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 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, and amended by 233-07)

§ 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. 217-04, passed 9-28-04)

CHAPTER 54: BUSINESS RECYCLING

Section

§54.01 Intent.

The purpose of this Regulation is to comply with the Business Recycling Requirement set forth in Metro Code Chapter 5.10. A significant increase in business recycling will assist the Metro region in achieving waste reduction goals, conserving natural resources, and reducing greenhouse gas emissions.

(Ord 247-09, passed 2-24-09)

§54.02 Applicability.

This Regulation applies to all businesses and business recycling service customers as those terms are defined in Metro Code. This Regulation does not apply to businesses whose primary office is located in a residence. A residence is the place where the business owner resides.

(Ord 247-09, passed 2-24-09)

§54.03 Business Recycling Requirement.

A. Businesses shall source separate all recyclable paper, cardboard, glass and plastic bottles and jars, and aluminum and tin cans for re-use or recycling.

B. Businesses and business recycling customers shall ensure the provision of recycling containers for internal maintenance or work areas where recyclable materials may be collected, stored, or both.

C. Business and business recycling customers shall post accurate signs where recyclable materials are collected, stored or both that identify the materials that the business must source separate for re-use or recycling and that provide recycling instructions.

(Ord 247-09, passed 2-24-09)

§54.04 Exemption from Business Recycling Requirement.

A business may seek exemption from the business-recycling requirement by providing access to a recycling specialist for a site visit and establishing that it cannot comply with the business-recycling requirement.

(Ord 247-09, passed 2-24-09)

§54.05 Compliance with Business Recycling Requirement.

A. Compliance enforcement shall be conducted by Metro in accordance with an Intergovernmental Agreement between Metro and the City of Durham.

B. A business or business-recycling customer that does not comply with the business recycling requirement may receive a written notice of noncompliance. Businesses or a business-recycling customer will be provided a timeframe to implement compliance. A business or business-recycling customer that does not implement an acceptable program within the specified time on the notice of noncompliance commits a Violation as defined in City code.

(Ord 247-09, passed 2-24-09)

TITLE 09

CHAPTER 90: METHODS AND PROCEDURES FOR MONITORING FALSE ALARMS

Section

§ 90.01 Purpose

The purpose of this Ordinance is to limit, by penalties, the number of false alarms transmitted from premises with the City to any emergency service provider by an automated device in or on those premises, whether the transmittal is intentional or not and whether or not the alarm device is monitored by a person who is not on the premises and who relays the alarm that is transmitted from the premises along to the emergency service provider.

(Ord. 239-07, passed 10-23-07)

§ 90.02 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 within 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 with a year. Each transmittal from the same premises that exceeds the number allowed by this Section constitutes a Violation.

B. A false alarm shall not be counted in the number of false alarms allowed without penalty as provided for in this section if, no later than 30 days from the date of notice from the city 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.

(Ord. 239-07, passed 10-23-07)

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.

CHAPTER 96: LITTERING AND DUMPING

Section

§ 96.01 Proper Disposal of Solid Waste

A. No person may deposit solid waste on a street, sidewalk, other public place or private property not under their ownership or control.

B. Persons must deposit solid waste in the appropriate public or authorized private receptacles and in such manner so as to prevent it from being removed by the elements.

(Ord. 261-19, passed 10-22-19)

§ 96.02 Construction Debris

A. All solid waste remaining as a result of demolition, repair or construction must be removed from the property by the owner or person in charge within seven days of

substantial completion of the work.

(Ord. 261-19, passed 10-22-19)

§ 96.03 Merchant Duty

A. An operator of a business may not allow solid waste to accumulate on the premises of the business or the abutting sidewalks, planter strips, and medians even if the solid waste was not deposited by the operator, employees or patrons of the business.

B. The operator of a business must remove any solid waste described in subsection (C)(1) above.

(Ord. 261-19, passed 10-22-19)

§ 96.04 Private Property

A. Solid waste may not be deposited or permitted to remain on or about private property, inhabited or vacant, to the detriment of public health, safety, peace and welfare.

B. The owner or person in charge of property must remove any solid waste described in subsection (96.04)(A) above from the property and abutting sidewalks and medians.

(Ord. 261-19, passed 10-22-19)

Title 13
CHAPTER 130: UTILITY FACILITIES IN PUBLIC RIGHTS OF WAY

Section

§130.01 Jurisdiction and Management of the Public Rights of Way.

A. The City has jurisdiction and exercises regulatory management over all rights of way within the City under authority of the City charter and state law.

B. The City has jurisdiction and exercises regulatory management over each right of way whether the City has a fee, easement, or other legal interest in the right of way, and whether the legal interest in the right of way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

C. The exercise of jurisdiction and regulatory management of a right of way by the City is not official acceptance of the right of way, and does not obligate the City to maintain or repair any part of the right of way.

D. The provisions of this Chapter are subject to and will be applied consistent with applicable state and federal laws, rules and regulations, and, to the extent possible, shall be interpreted to be consistent with such laws, rules and regulations.

(Ord 260-18, passed 12-18-18)

§130.02 Regulatory Fees and Compensation Not a Tax.

A. The fees and costs provided for in this Chapter, and any compensation charged and paid for use of the rights of way provided for in this Chapter, are separate from, and in addition to, any and all other federal, state, local, and City charges as may be levied, imposed, or due from a utility operator, its customers or subscribers, or on account of the lease, sale,

delivery, or transmission of utility services.

B. The City has determined that any fee or tax provided for by this Chapter is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees or taxes are not imposed on property or property owners.

C. The fees and costs provided for in this Chapter are subject to applicable federal and state laws.

(Ord 260-18, passed 12-18-18)

§130.03 Definitions.

For the purpose of this Chapter the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive.

A. CABLE SERVICE is to be defined consistent with federal laws and means the one-way transmission to subscribers of: (i) video programming, or (ii) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

B. CITY means the City of Durham, an Oregon municipal corporation, and individuals authorized to act on the City's behalf.

C. CITY COUNCIL means the elected governing body of the City of Durham, Oregon.

D. CITY FACILITIES means City or publicly-owned structures or equipment located within the right of way or public easement used for governmental purposes.

E. COMMUNICATIONS SERVICES means any service provided for the purpose of transmission of information including, but not limited to, voice, video, or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself and whether or not the transmission medium is wireline. Communications service includes all forms of telephone services and voice, video, data or information transport, but does not include: (1) cable service; (2) open video system service, as defined in 47 C.F.R. 76; (3) private communications system services provided without using the public rights of way; (4) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; and (5) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act.

