TITLE 01
CHAPTER 12: ERROR CORRECTIONS IN ORDINANCES AND RESOLUTIONS

Section

§ 12.01 City Attorney Authorized to Make Corrections

The City Attorney is hereby authorized to renumber sections and parts of sections of ordinances and resolutions, change the wording or headings, rearrange section, change reference numbers to agree with renumbered sections or other parts, substitute the proper subsection, section or other division numbers, strike out figures or words which are merely repetitious, change capitalization for the purpose of uniformity, and correct manifest clerical or typographical errors provided there is no alteration to the meaning, sense, effect or substance.

(Ord. 222-05, passed 3-22-05)

§ 12.02 Duties of the City Recorder

The City Recorder shall keep both the original and corrected version along with a notation of the date of correction and under the authority of what ordinance the correction was made.

(Ord. 222-05, passed 3-22-05)

§ 12.03 Notification to Council

The City Recorder shall notify the City Council by memo at the next available meeting of corrections to ordinances and resolutions and provide a description of such corrections.

(Ord. 222-05, passed 3-22-05)

CHAPTER 14: PUBLIC CONTRACTING RULES

Section

§ 14.01 City Council as Contract Review Board

The City council is designated to continue as the Local Contract Review Board of the City and shall have all the rights, powers and authority necessary to carry out the provisions of ORS Chapters 279A, 279B and 279C (the "Public Contracting Code"). Except as otherwise provided herein, the City Administrator is designated as the City's Contracting Agency for purposes of

contracting powers and duties assigned to the City of Durham as a Contracting Agency under the Public Contracting Code or the Model Rules.

(Ord. 223-05, passed 2-22-05)

§ 14.02 Public Contracts Let Per Oregon Public Contracting Code

Except as specifically provided herein, Public contracts shall be let by the City of Durham according to the State of Oregon Public Contracting Code, including the Model Rule adopted by the Oregon Attorney General.

(Ord. 223-05, passed 2-22-05)

§ 14.03 Definitions

A. Definitions provided by the State of Oregon Public Contracting Code or the Model Rules shall apply to City of Durham procurements except as otherwise provided by this Ordinance.

B. For purposes of this Ordinance, "personal Services" means services that require specialized, technical, creative, professional or communication skills or talents, unique and specialized knowledge, or the exercise of discretionary judgment skills, and for which the quality of service depends on attributes that are unique to the service provider. Such services include, but are not limited to, the services of architects, engineers, attorneys, auditors and other licensed professionals, artists, designers, computer programmers, performers, consultants and property managers. The City Administrator shall have discretion to determine whether a particular type of contract or services comes within this definition.

(Ord. 223-05, passed 2-22-05)

§ 14.04 Award of Contracts Subject to Written Findings of Administrator

The following classes of contracts for goods and services may be awarded as further provided in this Section.

A. Sole source procurements up to the limits provided for in ORS 279B.075

B. Contracts for the purchase of computer equipment and software which may be by a request for written quotations.

C. Emergency procurements pursuant to ORS 279B.080

D. Purchases through federal programs pursuant to ORS 279A.180

E. Contracts for products or supplies under $5,000 whether new or used

F. Amendments to contracts exceeding the limits if the City Council determines that it is not feasible to require competitive procurement to complete the purpose of the contract; otherwise the council shall direct additional competitive procurement and the competitive procurement procedure required for the amendment.

G. Personal services contracts as defined by this Ordinance.

H. By Resolution, the City Council in its capacity as Contract Review Board may exempt other public contracts or classes of public contracts pursuant to ORS 279B.085.

The above contracts may be awarded upon a written finding by the Administrator that in each case, use of such exemption will not substantially impair competition and will result in substantial cost savings to the City. Such findings shall be presented to the City council at the next following meeting.

(Ord. 223-05, passed 2-22-05)

§ 14.05 Award Criteria for Goods and Services

Public contracts for goods and services that are not contracts for public improvements or contracts for personal services shall be governed by the following procedures.

A. Contracts for goods and services valued at less than $5,000 may be awarded by the Contracting Agency based on informal quotes. Amendments to such contracts may not cause the contract to exceed $6,000.
B. Contracts for goods and services valued in excess of $5,000 but less than $25,000 may be awarded by the City Council based on formal quotes. Amendments to such contracts may not cause the contract price to exceed an amount that is greater than twenty-five percent of the original contract price.
C. Contracts for goods and services in excess of $25,000 may be awarded by the City council based on competitive sealed bidding or competitive sealed proposals pursuant to the Public Contracting Code.

(Ord. 223-05, passed 2-22-05

§ 14.06 Personal Services Contracts

Personal services contracts (other than personal services contracts for architectural and engineering services) are subject to the rules established by this section.

A. For personal service contracts involving an anticipated fee of $10,000 or less per year the city Administrator may negotiate a contract for such services with any qualified contractor.

B. For personal service contracts in excess of $10,000 the City Administrator shall attempt to solicit at least three (3) prospective contractors who shall appear to have at least the minimum qualification for the proposed assignment, notify each prospective contractor in reasonable detail of the proposed assignment, and determine the prospective contractors' interest and ability to perform the proposed assignment. Following the review of qualifications, and an interview if conducted, the City Administrator shall present the findings to the City Council for final selection and award of the contract. The Council in it sole discretion may award the work to any qualified person or may decline to award the work to any person.

C. Except as otherwise provided for in the Public contracting Code, personal service contracts may be entered into for amendments to existing contracts and annual renewals without solicitation.

(Ord. 223-05, passed 2-22-05)

§ 14.07 Disposition of City Owned Property

Disposition of personal property owned by the City shall be governed by the following rules:

A. The City Administrator shall prepare a list of property owned by the City that is surplus for presentation to the City Council.

B. Prior to the disposition of any personal property, the City Council shall make a declaration of surplus of those items they deem to be surplus.

C. Upon declaration of surplus the City Administrator is authorized to offer for sale any item valued at $100 or less by whatever means is likely to pro0vide a fair value to the City. Following the offer for sale, if no offer is received in a reasonable period of time after sufficient public notice, the City Administrator is authorized to dispose of the property by destruction and keep on file a certificate of destruction at City Hall. City employees shall be barred from purchasing items not subject to a sealed competitive offer.

D. Items valued at more than $100 shall be sold by means of solicitation for sealed competitive offers following at least one publication describing the items offered for surplus in a newspaper of local circulation.

E. The City of Durham may dispose of surplus property by mutual agreement with another government agency.

(Ord. 223-05, passed 2-22-05)

CHAPTER 16: CREATING MUNICIPAL COURT AND PROVIDING PENALTIES FOR VIOLATIONS

Section

§ 16.01 Municipal Court Established.

The Council establishes a Municipal Court for the City of Durham with jurisdiction over all acts and omissions to act that are now or hereafter defined as a violation of a city ordinance. The Municipal Court shall not be a court of record as provided for in ORS 221.342.

(Ord. 224-05, passed 9-27-05)

§ 16.02 Municipal Judge.

The Council may engage the services of one or more municipal judges by employment contract, by an agreement with an independent contractor or by agreement with another city or with the State Court Administrator as provided for under ORS 190.010 and ORS 221.355 or 221.357,

respectively. The municipal judge, other than a judge provided by the state or another city under such an intergovernmental agreement, shall be appointed by- and shall serve at the pleasure of the Council.

(Ord. 224-05, passed 9-27-05)

§ 16.03 Process; Burden of Proof.

Proceedings of the Durham Municipal Court shall conform to Oregon laws for a violation proceeding, as that term is defined in ORS 153.005, in a justice court or before a justice of the peace. In any prosecution of a violation of a city ordinance the burden of proof shall be a preponderance of the evidence. A violation of an ordinance shall not require pleading or proof of a culpable mental state as an element of the violation.

(Ord. 224-05, passed 9-27-05)

§ 16.04 Code Enforcement; Form of Citation.

The Council designates the City Administrator, the Assistant City Administrator and all sworn law enforcement officers employed by the city as code enforcement officers authorized to issue citations or summonses and complaints for all violations of city ordinances, now existing or hereafter enacted, that provide for monetary penalties or for forfeitures of property or both. A private party may not commence a violation proceeding to enforce the charter or any ordinance of the City of Durham. A code enforcement officer may issue a violation citation for conduct that does not take place in the presence of the enforcement officer provided that the enforcement officer has reasonable grounds to believe that the conduct has occurred and that it constitutes a violation. The form of such citations or summonses and complaints shall conform the to uniform citation form for violations as prescribed by the Oregon Supreme Court and the minimum requirements of ORS 153.045 - 153.051.

(Ord. 224-05, passed 9-27-05)

§ 16.05 Enforcement of Judgment Liens.

The Council directs the City Administrator to register the establishment of Durham Municipal Court with the state Department of Revenue as provided for in ORS 221.344 so as to allow for enforcement of municipal court judgments under ORS 221.346.

(Ord. 224-05, passed 9-27-05)

§ 16.06 Fines for Violations.

A violation of a city ordinance shall be a Class A Violation and shall be punishable by a fine not exceeding $720 for each violation in addition to any other penalties provided for in that ordinance.

(Ord. 224-05, passed 9-27-05)

CHAPTER 18: RULES FOR USE OF PUBLIC PARKS

Section

§ 18.01 Rules of Use.

On public property within the city designated for use as park or open space, no person shall:

A. Start or maintain an open fire in a place not specifically designated for such purpose;

B. Hunt, pursue, trap, kill, injure or molest any wild or domestic bird or animal or disturb its habitat;

C. Take, damage or destroy any flower or vegetation except for edible berries;

D. Place or maintain any temporary or permanent sign except as expressly allowed by a parade or assembly permit;

E. Conduct any private commercial enterprise including the offering of food or drink for consumption or goods or services for sale except as expressly allowed by a parade or assembly permit;

F. Operate any motor vehicle in or on any area not improved for motor vehicle use or park any vehicle other than in an area specifically designated for such purpose;

G. Allow any dog, cat or other domesticated animal to run at large without being controlled by a leash or similar restraint except for an off-leash area west of Fanno Creek in the City Park;

H. Use any sound amplification or sound reproduction device or equipment that disturbs the quiet enjoyment of the park or open space or of any other property by any other person, as determined by a reasonable and objective standard, except as expressly allowed by a parade or assembly permit;

I. Use a public park as a place of overnight accommodation except as expressly allowed by the City Administrator during an emergency affecting the general public safety or welfare;

J. Enter or remain upon any public park or public open space between the hours of sunset and sunrise.

(Ord. 207-01, passed 7-24-01)

§ 18.02 Parade or Assembly Permits.

The City Council by resolution may establish a process for use of public parks and open space and public right of way for a parade or a public assembly and may establish a fee intended to reimburse the city's costs incurred to review an application for such use.

§ 18.03 Fees.

The City Council by resolution may establish a schedule of fees to be charged for certain services and privileges relating to other uses of public parks and open space including the use of any

improvements thereon and may prohibit the use of such improvements unless the appropriate fee or fees have been paid.

(Ord. 207-01, passed 7-24-01)

§ 18.04 Enforcement of Rules and Regulations.

The City Administrator and Police Chief shall enforce the requirements of this Ordinance by any means legally available to the City. The Council appoints the City Administrator as the person in control of public property including public parks and open space and authorizes the City Administrator to bring complaints for criminal trespass against any person for unauthorized entry or for failure or refusal to leave such places upon demand.

(Ord. 207-01, passed 7-24-01)

§ 18.05 Penalties.

An offense against this Ordinance is a Violation and may be prosecuted as such in addition to or in lieu of any other remedy for such offense that is legally available to the City.

(Ord. 233-07, passed 2-27-07)

TITLE O4
CHAPTER 44: REGULATING SYSTEMS DEVELOPMENT CHARGES AND LOCAL IMPROVEMENT IDSTRICTS

Section

§ 44.01 How Charges Established; Effective Date.

A. A systems development charge on the act of development or redevelopment of property, for any of the categories of capital improvements authorized by state law, in the form of a reimbursement fee, an improvement fee or both fee components shall be established by Council resolution incorporating by reference a methodology that considers the factors (as to each component fee) set out in ORS 223.404 as amended from time to time.

B. A systems development charge duly established by Council resolution shall be imposed on all applications for a building permit for a use of property to which the systems development charge applies, received by the City on and after the effective date of the resolution establishing the charge. For purposes of this section, an application for a building permit shall not be deemed received if the application is not complete in all material respects or if the application is not accompanied by payment of the fees required for the permit.

(Ord. 192-98, passed 5-26-98)

§ 44.02 Offset or Credit for Prior Level of Use.

The methodology to be incorporated in a resolution establishing a systems development charge shall state whether the charge is imposed only on the units of development or redevelopment that exceed the number of units of the same- or of any other use that existed on the property prior to the act of development or redevelopment on which the systems development charge accrues.

((Ord. 192-98, passed 5-26-98)

§ 44.03 Limits on Amount of Credit; Transferability of Credits; Credit for Improvement Not Identified In Plan; Expiration of Credits

A. A credit against the improvement fee component of a systems development charge for the construction of a qualified public improvement may be allowed only by resolution of the

City Council. A person obligated to pay a systems development charge shall submit any and all requests for credit(s) to the City Administrator-Recorder no later than 60 days after the date that payment of the charge is due. The Administrator-Recorder on receipt of such request shall obtain at least one independent professional opinion whether the credit should be allowed and in what amount and shall submit the request and that opinion to the Council for consideration at the next regular meeting.

B. The Council by resolution may (1) allow a credit for the construction of a qualified public improvement in an amount greater than the charge that is imposed on the act of development or redevelopment in question; or, (2) provide a credit for construction of a capital improvement not identified in the capital improvement plan for the facilities and assets financed by the systems development charge; or, (3) provide a share of the cost of such improvement by other means. The Council by ordinance may establish a system for the transferability of credits, provided that any credits deemed to be transferable shall be applied or redeemed against a City-imposed systems development charge for the same category of capital improvements no later than 10 years from the date the credit is given and if not so applied or redeemed, the credit shall be void and of no further legal effect.

(Ord. 192-98, passed 5-26-98)

§ 44.04 Challenges to Expenditures and to Allowance of Credit(s).

A. Any interested person may challenge the City's expenditure of systems development charge revenue by filing a writing stating the grounds for the challenge with the City Administrator-Recorder. Any such challenge must be received by the Administrator-Recorder no later two years after the date of the first Council action authorizing the expenditure or any portion thereof. The Council shall consider a challenge received within the time allowed, at its next regular meeting under any process the Council deems reasonable. The Council's decision on the challenge shall be reviewed only as provided in ORS 34.010 to 34.100 relating to Writs of Review.

