

## **UPDATE INFORMATION**

# **Vols. I & II – Portland City Code**

## **March 31, 2018 – Quarterly Update**

Retain this page to document what update was last applied to your books.

### **How to download Code update packets and/or Code Titles:**

1. Go to <http://www.portlandoregon.gov/efiles>
2. Search for **City Code Folder version** and under SORT BY check Descending.
3. Locate quarter you want and click on the plus sign to see the available update packet and/or Code Title(s).
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Contact the Auditor's Office Council Clerk/Contracts  
Section if you have questions: 503-823-4082.

Previous Update Packet December 31, 2017



**CODE OF THE CITY OF PORTLAND, OREGON**  
**Insertion Guide for Code Revisions**  
**Office of the City Auditor 503-823-4082**  
**1st Quarter 2018 (March 31, 2018)**

<b>TITLE</b>	<b>REMOVE OLD PAGES</b>	<b>INSERT NEW PAGES</b>	<b>NEXT PAGE IS</b>
<b>2</b>	Table of Contents	Table of Contents	1
	31 - 59	31 - 59	End of Title
<b>3</b>	Table of Contents	Table of Contents	1
	21 - 26	21 - 26	27
	75 - 96	75 - 96	97
	129 - 130	129 - 130	131
	163 - 172	163 - 172	173
	283 - 287	283 - 289	End of Title
<b>11</b>	Table of Contents	Table of Contents	1
	7 – 100	7 - 101	End of Title
<b>17</b>	Table of Contents	Table of Contents	17.04 - 1
	17.15 - 1–27	17.15 - 1–26	17.16 - 1
	17.23 - 1–3	17.23 - 1–3	17.24 - 1
	17.24 - 5–21	17.24 - 5–21	17.25 - 1
	17.100 - 1–2	17.100 - 1–2	17.102 - 1
	-	17.108 - 1 – 7	Figure 1 – Page 1
<b>24</b>	Table of Contents	Table of Contents	1
	1 – 4	1 - 4	5
	55 - 105	55 - 112	End of Title
<b>25</b>	1 – 2	1 - 2	3
<b>26</b>	1 – 2	1 - 2	3
<b>30</b>	9 - 19	9 - 19	End of Title



## **TITLE 2 - LEGISLATION AND ELECTIONS**

### **TABLE OF CONTENTS**

<b>Chapter 2.02</b>	<b>GENERAL PROVISIONS</b>
2.02.010	Definitions.
2.02.020	City Elections Officer.
2.02.030	Campaign Finance Regulations.
2.02.040	Applicability of State Law; Limitations.
2.02.050	Computation of Dates.
<b>Chapter 2.04</b>	<b>INITIATIVE AND REFERENDUM PROCEDURES</b>
2.04.030	Pre-election Publication.
2.04.040	Submission of Measure to Voters.
2.04.050	Prospective Petition.
2.04.055	One Subject Determination.
2.04.060	Ballot Title; Publication; Legal Effect.
2.04.070	Legal Challenge to Ballot Title.
2.04.080	Circulation of Petition.
2.04.090	Filing Deadlines, Percentage Requirements and Signature Verification.
2.04.100	Council Action; Competing Measure and Certification.
2.04.110	Measures Proposed by the Charter Commission.
2.04.120	Measures Referred by the Council.
2.04.125	Advisory Questions Referred by Council.
2.04.130	Election Dates; Special Election.
2.04.140	Ballot Designations.
2.04.150	Computation of the Vote.
2.04.160	Effective Date.
<b>Chapter 2.08</b>	<b>NOMINATION AND ELECTION OF CANDIDATES</b>
2.08.040	City Offices.
2.08.050	Qualifications of Candidates.
2.08.060	Filing as a Candidate for Office.
2.08.070	Filing by Declaration of Candidacy.
2.08.080	Filing by Nominating Petition
2.08.090	Withdrawal of Candidate Before certification to County.
2.08.100	Register of Candidates for primary Election.
2.08.110	Statement of Candidates & Measures for Primary and General Elections Ballots.
2.08.120	Post-Election Procedures for Primary and General Election.
2.08.130	Tie Vote.
2.08.140	Candidate Elected by Write-in Vote.
2.08.150	Withdrawal after Nomination.
2.08.160	Filling Vacancy in Nomination.
2.08.170	Recall.

<b>Chapter 2.12</b>	<b>REGULATION OF LOBBYING ENTITIES</b>
2.12.010	Purpose.
2.12.020	Definitions.
2.12.030	Registration for Lobbying Entities.
2.12.040	Quarterly Reporting Requirements for Lobbying Entities.
2.12.050	Exemptions to Registration and Reporting Requirements for Lobbying Entities.
2.12.060	Declaration Required by Lobbyists
2.12.070	Reporting Requirements for City Officials.
2.12.080	Prohibited Conduct.
2.12.090	Verification of Reports, Registrations and Statements.
2.12.100	Public Nature of Reports, Registrations and Statements.
2.12.110	Auditor's Duties.
2.12.120	Penalties.
2.12.130	Severability.
<b>Chapter 2.14</b>	<b>REPORTING BY POLITICAL CONSULTANTS</b>
2.14.010	Purpose.
2.14.020	Definitions.
2.14.030	Registration for Political Consultants.
2.14.040	Termination of Registration.
2.14.050	Quarterly Reporting by City Elected Official.
2.14.060	Public Nature of Reports and Registrations.
2.14.070	Prohibited Conduct.
2.14.080	City Auditor's Duties.
2.14.090	Penalties for Violation of this Chapter.
2.14.100	Enforcement.
<b>Chapter 2.16</b>	<b>OPEN AND ACCOUNTABLE ELECTIONS PROGRAM</b>
2.16.005	Short Title.
2.16.010	Definitions.
2.16.020	Public Election Fund Established.
2.16.030	Administrative Rules, Director's Duties and Authority.
2.16.040	Contribution and Expenditure Requirements for Participating and Certified Candidates.
2.16.050	Requirements for Certification.
2.16.060	Director Determination.
2.16.070	Distribution of Public Contribution.
2.16.080	Use of Contributions.
2.16.090	Adequate Funds.
2.16.100	Return of Public Contributions.
2.16.110	Withdrawal.
2.16.120	Participating and Certified Candidate Restrictions.
2.16.130	Public Campaign Finance Commission.
2.16.140	Additional Reporting.

- 2.16.150 Removal of Certain Contribution Limits.
- 2.16.160 Penalties, Revocation of Certification and Repayment of Funds.
- 2.16.170 Hearings.
- 2.16.180 Implementation.
- 2.16.190 Program Management.





**TITLE 2**  
**LEGISLATION AND ELECTIONS**

- B.** No former salaried at-will staff of a City elected official, shall, for a period of 1 year after the termination of employment, lobby for money or other consideration any City elected official or their salaried at-will staff.
- C.** No former City director shall, for a period of 2 years after termination of the director's appointment, lobby for money or other consideration the current City director of the office or bureau to which the former City director was appointed or, regarding matters within the powers and duties of the bureau to which the former City director was appointed, the City elected official in charge of the office or bureau to which the City director was appointed.
- D.** No Former City employee shall lobby a City Official for money or other consideration regarding a contract if the employee exercised contract management authority with respect to that contract while employed by the City. This prohibition shall be for the duration of the contract.
- E.** The prohibitions in this Section shall not apply to:
  - 1.** Prevent any former City elected official or other City employee from representing himself or herself, or any member of his or her immediate family, in their individual capacities, in connection with any matter pending before the City;
  - 2.** The activities of any former City elected official or other City employee who is an elected or appointed officer or employee of any public body, when that former City elected official or other City employee is solely representing that agency in his or her official capacity as an officer or employee of the public body;
  - 3.** Any ministerial action. For purposes of this subsection, a ministerial action is one that does not require a City official or other City employee to exercise discretion concerning any outcome or course of action.
  - 4.** Prevent City officials or other City employees from seeking information or participation from former City elected officials or other City employees where the public interest would be served by the information or participation.

**2.12.090 Verification of Reports, Registrations and Statements.**

(Amended by Ordinance No. 181204, effective September 7, 2007.)

- A.** Each report, registration or statement required by this Chapter shall contain or be verified by a written or electronic declaration that it is made under the penalties of false swearing. Such declaration shall be in lieu of any oath otherwise required.

## **TITLE 2**

### **LEGISLATION AND ELECTIONS**

- B.** No person shall willfully make and subscribe any document which contains or is verified by a written or electronic declaration for false swearing which the person does not reasonably believe to be true and correct to every matter.

#### **2.12.100 Public Nature of Reports, Registrations and Statements.**

(Amended by Ordinance No. 186176, effective August 30, 2013.) All information submitted to the City Auditor in any report, registration or statement required by this Chapter is a public record and will be posted on Office of the Auditor website within three business days after receipt, except if the information is subject to amendment under this Chapter, the Auditor will post the information within three business days after the amendment period has closed.

#### **2.12.110 Auditor's Duties.**

(Amended by Ordinance Nos. 187854 and 188842, effective March 30, 2018.) In carrying out the provisions of this Chapter, the City Auditor:

- A.** Shall prescribe forms for registrations, statements and reports, and provide such forms to persons required to register and to file such statements and reports;
- B.** Shall accept registrations and reports in an electronic format;
- C.** Shall accept and file any information voluntarily supplied that exceeds the requirements of this Chapter;
- D.** Shall make registrations, statements and reports filed available for public inspection and copying during regular office hours, and make copies available. The Auditor may charge fees to recover the cost of retrieval and copying;
- E.** May audit whether registrations and reports required by this Chapter have been completed properly and within the time frames specified in this Chapter;
- F.** May initiate investigations and accept and investigate complaints of alleged violations of this Chapter;
- G.** May make such inquiries and obtain such reasonable assistance and information, including records, from any office or person as the Auditor shall require for enforcement purposes, including requests to produce documentary or other evidence that is reasonably relevant to the matters under investigation;
  - 1.** For information and records sought from City offices, employees or officials, the Auditor or any agent or employee of the Auditor employed for the purpose of auditing or investigating the City may obtain confidential and legally privileged information and records held by the City so long as privilege is not waived as to third parties. The Auditor shall not disclose confidential or legally privileged information and records and shall be subject to the same penalties as the legal custodian of records for any unlawful or unauthorized disclosure.

**TITLE 2**  
**LEGISLATION AND ELECTIONS**

- H.** May recover all reasonable costs incurred in enforcement in this Chapter, including but not limited to attorney's fees.
- I.** Is authorized to adopt administrative rules to carry out the duties and to administer the provisions of this Chapter.

**2.12.120 Penalties.**

(Amended by Ordinance Nos. 187854 and 188842, effective March 30, 2018.) A person who violates any provision of this Chapter or fails to file any report, registration or statement or to furnish any information required by this Chapter shall be subject to a civil penalty in an amount not to exceed \$3,000 per violation. By administrative rule, the Auditor shall establish enforcement criteria with increased fines for repeated violations. In the name of the City, the Auditor may seek civil penalties and enforcement of any provision of this Chapter in Multnomah County Circuit Court or other appropriate venue. The Auditor may bring such an action through independent legal counsel retained or employed by the Auditor, or may request that the City Attorney provide such representation.

**2.12.130 Severability.**

If any provision of this Chapter, or its application to any person or circumstance, is held invalid by any court, the remainder of this Chapter and its application to other persons and circumstances, other than that which has been held invalid, shall not be affected by such invalidity, and to that extent the provisions of this Chapter are declared to be severable.

## TITLE 2 LEGISLATION AND ELECTIONS

### CHAPTER 2.14 - REPORTING BY POLITICAL CONSULTANTS

(Chapter added by Ordinance No. 187689, effective  
May 20, 2016.)

#### Sections:

2.14.010	Purpose.
2.14.020	Definitions.
2.14.030	Registration for Political Consultants.
2.14.040	Termination of Registration.
2.14.050	Quarterly Reporting by City Elected Official.
2.14.060	Public Nature of Reports and Registrations.
2.14.070	Prohibited Conduct.
2.14.080	City Auditor's Duties.
2.14.090	Penalties for Violation of this Chapter.
2.14.100	Enforcement.

#### **2.14.010 Purpose.**

The purpose of this Chapter is to improve transparency by requiring Political Consultants advising City elected officials to meet certain registration and reporting requirements.

#### **2.14.020 Definitions.**

As used in this Chapter unless the context requires otherwise:

- A. "City elected official" means the Mayor, City Commissioners, or Auditor.
- B. "Day" means a calendar day by 5 p.m. unless "business day" is specified. If the computed date for action falls on a Saturday, Sunday or legal City holiday, then the "day" shall be the next business day by 5 p.m.
- C. "Political Consultant" means a person or entity that provides Political Consulting Services to a City elected official or successful candidate for elected office, or a successful candidate's principal campaign committee, registered with the Oregon Secretary of State. The term "Political Consultant" does not include attorneys who provide only legal services, accountants who provide only accounting services, professional fundraisers, or pollsters who provide only polling services. The term "Political Consultant" does not include a person who
  - 1. Does not engage in Political Consulting Services as a trade or profession, or
  - 2. Is a City employee.
- D. "Political Consulting Services" include actions in campaign management and political strategy services, including but not limited to: advocacy and strategy; political polling; advising or assisting in voter contact strategies and services;

## TITLE 2 LEGISLATION AND ELECTIONS

advising in media strategy, buying and advertisement; providing candidate development, policy training, political image consulting, and designing, implementing and analyzing polls and surveys; performing issues research and opposition research; developing, assisting in strategic communication such as news releases, talking points and speech writing; and advising on negative information handling and political crisis management. This Chapter does not regulate the content and viewpoint of the services provided to a City elected official.

### **2.14.030 Registration for Political Consultants.**

- A.** Within 15 days after providing any Political Consulting Services to a City elected official, a Political Consultant must register with the City Auditor.
  - 1.** The registration must include at least the following information:
    - a.** The name, address and contact information of the Political Consultant, including the organization, if applicable, with which the Political Consultant is associated and the address and contact information of that organization if different than that of the Political Consultant.
    - b.** If the Political Consultant is an entity, the names, addresses and contact information of principals, employees and contractors that provide Political Consulting Services to a City elected official.
    - c.** If an entity registers, the individual employees or contractors of the entity do not need to register separately.
  - 2.** The name of the City elected official to whom the Political Consultant provides Political Consulting Services, and the date when services commenced. If services are provided in support of a City referred measure under Chapter 2.08, then the name, address and contact information for the lead representative for the measure, and the date when services commenced.
- B.** A Political Consultant must file an updated statement within 15 days if any previously reported information changes.
- C.** If a person for whom Political Consulting Services has been provided later becomes a City elected official, a Political Consultant must file a statement as required by this Section within 15 days from certification of election results.

### **2.14.040 Termination of Registration.**

When a Political Consultant who is required to register under this Chapter later terminates all Political Consulting Services to a City elected official, the Political Consultant shall file a termination statement on the form required by the City Auditor within 15 days of service termination.

## **TITLE 2**

### **LEGISLATION AND ELECTIONS**

#### **2.14.050      Quarterly Reporting by City Elected Official.**

- A.**     A City elected official shall file a statement with the City Auditor identifying the Political Consultant who provides or provided services to the City elected official, and the date when services commenced. If a City elected official sponsors a City referred measure under Chapter 2.04, the City elected official shall identify the measure and the Political Consultant that will perform or performed Political Consulting Services for the measure. Sponsorship of a City referred measure by a City elected official shall be determined by the City elected official who signed a resolution filed pursuant to Chapter 2.04.
- B.**     The statement in this Section shall be filed with the City Auditor 15 days after the end of the calendar quarter as proscribed in Subsection 2.12.020 A.
- C.**     Amendments to statements submitted under this Section may be made without penalty within 25 days after the end of the calendar quarter.
- D.**     The City elected official shall file an updated statement within 15 days of change of any information reported.
- E.**     If a person through election becomes a City elected official, the person shall file the statement required in this Section at the next quarterly reporting period that follows certification of elections results. If a person is appointed to the position of City elected official pursuant to Charter Section 2-206, the person shall file the statement required in this Section at the next quarterly reporting period following appointment.

#### **2.14.060      Public Nature of Reports and Registrations.**

All information submitted to the City Auditor in any statement required by this Chapter will be posted on the City Auditor's website within 3 business days after the receipt, except if the information is subject to amendment under this Chapter, the Auditor will post the information within 3 business days after the amendment period has closed.

#### **2.14.070      Prohibited Conduct.**

- A.**     A City elected official shall not knowingly utilize a Political Consultant who is in violation of this Chapter.
- B.**     A Political Consultant shall not provide Political Consulting Services without reporting as required under this Chapter.
- C.**     No person shall submit false, fraudulent or misleading information on statements, including but not limited to misrepresenting the scope or nature of services provided or the identity of clients to whom services are provided.

**2.14.080 City Auditor's Duties.**

(Amended by Ordinance No. 188842, effective March 30, 2018.) The City Auditor is authorized to adopt, amend and repeal administrative rules, policies, procedures and forms for the regulation and enforcement of this Chapter, including but not limited to prescribing forms for registration and reporting, determining the method for filing, conducting appropriate inquiry and audit of reports or statements for completeness and accuracy, establishing fees for late filing or non-filing, and imposing civil penalties for non-compliance.

For information and records sought from City offices, employees or officials, the Auditor or any employee or agent of the Auditor employed for the purpose of auditing or investigating the City may obtain confidential and legally privileged information and records held by the City so long as privilege is not waived as to third parties. The Auditor shall not disclose confidential or legally privileged information and records and shall be subject to the same penalties as the legal custodian of records for any unlawful or unauthorized disclosure.

**2.14.090 Penalties for Violation of this Chapter.**

- A. A person who fails to report as required by this Chapter shall be subject to a civil penalty and other administrative sanctions until the registration or reporting is complete and in compliance with this Chapter.
- B. A person who provides false or misleading information may be subject to a civil penalty and other administrative sanctions.
- C. A person who violates any section of this Chapter may be subject to a civil penalty of up to \$1,000 per violation.

**2.14.100 Enforcement.**

(Amended by Ordinance No. 188842, effective March 30, 2018.) If facts supporting an enforcement action exist, the City Auditor, in the name of the City, may initiate action in Multnomah County Circuit Court to enforce the provisions of this Chapter, including collection of any unpaid fees or civil penalties. The Auditor may bring such an action through independent legal counsel retained or employed by the Auditor, or may request that the City attorney provide such representation. The City may seek enforcement of all provisions of this Chapter in the enforcement action, including but not limited to recovery of all fees and civil penalties assessed under this Chapter as well as enforcement of any other provision of this Chapter. In any enforcement action, the City shall be entitled to recover any costs and attorneys' fees incurred as a result of the violation of this Chapter.

## **TITLE 2 LEGISLATION AND ELECTIONS**

### **CHAPTER 2.16 – OPEN AND ACCOUNTABLE ELECTIONS PROGRAM**

(Chapter added by Ordinance No. 188152; amended  
by Ordinance No. 188853, effective March 8,  
2018.)

#### **Sections:**

- 2.16.005 Short Title.
- 2.16.010 Definitions.
- 2.16.020 Public Election Fund Established.
- 2.16.030 Administrative Rules, Director’s Duties and Authority.
- 2.16.040 Contribution and Expenditure Requirements for Participating and Certified Candidates.
- 2.16.050 Requirements for Certification.
- 2.16.060 Director Determination.
- 2.16.070 Distribution of Public Contribution.
- 2.16.080 Use of Contributions.
- 2.16.090 Adequate Funds.
- 2.16.100 Return of Public Contributions.
- 2.16.110 Withdrawal.
- 2.16.120 Participating and Certified Candidate Restrictions.
- 2.16.130 Public Campaign Finance Commission.
- 2.16.140 Additional Reporting.
- 2.16.150 Removal of Certain Contribution Limits.
- 2.16.160 Penalties, Revocation of Certification and Repayment of Funds.
- 2.16.170 Hearings.
- 2.16.180 Implementation.
- 2.16.190 Program Management.

#### **2.16.005 Short Title.**

(Added by Ordinance No. 188853, effective March 8, 2018.) Chapter 2.16 of the Portland City Code shall be known as the Open and Accountable Elections Program.

#### **2.16.010 Definitions.**

(Amended by Ordinance No. 188853, effective March 8, 2018.) As used in this Chapter, unless the context requires otherwise:

- A. “Allowable contribution”** means a monetary donation of at least \$5 but no more than \$250 in support of a participating or certified candidate that is:
  - 1.** Made by an individual;
  - 2.** Made during the election cycle in which the candidate is seeking office; and
  - 3.** Acknowledged by documentation, as specified by administrative rule.



**TITLE 2**  
**LEGISLATION AND ELECTIONS**

- B. “Campaign finance entity”** means a principal campaign committee registered with the Oregon Secretary of State.
- C. “Candidate”** means:
- 1.** An individual whose name is printed on a ballot, for whom a declaration of candidacy, nominating petition or certificate of nomination to public office has been filed or whose name is expected to be or has been presented, with the individual’s consent, for nomination or election to public office;
  - 2.** An individual who has solicited or received and accepted a contribution, made an expenditure, or given consent to an individual, organization, political party or political committee to solicit or receive and accept a contribution or make an expenditure on the individual’s behalf to secure nomination or election to any public office at any time, whether or not the office for which the individual will seek nomination or election is known when the solicitation is made, the contribution is received and retained or the expenditure is made, and whether or not the name of the individual is printed on a ballot.
- D. “Certified candidate”** means a candidate running for a covered office who is certified as eligible to receive public contribution matching from the Fund.
- E. “Commission”** means the Public Campaign Finance Commission.
- F. “Contested election”** means an election in which there are at least two candidates for a covered office who have a campaign finance entity. Contested election includes a special election held to fill a vacancy in a covered office.
- G. “Contribution”** has the meaning set forth in ORS 260.005 and 260.007 at the time of this Chapter’s adoption.
- H. “Covered office”** means the office of Mayor, Commissioner or Auditor.
- I. “Director”** means the Open and Accountable Elections Program Director.
- J. “Election cycle”** means the primary election period and the general election period for the same term of a covered office. For a special election, it means the special nominating election period and the special runoff election period.
- K. “Expenditure”** has the meaning set forth in ORS 260.005 and 260.007 at the time of this Chapter’s adoption.
- L. “Fund”** means the Public Election Fund.
- M. “General election matching period”** means the period beginning 20 days before the primary election and ending 21 days before the general election. The general

## TITLE 2

### LEGISLATION AND ELECTIONS

election matching period for a special runoff election must be set by administrative rule.

- N. **“General election period”** means the period beginning the day after the biennial primary election and ending the day of the biennial general Election.
- O. **“Independent expenditure”** means an expenditure by a person for a communication in support of or in opposition to a clearly identified candidate for City office that is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate. The terms “expenditure”, “clearly identified” and “agent” and the phrases “communication in support of or in opposition to a clearly identified candidate or measure” and “made with the cooperation or with the prior consent of, or in consultation with or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate” shall have the meanings set forth in ORS 260.005 and 260.007 at the time of this Chapter’s adoption.
- P. **“Individual”** means a natural person.
- Q. **“In-kind contribution”** has the meaning set forth in the Oregon Administrative Rule 165-012-005 at the time of this Chapter’s adoption.
- R. **“Matchable donor”** means an individual 18 years of age or older who resides within the City limits of the City of Portland, whose residency is verified pursuant to criteria established by the Director, and who can legally contribute to campaigns under state and federal law. The Director may use voter registration as the sole means of verifying residency if the Director determines other methods are not reliable or expedient. Matchable donors may only have their contributions matched for one candidate in each contested election in each matching period.
- S. **“Non-participating candidate”** means a person who is running for a covered office who chooses not to apply to be a certified candidate, applies to be a certified candidate but fails to qualify, or a certified candidate who declines to accept a public contribution.
- T. **“Notice of intent”** means a notice filed with the Director that a candidate intends to seek qualification as a certified candidate.
- U. **“Participating candidate”** means a person who is a candidate for a covered office and who seeks to be a certified candidate in a primary election or general election. Limitations imposed on a participating candidate apply during the entire election cycle, both before and after filing a notice of intent to participate, whether or not the candidate has announced an intention to seek public contribution matching, and continue to apply once the candidate becomes a certified candidate.

**TITLE 2**  
**LEGISLATION AND ELECTIONS**

- V. “Primary election matching period”** means the period of time beginning July 1 of the year preceding the primary election for the office the candidate seeks and ending 21 days before the date of the primary election. The primary election matching period for a special nominating election must be set by administrative rule.
- W. “Primary election period”** means the period beginning on the 21st day after the preceding biennial general election and ending the day of the biennial primary election.
- X. “Public contribution” or “public contribution matching”** means money disbursed from the Fund to a certified candidate.
- Y. “Publicly funded campaign account”** means a campaign finance account established by a candidate for the exclusive purpose of receiving allowable contributions, public contribution matching and seed money contributions and spending funds in accordance with this Chapter.
- Z. “Seed money contribution”** means a contribution that is not an allowable contribution or in-kind contribution, which is received by a participating candidate before filing a notice of intent. A loan from the candidate or the candidate’s spouse is considered a seed money contribution.
- AA “Special nominating election”** means a nominating election for a covered office held on any date other than the biennial primary election date when the Primary Election for that office would normally be held pursuant to City Charter Section 3-301.
- BB. “Special nominating election period”** means the period beginning on the day a vacancy exists or a notice of intent to resign from office is filed with the Auditor and ending the day of the Special Nominating Election.
- CC. “Special runoff election”** means a runoff election for a covered office held on any date other than the biennial general election date when the General Election for that office would normally be held pursuant to City Charter Section 3-301.
- DD. “Special runoff election period”** means the period beginning on the day after the special nominating election and ending the day of the special runoff election.

**2.16.020 Public Election Fund Established.**

- A.** The Public Election Fund is established, separate from the General Fund. All monies described in Subsection 2.16.020 E. shall be paid and credited to the Fund. Monies in the Fund shall be invested in the same manner as other City monies, and any interest earned shall be credited to the Fund.