F. FACILITIES-BASED PROVIDER shall have the meaning set forth in Ordinance No. 262-19.

G. LICENSE means the authorization granted by the City pursuant to Ordinance No. 262-19.

H. PERSON means and includes any individual, firm, sole proprietorship, corporation, company, partnership, co-partnership, joint-stock company, trust, limited liability company, association or other organization, including any natural person or any other legal entity.

I. PRIVATE COMMUNICATIONS SYSTEM means a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for their use and not for resale, directly or indirectly. "Private communications system" includes services provided by the state of Oregon pursuant to ORS 190.240 and 283.140.

J. PUBLIC UTILITY EASEMENT means the space in, upon, above, along, across, over or under an easement for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of utilities facilities. "Public utility easement" does not include an easement solely for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of City facilities, or where the proposed use by the utility operator is inconsistent with the terms of any easement granted to the City.

K. RIGHT OF WAY means and includes, but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland, or other City property not generally open to the public for travel. This definition applies only to the extent of the City's right, title, interest and authority to grant a franchise or license to occupy and use such areas for utility facilities.

L. STATE means the state of Oregon.

M. UTILITY FACILITY or FACILITY means any physical component of a system, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plant, equipment and other facilities, located within, under or above the rights of way, any portion of which is used or designed to be used to deliver, transmit or otherwise provide utility service.

N. UTILITY OPERATOR or OPERATOR means any person who owns, places, operates or maintains a utility facility within the City.

O. UTILITY SERVICE means the provision, by means of utility facilities permanently located within, under or above the rights of way, whether or not such facilities are owned by the service provider, of electricity, natural gas, communications services, cable services, water, sewer, and/or storm sewer to or from customers within the corporate boundaries of the City, and/or the transmission of any of these services through the City whether or not customers within the City are served by those transmissions.

P. WORK means the construction, demolition, installation, replacement, repair, maintenance or relocation of any utility facility, including but not limited to any excavation and restoration required in association with such construction, demolition, installation, replacement, repair, maintenance or relocation.

(Ord 260-18, passed 12-18-18)

§130.04 Franchise or License Required.

A. Every utility operator must have a valid franchise agreement from the City prior to conducting any work in the rights of way, provided that Facilities-based Providers shall obtain licenses as required in Ordinance No. 262-19 rather than a franchise. Facilities-based Providers shall be subject to the provisions of this Ordinance to the extent not in conflict with the provisions of Ordinance No. 262-19.

B. Franchise Application. The franchise application shall identify the applicant, its legal status, including its authorization to do business in Oregon, a description of the type of utility service provided or to be provided by the applicant, and the facilities over which the utility service will be provided, and other information reasonably necessary to determine the applicant's ability to comply with the terms of this Chapter.

C. Franchise Application Fee. The application shall be accompanied by a nonrefundable application fee or deposit set by resolution of the City Council in an amount sufficient to fully recover all of the City's costs related to processing the application for the franchise.

D. Determination by City. The City shall issue, within a reasonable period of time, a written determination granting or denying the franchise in whole or in part. If the franchise is denied, the written determination shall include the reasons for denial. The franchise shall be evaluated based upon the provisions of this Chapter, the continuing capacity of the rights of way to accommodate the applicant's proposed utility facilities and the applicable federal, state and local laws, rules, regulations and policies.

E. Rights Granted.

1. The franchise granted hereunder shall authorize and permit the franchisee, subject to the provisions of the City code and other applicable provisions of state or federal law, to construct, place, maintain and operate utility facilities in the rights of way, or the portions of the rights of way described in the franchise, for the term of the franchise.

2. Any franchise granted pursuant to this Chapter shall not convey equitable or legal title in the rights of way, and may not be assigned or transferred except as permitted in subsection J of this section.

3. Neither the issuance of the franchise nor any provisions contained therein shall constitute a waiver or bar to the exercise of any governmental right or power, police power or regulatory power of the City as may exist at the time the franchise is issued or thereafter obtained.

F. Term. Subject to the termination provisions in subsection L of this section and unless otherwise provided in the franchise, the franchise granted pursuant to this Chapter will remain in effect for a term of five (5) years.

G. Franchise Nonexclusive. No franchise granted pursuant to this section shall confer any exclusive right, privilege, license or franchise to occupy or use the rights of way for delivery of utility services or any other purpose. The City expressly reserves the right to grant licenses, franchises or other rights to other persons, as well as the City's right to use the rights of way, for similar or different purposes. The franchise is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the rights of way. Nothing in the franchise shall be deemed to grant, convey, create, or vest in franchisee a real property interest in land, including any fee, leasehold interest or easement.

H. Reservation of City Rights. Nothing in the franchise shall be construed to prevent the City from grading, paving, repairing and/or altering any rights of way, constructing, laying down, repairing, relocating or removing City facilities or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any City facilities. If any of franchisee's utility facilities interfere with the construction, repair, replacement, alteration or removal of any rights of way, public work, City utility, City improvement or City facility, except those providing utility services in competition with a franchisee, franchisee's facilities shall be removed or relocated as provided in subsections 8.C, 8.D and 8.E of this Chapter, in a manner acceptable to the City and consistent with industry standard engineering and safety codes.

I. Multiple Services.

1. A utility operator that provides or transmits or allows the provision or transmission of utility services and other services over its facilities is subject to the franchise and privilege tax requirements of this Chapter for the portion of the facilities and extent of utility services delivered over those facilities.

2. A utility operator that provides or transmits more than one utility service over its facilities is not required to obtain a separate franchise for each utility service, provided that it gives notice to the City of each utility service provided or transmitted and pays the applicable privilege tax for each utility service.

J. Transfer or Assignment. To the extent permitted by applicable state and federal laws, the franchisee shall obtain the written consent of the City prior to the transfer or assignment of the franchise. The franchise shall not be transferred or assigned unless the proposed transferee or assignee is authorized under all applicable laws to own or operate the utility system and the transfer or assignment is approved by all agencies or organizations required or authorized under federal and state laws to approve such transfer or assignment. If a franchise is transferred or assigned, the transferee or assignee shall become responsible for all facilities of the franchisee at the time of transfer or assignment. A transfer or assignment of a franchise does not extend the term of the franchise.