B. For purposes of this section, a Council resolution allowing a credit against a systems development charge for construction of a qualified public improvement shall be deemed the equivalent of an expenditure of systems development charge revenue.

(Ord. 192-98, passed 5-26-98)

§ 44.05 Actions Not Land Use Decisions.

This Ordinance and any resolution or ordinance adopted hereafter that imposes a systems development charge, that allows a credit against such a charge or that allows for transferability of credits is not a land use decision nor a limited land use decision. Any such resolution or ordinance shall be reviewed only as provided in ORS 34.010 to 34.100 relating to Writs of Review.

(Ord. 192-98, passed 5-26-98)

§ 44.06 Installment Payment of Systems Development Charges and Local Improvement District Assessments

A. A systems development charge imposed on residential development or redevelopment and designed to finance the construction, extension or enlargement of a street, community water supply, storm sewer or sewerage or disposal system as defined in ORS 199.464 is payable in

installments on application for such installment payment by the person from whom the charge is due.

B. An application to pay a systems development charge or a local improvement district assessment in installments shall be on a form provided by the City Administrator-Recorder. The application shall be submitted no later than the date that payment of the charge or the assessment is due. The form shall provide, and the applicant by its signature shall acknowledge on behalf of the applicant, its heirs, successors and assigns that the applicant thereby waives all irregularities or defects, jurisdictional or otherwise, in the proceedings to cause the systems development charge to be imposed or in the proceedings to cause the local improvement for which the final assessment is levied and in the apportionment of the actual cost of the local improvement. The applicant also shall agree by its signature to pay the charge or the final assessment in semi-annual installments over a period of not more than ten years, at a rate of interest on the principal balance determined by the City and with a proportionate part of the City's costs to administer the installment payment program to be included with the principal.

C. An application to pay a systems development charge or a local improvement district assessment in installments shall not be accepted (a) if not signed by all persons having an ownership interest in the property or his/her/their authorized agents; or, (b) if the City Administrator-Recorder determines that the tax assessed value of the property as of the date of application does not equal or exceed the amount of the charge or assessment to be paid.

D. A duly executed application to pay a systems development charge or a local improvement district assessment in installments when accepted by the City shall constitute the applicants promise to pay on the terms stated therein. To secure that promise the applicant shall grant and the City shall have a first and prior lien on the property described in the application, equivalent to a tax lien, to the extent such priority is allowed by state and federal law. The City Administrator-Recorder shall perform such acts as are reasonable and necessary to give notice of the City's lien in the deed records of Washington County, Oregon. Failure to give such notice shall not affect the validity of the lien as to any person.

E. The minimum balance of a systems development charge or a local improvement district assessment that a property owner may apply to pay in installments is $2500. The first payment shall be due and payable at the time the application is accepted by the City Administrator. The property owner shall execute a personal promissory note in favor of the City promising to pay the balance of principal and interest in installments on the date due. The application for payment in installments and the promissory note guaranteeing such payment both shall include the applicant's agreement that in case of the property owner's failure or refusal to make any payment when due the City, in addition to any other remedies available when due, may declare the entire remaining balance including any interest to be due and payable at once and may proceed to foreclose its lien on the property for that balance without further notice to the property owner.

(Ord. 192-98, passed 5-26-98)

§ 44.07 Purpose

A systems development charge for street facilities is hereby imposed for the purpose of creating a source of funds to pay for the installation, construction, reconstruction and extension of street facilities.

(Ord. 96-81, passed 11-18-81)

§ 44.08 Systems Development Charge

The systems development charge for street facilities shall be as follows:

(1) Residential development	$200.00 per dwelling unit
(2) Commercial and industrial Development	$100 per required parking space

(Ord. 96-81, passed 11-18-81)

§ 44.09 Scope.

The storm drainage system development charge provided for in this ordinance is separate from, and in addition to, any applicable tax, assessment, charge or fee otherwise provided by law or City ordinance.

(Ord. 96-81, passed 11-18-81)

CHAPTER 46: REIMBURSEMENT DISTRICTS

Section

§ 46.01 Offers to Construct Extra Capacity for Reimbursement.

A. A person who constructs public infrastructure improvements within the City as a condition of approval of property development ("required improvements") may offer to the City to construct extra-capacity improvements in addition to and in the course of constructing those required improvements. "Public infrastructure" means any capital improvement that is to be dedicated to public ownership when complete and accepted by the appropriate government entity for ownership and maintenance. "Extra capacity" means public infrastructure improvements of a type or scale that are surplus or additional to the required improvements.

B. The offer must include the offeror's agreement to construct the extra capacity improvements at the offeror's own initiative and at the offeror's initial expense, subject to full or partial reimbursement on such terms as are mutually agreed on between the offeror and the City. The offer must include the offeror's written agreement to pay the City's professional fees incurred in reviewing the offer if the Council in its discretion decides not to accept the offer.

C. An offer to construct extra capacity as to which some or all of the costs of constructions shall be reimbursed by the formation of a reimbursement district must be accepted by the

city in writing prior to the City's acceptance of the extra capacity improvements. If the offer is not so made and accepted, any and all public infrastructure that comes into City's possession may be put to any use by any person that the City allows and the person who constructed that infrastructure shall have no claim, legal or equitable, for reimbursement of any or all of the cost of construction, no matter that the improvements include capacity that is surplus to the needs or requirements of the person who constructs those improvements.

(Ord. 218-04, passed 9-28-04)

§ 46.02 Application Process

A. A person who offers to construct extra capacity public infrastructure improvements in exchange for reimbursement of costs of construction shall apply to the City to form a reimbursement district. The application shall be in writing to the City Administrator and shall contain sufficient detail to show:

1. The type and scale of extra capacity to be constructed;

2. The property(ies), other than the property that is subject to required improvements, that may benefit from the extra capacity including the dimensions of the benefited property(ies);

3. Whether the extra capacity improvements will require acquisition of additional private property and if so, whether the offeror or the City is to acquire that additional property and if the former, the (estimated) cost to acquire that property;
4. The offerors estimate of the cost to construct that extra capacity and the basis for such estimate; and,

5. Whether the offeror or the City will assume the risk that formation of a reimbursement district may not result in full reimbursement of the costs to construct the extra capacity improvements.

B. On receipt of an application for formation of a reimbursement district that includes all of the information required by this ordinance, the City Administrator may refer the application to the City Engineer for review. The City Engineer then shall review the application and offer to the City Council its opinion, in writing, as to:

1. The estimated, reasonable cost to construct the extra capacity improvements as distinguished from the cost to construct the required improvements, which costs may include a proportion of the costs of design and construction engineering, necessary permits, property acquisition, and the contractor's profit and overhead;

2. Whether property(ies) other than the property for which improvements are required may benefit from the extra capacity improvement(s); and

3. A methodology to allocate the reimbursement cost among benefited properties.

C. The methodology for deciding what property(ies) may benefit and how to allocate cost among them shall consider:

1. Each property's highest and best use under present zoning;

2. The possible benefit to each property that the extra capacity offers, assuming that the property is (re-)developed to its highest and best use;

3. Whether any benefited property in the past has dedicated to public use, extra capacity infrastructure improvements of the same type as now proposed in the past, without compensation for others' use of that capacity; and,

4. Whether any benefited property will contribute to the cost to construct the extra capacity improvements in the form of dedication of right of way or other contribution.

(Ord. 218-04, passed 9-28-04)

§ **46.03 How District Formed**

A. The council shall hold an informational public hearing at the next meeting that is available after it receives the City Engineer's recommendations. Any person owning property to be included in district shall be entitled to at least 7 days' notice of the hearing and may be heard on question of forming the district and on the fairness of the Engineer's recommended cost allocation. Notice of the hearing shall be deemed given on the date that the notice is mailed. Mailed notices shall be deemed sufficient if sent to the property owner at the address shown in the Washington County deed records. The City in its discretion may give notice of the hearing by any other means reasonably calculated to afford actual notice.

B. After the hearing, the council shall decide whether to accept the offer to construct the extra capacity improvements and whether to form a Reimbursement District. Formation shall be by Resolution listing the estimated assessment against each benefited property, and the Resolution forming the District shall be recorded with Washington county deed records and on the City's lien docket. The criterion for decision shall be whether the public interest requires formation. Consent to formation by any one or more owners of property to be included in the Reimbursement District is not necessary to formation.

(Ord. 218-04, passed 9-28-04)

§ 46.04 Cost to be Reimbursed.

A. In addition to the cost to construct the extra-capacity improvements as described in this Ordinance, the Council in its sole discretion may include in the final costs of the improvements and costs eligible for reimbursement, the City's professional fees incurred in review and formation of a reimbursement district and an allowance for the City's administrative overhead. The council may add a reasonable rate of interest to be charged on those costs until reimbursed.

B. The council shall determine the final, total costs to be reimbursed and the share of those costs to be assessed against each benefited property by a Resolution to be enacted at the next available Council meeting after the final cost can be determined. The Council shall cause this final assessment Resolution to be entered on the City's "lien" docket and to be recorded with the deed records of Washington County.

(Ord. 218-04, passed 9-28-04)

§ **46.05 Payment of Reimbursement District Assessment.**

A. Payment of a reimbursement district assessment shall be due, with accrued interest, in full at time of application for the first building- or other permit to develop or redevelop property to a more intense use than the use of the property existing at the time the district was formed, or at such time that connection to the extra capacity improvement(s) for which the district was formed is necessary or desirable, whichever comes first, as the City shall determine in its sole discretion. No such permit shall issue unless the assessment with accrued interest is paid in full, and any permit issued without such payment shall be voidable. A person may prepay all or part of the assessment against any property without penalty.

B. A person who applies for a permit or who does any other act on property within a reimbursement district at any time after formation of the district but prior to the Council's resolution assessing the final cost shall pay an assessment that is based on the City Engineer's estimate of the costs and be responsible for any difference in the final assessment if higher; if the final assessment is lower, the City shall refund the difference to the payor. Any permit issued in consideration of a person's payment of an estimated assessment shall be voidable if the person fails or refuses to pay a final assessment that is greater than the amount paid based on the estimate. Notwithstanding anything in this Ordinance that is stated or implied to the contrary, the obligation to pay a reimbursement district assessment shall be deemed personal to the property owner of the property subject to the assessment and shall not lie as a lien on the property for which a permit is sought. The council declares that the obligation to pay the assessment shall be deemed to be in the nature of a surcharge on the fee to connect to public infrastructure, not a lien on property.

C. The obligation to pay a Reimbursement District assessment shall expire and be of no further effect as to any property for which no permit application is made and for which no other activity on that property makes connection to the extra capacity improvements necessary or desirable occurring more than 15 years after the effective date of the Council's Resolution declaring the final assessment against that property.

(Ord. 218-04, passed 9-28-04)

TITLE 05

CHAPTER 52: LICENSING OF TRADES, SHOPS AND OCCUPATIONS

Section

§ 52.01 Purposes.

A. This ordinance is enacted to provide revenue for municipal purposes.

B. The license fees levied by this ordinance are in addition to any other license or permit fees required to engage in a business.

C. Nothing in this ordinance shall be construed to apply to a person transacting and carrying on a business that is exempt from city taxation by virtue of the constitutions or statutes of the United States or the state of Oregon.

D. The levy or collection of a license fee shall not be construed to be a license or permit to engage in a business that is unlawful, illegal or prohibited by the laws of the state of Oregon or the United States or by city or county ordinances.

(Ord. 201-00, passed 3-28-00)

§ 52.02 Definitions.

As used in this ordinance, "Business" means an enterprise, activity, profession or occupation or undertaking for profit, including the holding out of premises for tenancy by others. "Doing business" means an act or series of acts performed in the course or pursuit of a business activity on more than one occasion or day in a calendar quarter and not as a one-time isolated event. "Non-profit" means an entity that exists to accomplish some purpose for which the United States and the State of Oregon have granted an exemption from taxation on income and that is formally recognized as a not for profit entity by either jurisdiction. "Person" means, in addition to its ordinary meaning, any business entity recognized by the state of Oregon.

(Ord. 201-00, passed 3-28-00)

§ 52.03 License Required.

Unless exempt under the provisions of subsections A or B, no person shall do business within the City without a current, valid city business license. No person shall do business within the City as the employee, agent, or representative of another person unless either the principal or the employee, agent or representative has a current, valid City business license for that business, no matter where the principal offices of that business are situated.

A. A person who claims to be exempt from the license requirement of this Ordinance under provision of ORS 696.365 (relating to real estate salespersons working under a broker with principal offices outside the city), ORS 701.015 (relating to contractors and landscape contractors licensed by the Metropolitan Service District) or any other provision of state or local law shall show proof to the City Administrator of the business license or receipt for business tax given by the other jurisdiction, if any, or other proof of the person's current, valid entitlement to such exemption.

B. A person who claims to be exempt from the license requirement of this Ordinance as a non-profit shall show proof to the City Administrator that the United States Internal Revenue Service and the Oregon Department of Revenue have granted that status to the person.

(Ord. 201-00, passed 3-28-00)

§ 52.04 Door-to-Door Solicitation.

No person shall offer goods or services for sale or solicit money or anything having money value from another person or property occupied as a residence:

A. At any time before 8 AM and after 9 PM unless with the prior express permission of the person in possession or control of the residence; and,

B. At no time if the premises are posted with a sign stating "No Solicitors," "No Peddlers" or words to similar effect unless with the prior express permission of the person in possession or control of the residence; and

C. At no time without carrying on or about the person a legible copy of a current valid City Business license available for inspection on demand by any person to whom an offer or solicitation is made. A person who is exempt from the business license required by this Ordinance shall carry and make available in lieu of same, printed identification showing the person's true name and the true business name of the other person or the entity that the solicitor represents.

(Ord. 201-00, passed 3-28-00)

§ 52.05 When Fees Due.

Business licenses required under this Ordinance are for a term commencing on July 1 of a calendar year and ending on June 30 of the following year. The business license fee shall be due on or before July 1 for persons doing business as of that date or on or before the date a person commences doing business in Durham. Payment not received within 30 days of the due date is delinquent and is subject to penalties as provided for herein. A person who first commences doing business in Durham on or after January 1 of a calendar year, shall be entitled to a 50% reduction of the license fee for the license period ending June 30 of that year. In no case is a business license fee refundable.

(Ord. 201-00, passed 3-28-00)

§ 52.06 Information to be Submitted.

A. On or before the date that a business license is due, a person doing business in Durham shall submit to the City Administrator the following information:
   1. The date of the application.