## **TITLE 2**

### **LEGISLATION AND ELECTIONS**

- B.** The Director shall keep a record of all monies deposited into the Fund and the activity or program against which any withdrawal is charged.
- C.** If monies credited to the Fund are withdrawn, transferred, or otherwise used for purposes other than the program or activity for which the Fund is established, interest shall accrue on the amount withdrawn from the date of withdrawal and until the monies are restored.
- D.** Monies in the Fund shall provide, and are continuously appropriated for, the financing of election campaigns of certified candidates for nomination or election to City Office, and the payment of administrative, enforcement, and other expenses of the Director in carrying out the Director's functions and duties under this Chapter.
- E.** The following will be deposited in the Fund:
  - 1.** All amounts appropriated to it by the City Council. The annual impact of the appropriation on the City general fund is limited to two-tenths of one percent of the general fund without raising any new taxes or fees;
  - 2.** Any unspent money remaining in a certified candidate's publicly funded campaign account after the candidate is no longer a candidate for a covered office that is returned to the Fund as provided in Section 2.16.100;
  - 3.** Any public contribution plus interest returned to the Fund by a participating candidate who withdraws from participation as provided in Section 2.16.110;
  - 4.** All interest earned on money in the Fund;
  - 5.** Civil penalties and other monies collected under Sections 2.16.160 and .170; and
  - 6.** Voluntary donations made directly to the Fund.

#### **2.16.030 Administrative Rules, Director's Duties and Authority.**

Before any administrative rules proposed by the Director may go into effect, the Director must submit the rules to Council for consideration and approval. The rules proposed by the Director must specify:

- A.** How and when documentation for allowable contributions from contributors must be submitted to the Director;
- B.** The documents that must be filed with the Director for certification;
- C.** The allowable uses of money in a publicly funded campaign account; and

**TITLE 2**  
**LEGISLATION AND ELECTIONS**

- D.** Other policies necessary to implement this Chapter, including but not limited to:
1. Contested elections involving special elections, recounts, vacancies, or withdrawals, including qualification, certification, and disbursement of Public Election Fund revenues and return of unspent revenues;
  2. Obtaining allowable contributions and matchable contributions;
  3. Certification as a certified candidate;
  4. Collection of revenues for the Public Election Fund;
  5. Distribution of Fund revenues to certified candidates;
  6. Investigation and enforcement procedures for misuse of public funds;
  7. Penalty matrix detailing penalties for potential violations of this Chapter;
  8. Return of Fund disbursements, penalties, and other monies to the Fund;
  9. Inspection of reports and documents for compliance with this Chapter; and
  10. Investigation of alleged violations of Chapter 2.16.

**2.16.040 Contribution and Expenditure Requirements for Participating and Certified Candidates.**

- A.** Before accepting any allowable, seed money or in-kind contributions governed by this Chapter, a participating candidate must establish a publicly funded campaign account for the candidate for the purpose of receiving contributions and making expenditures in accordance with this Chapter.
- B.** Before accepting any allowable contribution governed by this Chapter on which a participating candidate intends to rely for certification under Section 2.16.050 and seek a public contribution match, a participating candidate must:
1. File a notice of intent with the Director after the primary election matching period begins and before the filing deadline for the primary election for the covered office. For a special nominating election, filing deadlines for the notice of intent will be set that seek to provide adequate time for candidates to qualify for public contribution matching; and
  2. Attend mandatory training provided by the City. The candidate's treasurer must also attend the training.
- C.** A participating candidate may accept up to \$5,000 total in seed money contributions before filing a notice of intent. A participating candidate may not accept seed

## **TITLE 2**

### **LEGISLATION AND ELECTIONS**

money after filing a notice of intent. Certified candidates may not accept seed money contributions.

- D.** Participating and certified candidates may accept in-kind contributions valued at no more than \$20,000 for the primary election period or special nominating election period and no more than \$20,000 for the general election period or special runoff election period. The contribution of paid time for a supervisor of volunteers does not count toward the \$20,000 limit on in-kind contributions for purposes of this Chapter. However, a participating candidate must provide documentation to the Director for such a contribution and it may be reportable as an in-kind contribution under state law.
- E.** During an election cycle, participating and certified candidates may only accept allowable contributions, public contribution matching from the City, and seed money and in-kind contributions allowed by this Chapter.
- F.** Participating and certified candidates may not accept allowable contributions from any one individual totaling more than \$250 in the primary election period and \$250 in the general election period, except as provided in Section 2.16.150.
- G.** From the date the primary election period begins until filing a notice of intent, a participating candidate may not collect any contributions other than allowable, seed and in-kind contributions allowed by this Chapter and may only make expenditures from such contributions. After filing a notice of intent, participating and certified candidates may not make expenditures from funds other than public contribution matching and allowable, seed money or in-kind contributions, as allowed by this Chapter.
- H.** Participating and certified candidates must deposit all allowable contributions, public contribution matching and seed money contributions received into the candidate's publicly funded campaign account. Participating and certified candidates must deliver to the Director documentation, as specified by administrative rule, for each allowable contribution, seed money contribution, and in-kind contribution.
- I.** A participating or certified candidate may retain a preexisting campaign committee or political activities committee as long as the campaign committee or political activities committee does not accept contributions or make expenditures during the election cycle for which the candidate is seeking a covered office, other than a transfer of seed money to the candidate, consistent with Subsection 2.16.040 C.
- J.** Seed money loans from the candidate or candidate's spouse must be repaid with contributions that are not eligible for public contribution matching or for which public contribution matching is not requested.

**TITLE 2**  
**LEGISLATION AND ELECTIONS**

**K.** The total contributions a participating or certified candidate may collect during the primary election period or special nominating election period, consisting of allowable contributions, public contributions, seed money and in-kind contributions, cannot exceed:

1. \$380,000 for a candidate for Mayor; and
2. \$250,000 for a candidate for Commissioner or Auditor.

**L.** The total contributions a participating or certified candidate may collect during the general election period or special runoff election period, consisting of allowable contributions, public contributions, seed money and in-kind contributions, cannot exceed:

1. \$570,000 for a candidate for Mayor; and
2. \$300,000 for a candidate for Commissioner or Auditor.

**2.16.050 Requirements for Certification.**

**A.** In addition to the requirements of Section 2.16.040 and the limitations in Section 2.16.120, to qualify as a certified candidate:

1. After filing a notice of intent, a candidate for Mayor must collect an aggregate total of at least \$5,000 in allowable contributions from at least 500 matchable donors.
2. After filing a notice of intent, a candidate for Commissioner or Auditor must collect an aggregate total of at least \$2,500 in allowable contributions from at least 250 matchable donors.
3. The participating candidate must have filed for office by petition as provided in Code Section 2.08.080.

**B.** A participating candidate must apply to the Director for certification not later than 28 days before the end of the primary election matching period, or for a special nominating election, 28 days before the election.

**2.16.060 Director Determination.**

**A.** The Director must certify a participating candidate if the Director finds that the election for the covered office is a contested election, the candidate has met the requirements of Sections 2.16.040, .050 and .120, the candidate has received the required aggregate total dollars of allowable contributions from the required number of matching donors for the office and the candidate has submitted all information required by this Code or by administrative rule.

## **TITLE 2**

### **LEGISLATION AND ELECTIONS**

- B.** Before certification, the participating candidate must submit at least the following information to the Director, along with other information as may be required by administrative rule:
  - 1.** A declaration from the candidate agreeing to follow the regulations governing the use of public contribution matching, allowable contributions, seed money and in-kind contributions; and
  - 2.** A campaign finance report that includes:
    - a.** A list of each allowable contribution received;
    - b.** A list of each seed money and in-kind contribution received;
    - c.** A list of each expenditure made by the candidate during the primary election matching period up to the time of filing; and
    - d.** Other documentation required by administrative rule.
- C.** The Director must make a certification determination no later than 10 business days after receiving information from the participating candidate necessary to determine compliance with the requirements of Subsections 2.16.060 A. and B. and Sections 2.16.040, .050 and .120. However, if the covered office is not a contested election at the time the participating candidate applies for certification, the Director will hold the application in abeyance until either the covered office becomes a contested election, in which case the Director will make a certification decision within 10 business days, or the filing deadline for the covered office expires, in which case the Director shall deny certification. Certification decisions may be challenged as provided in Section 2.16.170.
- D.** A candidate may submit only one application for certification for any election.
- E.** If the Director certifies a candidate, the Director will authorize an initial disbursement of a public contribution to the candidate's publicly funded campaign account.

#### **2.16.070 Distribution of Public Contribution.**

- A.** Public contributions from the Fund will be distributed only in a contested election. The Director must distribute a public contribution from the Fund to each certified candidate in a contested election as follows:
  - 1.** For a certified candidate for a covered office, the public contribution matching must equal:



## TITLE 2

# LEGISLATION AND ELECTIONS

- a. \$6 for each dollar of the first \$50 of allowable contributions in aggregate from a matchable donor made after the candidate files a notice of intent;
      - b. No match for allowable contributions after the first \$50 in aggregate contributed by a matchable donor.
    2. The total public contribution payable to a certified candidate for a primary election or special nominating election may not exceed \$304,000 for a candidate for Mayor and \$200,000 for a candidate for Commissioner or Auditor. The total public contribution payable to a certified candidate for a general election or special runoff election may not exceed \$456,000 for a candidate for Mayor and \$240,000 for a candidate for Commissioner or Auditor.
  - B. The Director must not distribute public contribution matching from the Fund to a certified candidate for:
    1. Seed money contributions;
    2. In-kind contributions;
    3. Allowable contributions from matchable donors made before the candidate files a notice of intent;
    4. Allowable contributions from donors who are not matchable donors; or
    5. Allowable contributions from matchable donors whose donations to another candidate for the same contested election during the same election period have resulted in a request for public contribution matching for that other candidate.
  - C. Public contributions from the Fund will be distributed on at least four dates in addition to the initial distribution to each certified candidate upon certification during the primary election period or special nominating election period and on at least four dates during the general election period or special runoff election period. The final distribution for each election period will be 14 days before the election.
  - D. A certified candidate may collect allowable contributions, including allowable contributions from matchable donors for which the candidate may seek public contribution matching for the primary or special nominating election, until the end of the primary election matching period. A certified candidate may continue to collect allowable contributions, consistent with Sections 2.16.040 and 2.16.120, between the date the primary election matching period ends until the end of the primary election period or special nominating election period, but allowable contributions from matchable donors collected during this time will only be eligible

## **TITLE 2**

### **LEGISLATION AND ELECTIONS**

for public contribution matching for the general or special runoff election if the candidate qualifies for the general or special runoff election, as provided in Subsection 2.16.070 E.

- E.** Certified candidates in the primary election or special nominating election who are nominated to the general election or special runoff election ballot in the same election cycle are eligible for public contributions as provided in this Section.
  - 1.** Certified candidates who reasonably expect to qualify for the general or special runoff election ballot may begin collecting allowable contributions for the general election or special runoff election on the first day of the general election matching period.
  - 2.** After certification of the results of the primary or special nominating election, a certified candidate who qualifies for the general or special runoff ballot may use unspent funds in their publicly funded campaign account and seek public contribution matching for allowable contributions collected from matchable donors during the general election matching period.
  - 3.** A certified candidate may continue to collect allowable contributions, consistent with Section 2.16.040, from the end of the general election matching period until the end of the general election period or special runoff election period, but the contributions will not be eligible for public contribution matching.
- F.** A certified candidate must submit documentation, as specified by administrative rule, for each allowable contribution from a matchable donor to the Director to receive public contribution matching. The Director must deposit the appropriate public contribution into a certified candidate's publicly funded campaign account on the next distribution date after the Director authorizes the public contribution matching.

#### **2.16.080 Use of Contributions.**

- A.** A participating or certified candidate may only use the seed money, in-kind and allowable contributions and the public contribution matching for direct allowed campaign purposes related to the candidate's campaign for nomination or election to the covered office for which they are eligible to be or have qualified as a candidate. Guidelines regarding direct allowed campaign expenditures may be established by administrative rule.
- B.** Public contributions distributed to a participating candidate and qualifying, seed money and in-kind contributions may not be:
  - 1.** Used to make any expenditures for personal use prohibited by ORS Chapter 260 and Oregon Administrative Rules;

**TITLE 2**  
**LEGISLATION AND ELECTIONS**

2. Contributed to, or for the purpose of supporting or opposing, any other candidate, political committee or measure;
  3. Used to make independent expenditures supporting or opposing any candidate, political committee or measure;
  4. Used in connection with the nomination or election of a participating candidate to any office or at any election other than the office or election for which the contributions were given;
  5. Used to pay any loans, debts, fines or penalties;
  6. Used to pay for consulting services to an individual, unless the individual is providing bona fide services to the candidate and is compensated at fair market value;
  7. Used for out of state travel;
  8. Certain vehicle-related expenses, including vehicle purchases, leases, rental, insurance, repairs or fuel. Vehicle mileage reimbursement for campaign purposes is allowed, using the standard rate used by the City for mileage reimbursement;
  9. Attorney, accountant and other professional service fees in conjunction with appealing penalties or decertification;
  10. Used for salary or payment, other than reimbursable expenses, to a family member;
  11. Used for gifts, not including campaign brochures, buttons, signs or other printed campaign material;
  12. Used to make payments in cash; or
  13. Used in a manner inconsistent with administrative rules.
- C.** Public contributions may not be used for election night and post-election parties; however, allowable contributions, seed money and in-kind contributions may be used for such events.
- D.** Contributions to civic and non-profit organizations from a participating candidate's publicly funded account are permitted only if the payment is for the purpose of attending a specific campaign event open to the public.
- E.** A complaint alleging an impermissible receipt or use of funds by a participating candidate must be filed with the Director.

## **TITLE 2**

### **LEGISLATION AND ELECTIONS**

- F.** A participating candidate must provide the Director with reasonable access to the financial records of the candidate's publicly funded campaign account, upon request.

#### **2.16.090 Adequate Funds.**

- A.** If the Director determines that the amount deposited in the Fund will be insufficient at any point during the election cycle, the Director shall request the additional amount the Director estimates will be necessary from the City Council, subject to the annual appropriation limit detailed in Section 2.16.020.
- B.** If the total amount available for distribution in the Fund is insufficient to meet the allocations required by this Chapter, the Director must reduce each public contribution to a certified candidate by the same percentage of the total public contribution.

#### **2.16.100 Return of Public Contributions.**

- A.** Within 15 days after the results of the primary election or special nominating election are certified, a certified candidate who is elected or is not certified to be on the ballot for the general election or special runoff election must return unspent money in the candidate's publicly funded campaign account to the Fund in proportion to the percentage of public to private contributions collected by the candidate, excluding in-kind contributions.
- B.** Within 15 days after the results of the general election or special runoff election are certified, all participating candidates must return unspent money in the candidates' publicly funded campaign accounts to the Fund in proportion to the percentage of public to private contributions collected by the candidate, excluding in-kind contributions.

#### **2.16.110 Withdrawal.**

(Amended by Ordinance No. 188853, effective March 8, 2018.)

- A.** A participating candidate may withdraw an application for a public contribution any time before the public contribution is received by the candidate's publicly funded campaign account.
- B.** A certified candidate may withdraw from participation if the candidate:
  - 1.** Files a statement of withdrawal with the Director on a form prescribed by the Commission; and
  - 2.** Repays to the Fund any remaining funds in their account up to the full amount of the public contribution received, together with the applicable interest established by administrative rule.

**2.16.120 Participating and Certified Candidate Restrictions.**

A participating or certified candidate must not:

- A.** Accept a contribution, other than seed money or in-kind contributions as permitted by this Chapter, from any group or organization, including a political action committee, a corporation, a labor organization, or a State or local central committee of a political party;
- B.** Accept one or more contributions from an individual totaling more than \$250 during the primary election period and \$250 during the general election period, other than seed money or in-kind contributions as permitted by this Chapter, except as provided in Section 2.16.150;
- C.** Make an allowable contribution from the candidate's personal funds to the candidate's principal campaign committee.
- D.** Accept seed money or in-kind contributions in excess of the amounts established in Section 2.16.040.
- E.** Expend funds to benefit or advocate for another candidate;
- F.** Accept a loan from anyone for campaign purposes, other than a loan from the candidate or candidate's spouse within seed money limitations; or
- G.** Transfer funds:
  - 1.** To the candidate's publicly funded campaign account from any other campaign finance entity established for the candidate; and
  - 2.** From the candidate's publicly funded campaign account to any other campaign finance entity.
- H.** Solicit for or direct contributions to other campaign finance entities to support their own election.

**2.16.130 Public Campaign Finance Commission.**

- A. Duties.** The Public Campaign Finance Commission is hereby created. The Commission shall:
  - 1.** Provide assistance to the Director and Council in the development and implementation of the Public Election Fund. The Commission may make recommendations to the Director regarding administrative rules necessary to the effective administration of the code.

## TITLE 2

### LEGISLATION AND ELECTIONS

2. Make recommendations on adjustments to matching ratios, adjustments to contribution limits and other regulations to improve operation of public campaign finance.
  3. At the request of the Director, advise the Director on administrative judgments, recommended policy changes, administrative rule development, and operation of the Public Election Fund.
  4. Recommend to the Director for appointment hearings officers to review cases and make determinations under Section 2.16.160.
  5. Adopt such operating policies and procedures as necessary to carry out its duties.
  6. Prepare and submit to the Council a biennial report which shall contain an overview and evaluation of the Campaign Finance Fund during the previous election period.
- B. Membership.** The Public Campaign Finance Commission shall consist of seven members who have demonstrated an interest in campaign finance funding and, insofar as possible, represent diverse interests and diverse communities. The Director shall solicit applications from the Office of Neighborhood Involvement and the general public in order to recommend nominees to Council for appointment.
- C. Appointments and Terms.** Public Campaign Finance Commission members shall be appointed by Council and serve 4 year terms starting January 1 of odd-numbered years, except that three of the initial appointments shall be for 2 year terms. Upon expiration of the term, a Commission member shall serve until reappointed or replaced. Members of the Commission are limited to a maximum of two full terms, except that members serving an initial term of less than 4 years may serve two subsequent 4 year terms. If a position is vacated during a term, it shall be filled for the unexpired term. Council may replace any member of the Commission for due cause, including but not limited to malfeasance, incapacity, conflict of interest or neglect of duties.
- D. Meetings, Officers and Subcommittees.**
1. The Public Campaign Finance Commission shall meet at least four times per year and may meet more often as otherwise necessary to conduct its business. Meetings shall be conducted in accordance with rules of procedure adopted by the Commission. Four members shall constitute a quorum. A quorum shall be necessary to make decisions that represent the position of the Commission and to conduct any other Commission responsibilities. The election of officers shall take place at the first meeting of each calendar year.

**TITLE 2**  
**LEGISLATION AND ELECTIONS**

2. The officers of the Commission shall consist of a chairperson and a vice-chairperson. The chairperson shall be responsible for conducting the meetings of the committee. The vice-chairperson shall act as chair when the chairperson is not available.
  3. The Commission may form subcommittees comprised of Commission members which are authorized to act on behalf of the Commission for an assigned purpose.
- E. Attendance.** Members of the Public Campaign Finance Commission are expected to attend each meeting of the Commission. Council may replace any member who accrues unexcused absences from three or more consecutive meetings or more than 50 percent of the meetings in any year.
- F. Compensation.** Public Campaign Finance Commission members shall serve without compensation.

**2.16.140 Additional Reporting.**

- A.** All candidates and political committees, including non-participating candidates, must report contributions and expenditure transactions electronically in the ORESTAR system in compliance with state law.
- B.** Participating and certified candidates must file additional contribution and expenditure reports in the ORESTAR system as the City deems necessary to make certification and public contribution matching decisions in a timely manner, as established by administrative rule.
- C.** In a contested election in which there is at least one participating or certified candidate, beginning on the 180th day before the election and ending on the 42nd day before the election, participating and non-participating candidates shall report contribution and expenditure transactions in ORESTAR within 14 days.
- D.** In a contested election in which there is at least one participating or certified candidate, beginning on the 180th day before the election and ending on the 42nd day before the election, persons or political committees making an independent expenditure in an amount of \$1,000 or more, or independent expenditures in an aggregate of \$1,000 or more, supporting or opposing a candidate or candidates for nomination or election to City office shall report such expenditures in ORESTAR within 14 days.

**2.16.150 Removal of Certain Contribution Limits.**

If contributions to a non-participating candidate exceed the total contribution amounts in Subsection 2.16.040 K. for a primary election period or special nominating election period or the amounts in Subsection 2.16.040 L. for a general election period or special runoff election period, then any participating candidates for the same covered office may:

## **TITLE 2**

### **LEGISLATION AND ELECTIONS**

- A.** Exceed the total contribution amounts in Subsection 2.16.040 K. or L. for the election period in which the non-participating candidate exceeds those amounts; and
- B.** Accept up to \$500 in aggregate in allowable contributions from an individual during the relevant election period, notwithstanding the \$250 limit in Subsections 2.16.010 A., 2.16.040 F. and 2.16.120 B.

#### **2.16.160 Penalties, Revocation of Certification and Repayment of Funds.**

- A.** Civil Penalties.
  - 1.** The Director may impose a civil penalty as provided in this Section, in addition to any other remedies that are provided by this Code or other law, for:
    - a.** Violation of any provision of this chapter by a participating or certified candidate; or
    - b.** Failure to timely file a non-participating candidate or independent expenditure report or to include information required by Section 2.16.140.
  - 2.** The City may establish a penalty matrix by administrative rule detailing civil penalties for potential violations of this chapter. A civil penalty imposed under this section shall not exceed \$10,000 for any violation except as otherwise provided in this Section. Limits on penalties imposed under this Section do not include interest. Penalties are subject to interest at a rate of 12 percent of the total amount per annum.
  - 3.** The Director shall send a notice of proposed penalty to any candidate, person or political committee against whom the Director is imposing a civil penalty.
    - a.** The notice shall describe the proposed penalty and outline the procedures for requesting a penalty hearing.
    - b.** The notice shall be sent by both certified and regular mail.
    - c.** If a penalty hearing is not requested, the proposed penalty shall become final on the date specified in the notice, which date shall be the first day following the last day to file a request for a hearing.
  - 4.** If a civil penalty has been imposed under this Section against a candidate or the principal campaign committee of a candidate, the candidate shall be personally liable for the amount to be paid under this Section.



**TITLE 2**  
**LEGISLATION AND ELECTIONS**

5. If a civil penalty has been imposed under this Section against a political committee other than a principal campaign committee, the directors of the political committee shall be jointly and severally liable for any amount to be paid under this Section.
6. Penalties may be paid from any private source. A penalty may not be paid from a candidate's publicly funded campaign account.
7. Civil penalties may be paid at any time after receiving the notice of proposed penalty, but are due immediately after the penalty has become final.
8. Penalties imposed under this Section are subject to interest at a rate of 12 percent of the total amount per annum.
9. All moneys received under this Section for violations of any provision of this Chapter shall be paid and credited to the Fund.
10. At the request of the Director, the City Attorney may seek civil penalties and enforcement of any provision of this Chapter, in addition to any other remedies provided by this Code or other law, in Circuit Court or other appropriate venue.

**B. Revocation of Certification.**

1. The certification of a participating or certified candidate against whom a civil penalty has been imposed for violation of Section 2.16.080 shall be revoked by the Director and the candidate shall not be eligible to receive public contributions from the Fund during the primary and general election periods, or special nominating and special runoff period during which the penalty is imposed. However, revocation of a candidate's certification is permissive, not mandatory, if all of the following conditions are met:
  - a. The candidate has been found to have committed only one violation of Section 2.16.080; and
  - b. It is the candidate's first violation of Section 2.16.080.
2. If it is determined that a participating candidate violated any other provision of this Chapter during the primary election matching period or after certification, the Director has the authority to revoke the candidate's certification.

**C. Repayment of Funds.**

1. A participating candidate against whom a civil penalty has been imposed for violation of Section 2.16.080 shall return to the Director an amount of

## **TITLE 2**

### **LEGISLATION AND ELECTIONS**

money equal to all revenues distributed to the candidate from the Fund after the date the candidate was certified, plus interest on the total amount of revenues received at a rate of 12 percent per annum, in addition to the penalty and interest on the penalty.

2. The Director shall seek immediate recovery of public contributions for any violation of this Chapter.

#### **2.16.170 Hearings.**

- A. Purpose. The purpose of this Section is to provide persons or political committees adversely affected by administrative determinations and decisions made under this Chapter with a timely, effective, and impartial appeal and review of the determination. Hearings will be heard by a member of the outside panel of hearings officers recommended by the Public Campaign Finance Commission and appointed by the Director.
- B. Types of Hearings.
  1. Certification Hearings. A candidate who has received a determination denying certification or an opponent of a candidate who has been granted certification may challenge a certification decision by filing a written request for a hearing as outlined in Subsection 2.16.170 C.
  2. Matching Fund Hearings. A candidate who has received a determination granting or denying public contribution matching or an opponent of a candidate who has been granted public contribution matching may challenge the public contribution matching decision by filing a written request for a hearing as outlined in Subsection 2.16.170 C.
  3. Penalty Hearings. A candidate, person or political committee who has received a notice of proposed penalty from the Director may challenge the proposed penalty by filing a written request for a hearing as outlined in Subsection 2.16.170 C.
- C. Requests for Hearings.
  1. The written request for a hearing shall be filed with the Director not later than:
    - a. 7 days after the mailing of the determination for a certification or public contribution matching hearing; or
    - b. 7 days after the mailing of the notice of proposed penalty for a penalty hearing.

**TITLE 2**  
**LEGISLATION AND ELECTIONS**

2. The request shall be filed pursuant to forms and procedures recommended by the Commission and adopted by rule. The written request shall contain either a copy of, or a full and complete description of, the decision or determination appealed and a statement of grounds upon which it is contended that the decision or determination is invalid, unauthorized, or otherwise improper, together with such other information as the Director may by require by rule.
3. No person or political committee other than those described in Subsection 2.16.170 B. may be a party to any hearing conducted under this Section.