K. Renewal. At least ninety (90), but no more than one hundred eighty (180), days prior to the expiration of a franchise granted pursuant to this section, a franchisee seeking renewal of its franchise shall submit a franchise application to the City, including all information required in subsection B of this section and the application fee required in subsection C of this section. The City shall review the application as required by subsection D of this section. If the City determines that the franchisee is in violation of the terms of this Chapter

or its franchise at the time it submits its application, the City may require that the franchisee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the City, before the City will consider the application and/or grant the franchise.

L. Termination.

1. Revocation or Termination of a Franchise. The City Council may terminate or revoke the franchise granted pursuant to this Chapter for any of the following reasons:

    a. Violation of any of the provisions of this Chapter;

    b. Violation of any provision of the franchise;

    c. Misrepresentation in a franchise application;

    d. Failure to pay taxes, compensation, fees or costs due the City after final determination of the taxes, compensation, fees or costs;

    e. Failure to restore the rights of way after construction as required by this Chapter or other applicable state and local laws, ordinances, rules and regulations;

    f. Failure to comply with technical, safety and engineering standards related to work in the rights of way; or

    g. Failure to obtain or maintain any and all licenses, permits, certifications and other authorizations required by state or federal law for the placement, maintenance and/or operation of the utility facilities.

2. Standards for Revocation or Termination. In determining whether termination, revocation or some other sanction is appropriate, the following factors shall be considered:

    a. The egregiousness of the misconduct;

    b. The harm that resulted;

    c. Whether the violation was intentional;

    d. The utility operator’s history of compliance; and/or

    e. The utility operator’s cooperation in discovering, admitting and/or curing the violation.

3. Notice and Cure. The City shall give the utility operator written notice of any apparent violations before terminating a franchise. The notice shall include a short and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time (no less than twenty (20) and no more

than forty (40) days) for the utility operator to demonstrate that the utility operator has remained in compliance, that the utility operator has cured or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination or revocation. If the utility operator is in the process of curing a violation or noncompliance, the utility operator must demonstrate that it acted promptly and continues to actively work on compliance. If the utility operator does not respond or if the City manager or designee determines that the utility operator's response is inadequate, the City manager or designee shall refer the matter to the City Council, which shall provide a duly noticed public hearing to determine whether the franchise shall be terminated or revoked.

(Ord 260-18, passed 12-18-18)

§130.05 Construction and Restoration.

A. Construction Codes. Utility facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations, including the National Electrical Code and the National Electrical Safety Code and the current edition of the Oregon Department of Transportation (ODOT)/American Public Works Association (APWA) Oregon Standard Specifications for Construction. When a utility operator, or any person acting on its behalf, does any work in or affecting the rights of way, the utility operator shall, at its own expense, promptly restore the rights of way as directed by the City consistent with applicable City codes, rules and regulations. A utility operator or other person acting on its behalf shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting the rights of way or property.

B. Construction Permits.

1. No person shall perform any work on utility facilities within the rights of way without first obtaining all required permits. The City shall not issue a permit for the construction, installation, maintenance or repair of utility facilities unless the utility operator of the facilities has a current franchise or license with the City, and all applicable fees have been paid.

2. In the event of an emergency, a utility operator with a franchise or license pursuant to this Chapter, or its contractor, may perform work on its utility facilities without first obtaining a permit from the City, provided that, to the extent reasonably feasible, it attempts to notify the City prior to commencing the emergency work and in any event applies for a permit from the City as soon as reasonably practicable, but not more than forty eight (48) hours after commencing the emergency work. As used in this subsection, "emergency" means a circumstance in which immediate repair to damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.

3. Applications for permits to construct utility facilities shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

    a. That the facilities will be constructed in accordance with all applicable codes, rules and regulations.

    b. The location and route of all utility facilities to be installed aboveground or on existing utility poles.

    c. The location and route of all utility facilities on or in the rights of way to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route that are within the rights of way. Applicant's existing utility facilities shall be differentiated on the plans from new construction. A cross section shall be provided showing new or existing utility facilities in relation to the street, curb, sidewalk or right of way.

    d. The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the rights of way, and description of any improvements that applicant proposes to temporarily or permanently remove or relocate.

4. All permit applications shall be accompanied by the verification of a registered professional engineer, or other qualified and duly authorized representative of the applicant, that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

5. All permit applications shall be accompanied by a written construction schedule, which shall include a deadline for completion of construction. The construction schedule is subject to approval by the City.

6. Prior to issuance of a construction permit, the applicant shall pay a permit fee in an amount to be determined by resolution of the City Council.

7. If satisfied that the applications, plans and documents submitted comply with all requirements of this Chapter, the City shall issue a permit authorizing construction of the utility facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as they may deem necessary or appropriate.

8. Except in the case of an emergency, the permittee shall notify the City not less than two (2) working days in advance of any excavation or construction in the rights of way.

9. All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the utility facilities. The City and its representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements.

10. All work which does not comply with the permit, the approved or corrected plans and specifications for the work, or the requirements of this Chapter, shall be removed at the sole expense of the permittee. The City is authorized to stop work in order to assure compliance with the provision of this Chapter.

11. The permittee shall promptly complete all construction activities so as to minimize disruption of the city rights of way and other public and private property. All construction work within the rights of way, including restoration, must be completed within one hundred twenty (120) days of the date of issuance of the construction permit unless an extension or an alternate schedule has been approved by the appropriate city official.

C. Performance Surety.

1. The City may, in its sole discretion, require a performance bond or other form of surety acceptable to the City equal to at least one hundred percent (100%) of the estimated cost of the work within the rights of way of the City shall be provided before construction is commenced.

2. The performance bond or other form of surety acceptable to the City shall remain in force until sixty (60) days after substantial completion of the work, as determined in writing by the City, including restoration of rights of way and other property affected by the construction.

3. The performance bond or other form of surety acceptable to the City shall guarantee, to the satisfaction of the City:

a. Timely completion of the work;

b. That the work is performed in compliance with applicable plans, permits, technical codes and standards;

c. Proper location of the facilities as specified by the City;

d. Restoration of the rights of way and other property affected by the work; and

e. Timely payment and satisfaction of all claims, demands or liens for labor, material, or services provided in connection with the work.