2. The name of the business.

3. A description of the business to be conducted in the city.

4. The name and title of the applicant and all persons having an interest in the business.

5. The person who may be contacted in case of an emergency and the phone number at which that person may be reached.

6. The location where the business is to be conducted.

    a. Name of the property owner or manager on which the business is located.

    b. Street and mailing address(es) of the business.

7. The average number of persons regularly employed.

8. The types of hazardous materials, if any, regularly maintained on the premises as defined under ORS 466.605.

9. The license fee tendered with the application.

10. Any other information necessary to enable the City Administrator or designee to review the application to determine whether the application should be approved.

B. The City Administrator may verify the information submitted for a business license by any information available and shall determine the license fee due from the person. A person who disagrees with the Administrator's determination may appeal the matter to the City Council, who shall hear the appeal at its next available meeting. The City Council's determination of the business license fee due from a person shall be final.

(Ord. 201-00, passed 3-28-00)

§ 52.07 Fees Imposed.

A. A license fee is imposed on the act of doing business within the City of Durham according to the following table:

Minimum Fee:	$50.00
1 –10 employees	$50.00
11 – 50 employees	$100.00
51 or more employees	$200.00
Multi-Unit Residential Rental Business	$12.00 per unit plus Minimum Fee

B. A person doing business in Durham, for whom payment of a business license fee is delinquent, shall pay as a penalty for delinquency the additional sum of $10.00 for each calendar month or fraction thereof for which payment remains delinquent.

C. Nothing contained in this ordinance shall vest any right in a license as a contract obligation on the part of the city as to the amount of the fee. The fees provided for in

this ordinance may be increased or decreased, additional fees may be imposed, and classifications may be changed.

D. A person operating more than one business shall pay the license fee prescribed for each of the businesses, except as specifically provided by ordinance.

As of the date of implementation of this ordinance any increase in fees due for fiscal year 2004 –2005 shall be credited with any amount already paid for that fiscal year.

(Ord. 201-00, passed 3-28-00; Amending Ord. 201-04, passed 9-28-04)

TITLE 08
CHAPTER 80: REGULATING REFUSE HAULING

Section

§ 80.01 Establishment and Purpose

A. This ordinance is intended to exercise the option in ORS 459.108 to establish and enforce civil penalties for refuse hauling, dumping and littering.

B. Departmental enforcement responsibilities are established by this ordinance.

C. A City of Durham Infractions Section with the powers and responsibilities provided in this Chapter, and subject to the procedures and limitations set forth below, is hereby established.

D. The City of Durham Infractions Section has been established for the purpose of providing a convenient nd practical forum for the administrative hearing and determination of cases arising out of civil infractions of this ordinance.

(Ord. 173-93, passed 3-23-93)

§ 80.02 Refuse Hauling Regulation

A. No person, firm, or corporation shall transport or carry, or direct another person, firm or corporation to transport or carry, any rubbish, trash, garbage, debris or other refuse, or recyclable material, in or on a motor vehicle or trailer, upon a public road right of way in the City of Durham, unless such refuse or recyclable is either:

1. Completely covered on all sides and on the top and bottom thereof and such cover is either a part of or securely fastened to the body of such motor vehicle or trailer; or

2. Contained in the body of the motor vehicle or trailer in such a way as not to cause any part of the hauled refuse or recyclable material to be deposited upon any private or public right of way or driveway in the City of Durham.

B. Any person, firm, or corporation violating subsection (A) shall be subject to a civil fine of not less than $100 and no more than $500 for each infraction. A complaint for any

infraction of subsection (A) shall be initiated before a Hearings Officer, pursuant to this Chapter.

(Ord. 173-93, passed 3-23-93)

§ 80.03 Dumping and Littering Prohibited

A. No person, firm or corporation shall throw or place, or direct another person, firm or corporation to throw or place, other than in receptacles provided therefore, upon private land or waters of another person, firm, or corporation without the permission of the owner, or upon public lands or waters, or upon any public place, any rubbish, trash, garbage, debris, or other refuse or recyclable material.

B. Any person, firm, or corporation violating subsection (A) shall be subject to :

1. A civil fine of not less than $500 and no more than $999 for each infraction; and

2. An award of costs to reimburse the City of Durham for the following actual expenses: (a) administrative costs of investigation, adjudication, and collection; and (b) cleanup and disposal costs incurred.

A complaint alleging any infraction of subsection (A) shall be initiated before a Hearings Officer, pursuant to this Chapter.

(Ord. 173-93, passed 3-23-93)

§ 80.04 Reward

Any person other than a City of Durham officer, employee, or agent charged with the enforcement of this ordinance, who provides information leading to the imposition and collection of a fine under sections 1.020 or 1.030 may receive a reward of up to fifty-one (51%) of the amount of the fine collected by the City of Durham as determined by the City Council.

(Ord. 173-93, passed 3-23-93)

§ 80.05 Departmental Enforcement

A. Enforcement of the regulatory enactments and policies set forth in this Chapter shall be the responsibility of City Administrator/Recorder.

B. The City Administrator/Recorder shall:

1. Investigate refuse hauling, dumping, and littering infractions;

2. Issue complaints;

3. Reach written settlements, signed by the City Administrator/Recorder;

4. Represent the City of Durham before the Hearings Officer; except where counsel is necessary; and

5. Collect fines and costs.

(Ord. 173-93, passed 3-23-93)

§ 80.06 Infraction Section Organization

A. The Section shall consist of the chief Hearings Officer, any temporary or assistant Hearings Officers, and supporting clerical staff and shall be under the general supervision of the City Administrator/Recorder.

B. Consistent with this Chapter and other applicable law, the City of Durham may establish rules for the performance of the functions assigned to the Section.

C. The chief Hearings Officer, temporary Hearings Officers, and assistant Hearings Officers shall be appointed by and subject to removal by the City Council of the City of Durham. All appointments made pursuant to this Section shall be for a period of one year or less.

D. The compensation of the Hearings Officers shall be as established by separate Order of the City Council of the City of Durham. Other employees of this Section shall be subject to the personnel system of the City of Durham.

E. A personal services contract may be entered into by the City of Durham and the Hearings Officer to cover their compensation. The City of Durham may enter into an intergovernmental agreement to share the Hearings Officer with other jurisdictions.

(Ord. 173-93, passed 3-23-93)

§ 80.07 Complaint and Notice of Hearing

A. A proceeding before the Hearings Officer may be initiated only as specifically authorized by this Chapter.

B. A proceeding shall be initiated only by the department filing a complaint with the Hearings Officer in substantially the following form.

COMPLAINT REGARDING DURHAM INFRACTIONS

CODE INFRACTION

_____ VS _____ Petitioner Respondent
Address of Respondent
Address or Location of the Alleged Incident
Nature of Infraction, including Chapter section violated. $_____ _____ Max. Penalty Relief sought by City of Durham Date_____ Signed_____ Printed name_____ Title_____

C. The hearings Officer shall cause notice of the hearing to be given to the respondent (s) either personally or by certified United States mail at least 15 days prior to the hearing date. The notice shall contain a statement of the time, date, and place of the hearing. A copy of the complaint shall be attached to the notice.

D. The City Attorney shall prepare the Summons and Complaint to be used for the city of Durham's infractions and shall establish procedures to control its use.

(Ord. 173-93, passed 3-23-93)

§ 80.08 Answer; Default

A. A respondent who receives a notice of hearing and complaint for an infraction shall answer such complaint and notice of hearing either (1) personally appearing to answer at the time and place specified herein, or (2) mailing or otherwise delivering to the place specified on or before the assigned appearance date, a signed copy of the complaint and notice of hearing, together with a check or money order in the amount of the scheduled fine listed therein. If the infraction is denied, a hearing will be held on the date assigned in the notice of the hearing.

B. If the respondent alleged to have committed the infraction fails to answer the complaint and notice of hearing by the appearance date indicated thereon, which shall be no sooner than seven days from the date of the notice of hearing, or appear at a hearing as provided herein, the Hearings Officer shall accept the department's file as the entire record and shall deliver or mail a final order declaring a default, making findings based on the record, and making the fine and costs identified in the complaint due and payable.

(Ord. 173-93, passed 3-23-93)

§ 80.09 Hearing

A. Unless precluded by law, informal disposition of any proceeding may be made between the department and respondent, with or without a hearing, by stipulation, consent order, agreed settlement, or default.

B. The City of Durham shall not be represented before the Hearings Officer by legal counsel except in preparation of the case or as provided below. A respondent charged with an infraction may be represented by a retained attorney provided that five (5) working days' written notice of such representation is received by legal counsel. The City of Durham may have legal counsel represent it when respondent is represented by counsel. The Hearings Officer may waive this notice requirement in individual cases or reset the hearing for a later date.

C. The City of Durham must prove the infraction occurred by a preponderance of the admissible evidence. The Oregon Evidence Code shall be applied by the Hearings Officer.

D. A name of a person, firm, or corporation found on rubbish, trash, garbage, debris, or other refuse, or recyclable material, in such a way that it denotes ownership of the items, constitutes rebuttable evidence that the person, firm, or corporation has violated the refuse hauling, dumping, and/or littering regulations.

E. The Hearings Officer shall place on the record a statement of the substance of any written or oral ex-parte communications made to the Officer on a fact in issue during the pendency of the proceedings. The Officer shall notify the parties of the communication and of their right to rebut such communications.

F. The Hearings Officer shall have the authority to administer oaths and take testimony of witnesses. Upon the request of the respondent, or upon his or her own motion, the Hearings Officer may issue subpoenas in accordance with the Oregon Rules of Civil Procedure, which shall apple to procedural questions not otherwise addressed by this Chapter.

1. If the respondent desires that witnesses be ordered to appear by subpoena, respondent shall so request in writing at any time before five days prior to the scheduled hearing. A $15 deposit for each witness shall accompany each request, such deposit to be refunded as appropriate if the witness cost is less than the amount deposited.

2. Subject to the same five-day limitation, the City of Durham may also request that certain witnesses be ordered to appear by subpoena.
3. The Hearings Officer may waive the five-day limitation for a request in writing with the required deposit for good cause.

4. Witnesses ordered to appear by subpoena shall be allowed the same fees and mileage as allowed in civil cases.

5. If a fine is imposed in the final order, the order shall include an order for payment of actual costs for any witness fees attributable to the hearing.

G. The respondent shall have the right to cross-examine witnesses who testify and shall have the right to submit evidence on his, her, or its behalf.

H. After due consideration of the evidence and arguments, the Hearings Officer shall determine whether the infraction alleged in the complaint has been proven by a preponderance of the evidence.

1. When the determination is that the infraction has not been proven, an order dismissing the complaint shall be entered.

2. When the determination is that the infraction has been proven, or if an answer admitting the infraction has been received, an appropriate order shall be entered, including penalty and costs.

3. The final order issued by the Hearings Officer shall set forth both findings of fact and conclusions of law and shall contain the amount of the fine and costs imposed and instruction regarding payment.

4. A copy of the order shall be delivered to the parties, or to their attorneys of record, personally or by mail.

I. A tape recording shall be made of the hearing unless waived by both parties. The tape shall be retained for at least 90 days following the hearing or final judgment on appeal.

(Ord. 173-93, passed 3-23-93)

§ 80.10 Review

A. Any motion to reconsider the final order of the Hearings Officer must be filed within 10 days of the original order to be considered. The Hearings Officer may reconsider the final order with or without further briefing or oral argument. If allowed, reconsideration shall result in reaffirmance, modification, or reversal in a new final order. Filing a motion for reconsideration does not toll the period for filing an appeal in court.

B. A respondent may appeal a final adverse ruling by Writ of Review as provided in ORS 34.010 through 34.100.

(Ord. 173-93, passed 3-23-93)

§ 80.11 Enforcement of Fines and Costs

A. Fines and costs are payable upon receipt of the written settlement or final order imposing the fines and costs. Fines and costs under this Chapter are a debt owing to the City of Durham and may be collected in the same manner as any other debt allowed by law.

B. The City of Durham may initiate appropriate legal action, in law or equity, in any court of competent jurisdiction to enforce the provisions of any written settlement or final order of the Hearings Officer.

TITLE 09
CHAPTER 90: METHODS AND PROCEDURES FOR MONITORING FALSE ALARMS

Section

§ 90.01 Purpose, Construction and Scope

A. The occupants of numerous residential, commercial and industrial establishments with the corporate limits of the City of Durham have found it desirable to make provisions for the installation of alarm systems upon their premises, at their own costs and expense, for emergencies which require emergency service provider response.

B. The proliferation of commercial and residential users of such alarm systems has resulted in conditions that, if not remedied, will lead to an unnecessary drain on the finances of the City (and its emergency service providers) and a deterioration of the quality of service to the City's residents.

C. The purpose of this ordinance is to encourage alarm users to assume increased responsibility for maintaining the mechanical reliability and the proper use of alarm systems to prevent unnecessary emergency service provider responses to false alarms and thereby protect the emergency response capability of the City from misuse. The public interest, therefore, requires the enactment of rules, regulations, and procedures to monitor and control the occurrence of false alarms within the corporate limits of the City for the following purposes:

1. The excessive number of false alarms which require expenditure of emergency service provider resources must be reduced so that those limited resources may be more efficiently utilized;

2. Those persons who fail to maintain their alarm systems, thereby giving cause for false alarms, should help support the administration of the alarm response system through additional charges, which relate to the additional responses by the emergency service providers;

3. Those alarm users who are responsible for excessive false alarms and who fail or refuse to remedy the cause of excessive false alarms demonstrate their indifference to limited emergency service provider resources being devoted to unnecessary emergency responses, and such users should be treated by punitive measures. By the time an alarm user's system has generated two (2) false alarms within a year, the City of Durham, by way of notices, will have provided the user with ample warning

of the consequences and, therefore it is presumed the alarm user has failed to take adequate steps to remedy the problem(s) and maintain the alarm system.

D. Except where otherwise provided, this ordinance:

1. relates to all alarm systems in the City of durham eliciting emergency service provider response;

2. establishes Excessive False Alarm fees; and

3. provides for the enforcement of violations.

(Ord. 165-91, passed 4-28-92)

§ 90.02 Definitions

For the purpose of this ordinance, the following definitions apply:

A. Alarm System. An assembly of equipment, mechanical or electrical, arranged to signal the occurrence of an illegal entry or other activity requiring urgent attention and to which emergency service providers are expected to respond.

B. Alarm User. A person, firm, partnership, corporation, association or other legal entity in control of a building, structure, facility or portion thereof with the city of durham wherein an alarm system is used.