**D. Conduct of Hearings.**

1. As provided in Section 2.16.130, the Public Campaign Finance Commission shall recommend to the Director for appointment an outside panel of hearings officers to review cases and make determinations under this Section.
2. The Director shall designate and appoint the hearings officers based upon the recommendations of the Public Campaign Finance Commission.
3. Written requests for hearings shall be filed with the Director within the deadlines established in Subsection 2.16.170 C. The Public Campaign Finance Commission shall coordinate with the hearings officer panel to assign a hearings officer to the case and set a hearing date within the timelines established in Subsection 2.16.170 D.4.
4. The date set for hearings under this Section shall be:
  - a. Not later than 7 days after the request for a certification or public contribution matching hearing is filed as outlined in Subsection 2.16.170 C.1.a.; or
  - b. Not more than 14 days after the request for a penalty hearing is filed as outlined in Subsection 2.16.170 C.1.b.
5. Notice.
  - a. In the case of certification or public contribution matching hearings requested under Section 2.16.170 C.1.a.:
    - (1) The Director shall give notice of receipt of a request for a hearing, together with a copy of the request, to all other candidates for the same office. The notice shall be sent not later than one business day after the request is filed with the Director.

## TITLE 2

### LEGISLATION AND ELECTIONS

- (2) The Director shall give notice of the hearing, together with a copy of the request for a hearing, to the Person who requested the hearing and all other candidates for the same office. The notice shall be sent not later than one business day after the date is set for the hearing. The notice shall specify the time, date, and place set for the hearing.
    - (3) The notices required in Subsections 2.16.170 D.5.a.(1) and (2) may be combined.
  - b. In the case of penalty hearings requested under Subsection 2.16.170 C.1.b., the Director shall give notice of the hearing to the person or political committee who requested the hearing. The notice shall be sent not later than one business day after the date is set for the hearing under Subsection 2.16.170 D.4. The notice shall specify the time, date, and place set for the hearing.
  - c. Notices may be given by any method or combination of methods which, under the circumstances, is reasonably likely to apprise the parties of the hearing. Notice may be given by United States mail, phone, e-mail or other method authorized by rule. If notice is given by mail, such notice shall be deemed given and received three days (Sundays and holidays not included) after the notice is deposited in the United States mail. The failure of any Person to receive actual notice of the proceeding shall not invalidate the hearing or any determination, decision, or order of the hearings officer.
6. The hearings shall be conducted in accordance with the provisions of Chapter 22.10, except as otherwise provided in this Section.
- E. Order of the Hearings Officer.
1. The hearings officer shall issue an order not later than three business days after a certification public contribution matching or penalty hearing.
  2. In the case of a certification hearing, the hearings officer may uphold or revoke the certification.
  3. In the case of a public contribution matching hearing, the hearings officer may uphold or revoke public contribution matching, or modify a public contribution matching decision by revoking some or all public contribution matching or granting additional public contribution matching.
  4. In the case of a penalty hearing, the hearings officer may uphold, revoke or modify the penalty.
  5. The order of the hearings officer is a final decision of the City.

**TITLE 2**  
**LEGISLATION AND ELECTIONS**

6. Judicial review of an order made under this Section shall be as provided in Title 22.

**F. Return of Funds and Payment of Cost of Hearing.**

1. If the certification of a candidate is revoked following a hearing under this Section, the candidate shall return to the Director an amount of money equal to all revenues distributed to the candidate from the Public Election Fund after the date the candidate was certified, plus interest on the total amount of revenues received at a rate of 12 percent per annum, in addition to the penalty and interest on the penalty.
2. If public contribution matching is revoked, the candidate shall return to the Director an amount of money equal to the amount of revoked public contribution matching distributed to the candidate from the Public Election Fund, plus interest on the total amount of public contribution matching received at a rate of 12 percent per annum.
3. If the hearings officer or a court finds that a request for a hearing under this Section was made frivolously or to cause delay or hardship, the hearings officer or the court may require the person who filed the request for a hearing to pay costs of the hearings officer, court and opposing parties, and attorney fees of the opposing parties, if any.

**2.16.180 Implementation.**

This Chapter applies to election cycles beginning after the 2018 general election.

**2.16.190 Program Management.**

(Added by Ordinance No. 188853, effective March 8, 2018.) The Mayor shall appoint a Commissioner to provide oversight to the Open and Accountable Elections Program. When the appointed Commissioner is in the final 2 years of their term, the Mayor shall appoint a new Commissioner to provide oversight to the program.



## **TITLE 3 - ADMINISTRATION**

### **TABLE OF CONTENTS**

<b>Chapter 3.02</b>	<b>COUNCIL ORGANIZATION AND PROCEDURE</b>
3.02.010	Council Meetings.
3.02.020	Special Meetings.
3.02.025	Attendance by Electronic Communication.
3.02.030	Entry of Documents on Agenda.
3.02.035	Ordinance Wording.
3.02.036	Consent Agenda.
3.02.037	Time Certain Agenda.
3.02.040	Rules of the Council.
3.02.050	Authority to Adopt Rules, Procedures and Forms.
3.02.060	Rules of Conduct at City Council Meetings, Ejection and Exclusion.
<b>Chapter 3.04</b>	<b>SUBPOENA POWERS</b>
3.04.010	Legislative Subpoena Power.
3.04.020	Administering Oaths to Witnesses.
3.04.030	Enforcement of Legislative Subpoena.
<b>Chapter 3.05</b>	<b>CITY AUDITOR'S AUDIT SERVICES DIVISION</b>
3.05.010	Independence.
3.05.020	Scope of Audits.
3.05.030	Annual Audit Plan.
3.05.035	Special Audits.
3.05.040	Access to Information.
3.05.045	Confidential Information.
3.05.050	Response to Audit.
3.05.060	Audit Reports.
3.05.065	Report of Irregularities.
3.05.070	Contract Auditors, Consultants and Experts.
3.05.080	External Quality Control Review.
<b>Chapter 3.06</b>	<b>DEPARTMENTS, BUREAUS AND DIVISIONS GENERALLY</b>
3.06.010	Departments Enumerated.
3.06.020	Bureaus and Divisions.
3.06.030	Acting Chief of Bureau or Office.
<b>Chapter 3.08</b>	<b>TREASURER</b>
3.08.010	Office.
3.08.020	Salary - Bond.
3.08.030	Duties of City Treasurer.
3.08.040	Treasurer Authorized to Deposit in Banks.
3.08.050	Liability of Treasurer for Deposit of Funds.
3.08.060	Council May Require Additional Security from Banks.

3.08.070	City Officers or Agents to Pay Money to the City Treasurer.
<b>Chapter 3.10</b>	<b>OFFICE OF CITY ATTORNEY</b>
3.10.010	Office of City Attorney.
3.10.030	Duties.
3.10.040	Chief Deputy City Attorney.
3.10.050	Records.
3.10.060	Attorney-Client Relationship.
3.10.070	Settlements.
3.10.080	Outside Counsel Conflicts of Interest.
<b>Chapter 3.12</b>	<b>BUREAU OF TRANSPORTATION</b>
3.12.010	Organization.
<b>Chapter 3.13</b>	<b>BUREAU OF ENVIRONMENTAL SERVICES</b>
3.13.010	Purpose.
3.13.020	Organization.
3.13.030	Mission.
3.13.040	Administrative Rules and Procedures.
3.13.050	Permitting Authority.
<b>Chapter 3.15</b>	<b>OFFICE OF MANAGEMENT AND FINANCE</b>
3.15.010	Organization.
3.15.020	Bureau of Internal Business Services.
3.15.030	Business Operations Division.
3.15.040	Bureau of Revenue and Financial Services.
3.15.050	Bureau of Human Resources.
3.15.070	Bureau of Technology Services.
3.15.080	Enterprise Business Solution Division.
<b>Chapter 3.16</b>	<b>CITY BUDGET OFFICE</b>
3.16.010	Organization.
3.16.020	Authority of Council.
<b>Chapter 3.18</b>	<b>RULES OF CONDUCT FOR CITY PROPERTY</b>
3.18.010	Designation of Persons-in-Charge.
3.18.020	Rules of Conduct at City Property.
3.18.030	City Property Exclusions.
<b>Chapter 3.20</b>	<b>BUREAU OF POLICE</b>
3.20.010	General Organization.
3.20.020	Council to Organize and Make Rules and Regulations.
3.20.030	Authority of Chief of Police.
3.20.040	Duties of the Chief of Police.
3.20.050	Subordinate Officers.
3.20.070	Fees to be Paid Over to Treasurer.



- 3.20.080 Policemen Receiving Gifts and Employing Attorneys - Penalty for Violation.
- 3.20.110 Duties of Police Force.
- 3.20.120 Council in Emergency to Appoint Temporary Policemen.
- 3.20.130 Record of Daily Arrests.
- 3.20.140 Police Review Board.
- 3.20.150 Fingerprints, Photographs and Records of Identification.
- 3.20.160 Police Chief to Make Rules and Regulations.
- 3.20.170 Uniforms.
- 3.20.180 Appointment and Removal of Police Reserves
- 3.20.190 Application, Oath of Office, Compensation and Equipment of Police Reserves.
- 3.20.200 Membership Card and Star of Police Reserves.
- 3.20.210 Police Reserves Exempt from Civil Service.
- 3.20.230 Medical Examinations.
- 3.20.240 Membership.
- 3.20.360 Fees for Report on Police Records.
- 3.20.370 Accountability and Disposition of Fees.

#### **Chapter 3.21**

#### **CITY AUDITOR'S INDEPENDENT POLICE REVIEW**

- 3.21.010 Purpose.
- 3.21.020 Definitions.
- 3.21.030 Independent Police Review.
- 3.21.040 Director Selection.
- 3.21.050 Staff and Delegation.
- 3.21.060 Office Facilities and Administration.
- 3.21.070 Powers and Duties of IPR.
- 3.21.080 Citizen Review Committee.
- 3.21.090 Powers and Duties of the Committee.
- 3.21.100 Council Role.
- 3.21.110 Intake.
- 3.21.120 Handling Complaints.
- 3.21.130 Communications.
- 3.21.140 Filing Requests for Review.
- 3.21.150 Case File Review.
- 3.21.160 Hearing Appeals.
- 3.21.170 Monitoring and Reporting.
- 3.21.180 Increasing Public Access.
- 3.21.190 Response of Chief.
- 3.21.200 Limitation on Power.
- 3.21.210 Subpoenas.
- 3.21.220 Bureau Witnesses.

#### **Chapter 3.22**

#### **PORTLAND FIRE & RESCUE**

- 3.22.010 General Organization.
- 3.22.020 Organized by Council - Subject to Civil Service.

3.22.030	Council Powers.
3.22.040	Care of Property by Council.
3.22.050	Duties of Chief Engineer.
3.22.060	Destroying Buildings to Check Fire.
3.22.070	Appointment of Temporary Employees.
3.22.080	Assignment of Disabled Members.
3.22.090	Rules and Regulations and Administrative Orders.
3.22.100	Uniforms.
3.22.110	Fire Suppression and/or Prevention Contracts.
3.22.120	Renewal Notices.
3.22.130	Contract Form to be Approved by City Attorney.
3.22.140	Mutual Assistance Agreements.
3.22.150	Use of Fire Boats for Pumping Water Out of Boats and Barges.
3.22.160	Fees for Pumping Water from Imperiled Vessels.
3.22.170	Distribution of Awards Earned by Members of Portland Fire & Rescue.
3.22.180	Forested and Wildland Interface Areas Fire Protection Plan.

#### **Chapter 3.24**

#### **PORTLAND WATER BUREAU**

3.24.010	Organization.
3.24.020	Administration.
3.24.030	Customer Service Group.
3.24.040	Engineering Services Group.
3.24.050	Finance and Support Services Group.
3.24.060	Maintenance and Construction Group.
3.24.070	Operations Group.
3.24.080	Resources Protection and Planning Group.

#### **Chapter 3.26**

#### **BUREAU OF PARKS**

3.26.010	Organization Generally.
3.26.020	Executive and Clerical Division.
3.26.030	Park Maintenance and Operation Division.
3.26.040	Nursery and Planting Division.
3.26.050	Public Recreation Division.
3.26.080	Sale or Exchange of Surplus Animals, Birds or Reptiles.
3.26.090	Solar Friendly Trees.

#### **Chapter 3.27**

#### **PORTLAND PARKS AND RECREATION BOARD**

3.27.010	Purpose.
3.27.020	Definitions.
3.27.030	Members and Terms.
3.27.040	Organization and Meetings.
3.27.050	Duties.
3.27.060	Staff Liaison and Support.

#### **Chapter 3.28**

#### **BUREAU OF HEALTH**

3.28.010	Transfer of Functions.
----------	------------------------

3.28.020	Executive and Clerical Division.
3.28.030	Communicable Disease Control Division.
3.28.040	Tuberculosis Control Division.
3.28.050	Venereal Disease Control Division.
3.28.060	Laboratory Division.
3.28.070	School Hygiene Division.
3.28.080	Emergency Hospital Division.
3.28.090	Pure Food Sanitation Division.
3.28.100	Division of Mental Health.
3.28.110	Division of Home Health Care.

### **Chapter 3.30**

### **BUREAU OF DEVELOPMENT SERVICES**

3.30.005	Organization.
3.30.010	Duties of the Bureau of Development Services.
3.30.020	Responsibility for the Development Services Center and Development Review.
3.30.030	Development Review Advisory Committee.
3.30.040	Administration and Enforcement.
3.30.045	Administrative Rulemaking Procedures.
3.30.050	Special Jurisdiction.
3.30.060	Nuisance Abatement Contracts.
3.30.070	Inspections.
3.30.080	Stop Work Orders.

### **Chapter 3.33**

### **BUREAU OF PLANNING AND SUSTAINABILITY**

3.33.010	Purpose.
3.33.020	Organization.
3.33.030	Functions.

### **Chapter 3.36**

### **PORTLAND HOUSING BUREAU**

3.36.010	Purpose.
3.36.020	Organization.
3.36.030	Functions.

### **Chapter 3.38**

### **PORTLAND HOUSING ADVISORY COMMISSION (PHAC)**

3.38.010	PHAC Established.
3.38.020	PHAC Mission.
3.38.030	Duties.
3.38.040	Membership.
3.38.050	Staffing.
3.38.060	Consolidated Plan Consortium.
3.38.070	Cooperation.

### **Chapter 3.46**

### **BUREAU OF INSECT CONTROL**

3.46.010	County to Perform Duties.
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<b>Chapter 3.54</b>	<b>LOSS CONTROL AND PREVENTION</b>
3.54.010	Definitions.
3.54.020	OMF Risk Management Division Responsibility and Authority.
3.54.030	Bureau Responsibility and Authority.
3.54.040	Loss Control and Prevention Advisory Committee - Responsibility and Authority.
<b>Chapter 3.62</b>	<b>BOXING COMMISSION</b>
3.62.010	Certain City Officials to Render Certain Services.
<b>Chapter 3.67</b>	<b>PERFORMING ARTS ADVISORY COMMITTEE</b>
3.67.010	Creation and Organization.
3.67.020	Procedure and Rules of Committee.
3.67.030	Duties.
<b>Chapter 3.68</b>	<b>FORMAL JAPANESE GARDEN COMMISSION</b>
3.68.010	Created.
3.68.020	Powers and Duties.
3.68.030	Meetings.
3.68.040	Officers.
3.68.050	Rules - Quorum.
3.68.060	Vacancy - Removal.
<b>Chapter 3.70</b>	<b>PITTOCK MANSION ADVISORY COMMISSION</b>
3.70.010	Created - Terms.
3.70.030	Special Committees and Services.
3.70.050	Officers.
3.70.060	Rules - Quorum.
3.70.070	Vacancy.
<b>Chapter 3.72</b>	<b>COMMITTEE ON CLAIMS</b>
3.72.010	Created - Members - Meetings.
3.72.020	Presentation of Claims.
3.72.030	Consideration of Claims Not Covered by Insurance.
<b>Chapter 3.74</b>	<b>OATHS OF OFFICE</b>
3.74.010	Persons Required to Take Oath.
3.74.020	Form of Oath for Mayor, Commissioner and Auditor.
3.74.030	Form of Oath for Other Officer or Employee.
<b>Chapter 3.76</b>	<b>PUBLIC RECORDS</b>
3.76.010	Definitions.
3.76.020	Purpose.
3.76.030	Archives and Records Management Program Creation and Administration.
3.76.040	Authority and Duties of the Archives and Records Management Program.
3.76.050	Duties of Elected Officials and the Managers of City Agencies.

- 3.76.060 Care of Records.
- 3.76.070 Destruction of Records.
- 3.76.080 Use of Copies.
- 3.76.090 Public Access to Records.

#### **Chapter 3.77**

#### **OFFICE OF THE OMBUDSMAN**

- 3.77.010 Purpose.
- 3.77.020 Definitions.
- 3.77.030 Office of the Ombudsman.
- 3.77.040 Ombudsman Selection.
- 3.77.050 Qualifications and Prohibitions.
- 3.77.060 Reserved.
- 3.77.070 Removal.
- 3.77.080 Staff and delegation.
- 3.77.090 Reserved.
- 3.77.100 Office Facilities and Administration.
- 3.77.110 Powers and Duties.
- 3.77.120 Investigations of Complaints.
- 3.77.130 Communications with Agency.
- 3.77.140 Communications with Complainant.
- 3.77.150 Procedure after Investigation.
- 3.77.160 Informing Citizens.
- 3.77.170 Reports.
- 3.77.180 Reserved.
- 3.77.190 Duty to Cooperate.
- 3.77.200 Ombudsman Immunities.
- 3.77.210 Reprisals Prohibited.
- 3.77.220 Relationship to Other Laws.
- 3.77.230 Effective Date.

#### **Chapter 3.78**

#### **ACQUISITION OF COUNTY PROPERTY FOR PARK PURPOSES**

- 3.78.010 Authorization for Payment.
- 3.78.020 Title Reports.
- 3.78.030 Clearing of Title.
- 3.78.040 Retaining Property with Cloud on Title.

#### **Chapter 3.80**

#### **SPECIAL PERMITS**

- 3.80.010 Operations to Cease Upon Expiration of Permit.
- 3.80.020 Use of Park Property for Private Gardening Purposes.

#### **Chapter 3.82**

#### **OFFICER AND EMPLOYEE BONDS**

- 3.82.010 Exceptions.
- 3.82.020 Bond of the City Treasurer.
- 3.82.030 City Auditor's Bond.

<b>Chapter 3.84</b>	<b>CITY OWNED MOTOR VEHICLE ACCIDENT REPORTS</b>
3.84.010	Filing of Accident Report.
3.84.020	Form of Report.
3.84.030	Repair Shop Report.
3.84.040	Repair.
3.84.050	Billing of Charges.
<b>Chapter 3.86</b>	<b>GOLF ADVISORY COMMITTEE</b>
3.86.010	Created - Organization.
3.86.020	Procedure and Rules.
3.86.030	Duties.
<b>Chapter 3.88</b>	<b>INVESTMENT ADVISORY COMMITTEE</b>
3.88.010	Created - Organization.
3.88.020	Procedure and Rules.
3.88.030	Duties.
<b>Chapter 3.96</b>	<b>OFFICE OF NEIGHBORHOOD INVOLVEMENT</b>
3.96.010	Purpose.
3.96.020	Definitions.
3.96.030	Neighborhood Associations.
3.96.040	Functions of District Coalitions.
3.96.050	Responsibility of City Agencies.
3.96.060	Responsibilities of the Office of Neighborhood Involvement.
<b>Chapter 3.98</b>	<b>TOWING BOARD OF REVIEW</b>
3.98.010	Created - Organization.
3.98.020	Procedure and Rules.
3.98.030	Staff.
3.98.040	Contracts - Rates.
3.98.050	Eligibility.
3.98.060	Powers of Board.
3.98.080	Appeals.
<b>Chapter 3.99</b>	<b>FAIR WAGE POLICIES</b>
3.99.005	Policy.
3.99.010	Covered Services and Agreements.
3.99.015	Compliance.
3.99.020	Adjustments.
3.99.030	Documentation of Fair Wage in Contracts.
<b>Chapter 3.100</b>	<b>EQUAL OPPORTUNITY</b>
3.100.005	City Policies Relating to Equal Employment Opportunity, Affirmative Action and Civil Rights.
3.100.030	Contractor Equal Employment Opportunity Program.
3.100.041	Contracts with City.

3.100.042	Certification of Contractors.
3.100.043	Information Required.
3.100.044	Compliance Review.
3.100.045	Denial, Suspension, Revocation.
3.100.050	Nondiscrimination in Contracting.
3.100.051	Policy regarding Benefits.
3.100.052	Definitions.
3.100.053	Discrimination in the provision of benefits prohibited.
3.100.054	Limitations.
3.100.055	Power and duties of the Director.
3.100.056	Severability of Provisions.
3.100.060	Grant Equal Opportunity Compliance Program.
3.100.061	Definitions.
3.100.062	Purpose.
3.100.063	Responsibility.
3.100.064	Compliance Monitoring.
3.100.065	Rules and Regulations.
3.100.080	Minority/Female Purchasing Program.
3.100.081	Definitions.
3.100.082	Purpose.
3.100.083	Liaison Officer.
3.100.084	Minority/Female Business Enterprise List.
3.100.085	Advertising.
3.100.086	Minority/Female Purchasing Associations.
3.100.087	Monitoring.
3.100.088	Certification.
3.100.089	Rules and Regulations.

**Chapter 3.101      PROPERTY TAX EXEMPTION FOR LOW INCOME HOUSING  
HELD BY CHARITABLE NON-PROFIT ORGANIZATIONS**

3.101.010	Definitions.
3.101.020	Eligible Organizations.
3.101.030	Eligible Property.
3.101.040	Application Procedure.
3.101.050	Review of Application.
3.101.060	Annual Application Renewal.
3.101.070	Assessment Exemption.
3.101.080	Termination.
3.101.090	Implementation.

**Chapter 3.102      PROPERTY TAX EXEMPTION FOR NEW CONSTRUCTION OF  
SINGLE-UNIT HOUSING IN HOMEBUYER OPPORTUNITY  
AREAS**

3.102.010	Purpose.
3.102.020	Definitions.
3.102.030	Benefit of the Exemption; Annual Maximum Number of Exemptions.

3.102.040	Exemption Requirements.
3.102.050	Application Review and Approval.
3.102.060	Compliance.
3.102.080	Termination of the Exemption.
3.102.090	Implementation.
<b>Chapter 3.103</b>	<b>PROPERTY TAX EXEMPTION FOR MULTIPLE-UNIT HOUSING DEVELOPMENT</b>
3.103.010	Purpose.
3.103.020	Definitions.
3.103.030	Benefit of the Exemption; Annual Maximum Exemption Amount.
3.103.040	Program Requirements.
3.103.050	Application Review.
3.103.060	Application Approval.
3.103.070	Rental Project Compliance.
3.103.080	For-Sale Unit Compliance.
3.103.100	Termination of the Exemption.
3.103.110	Implementation.
<b>Chapter 3.106</b>	<b>EXPOSITION-RECREATION COMMISSION</b>
3.106.010	Commission Action.
3.106.020	Filing Copies of Resolutions with City Auditor.
3.106.030	Council Review.
3.106.040	Exposition - Recreation Commission Action Not Subject to Council Review.
3.106.050	Council Initiation of Exposition - Recreation Commission Action.
3.106.060	Amendment, Repeal or Alterations of Resolutions by Council.
<b>Chapter 3.107</b>	<b>WATER QUALITY ADVISORY COMMITTEE</b>
3.107.010	Created - Appointments.
3.107.020	Duties.
3.107.030	Meetings.
3.107.040	Chairperson.
3.107.050	Rules - Quorum.
3.107.060	Staff.
<b>Chapter 3.110</b>	<b>BUREAU OF HYDROELECTRIC POWER</b>
3.110.010	Creation and Function.
3.110.020	Jurisdiction.
<b>Chapter 3.114</b>	<b>OFFICE FOR COMMUNITY TECHNOLOGY</b>
3.114.010	Creation.
3.114.020	Functions.
3.114.030	Jurisdiction.
3.114.040	Policy.
3.114.050	Administration.



<b>Chapter 3.115</b>	<b>MT. HOOD CABLE REGULATORY COMMISSION</b>
3.115.010	Definitions.
3.115.020	Cable Regulatory Commission.
3.115.030	General Powers & Duties.
3.115.040	Portland Community Media.
3.115.060	Annexations.
3.115.070	Cable Television Consumer Protection.
3.115.080	Definitions.
3.115.090	Local Office and Office Hours.
3.115.100	Telephone Answering Standard.
3.115.110	Installations, Disconnections, Outages And Service Calls.
3.115.120	Notice Requirements.
3.115.130	Billing.
3.115.140	Reporting.
<b>Chapter 3.116</b>	<b>WATERWAYS ADVISORY COMMITTEE</b>
3.116.010	Created - Organization.
3.116.020	Procedures and Rules.
3.116.030	Duties.
<b>Chapter 3.122</b>	<b>ECONOMIC IMPROVEMENT DISTRICTS</b>
3.122.010	Purpose.
3.122.020	Definitions.
3.122.030	Council Control.
3.122.040	Statutory Provisions Applicable.
3.122.050	Preliminary Institution of Economic Improvement District
3.122.060	Final Plan and Ordinance Preparation.
3.122.070	Consideration of Final Plan and Ordinance.
3.122.080	Notice to Owners.
3.122.090	Exemption Process.
3.122.100	Hearing and Resolution Establishing District.
3.122.110	Preparation and Notice of Assessments.
3.122.120	Hearing on Assessments.
3.122.130	Amendments to Ordinance.
3.122.140	Limitation on Assessments.
3.122.150	Limitation on Boundaries.
3.122.160	Continuation of Assessments.
3.122.170	Expenditure of Moneys.
3.122.180	Cost of Administration.
3.122.190	Limitation on Expenditures.
3.122.200	Administration
3.122.210	Early Termination.
3.122.220	Surplus.
3.122.230	Entry and Collection of Assessments.