D. Injury to Persons or Property. A utility operator shall preserve and protect from injury or damage other utility operators' facilities in the rights of way, the public using the rights of way and any adjoining property, and take other necessary measures to protect life and property, including but not limited to buildings, walls, fences, trees or facilities that may be subject to damage from the permitted work. A utility operator shall be responsible for all injury to persons or damage to public or private property resulting from its failure to properly protect people and property and to carry out the work.

E. Restoration.

1. When a utility operator, or any person acting on its behalf, does any work in or affecting any rights of way, it shall, at its own expense, promptly restore such ways or property to the same or better condition as existed before the work was undertaken, in accordance with applicable federal, state and local laws, codes, ordinances, rules and regulations, unless otherwise directed by the City and as determined by the City.

2. If weather or other conditions beyond the utility operator's control do not permit the complete restoration required by the City, the utility operator shall temporarily restore the affected rights of way or property. Such temporary restoration shall be at the utility operator's sole expense and the utility operator shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule may be subject to approval by the City.

3. If the utility operator fails to restore rights of way or property as required in this Chapter, the City shall give the utility operator written notice and provide the utility operator a reasonable period of time not less than ten (10) days, unless an emergency or threat to public safety is deemed to exist, and not exceeding thirty (30) days to restore the rights of way or property. If, after said notice, the utility operator fails to restore the rights of way or property as required in this Chapter, the City shall cause such restoration to be made at the expense of the utility operator.

F. Inspection. Every utility operator's facilities shall be subject to the right of periodic inspection by the City to determine compliance with the provisions of this Chapter and all other applicable state and City codes, ordinances, rules and regulations. Every utility operator shall cooperate with the City in permitting the inspection of utility facilities upon request of the City. The utility operator shall perform all testing, or permit the City to perform any testing at the utility operator's expense, required by the City to determine that the installation of the utility operator's facilities and the restoration of the right of way comply with the terms of this Chapter and applicable state and City codes, ordinances, rules and regulations.

G. Coordination of Construction. All utility operators are required to make a good faith effort to both cooperate with and coordinate their construction schedules with those of the City and other users of the rights of way.

1. Prior to January 1st of each year, utility operators shall provide the City with a schedule of known proposed construction activities for that year in, around or that may affect the rights of way.

2. If requested by the City, utility operators shall meet with the City annually, or as determined by the City, to schedule and coordinate construction in the rights of way.

3. All construction locations, activities and schedules within the rights of way shall be coordinated as ordered by the City, to minimize public inconvenience, disruption, or damages.

(Ord 260-18, passed 12-18-18)

§130.06 Location of Facilities.

A. Location of Facilities. Unless otherwise agreed to in writing by the City, whenever any existing electric utilities, cable facilities or communications facilities are located underground within a right of way of the City, the utility operator with permission to occupy the same right of way shall locate its facilities underground at its own expense. This requirement shall not apply to facilities used for transmission of electric energy at nominal voltages in excess of thirty-five thousand (35,000) volts or to pedestals, cabinets or other above-ground equipment of any utility operator for which the City has given written approval for above-ground installation.

B. Installation of Facilities. The City reserves the right to specify the location and manner in which utility facilities may be installed within the rights of way. All facilities in the public right of way shall be installed underground unless the City specifically authorizes attachments to utility poles or other above ground facilities. Unless otherwise provided in a franchise agreement, the following requirements shall apply:

1. Whenever any new or existing facilities are located or relocated underground within a public right-of-way, franchisees currently occupying the same public right-of-way shall relocate above-ground facilities underground concurrently with the other affected utilities to minimize disruption of the public right-of-way, absent undue hardship or extraordinary circumstances as determined by the City and consistent with applicable State and Federal law.

2. Whenever any existing facilities are located underground within a public right-of-way of the City, a franchisee with permission to occupy the same public right-of-way must also locate its facilities underground.

3. All facilities installed underground shall be installed within an existing underground duct or conduit whenever surplus capacity exists within such utility facility, unless the franchisee demonstrates to the satisfaction of the City that such installation is not feasible.

4. All franchisees with permission to install overhead facilities in the right of way shall install facilities on pole attachments to existing utility poles only, and then only if surplus space is available.

5. No franchisee may locate or maintain facilities so as to unreasonably interfere with the use of the public rights-of-way by the City, by the general public or by other persons authorized to use or be present in or upon the public rights-of-way. All such facilities shall be moved by the franchisee, temporarily or permanently as determined by the City, at the franchisee's sole expense. All use of public rights-of-way shall be consistent with all other applicable City regulations.

6. Within 30 days following written notice from the city, a franchisee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of

any facilities within the public rights-of-way whenever the City shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

a. The construction, repair, maintenance or installation of any City or other public improvement in or upon the public rights-of-way.

b. The operations of the City or other governmental entity in or upon the public rights-of-way.

c. The public interest.

7. In addition to the requirements imposed by this Ordinance, all wireless facilities authorized by the City for installation on utility poles or other above-ground facilities in the right of way shall conform to standards adopted by separate resolution of the City Council.

8. Equipment cabinets, utility vaults equipment pedestals and similar facilities must be installed underground, unless the franchisee demonstrates to the satisfaction of the City that such installation is not feasible, and constructed no larger than necessary.

C. Interference with the rights of way. No utility operator or other person may locate or maintain its facilities so as to unreasonably interfere with the use of the rights of way by the City, by the general public or by other persons authorized to use or be present in or upon the rights of way. All use of the rights of way shall be consistent with City codes, ordinances, rules and regulations.

D. Relocation of Utility Facilities.

1. A utility operator shall, at no cost to the City, temporarily or permanently remove, relocate, change or alter the position of any utility facility within a right of way, including relocation of aerial facilities underground, when requested to do so in writing by the City.

2. The City may allow payment of a fee in lieu of undergrounding when the City Engineer determines that one or more of the following circumstances exist:

a. The placement or relocation of the facilities 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, and the undergrounding work will be included as part of that public agency's project; or

c. The scale of a private development or re-development of property is such that the undergrounding of 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, in the City's sole estimation, is therefore better left to such future time as it may be done on a larger scale together with additional undergrounding work to achieve economies of scale in construction costs.

A fee in lieu of undergrounding, when allowed by the City, shall be calculated by the City Engineer as the amount estimated 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 a separate dedicated account to be used only for costs related to the undergrounding of 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 how or where the fee so paid is applied by the City in the future. Interest earnings on fees paid to the City in lieu of undergrounding shall accrue to the 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.