C. Automatic Dialing Device. A device which is interconnected to a telephone line and is programmed to select a predetermined telephone number and to automatically (without manual intervention) transmit by voice message or code signal an emergency message indicating a need for emergency response. An automatic dialing device is an alarm system.

D. Chief of Police. The Chief of Police of the police agency providing service to the City of Durham, or a designated representative.

E. Coordinator. The individual designated by the City council of the City of durham to issue permits and administer the provisions of this ordinance.

F. Council. The Durham City Council, governing body of the City of Durham, Washington County, Oregon.

G. Emergency Service Provider. The City of Tualatin Police Department (currently under contract to provide police services in the City of Durham), the Tualatin Valley Fire and Rescue department, any (public and/or private) agency providing ambulance service, or any future successor(s) to these service providers.

H. Excessive False Alarm. A false alarm which occurs following one previous false alarm within one year.

I. False Alarm. Signal or activation by an alarm system which elicits a response by an emergency service provider when a situation requiring a response by that provider does not in fact exist. False alarm does not include an alarm signal by an alarm system which is caused by violent and extraordinary conditions of nature or other extraordinary circumstances not reasonably anticipated or subject to control by the alarm user.

J. Governmental Political Unit. Any tax-supported public agency.

K. Handicap. A physical or mental impairment which for the individual constitutes or results in a functional limitation to one or more major life activities, as defined in ORS 443.580(2).

L. Interconnect. To connect an alarm system including an automatic dialing device to a telephone line either directly or through a mechanical device that utilizes a telephone for the purpose of using the telephone line to transmit a message upon the activation of the alarm system.

M. Monitoring Center. A facility used to receive emergency and general information from an alarm user and to direct an emergency response.

N. Primary Trunk Line. A telephone line serving the Washington County Consolidated Communication Agency (or any successor) that is designated to receive emergency calls.

O. Sound Emission Cutoff Feature. A feature of an alarm system which will cause an audible alarm to stop emitting sound.

P. System Becomes Operative. The date when the alarm system is capable of eliciting a response by an emergency service provider.

Q. Year. A twelve-month period of time coinciding with the City's fiscal year, or any other twelve-month period as determined by the Council.

(Ord. 165-91, passed 4-28-92)

§ 90.03 User Instructions

Every alarm business, which operates as such on behalf of alarm users within the city of Durham, shall furnish the user with instructions which enable the user to operate the alarm system properly without false alarms and to obtain service for the alarm system.

(Ord. 165-91, passed 4-28-92)

§ 90.04 Automatic Dialing Device; Certain Interconnections Prohibited

A. Within sixty (60) days after the effective date of this ordinance, all existing automatic dialing devices programmed to select a primary trunk line shall be reprogrammed or disconnected.

B. Except as provided in Paragraph 3 of this section, it is unlawful for any person to program an automatic dialing device which selects any telephone line assigned to a City of durham emergency service provider; and it is unlawful form an alarm user to tail to

disconnect or reprogram such a device within twelve (12) hours of receipt of written notice from the City of Durham that such automated dialing device should be disconnected or reprogrammed.

C. The City of Durham and other governmental providers of emergency and critical municipal services to the City are exempt from the provisions of this section.

(Ord. 165-91, passed 4-28-92)

§ 90.05 Penalties for Excessive False Alarms

A. No person in charge of residential premises shall cause or allow the transmittal of more than three false alarms from those premises with a year. No person in charge of non-residential premises shall cause or allow the transmittal of more than three false alarms from those premises within a year. Each transmittal from the same premises that exceeds the number allowed by this Section constitutes a separate Violation.

B. A false alarm shall not be counted in the number of false alarms allowed without penalty as provided for in subsection 1of this Section 6 if, no later than 30 days from the date of notice that a false alarm has been reported, the person in charge of the premises presents proof satisfactory to the City that the alarm was the result of an equipment malfunction and that the malfunction has been repaired.

(Amended Ord. 229-06, passed 3-28-06)

§ 90.06 Confidentiality and Statistics

A. All information submitted in compliance with this ordinance shall be held in the strictest confidence and shall be deemed a public record exempt from disclosure pursuant to ORS 192.202. The Coordinator shall be charged with the sole responsibility for the maintenance of all records of any kind whatsoever under this ordinance.

B. Not withstanding the requirements of Paragraph 1, the Coordinator shall develop and maintain statistics for purposes of evaluating alarm systems.

(Ord. 165-91, passed 4-28-92)

§ 90.07 Allocation of Revenues

All collections of money collected pursuant to this ordinance shall be deposited in the General Fund of the City of Durham, and are non-refundable.

(Ord. 165-91, passed 4-28-92)

CHAPTER 92: DECLARING CERTAIN ACTS AND CONDITIONS OF PROPERTY TO BE PUBLIC NUISANCES, AND PROVIDING FOR THEIR ABATEMENT

Section

§ 92.01 Short Title

This ordinance shall be known as the "Nuisance Ordinance."

(Ord. 196-99, passed 8-22-99)

§ 92.02 Acts and Conditions Constituting a Public Nuisance

The following acts upon- and conditions of property are declared to be public nuisances *per se* and may be abated by any of the procedures established by this Ordinance:

A. To allow *graffiti* to remain on any structure that is visible from any portion of the public right of way or from premises open to the public for any time longer than is reasonably required to remove or cover same after notice or discovery of same;

B. To cause or allow the erection or maintenance of a barbed- or ribbon-wire- or electrified fence adjacent to public right of way;

C. To cause or allow the operation of light fixtures that directly illuminate the property of others without those others' consent;

D. To erect or maintain any structure or vegetation that obstructs the vision clearance area for public right of way that is established by City ordinance;

E. To accumulate putrescible waste other than a compost pile kept on residential property by the owner or occupant of that property;

F. To allow any vegetation that is poisonous or toxic to human touch to extend into or onto the public right of way;

G. To allow grasses or similar combustible vegetation to exist at a height greater than 12" at any time between the official start of the seasons of spring and fall, other than for agriculture operations permitted under the Comprehensive Land Use Code;

H. To cause or allow discarded bulk waste, such as, but not limited to, furniture, appliances or boxes of trash, to remain on property outside a fully enclosed structure;

I. To cause or allow to remain in a place accessible to children a container of more than 1.5 cubic foot capacity that cannot be readily unlocked or unfastened from the inside when closed;

J. To cause or allow the use of property in violation of the Comprehensive Land Use Code or in violation of the laws and rules of the United States, the State of Oregon or the Unified Sewerage Agency of Washington County relating to releases or discharges of toxic or contaminated waste into the soil or into the waters of the state, or relating to soil erosion;

K. To cause or allow motor vehicles not currently registered for operation to remain on property outside a fully enclosed structure.

(Ord. 196-99, passed 8-22-99)

§ 92.03 Noise

No person shall create unreasonable or unnecessary noise in the City of Durham. The following noise creating acts are illustrative of unreasonable noises, declared to be public nuisances *per se* and may be abated by any of the procedures established by this Ordinance:

A. To cause or allow continual or continuous man-made sound for a duration that unreasonably disturbs the peace and quiet of other persons at a sound level that is plainly audible within any dwelling unit that is not the source of the sound, between the hours of 9PM and 7AM;

B. Maintenance of property, including alteration or repair of a building, mowing of lawns or other landscape maintenance using power tools may occur only between the hours of 7AM and 9PM, Monday through Friday; and, 9AM to 7:00PM on Saturdays and Sundays.

C. Construction, including excavation, demolition, alteration or repair of a building or the maintenance of property using power tools may occur only between the hours of 7AM and 7PM, Monday through Friday; 9AM to 7:00PM on two Saturdays per month; and, not on Sundays.

(Ord. 196-99, passed 8-22-99)

§ 92.04 Dangerous Structure a Nuisance

The Council declares that a dangerous structure is a nuisance *per se.* A dangerous structure is a structure as to which the Building Official finds:

A. Any portion of the structure has been damaged by fire, earthquake, wind, flood or any other cause to such extent that the structural strength or stability is materially less than it was before the damage and is less than the minimum requirements of the Oregon State Structural Specialty Code or Fire and Life Safety Code for new, similar structures; or,

B. Any portion of the structure is likely to fail, to become detached or dislodged, or to collapse and thereby present an unreasonable risk of harm to persons or property; or,

C. There exists 33 percent or more damage or deterioration of any supporting member, or 50 percent or more damage or deterioration of any non-supporting member or of the enclosing or exterior wall covering; or

D. Damage by fire, earthquake, wind, flood or any other cause has caused or allowed the structure or the property on which the structure stands to become an attractive nuisance or inhabited by trespassers."

(Ord. 216-04, passed 9-28-04)

§ 92.05 Animals

The following acts pertaining to animal ownership are declared to be public nuisances *per se* and may be abated by any of the procedures established by this Ordinance:

A. To cause or allow continual or continuous barking or other animal sounds emanating from the person's property at a time and for a duration that unreasonably disturbs the peace and quiet of other persons;
B. To keep or raise animals, birds or livestock other than the domestic pets of the person occupying the property, unless such use of property is allowed by the Comprehensive Land Use Code and meets the standards established by applicable City ordinances;
C. To cause or allow an animal carcass to remain on property for any time longer than is reasonably necessary to dispose of same after notice or discovery of same;

(Ord. 196-99, passed 8-22-99)

§ 92.06 Council Initiative

The Council on its own initiative may direct the Administrator-Recorder to send notice to abate as provided for in this Ordinance when the Council, on information to it from any source, has reason to believe the existence of the following acts upon or conditions of property:

A. Any act or condition not defined by this Ordinance as a nuisance *per se;*

B. Any other act or condition constitutes an attractive nuisance to children as defined by the common law; or,

C. Any act or condition that the Council finds to constitute substantial interference with the rights of the public generally to common enjoyment of the public good.

(Ord. 196-99, passed 8-22-99)

§ 92.07 Notice

When the Administrator-Recorder has reason to believe the existence of a nuisance *per se* or when the Council so directs, the Administrator-Recorder shall direct notice to the person shown on the current county tax assessment roll to be the property owner and to the occupant if different. Notice may be given by any means reasonably calculated to effect actual notice, including a writing addressed to the street address of the property and to the address of the record owner on the assessment roll if different, deposited with the United States Postal Service. The Administrator-Recorder shall cause similar notice to be posted in a prominent place on or adjacent to the property where the nuisance exists. An error in the name or address of the property owner shall not void the notice sent or given to that person if the City can demonstrate that the owner had actual notice.

(Ord. 196-99, passed 8-22-99)

§ 92.08 Notice Content

The notice to abate shall describe the property on which the nuisance exists by street address or by tax assessor's map and tax lot numbers. It shall describe the nuisance in a short and plain statement and state the property owner's obligations in response to the notice. The notice shall state the City's right to abate the nuisance by all legal means available to it and the City's right to recover the costs of abatement by imposition of a lien on the property if the owner fails or refuses to act in response to the notice.

(Ord. 196-99, passed 8-22-99)

§ 92.09 Owner to Abate or Show No Nuisance; Hearing

The owner(s) of the property that is subject to a notice to abate or the owner's authorized agent shall, within 10 days of the date the notice first is given or sent, abate the nuisance or show in a writing delivered within that time to the City Administrator-Recorder that no nuisance exists. On receipt of such a showing the Administrator-Recorder shall set the matter for hearing at the next available meeting of the Council and shall inform the person who submitted the showing of the date and time of the hearing and the person's right to be heard at same. At the hearing either party may be represented by an attorney, may present witnesses and documents in support of its position and may question the witnesses and documents offered by the other party. The proponent of a fact or position shall have the burden of proof and the burden as to same. At the close of the hearing the Council shall determine whether a public nuisance exists on the property and if so, shall direct the remedies the City shall undertake to abate the nuisance on the property owner's failure or refusal to abate within the time set by the Council. A decision by the Council that a nuisance exists and directing its abatement shall be reduced to writing and mailed or delivered to the property owner or the owner's authorized agent.

(Ord. 196-99, passed 8-22-99)

§ 92.10 City to Abate; Cost Recovery

On the property owner's failure or refusal to abate a nuisance within 10 days from the first date of notice or, if a hearing was requested, within the time set by the Council in its decision after hearing, the Council may direct that the City abate the nuisance using its own forces. In such case the City shall have the right to enter on the property in question for the limited purpose of effecting the abatement. The Administrator-Recorder shall keep a written record of the City's costs incurred in abating a public nuisance. The Council by resolution may direct that the City impose a lien on the property in question to recover its costs of abating a public nuisance provided that the owner(s) of the property shall first be entitled to notice and the opportunity to be heard on the question of the reasonableness of the costs incurred by the City and the veracity of the City's accounting for same.

(Ord. 196-99, passed 8-22-99)

§ 92.11 Immediate Threat to Health, Safety or Welfare

At any time that the Council finds that an act upon or a condition of property presents an immediate threat to the public health, safety or welfare that will cause irreparable public harm if not promptly abated, the Council may direct the Administrator-Recorder immediately to give notice to the owner(s) of the property in question of the nuisance by any means calculated to afford actual notice. The contents of the notice shall be as provided in Section 4 of this Ordinance and shall allow no less than 24 and no more than 72 hours for the owner to cause the activity to cease or the condition to be removed. On the property owner's failure or refusal to so act within the time

allowed by the notice, the Council may direct the Administrator-Recorder to take immediate action to abate the nuisance using the City's own forces. The Council shall as soon as practical thereafter send written notice to the property owner(s) of the right to be heard that no nuisance existed or that the City's costs to abate the nuisance should not be recoverable by imposition of a lien on the property, and stating the date, time and place for the hearing. In such case the Council's decision after hearing on the matters raised by the property owner(s) shall be final.

(Ord. 196-99, passed 8-22-99)

§ 92.12 Other Remedies

Nothing in this Ordinance shall limit the City's use of any and all other remedies legally available to it to abate a public nuisance, including but not limited to a suit to enforce this Ordinance, to obtain injunctive relief, or to recover the City's costs of abatement.

§ 92.13 Penalties

An offense against this Ordinance is a Violation and may be prosecuted as such in addition to or in lieu of any proceedings to abate the offense as a public nuisance.

(Ord. 226-05, passed 1-24-06)

CHAPTER 94: GRAFFITI

Section

§ 94.01 Application of Graffiti Unlawful

No person shall apply any graffito to any structure that is visible from any area that is open to the public without the permission of the person owning or controlling the structure.