<b>Chapter 3.123</b>	<b>PORTLAND UTILITY BOARD</b>
3.123.010	Created - Purpose.
3.123.020	Scope.
3.123.030	Membership.
3.123.040	Appointments - Composition.
3.123.050	Terms.
3.123.060	Standing Committees.
3.123.070	Staffing.
3.123.080	Meeting Schedule.
3.123.090	By-Laws.
3.123.100	Annual Report and Work Session.
<b>Chapter 3.124</b>	<b>PORTLAND BUREAU OF EMERGENCY MANAGEMENT</b>
3.124.010	Definitions.
3.124.020	Portland Bureau of Emergency Management.
3.124.030	Purpose.
3.124.040	Organization.
3.124.050	Director's Powers and Duties.
3.124.060	Staff and Delegation.
3.124.070	Neighborhood Emergency Team Program.
3.124.080	Neighborhood Emergency Teams.
3.124.090	Neighborhood Emergency Team Leaders.
<b>Chapter 3.125</b>	<b>DISASTER POLICY COUNCIL</b>
3.125.010	Disaster Policy Council.
3.125.020	Duties.
3.125.030	Membership.
3.125.040	Procedures.
3.125.050	Staff Support to Disaster Policy Council.
<b>Chapter 3.126</b>	<b>EMERGENCY MANAGEMENT STEERING COMMITTEE</b>
3.126.010	Emergency Management Steering Committee.
3.126.020	Duties.
3.126.030	Membership.
3.126.040	Staff Support to the Emergency Management Steering Committee.
<b>Chapter 3.127</b>	<b>BUREAU OF PORTLAND FIRE AND POLICE DISABILITY AND RETIREMENT</b>
3.127.010	Bureau of Portland Fire and Police Disability and Retirement.
3.127.020	Purpose.
3.127.030	Organization.
3.127.040	Director's Powers and Duties.
3.127.050	Staff and Delegation.
<b>Chapter 3.128</b>	<b>OFFICE OF EQUITY AND HUMAN RIGHTS</b>
3.128.010	Creation and Organization.

3.128.020	Purpose.
3.128.030	Director's Powers and Duties.
3.128.040	Administrative Rulemaking Procedures.
<b>Chapter 3.129</b>	<b>HUMAN RIGHTS COMMISSION</b>
3.129.010	Staffing and Membership.
3.129.020	Mission.
3.129.030	Jurisdiction.
<b>Chapter 3.130</b>	<b>ADMINISTRATIVE APPEALS</b>
3.130.010	Definitions.
3.130.020	Timely and Adequate Notification of Right to Appeal Required.
<b>Chapter 3.131</b>	<b>NEW PORTLANDERS POLICY COMMISSION</b>
3.131.010	Mission.
3.131.020	Membership and Staffing.
3.131.030	Purpose.
3.131.040	Organization and Meetings.
<b>Chapter 3.132</b>	<b>Community Involvement Committee for legislative projects under the Comprehensive Plan.</b>
3.132.010	Purpose.
3.132.020	Membership, Meetings, and Organization.
<b>Chapter 3.133</b>	<b>RENTAL SERVICES COMMISSION (RSC)</b>
3.133.010	Rental Services Commission Established.
3.133.020	Mission.
3.133.030	Duties.
3.133.040	Membership.
3.133.050	Meetings.
3.133.060	Quorum.
3.133.070	Chairperson.
3.133.080	Committees.
3.133.090	Staffing.
3.133.100	Cooperation.



**3.04.030      Enforcement of Legislative Subpoena.**

(Added by Ordinance No. 188362, effective May 10, 2017.)

- A.**      If a person subpoenaed as provided in Section 3.04.010 fails to appear to testify or fails to produce any records as required, or whenever any person so summoned refuses to answer any question pertinent to the subject under inquiry, the City Attorney may apply to any court of competent jurisdiction for an order to the person to attend and testify, or otherwise to comply with the subpoena.
- B.**      The City Attorney's application to the court may seek an order requiring the person against whom the subpoena is directed to comply with the subpoena within three days after service of the order, or within such further time as the court may grant, or to justify the failure within that time.

## **TITLE 3 ADMINISTRATION**

### **CHAPTER 3.05 - CITY AUDITOR'S AUDIT SERVICES DIVISION**

(Chapter replaced by Ordinance No. 170381,  
effective August 16, 1996.)

#### **Sections:**

- 3.05.010 Independence.
- 3.05.020 Scope of Audits.
- 3.05.030 Annual Audit Plan.
- 3.05.035 Special Audits.
- 3.05.040 Access to Information.
- 3.05.045 Confidential Information.
- 3.05.050 Response to Audit.
- 3.05.060 Audit Reports.
- 3.05.065 Report of Irregularities.
- 3.05.070 Contract Auditors, Consultants and Experts.
- 3.05.080 External Quality Control Review.

#### **3.05.010 Independence.**

(Amended by Ordinance No. 188842, effective March 30, 2018.)

- A. The Audit Services Division is established within the City Auditor's Office, answerable directly to the City Auditor in accordance with City Charter.
- B. The Audit Services Division will adhere to generally accepted government auditing standards in conducting its work and will be considered independent as defined by those standards.
- C. If the Audit Services Division conducts an audit of an activity for which the City Auditor is or was responsible, the audit scope will state that the auditors are not organizationally independent with regard to the entity being audited.

#### **3.05.020 Scope of Audits.**

(Amended by Ordinance No. 188842, effective March 30, 2018.)

- A. The Auditor shall conduct financial and performance audits of all departments, bureaus, offices, boards, activities, functions and administrative agencies of the City of Portland to independently determine whether:
  - 1. Activities and programs being implemented have been authorized by City Charter or Code, state law or applicable federal law or regulations;
  - 2. Activities and programs are being conducted in a manner contemplated to accomplish the objectives intended by City Charter or Code, state law or applicable federal law or regulations;

**TITLE 3  
ADMINISTRATION**

3. The activities or programs efficiently and effectively serve the purpose intended by City Charter, Code, state law or applicable federal law or regulations;
  4. Activities and programs are being conducted and funds expended in compliance with applicable laws;
  5. Revenues are being properly collected, deposited and accounted for;
  6. Resources, including funds, property and personnel, are adequately safeguarded, controlled and used in a faithful, effective and efficient manner;
  7. Financial and other reports are being provided that disclose fairly and fully all information that is required by law, that is necessary to ascertain the nature and scope of programs and activities and that is necessary to establish a proper basis for evaluating the programs and activities;
  8. There are adequate operating and administrative procedures and practices, systems or accounting internal control systems and internal management controls which have been established by management; or
  9. Indications of fraud, abuse or illegal acts are identified for further investigation.
- B.** Audits shall be conducted in accordance with Government Auditing Standards for financial and performance audits issued by the Comptroller General of the United States.

**3.05.030 Annual Audit Plan.**

(Amended by Ordinance No. 188842, effective March 30, 2018.)

- A.** By the beginning of each fiscal year, the Auditor shall submit an annual audit plan to Council for review and comment. The plan shall include the departments, bureaus, offices, boards, activities, functions and administrative agencies scheduled for audit during the year. This plan may be amended during the year after review with Council members affected by the change. Additionally, the Auditor may spontaneously initiate and conduct any other audit deemed necessary to undertake.
- B.** In accordance with independence provisions of generally accepted government auditing standards, the authority for selection of audit areas shall reside solely with the City Auditor.

## **TITLE 3 ADMINISTRATION**

### **3.05.035 Special Audits.**

- A.** Council members may request that the Auditor perform special audits that are not included in the annual audit plan. After consultation with Council members whose work would need to be postponed, special audits may become amendments to the annual audit plan.
- B.** Special audit reports will be handled the same as regular audit reports, except that in personnel matters of a confidential nature, reporting of results may be limited to the Commissioner in Charge and the Mayor.

### **3.05.040 Access to Information.**

(Amended by Ordinance No. 188842, effective March 30, 2018.) In accordance with City Charter, subject to collective bargaining obligations to the City's recognized bargaining units, the Auditor shall have timely access to all employees, information and records required to conduct an audit or otherwise perform audit duties, including confidential and legally privileged information and records so long as privilege is not waived as to third parties. All officers and employees of the City of Portland shall timely furnish the Auditor with requested information and records within their custody regarding powers, duties, activities, organization, property, financial transactions and methods of business required to conduct an audit or otherwise perform audit duties. In addition, they shall provide timely access for the Auditor to inspect all property, equipment and facilities within their custody. If such officers or employees fail to timely produce the aforementioned information, then the Auditor, subject to Council approval, may, without fee, cause a search to be made and exhibits to be taken from any book, paper or record of any such official or employee, excepting personal information, and every office having the custody of such records shall make a search and forward such requested exhibits to the Auditor.

### **3.05.045 Confidential Information.**

(Added by Ordinance No. 183217; amended by Ordinance No. 188842, effective March 30, 2018.) The Auditor shall not disclose confidential or legally privileged information and records and shall be subject to the same penalties as the legal custodian of records for any unlawful or unauthorized disclosure. The Auditor shall maintain the confidentiality of information submitted in confidence and the identity of the provider of such information to the extent allowed by law, except as the Auditor deems necessary to discharge the Auditor's duties or as directed by the District Attorney pursuant to a public records request or by a court of competent jurisdiction.

### **3.05.050 Response to Audit.**

(Amended by Ordinance No. 188842, effective March 30, 2018.) A final draft of each audit report will be forwarded to the auditee and the Commissioner in Charge for review and comment before it is released. The auditee must respond in writing specifying agreement with audit findings and recommendations or reasons for disagreement with findings and/or recommendations, plans for implementing solutions to identified problems and a timetable to complete such activities. The response must be forwarded to the Auditor



within the time frame specified by the Auditor. The Auditor will include the full text of auditee and Commissioner responses in the report.

**3.05.060      Audit Reports.**

(Amended by Ordinance No. 188842, effective March 30, 2018.)

- A.**     Each audit will result in a written report.
- B.**     Reports are to be issued promptly so as to make information available for timely use by Council, management and other interested parties.
- C.**     The Auditor will submit each audit report to the Council and will retain a copy as a permanent record.
- D.**     If appropriate, the audit report shall contain the professional opinion of the Auditor or the contract auditor concerning the financial statements issued by the auditee or if the audit is a performance audit, the report will contain the professional conclusions of the audit regarding the management activities audited.
- E.**     Audit reports issued by the Auditor shall contain:
  - 1.**     A statement of audit objectives and a description of the audit scope and methodology;
  - 2.**     A statement that the audit was performed in accordance with generally accepted government auditing standards;
  - 3.**     A description of all significant instances of non-compliance and abuse and all instances of illegal acts found during or in connection with the audit;
  - 4.**     A full discussion of audit findings and conclusions, including the cause of problem areas and recommendations for necessary or desirable action;
  - 5.**     A statement of all significant management controls that were assessed and any significant weaknesses found;
  - 6.**     Pertinent views of responsible officials concerning audit findings, conclusions and recommendations;
  - 7.**     A listing of any significant issues needing further study and consideration;
  - 8.**     A description of noteworthy accomplishments of the auditee.

**3.05.065      Report of Irregularities.**

If the Auditor detects apparent violations of law or apparent instances of malfeasance or nonfeasance by an officer or employee or information that indicates derelictions may be

### **TITLE 3**

### **ADMINISTRATION**

reasonably anticipated, the Auditor shall report the irregularities to the Commissioner in Charge and the Mayor. If the irregularity is criminal in nature, the Auditor shall immediately notify the City Attorney and the District Attorney in addition to those previously cited.

#### **3.05.070 Contract Auditors, Consultants, and Experts.**

(Amended by Ordinance No. 188842, effective March 30, 2018.) Within budget limitations, the Audit Services Division may obtain the services of certified public accountants, qualified management consultants, or other professional experts necessary to perform audit services. An audit that is performed by contract must be conducted by persons who have no financial interests in the affairs of the governmental unit or its officers. The Auditor's Audit Services Division will coordinate and monitor auditing performed by public accounting or other organizations employed under contract by the City of Portland to assist with audit related activities.

In choosing the outside independent auditors to conduct the City's annual financial statement audit, the Auditor will convene a committee of at least three City bureau managers, including the Auditor or the Auditor's representative to prepare a request for proposal and to screen applicants. The Auditor's selection of a certified public accounting firm for the annual financial audit must be approved by Council. Normally, this contract will be for a three to five year period.

#### **3.05.080 External Quality Control Review.**

The Audit Services Division of the City Auditor's Office shall be subject to peer review at least once every three years by a professional, non-partisan objective group utilizing guidelines adopted by the National Association of Local Government Auditors. The review will evaluate compliance with generally accepted government auditing standards. A copy of the written report of any such independent review shall be furnished to each member of the City Council.

**TITLE 3**  
**ADMINISTRATION**

- P.** “Misconduct” means conduct by a member which conduct violates Bureau regulations or orders, or other standards of conduct required of City employees.
- Q.** “Request for Review” means a request by an appellant that the Committee review an IAD or IPR investigation of alleged member misconduct.
- R.** “RU (Responsibility Unit) Manager” means a commanding officer or manager of a Bureau division, unit or precinct.
- S.** “Supported by the Evidence.” A finding regarding a complaint is supported by the evidence when a reasonable person could make the finding in light of the evidence, whether or not the reviewing body agrees with the finding.
- T.** “Police Review Board” means the board established by Code Section 3.20.140.
- U.** "Policy-related issue" means a topic pertaining to the Police Bureau's hiring and training practices, the Manual of Policies and Procedures, equipment, and general supervision and management practices, but not pertaining specifically to the propriety or impropriety of a particular officer's conduct.
- V.** “Supervisory Investigation” means a formal, non-disciplinary process where the involved member’s supervisor is tasked with reviewing a complaint stating a member provided poor quality of service or committed a rule violation that if sustained would not result in corrective action greater than command counseling, as defined by the Bureau’s discipline guide.

**3.21.030 Independent Police Review.**

(Amended by Ordinance No. 188331, effective May 19, 2017.) There is established by the City Council the Independent Police Review, a division within the Auditor's Office.

**3.21.040 Director Selection.**

(Amended by Ordinance Nos. 186416 and 188842, effective March 30, 2018.) The City Auditor shall select the Director of IPR in accordance with the Auditor’s human resource policies and rules and any other applicable laws. The Director shall be a person of recognized judgment, objectivity and integrity who is well-equipped to analyze problems of administration, and public policy, and shall have a working knowledge in criminal justice commensurate to the powers and duties of the office.

**3.21.050 Staff and Delegation.**

(Amended by Ordinance No. 186416, effective February 7, 2014.)

- A.** The Director may appoint other personnel necessary to carry out the provisions of this chapter, when in keeping within the adopted budget for the IPR.
- B.** The Director may delegate to a designee any or all duties or responsibilities.

## **TITLE 3**

### **ADMINISTRATION**

#### **3.21.060 Office Facilities and Administration.**

(Amended by Ordinance No. 188842, effective March 30, 2018.)

- A.** The City shall provide suitable office facilities for the Director and staff in a location convenient for the public but separate from the Bureau.
- B.** The IPR office shall be located within the City Auditor's office, and be accountable to the City Auditor. The Director shall comply with the Auditor's purchasing procedures but shall have sole discretion in choosing consultants to assist with investigations.

#### **3.21.070 Powers and Duties of IPR.**

(Amended by Ordinance Nos. 176317, 183657, 185076, 186416, 188331, 188547 and 188842, effective March 30, 2018.) The Director's powers and duties are the following:

- A.** Intake. IPR shall receive complaints and select the appropriate manner to address the complaint.
- B.** Report on complaint activities. IPR shall track and report on the disposition of complaints to the public, IAD, the Chief, and the Council and monitor and report measures of activity and performance of IAD and IPR. IPR will also monitor and track trends relating to member history and complaint type as well as frequency, consistency and adequacy of discipline imposed. In performing these duties, IPR shall have access to Bureau data and records, including but not limited to raw data, tabulated summary statistics, other source materials, and any other format source necessary for IPR to perform its duties. IPR shall also have direct access to original database sources as permitted by state and federal law.
- C.** Access to Police data and data sources. IPR shall have access to Bureau data and records, including but not limited to raw data, tabulated summary statistics, other source materials, and any other format source necessary for IPR to perform its duties. IPR shall also have direct access to original database sources as permitted by state and federal law.
- D.** Initiate, monitor and conduct investigations. IPR is authorized to initiate, monitor and conduct administrative investigations. IPR is authorized to identify complaints or incidents involving members that are of community concern which merit additional involvement of the Director and to review evidence and IAD investigation efforts, participate in investigations with IAD investigators, or conduct the investigations in conjunction with or independent of the Bureau.
  - 1.** For investigations conducted by IPR, investigation reports will include recommended findings.

### **TITLE 3 ADMINISTRATION**

2. The Bureau shall notify the Director that it intends to conduct an administrative investigation into misconduct before initiating the investigation.
- E. Compel review. In accordance with the procedures of Code Section 3.20.140, the Director may compel review by the Police Review Board of any RU Manager's or Commanding Officer's proposed findings and discipline resulting from a Bureau or IPR administrative investigation of a member. The Director may compel review by the Police Review Board on the basis of recommended discipline whether or not discipline was recommended as a result of the investigation.
- F. Communicate with Complainants. IPR will be the primary contact with the complainant regarding the status and results of the complaint; to assist IAD in communicating with the Member.
- G. Arrange hearings of appeals. IPR will explain the appeal options to complainants and schedule hearings before the Committee and Council.
- H. Recommend policy changes. IPR will evaluate complaint and other information and investigation practices to make recommendations to the Chief to prevent future problems. Policy change recommendations shall be published for public review.
- I. Outreach. IPR will widely distribute complaint forms in languages and formats accessible to citizens, educate them on the importance of reporting complaints, and hold public meetings to hear general concerns about police services.
- J. Access to information. Notwithstanding any other provision of City law, IPR shall have access to and be authorized to examine and copy, without payment of a fee, any bureau information and records, including confidential and legally privileged information and records so long as privilege is not waived as to third parties, and police databases, subject to any applicable state or federal laws. The Director shall not disclose confidential or legally privileged information or records and shall be subject to the same penalties as the legal custodian of the information or records for any unlawful or unauthorized disclosure.
- K. Adoption of rules. IPR shall adopt, promulgate, amend and rescind rules and procedures required for the discharge of the Director's duties, including policies and procedures for receiving and processing complaints, conducting investigations, and reporting findings, conclusions and recommendations. However, the Director may not levy any fees for the submission or investigation of complaints.
- L. Review of closed investigations. IPR shall hire a qualified person to review closed investigations pertaining to officer-involved shootings and deaths in custody on an ongoing basis. IPR shall issue reports on an annual basis identifying any policy-related issues or quality of investigation issues that could be improved. The

### **TITLE 3**

#### **ADMINISTRATION**

Director and the Citizen Review Committee shall address any policy-related or quality of investigation issues that would warrant further review.

- M.** Additional public reports. The Director may issue public reports related to member misconduct trends and Bureau disciplinary practices.
- N.** Conduct investigative interviews of Bureau employees.
- O.** All Bureau employees shall be truthful, professional and courteous in all interactions with IPR. No member shall conceal, impede or interfere with the filing, investigation or adjudication of a complaint.
- P.** The Auditor may retain or employ independent legal counsel.

#### **3.21.080 Citizen Review Committee.**

(Amended by Ordinance Nos. 177688, 185076, 186416 and 188331, effective May 19, 2017.)

- A.** The Committee shall consist of eleven citizens. Five members shall constitute a quorum of the Committee. Decisions shall be made by a majority of Committee members present and constituting a quorum. However, adoption or amendment of rules of procedures or protocols requires an affirmative vote of six members. The Committee members shall be appointed as follows:
  - 1.** The Director shall solicit applications from the Office of Neighborhood Involvement, the seven Neighborhood Coalition offices, Mayor and commissioners' offices, PPB advisory committees, and the general public.
  - 2.** The City Auditor shall appoint a committee that shall recommend to the Auditor the appropriate number of nominees to fill impending vacancies. The selection committee shall consist of three CRC representatives, either past or not applying for reappointment, two members of the community, and the Director. Three of the selection committee members, including one CRC representative and the Director, shall serve as the interview panel.
  - 3.** Selection criteria shall include a record of community involvement, passing a criminal background check performed by an agency other than the Bureau, and absence of any real or perceived conflict of interest. The selection committee will nominate individuals who are neutral, unbiased, and capable of making objective decisions. The Mayor and commissioners may each submit an applicant meeting these qualifications.
  - 4.** The Auditor shall recommend nominees to Council for appointment.

**TITLE 3  
ADMINISTRATION**

5. In the event a majority of the Council fails to appoint a person nominated under the provisions of City Code Section 3.21.080 the Auditor shall initiate the process again within 30 days after the Council action.
6. In selecting Committee members, consideration shall be given to the current composition of the Committee and appointments should be made that will cause the group to best reflect the demographic make-up of the community.

**B.** The Committee members shall:

1. Participate in orientation and training activities that may include review of Bureau and IPR procedures, participation in Bureau training to become familiar with police training, policies and investigative practices, including Police Review Board process, participate in ride-alongs with officers, to maintain sufficient knowledge of police patrol procedures.
2. Each serve a term of three years, subject to reappointment by Council. Upon expiration of the term, a committee member shall serve until re-appointed or replaced.
3. Attend committee meetings or provide an explanation in advance for an absence.
4. Serve staggered terms to better ensure continuity. Four members of the Committee shall be appointed to one year terms in July 2001.
5. Select a chair from among their members. Adopt such operating policies and procedures as necessary to carry out their duties.
6. Sign a confidentiality agreement.
7. Serve on the Police Review Board when the Board reviews use of force cases as defined in Chapter 3.20. Committee members shall serve on the Police Review Board on a rotating basis for no more than two terms of three years.

**3.21.090 Powers and Duties of the Committee.**

(Amended by Ordinance Nos. 177688 and 185076, effective December 14, 2011.)

**A.** The Committee's duties and powers are the following:

1. Conduct meetings. To schedule and conduct at least four meetings per year for the purpose of exercising the authority delegated to it in this chapter. Quarterly meetings and hearings conducted pursuant to the Chapter shall be subject to the Oregon Public Meetings Law, ORS 192.610 through 192.710. The number of Committee members required for a quorum shall be five.

## **TITLE 3**

### **ADMINISTRATION**

2. Gather community concerns. To participate in various community meetings to hear concerns about police services.
3. Recommend policy changes. To evaluate complaint, investigative practices, and other information to make policy recommendations to the Chief of Police, the Director, and the Council to prevent and rectify patterns of problems.
4. Advise on operations. To review methods for handling complaints and advise on criteria for dismissal, mediation, and investigation.
5. Hear appeals. To hold hearings of complainant or member appeals as defined in City Code Section 3.21.160; to recommend referral to a final hearing before Council; to publicly report its findings, conclusions and recommendations.
6. Outreach to public. To advise and assist the Director to disseminate information about IPR and Committee activities to organizations in the community; to present reports to Council.
7. Create other committees. To create special purpose subcommittees or committees including other citizens to address particular short-term issues and needs.

#### **3.21.100 Council Role.**

- A. Council shall review applications of nominees to the Committee and vote whether to approve each appointment.
- B. Council shall hear final appeals as specified in 3.21.160.

#### **3.21.110 Intake.**

(Amended by Ordinance Nos. 179162, 186416, 188331 and 188842, effective March 30, 2018.)

- A. The Director shall receive complaints from any source concerning alleged member misconduct. The Director shall make reasonable accommodation when complainants cannot file their complaint at the IPR office. All allegations of use of excessive force shall be subject to a full and completed investigation resulting in findings, unless there is clear and convincing evidence to IPR that the allegation has no basis in fact.
  1. A community member may file a complaint or commendation regarding alleged member misconduct with IPR, Internal Affairs, a Police Bureau Precinct, the Police Commissioner, or with any Bureau member.



### **TITLE 3 ADMINISTRATION**

- a.** All complaints regardless of intake point will be forwarded to IPR or Internal Affairs and entered into the Administrative Investigation Management database.
  - b.** All Bureau facilities will have complaint and commendation forms available in areas accessible to the public.
  - c.** All Bureau issued business cards intended to be given to community members during calls for service will have IPR's phone number and email address printed on them.
- 2.** All complaints of alleged member misconduct will be investigated as either:
  - a.** Formal administrative investigations conducted by either Internal Affairs or IPR.
  - b.** Supervisory investigations conducted by a supervisor assigned to the same responsibility unit as the involved member.
    - (1)** Supervisory investigations will only be used for non-disciplinary complaints, such as those related to quality of service or minor rule violations.
    - (2)** All supervisory investigations will include a recommended disposition.
    - (3)** All completed supervisory investigations must be reviewed by Internal Affairs and IPR.
    - (4)** Completed supervisory investigations will not be subject to appeal.
- 3.** The Director will be notified in a timely manner by either the Assistant Chief of Investigations, Captain of IAD, or a member of the Police Commissioner's staff upon their knowledge that a member has engaged in conduct that may be subject to criminal and/or administrative investigation.
- 4.** IPR may request that the Bureau open an administrative deadly force investigation into any incident where IPR believes the physical force used by a member was such that it was readily capable of causing death or serious physical injury.
- 5.** When members of the public make complaints that do not allege member misconduct but do raise issues of a broader systemic nature, IPR may conduct reviews of Bureau policies and practices.

### **TITLE 3 ADMINISTRATION**

- B.** The Director shall develop procedures for handling complaints and appeals involving matters currently in litigation or where a notice of tort claim has been filed. The Director shall not initiate a case where a grievance or other appeal has been filed under a collective bargaining agreement or City personnel rules; or with respect to employee or applicant discrimination complaints.
- C.** The Director, when requested, shall protect the confidentiality of complainants, members or witnesses consistent with the requirements of the Oregon Public Records Law, except insofar as disclosures may be necessary to enable the Director to carry out their duties, or to comply with applicable collective bargaining agreements, or the disclosure of records is directed by the District Attorney. When considering a request for public records, the Director shall consult with appropriate Bureau personnel and obtain approval from the Bureau prior to disclosure of records under the Oregon Public Records Law.
- D.** No member of the community or the Police Bureau shall face retaliation, intimidation, coercion, or any adverse action for reporting misconduct or cooperating with a misconduct investigation.

#### **3.21.120 Handling Complaints.**

(Amended by Ordinance Nos. 179162, 183657, 186416, 188331 and 188547, effective September 8, 2017.) To ensure appropriateness and consistency in handling complaints the Director shall work with the Committee to establish procedures for taking action based upon the characteristics of the complaint.