3. Nothing herein shall be deemed to preclude the utility operator from requesting reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs or agreements, provided that the utility operator shall timely comply with the requirements of this section regardless of whether or not it has requested or received such reimbursement or compensation.

4. The City shall provide written notice of the time by which the utility operator must remove, relocate, change, alter or underground its facilities. If a utility operator fails to remove, relocate, alter or underground any utility facility as requested by the City and by the date reasonably established by the City, the utility operator shall pay all costs incurred by the City due to such failure, including but not limited to costs related to project delays, and the City may cause the utility facility to be removed, relocated, altered or undergrounded at the utility operator's sole expense. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days.

E. Removal of Unauthorized Facilities.

1. Unless otherwise agreed to in writing by the City, within thirty (30) days following written notice from the City or such other time agreed to in writing by the City, a utility operator and any other person that owns, controls, or maintains any abandoned or unauthorized utility facility within a right of way shall, at its own expense, remove the facility and restore the right of way.

2. A utility system or facility is unauthorized under any of the following circumstances:

   a. The utility facility is outside the scope of authority granted by the City under the license, franchise or other written agreement. This includes facilities that were never licensed or franchised and facilities that were once licensed or franchised

but for which the license or franchise has expired or been terminated. This does not include any facility for which the City has provided written authorization for abandonment in place.

b. The facility has been abandoned and the City has not provided written authorization for abandonment in place. A facility is abandoned if it is not in use and is not planned for further use. A facility will be presumed abandoned if it is not used for a period of one (1) year. A utility operator may overcome this presumption by presenting plans for future use of the facility.

c. The utility facility is improperly constructed or installed or is in a location not permitted by the construction permit, license, franchise or this Chapter.

d. The utility operator is in violation of a material provision of this Chapter and fails to cure such violation within thirty (30) days of the City sending written notice of such violation, unless the City extends such time period in writing.

F. Removal by City.

1. The City retains the right and privilege to cut or move the facilities of any utility operator or similar entity located within the rights of way of the City, without notice, as the City may determine to be necessary, appropriate or useful in response to a public health or safety emergency. The City will use qualified personnel or contractors consistent with applicable state and federal safety laws and regulations to the extent reasonably practicable without impeding the City's response to the emergency.

2. If the utility operator fails to remove any facility when required to do so under this Chapter, the City may remove the facility using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, and the utility operator shall be responsible for paying the full cost of the removal and any administrative costs incurred by the City in removing the facility and obtaining reimbursement. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days. The obligation to remove shall survive the termination of the license or franchise.

3. The City shall not be liable to any utility operator for any damage to utility facilities, or for any consequential losses resulting directly or indirectly therefrom, by the City or its contractor in removing, relocating or altering the facilities pursuant to subsections C, D or E of this section or undergrounding its facilities as required by subsection A or B of this section, or resulting from the utility operator's failure to remove, relocate, alter or underground its facilities as required by those subsections, unless such damage arises directly from the City's negligence or willful misconduct. In no event shall the City be liable for consequential losses or damages.

G. Engineering Designs and Plans. Upon request, the utility operator shall provide the City with two complete sets of engineered plans in a form acceptable to the City showing the location of all its utility facilities in the rights of way after initial construction if such plans

materially changed during construction. The utility operator shall provide two updated complete sets of as built plans upon request of the City, but not more than once per year.

(Ord 260-18, passed 12-18-18)

§130.07 Leased Capacity.

A utility operator may lease capacity on or in its systems to others, provided that, upon request, the utility operator provides the City with the name and business address of any lessee. A utility operator is not required to provide such information if disclosure is prohibited by applicable law or a valid agreement between the utility operator and the lessee.

(Ord 260-18, passed 12-18-18)

§130.08 Maintenance.

A. Every utility operator shall install and maintain all facilities in a manner that complies with applicable federal, state and local laws, rules, regulations and policies. The utility operator shall, at its own expense, repair and maintain facilities from time to time as may be necessary to accomplish this purpose.

B. If, after written notice from the City of the need for repair or maintenance, a utility operator fails to repair and maintain facilities as requested by the City and by the date reasonably established by the City, the City may perform such repair or maintenance using qualified personnel or contractors at the utility operator's sole expense. Upon receipt of a detailed invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days.

(Ord 260-18, passed 12-18-18)

§130.09 Vacation.

If the City vacates any right of way, or portion thereof, that a utility operator uses, the utility operator shall, at its own expense, remove its facilities from the right of way unless the City reserves a public utility easement, which the City shall make a reasonable effort to do provided that there is no expense to the City, or the utility operator obtains an easement for its facilities. If the utility operator fails to remove its facilities within thirty (30) days after a right of way is vacated, or as otherwise directed or agreed to in writing by the City, the City may remove the facilities at the utility operator's sole expense. Upon receipt of an invoice from the City, the utility operator shall reimburse the City for the costs the City incurred within thirty (30) days.

(Ord 260-18, passed 12-18-18)

§130.10 Privilege Tax.

A. Except as provided in subsection B, every utility operator and every person that uses utility facilities in the City to provide utility service, whether or not the person owns the utility facilities used to provide the utility services, shall pay the privilege tax for every

utility service provided using the rights of way in the amount determined by resolution of the City Council.

B. Facilities-based Providers shall pay the license fee as provided in Ordinance 262-19 and the applicable City Council Resolution in lieu of the privilege tax required in this section.

C. Privilege tax payments required by this section shall be reduced by any franchise fee payments received by the City, but in no case will be less than zero dollars ($0).

D. Unless otherwise agreed to in writing by the City, the privilege tax set forth in subsection A of this section shall be paid annually, in arrears, within thirty (30) days after the end of each calendar year for each year or portion of a year during which the person owns, places, operates, maintains or uses utility facilities in the City, and shall be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable. The utility shall pay interest at the rate of nine percent (9%) per year for any payment made after the due date.

E. The calculation of the privilege tax required by this section shall be subject to all applicable limitations imposed by federal or state law.

F. The City reserves the right to enact other fees and taxes applicable to the utility operators subject to this Chapter. Unless expressly permitted by the City in enacting such fee or tax, or required by applicable state or federal law, no utility operator may deduct, offset or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or taxes based on the payment of the privilege tax or any other fees required by this Chapter.

(Ord 260-18, passed 12-18-18)

§130.11 Audits.