(Ord. 230-06, passed 9-26-06)

§ 94.02 Owner to Remove Graffiti

No person who owns or controls real property in the City shall allow any graffito on any structure on that property that is visible from any area that is open to the public to remain for more than 7 days from the date of notice from the City that the marking must be removed.

(Ord. 230-06, passed 9-26-06)

§ 94.03 Not Applicable to Signage

Nothing in this Ordinance shall be construed to state or imply that a person may cause or allow the marking of any structure in violation of any local law limiting the number and dimension of signs permitted on that property.

(Ord. 230-06, passed 9-26-06)

§ 94.04 Violation, Removal by City, Charge Against Property

An offense against Section 1 or 2 of this Ordinance constitutes a Violation. In addition to and not in lieu of any other remedy available to it, the City may declare the failure to remove graffiti as required by Section 2 of this Ordinance within the time allowed to be a nuisance subject to immediate abatement. The City may charge its costs to abate the nuisance as a lien against the real property on which the structure is located.

(Ord. 230-06, passed 9-26-06)

§ 94.05 Notification, Summary Abatement, Lien on Property

When the City Administrator/Recorder finds that a structure is marked with graffiti visible from any area that is open to the public, the Administrator/Recorder shall give written notice to the person who owns or controls the structure, if known, and to the person(s) shown in Washington County deed records as the owner(s) or the person(s) controlling the underlying real property that the graffito/i must be removed no later than 7 days from the date of notice. The notice may be delivered in person or by ordinary mail addressed to the occupant of the property and to the registered owner(s) as shown in the deed records if the owner is not the occupant. The notice shall state that the person's failure to remove the graffiti within the time allowed shall constitute a Violation and that the City may cause the summary abatement of the markings as a nuisance with the costs of abatement to be charged as a lien against the underlying real property. On the expiration of the time allowed to remove the graffiti the Administrator/Recorder in his or her discretion may issue a citation for a Violation of this Ordinance or shall declare the failure to remove the graffiti to be a public nuisance and shall proceed to abate the nuisance, with the costs of abatement to be charged as a lien against the real property underlying the structure marked with graffiti. The process for certifying the costs of abatement and imposing a lien on the property for the costs of abatement shall be as otherwise provided in local or state law.

TITLE 12
CHAPTER 120: PROHIBITING DISCHARGE OF FIREARMS

Section

§ 120.01 Definition.

For purposes of this ordinance, firearm means a gun, rifle, shotgun, pistol, bow, crossbow, or other weapon whose projectile is propelled by:

A. Powder or powder cartridge.

B. CO2 or other compressed gas.

C. Spring compression or release.

D. Other explosive, jet or rocket projection

(Ord. 119-83, passed 11-16-83)

§ 120.02 Discharge Prohibited

Exception: No person shall discharge a firearm in the city except:

A. A peace officer in the performance of duty.

B. A person lawfully using a firearm in defense of person or property.

(Ord. 119-83, passed 11-16-83)

§ 120.03 Penalty

A violation of section 2 is punishable by a fine not to exceed $500.

(Ord. 119-83, passed 11-16-83)

TITLE 13
CHAPTER 130: REQUIRING UNDERGROUNDING UTILITIES

Section

§ 130.01 Permits and Maps. All work on public right of way or on City-owned property by any provider of public utilities shall be subject to the following:

A. The City may impose conditions recommended by City's engineer on any non-emergency excavations in any newly paved or resurfaced areas for a reasonable period following such paving or resurfacing. The City may place reasonable limitations on the location of any of the provider's facilities so as not to interfere with City's use of same or others' existing or known use of same.

B. A provider may make necessary excavations for the purpose of erecting, constructing, repairing, maintaining, removing, relocating and operating its facilities but except in an emergency, a provider shall obtain all permits required by state, federal and local law before commencing any work that may damage or destroy paved surfaces or other above- or below-ground utilities or that will require motor vehicle traffic control, other than for "service drops" that do not disrupt motor vehicle traffic for more than 4 hours.

C. A provider's failure to timely restore property to City's standards for restoration such as to present an unreasonable risk of injury or damage to persons or property shall constitute a nuisance subject to immediate abatement. In such case City may proceed immediately to restore the property so as to abate or remove that risk, and the provider shall indemnify City against any and all of City's reasonable costs incurred to make that restoration. For any and all work for which a provider must apply for a City permit, the provider shall guarantee the restoration of paved surfaces against defects in the work for a period of one year following completion of the work.

D. A provider shall furnish City with documents showing the provider's facilities "as-built" within the public right of way and on and under public property and public places in a mutually acceptable format and within a reasonable time after such work is complete.

E. A provider shall perform all work done on public right of way or on City-owned property according to all requirements of federal and state and industry practice for workplace- and public safety. A provider shall allow the City access to and the right to inspect any of the provider's work within public right of way or on public property or other public place and shall insure against the risk of personal-and bodily injury that may be incurred by any City agent or employee in the course of that person's access to and inspection of such work.

§ 130.02 Location and Relocation of Facilities.

A. A provider shall obtain City's prior written approval of the location of all of the

provider's facilities on public right of way or City-owned property other than for customer service drops and the installation, maintenance and repair of cables or wires on existing aerial facilities that will not damage or disturb paved surfaces or other utilities and that will not require motor vehicle traffic control. The provider shall place its facilities so that they do not unreasonably interfere with City's and its invitees and permittees use of the same property that Company knows of or should know of with the exercise of reasonable diligence. In locations where aerial or above ground public utility facilities (including aerial cable supports) exist as of the effective date of this Ordinance, a provider shall be allowed to overbuild, upgrade, maintain, replace or add to its existing aerial facilities and supporting structures unless City requires, in the course of permitting public improvements or public or private property development or redevelopment, that all such facilities be relocated underground. In the case of private property development or redevelopment the person or entity who has applied for the land use or site development permit that requires such relocation of facilities shall be responsible for the cost of same.

B. The City shall have the right also to require, in the public interest, the removal or relocation of facilities in a like manner (aerial to aerial, underground to underground) placed by a provider on public right of way or on City-owned property at the provider's sole expense. "Removal or relocation in the public interest" shall mean removal or relocation to accommodate the construction or reconstruction of transportation or utility improvements that are undertaken by the Oregon Department of Transportation or by any unit of local government or municipal corporation, including sewage, transportation and water districts; it shall not include relocation to accommodate private construction of public infrastructure that is required as a condition of approval of private property development or redevelopment. A provider shall perform such work promptly following notice to do so from the City and its failure or refusal to do so shall constitute a nuisance and a violation of this Ordinance. Prior to any such relocation City shall provide a suitable location for the provider to relocate the facilities sufficient to maintain service. Where relocation is to be temporary, the City and the provider shall work to minimize its economic impact on each party. The cost of such removal or relocation shall be payable solely by the provider unless chargeable by law or tariff to another party.

C. City in its sole discretion may require that a provider's and other similar other utility facilities be placed- or converted to underground in the course of construction of public works or in the course of private property development or redevelopment. City in its sole discretion may delay an otherwise required conversion to underground until a later time to allow for economies of scale. If the rules of the Oregon Public Utility Commission or other applicable rules allow a provider to charge the costs of conversion to customers located within City's boundaries, City may direct the provider to collect those costs from only a portion of such customers. When conversion of a provider's facilities to underground is a condition of approval of private property development or redevelopment the costs of conversion shall be the responsibility of the person to whom the City has issued a land use or site development permit for such (re-)development. A provider may require a deposit against its anticipated cost to relocate its facilities or convert them to underground, including its costs to guy any adjacent overhead facilities, from the person who carries on the development or redevelopment of property that in turn requires the relocation or conversion.

D. When City directs a provider to convert it's facilities from overhead to underground City also shall (1) require removal and conversion to underground of all existing overhead

telecommunication and electric distribution facilities (of less than 12 Kv capacity) in the affected area; and, (2) require each customer served from existing overhead facilities in the area to make all changes on the customer's premises as reasonably required by the provider so as to connect the premises to the underground facilities as soon as the underground facilities are available; and, (3) authorize the provider to discontinue its overhead service on completion of the underground facilities.

§ 130.03 City Actions Affecting Provider Facilities.

A. Whenever the City performs any work such as may require removal or relocation of a provider's facilities, except in an emergency City shall notify the provider sufficiently in advance to enable it to take such measures as it may deem necessary to protect its facilities. City shall attempt to give all providers notice of any and all pre-bid and pre-construction conferences arranged by City in the course of any work by City that may cause such removal or relocation.

C. The City shall not transfer, assign or vacate any portion of a provider notice and the right to be heard as to any property interests that the provider desires to preserve in, on or under the area to be transferred, assigned or vacated.

D.

(Ord. 236-07, passed 5-22-07)

CHAPTER 132: Responsibility for Maintenance and Repair of Vegetation and Improvements in the Public Right of Way

Section

§ 132.01 Obligation Placed on Property Owners

A. A person owning property abutting the public right of way shall maintain, reconstruct and repair all landscaping and sidewalks within that portion of the right of way abutting the person's property between the nearest edge of the area maintained for motor vehicle travel and the private property line so as not to present an unreasonable risk of harm or damage to person or property. Such maintenance, reconstruction and repair shall be performed according to the standards provided in this Ordinance, or the standards provided for public works set out elsewhere in this Code, or to the standards prevailing in the Portland metropolitan region as determined by the City Administrator, in that order of preference.

B. The property owner shall keep landscaping within the right of way trimmed and maintained:

1. So as not to partially or wholly obstruct the visibility of any stop sign or other traffic control device for a minimum distance of 100 feet as viewed by a person operating a motor vehicle from the normal vehicular approach;

2. So as to maintain the ability to view approaching vehicles and pedestrians at the intersection of streets or a street and a driveway when viewing the area between 3 feet and 10 feet above the street grade for a distance of at least 20 feet from the point of intersection;

3. So that the minimum distance between the pavement any overhanging or projecting branch shall be not less than 8 feet above the sidewalk or bicycle path and not less than 14 feet above the area designated for vehicle travel, and so that no portion of the landscaping lies on any roadway, sidewalk or bicycle path; and,
4. At a maximum height of 12 inches for any grass, vine or similar vegetation other than a tree or shrub, and clean of rubbish and debris.

A. A person owning property abutting the public right of way shall not allow snow or ice to remain on the sidewalk for more than twelve (12) daylight hours unless covered with sand, gravel or other suitable material that allows reasonably safe pedestrian travel.

(Ord. 191-97, passed 9-24-97)

§ 132.02 Property Owner's Liability

A person owning property abutting the public right of way is liable for any and all personal- and bodily injury and property damage arising out of that person's failure or refusal to perform the obligations imposed by this Ordinance. The person owning the land abutting the public right of way where such injury or damage is alleged to occur shall hold the City of Durham harmless from and indemnify the City against any and all claims, actions and suits for such injury or damage, including attorneys fees and other costs of defense.

(Ord. 191-97, passed 9-24-97)

§ 132.03 Partial Exemptions

A person is relieved of the obligations and the liability imposed by this Ordinance if:

A. The person's property abuts an arterial street as to which City Code allows no direct vehicle or pedestrian access to or from that arterial street and the property; or,

B. The condition that presents an unreasonable risk of harm results from defective materials or workmanship in landscaping or paved improvements that the City or other entity placed or constructed or caused to be placed or constructed within one year prior to the appearance of the condition.

(Ord. 191-97, passed 9-24-97)

§ 132.04 Standards and Permits

No person shall construct or reconstruct paved improvements within the public right of way without first obtaining a permit from the City Administrator allowing such construction, according

to the current standards for such construction then adopted in the City and on such further terms and conditions the Administrator deems reasonable including but not limited to the giving of security in favor of the City to guarantee the costs of performing the work according to those standards.

(Ord. 191-97, passed 9-24-97)

§ 132.05 City May Act on Notice

A. When the City Administrator has actual notice that a condition of landscaping or sidewalks within the public right of way abutting private property violates the standards set out in this ordinance or otherwise presents an unreasonable risk of harm to person or property, the Administrator shall mail or otherwise deliver written notice of the condition to the record owner of the property and to the occupant if the occupant is not the owner.

B. The notice shall direct that the owner cause maintenance, reconstruction or repair of the condition to the City's standards and, if a permit is required by City Code, under a permit to be obtained from the Administrator, within a reasonable time but in any case no later than 30 days from the date that notice is sent. The notice shall inform the property owner that the City may declare the condition to be a public nuisance if not corrected and may cause the nuisance to be abated and the cost of abatement to be charged against the property. A mistake in the name or address shall not invalidate the notice, and the Administrator may use any other means intended to provide actual notice.

C. Nothing in this section shall cause or allow the property owner's liability for injury or damage to person or property to revert or attach to the City between the time the City has notice of the condition and the time that maintenance, reconstruction or repair is complete.

(Ord. 191-97, passed 9-24-97)

§ 132.06 Action by Property Owner On Notice

An owner of property who receives notice given under Section 5 of this Ordinance shall complete the required maintenance, reconstruction or repair within such time as the City Administrator allows or shall, within that same time, show cause to the Council why maintenance, reconstruction or repair is not reasonable or necessary. The Council thereupon shall hear the matter as soon as is practical and after hearing shall affirm, modify or reverse the decision of the City Administrator and shall determine the time for completion of the work if the Council deems that the work still is required.

(Ord. 191-97, passed 9-24-97)

§ 132.07 Failure to Maintain, Reconstruct or Repair as Nuisance; Abatement; Lien

A property owner's failure to maintain, reconstruct or repair landscaping or the sidewalk within the public right of way abutting that person's property as required by this Ordinance or such as to present an unreasonable risk of harm to person or property hereby is declared a nuisance affecting the public health, safety and welfare. The City Administrator or the Council under the procedures set out in this Ordinance or under Chapter 4 of the Code, whichever is applicable, may

give notice of the nuisance and cause it to be abated. The City's costs of abatement may be charged as a lien against the property where the condition exists until those costs are paid.

(Ord. 191-97, passed 9-24-97)

§ 132.08 Penalties

An offense against this Ordinance is a Violation and may be prosecuted as such in addition to or in lieu of any proceedings to abate the offense as a public nuisance.

(Ord. 226-05, passed 1-24-06)

CHAPTER 134: REQUIRING THE PAYMENT OF COMPENSATION FOR- AND REGULATING THE USE OF PUBLIC RIGHT OF WAY BY TELECOMMUNICATIONS SERVICE PROVIDERS

Section

§ 134.01 Definitions

For purposes of this Ordinance, "competitive provider" and "shared telecommunications service" have the meaning set out in the rules of the Oregon Public Utility Commission; "gross revenues" means revenues defined from exchange access services as that later term is defined in ORS 401.710, less net uncollectibles from such revenues; "public right of way" has the meaning set out in Oregon Revised Statutes (ORS); and "telecommunications services" and "telecommunications utility" have the meaning set out in ORS 759.005.