- A.** Mediation. The complainant, the Member who is the subject of the complaint, and Bureau administration must all agree before mediation can be conducted. A complaint that undergoes mediation shall not be investigated. A mediation may be suspended if, in the opinion of the mediator, there is no reasonable likelihood of reaching resolution.
- B.** Complaint Types:
  - 1.** Complaint Type I: IPR is the intake point for complaints from community members and others regarding the conduct of members during an encounter involving a community member. Type I complaints involve alleged misconduct of a member during an encounter involving a community member.
  - 2.** Complaint Type II: A complaint about alleged member misconduct that does not occur during an encounter involving a community member is a Type II complaint. Such a complaint may be initiated by another Bureau employee or supervisor, or may be based on information obtained from another law enforcement agency, an employee of governmental agency

## **TITLE 3 ADMINISTRATION**

acting in an official capacity or a community member. These complaints may be filed with the Bureau or with IPR.

3. Complaint Type III: A complaint may be initiated by the Director at the discretion of the Director that an administrative investigation is warranted. IPR can initiate a complaint whether or not the alleged misconduct occurred during an encounter involving a community member and is not dependent on a community or Bureau member filing a complaint.
  - a. IPR will initiate and conduct administrative investigations in accordance with Human Resources Administrative Rules regarding process and investigation of complaints of discrimination.
  - b. If a criminal investigation has been initiated against the involved member, or during the course of an IPR administrative investigation a basis for conducting a criminal investigation arises, IPR shall advise the City Attorney and/or District Attorney prior to initiating or continuing an administrative investigation. IPR shall take all steps necessary to meet constitutional requirements and comply with existing provisions of City labor agreements.
4. Complaint Type IV: When Bureau supervisors generate complaints about poor member performance or other work rule violations. RU managers are responsible for intake and investigation of allegations of Type IV cases.
5. For all complaint types, the Bureau shall notify IPR prior to the termination of any administrative investigation that has not been assigned for recommended findings.

### **C. Initial Handling and Investigation of Type I Complaints**

1. Once IPR receives a Type I complaint regarding alleged misconduct of a member during an encounter involving a community member, IPR will:
  - a. Gather information about the complaint through an intake interview;
  - b. Assign an IPR/IAD Case Number;
  - c. Make a case handling decision; and
  - d. Send a letter to the complainant summarizing the complaint and the Director's case handling decision.
2. If IPR determines an investigation is appropriate, IPR will identify the complainant's allegations and either:

### **TITLE 3 ADMINISTRATION**

**a. Recommend that the Bureau/IAD conduct an investigation**

IPR shall gather information from the complainant and forward it to the Bureau/IAD. IPR shall monitor the on-going Bureau investigation. The Director may determine that a Bureau/IAD investigation should also involve IPR personnel. When forwarding the complaint to the Bureau/IAD the Director shall notify the Captain of IAD of the extent that IPR personnel must be included in the investigation. Bureau/IAD personnel shall schedule interviews and other investigative activities to ensure that IPR personnel can attend and participate.

IPR personnel shall have an opportunity to review and comment on draft reports regarding a Bureau/IAD investigation to ensure accuracy, thoroughness, and fairness. The investigation cannot be closed or sent to the RU manager without IPR's determination that the investigation is complete.

To facilitate review, IAD shall tape record all interviews with witnesses, including members of the Bureau, conducted during an IAD investigation and shall make those tapes, or accurate copies, available during a review of an IAD investigation.

In carrying out its functions, the IPR may visit IAD offices, examine documents, reports and files and take such other actions as the Director deems necessary and consistent with the purposes of this Chapter. To maintain the security of IAD documents, reports or files, the Chief may require that the examinations be conducted in the IAD offices.

**b. IPR may conduct an independent investigation.**

The Director shall have discretion to initiate and conduct an independent investigation of alleged member misconduct. The Director may conduct an independent investigation whether or not the alleged misconduct involves an encounter with a community member.

IPR investigations shall be conducted in conformance with legal and collective bargaining provisions. The Director shall notify the Captain of IAD that IPR has undertaken an investigation and the reason.

To facilitate review, IPR shall tape record all interviews with witnesses, including members of the Bureau, conducted during an

### **TITLE 3 ADMINISTRATION**

investigation and shall make those tapes, or accurate copies, available during a review of an investigation.

The Director shall provide the Captain of IAD and the Police Chief with a report on the investigation, including recommended findings, and present the IPR investigation, with recommended findings to the RU manager for preparation of RU Manager's proposed findings and discipline. At the completion of the investigation and any appeal process the records of the investigation shall be transferred to the IAD offices for retention.

3. Referral. IPR may refer a complaint regarding quality of service or other rule violations that likely would not result in discipline according to the Bureau. The Director may refer the complainant to another bureau in the City or another agency that would be more appropriate to address the complaint.
4. Administrative Closure. After an initial investigation, IPR may decline to take further action on a complaint. If there is an administrative closure, IPR will provided notification to the complainant. IPR will also notify the involved officer(s) and their commanding officer within 30 calendar days of the administrative closure. The Director may administratively close a complaint for the following reasons:
  - a. Another remedy exists that would resolve the complainant's issue.
  - b. The complainant delayed too long in filing the complaint to justify present examination;
  - c. Even if all aspects of the complaint were true, no act of misconduct would have occurred;
  - d. The complaint is trivial, frivolous or not made in good faith;
  - e. Where there is clear and convincing evidence that the involved member did not engage in misconduct.
  - f. The complainant withdraws the complaint or fails to complete necessary steps to continue with the complaint.
  - g. IPR was unable to identify the involved member.
  - h. Lack of jurisdiction.

#### **D. Initial Handling and Investigation of Type II Complaints**

### **TITLE 3**

#### **ADMINISTRATION**

1. If a Type II complaint is filed with IPR, IPR will gather information about the complaint and make a case handling decision. When appropriate, IPR will assign an IPR/IAD case number. Before disposing of a complaint of alleged misconduct or initiating an investigation, IPR shall notify the Bureau in writing how it intends to process the complaint and whether it intends to refer the case to the Bureau/IAD to conduct an investigation or conduct an independent investigation as set forth below. IPR will make an entry regarding the allegations in the Administrative Investigation Management (AIM) or other appropriate database which can be reviewed by the Director.
2. If a Type II complaint is filed within the Bureau, Bureau/IAD staff will create an intake worksheet and assign an IPR/IAD case number for use by IAD. Before disposing of a complaint of alleged misconduct or initiating an investigation, the Bureau/IAD shall notify the Director in writing how it intends to process each complaint and whether it intends to conduct an internal investigation. In addition, the Bureau/IAD will make an entry regarding the allegations in the Administrative Investigation Management (AIM) database or other appropriate database which can be reviewed by the Director.
3. Bureau/IAD Investigation. If the Type II complaint is filed with IPR, IPR shall gather information from the complainant and forward it to the Bureau/IAD. IPR shall monitor the on-going investigation. The Director may determine that a Bureau/IAD investigation should also involve IPR personnel. When forwarding the complaint to the Bureau/IAD, the Director shall notify the Bureau/Captain of IAD of the extent that IPR personnel must be included in the investigation. Bureau/IAD personnel shall schedule interviews and other investigative activities to ensure that IPR personnel can attend and participate.

IPR personnel shall have an opportunity to review and comment on draft reports and recommended findings regarding a Bureau/IAD investigation to ensure accuracy, thoroughness, and fairness. The investigation can not be closed or sent to the RU manager without IPR's determination that the investigation is complete.

To facilitate review, IAD shall tape record all interviews with witnesses, including members of the Bureau, conducted during an IAD investigation and shall make those tapes, or accurate copies, available during a review of an IAD investigation.

In carrying out its functions, the IPR may visit IAD offices, examine documents, reports and files and take such other actions as the Director deems necessary and consistent with the purposes of this Chapter. To

### **TITLE 3 ADMINISTRATION**

maintain the security of IAD documents, reports or files, the Chief may require that the examinations be conducted in the IAD offices.

4. IPR independent investigation. The Director shall have discretion to initiate and conduct an independent investigation of alleged member misconduct. The Director may conduct an independent investigation whether or not the alleged misconduct involves an encounter with a community member. The IPR investigations shall be conducted in conformance with legal and collective bargaining provisions. The Director shall notify the Bureau/Captain of IAD that IPR has undertaken an investigation and the reason.

To facilitate review, IPR shall tape record all interviews with witnesses, including members of the Bureau, conducted during an investigation and shall make those tapes, or accurate copies, available during a review of an investigation.

The Director shall provide the Captain of IAD and the Police Chief with a report on the investigation, including recommended findings and present the IPR investigation with recommended findings to the RU manager for preparation of RU Manager's proposed finding and discipline. At the completion of the investigation the records of the investigation shall be transferred to the IAD offices for retention.

5. Referral. IPR may refer a complaint regarding quality of service or other rule violations that likely would not result in discipline according to the Bureau. The Director may refer the complainant to another bureau in the City or another agency that would be more appropriate to address the complaint.

#### **E. Initial Handling and Investigation of Type III Complaints**

Upon opening a Type III IPR initiated complaint investigation. IPR staff will create an intake worksheet and assign an IPR/IAD case number. If a Type III case involves alleged member misconduct during an encounter involving a community member, the case will be handled following the same procedures as a Type I complaint. If a Type III case involves alleged member misconduct that does not occur during an encounter involving a community member, the case will be handled following the same procedures as a Type II complaint.

#### **F. Initial Handling and Investigation of Type IV Complaints**

RU managers are responsible for intake and investigation of allegations of Type IV cases. The RU manager will provide the Director a summary of the complaint and a summary of any subsequent investigation of a sworn member. The Director may

### **TITLE 3 ADMINISTRATION**

refer the matter to IAD for further investigation, conduct additional investigation, or controvert the RU manager's recommendations and compel review by the Police Review Board after receiving the completed investigation.

**G. Type I, II, III & IV Post-Investigative Case Handling Procedures:**

- 1.** Adequacy of investigation. When an investigation of any type of complaint is conducted by IAD or other designated PPB division, after the investigation, including RU Manager's proposed finding and discipline, is complete, IAD will provide the Director with a copy of and provide unrestricted access to the entire investigation file. Upon review of the file, the Director or designee must determine whether or not the investigation is adequate, considering such factors as thoroughness, lack of bias, objectivity, and completeness. If the Director determines that the investigation is not adequate, the investigation shall be returned to the IAD or other designated division within the Bureau explaining the determination and providing direction. Such direction shall include, but not limited to, rewriting portions of the summary, gathering additional evidence, conducting additional interviews, or re-interviewing officers or civilians. The investigation can not be closed or sent to the RU manager without IPR's determination that the investigation is complete. Upon receipt of IPR's determination that the investigation is complete, IAD shall send the investigation to the appropriate RU Manager.
- 2.** Submission of recommended findings to RU Manager. The RU manager will review the investigation and recommended finding for any type of complaint when the investigation is conducted by IAD, other designated PPB division or IPR and submit the RU Manager's proposed finding and discipline to the Captain of IAD. The Captain of IAD will circulate the RU Manager's proposed finding to the Director and the Supervising Assistant Chief. After receipt of the RU Manager's proposed finding and discipline, the supervising Assistant Chief, the Director or the Captain of IAD may controvert the RU Manager's proposed finding and/or discipline. All controverts shall be documented in a memo that clearly articulates that the reviewer wishes to controvert and provides an adequate explanation for the writer's basis for disagreeing with the recommended finding or discipline.

  - a.** If the RU Manager determines that an investigation by IAD or IPR is not adequate, the RU Manager may return the investigation to the investigating entity for further investigation explaining the determination and providing direction for further investigation. Such direction shall include, but not be limited to, investigating additional allegations of misconduct, gathering additional evidence, conducting additional interviews, re-interviewing officers or



### **TITLE 3 ADMINISTRATION**

civilians, or requesting factual errors within the investigative report be corrected.

- b.** If the RU Manager disagrees with the recommended finding by IA or IPR the RU Manager will document their disagreement, based on the evidentiary record, with the investigative entity in the RU's proposed finding and discipline
- 3.** Police Review Board meeting. If the RU Manager's proposed findings and/or proposed discipline are controverted, the Bureau shall schedule a Police Review Board meeting on the complaint. As specified in Code Section 3.20.140, the Police Review Board shall also hold a meeting for review of a case if it involves an officer-involved shooting, physical injury caused by an officer that requires hospitalization, an in-custody death, a less lethal incident where the recommended finding is "out of policy" or if the investigation resulted in a proposed sustained finding and the proposed discipline is suspension without pay or greater.
- 4.** Notification and Appeals of Type I and III complaints without Police Review Board meeting. In Type I cases, and Type III cases where the alleged misconduct occurred during an encounter involving a community member, if the RU Manager's proposed findings and discipline are not sent to the Police Review Board for a meeting, the Director shall send a letter to the complainant explaining the disposition of the complaint and add any appropriate comment regarding the reasoning behind the decision. Both the complainant and involved member will be notified of the investigative entity's recommended finding. IPR will notify the complainant that they have a right to request a review of the Bureau's proposed findings to the Committee and provide an appeal form. The Bureau will notify the involved member regarding the disposition of the complaint. The Bureau will notify the involved member of the right to request a review of the proposed findings to the Committee. The Bureau will be responsible for providing the member and union representative with the appeal form. A copy of the communications sent by IPR and IAD will be placed into the AIM database or other appropriate database for both IPR and IAD review.
- 5.** Notification and Appeals of Type I and III complaints after Police Review Board hearing. In Type I cases and Type III cases where the alleged misconduct occurred during an encounter with a community member and the RU Manager's proposed findings and discipline are sent to the Police Review Board for a meeting, the Director shall send a letter to the complainant explaining the disposition of the complaint and add any appropriate comment regarding the reasoning behind the decision. Both the complainant and involved member will be notified of the investigative entity's recommended finding. IPR will notify the complainant that they

### **TITLE 3**

### **ADMINISTRATION**

have a right to request a review of the proposed findings to the Committee and provide an appeal form. The Bureau will notify the involved member regarding the proposed findings of the Police Review Board. The Bureau will notify the involved member of the right to request a review of the proposed findings to the Committee. The Bureau will be responsible for providing the member and union representative with the appeal form. A copy of the communications sent by IPR and IAD will be placed into the AIM database or other appropriate database for both IPR and IAD review.

6. No appeal of Type II and certain Type III complaints. In Type II cases and Type III cases that involve alleged member misconduct that does not occur during an encounter involving a community member, the recommended findings may not be appealed to the Committee.
7. Nothing in this section prohibits the Bureau from terminating the employment of a probationary officer without following the procedures of this Section.
8. The Police Commissioner and the City Auditor shall be notified and provided with explanatory information in all cases where an administrative investigation exceeds 129 days, and the information posted on the City's website.

#### **3.21.130 Communications.**

The IPR shall ensure that the complainant and member complained about are informed of the progress and status of the complaint or appeal. Communication may be accomplished orally or by first class mail.

#### **3.21.140 Filing of requests for review.**

(Amended by Ordinance Nos. 183657 and 187136, effective June 19, 2015.)

- A. Any complainant or member who is dissatisfied with an investigation of alleged member misconduct that occurred during an encounter with a community member may request a review.
- B. The request for review must be filed within 14 calendar days of the complainant or member receiving IPR's notification regarding disposition of the case. The Director may adopt rules for permitting late filings. When good cause has been established, the Director may accept late filings. Good cause includes, but is not limited to:
  1. Appellant has limited English language proficiency.
  2. Appellant has physical, mental or educational issues that contributed to an untimely request for review.

**TITLE 3**  
**ADMINISTRATION**

- C.** A request for review must be filed in writing personally, by mail or email with the IPR Office, or through other arrangements approved by the Director.
- D.** The request for review shall include:
  - 1.** The name, address, and telephone number of the appellant;
  - 2.** The approximate date the complaint was filed (if known);
  - 3.** The substance of the complaint;
  - 4.** The reason or reasons the appellant is dissatisfied with the investigation.
- E.** The complainant or member may withdraw the request for review at any time.

**3.21.150 Case File Review.**

(Replaced by Ordinance No. 187136; Amended by Ordinance No. 188331, effective May 19, 2017.)

- A.** When the Director receives and accepts a timely request for review, a Case File Review and Appeal Hearing shall be scheduled before the Committee. The Director will notify the CRC Executive Committee upon receipt of a request of review. The Case File Review shall take place prior to the Appeal Hearing either on the same day or on an earlier date.
- B.** The Case File Review will be an opportunity for the Committee to assess the completeness and readiness of the investigation for an Appeal Hearing. Public comment will be allowed before the Committee has made a decision whether a case is ready for an Appeal Hearing. In the event that the Committee conducts a Case File Review and Appeal Hearing on the same day, public comment will be allowed before the Committee has made its recommendation to the Bureau.
- C.** During either the Case File Review or Appeal Hearing, the Committee may direct, by majority vote, additional investigation by either IAD and/or IPR.
  - 1.** Only Committee members who have read the case file are eligible to vote.
  - 2.** The Committee will have one opportunity to direct additional administrative investigation, all other requests will be at the discretion of either IAD or IPR.
  - 3.** The request for additional investigation may include multiple areas of inquiry.
  - 4.** All additional investigation will be conducted in a timely manner, with the Committee given regular updates.

### **TITLE 3 ADMINISTRATION**

- D.** If the committee agrees no further investigation and consideration of the evidence appears warranted, the committee shall vote on when to hold an Appeal Hearing.

#### **3.21.160 Hearing Appeals.**

(Amended by Ordinance Nos. 185076, 188331 and 188547, effective September 8, 2017.)

- A.** An Appeal Hearing shall be conducted after a majority vote of the Committee to hold such a hearing at the case file review or other meeting of the full Committee. Public comment will be allowed before the Committee has made its recommendation to the Bureau.

- 1.** At the Appeal Hearing the Committee shall decide by majority vote:

- a.** To recommend further investigation by IAD or IPR; or
- b.** If the finding is supported by the evidence. In a case where the majority of the voting members of the Committee affirms that the Bureau's proposed findings are supported by the evidence, the Director shall close the complaint; or
- c.** If the finding is not supported by the evidence. In a case where a majority of the voting members of the Committee challenges one or more of the Bureau's proposed findings by determining that one or more of the findings is not supported by the evidence, and recommends a different finding, the Director shall formally advise the Bureau in writing of the Committee recommendation.
  - (1)** If the Bureau accepts the recommendation, the Bureau shall formally advise the Director in writing, and the Director shall close the case.
  - (2)** If the Bureau does not accept the recommendation, the Bureau shall formally advise the Director in writing, and the Director shall schedule the case for a conference hearing.
    - (a)** At the conference hearing, if the Committee, by a majority vote, is able to reach an agreement with the Bureau on the proposed findings, the Director shall close the case.
    - (b)** If, by majority vote, the Committee can not reach an agreement with the Bureau on the proposed findings, the Committee shall vote whether to present the appeal to City Council.

## TITLE 3 ADMINISTRATION

- (c) If, by majority vote, the Committee decides to present the appeal to City Council, the Director and the Committee Chair will schedule an appeal hearing before City Council. The Committee shall appoint one of its members to present its recommended findings during the appeal to City Council.
2. In its hearing the Council shall decide:
  - a. If the finding is supported by the evidence. The Director shall inform the complainant, member, IAD and the Chief of the Council's decision and close the complaint; or
  - b. If the finding is not supported by the evidence. The Council shall decide what the finding is. The Director shall inform the complainant, member, IAD and the Chief of the Council's decision and close the complaint.
- B. In reviewing the investigation, the Committee may examine the appeal form and any supporting documents, the file and report of the IAD and IPR, and any documents accumulated during the investigation and may listen to the tape recordings of the witnesses produced by IPR and IAD. The Committee may receive any oral or written statements volunteered by the complainant or the member or other officers involved or any other citizen. The complainant or member may appear with counsel. When the Committee's review process develops new information, the Committee may consider the new information when determining if additional investigation is warranted, but the Committee may not incorporate the new information in the evidentiary record the Committee considers when determining if a finding is supported by the evidence.
- C. In reviewing the investigation, the Council may examine the appeal form and any supporting documents, the file and report of the IAD and IPR, any documents accumulated during the investigation, the recording of the Committee's case file review and appeal hearing, the Committee's Case File review Worksheet, and may listen to the tape recordings of the witnesses produced by IPR and IAD. The Council may receive any oral or written statements volunteered by the complainant or the member about whether or not they believe the finding is or is not supported by the evidence in the record. No new evidence may be introduced in the hearing. The complainant or member may appear with counsel.
- D. Witnesses.
  1. The Committee and Council may require within its scope of review the investigators and Captain of IAD and the Director to appear and answer questions regarding the investigation and may also require the responsible

### **TITLE 3 ADMINISTRATION**

Bureau Commander to answer questions regarding the basis and the rationale for a particular decision.

2. Other Witnesses. Other witnesses shall not be required to appear involuntarily before the Committee.
3. Council may utilize the full powers granted by Section 2-109 of the Charter, including the power to compel the attendance and testimony of witnesses, administer oaths and to compel the production of documents and other evidence. The power to compel the attendance and testimony of witnesses in accordance with City Code Section 3.21.160 D.3. shall not be delegated by the Council to the Committee.

#### **3.21.170 Monitoring and Reporting.**

(Amended by Ordinance No. 181483, effective January 18, 2008.)

- A. The Director shall develop a data system to track all complaints received, develop monthly reports to inform IAD and the Chief regarding IAD workload and performance, and inform complainants and members regarding the status of complaints and appeals.
- B. The Director shall use complaint and OMF Risk Management Division data to support the Bureau's Early Warning System.
- C. The Director shall work with the Committee to develop recommendations to modify Bureau policies and procedures in order to prevent problems, improve the quality of investigations, and improve police-community relations.
- D. The Director shall work with the Committee to develop quarterly and annual summary reports for the Chief, Commissioner in Charge, Council and public on IPR and IAD activities, policy recommendations, and Bureau follow-through on recommendations. The report may include analysis of closed files which were not appealed, but it is not the intent that the files be reopened.

#### **3.21.180 Increasing Public Access.**

(Amended by Ordinance No. 186416, effective February 7, 2014.)

- A. The Director shall work with the Committee to make complaint forms available in formats and locations to reach as many community members as possible.
- B. The Director shall work with the Committee to develop programs to educate the public about IPR and the importance of reporting problems.
- C. The Director shall work with the Committee to develop programs to educate Bureau personnel on the complaint process, mediation, and IPR activities. Bureau

personnel shall be informed that IPR is the primary means for citizens to file complaints.

- D.** IPR, Committee and Bureau shall develop guidelines for situations when a commander or supervisor in a precinct is directly contacted by a complainant with a complaint. In general, they may intervene and attempt to resolve the complaint themselves, but they must also inform complainants that they can still file with IPR if they do not achieve satisfaction.

**3.21.190 Response of Chief.**

(Amended by Ordinance No. 186416, effective February 7, 2014.)

- A.** The Chief, after reviewing a report provided by IPR under City Code Section 3.21.170, shall respond promptly to IPR in writing, but in no event more than 60 days after receipt of the report. The response shall indicate what, if any, policy or procedural changes are to be made within the IAD or the Bureau.
- B.** If the Chief fails to respond within 60 days after receipt of the Committee Report, the Auditor shall place the matter on the Council Calendar, for consideration by City Council, within 15 days thereafter.

**3.21.200 Limitation on Power.**

The Committee and Director are not authorized to set the level of discipline for any member pursuant to any request for review made under this Chapter. However, this Section shall not be construed to limit the authority granted to City Council by the City Charter, City Code, state statutes, and other applicable law.

**3.21.210 Subpoenas.**

(Added by Ordinance No. 183657; Amended by Ordinance No. 186416, effective February 7, 2014.) IPR shall have the authority to issue subpoenas for the purpose of compelling witness testimony or the production of documents, photographs, or any other evidence necessary for IPR to fully and thoroughly investigate a complaint or conduct a review.

IPR personnel will not subpoena a sworn Bureau member employed by the Portland Police Bureau, but is authorized to direct Bureau members to cooperate with administrative investigations as described in Sections 3.21.120 and 3.21.220.

Any person who fails to comply with a subpoena will be subject to contempt proceedings as prescribed by State law; provided that such persons shall not be required to answer any question or act in violation of rights under the constitutions of the State or of the United States.

**3.21.220 Bureau Witnesses.**

(Added by Ordinance No. 186416, effective February 7, 2014.)

- A.** A Bureau employee shall attend investigative interviews conducted by IPR, cooperate with and answer questions asked by IPR during an administrative

### **TITLE 3**

### **ADMINISTRATION**

investigation of a member conducted by IPR. If an employee refuses to attend an investigative interview after being notified to do so by IPR or refuses to answer a question or questions asked by IPR during an investigative interview, the Police Chief or Police Commissioner shall direct the employee to attend the interview and answer the question or questions asked.

- B.** All IPR interviews of Bureau employees shall be conducted in conformance with legal requirements and collective bargaining provisions.
- C.** Prior to being interviewed, a Bureau employee will be:
  - 1.** Notified of the time, date, and location of the interview.
  - 2.** Informed of the right to bring a union representative to the interview.
  - 3.** Read a statement, issued under the authority of the Police Chief or Police Commissioner, that the employee is directed to attend the interview, cooperate during the interview and answer all questions fully and truthfully and, if the employee fails to attend the interview, cooperate during the interview or answer any questions fully and truthfully, the employee will be subject to discipline or discharge
  - 4.** Provided with any other information or protections required by any applicable collective bargaining agreement.
- D.** A representative of the Police Bureau shall attend IPR interviews of Bureau employees for the purpose of reading the statement referenced in Subsection C. and to provide any assistance required by IPR.



**CHAPTER 3.33 - BUREAU OF PLANNING  
AND SUSTAINABILITY**

(Chapter added by Ordinance No. 182671, effective  
May 15, 2009.)

**Sections:**

- 3.33.010 Purpose.
- 3.33.020 Organization.
- 3.33.030 Functions.

**3.33.010 Purpose.**

The purpose of this Chapter is to describe the organization and functions of the Bureau of Planning and Sustainability.

**3.33.020 Organization.**

The Bureau is administered by the Commissioner in charge and led by the Director of Planning and Sustainability. The organizational structure of the Bureau shall be determined by the Director of the Bureau after consultation with the Commissioner in charge.

**3.33.030 Functions.**

(Amended by Ordinance Nos. 184046 and 188177, effective January 1, 2018.) The Bureau of Planning and Sustainability is responsible for planning, implementing, and managing complex programs and projects related to sustainability, urban design, land use, and long range planning.

