned developments 18.125.040
R-1 district 18.35.020
R-2 district 18.35.020
Trucking
LI district 18.45.020
Universities
off-street parking 18.75.030
Use of a development 18.10.040
Utilities
LI district 18.45.020
Utility facilities
LI district 18.45.020
Variances
application, appeals 18.155.050
Class A 18.155.020
Class B 18.155.030
Class C 18.155.040
introduction 18.150.010
purpose 18.155.010
Vehicle repair shops
C-2 district 18.40.020
Vehicular maintenance
P district 18.50.020
Violation
abatement 18.20.060
complaints 18.20.040
penalty 18.20.030
prohibited 18.20.020
Vocational schools
LI district 18.45.020
Walls *See* Fences, walls

Warehousing
LI district 18.45.020
off-street parking 18.75.030
Water tanks
O-R district 18.40.020
Water/wastewater treatment, collection facilities
P district 18.50.020
Wholesale trade, services
LI district 18.45.020
Wireless communication equipment
LI district 18.45.020
Zero lot line dwellings, houses
R-1 district 18.35.020
R-2 district 18.35.020
Zones
See also Districts
classification 18.25.010
location 18.25.020