(Ord. 197-99, passed 6-22-99)

§ 134.02 Certificate of Authority from PUC and City Notification/Approval

No person shall use public right of way within the City to provide telecommunications services for sale to others without a certificate of authority from the Oregon Public Utility Commission to provide such services and without first notifying the City of the extent of such use or occupancy in a reasonable level of detail that is acceptable to the City Administrator-Recorder acting with the advice of the City Engineer.

(Ord 197-99, passed 6-22-99)

§ 134.03 Annual Compensation is Maximum Allowable

A person doing business as a telecommunications utility, also known as an incumbent local exchange carrier providing local exchange access services shall pay to the City annually as compensation for the use of public right of way to provide those services, a fee calculated as the percentage of gross revenues that is the maximum amount that the City may impose under Oregon Law as a privilege tax on the operations of a telecommunications utility within the City.

(Amended Ord. 203-00, passed 10-24-00)

§ 134.04 Compensation Due from Telecommunications Services not Substantially the Same as Telecommunications Utility

A person doing business providing telecommunications services that are not substantially similar to the services provided by a telecommunications utility or that do not rely on local exchange access services as a major or primary source of revenue shall pay to the City annually as compensation for the use of public right of way to provide these services, a fee calculated as a percentage of gross revenues generated from all services provided within the City. The City Administrator / Recorder shall recommend such a fee to the Council based on the prevailing practice among cities and other trustees of public right of way in the Portland metropolitan area and may recommend that compensation be payable as a minimum annual fee (if greater than a percentage of gross revenue in any one year).

(Amended Ord. 203-00, passed 10-24-00)

§ 134.05 No Exclusive Right or Privilege to Use the Right of Way

No franchise or permit granted under this ordinance shall confer any exclusive right, privilege, or license to occupy or use the public right of way of the City for delivery of telecommunications services or any other purpose. Franchise fees, rights granted, term of grant and other franchise provisions shall be adopted by Council resolution.

(Amended Ord. 203-00, passed 10-24-00)

§ 134.06 Application Fee

In addition to the compensation payable for use of public right of way, a telecommunications services provider who applies for the right to use public right of way within the City shall pay an application fee calculated so as to reimburse the city's costs to review the application, including review of plans for construction within right of way, and shall submit a bond or other security for the value of all construction work within the right of way intended to guarantee performance of the work in the manner approved by the City Engineer, with the value of the work to be determined by the City Engineer.

(Amended Ord. 203-00, passed 10-24-00)

§ 134.07 Use of Public Right of Way Without Providing Local Service

A telecommunications services provider using public right of way within the City to provide those services who does not provide local exchange access services shall pay to the City annually as compensation for such use, an amount calculated at $2.82 per lineal foot of facilities lying within public right of way, the footage to be verified by the City Engineer based on the detail to be submitted by the provider, with that amount to be adjusted annually by a percentage equal to the US

Department of Labor's CPI-U for the Portland, Oregon region for the preceding year, unadjusted for seasonal variations; or, an annual fee of $1500, whichever is greater.
(Ord 197-99, passed 6-22-99)

§ 134.08 Franchise is Not Exclusive

Nothing in this Ordinance shall be deemed to grant neither any exclusive right to use of public right of way nor any unique property right in any person. Nothing in this Ordinance shall operate to relieve a provider of telecommunications services from compliance with any other requirement of City, state, regional or federal laws, rules or ordinances, including but not limited to requirements for undergrounding of utility services.
(Ord 197-99, passed 6-22-99)

CHAPTER 136: REQUIRING THE PLACEMENT OF UTILITIES UNDERGROUND AND PROVIDING FOR A FEE IN LIEU OF UNDERGROUNDING

Section

§ 136.01 Place of Utilities Underground Required

All new and existing utility facilities placed or relocated in the course of development or redevelopment of property in the City or in the course of improvements to public right of way or public property shall be placed or relocated underground except:

A. when use of surface-mounted or aerial facilities is expressly allowed by written franchise or agreement between the city and a utility provider; or,

B. when the City Engineer determines that placement of the utility facility underground is not reasonable or practical, such as with radio broadcast antennae, high-voltage electric lines, electric current transformers, gas and electric consumption meters and similar facilities.

(Ord. 227-05, passed 2-28-06)

§ 136.02 Permit Required

No person shall perform any excavation, tunneling or boring of the soil lying within the boundaries of public right of way or on public property without a current, valid permit from the City Engineer. The City Engineer may require the applicant for such a permit to submit such detail as to location, inverse elevation, spatial relation of the proposed activity to the location of existing utilities as the City Engineer may reasonably require and may require the applicant to supply

permanent records of the applicant's work "as-built" in a level of detail and a format that meet the standards of this Ordinance, as those standards are revised from time to time. An applicant for such a permit shall show proof of liability insurance coverage for the risks of bodily-and personal injury and property damage in a form and in coverage amounts that are acceptable to the City Administrator. An applicant for such a permit shall undertake to pay all fees and costs reasonably incurred by the City Engineer in reviewing the application and in inspecting the work for conformance to city standards. The City Engineer may exempt any work from the provisions of this section that is *de minimus* or that is expressly allowed without a permit by a written franchise or other agreement between the city and the applicant.

(Ord. 227-05, passed 2-28-06)

§ 136.03 Standards

All underground- and other work within the public right of way or on public property that disturbs the surface or the sub-surface of the soil shall be performed to the Oregon Department of Transportation (ODOT) current version of American Public Works Association (APWA) standards. The Council by resolution may from time to time adopt newer versions of such standards.

(Ord. 227-05, passed 2-28-06)

§ 136.04 Relocation for "Public Improvement" at Utility's Expense

When the City or the State of Oregon constructs a "public improvement" as defined in Oregon laws relating to public purchasing, and that construction in turn requires the re-location of existing utility facilities lying within the public right of way or on public property, the owner of the facilities shall conduct such relocation on the City or State's demand at the utility's expense except as the rules of the Oregon Public Utility Commission or except as the terms of a written franchise or other agreement between the City and the utility owner expressly allow otherwise.

(Ord. 227-05, passed 2-28-06)

§ 136.05 Fee in Lieu

When this Ordinance requires a person to place or relocate utility facilities underground, the City Engineer may allow the person to pay the City a fee in lieu of such undergrounding when the City Engineer determines that one or more of the following circumstances exist:

A. The placement or relocation of the facilitie(s) underground conflicts with the City's current adopted standards for underground utility work; or,

B. The City, the State of Oregon or another taxpayer-funded provider of utilities or right of way improvements has appropriated funds in that agency's current fiscal year for the construction of utilities or other improvements at or near the same location, such that the undergrounding work should be included as part of the public agency's project; or,

C. The scale of a private development or re-development of property is such that undergrounding utilities in the course of such development or redevelopment would result in a piecemeal effect when the property is viewed in its surroundings and the undergrounding work thus is better left to such future time as it may be done on a larger scale and achieve economies of scale in construction costs.

(Ord. 227-05, passed 2-28-06)

§ 136.06 Calculation of Fee

A fee in lieu of undergrounding, when allowed by the City Engineer, shall be calculated as the amount that the City Engineer estimates to be the present cost of such undergrounding if done in the course of the development or redevelopment in question. The fee shall be due and payable before any city permit to develop the site or to construct a structure on the site may be issued. The City may commingle all such fees collected but shall keep all such fees collected in an encumbered account to be used only for the cost of undergrounding utilities in the course of public improvements undertaken by the City or the State of Oregon anywhere within the city's boundaries. A person paying the fee shall have no property interest in the amount paid and may not direct where the fee so paid is applied in the future. Interest earnings on fees paid to the City in lieu of undergrounding shall accrue to City as an offset for the inflation in construction costs that may occur between the time the fee is paid and the time that the City applies the fee to the purposes set out in this Ordinance.

(Ord. 227-05, passed 2-28-06)

§ 136.07 Penalty

An offense against this Ordinance is a Violation. The City shall have any and all other remedies available to it to enforce the provisions of this Ordinance.

(Ord. 227-05, passed 2-28-06)

CHAPTER 138: VEHICULAR AND PEDESTRIAN TRAFFIC

Section:

§ 138.01 Prosecution of Traffic Offenses Defined in the Oregon Vehicle Code

The Council from time to time by separate ordinance may declare a violation of the Oregon Vehicle Code committed within the city limits to be an offense against the City of Durham and may authorize the City Attorney to prosecute in the name of the state, under authority of ORS 153.565, for a state traffic offense committed within the jurisdiction of the City.

(Ord. 190-97, passed 9-23-97)

§ 138.02 Definitions

Except where the context requires otherwise, the definitions in Chapter 801, Oregon Revised Statutes govern the construction of this Ordinance. Where Chapter 801 provides no definition, the terms of this Ordinance shall have their ordinary meaning.

(Ord. 190-97, passed 9-23-97)

§ 138.03 Duties of City Administrator

A. The City Administrator shall implement all ordinances and resolutions of the City Council relating to control of vehicle and pedestrian traffic by installing, maintaining, removing and altering traffic control devices. The placement of traffic control devices shall be according to the standards of the edition of the Manual on Uniform Traffic Control Devices for Streets and Highways and the Oregon Supplements thereto currently in effect and, as to matters where the former are silent, according to any other standards and practices prevailing in the Portland metropolitan region. The City Administrator shall establish crosswalks, areas where motor vehicle turns are prohibited, parking areas and time limitations and loading zones and stops for vehicles by installing and maintaining signs giving notice of same and shall install and maintain signs giving notice of -, and where permits are required by the City Code, issue permits to temporarily occupy, block or close city streets.

B. The City Administrator may install temporary traffic control devices in emergencies constituting an immediate threat to public safety.

(Ord. 190-97, passed 9-23-97)

§ 138.04 Crossing Property between Streets

No person while operating a motor vehicle shall proceed from one roadway to another by crossing property between the roadways unless the person stops on the property to procure or provide goods or services.

(Ord. 190-97, passed 9-23-97)

§ 138.05 Unlawful Riding.

A. No person while operating a motor vehicle shall permit a person to ride on or in or be carried by or attached to the vehicle unless the person is inside the passenger compartment of a passenger vehicle or within the enclosed cargo space of a commercial vehicle.

B. No person shall enter into or exit from a motor vehicle while the vehicle is in operation on a roadway or on premises open to the public for use of motor vehicles.

C. This Section shall not apply to prevent the practice of any employee that is common in the employee's trade or industry and that is not disallowed by state and federal law relating to occupational health and safety.

(Ord. 190-97, passed 9-23-97)

§ 138.06 Damage to Sidewalks, Curbs, Vegetation.

No person shall operate a motor vehicle on public right of way outside of the lanes marked for motorized vehicle travel except to enter on or exit from abutting property within the boundaries of driveways or curb cuts placed for that purpose.

(Ord. 190-97, passed 9-23-97)

§ 138.07 Transporting Solid Waste

No person shall operate a motor vehicle to transport solid waste or recyclable material upon the public right of way unless the container for the waste or material is securely enclosed or covered on all sides so as to prevent the escape of the waste or material contained therein.

(Ord. 190-97, passed 9-23-97)

§ 138.08 Obstructing Right of Way

No person shall place or maintain any vehicle, structure or object in or on that portion of public right of way intended for vehicle or pedestrian use, in any manner that tends to obstruct the free flow of traffic.

(Ord. 190-97, passed 9-23-97)

§ 138.11 Method of Parking

A. No person shall park or stand a motor vehicle on the side of a roadway other than in the direction of travel for that side of the roadway unless the City has placed signs giving notice that a different method is allowed.

B. No person shall park a motor vehicle on a public sidewalk or on that portion of the right of way between a curb and sidewalk.

(Ord. 190-97, passed 9-23-97)

§ 138.12 Prohibited Parking or Standing

A. No person shall park a motor vehicle:

1. On the north side of SW Woody End between 30 feet and 160 feet west of the intersection with SW Rivendell Drive; and

2. Along that c. 200 foot long portion of Afton lane wherein the public right of way is divided by a median planting strip, and for 20 feet from either end of that planting strip.

B. No person shall park a camper or motor home, or a motor truck having a gross weight exceeding 8000 pounds on any street adjacent to property zoned for residential use between the hours of 9PM and 7AM.

(Ord. 190-97, passed 9-23-97)

§ 138.13 Prohibited Uses of Public Right of Way

A. No person shall cause or allow a motor vehicle to be parked upon the public right of way for the purpose(s) of:

1. Advertising the vehicle for sale or using the vehicle as a sign to advertise goods, services or premises;

2. Repairing or servicing the vehicle other than in an emergency;

3. The sale of goods or services from the vehicle; or,

4. Storing the vehicle for 48 hours or longer.

B. No person shall park or leave a bicycle in or on the public right of way so as to obstruct the free movement of pedestrians or other vehicles within the right of way.

C. If the City Administrator has reason to believe that a vehicle, including a bicycle, that has been parked or left standing upon the public right of way for more than 48 hours is disabled or abandoned, the Administrator may remove the vehicle and take it into the city's custody under the procedures set out in Chapter 819, Oregon Revised Statutes.

§ 138.14 Exemptions

The provisions of this Ordinance that regulate the parking or standing of motor vehicles shall not apply to vehicles while in use on official business of a governmental entity or public utility nor to a motor vehicle operated by a disabled person having a parking permit or placard that entitles the person to the privileges of ORS 811.635 and 811.637.
(Ord. 190-97, passed 9-23-97)

§ 138.15 Penalties

A. Penalty for Prohibited Parking. A violation of Sections 11 through 13 of this Ordinance shall constitute- and shall be punishable as a Class B infraction as defined in the Oregon Vehicle Code

.

B. Penalty for All Other Violations. A violation of Sections 4 through 8 of this Ordinance shall constitute- and shall be punishable as a Class A infraction as defined in the Oregon Vehicle Code.

(Ord. 190-97, passed 9-23-97)

TITLE 15
CHAPTER 152: BUILDING CODE

Section:

§ 152.01 Standards Applicable to Building.

In addition to compliance with this and other ordinances of the City, building and related activities shall comply with the following additional requirements:

A. Chapter 1 of the 1998 edition of the Structural Specialty Code, as adopted by the Administrator of the State Building Codes Division.