A. Within thirty (30) days of a written request from the City, or as otherwise agreed to in writing by the City:

1. Every provider of utility service shall furnish the City with information sufficient to demonstrate that the provider is in compliance with all the requirements of this Chapter and its franchise agreement, if any, including but not limited to payment of any applicable registration fee, privilege tax or franchise fee.

2. Every utility operator shall make available for inspection by the City at reasonable times and intervals all maps, records, books, diagrams, plans and other documents, maintained by the utility operator with respect to its facilities within the rights of way or public utility easements. Access shall be provided within the City unless prior arrangement for access elsewhere has been made with the City.

B. If the City's audit of the books, records and other documents or information of the utility operator or utility service provider demonstrate that the utility operator or provider has underpaid the privilege tax or franchise fee by three percent (3%) or more in any one (1) year, the utility operator shall reimburse the City for the cost of the audit, in addition to any interest owed pursuant to subsection 12.D of this Chapter or as specified in a franchise.

C. Any underpayment, including any interest or audit cost reimbursement, shall be paid within thirty (30) days of the City's notice to the utility service provider of such underpayment.

(Ord 260-18, passed 12-18-18)

§130.12 Insurance and Indemnification.

A. Insurance.

1. All utility operators shall maintain in full force and effect the following liability insurance policies that protect the utility operator and the City, as well as the City's officers, agents, and employees:

   a. Comprehensive general liability insurance with limits not less than:
      i. Three million dollars ($3,000,000.00) for bodily injury or death to each person;
      ii. Three million dollars ($3,000,000.00) for property damage resulting from any one accident; and
      iii. Three million dollars ($3,000,000.00) for all other types of liability.

   b. Motor vehicle liability insurance for owned, non-owned and hired vehicles with a limit of one million dollars ($1,000,000.00) for each person and three million dollars ($3,000,000.00) for each accident.

   c. Worker's compensation within statutory limits and employer's liability with limits of not less than one million dollars ($1,000,000.00).

   d. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars ($3,000,000.00).

2. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the state of Oregon. The insurance shall be without prejudice to coverage otherwise existing and shall name, or the certificate of insurance shall name, as additional insureds the City and its officers, agents, and employees. The coverage must apply as to claims between insureds on the policy. The policy shall provide that the insurance shall not be canceled or materially altered without thirty (30) days prior written notice first being given to the City. If the insurance is canceled or materially altered, the utility operator shall obtain a replacement policy that complies with the terms of this section and provide the City with a replacement certificate of insurance. The utility operator shall maintain continuous uninterrupted coverage, in the terms and amounts required. The utility operator may self-insure, or keep in force a self-insured retention plus insurance, for any or all of the above coverage.

3. The utility operator shall maintain on file with the City a certificate of insurance, or proof of self-insurance acceptable to the City, certifying the coverage required above.

B. Financial Assurance. If requested by the City, before a franchise is granted or license is issued, and as necessary thereafter, the utility operator shall provide a performance bond or other financial security, in a form acceptable to the City, as security for the full and complete performance of the franchise or license, and compliance with the terms of this Chapter, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the utility operator to comply with the codes, ordinances, rules, regulations or permits of the City. This obligation is in addition to the performance surety required by subsection 7.C of this Chapter.

C. Indemnification.

1. Each utility operator shall defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity in any way arising out of, resulting from, during or in connection with, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failure to act, or other misconduct of the utility operator or its affiliates, officers, employees, agents, contractors, subcontractors, or lessees in the construction, operation, maintenance, repair, or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this Chapter or by a franchise agreement or license. Upon notification of any such claim the City shall notify the utility operator and provide the utility operator with an opportunity to provide defense regarding any such claim.

2. Every utility operator shall also indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from the utility operator's failure to remove or relocate any of its facilities in the rights of way or easements in a timely manner, unless the utility operator's failure arises directly from the City's negligence or willful misconduct.

(Ord 260-18, passed 12-18-18)

§130.13 Compliance.

Every utility operator shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all applicable ordinances, resolutions, rules and regulations of the City, heretofore or hereafter adopted or established during the entire term of any license or any franchise granted under this Chapter.

(Ord 260-18, passed 12-18-18)

§130.14 Confidential/Proprietary Information.

If any person is required by this Chapter to provide books, records, maps or information to the City that the person reasonably believes to be confidential or proprietary, the City shall take reasonable steps to protect the confidential or proprietary nature of the books, records or information, to the extent permitted by Oregon Public Records Laws, provided that all documents are clearly marked as confidential by the person at the time of disclosure to the City. The City shall not be required to incur any costs to protect such document, other than the City's routine internal procedures for complying with the Oregon Public Records Law.

(Ord 260-18, passed 12-18-18)

§130.15 Penalties.

A. Any person found guilty of violating any of the provisions of this Chapter or the franchise shall be subject to a penalty of not less than One Hundred Dollars ($100.00) nor more than one thousand dollars ($1,000.00) for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs or continues.

B. Nothing in this Chapter shall be construed as limiting any judicial or other remedies the City may have at law or in equity, for enforcement of this Chapter.

(Ord 260-18, passed 12-18-18)

§130.16 Severability and Preemption.

A. The provisions of this Chapter shall be interpreted to be consistent with applicable federal and state law, and shall be interpreted, to the extent possible, to cover only matters not preempted by federal or state law.

B. If any article, section, subsection, sentence, clause, phrase, term, provision, condition or portion of this Chapter is for any reason declared or held to be invalid or unenforceable by any court of competent jurisdiction or superseded by state or federal legislation, rules, regulations or decision, the remainder of this Chapter shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, clause, phrase, term, provision, condition, covenant and portion of this Chapter shall be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by federal or state laws, rules or regulations, the provision shall be preempted only to the extent required by law and any portion not preempted shall survive. If any federal or state law resulting in preemption is later repealed, rescinded, amended or otherwise changed to end the preemption, such provision shall thereupon return to full force and effect and shall thereafter be binding without further action by the City.

(Ord 260-18, passed 12-18-18)

§130.17 Application to Existing Agreements.

To the extent that this Chapter is not in conflict with and can be implemented consistent with existing franchise agreements, this Chapter shall apply to all existing franchise agreements granted to utility operators by the City.

(Ord 260-18, passed 12-18-18)

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 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

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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.