The Bureau of Planning and Sustainability:

- A.** Works with the City Council, Planning and Sustainability Commission, and the community to define shared values and develop a cohesive vision for the future of Portland;
- B.** Maintains, modifies, and updates a Comprehensive Plan to guide the development and redevelopment of the city;
- C.** Ensures that City policies, implementation tools, and zoning designations are consistent with the Comprehensive Plan, the Metro Functional Plan, Statewide Planning Goals, and other requirements. Implementation tools include Title 33, Planning and Zoning, portions of other City Titles, and a range of programs and policies;
- D.** Maintains, modifies, and updates Title 33, Planning and Zoning, and the City Zoning Map;

### **TITLE 3**

#### **ADMINISTRATION**

- E.** Develops, modifies and updates city sustainability principles, climate protection strategies, and green building and other sustainability policies and programs including sustainable government, renewable energy, energy efficiency, sustainable industries, and sustainable food systems; and evaluates the implementation and effectiveness of these policies and programs;
- F.** Develops, modifies and updates economic, environmental, housing, historic preservation, and community development policies and programs; updates demographic data; advocates for and advances quality sustainable urban design; works to ensure natural resource enhancement; and supports thriving neighborhoods and business communities; and evaluates the implementation and effectiveness of these policies and programs;
- G.** Convenes meetings of the Planning and Development Directors to coordinate planning and development activities of the City of Portland;
- H.** Provides City input into and coordination with regional and statewide planning and development activities;
- I.** Administers the City's solid waste and recycling rules and programs;
- J.** Provides support for:
  - 1.** The activities of the Planning and Sustainability Commission;
  - 2.** The legislative activities of the Portland Historic Landmarks Commission and the Portland Design Commission.
  - 3.** The activities of the Community Involvement Committee.
- K.** Carries out other tasks and functions as required by the City Council or Commissioner in Charge.

- K.** Designate a management level employee to act as a liaison between the agency and Archives and Records Management on all matters relating to the archives and records management program.

**3.76.060 Care of Records.**

Records of the City of Portland shall be managed according to the provisions of Oregon Revised Statutes, Oregon Administrative Rules and of this Chapter.

**3.76.070 Destruction of Records.**

City records covered by a records retention schedule shall be destroyed according to the parameters set forth in the retention schedule. In general, records shall not be retained beyond their prescribed retention.

**3.76.080 Use of Copies.**

- A.** A public officer performing duties under this Chapter is authorized to copy in any manner which produces a permanent, clear, accurate and durable reproduction of the original record. An original City record which is worn or damaged may be replaced by a reproduction made in accordance with this Chapter. Certification by the City Auditor, City Attorney, Archives and Records Management, or by the agency having custody of the record that the replacement is a true and correct copy of the original shall appear at the end of the reproduction. When original City records are reproduced and placed in conveniently accessible files and provisions are made for preserving and using them for the duration of their legally mandated retention, the originals from which they were made may be destroyed.
- B.** Reproduction or replacement of City records made under this Chapter are admissible in evidence as primary evidence of the original writing.

**3.76.090 Public Access to Records.**

All City records, except for those exempted by law, are available for inspection and copying by the public. The City may require that records use occur during certain business hours and at specified locations, and may charge fees to recover the cost of retrieval and copying.

### **TITLE 3 ADMINISTRATION**

#### **CHAPTER 3.77 - OFFICE OF THE OMBUDSMAN**

(Chapter added by Ordinance No. 175568, effective  
July 1, 2001.)

##### **Sections:**

3.77.010	Purpose.
3.77.020	Definitions.
3.77.030	Office of the Ombudsman.
3.77.040	Ombudsman Selection.
3.77.050	Qualifications and Prohibitions.
3.77.060	Reserved.
3.77.070	Removal.
3.77.080	Staff and delegation.
3.77.090	Reserved.
3.77.100	Office Facilities and Administration.
3.77.110	Powers and Duties.
3.77.120	Investigations of Complaints.
3.77.130	Communications with Agency.
3.77.140	Communications with Complainant.
3.77.150	Procedure after Investigation.
3.77.160	Informing Community Members.
3.77.170	Reports.
3.77.180	Reserved.
3.77.190	Duty to Cooperate.
3.77.200	Ombudsman Immunities.
3.77.210	Reprisals Prohibited.
3.77.220	Relationship to Other Laws.
3.77.230	Effective Date.

##### **3.77.010 Purpose.**

(Amended by Ordinance No. 188842, effective March 30, 2018.) The Office of the Ombudsman is an independent, impartial office, readily available to the public, responsible to the City Auditor, empowered to investigate the administrative acts of City departments, bureaus and other administrative agencies, issue reports and recommend appropriate changes toward the goals of safeguarding the rights of persons and of promoting higher standards of fairness, competency, efficiency and justice in the provision of city services.

##### **3.77.020 Definitions.**

(Amended by Ordinance No. 188842, effective March 30, 2018.) In this chapter:

- A. "Administrative act" means an action, failure to act, omission, decision, recommendation, practice, policy or procedure.

**TITLE 3  
ADMINISTRATION**

- B.** “Agent or agency” includes any department, bureau, office, institution, corporation, authority, board, commission, committee of the city, and any officer, employee, or member of the foregoing entities acting or purporting to act in the exercise of their official duties. EXCEPTING: elected officials and their personal staff.
- C.** “City Auditor” refers to the elected City Auditor.
- D.** “City” refers to the City of Portland.
- E.** “City Council” refers to the City’s legislative body comprised of five elected officials, the Mayor, and four City Commissioners.
- F.** “Ombudsman” means the public official appointed by the City Auditor to receive and investigate the public’s complaints against administrative acts of City government.
- G.** “Person” means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, and/or the manager, lessee, agent, servant, officer, or employee of any of them;
- H.** "Record" means all records, documents, books, papers, files, photographs, microfilms, sound recordings, video recordings, magnetic storage media, computer data and all other materials, regardless of physical form or characteristics, created, generated, recorded, received, possessed or controlled by or on behalf of any agency.
- I.** “State” refers to the State of Oregon.

**3.77.030 Office of the Ombudsman.**

(Amended by Ordinance No. 188842, effective March 30, 2018.) There is established in accordance with City Charter Section 2-509 the Office of the Ombudsman.

**3.77.040 Ombudsman Selection.**

(Amended by Ordinance No. 188842, effective March 30, 2018.) The City Auditor shall select the Ombudsman in accordance with the Auditor’s human resource policies and rules and other applicable laws.

**3.77.050 Qualifications and Prohibitions.**

(Amended by Ordinance No. 188842, effective March 30, 2018.)

- A.** The Ombudsman shall be a person of recognized judgment, objectivity and integrity who is well-equipped to analyze problems pertaining to City regulations, administration, and public policy, and shall have a working knowledge in local government commensurate to the powers and duties of the office. The Ombudsman shall be a registered voter of the United States, and shall hold a degree from an accredited college/university, or its equivalent in service to local government.

### **TITLE 3**

#### **ADMINISTRATION**

- B.** No person may serve as Ombudsman while engaged in any other occupation, business, or profession likely to detract from the full-time performance of their duties as Ombudsman or to result in a conflict of interest or an appearance of impropriety or partiality. All laws and requirements generally applicable to public employees are applicable to the Ombudsman.

**3.77.060      Reserved.**

**3.77.070      Removal.**

(Amended by Ordinance No. 188842, effective March 30, 2018.)

- A.** The Ombudsman is an at-will employee and may be removed from office by the City Auditor.
- B.** If the position becomes vacant for any reason, the Deputy Ombudsman shall serve as acting Ombudsman until a new Ombudsman has been appointed.

**3.77.080      Staff and Delegation.**

(Amended by Ordinance No. 188842, effective March 30, 2018.)

- A.** The Ombudsman may appoint a deputy who is accountable to the Ombudsman and other personnel necessary to carry out the provisions of this chapter, when in keeping within the adopted budget for the Ombudsman's Office.
- B.** The Ombudsman may delegate to staff members any of the Ombudsman's duties, unless otherwise specified in this chapter.
- C.** The deputy shall succeed to all duties and responsibilities of the Ombudsman, including those specified by ordinance, when serving as the acting Ombudsman.

**3.77.090      Reserved.**

**3.77.100      Office Facilities and Administration.**

- A.** The City shall provide suitable office facilities for the Ombudsman and staff in a location convenient for the public.
- B.** The Ombudsman shall annually recommend a budget proposal for submission to the City Auditor, who shall in turn include it in the Auditor's budget submission to the Mayor and City Council.
- C.** The Ombudsman shall be located within the City Auditor's office, and be accountable to the City Auditor. The Ombudsman shall have sole discretion in choosing consultants to assist with investigations, and in hiring staff. All administrators shall retain the authority to deny any request which is otherwise

contrary to ordinance or which exceeds the city council-adopted budget for the office.

**3.77.110 Powers and Duties.**

(Amended by Ordinance No. 188842, effective March 30, 2018.) The Ombudsman's powers and duties include, but are not limited to the following:

- A.** To investigate, on complaint or on the Ombudsman's own initiative, any administrative act of an agency, without regard to the finality of the administrative act, if the Ombudsman reasonably believes that it is an appropriate subject for review;
- B.** To undertake, participate in or cooperate with persons and agencies in such general studies, conferences, inquiries, meetings, or studies which might improve the functioning of agencies or lessen the risks that objectionable administrative acts will occur;
- C.** To make such inquiries and obtain such reasonable assistance and information from any agency or person as the Ombudsman shall require for the discharge of the Ombudsman's duties; and may without prior notice enter and inspect the premises of any agency. Agencies shall not restrict the Ombudsman's access to agency employees, subject to collective bargaining obligations to the City's recognized bargaining units;
- D.** In accordance with City Charter, subject to collective bargaining obligations to the City's recognized bargaining units, to have timely access to and to examine and copy, without payment of a fee, any agency information and records, including confidential and legally privileged information and records so long as privilege is not waived as to third parties, subject to any applicable state or federal laws. The Ombudsman shall not disclose confidential or legally privileged information or records and shall be subject to the same penalties as the legal custodian of the information or records for any unlawful or unauthorized disclosure;
- E.** To request any person or agency to give sworn testimony or to timely produce documentary or other evidence that is reasonably relevant to the matters under investigation;
- F.** To maintain confidential any matter related to complaints and investigations to the extent allowable by law, except as the Ombudsman deems necessary to discharge the Ombudsman's duties or as directed by the District Attorney pursuant to a public records request;
- G.** To take appropriate measures to enforce the provisions of this chapter, including issuing reports, submitting recommendations, or seeking Council authorization for legal recourse if necessary to carry out the duties of the Office of the Ombudsman;

### **TITLE 3**

#### **ADMINISTRATION**

- H.** To adopt, promulgate, amend and rescind rules and regulations required for the discharge of the Ombudsman's duties, including policies and procedures for receiving and processing complaints, conducting investigations, and reporting findings, conclusions and recommendations. However, the Ombudsman may not levy any fees for the submission or investigation of complaints;
- I.** To insure that a budget for the Office of the Ombudsman is well prepared and administered.

#### **3.77.120 Investigations of Complaints.**

(Amended by Ordinance No. 188842, effective March 30, 2018.)

- A.** The Ombudsman shall receive complaints from any source concerning any administrative act. The Ombudsman may conduct a suitable investigation of a complaint that is an appropriate subject for investigation. An appropriate subject for investigation by the Ombudsman includes any administrative act that the Ombudsman believes might be:
  - 1.** contrary to, law, regulation or agency practice;
  - 2.** unreasonable, unfair, oppressive, arbitrary, an abuse of discretion, or unnecessarily discriminatory even though in accordance with law;
  - 3.** based on mistaken facts or irrelevant considerations;
  - 4.** unclear or not adequately explained;
  - 5.** performed in an inefficient or discourteous manner;
  - 6.** otherwise erroneous or objectionable.
- B.** The Ombudsman, at the Ombudsman's discretion, may decide not to investigate a complaint because:
  - 1.** the complainant could reasonably be expected to use, or is using, another remedy or channel, or tort claim, for the grievance stated in the complaint;
  - 2.** the complaint relates to a matter that is outside the jurisdiction of the Ombudsman;
  - 3.** the complaint has been too long delayed to justify present examination;
  - 4.** the complainant does not have a sufficient personal interest in, or is not personally aggrieved by, the subject matter of the complaint;
  - 5.** the complaint is trivial, frivolous, vexatious or not made in good faith;



**TITLE 3  
ADMINISTRATION**

- 6. the resources of the Ombudsman's Office are insufficient for adequate investigation;
- 7. other complaints are more worthy of attention.
- C. The Ombudsman shall not investigate matters currently in litigation; covered by collective bargaining agreement grievance procedures; or, employee or applicant discrimination complaints.
- D. The Ombudsman's declining to investigate a complaint shall not bar the Ombudsman from proceeding on their own initiative to investigate an administrative act whether or not included in the complaint.
- E. The Ombudsman shall protect the confidentiality of complainants or witnesses coming before them consistent with the requirements of the Oregon Public Records Law, except insofar as disclosures may be necessary to enable the Ombudsman to carry out their duties or the disclosure of records is directed by the District Attorney. (See Subsection 3.77.110 F.)
- F. The Ombudsman shall have the authority to pursue administrative review of responses to complaints through higher authorities within the City.

**3.77.130 Communications with Agency.**

(Amended by Ordinance No. 188842, effective March 30, 2018.)

- A. The Ombudsman may make recommendations to an agency for the resolution of complaints and inquiries in accordance with this Chapter and City Charter.
- B. In seeking a resolution to a complaint or inquiry the Ombudsman may draw the matter to the attention of any agency head or division manager, the City Auditor, Mayor, City Commissioner, or the public.
- C. Before formally issuing a report with a conclusion or recommendation that is significantly critical or adverse to an agency, the Ombudsman shall have consulted with that agency and permitted the agency reasonable opportunity to reply. The Ombudsman may require an agency to notify them within a reasonable specified time of any action taken on a conclusion or recommendation. The Ombudsman will provide the opportunity to include with a final report a brief statement by the agency.

**3.77.140 Communications with Complainant.**

- A. After the Ombudsman has decided whether or not to investigate a complaint, the Ombudsman shall inform the complainant.

### **TITLE 3 ADMINISTRATION**

- B.** The Ombudsman shall, if requested by the complainant, report the status of his or her investigation to the complainant.
- C.** After investigation of a complaint, the Ombudsman shall inform the complainant of his or her conclusion or recommendation and, if appropriate, any action taken or to be taken by the agency involved.

#### **3.77.150 Procedure after Investigation.**

(Amended by Ordinance No. 188842, effective March 30, 2018.)

- A.** If, after investigation, the Ombudsman is of the opinion that an agency should:
  - 1.** consider the matter further,
  - 2.** modify or cancel an act,
  - 3.** alter a regulation, ruling, practice, policy or procedure;
  - 4.** explain more fully the act in question,
  - 5.** rectify an omission, or take any other action,

the Ombudsman shall state any conclusions, recommendations and reasons therefor to the agency. If the Ombudsman so requests, the agency shall, within the time specified, inform the Ombudsman about the action taken on recommendations or the reasons for not implementing them.

- B.** After a reasonable period of time has elapsed, the Ombudsman may issue final conclusions or recommendations to the Auditor, the Mayor and City Commissioners, a grand jury, the public, or any other appropriate authority. The Ombudsman shall include any brief statement the agency may provide if an opportunity to reply is required by this Chapter.
- C.** If the Ombudsman believes that an action has been dictated by laws whose results are unfair or otherwise objectionable, and could be revised by City Council action, the Ombudsman shall notify the City Council and the agency of a desirable statutory change.
- D.** If the Ombudsman believes that any agency official or employee has acted in a manner warranting criminal or disciplinary proceedings, the Ombudsman shall refer the matter to the appropriate authorities without notice to that person.

#### **3.77.160 Informing Community Members.**

(Amended by Ordinance No. 188842, effective March 30, 2018.) The Ombudsman shall post notices or use other appropriate means to inform community members of their rights, protections, and availability of services provided for under this Chapter and City Charter

Section 2-509. These notices may include posted notices in public areas; or, electronic postings or links through Internet web sites, including the City web site. Nothing in this section is to be construed as repealing any other provisions of contract, ordinance or law.

**3.77.170        Reports.**

(Amended by Ordinance No. 188842, effective March 30, 2018.) The Ombudsman may from time to time and shall annually report the Office of the Ombudsman's activities to the Auditor and City Council, or any of its committees, to the public and, in the Ombudsman's discretion, to agencies.

**3.77.180        Reserved.**

**3.77.190        Duty to Cooperate.**

(Amended by Ordinance No. 188842, effective March 30, 2018.) City employees shall cooperate with the Ombudsman in the exercise of their powers, and shall not mislead or attempt to mislead an Ombudsman's inquiry.

**3.77.200        Ombudsman Immunities.**

(Amended by Ordinance No. 188842, effective March 30, 2018.) To the extent allowable by law, the Ombudsman and staff shall not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to any matter involving the exercise of their official duties except as may be necessary to enforce this Chapter and City Charter Section 2-509.

**3.77.210        Reprisals Prohibited.**

No person who files a complaint or participates in any investigation or proceeding pursuant to this chapter shall be subject to any penalties, sanctions or restrictions in connection with his or her employment or be denied any right, privilege, or benefit because of such action.

**3.77.220        Relationship to Other Laws**

The provisions of this Chapter are in addition to and do not in any manner limit or affect any other provisions of law under which any remedy or right of appeal is provided for any person, or any procedure is provided for the inquiry into or investigation of any matter. The powers conferred on the Ombudsman may be exercised notwithstanding any provision of law to the effect that any administrative action shall be final or unappealable.

**3.77.230        Effective Date**

This Act shall take effect on July 1, 2001.

## **TITLE 3 ADMINISTRATION**

### **CHAPTER 3.78 - ACQUISITION OF COUNTY PROPERTY FOR PARK PURPOSES**

#### **Sections:**

- 3.78.010 Authorization for Payment.
- 3.78.020 Title Reports.
- 3.78.030 Clearing of Title.
- 3.78.040 Retaining Property with Cloud on Title.

#### **3.78.010 Authorization for Payment.**

(Amended by Ordinance No. 173369, effective May 12, 1999.) In all cases, past, present or future, in which an ordinance provides for the acquisition of park property from Multnomah County and where Multnomah County does not furnish an abstract or title insurance, the City Auditor is hereby authorized to draw and deliver a check in favor of Multnomah County for the amount to be paid for the deed from the county unless such ordinance indicates specifically a purpose to disregard this Chapter and thereupon the Auditor shall submit the matter to the City Attorney.

#### **3.78.020 Title Reports.**

The City Attorney hereby is authorized to obtain a policy of title insurance covering any particular parcel or parcels of property purchased in the past or in the future from Multnomah County for park and playground purposes. The expense of such title reports shall be chargeable to the public recreational areas fund.

#### **3.78.030 Clearing of Title.**

The City Attorney hereby is authorized to initiate and prosecute whatever legal action is necessary in his opinion to clear the title to any property covered by this Chapter and in any case, past, present or future, where he deems it necessary. Any expense incident thereto shall be chargeable to the public recreational areas fund.

#### **3.78.040 Retaining Property with Cloud on Title.**

Authority is hereby granted to accept and retain any property covered by this Chapter that has cloud on the title when and if the City Attorney renders an opinion that such cloud on title is not be deemed in imminent hazard.

**TITLE 3  
ADMINISTRATION**

- B.** Facilitate constructive working partnerships between City leaders and newcomer community leadership.
- C.** Provide a forum for setting integration goals between City bureaus and community organizations.
- D.** Provide technical support and policy advice to City Council offices and City bureaus.
- E.** Serve as a consultant and advocate to local, state and federal agencies on policies impacting immigrant and refugee communities, as capacity allows.
- F.** Provide a report to City Council on policy and practice outcomes on an annual basis.
- G.** Engage in the City's annual budget process.

**3.131.040 Organization and Meetings.**

The Commission shall adopt bylaws and rules of procedure, and specify procedures for public testimony. The Commission shall elect each year a Chair or Co-Chairs and such other officers as the Commission may from time to time establish. The Commission shall meet at least quarterly, and may meet more often. The Commission Chair(s), in consultation with the Commissioner-in-Charge and the Director of the Bureau staffing the New Portlanders program, or their designee, shall set the agenda for Commission meetings.

## **TITLE 3 ADMINISTRATION**

### **CHAPTER 3.132 - COMMUNITY INVOLVEMENT COMMITTEE FOR LEGISLATIVE PROJECTS UNDER THE COMPREHENSIVE PLAN.**

(Chapter added by Ordinance No. 188177, effective  
January 1, 2018.)

#### **Sections:**

- 3.132.010 Purpose.
- 3.132.020 Membership, Meetings, and Organization.

#### **3.132.010 Purpose.**

The Community Involvement Committee (CIC), an independent advisory body, is charged with reviewing, commenting and advising City staff on the community involvement elements of legislative projects that implement Portland's Comprehensive Plan. The Committee will:

- A. Recommend changes to and assessments of ongoing and project-specific community involvement practices to bring them closer into alignment with the Comprehensive Plan Community Involvement goals and policies.
- B. Approve and update the Community Engagement Manual over time to reflect emerging best practices.

#### **3.132.020 Membership, Meetings, and Organization.**

The Community Involvement Committee members shall be appointed by the Commissioner-in-Charge of the Bureau of Planning and Sustainability and confirmed by the City Council. The Committee will consist of at least 5 and no more than 12 members. The appointed membership shall be broadly representative of geographic areas and interests and from a reasonably broad spectrum of lived experience, particularly in under-served and under-represented communities. Members must live, work, worship or be enrolled in school within the City of Portland and/or volunteer for a nonprofit within the City of Portland.

- A. **Appointments and Terms.** The Commissioner-in-Charge of the Bureau of Planning and Sustainability shall appoint members of the Community Involvement Committee. Appointment to the Community Involvement Committee shall be for a three-year term, renewable for a second term. If a position is vacated during a term, the Commissioner-in-Charge of the Bureau shall appoint a member to serve for the unexpired term. Members appointed to the Community Involvement Committee serve at the pleasure of the Commissioner-in-Charge of the Bureau of Planning and Sustainability. Members of the Committee may be dismissed at the discretion of the Commissioner-in-Charge.

**TITLE 3**  
**ADMINISTRATION**

- B.** Meetings, Officers, and Subcommittees.
  - 1.** The Community Involvement Committee shall meet at least five times yearly and as otherwise necessary to conduct its business. Meetings shall be conducted in accordance with bylaws adopted by the Director of the Bureau of Planning and Sustainability.
  - 2.** The Community Involvement Committee may divide its members into subcommittees which are authorized to act on behalf of the committee for an assigned purpose, such as gathering information.
- C.** Attendance. Members of the Community Involvement Committee are expected to attend each meeting of the committee. The Commissioner-in-Charge may replace any member who accrues unexcused absences from two or more consecutive meetings or more than 50 percent of the meetings in any year.
- D.** Compensation. Community Involvement Committee members shall serve without compensation.

## **TITLE 3 ADMINISTRATION**

### **CHAPTER 3.133 - RENTAL SERVICES COMMISSION (RSC)**

(Chapter added by Ordinance No. 188633, effective  
October 4, 2017.)

#### **Sections:**

- 3.133.010 Rental Services Commission Established.
- 3.133.020 Mission.
- 3.133.030 Duties.
- 3.133.040 Membership.
- 3.133.050 Meetings.
- 3.133.060 Quorum.
- 3.133.070 Chairperson.
- 3.133.080 Committees.
- 3.133.090 Staffing.
- 3.133.100 Cooperation.

#### **3.133.010 Rental Services Commission Established.**

There is established in the City of Portland, the Rental Services Commission (RSC). The RSC is designated as the primary public forum for discussion of landlord-tenant housing regulation and programs in the City of Portland.

#### **3.133.020 Mission.**

The mission of the RSC is to advise the Director of the Portland Housing Bureau (PHB), the Housing Commissioner, and the Portland City Council on issues related to landlord-tenant housing regulation and programs, and to provide a forum for public input on the rental housing market.

#### **3.133.030 Duties.**

The RSC is delegated to carry out the following functions:

##### **A. Landlord-Tenant Policy Initiatives**

1. Advise PHB on landlord-tenant policy issues and initiatives
2. Provide feedback and recommendations on landlord-tenant policy initiatives and policy changes

##### **B. Landlord-Tenant Regulation and Programs**

1. Advise PHB on landlord-tenant regulation and programs
2. Monitor PHB landlord-tenant regulation and programs



**TITLE 3  
ADMINISTRATION**

3. Advise PHB on the effectiveness of landlord-tenant regulation and programs.
4. Recommend improvements to PHB's landlord-tenant regulation and programs
5. Recommend annual performance goals for PHB's landlord-tenant regulation and programs

**C. Budget**

1. Advise the Portland Housing Advisory Commission (PHAC), the Housing Commissioner, and City Council on the budget for PHB's landlord-tenant regulation and programs
2. Provide feedback on landlord-tenant funding priorities

**D. Community Involvement**

1. Provide an inclusive forum for the community's discussion of its landlord-tenant housing needs and priorities
2. Assist PHB in strengthening community partnerships

**3.133.040 Membership.**

- A. The RSC shall consist of at least 7 members and no more than 13 members.
- B. The Housing Commissioner shall appoint all members.
- C. The Housing Commissioner may designate a staff representative to serve as a non-voting ex officio member.
- D. Membership appointment shall take into account the socio-economic, gender, racial, ethnic, cultural, and geographic diversity of the City of Portland.
- E. Membership appointment shall achieve a balanced citizen-based perspective encompassing knowledge of fair housing, rent-regulated and market-rate rental housing, landlord-tenant law, property management, renter-owner advocacy, rental housing access, and rental housing health & safety.
- F. Members shall not simultaneously serve on the PHAC and the RSC.
- G. For the initial appointments to the RSC, the following terms will apply: five to seven members shall be appointed for a term of 2 years; and six to eight members for a term of 3 years.

### **TITLE 3**

#### **ADMINISTRATION**

- H.** All subsequent appointments to the RSC shall be for terms of 2 years.
- I.** Members shall be eligible to renew their appointment at the discretion of the Housing Commissioner.
- J.** The Housing Commissioner may rescind the appointment of a member if the duties and responsibilities of appointment are not being fulfilled.
- K.** Members shall serve without compensation.
- L.** PHB may approve the reimbursement of reasonable expenses of the appointed members that are incurred while a member is fulfilling authorized duties of the RSC.
- M.** The RSC shall adopt necessary bylaws and rules of procedure for the governance of its proceedings.