B. The following codes published by the International Conference of Building Officials, 1997 editions, shall be effective within the City:

1. Uniform Fire Code and the Uniform Fire Code Standards as amended by Tualatin Valley Fire & Rescue District Ordinance 99-01

2. Uniform Sign Code

3. Appendix Chapter 33 regarding Excavation and Grading, an appendix to the 1997 edition of the Uniform Building Code.

(Ord. 195-99, passed 6-22-99)

C. Alternative Group R, Division 1 Fire Sprinkler Requirements of the 1998 Edition of the State of Oregon Structural Specialty Code shall be enforced for new multi-family construction in the City of Durham.

(Amending Ord. 205-00, passed 11-28-00)

§ 152.02 Building Official Services.

The Council from time to time may provide for the services of a person to act as the City Building Official by employment contract managed by the Administrator-Recorder, by intergovernmental agreement with another local government under authority of ORS Chapter 190, or by professional services contract with a private person or entity.

(Ord. 195-99, passed 6-22-99)

§ 152.03 Standards for Appeals and Fees by Resolution.

The Council by resolution shall provide a process for appeals of the decisions of the Building Official and for the fees to be charged to persons seeking a permit under the codes effective within the City.

CHAPTER 156: FLOOD DAMAGE PREVENTION

Section:

§156.01 Definitions

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

"Area of Special Flood Hazard" means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters 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 letters A or V.

"Basement" means any area of the building having its floor sub-grade (below ground level) on all sides.

"Development" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within the area of special flood hazard.

"Elevated Building" means, for insurance purposes, a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, post, piers, pilings, or columns.

Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

A. The overflow of inland or tidal waters and/or

B. 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 non-elevation design requirements of this ordinance found at §156.04(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".

"New Construction" means structures for which the "start of construction" commenced on or after the effective date of this ordinance.

"Recreational Vehicle" means a vehicle that is:

A. Built on a single chassis;

B. 400 square feet or less when measured at the largest horizontal projection;

C. Designed to be self-propelled or permanently towable by a light duty truck; and

D. Designed primarily not for 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 site, such as the pouring of a 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 of a basement, footing, piers or foundation, 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 the alteration affects the external dimensions of the building.

"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 before damaged 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:

A. before the improvement or repair, or

B. if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either

A. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or

B. Any alteration of a structure listed on the National Register of Historic Places or State inventory of Historic Places.

(Ord. 219-04, passed 12-30-04)

§156.02 General Provisions

A. Lands to which this Ordinance Applies

This ordinance shall apply to all areas of special flood hazards with the jurisdiction of Durham, Oregon.

B. Basis for Establishing the Areas for Special Flood Hazards

The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled "The Flood Insurance Study for the City of Durham," dated February 18, 2005, with accompanying Flood Insurance Maps is hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance study is on file at 17160 S.W. Upper Boones Ferry Rd., Durham, Oregon 97224.

(Ord. 219-04, passed 12-30-04)

§156.03 Administration

A. Establishment for 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 §156.02(B). The permit shall be for all structures including manufactured homes, as set forth in the

"Definitions," and for all development including fill and other activities, also as set forth in the "Definitions."

B. Designation of the Administration

The Building Official is hereby appointed to administer and implement this ordinance by granting or denying development permit applications in accordance with its provisions.

C. Duties and Responsibilities of the Building Official

Duties of the Building Official shall include, but not be limited to:

1. Permit Review

a. Review all development permits to determine that the permit requirements of this ordinance 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 §156.04(C)(1) are met.

2. Use of Other Base Flood Data

When base flood elevation data has not been provided in accordance with §156.02(B), Basis for Establishing the Areas of Special Flood Hazard, the Building Official 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 §156.04(B), Specific Standards §156.04(C) Floodways.

3. Information to be obtained and maintained

a. Where the base flood elevation data is provided through the Flood Insurance Study or required as in §156.03(C)(2), obtain the record of the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
b. For all new or substantially improved flood-proofed structures:
   (i) verify and record the actual elevation (in relation to mean sea level), and
   (ii) maintain the flood-proofing certification required in §156.04(B)(2)(c).

c. Maintain for public inspection all records pertaining to the provisions of this ordinance.

4. Alterations of watercourses

a. Notify adjacent communities and the Department of Land Conservation and Development 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 th flood carrying capacity is not diminished.

5. Interpretation o FIRM Boundaries

Make interpretations where needed, as to the 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 reasonable opportunity to appeal the interpretation. Such appeals shall be granted consistent with the standards of Section 60.6 of the rules and regulations of the National Flood Insurance Program (44 CFR 59-76).

(Ord. 219-04, passed 12-30-04)

§156.04 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. 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 to minimize flood damage.
c. Electrical, heating, ventilation, pluming, 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.

3. 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 system into flood waters, and,
c. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

4. 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 the subdivision proposals and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).

5. Review of Building Permits

Where elevation data is not available either through the Flood Insurance Study or from another authoritative source (§156.03(C)(2)), applications for building permits shall be reviewed to assure that the 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 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 the base flood elevation data has been provided as set forth in §156.02(B), BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD or §156.03(C)(2), Use of other Base Flood data, 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 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 wall by allowing for the entry and exit of floodwaters. 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 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:

be so that the below base flood level the structure is watertight with walls substantially impermeable to the passage of water,

have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy,

be certified by a registered professional engineer or architect that the design 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 §156.03(C)(3)(b).

(Amending Ord. 221-05, passed 2-22-05)

Nonresidential structures that are elevated, not flood-proofed, must meet the same standards for space below the lowest floor as described in §156.04(B)(1)(b).

(Amending Ord. 221-05, passed 2-22-05)

Applicants flood-proofing nonresidential buildings shall be notified that the flood insurance premiums will be based on rates that are one foot below the flood-proofed level (e.g. a building constructed to the base flood level will be rated as one foot below that level).

3. Manufactured Homes

All manufactured homes to be placed or substantially improved with Zones A1-30, AH and AE shall be elevated on a permanent foundation such that the lowest floor of the manufactured home a minimum of one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system in accordance with the provisions of subsection §156.04(A)(1)(b).

4. Recreational Vehicles

Recreational vehicles placed on sites are required to either;

Be on the site for fewer than 180 consecutive days,

Be fully licensed and ready for highway use, on it wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions; or

Meet the requirements of §156.04(B)(3) above and the elevation and anchoring requirements for manufactured homes.

C. FLOODWAYS

Located within areas of special flood hazard established in §156.02(B) 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:

(Amending Ord. 221-05, passed 2-22-05)

Prohibit encroachments, including fill, new construction, substantial improvements, and other developments unless certification by a registered professional civil engineer is provided demonstrating through hydrologic and hydraulic analysis 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.

If §156.04(C)(1) is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of §156.04, PROVISIONS FOR FLOOD HAZARD REDUCTION.

(Ord. 219-04, passed 12-30-04)

Repealed: see CH5 of the Development Code

TITLE 16
CHAPTER 162: TREE PRESERVATION

Section:

§162.01 Definitions

City Arborist. A licensed tree care consultant who is certified as an Arborist by the International Society of Arboriculture and is engaged as required by the City to perform the functions delegated to the City Arborist in this ordinance.

Project Arborist. A licensed tree care consultant who is certified as an Arborist by the International Society of Arboriculture and engaged by a property owner to prepare and implement a Tree and Plant Protection Plan.

Cut. To fell or remove a tree or to do anything that has the natural result of causing the death or substantial destruction of a tree, including Girdling and Topping as defined herein

Girdling. The cutting or removal of the outer bark and conducting tissues of a tree potentially causing death by interrupting the circulation of water and nutrients.

Hazardous Tree. A dead tree, or tree so affected by a significant structural defect or disease that falling or failure and a threat of bodily injury or property damage, impairment of vision or traffic flow in the public right of way is imminent .

Preserved Tree. A tree that has been so designated in a Tree and Plant Protection Plan approved by the City pursuant to the issuance of a land use permit.

Topping. The severe cutting back of the tree's crown limbs to stubs three (3) inches or smaller in diameter to such a degree so as to remove the natural canopy and disfigure the tree.

Tree Care Provider. A person registered with the Oregon Construction Contractors Board to perform tree preservation, tree maintenance and/or tree removal activities, including but not limited to pruning, tree limb removal, tree or limb guying, and tree fertilization.

(Ord. 228-05, passed 3-28-06)

§162.02 Performance Requirements for Tree Preservation and Review for Property within the City.

Scope. This ordinance applies to all trees within the City, no matter where located, having a diameter of five (5) inches or greater diameter measured at 24" above grade; or, for species trees with multiple main stems (e.g. hazelnut, vine maple) the average diameter of all stems of the tree measured at a point no more than six inches above the surrounding grade or measured six (6) inches from the point where the stems digress from the trunk, whichever produces the larger measurement. If a tree has been removed and only the stump remains, diameter shall be measured as the diameter of the top of the stump.

Tree Care Provider. No person other than a Tree Care Provider or property owner shall perform significant tree preservation, tree protection, tree maintenance or tree removal services within the incorporated boundaries of the city.

Standard of Care. Every property owner and Tree Care Provider shall perform all work within the City in accordance with the American National Standards Institute A-300 standards. Any work done in violation of those standards constitutes a Violation of this ordinance.

Permit Required. No person shall Cut a tree without first submitting an application for and obtaining both the City's permission to Cut the tree and a second, written City permit setting the terms and conditions for Cutting. The provisions of this ordinance apply in addition to the provisions of any other federal, state and local law. Permission granted under authority of any other law shall not be deemed to require the Cutting of any tree.

Tree Protection for New Construction. Whenever construction of new buildings or structures, construction of impervious surfaces or a ground level expansion of the total floor area of an existing building occurs on property, the tree preservation and protection measures identified in **Section 7** shall be applicable.

(Ord. 228-05, passed 3-28-06)

§**162.03 Application Requirements and Fees**

Requirements. Applications shall be made on forms to be prescribed and furnished by the City. The application shall contain a plot plan of the applicable property showing the number, size, species and location of all trees on the property; the tree(s) to be Cut; the reason the tree(s) is/are to be Cut [based on the criteria set forth in §162.04(1); the time and method of Cutting or removal; and information concerning any proposed landscaping or planting of new trees to replace the trees to be Cut. In addition, the applicant shall furnish other information as reasonably may be required by the city. If a

permit is issued for tree removal, the City may impose replacement requirements as provided under §162.07 and §162.08 of this ordinance.

A. **Fees**. An application to Cut or remove a tree shall not be complete unless accompanied by a payment of the prescribed application fee. The application fee schedule shall be adopted by resolution of the City Council and the application shall include the applicant's written undertaking to pay all of the City's professional fees (arborist, attorney, planner, etc. as City deems necessary) incurred in reviewing the application. No application fee shall be required for an application filed by a governmental agency. Upon City's approval of an application for a permit, the applicant may obtain the permit by paying an additional fee in an amount determined by Resolution of the City Council. If an improvement is to be constructed on the premises, the tree removal permit shall not be valid until a building or grading permit has been issued for construction of the improvement**.**

(Ord. 228-05, passed 3-28-06)

§162.04 Criteria for Issuance of Tree Cutting Permits

Normal Conditions. A tree Cutting permit, as requested in the application, may be issued in part or denied in part, or it may be issued subject to compliance by the applicant with reasonable conditions to promote the purposes of this ordinance. A permit shall state the period of time for which it is valid. The burden is on the applicant to show that granting a permit will be consistent with the stated purpose of this ordinance. The following criteria shall be considered:

A. The condition of the trees with respect to danger of falling, proximity to existing or proposed structures, interference with utility services or traffic safety, and hazards to life or property.

B. The necessity to remove trees to construct proposed improvements or to otherwise utilize the applicant's property in an economically beneficial manner.

C. The topography of the land and the effect of tree removal on erosion, soil retention, stability of earth, flow of surface water, protection of nearby trees, windbreaks and a desirable balance between shade and open space.

D. The number of trees existing in the neighborhood, the character and property uses in the neighborhood, and the effect of tree removal on neighborhood characteristics, beauty and property values.

E. The adequacy of the applicant's proposals to plant new trees as a substitute for the trees to be Cut in accord with **Section 7** and **Section 8** of this ordinance.

F. The tree is diseased.

G. The tree is dead.

Emergency Conditions. In emergency conditions that require the immediate Cutting or removal of trees to avoid danger or hazard to persons or property, an emergency permit may be issued by the City Administrator, the Mayor, the President of Council, the Planning Commission Chair or Vice-Chair, without payment of fee at that time and without formal

application. If after diligent inquiry, none of those city officials is available, it shall be lawful to Cut trees without a permit but only to the extent necessary to avoid an immediate danger or hazard to life or property. If a tree is Cut under the provisions of this section without an application having been filed with the City Administrator, the person Cutting the tree shall report the action taken to the City Administrator, or in his or her absence to one of the City officials listed above, within 48 hours or the first work day following a weekend or holiday, pay the required application and permit fees, and provide information and evidence as may be reasonably required by the City Administrator to explain and justify the action taken.

Determination by City Administrator. Tree Cutting applications based on the tree or trees being diseased, dead, or dangerous may be determined by the City Administrator without formal Planning Commission review. In lieu of making such a determination the City Administrator may refer the application to the Planning Commission for determination. Except in cases of emergency, the City Administrator shall refer all applications for removal of more than a single tree on a single lot to the Planning Commission.

Determination by Planning Commission. Except as otherwise provided in this **Section 4**, a tree cutting or removal application shall be reviewed and either approved or denied by the Planning Commission. The City Administrator shall conduct an investigation, furnish information developed by the investigation to the Planning Commission and may make a recommendation to the Planning Commission. Approval by the Planning Commission shall constitute authorization for the City Administrator to issue a tree cutting permit upon payment of the required permit fee. Tree cutting permits shall be valid for no more than six (6) months.

In the event the Planning Commission is unable to reach a decision within 45 days and upon showing of proof by the property owner that further delay would cause undue hardship, the City Administrator shall render a decision as to whether or not a permit may be issued. The City Administrator shall provide a written report to the Planning Commission at its next regularly scheduled meeting setting forth the basis of the determination.

Replacement of Removed Trees on Developed Property.

If tree removal has a significant impact or substantially reduces the tree canopy, mitigation shall be required. If the tree (s) being removed is dead, dying, diseased or dangerous to life or property mitigation shall be encouraged but not required. If removal is for the purpose of landscaping or esthetics only and does not relate to the condition of the tree or the tree's adverse impact on a surrounding grove, mitigation shall be judged based on the uniqueness of the tree, number of other trees on the property and surrounding area, or other factors pertinent to the particular situation.