The City adopts the following codes as the standards for review of all applications for building- and related permits for the construction, re-construction, maintenance and repair of structures within the City, all of the following as adopted by the Administrator of the State Building Codes Division:

(1) The 2019 edition of the Oregon Structural Specialty Code, together with Section 115 and Appendices G (Flood-Resistant Construction) and H (Signs);
(2) The 2019 edition of the Oregon Mechanical Specialty Code;
(3) The 2021 edition of the Oregon Plumbing Specialty Code (all chapters);
(4) The 2021 edition of the Oregon Residential Specialty Code;
(5) The 2021 edition of the Oregon Energy Efficiency Specialty Code;
(6) The Oregon Manufactured Dwelling Administrative Rules; OAR 918-500-510 to 918-500-0595 (2010);
(7) The Manufactured Dwelling and Parks Specialty Code, 2002 edition, adopted by the State in OAR 918-600-0010 (2002), including the April 1, 2005 amendments;
(8) The Oregon Manufactured Dwelling Installation Specialty Code, 2010 edition, adopted by the State in OAR 918-500-510 to 981-500-590 (2010);
(9) The 2011 edition of the Oregon Administrative Rules for Recreational Parks and Organizational Camps;
(10)The 2019 Oregon Fire Code as adopted by the state rule 837-040-0010 (2019), and as adopted by Tualatin Valley Fire and Rescue District Ordinance No. 2020-01; and
(11) Chapter 18 of the 2019 edition of the Oregon Structural Specialty Code as to grading and excavation. Each permit application for grading and excavation shall be accompanied with a soils report as specified in Section 1802.1, signed and sealed by an Oregon-certified soils engineer.

(Ord 195-99, passed 6-22-99, Amending Ord. 264-20, passed 12-15-20, Amending Ord. 265-20, passed 10-26-21)

§ 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 the 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)

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 and for general maintenance of and education regarding the City's urban forest. The City's accounting records shall separately track all in-lieu payments received as well as expenditures of mitigation funds. 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, Amending Ord 246-08, passed 9-23-08)

§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 49 PROVISIONS

Section

§164.01 Definitions.

A. "Land use regulation" means a provision of the City of Durham comprehensive land use plan or land use code that restricts the residential use of private real property zoned for residential use.

B. "Owner" means:

1. The owner of fee title to the property as shown in the deed records of the county where the property is located;
2. The purchaser under a recorded land sale contract that is in force for the property; or,
3. If the property is owned by the trustee of a revocable trust, the settlor of a

revocable trust, except that when the trust becomes irrevocable only the trustee is the owner.

C. "Property" means the private real property described in a claim and contiguous private real property that is owned by the same owner, whether or not the contiguous property is described in another claim, and that is not property owned by the federal government, an Indian tribe or a public body as "public body" is defined in ORS 192.410.

D. "Protection of public health and safety" means a law, rule, ordinance, order, policy, permit or other governmental authorization that restricts a use of property in order to reduce the risk or consequence of fire, earthquake, landslide, flood, storm, pollution, disease, crime or other natural or human disaster or threat to persons or property including, but not limited to, building and fire codes, health and sanitation-, solid or hazardous waste- and pollution control regulations.

E. "Zoned for residential use" means zoning that has as its primary purpose single-family residential use.

(Ord 245-08, passed 5-27-08)

§164.02 Basis of Claim.

A. If the city enacts one or more land use regulations that restrict the residential use of private real property and that reduce the fair market value of the property, then the owner of the property shall be entitled to just compensation from the city.

B. Just compensation under this Chapter shall be based on the reduction in the fair market value of the property resulting from the land use regulation.

C. Subsection (1) of this section shall not apply to land use regulations that were enacted prior to the claimant's acquisition date or to land use regulations:

(1) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law;

(2) Restricting or prohibiting activities for the protection of public health and safety;

(3) To the extent the land use regulation is required to comply with federal law; or

(4) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing.

(Ord 245-08, passed 5-27-08)

§164.03 No Land Use Decision.

A city decision that an owner qualifies for just compensation under sections 5 to 22 of this 2007 Act and a city decision on the nature and extent of that compensation are not land use decisions.

(Ord 245-08, passed 5-27-08)

§164.04 Requirements for Claim.

A. A person may file a claim for just compensation under this Chapter if:

(1) The person is an owner of the property and all owners of the property have consented in writing to the filing of the claim;

(2) The person's desired use of the property is a residential use;

(3) The person's desired use of the property is restricted by one or more land use regulations enacted after January 1, 2007; and

(4) The enactment of one or more land use regulations after January 1, 2007, other than land use regulations described in ORS 197.352 (3), has reduced the fair market value of the property.

B. For purposes of subsection (A) of this section, the reduction in the fair market value of the property caused by the enactment of one or more land use regulations that are the basis for the claim is equal to the decrease, if any, in the fair market value of the property from the date that is one year before the enactment of the land use regulation to the date that is one year after the enactment, plus interest. If the claim is based on the enactment of more than one land use regulation enacted on different dates, the reduction in the fair market value of the property caused by each regulation shall be determined separately and the values added together to calculate the total reduction in fair market value. Interest shall be computed under this subsection using the average interest rate for a one-year United States Government Treasury Bill on December 31 of each year of the period between the date the land use regulation was enacted and the date the claim was filed, compounded annually on January 1 of each year of the period. A claimant must provide an appraisal showing the fair market value of the property one year before the enactment of the land use regulation and the fair market value of the property one year after the enactment. The actual and reasonable cost of preparing the claim, including the cost of the appraisal, not to exceed $5,000, may be added to the calculation of the reduction in fair market value under this subsection. The appraisal must:

(1) Be prepared by a person certified under ORS Chapter 674 or a person registered under ORS Chapter 308;

(2) Comply with the Uniform Standards of Professional Appraisal Practice, as authorized by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989; and

(3) Expressly determine the highest and best use of the property at the time the land use regulation was enacted.

C. Relief may not be granted under this section if the highest and best use of the property at the time the land use regulation was enacted was not the use that was restricted by the land use regulation.

D. If the claimant establishes that the requirements of subsection (1) of this section are satisfied and the land use regulation was enacted the city, the city must either:

(1) Compensate the claimant for the reduction in the fair market value of the property; or

(2) Authorize the claimant to use the property without application of the land use regulation to the extent necessary to offset the reduction in the fair market value of the property.