#### **3.133.050 Meetings.**

The RSC will hold regularly scheduled meetings at least every 2 months, at a schedule established by the RSC.

#### **3.133.060 Quorum.**

Quorum shall be defined as one-half plus one of all appointed members. A quorum shall be necessary for the RSC to take any action. Actions of the RSC shall be passed upon a majority vote of the members present.

#### **3.133.070 Chairperson.**

A chairperson shall be selected from the appointed members by the Housing Commissioner.

#### **3.133.080 Committees.**

- A.** The RSC will have the following standing committees, whose membership shall be determined by the Chairperson and the Housing Commissioner:
  - 1.** Executive Committee
  - 2.** Bylaws and Rules Committee
- B.** The RSC may create non-standing committees and task forces to address issues within the parameters of the RSC's duties and responsibilities.

#### **3.133.090 Staffing.**

PHB staff shall be provided for the ongoing functions of the RSC. PHB shall provide notice of RSC meetings to liaison staff representing the other key implementing and policy agencies in the local rental housing delivery system.

**3.133.100 Cooperation.**

All city boards, bureaus, and agencies of any kind shall cooperate with the RSC and shall provide information at the RSC's request.



## **TITLE 11 - TREES**

### **TABLE OF CONTENTS**

<b>Chapter 11.05</b>	<b>LEGAL FRAMEWORK AND RELATIONSHIPS</b>
11.05.010	Purpose.
11.05.020	Official Name.
11.05.030	Authority.
11.05.040	Where This Title Applies.
11.05.050	Other City, Regional, State and Federal Regulations.
11.05.100	Severability.
11.05.110	Liability.
<b>Chapter 11.10</b>	<b>ADMINISTRATION OF THIS TITLE</b>
11.10.010	Code Administration and Duties Performed.
11.10.020	Determining What Regulations Apply.
11.10.030	General Rules for Reading and Applying the Code Language.
11.10.040	Amendments to this Title.
11.10.050	Interagency and Intergovernmental Agreements.
11.10.060	Performance Guarantees.
11.10.070	Fees.
<b>CHAPTER 11.15</b>	<b>FUNDS AND CONTRIBUTIONS</b>
11.15.010	Tree Planting and Preservation Fund.
11.15.020	Urban Forestry Fund.
11.15.030	Charitable Contributions.
11.15.040	Annual Report.
<b>CHAPTER 11.20</b>	<b>URBAN FORESTRY PROGRAM</b>
11.20.010	Purpose.
11.20.020	The Urban Forestry Commission.
11.20.030	The Urban Forestry Appeals Board.
11.20.040	Technical Assistance.
11.20.050	The Urban Forest Plan.
11.20.060	Heritage Trees.
<b>CHAPTER 11.30</b>	<b>TREE PERMIT PROCEDURES</b>
11.30.010	Purpose.
11.30.020	Description of Tree Permits.
11.30.030	Applications.
11.30.040	Procedure for Type A Permits.
11.30.050	Procedure for Type B Permits.
11.30.100	Regulations That Apply After Permit Approval.

<b>CHAPTER 11.40</b>	<b>TREE PERMIT REQUIREMENTS (no associated DEVELOPMENT)</b>
11.40.010	Purpose.
11.40.020	When a Tree Permit is Required.
11.40.030	Exemptions.
11.40.040	City and Street Tree Permit Standards and Review Factors.
11.40.050	Private Tree Permit Standards and Review Factors.
11.40.060	Tree Replacement Requirements.
<b>CHAPTER 11.45</b>	<b>PROGRAMMATIC TREE PERMITS</b>
11.45.010	Purpose.
11.45.020	Application Requirements.
11.45.030	Procedures.
11.45.040	Review Factors.
11.45.050	Permit Specifications.
<b>CHAPTER 11.50</b>	<b>TREES IN DEVELOPMENT SITUATIONS</b>
11.50.010	Purpose.
11.50.020	When a Tree Plan is Required.
11.50.030	Development Impact Area Option for Large Sites and Streets.
11.50.040	Tree Preservation Standards.
11.50.050	On-Site Tree Density Standards.
11.50.060	Street Tree Planting Standards.
11.50.070	Tree Plan Submittal Requirements.
11.50.080	Changes to Approved Tree Plans and Emergency Tree Removal.
11.50.090	Administrative Review.
11.50.095	Appeals.
<b>CHAPTER 11.60</b>	<b>TECHNICAL SPECIFICATIONS</b>
11.60.010	Where These Regulations Apply.
11.60.020	Tree Planting Specifications.
11.60.030	Tree Protection Specifications.
11.60.040	Tree Pruning and Root Cutting Specifications.
11.60.050	Tree Removal Specifications.
11.60.060	Tree Maintenance Specifications and Responsibilities.
<b>CHAPTER 11.70</b>	<b>ENFORCEMENT</b>
11.70.010	Purpose.
11.70.020	Where These Regulations Apply.
11.70.030	Violations.
11.70.040	Enforcement Authority.
11.70.050	Prohibited Actions.
11.70.060	Inspections and Evidence.
11.70.070	Notice and Order.
11.70.080	Correcting Violations of this Title.

- 11.70.090 Enforcement Actions.
- 11.70.100 Nuisance Abatement.
- 11.70.110 Summary Abatement.
- 11.70.120 Administrative Review.
- 11.70.130 Appeals to the Code Hearings Officer.
- 11.70.140 Further Appeals.
- 11.70.150 Waivers.

**CHAPTER 11.80      DEFINITIONS AND MEASUREMENTS**

- 11.80.010 Defining Words.
- 11.80.020 Definitions and Measurements.





## **TITLE 11 TREES**

- a.** Preparing and submitting the annual budget request for the operation of the Parks and Recreation Forestry Division to the Director of the Bureau of Parks and Recreation; and
    - b.** Providing tree maintenance or supervisory services including cutting, pruning, spraying, planting and tree removal on city managed property required by or performed by the Bureau of Parks and Recreation subject to the annual budget. Bureaus may also employ normal procedures to have such services provided by private contractors; and
  - 5.** Preserving and enhancing the urban forest by:
    - a.** Developing and periodically updating specifications for planting, pruning, removing and maintaining trees in accordance with proper arboricultural practices;
    - b.** Developing lists of recommended trees for streets as well as recommended trees for other specific objectives;
    - c.** Coordinating with the UFC and City bureaus, the development, monitoring, and reporting on implementation of the Urban Forest Plan described in Chapter 11.20; and
    - d.** Providing staff services and carrying out the other responsibilities applicable to the UFC including:
      - (1)** Preparing a monthly report on the Urban Forestry Program's activities for the Urban Forestry Commission's (UFC) review;
      - (2)** Reviewing and identifying for the UFC budget proposals, programs, and projects that could substantially affect trees or the urban forest; and
      - (3)** Analyzing potential activities for consideration in the development of the UFC's annual work plan and retreat.
- B.** BDS Director. In addition to duties specified in other City Titles, the BDS Director is responsible for:
  - 1.** Reviewing development permits for compliance with tree preservation, protection and planting requirements per Chapter 11.50;
  - 2.** Processing violations of this Title as stated in Chapter 11.70; and

## **TITLE 11 TREES**

3. Processing violations affecting trees when the violation is of a requirement of this Title and Title 33, Planning and Zoning. In such cases, the BDS Director may also consult with the City Forester.
- C. Responsible Engineer. The Responsible Engineer in consultation with the City Forester is responsible for:
1. Reviewing tentative planting proposals in public streets for the purpose of protecting existing utilities and sewer and water lines;
  2. Applying standards for planting, care, and protection of trees through development projects, including public works, and capital improvements;
  3. Planting, care, and management of trees in center medians and greenstreet facilities; and
  4. Identifying for the City Forester city programs and capital projects or significant budget proposals that would substantially affect trees or the urban forest and that warrant UFC involvement or review.
- D. Urban Forestry Commission (UFC). The roles and functions of the Urban Forestry Commission are specified in Chapter 11.20.
- E. Urban Forestry Appeals Board. The roles and composition of the Appeals Board are specified in Chapter 11.20.
- F. Code Hearings Officer. The City's Code Hearings Officer is responsible for hearing abatement cases and providing review of enforcement cases related to this Title, following the procedures in Title 22, Hearings Officer.

### **11.10.020 Determining What Regulations Apply.**

(Amended by Ordinance No. 188816, effective March 16, 2018.)

- A. Determine whether the proposed activity will require a development permit.
1. If the proposal will require a development permit, the regulations of Chapter 11.50 may apply to the proposal. Chapter 11.50 will identify when its requirements apply. If those requirements do not apply, then the requirements of Chapter 11.40 will apply. Chapter 11.50 will also direct readers to other regulations relevant to the proposal. Tree preservation and tree removal proposed as part of a development permit must be reviewed and approved as part of the development permit, regardless whether the regulations of Chapter 11.50 apply or if the proposal is exempt from the regulations. Approved activities may not commence until issuance of the development permit.

## **TITLE 11 TREES**

2. If the proposal will not require a development permit, the regulations of Chapters 11.30 and 11.40 apply to the proposal. Chapter 11.40 will also direct readers to other regulations relevant to the proposal.
  3. The regulations of those chapters are specific to City, Street, and Private Trees as defined in Chapter 11.80, Definitions and Measurements.
- B.** For regulations pertaining to Heritage Trees, refer to Chapter 11.20.

### **11.10.030 General Rules For Reading and Applying the Code Language.**

- A.** Reading and applying the code. When a conflict arises as a result of a particular tree situation spanning multiple chapters, the more specific provisions take precedence. When the conflict cannot be resolved by the more specific provision, the requirement that results in retaining the existing tree will prevail, except in cases where the public safety is jeopardized.
- B.** Terms.
1. Defining words. Words used in this Title have their dictionary meaning unless they are defined in Chapter 11.80, Definitions and Measurements. Words listed in the Definitions chapter have the specific meaning stated, unless the context clearly indicates another meaning.
  2. Tenses and usage.
    - a. Words used in the singular include the plural. The reverse is also true.
    - b. Words used in the present tense include the future tense. The reverse is also true.
    - c. The words "shall," "will," and "may not" are mandatory.
    - d. "May" is permissive.
    - e. "Prohibited" means that a particular activity is in violation of this Title.
    - f. When used with numbers, "At least x," "Up to x," "Not more than x" and "a maximum of x" all include x.
  3. Conjunctions. Unless the context clearly indicates otherwise, the following conjunctions have the following meanings:
    - a. "And" indicates that all connected items or provisions apply;

## **TITLE 11 TREES**

- b.** "Either...or" indicates that the connected items or provisions apply singly, but not in combination.
- 4.** Lists. Lists of items that state "including the following," "such as" or similar language are not limited to just those items. The lists are intended to provide examples, but not to be exhaustive of all possibilities.

### **11.10.040 Amendments to this Title.**

#### **A. General.**

- 1.** Substantive amendments to this Title or amendments necessary to ensure conformance with other City Titles may be prepared by any bureau but will be coordinated by the Bureau charged with those responsibilities in the Title in consultation with the Bureaus of Planning and Sustainability, Parks and Recreation, Development Services, Environmental Services, Transportation and Water.
- 2.** Technical corrections and matters of simple clarification may be prepared and approved by the Auditor or City Attorney.

#### **B. Urban Forestry Commission (UFC).** The UFC shall hold at least one public hearing for proposed amendments to this Title before making a recommendation on such an amendment. A hearing is not required for technical corrections or amendments needed to ensure conformance with other City Titles.

#### **C. Planning and Sustainability Commission (PSC).** The PSC may provide input on the proposed amendments to the UFC. The PSC shall hold a public hearing for any proposed substantive amendments to Chapter 11.50 Trees In Development Situations, Chapter 11.60 Technical Specifications, or Chapter 11.70 Enforcement. A hearing is not required for technical corrections or amendments needed to ensure conformance with other City Titles.

#### **D. Notification Requirements.**

- 1.** UFC or PSC Hearing. Notice of any public hearing held by the UFC or PSC to consider a proposed substantive amendment to this Title shall be mailed to Metro, the Oregon Department of Transportation, all recognized organizations, affected bureaus and interested persons who have requested such notice. Notice shall also be published in a recognized newspaper and mailed at least 30 days prior to the hearing.
- 2.** The Urban Forestry Commission shall additionally be notified of any amendment needed to ensure conformance with other City titles or technical corrections a minimum of 14 days prior to a final decision.

3. City Council Hearing. Notice of the hearing shall be mailed to those who testified at the UFC hearing, either in person or in writing, or those who requested such notice. If hearings were not held by the UFC or PSC, notice shall be mailed to all affected bureaus and persons who have requested such notice. Notice shall be published in a recognized newspaper and mailed at least 14 days prior to the hearing.
  4. The notifications required by this Section shall be the responsibility of the Bureau coordinating the amendment or technical correction.
- E. City Council. The City Council shall hold at least one public hearing on all amendments that are not considered technical. City Council makes the final decision on amendments, after considering the recommendations of the UFC and PSC and after hearing testimony from the public.
- F. Declaring an emergency. City Council may declare an emergency in accordance with the City Charter and amend this Title and associated Administrative Rules without following the process set out in this Section.

**11.10.050 Interagency and Intergovernmental Agreements.**

The City Forester or BDS Director in the course of their duties in implementing this Title may enter into agreements with other bureaus or public agencies. These interagency and intergovernmental agreements may allow the BDS Director or City Forester to delegate powers granted within this Title to or provide services to other bureaus or public agencies, subject to the requirements outlined in the agreement. Such agreements may not grant or delegate powers or authority not already assigned to the City Forester or BDS Director. Neither the BDS Director nor the City Forester may enter into any agreement under this Section that requires expenditure of City funds, unless such funds have been appropriated by the Council through the budget process.

**11.10.060 Performance Guarantees.**

- A. Applicability. The City Forester or BDS Director may require performance guarantees when an owner, applicant, or responsible person defers a planting requirement, as an assurance for performance path root protection methods, or when a violation has occurred and there is uncertainty regarding the extent of a particular tree injury.
- B. Types of guarantees. Guarantees may be in the form of a performance bond payable to the City in cash, by certified check, time certificate of deposit, irrevocable letter of credit, or other form acceptable to the City. Indemnity agreements may be used by other governmental agencies. Guarantees shall be accompanied by a contract. The form of the guarantee and contract shall be approved by the City Attorney. The City Forester and BDS Director are each authorized to accept and sign the contract for the City, and to accept the guarantee.

## **TITLE 11 TREES**

- C.** Amount of guarantee. The amount of the performance guarantee shall be equal to at least 110 percent of the estimated cost of performance as described below. The owner, applicant or responsible party shall provide written estimates by three contractors with their names and addresses. The estimates shall include as separate items all materials, labor, and other costs of the required action.
- 1.** Planting deferral. When tree planting is deferred, the cost of performance is equivalent to the payment in lieu for any trees to be planted and maintained for a 2 year period.
  - 2.** Alternate root protection method assurance. If assurances are required for alternate root protection methods, the cost of performance is the estimated cost for removing the tree, plus an equivalent payment in lieu for planting to meet the tree standards in Chapter 11.50 Trees in Development Situations.
  - 3.** Violation remedy. Should an injury result to a protected tree, and where the City Forester determines that the tree may still be viable, the property owner or responsible party may submit a performance guarantee in lieu of providing for an arborist treatment regimen or removing the tree in accordance with the provisions in Chapter 11.70. If assurances are allowed in these cases, the cost of performance is the estimated cost for removing the tree, plus an equivalent payment in lieu for replacing the tree based on mitigating at an inch for inch equivalent.
- D.** Completion. An inspection and approval of the action or improvement covered by the performance guarantee is required before the performance guarantee is returned. The inspection will be conducted by the appropriate City bureau that holds the guarantee. If the action or improvement is not completed satisfactorily within the stated time limits, the City may have the necessary action or improvement completed and seek reimbursement for the work from the performance guarantee. Any remaining funds will be returned to the owner, applicant, or responsible party.

### **11.10.070 Fees.**

- A.** Generally. The City Council may establish and amend by ordinance permit, inspection, review, enforcement, in-lieu of planting or preservation, appeal and other fees as necessary to sustain the development permit, tree permit, and other Development Service or Urban Forestry programs. All fees, charges, civil penalties, and fines established by authority of this Title will be listed in the Portland Policy Documents.
- B.** Fees in lieu of planting or preserving trees. Where allowed by other provisions of this Title, a fee may be paid into the Tree Planting and Preservation Fund in lieu of planting or preserving trees. The fee per tree is the entire cost of establishing a new tree in accordance with standards described by the City Forester. The cost includes

## **TITLE 11**

### **TREES**

materials and labor necessary to plant the tree, and to maintain it for 2 years. The fee will be reviewed annually and, if necessary, adjusted to reflect current costs. See Section 11.15.010 for more information on the Tree Planting and Preservation Fund.

## **TITLE 11 TREES**

### **CHAPTER 11.15 - FUNDS AND CONTRIBUTIONS**

#### **Sections:**

- 11.15.010 Tree Planting and Preservation Fund.
- 11.15.020 Urban Forestry Fund.
- 11.15.030 Charitable Contributions.
- 11.15.040 Annual Report.

#### **11.15.010 Tree Planting and Preservation Fund.**

- A.** Purpose. The purpose of the Tree Planting and Preservation Fund is to facilitate tree planting, to ensure mitigation or tree replacement when tree preservation or tree density standards are not met on a particular site, and to advance the City's goals for the urban forest and equitable distribution of tree-related benefits across the City.
- B.** Expenditures. Money in the Tree Planting and Preservation Fund may be used only as follows:
  - 1.** To plant trees on public or private property, including streets, in the same watershed as the site from which the funds were collected. Planting trees includes the cost of materials and labor necessary to install and establish a tree for a 2 year period;
  - 2.** To purchase conservation easements for the perpetual retention of trees and tree canopy. Such conservation easements shall allow the City to replace trees that are removed when they die or become dangerous; and
  - 3.** To acquire land to permanently protect existing trees or groves.
- C.** Contributions. Contributions to the Tree Planting and Preservation Fund may occur through a number of means, including:
  - 1.** Payment made in lieu of tree replacement as part of a tree permit issued as stated in Chapter 11.40;
  - 2.** Payment made in lieu of preservation or planting where site or street characteristics or construction requirements make it infeasible to meet the requirements of Chapter 11.50;
  - 3.** Payment of restoration fees for enforcement actions for Private Trees; and
  - 4.** Voluntary contributions. The funds shall be used within the watershed of the contributor's choosing.



- D.** Administration of the Tree Planting and Preservation Fund. The Tree Planting and Preservation Fund is administered by the City Forester, maintained in a dedicated separate account, and is independent of the general fund. Any balance in the Tree Planting and Preservation Fund will be carried forward into subsequent fiscal years.

**11.15.020 Urban Forestry Fund.**

- A.** Purpose. The purpose of the Urban Forestry Fund is to replace Street or City Trees illegally removed or damaged, to enhance the urban forest through the planting of new Street or City Trees, and to increase public awareness of trees, tree care, and values of the urban forest.
- B.** Expenditures. Money in the Urban Forestry Fund may be used as follows:
- 1.** To replace, establish, and maintain Street or City Trees illegally removed or damaged;
  - 2.** To plant, establish and maintain Street or City Trees where, in the judgment of the Forester, they will enhance the values of the Urban Forest;
  - 3.** To provide education, outreach and technical assistance to the community; and
  - 4.** Other Forestry-related actions or programs, as determined by the City Forester.
- C.** Contributions. Contributions to the Urban Forestry Fund may occur through a number of means as established by the City Forester, including:
- 1.** Payment of restoration fees, civil penalties, or civil remedies resulting from City or Street Tree enforcement actions; and
  - 2.** Voluntary contributions
- D.** Administration of Urban Forestry Fund. The Urban Forestry Fund is administered by the City Forester, maintained in a dedicated separate account, and is independent of the general fund. Any balance in the Urban Forestry Fund will be carried forward into subsequent fiscal years.

**11.15.030 Charitable Contributions.**

The City Forester may accept, on behalf of the City, gifts and contributions which are specifically designated for the purpose of planting or maintaining trees within the City. Gifts may include: nursery stock and planting supplies, vehicles, tools, pro bono consultation, education and outreach services, and real property for the purposes of open space and tree planting or preservation. Contributions may also be made to the Tree Planting and Preservation Fund or Urban Forestry Fund as described in this Chapter.

## **TITLE 11**

### **TREES**

Nothing in this Section obligates the City Forester to accept such gifts when the City Forester determines it is not in the best interests of the City to do so.

#### **11.15.040      Annual Report.**

The City Forester will provide an annual report to the Urban Forestry Commission and City Council at the end of each fiscal year. The report will include any charitable contributions received, as well as fund revenues collected and spent and the end balance in each fund. The report should also include recommendations for future expenditures of the funds and means to optimize those expenditures in the upcoming fiscal year.

- A.**     Tree Planting and Preservation Fund. The report will include a general inventory by watershed of the funds collected and number and types of trees planted or area protected through preservation easements or acquisition.
- B.**     The Urban Forestry Fund. The report will include an accounting of revenues collected and expenditures.

**CHAPTER 11.20 - URBAN FORESTRY  
PROGRAM**

**Sections:**

- 11.20.010 Purpose.
- 11.20.020 The Urban Forestry Commission.
- 11.20.030 The Urban Forestry Appeals Board.
- 11.20.040 Technical Assistance.
- 11.20.050 The Urban Forest Plan.
- 11.20.060 Heritage Trees.

**11.20.010 Purpose.**

The field of urban forestry has as its objective the cultivation and management of trees and related plants for their present and potential contribution to the physiological, sociological and economic well being of urban society. Inherent in this function is a comprehensive program designed to establish policies, goals and objectives, and implementing actions, and to educate the urban populace on the role of trees and related plants in the urban environment. In its broadest sense, urban forestry is one essential component of a multi-managerial urban system that includes neighborhoods and watersheds within the City, wildlife habitats, outdoor recreation opportunities, landscape design, green infrastructure, air filtering and greenhouse gas capture, recycling of municipal vegetative wastes and tree care in general.

**11.20.020 The Urban Forestry Commission.**

(Amended by Ordinance No. 188647, effective November 17, 2017.)

- A.** Membership. The Urban Forestry Commission consists of eleven members who have demonstrated an interest in the protection and enhancement of the urban forest, appointed by the Mayor in consultation with the Commissioner of Parks and Recreation and confirmed by the City Council. Women and multi-cultural groups shall be represented. At least three members shall have experience and expertise in arboriculture, landscape architecture or urban forestry. One member shall be on the board of a non-profit organization that has a demonstrated direct interest in the urban forest, who is not a City employee. The remaining seven members, insofar as possible, shall represent diverse geographic areas, interests, and expertise of the community.
- B.** Terms. Members will serve without compensation for terms of 4 years and may be reappointed for one additional consecutive term. After serving two consecutive terms, at least 1 year shall elapse before a member may again be reappointed to the Commission. Notwithstanding the limitations of this Section, a member of the Commission will continue to serve until the member's replacement is appointed.
- C.** Rules of order. The Urban Forestry Commission will elect its own chair and adopt such rules of procedure as it deems necessary to the conduct of its duties. Unless otherwise stated in the rule, all rules are effective upon adoption by the Commission

## **TITLE 11 TREES**

and shall be filed in the office of the City Forester and in the Portland Policy Documents repository described in Chapter 1.07.

- D.** Meetings. The Commission will meet at least ten times per year and may meet more often.
- E.** Duties. The Commission is responsible for carrying out the following duties:
  - 1.** Providing assistance in the development, periodic reviews, and updates to the Urban Forest Plan, and submitting said plan updates to the City Council for approval.
  - 2.** Reviewing and providing input on plans, policies, and projects developed pursuant to other City Code provisions which contain elements or which affect matters related to urban forestry and other matters to ensure that the policies of the Urban Forest Plan are fully considered.
  - 3.** Advising the City Forester, the Director and Commissioner-in-Charge of the Bureau of Parks and Recreation, and Citizen's Budget Advisory Committee on the preparation and contents of the annual Forestry Division budget request.
  - 4.** Considering and making recommendations to the City Council pertaining to:
    - a.** Proposed amendments to this Title;
    - b.** Heritage Tree nominations; and
    - c.** Other City bureau budget proposals that may substantially affect programs relating to trees and the urban forest.
  - 5.** Preparation of an annual report which specifically addresses the relations with and concerns of the various City bureaus and other matters brought forward by the City Forester. The report will include an evaluation of the opportunities and barriers to effective management of the urban forest, and assessment of progress of these issues identified in prior annual reports.

### **11.20.030 The Urban Forestry Appeals Board.**

- A.** Membership. The Urban Forestry Appeals Board consists of five members representing diverse interests of the Urban Forestry Commission, selected by a majority of the Commission. Members will serve without compensation for terms not to exceed their membership in the general Commission and may be reappointed.
- B.** Rules of order. The Urban Forestry Appeals Board may elect its own chair and propose rules of procedure as it deems necessary to the conduct of its duties. The

Commission will consider and adopt such rules upon majority vote. All rules become effective upon adoption by the Commission and shall be filed in the Portland Policy Documents repository described in Chapter 1.07.

- C.** Meetings. The Appeals Board will meet as required to respond and to hear appeals within the time allotted to appeals as described in this Title. Appeal hearings are open to the public.
- D.** Duties. The Appeals Board is responsible for reviewing and deciding appeals of tree permit decisions as authorized in this Title.

**11.20.040 Technical Assistance.**

When requested by the Urban Forestry Commission and Commissioner of Parks and Recreation, the City may retain the services of a professional review panel of not more than three members, either foresters, arboriculturists, landscape architects or some combination thereof to advise the Commission on the efficiency of proposed actions and planting schemes. At least one member of this panel should be very familiar with Portland. The City Forester will present a list of qualified professionals to the Urban Forestry Commission for its review and selection. A member of the professional review panel may not serve if the member has a conflict of interest.