It is the policy of the Planning Commission to emphasize a preference for native conifers when requiring the planting of a mitigation tree. However, the Planning Commission shall take into consideration site compatibility as well as the property owner's preference so long as the species of replacement tree is expected to mature to approximately the same environmental and esthetic value as the tree being removed. The minimum caliper size of a replacement tree shall be 2.5" as measured at a height 24" above mean grade. The Planning

Commission or City Administrator may waive the size requirement for tree species wherein a 2.5" caliper size would be unreasonable or impractical.

The preferred replacement site shall be on the property from which a tree is being removed. Provided one or more of the replacement trees cannot be located viably on the property from which a tree is removed, the Planning Commission or City Administrator may require payment to the City of an amount set by annual resolution of the Council equivalent to the average cost of a replacement trees and the cost of labor for planting.

The in-lieu payment so received shall be used by the City for planting of mitigation trees on City owned property but such planting shall not necessarily be on a one for one basis. The City's accounting records shall separately track all in-lieu payments received as well as expenditures for mitigation plantings. Any unspent funds shall be carried forward from year to year for the purpose of meeting the intent of this Ordinance to maintain the City's urban forest. The exact placement of mitigation trees on City property shall be determined by the City Administrator and coordinated with the City Arborist.

The planting of replacement trees shall take place in such a manner as to reasonably insure that the trees grow to maturity. Any mitigation tree planted on private property dying within one year of the date of planting shall be replaced by the owner of the property.

Replacement trees, including trees meant to replace a previously planted mitigation tree that has died within one year, shall be planted within 6 months of the date of issuance of a tree removal permit or death of a mitigation tree, unless granted a 3 months extension by the City Administrator due to season or unforeseen circumstances. Failure to complete mitigation within the allotted time frame shall be considered a violation of this Ordinance and subject to the penalties provided for herein.

(Ord. 228-05, passed 3-28-06)

§162.05 Appeal

A decision made by the City Administrator may be appealed to the Planning Commission. A decision made by the Planning Commission may be appealed to the City Council. A notice of appeal must be submitted in writing to the City Administrator within ten days after the date that the decision being appealed was reduced to writing and mailed to the applicant. Said appeal notice shall briefly state the facts and the grounds of appeal, and shall be signed by the applicant. Following receipt of the notice of appeal, the matter shall be set for hearing by the Planning Commission or the City Council, as the case may be, for hearing at a regular or special meeting no later than 60 days from the date of filing the appeal. The applicant shall be notified of the hearing date, time and place and shall be entitled to be heard at the hearing.

(Ord. 228-05, passed 3-28-06)

§162.06 Notice of Hearings.

Notice Requirements.

Notice of a public hearing shall be given by posting the property in question at least twenty (20) days before a hearing or appeal hearing before the Planning Commission or a hearing before the City Council on appeal from a decision of the Planning Commission.

(Ord. 228-05, passed 3-28-06)

§162.07 Tree Preservation and Replacement Measures Required as a Condition for Issuance of a Land Use Permit.

Tree Preservation Plan. An application for a land use permit shall show how preservation of existing trees shall be incorporated into the proposed development.

Protection of Preserved Trees. Trees to be Preserved shall be protected in the following manner:

A. The services of a Project Arborist shall be provided by the property owner to oversee that construction activities do not harm Preserved trees. The Project Arborist shall prepare and implement a Tree and Plant Protection Plan for the proposed development and shall coordinate tree protection efforts closely with the City Arborist at the expense of the property owner.

B. At a minimum, the Tree and Plant Protection Plan shall incorporate the following provisions:

Provide specific measures for tree preservation and protection during all phases of construction, including excavation around trees, grading and filling around trees, repair and removal of trees, pruning and structural support, and fertilization/aeration.

Require Tree Protection Zone or Construction Zone tape to be used with tree fencing.

Require all tree related decisions and activities referred to in the plan to be approved by the City Arborist.

Require all Preserved Tree health determinations, other than construction damage, to be made by taking core samples or performing other non harmful procedures to document the health of the tree.

Provide the City Arborist and/or the City Administrator with authority to stop work for any violations of the approved plan.

C. A *Certificate of Recognition and Acceptance of Special Tree Preservation and Protection Requirements*, as provided by city staff, shall be signed by the General Contractor and the Owner of the property prior to any on-site tree removal and a copy of the certificate provided to the City Administrator.

D. Negligence of sub-contractors and utility installation crews shall be the responsibility of the Owner and the General Contractor.

E. The Owner shall be responsible for the cost of repairing damage to any Preserved Trees during construction as directed by the City Arborist and/or the City Administrator. Failure to repair the tree damage in a timely manner shall be cause for the City to withhold any land use- or building- permits or certificates for the property until the necessary tree repair is accomplished to City's satisfaction.

Permit Required for Tree Removal. A Tree Removal Permit shall be required prior to any tree removal within the project. Before issuance of a permit, the applicant shall coordinate the project grading with the City Arborist to identify the possible preservation of additional trees not shown on the site plan. Said permit application shall comply with Section 4 of this Ordinance.

Standards for Replacement of Preserved Trees
Preserved Trees which have to be removed prior to building occupancy and Preserved Trees which die within one year of building occupancy shall be replaced by the owner at a 1:1 ratio for eight inch or smaller diameter trees, a 2:1 ratio for 8" to 18" diameter trees, and a 3:1 ratio for trees larger than eighteen inches in diameter as determined by the City Administrator.

a. The minimum trunk diameter (caliper size) for replacement trees shall be three (3) inches at a point 24 inches above mean ground level at the base of the trunk.

b. The total caliper size of replacement trees shall be not less than 50% of the total caliper size of the Preserved Trees removed per Section 7(4)(a).

Preserved Trees which die from year two (2) through year five (5) of building occupancy, shall be replaced at a 1:1 ratio with a minimum five (5) inch diameter tree. This replacement requirement shall only apply to the preserved trees that are identified on the project site plan.

Replacement of trees removed in conformity with the issuance of a land use permit shall be completed within six months of permit approval and made with disease resistant and/or adaptive tree(s) as approved for the replacement site by the City Administrator, City Arborist, Planning Commission or the City Council, as the case may be. The replacement site must be in the City of Durham but need not be on the same property as the property on which the trees were removed.

Prior to the issuance of a certificate of permission for occupancy, the applicant shall execute and file with the City Recorder a Guarantee Bond in favor of the City issued by a surety authorized to do business in the State of Oregon, which Guarantee Bond shall provide for the replacement of all preserved and replacement trees as noted in the approved Tree and Plant Protection Plan. Such Guarantee Bond shall be for a sum determined by the Design Review Board at the time of approval of the Tree and Plant Protection Plan to be equal to 120 percent of the project landscape architect's and engineer's cost estimate for replacing trees that die during the first five years of occupancy.

(Ord. 228-05, passed 3-28-06)

§162.08 Penalties

A person who causes or allows a tree to be Cut without a current, valid city permit or who Girdles or Tops a tree commits a Violation for each tree so Cut, Girdled or Topped.

A person who performs significant tree preservation, -protection, -maintenance or –removal not in accordance with ANSI A-300 standards commits a Violation.

A person who fails or refuses to comply with any condition of a tree removal permit, including but not limited to a condition as to replacement tree(s), commits a Violation.

The City may require as a condition of any permit to develop or use property on which a violation of this Ordinance is alleged to have occurred, that no grading- or other site development- or building permit issue for any work on the property and that no such work shall

proceed until the violation finally is resolved. The City may stop any work that is proceeding on real property under the terms of any grading-, site development- or building permit within City's discretion or control if a violation of this Ordinance is alleged to occur during the course of such work, and in such case the order to stop work shall remain in effect until the violation finally is resolved.

The city in its discretion may enforce any and all of the terms of this Ordinance by a civil action for injunctive relief or for damages or both. In any such action the City shall be entitled to recover as damages its reasonable costs to replace any tree damaged or destroyed in violation of this Ordinance and the value of the timber removed.

In addition to and not in lieu of any other remedies available to it for a violation of this Ordinance by a Tree Care Provider, the City Council may revoke the right of that Provider to do business as such within the city for a period not to exceed two years following the violation.

In any civil action the city brings to enforce this Ordinance, the City shall be entitled to recover its reasonable costs incurred, including attorney's fees and fees for services of professionals offering evidence, as well as any other costs and fees allowed to prevailing parties under state law.

(Ord. 228-05, passed 3-28-06)

CHAPTER 164: MEASURE 37 PROVISIONS

Section

§ 164.01 Actions Constituting Enforcement; Restrictions on Use.

For purposes of Measure 37, the city "enforces" a land use regulation when it makes a final decision on a land use application and that decision requires that the applicant comply with a regulation that has been enacted as part of the city's comprehensive land use code or comprehensive land use plan. The city also "enforces" a land use regulation when it commences legal action against a property owner for a use of property that violates that code or plan. City regulations on land divisions shall not be deemed to restrict the use of property unless and until the city enforces those regulations as to existing or proposed improvements on the property in question.
(Ord. 220-04, passed 12-30-04)

§ 164.02 Application

A claim under Measure 37 shall be in writing and signed and dated by the property owner or the owner's authorized agent. The claim shall be delivered to the City Administrator and shall describe or include at least the following information so that the city may properly decide the claim:

A. A description of the property by street address, assessor's map and tax lot number, or any other information sufficient for the city to identify the property;

B. The Interest that the applicant owns in the property, the names of all others who own an interest in the same property, and the date that the applicant acquired that interest;

C. The land use regulation(s) that allegedly reduce the fair market value of the property and the date that the regulations(s) was/were enacted or enforced;

D. The monetary amount by which the land use regulation(s) in question allegedly reduce the fair market value of the property, and the basis for claiming that amount, together with and appraisal, market study or any other documentation to support the claim for that amount;

E. Whether the claimant seeks compensation or a waiver of the land use regulation(s) in question; and,

F. The name and contact information for any other person owning an interest in the property who also has made a claim under Measure 37 as to that property.

(Ord. 220-04, passed 12-30-04)

G. The City shall consider a claim arising from a city land use regulation enacted prior to December 2, 2004 only if the city applies that same regulation as an approval criterion to a land use application that is submitted by the claimant simultaneously with submittal of the claim. The City shall consider a claim arising from a city land use regulation enacted after December 2, 2004 only if the claim is made within 2 years of the enactment of the land use regulation, or the date the owner of the property submits a land use application as to which the city applies the same land use regulation as an approval criterion, whichever is later.

(Ord. 233-07, passed 2-27-07)

§ 164.03 Action on Application

Within 10 days from the receipt of the claim the City Administrator shall determine if the claim includes the minimum information required by Section 2 of this Ordinance; if the claim is not complete, the Administrator shall so notify the claimant by mail in writing. The time limit under Measure 37 by which the City must act on the claim shall not commence until the City Administrator receives all of the minimum information required by this Ordinance or receives written notice from the claimant that no additional information will be submitted, whichever is sooner. Not later than 180 days after receipt of a complete claim or after receipt of written notice that the claimant deems the claim to be complete, the City Council shall decide the claim after notice and public hearing. At such hearing the City Administrator shall make a written recommendation to the Council as to the disposition of the claim but the recommendation shall not be binding on the Council. Notice of the Council's public hearing and the opportunity to be heard shall be afforded to all persons shown in deed records and shown by the claimant as having an interest in the property as well as to all persons –entitled to notice under City Code or state law, whichever imposes the greater requirements, as if the matter being decided was a quasi-judicial land use application.

(Ord. 220-04, passed 12-30-04)

§ 164.04 Fees

A person who submits a claim to the City under Measure 37 thereby contracts to reimburse the City for all of the City's professional costs reasonably incurred, including but not limited to attorney's fees and fees for professional planners, real estate professionals and appraisers, title insurance issuers and other professionals that the City employs to evaluate the claim. No grant of a waiver from land use regulation(s) and no payment for compensation shall be made or be effective, and no permit shall be issued for any use of the property or for any improvements to be placed on the property, unless and until fees due under this Ordinance have been paid. Such fees shall be due and payable, notwithstanding that the City denies a claim in whole or in part, on the date of the City's final decision on the claim. The City shall have any and all other remedies available to it to collect such fees if unpaid.

(Ord. 220-04, passed 12-30-04)

§ 164.05 Council Action on Claim

After notice and public hearing as provided for in this Ordinance, the Council shall decide whether to allow or deny a claim made under Measure 37. The Council may grant a waiver of the land use regulation(s) that are the basis of the claim as the regulation(s) apply to the property in question, or may determine the amount by which enactment or enforcement of the regulation(s) reduce the fair market value of the property, or may allow some combination of a full or partial waiver and a full or partial payment of compensation. Compensation, if any, shall be payable only from those City funds that the Council specifically has appropriated for the purpose of payment of Measure 37 claims and from no other City funds. In addition to or in lieu of the grant of a waiver or the payment of compensation, or both, the Council may declare its intent to acquire an interest in the property in question in eminent domain. The Council also may deny a claim, in whole or in part, on the grounds that the claim is incomplete, that the person submitting the claim was not entitled under the Measure to make the claim, that the person who submitted the claim no longer is a present owner of the property, that the claim was not submitted within the time allowed by Measure 37, that a claim as to the same regulation(s) affecting the same property already has been decided by the City or by another public entity, or on the grounds, among other things, that the regulations(s) in question are exempt from claims under the provisions of Measure 37 or any other exemptions as may hereafter be enacted by a federal, state or local government entity.

(Ord. 220-04, passed 12-30-04)

§ 164.06 Effect of Grant of Waiver or Payment of Compensation

If the Council or a court of competent jurisdiction finally allows a claim under Measure 37 and grants a waiver of one or more land use regulation(s), the waiver shall be in writing in the form of a non-transferable license to the current owner(s) of the property and shall be recorded in the deed records of Washington County. The license shall describe the regulation(s) that shall not apply to the use(s) of the property for the duration of the license. The license shall be deemed to have expired and be of no further force and effect from and after the effective date of any sale or transfer of any interest in the property from any person holding an interest on the date of City's receipt of the claim that resulted in the grant waiver. Any use of the property allowed under the waiver shall be deemed a non-conforming use under the City's comprehensive land use code from and after the date that the license expires. If the Council or a court of competent jurisdiction pays

compensation for the reduced value of property that is the subject of a claim, the payment shall be made jointly to all persons claiming an interest in the property and shall be due and payable in exchange for all of the property's owners' execution of a covenant declaring that the land use regulation(s) that reduced the fair market value of the property, remain in full force and effect as to that property.

(Ord. 220-04, passed 12-30-04)