E. A use authorized by this section has the legal status of a lawful nonconforming use in the

same manner as provided by ORS 215.130. The claimant may carry out a use authorized by the city under this section except that the city may waive only land use regulations that were enacted by the public entity. When a use authorized by this section is lawfully established, the use may be continued lawfully in the same manner as provided by ORS 215.130.

(Ord 245-08, passed 5-27-08)

§164.05 Claims Process.

A. A person filing a claim under this Chapter shall file the claim in the manner provided by this section. If the property for which the claim is filed has more than one owner, all the owners must sign the claim or the claim must include a signed statement of consent from each owner. Only one claim for each property may be filed for each land use regulation.

B. A claim filed under this Chapter must be filed with the city if it arises from a city-enacted land use regulation and shall be filed with the City Administrator-Recorder.

C. A claim filed under this Chapter shall not be considered unless accompanied by payment of a fee in the amount of the city's estimate of the actual and reasonable professional costs it will incur to review the claim and the claimant's written promise to pay the full amount of those costs that may exceed the estimate. The city's approval of a claim shall not be effective unless and until those professional costs have been paid in full.

D. A person must file a claim under this Chapter within five years after the date the city enacted the land use regulation.

E. The city must issue a final determination on a claim made under this Chapter within 180 days after the date the claim is complete, as described in subsection D of this section.

F. A claim filed under this Chapter must be in writing and must include:

(1) The name and address of each owner;

(2) The address, if any, and tax lot number, township, range, and section of the property;

(3) Evidence of the acquisition date of the claimant, including the instrument conveying the property to the claimant and a report from a title company identifying the person in which title is vested and the claimant's acquisition date and describing exceptions and encumbrances to title that are of record;

(4) A citation to the land use regulation that the claimant believes is restricting the claimant's desired use of the property that is adequate to allow the city to identify the specific land use regulation that is the basis for the claim;

(5) A description of the specific use of the property that the claimant desires to carry out but cannot because of the land use regulation; and

(6) An appraisal of the property that complies with this Chapter.

G. The city shall review a claim filed under this Chapter to determine whether the claim complies with the requirements for filing as set out herein. If the claim is incomplete, the city shall notify the claimant in writing of the information or fee that is missing within 60 days after receiving the claim and allow the claimant to submit the missing information or fee. The claim is complete when the public entity receives any fee required by this Chapter

and:

(1) The missing information;

(2) Part of the missing information and written notice from the claimant that the remainder of the missing information will not be provided; or

(3) Written notice from the claimant that none of the missing information will be provided.

H. If the city does not notify a claimant within 60 days after a claim is filed under this Chapter that information or the fee is missing from the claim, the claim is deemed complete when filed.

I. A claim filed under this Chapter is deemed withdrawn if the city gives notice to the claimant under this section and the claimant does not comply with the requirements of this section.

(Ord 245-08, passed 5-27-08)

§164.06 Notice and Hearing.

A. The city shall provide notice of the claim at least 30 days before the date that the city sets a public hearing on the claim, to:

(1) All owners identified in the claim;

(2) All persons described in ORS 197.763 (2);

(3) The Department of Land Conservation and Development, unless the claim was filed with the department;

(4) Metro; and,

(5) Washington County, unless the claim was filed with the county.

B. The notice required under subsection (A) of this section must describe the claim and state:

(1) The date, time, and location of the public hearing to be held on the claim and the final date for submission of written evidence and arguments relating to the claim;

(2) That judicial review of the city's final determination on the claim is limited to the written evidence and arguments submitted to the city; and

(3) That judicial review is available only for issues that are raised with sufficient specificity to afford the city an opportunity to respond.

C. Except as provided in subsection (D) of this section, written evidence and arguments in proceedings on the claim must be submitted to the public entity not later than the close of the final public hearing on the claim.

D. The claimant may request additional time to submit written evidence and arguments in response to testimony or submittals. The request must be made before the close of testimony or the deadline for submission of written evidence and arguments.

E. The city shall make the record on review of a claim, including any staff reports, available to the public before the close of the record as described in subsections (3) and (4) of this section.

F. The city shall mail a copy of the final determination to the claimant and to any person who submitted written evidence or arguments before the close of the record. The city shall forward to Washington County, and the county shall record, a memorandum of the final determination in the deed records of the county.

(Ord 245-08, passed 5-27-08)

§164.07 Plan and Zoning Amendments.

A. If an owner submits an application for a comprehensive plan or zoning amendment and the city approves the amendment, the owner is not entitled to relief under sections 5 to 22 of this 2007 Act with respect to a land use regulation enacted before the date the application was filed.

B. If an owner files a petition to initiate annexation to the city and the city approves the petition, the owner is not entitled to relief under this Chapter with respect to a land use regulation enacted before the date the petition was filed.

(Ord 245-08, passed 5-27-08)

§164.08 Appraiser.

An appraiser certified under ORS 674.310 or a person registered under ORS chapter 308 may carry out the appraisals required by this Chapter.

(Ord 245-08, passed 5-27-08)

§164.09 Other Provisions

A. Except as provided in this section, a claimant's acquisition date is the date the claimant became the owner of the property as shown in the deed records of the county in which the property is located. If there is more than one claimant for the same property under the same claim and the claimants have different acquisition dates, the acquisition date is the earliest of those dates.

B. If the claimant is the surviving spouse of a person who was an owner of the property in fee title, the claimant's acquisition date is the date the claimant was married to the decease spouse or the date the spouse acquired the property, whichever is later. A claimant or a surviving spouse may disclaim the relief provided under this Chapter by using the procedure provided in ORS 105.623 to 105.649.

C. If a claimant conveyed the property to another person and reacquired the property, whether by foreclosure or otherwise, the claimant's acquisition date is the date the claimant reacquired ownership of the property.

D. A default judgment entered after December 2, 2004, does not alter a claimant's acquisition date unless the claimant's acquisition date is after December 2, 2004.

E. For the purposes of this Chapter, a document is filed on the date the document is

received by the city.

F. For the purposes of this Chapter, the fair market value of property is the amount of money, in cash, that the property would bring if the property was offered for sale by a person who desires to sell the property but is not obligated to sell the property, and if the property was bought by a person who was willing to buy the property but not obligated to buy the property. The fair market value is the actual value of property, with all of the property's adaptations to general and special purposes. The fair market value of property does not include any prospective value, speculative value or possible value based upon future expenditures and improvements.

(Ord 245-08, passed 5-27-08)