**11.20.050 The Urban Forest Plan.**

- A.** Purpose. The Urban Forest Plan (the Plan) establishes a comprehensive framework of goals, policies, and actions to guide City management activities and decisions over the short and long term. The plan will be implemented through the individual and collective works of the City Forester and other City bureaus, agencies, citizens, organizations and other groups.
- B.** Roles. The City Forester, in consultation with the Urban Forestry Commission and City bureaus, is responsible for coordinating the development, update, and implementation of the Urban Forest Plan. Working groups made up of representatives of those bureaus and groups who contribute to the management of the City's urban forest will be formed to develop citywide action plans to implement the Plan, and to monitor and report on progress of those actions.
- C.** Updates. The Plan will periodically, and at least every 10 years, be reviewed and updated to respond to changes in the condition of the urban forest, changes in city policy or changes to applicable regulatory mandates.

**11.20.060 Heritage Trees.**

(Amended by Ordinance No. 188278, effective April 14, 2017.)

- A.** Generally. Heritage Trees are trees that because of their age, size, type, historical association or horticultural value, are of special importance to the City.

## **TITLE 11 TREES**

- B.** Nuisance trees. Trees may not be designated as Heritage Trees if, on the date they would be designated, the tree species is on the Nuisance Plant List.
- C.** Private trees. Trees on private property may not be designated as Heritage Trees without the consent of the property owner; however, the consent of a property owner will bind all successors, heirs, and assigns. When a Private Tree is designated as a Heritage Tree, the owner shall record the designation on the property deed, noting on such deed that the tree is subject to the regulations of this Title.
- D.** Designation. The Urban Forestry Commission (UFC) makes a recommendation to City Council as to whether a tree should be designated as a Heritage Tree. A recommendation to designate a tree shall be supported by at least six members of the UFC. City Council may designate a tree if it finds that the tree's health, aerial space, and open ground area for the root system have been certified as sufficient by an arborist.
- E.** Removal of designation. The Urban Forestry Commission (UFC) makes a recommendation to City Council as to whether the Heritage Tree designation should be removed from a tree. A recommendation to remove the designation shall be supported by at least six members of the UFC. City Council may remove the designation if it finds that the designation is no longer appropriate.
- F.** Heritage Tree removal. Heritage Trees may be removed only with the consent of the UFC, except as provided in Subsection I., below. The UFC shall hold a public hearing on a request to remove a Heritage Tree. Consent to remove the tree shall be supported by at least six members of the UFC.
- G.** List and plaques. The City Forester maintains a list of the City's designated Heritage Trees. The City Forester may place a plaque on or near Heritage Trees.
- H.** Maintenance and Protection. The City Forester maintains Heritage Trees located on streets and on property owned or managed by the City. Heritage trees on private property shall be maintained by the property owner. It is unlawful for any person without prior written authorization from the City Forester to remove, prune, or injure any Heritage Tree. The City Forester shall report to the Urban Forestry Commission any such authorization granted.
- I.** Emergencies.
  - 1.** If the City Forester determines that a Heritage Tree is dangerous and is a threat to public safety, the City Forester may order the tree to be removed without prior consent from the UFC.
  - 2.** In an emergency, when the City Forester is unavailable, pruning only what is necessary to abate an immediate danger may be performed without

**TITLE 11**  
**TREES**

authorization by the City Forester. Any additional work shall be performed under the provisions of this Section.

# **TITLE 11 TREES**

## **CHAPTER 11.30 - TREE PERMIT PROCEDURES**

### **Sections:**

- 11.30.010 Purpose.
- 11.30.020 Description of Tree Permits.
- 11.30.030 Applications.
- 11.30.040 Procedure for Type A Permits.
- 11.30.050 Procedure for Type B Permits.
- 11.30.100 Regulations That Apply After Permit Approval.

### **11.30.010 Purpose.**

This Chapter establishes application requirements and procedures for all tree permits required by this Title to ensure that the legal rights of individual property owners and the public are protected. Tree permits are generally required for specific tree related activity when not associated with development.

### **11.30.020 Description of Tree Permits.**

**A.** Generally. Tree permits are required for tree-related activities not associated with:

1. Heritage Trees (see Chapter 11.20);
2. Programmatic Permits (see Chapter 11.45); or
3. Tree plans or activities that require a development permit (see Chapter 11.50).

**B.** Types of Permits.

There are two types of tree permits, A and B. This Chapter sets out the procedures for each permit type, including when public notice and opportunity for public appeal are required. Applications for activities subject to both a Type A and Type B permit will be processed as a Type B permit. The type of permit may be modified during the course of the review when the City Forester finds that the standards or review factors are not met or when the approved scope of the tree activity is changed. For example, a Type A tree permit application to remove a dangerous tree may be modified to a Type B removal request when the City Forester finds the tree is not dangerous. Conversely, the City Forester may modify a Type B request to remove a Street Tree by granting a Type A pruning permit instead of allowing the removal. The standards and review factors for granting Type A or B permits are in Chapter 11.40.

Table 30-1 summarizes the public notice and appeal procedures applicable to a Type A or Type B permit.



**Table 30-1  
Public Notice and Appeal requirements for City, Street and Private Trees**

Permit Type	Proposal	City/Street or Private Tree	Public Notice/ Public May Appeal [1]
<b>A</b>	Any Type A request	City/Street Private	No
<b>B</b>	Up to four healthy < 20" diameter nuisance and non-nuisance species trees	City/Street	No
	≥ 20" diameter, healthy nuisance or non-nuisance species tree	City/Street	Yes
	More than four healthy ≥ 12" diameter nuisance and non-nuisance species trees	City/Street	
	≥ 20" diameter, healthy non-nuisance species tree [2]	Private	
	More than four healthy ≥12" diameter non-nuisance species trees	Private	

Note [1] The applicant may appeal any Type A or B permit decision.

Note [2] No public notice or opportunity for public appeal is required for removal of one healthy non-nuisance species tree >20" diameter per lot per calendar year in any residential zone.

### **11.30.030 Applications.**

- A.** Applications for Tree Permits shall:
1. Be made in writing or electronically upon forms furnished by the City;
  2. Be legible, accurate, and contain sufficient information in order to evaluate the request; and
  3. Be accompanied by the correct fee.
- B.** A separate application is required for each site, but each application may address multiple trees and multiple types of activities, such as planting, pruning, or removal.
- C.** Marking trees to be removed. Applicants for permits for tree removal shall mark each tree proposed for removal by tying or attaching yellow tagging tape around the trunk of the tree at 4.5 feet above ground level.

## **TITLE 11 TREES**

- D.** Consent to site access. By submitting an application for a tree permit, the owner and applicant agrees that authorized City representatives may enter the site during business hours for the purpose of conducting inspections related to the tree permit request.
- E.** Authority. An applicant will be authorized to apply for the Tree Permit, as described below:
  - 1.** City Trees. For City Trees, only the Bureau that owns the site may submit an application. Where the City is managing trees on lands not owned by the City, the Bureau assigned to manage or care for trees, the owner or the agent authorized to represent the property owner may submit the application.
  - 2.** Street Trees. The applicant shall be the owner of the adjacent property or be authorized by the owner of the adjacent property where the Street Tree will be planted, pruned or removed. Exceptions to this requirement include:
    - a.** The Bureau of Environmental Services shall act as applicant for permits for Street Trees in greenstreet facilities.
    - b.** The Bureau of Transportation shall act as applicant for permits for Street Trees in center medians.
    - c.** The City Forester may plant, prune or remove Street Trees without obtaining the authorization of the adjacent property owner.
    - d.** Public agencies operating under the conditions of a Programmatic Tree Permit are not required to obtain the adjacent owner's consent for tree-related work on streets.
  - 3.** Private Trees. The applicant shall be the owner of property where the tree is located or be authorized by the owner. For trees that straddle property lines, the owners of all properties where the tree is located shall authorize the application. For commonly held tracts such as open space or private street tracts, the application shall be submitted by the agent or parties authorized to represent the shared ownership interest in the tract. It is the applicant's responsibility to obtain the appropriate consent for tree permit applications.
  - 4.** City, Street and Private Trees within easements, or addressed by deed restrictions or other agreements. Any person having or asserting the right to remove trees under the terms of an easement, deed restriction or other agreement shall comply with the provisions of this Title. An easement holder, beneficiary of a deed restriction, or other person seeking to remove a tree on the property of another under an agreement is authorized to apply for permits or approvals required by this Title. The owner of a servient

tenement, the grantor of a deed restriction or other person who by agreement has authorized another to possess, occupy or use property owned by the person is authorized to apply for permits or approvals required by this Title. The presence of an easement, deed restriction or other agreement does not change the type of tree. A tree remains either a City Tree, a Street Tree or a Private Tree.

**11.30.040 Procedure for Type A Permits.**

(Amended by Ordinance No. 188278, effective April 14, 2017.) Type A permits are technical determinations regarding the facts of a particular request, and applications of city standards to ensure that work is performed in accordance with best management practices to protect trees, the public, or public infrastructure, and to ensure tree replacement. Type A permits are reviewed administratively by the City Forester. There is no public notice, and only the applicant may appeal the decision.

**A. Application.**

1. Generally. Applications for a Type A Tree Permit shall meet the requirements of Section 11.30.030, Applications.
2. Additional information required.
  - a. If the City Forester requires additional information to review an application, the City Forester will send a notice to the applicant requesting the additional information.
  - b. The applicant will have a maximum of 30 days from the date of the City Forester's notice to submit the additional information.
  - c. If the additional information is not received by the City Forester within 30 days from the date of the City Forester's notice, the application will be voided on the 31st day. The City will not refund the filing fee.

**B. Decision by the City Forester.**

1. The City Forester's decision shall be based on an evaluation of the facts and applicable standards and review factors in Chapter 11.40.
2. The City Forester may issue the permit, deny the permit, or may apply conditions of approval to the permit to ensure the request complies with the applicable review factors and standards. Type A permits may be self issued for Street Tree pruning. The applicant must agree that such pruning will be conducted in accordance with proper arboricultural practices. Self-issued permits are not subject to Subsection B.4. and may not be appealed.

## **TITLE 11 TREES**

3. Any work done under a permit shall be performed in strict accordance with the terms and provisions of this Title and conditions of approval of the permit.
  4. The City Forester shall notify the applicant of the decision in writing.
  5. If the applicant does not file a timely appeal as specified in Subsection C., below, the decision is final.
- C.** Appeal. The applicant may appeal the City Forester's decision on a tree permit. Appeals shall be:
1. Filed with the City Forester on forms prescribed by the City;
  2. Filed within 14 days from the date on the City Forester's decision; and
  3. Specifically identify how the City Forester erred in applying the standards or review factors.
- D.** Appeal process.
1. Scheduling the appeal hearing. The appeal hearing will be scheduled within 45 days of the date the appeal was filed. However, the applicant may request the hearing at a later time.
  2. Notice. Notice of the appeal hearing will be sent to the applicant at least 14 days before the hearing.
  3. Hearing.
    - a. Appeals are heard by the Urban Forestry Appeals Board (Appeals Board).
    - b. The Appeals Board will consider the application against the applicable standards or review factors, taking into consideration information provided by the applicant, appellant and City staff, and any observations made by members of the Appeals Board if they visit the site.
- E.** Appeals Board Decision.
1. The Appeals Board may affirm or reverse the City Forester's decision.
  2. The Appeals Board will give due deference to the professional judgment of the City Forester, and will reverse or remand the City Forester's decision only upon a finding that the City Forester's decision is not supported by substantial evidence, or upon a finding that the City Forester's decision was

arbitrary or capricious, an abuse of discretion or otherwise was not in accordance with the provisions of this Title.

3. The appeal decision of the Urban Forestry Appeals Board is final and may not be appealed to another review body within the City.

**11.30.050 Procedure for Type B Permits.**

(Amended by Ordinance No. 188278, effective April 14, 2017.) Type B permits involve the consideration of relevant technical and qualitative factors to prevent risks to public health and safety or significant undue impacts on neighborhood character, and to ensure that the impacts of tree removal are mitigated. Type B permits are reviewed administratively by the City Forester, and the decision may be appealed to the Urban Forestry Appeals Board by the applicant and any person adversely affected or aggrieved by the decision.

**A. Application.**

1. Generally. Application for a Type B Tree Permit shall meet the requirements of Section 11.30.030, Applications.
2. Additional information required.
  - a. If the City Forester requires additional information to review an application, the City Forester will send a notice to the applicant requesting the additional information.
  - b. The applicant will have a maximum of 30 days from the date of the City Forester's notice to submit the additional information.
  - c. If the additional information is not received by the City Forester within 30 days from the date of the City Forester's notice, the application will be voided on the 31st day. The City will not refund the filing fee.

**B. Decision by the City Forester.**

1. The City Forester's decision shall be based on an evaluation of the facts and applicable standards and review factors in Chapter 11.40.
2. The City Forester may issue the permit, deny the permit, or may apply conditions of approval to the permit to ensure the request complies with the applicable review factors and standards.
3. Any work done under a permit shall be performed in strict accordance with the terms and provisions of this Title and conditions of approval of the permit.

## **TITLE 11 TREES**

4. If the application is denied, the City Forester shall notify the applicant of the decision in writing.
  5. If the application is tentatively approved, and public notice is required per Table 30-1, the City Forester shall send notice of the pending approval to the applicant and the neighborhood association. The applicant shall post a copy of the notice on the site in a location clearly visible from the street nearest the tree.
  6. If no appeal is filed within a timely manner as specified in Subsection C., below, the decision is final. The City Forester shall notify the applicant that the decision is final.
- C.** Appeal. The applicant may appeal the City Forester's decision. In addition, when public notice is required per Table 30-1, the neighborhood association or any other person may also appeal the decision. Appeals shall be:
1. Filed with the City Forester on forms prescribed by the City;
  2. Filed within 14 days from the date of the City Forester's decision; and
  3. Specifically identify how the City Forester erred in applying the standards or review factors.
- D.** Appeal process.
1. Scheduling of the appeal hearing. The appeal hearing will be scheduled within 45 days of the date the appeal was filed. However, for good cause shown by any party, the Appeals Board may extend the hearing deadline.
  2. Notice. Notice of the appeal hearing will be sent to the applicant, the appellant, and the neighborhood association at least 14 days before the hearing. The applicant shall post a copy of the appeal hearing notice on the site in a location clearly visible from the street nearest the tree.
  3. Hearing.
    - a. Appeals are heard by the Urban Forestry Appeals Board (Appeals Board).
    - b. The Appeals Board will consider the application against the applicable standards or review factors, taking into consideration information provided by the applicant, appellant, and City staff, or observations made by members of the Appeals Board if they visit the site.

- c.** Additional testimony and evidence may be introduced at the hearing, and the Appeals Board may delay its decision to provide adequate time for other parties to respond.
- d.** If additional hearings are scheduled, the Appeals Board may, at its discretion, choose to not allow new evidence after the initial hearing.

**E. Appeals Board Decision.**

- 1.** The Appeals Board may affirm or reverse the City Forester's decision, or remand the decision to the City Forester to determine appropriate mitigation.
- 2.** The Appeals Board will give due deference to the professional judgment of the City Forester, and will reverse or remand the City Forester's decision only upon a finding that the City Forester's decision is not supported by substantial evidence, or upon a finding that the City Forester's decision was arbitrary or capricious, an abuse of discretion or otherwise was not in accordance with the provisions of this Title.
- 3.** The appeal decision of the Urban Forestry Appeals Board is final and may not be appealed to another review body within the City.

**11.30.100 Regulations That Apply After Permit Approval.**

- A.** Posting tree removal permits. Permits for tree removal shall be posted while the approved tree removal work is underway. The permit shall be posted in a location visible to pedestrians and motorists.
- B.** Certifying compliance with replacement requirements. Applicants shall certify that they have complied with the tree replacement and any other requirements or conditions stipulated on a permit, as applicable.
- C.** Permit expiration. Tree Permits expire 90 days from the date of issuance, unless a specific expiration date has been added to the permit by the City Forester or Urban Forestry Appeals Board. The reviewing authority may require a performance guarantee as described in Section 11.10.060, when replacement planting is allowed to be deferred beyond the permit expiration date.
- D.** Permit suspension or revocation. The City Forester may suspend or revoke a tree permit. The permit holder shall be notified of the suspension or revocation in writing. Permits may be suspended or revoked when:
  - 1.** The permit is issued in error;
  - 2.** The permit is issued on the basis of incorrect information supplied by the owner or applicant;

## **TITLE 11**

### **TREES**

3. The permit is issued in violation of any of the provisions of City code or an approved land use decision; or
4. The applicant, owner, or contractor listed on a permit is the subject of a pending violation of this Title for the site where the work is proposed or occurring. In such cases, the permit may be suspended until the alleged violation has been resolved.



**CHAPTER 11.40 - TREE PERMIT  
REQUIREMENTS (NO ASSOCIATED  
DEVELOPMENT)**

**Sections:**

- 11.40.010 Purpose.
- 11.40.020 When a Tree Permit is Required.
- 11.40.030 Exemptions.
- 11.40.040 City and Street Tree Permit Standards and Review Factors.
- 11.40.050 Private Tree Permit Standards and Review Factors.
- 11.40.060 Tree Replacement Requirements.

**11.40.010 Purpose.**

The purpose of this Chapter is to manage, conserve and enhance the urban forest when development activity is neither proposed nor occurring. The provisions of this Chapter encourage preservation of high quality trees, large trees, and groves; regulate pruning and planting on City-owned and managed sites and streets to protect public safety and public infrastructure; and ensure replacement for trees that are removed. The permitting procedures that are required to implement these provisions are intended to not only enforce maintenance, removal and preservation requirements but also to educate property owners about the intrinsic urban benefits of trees as well as the principles of tree care.

**11.40.020 When a Tree Permit is Required.**

(Amended by Ordinance Nos. 187216 and 188278, effective April 14, 2017.) A tree permit is required for all trees in the City of Portland as further described below, unless the activity is exempt from the requirements of this Chapter as specified in Section 11.40.030.

- A.** Street Trees. Street trees of any size are regulated by this Chapter unless otherwise specified in Table 40-1 or 40-2.
- B.** City Trees. City trees 3 or more inches in diameter are regulated by this Chapter unless otherwise specified in Table 40-1.
- C.** Private Trees. Private trees 12 or more inches in diameter are regulated by this Chapter unless otherwise specified in Table 40-1. Trees required to be preserved by a condition of a land use review may be subject to other requirements. All applicable Zoning Code landscape requirements, including landscape buffers and parking lot landscaping, must be met on the site.
- D.** Emergency pruning or removal. Emergency pruning or removal of trees is regulated by this Chapter as follows:
  - 1.** If an emergency exists because the condition or location of a tree presents such a clear and present danger to structures or the public that there is insufficient time to obtain a tree permit, the hazardous portion of the tree may be removed without first obtaining a required tree permit.

## **TITLE 11**

### **TREES**

- 2.** In the course of performing unexpected or emergency road, sewer or water maintenance activities, representatives of the Responsible Engineer may trim, prune or remove a tree as required to perform the immediate work without first obtaining a required tree permit. If such activities occur during normal business hours, these representatives shall first attempt to contact the City Forester to determine if technical assistance can be made immediately available. If such assistance is not immediately available, then the pruning or removal may occur in accordance with proper arboricultural practices.
  - 3.** Any person who prunes or removes a tree under the provisions of this Subsection shall, within 7 days of such action, apply for a Type A tree permit. The application shall include photographs or other documentation to prove that an emergency existed. The City Forester will evaluate the information to determine whether an emergency existed. Failure to submit an application or provide information documenting the emergency nature of the event may be pursued as a violation per Chapter 11.70.
- E.** State, Federal and court orders. Trees that must be removed or pruned by an order of a court, or of a State or Federal agency are not subject to the public notice and appeal procedures of Chapter 11.30 and approval standards and review factors of this Chapter. However, a tree permit is required and the tree replacement requirements of this Chapter shall be met.
- F.** Hazardous Material Cleanup Orders. Hazardous material cleanup orders, are not subject to the permit procedures of this Title; however, a person removing a regulated tree pursuant to a Hazardous Material Cleanup Order must comply with the tree replacement requirements of this Chapter.
- G.** Trees on levees. Trees on levees that have been identified by a public Drainage District as violating federal regulations or requirements are subject to the requirements of this Chapter for a Type A permit for removal of trees. Required replacement trees shall be placed outside the critical cross section area of the levee, and may be placed on any property in the same watershed that is owned by the applicant; or on property for which the applicant possesses a legal instrument approved by the City, such as an easement, deed restriction, or interagency agreement, sufficient to carry out and ensure success of the replacement.

# TITLE 11 TREES

**Table 40-1**  
**Tree Removal in Overlay Zones and Plan Districts [1]**

Overlay Zone or Plan District	T11 Tree Size	Title 11 tree permits for removing[2]	T33 Tree Size	Title 33 Zoning Code review for removing
Environmental conservation and protection overlay zones "c" "p" See: 33.430.080	<b>Street</b> all <b>City</b> ≥ 3" <b>Private</b> ≥ 6"	<ul style="list-style-type: none"> <li>• Trees within 10 feet of buildings or attached structures</li> <li>• Nuisance species trees</li> <li>• Non-native non-nuisance trees</li> <li>• Dead, Dying, or Dangerous trees when wood 12 inches in diameter and greater is left in the same ownership, unless the City Forester approves removal of diseased wood from the site because it will threaten the health of other trees</li> <li>• Trees projecting into a City-designated view corridor</li> </ul>	<b>Street</b> all <b>City</b> all <b>Private</b> all	<ul style="list-style-type: none"> <li>• Healthy native trees that do not meet the applicable Title 11 situations listed in this table</li> </ul>
Greenway overlay zones "n" "q" "g" "i" "r" See: 33.440.320	<b>Street</b> all <b>City</b> ≥ 3" <b>Private</b> ≥ 6"	<ul style="list-style-type: none"> <li>• Nuisance species trees</li> <li>• Dangerous trees</li> <li>• Trees landward of the greenway setback in "g" "i" "r" overlays</li> </ul>	<b>Street</b> all <b>City</b> all <b>Private</b> all	<ul style="list-style-type: none"> <li>• Native Trees</li> <li>• Non-native non-nuisance trees</li> <li>• Dead or dying trees</li> <li>• Trees not meeting the listed situations when located within or riverward of the greenway setback in "g" "i" "r" overlays</li> <li>• Trees not meeting the listed situations when located in "n" "q" overlays</li> </ul>
Pleasant Valley Natural Resources Overlay Zone "v" See: 33.465.080	<b>Street</b> all <b>City</b> ≥ 3" <b>Private</b> ≥ 6"	<ul style="list-style-type: none"> <li>• Trees within 10 feet of buildings or attached structures</li> <li>• Nuisance species trees</li> <li>• Non-native non-nuisance trees</li> <li>• Dead, Dying, or Dangerous trees when wood 12 inches in diameter and greater is left in the same ownership, unless the City Forester approves removal of diseased wood from the site because it will threaten the health of other trees</li> </ul>	<b>Street</b> all <b>City</b> all <b>Private</b> all	<ul style="list-style-type: none"> <li>• Healthy native trees that do not meet the applicable Title 11 situations listed in this table</li> </ul>
Scenic Resource Overlay "s"  Only applies to trees that are within the scenic corridor setback. See: 33.480.040 B.2.a.	<b>Street</b> all <b>City</b> ≥ 3" <b>Private</b> ≥ 6"	<ul style="list-style-type: none"> <li>• Trees within 10 feet of buildings or attached structures</li> <li>• Nuisance species trees</li> <li>• Dead, Dying, or Dangerous trees</li> <li>• Trees associated with the repair and maintenance of water, sewer or storm water lines</li> <li>• Trees within 20 feet of a public safety RF Transmission Facility</li> <li>• Street, City, or Private trees up to and including 12 inches diameter provided that replanting per 33.480.040.B.2.h(7) is met [3]</li> </ul>	<b>Street</b> ≥ 6" <b>City</b> ≥ 6" <b>Private</b> ≥ 6"	<ul style="list-style-type: none"> <li>• Trees within the scenic corridor setbacks that do not meet the applicable Title 11 situations listed in this table</li> </ul>

# TITLE 11 TREES

**Table 40-1  
Tree Removal in Overlay Zones and Plan Districts [1]**

<b>Overlay Zone or Plan District</b>	<b>T11 Tree Size</b>	<b>Title 11 tree permits for removing[2]</b>	<b>T33 Tree Size</b>	<b>Title 33 Zoning Code review for removing</b>
Cascade Station/Portland International Center Plan District See: 33.508.340  Only applies to trees located in a "c" or "p" overlay	<b>Street</b> all <b>City</b> ≥ 3" <b>Private</b> ≥ 6"	<ul style="list-style-type: none"> <li>• Trees within 10 feet of buildings or attached structures</li> <li>• Nuisance species trees</li> <li>• Non-native non-nuisance trees</li> <li>• Dead, Dying, or Dangerous trees when wood 12 inches in diameter and greater is left in the same ownership, unless the City Forester approves removal of diseased wood from the site because it will threaten the health of other trees</li> <li>• Trees projecting into a City-designated view corridor</li> </ul>	<b>Street</b> all <b>City</b> all <b>Private</b> all	<ul style="list-style-type: none"> <li>• Healthy native trees that do not meet the applicable Title 11 situations listed in this table</li> </ul>
Columbia South Shore Plan District See: 33.515.262 & 33.515.274  Only applies to trees located in a "c" or "p" overlay	<b>Street</b> all <b>City</b> ≥ 3" <b>Private</b> ≥ 6"	<ul style="list-style-type: none"> <li>• Trees within 10 feet of buildings or attached structures</li> <li>• Nuisance species trees</li> <li>• Dead, Dying, or Dangerous trees when wood 12 inches in diameter and greater is left in the same ownership, unless the City Forester approves removal of diseased wood from the site because it will threaten the health of other trees</li> </ul>	<b>Street</b> all <b>City</b> all <b>Private</b> all	<ul style="list-style-type: none"> <li>• Healthy native trees that do not meet the applicable Title 11 situations listed in this table</li> <li>• Healthy non-native non-nuisance trees that do not meet the applicable Title 11 situations listed in this table</li> </ul>
Johnson Creek Basin Plan District 33.537.125  <ul style="list-style-type: none"> <li>• Only applies to trees:</li> <li>• Within 20 feet of the Springwater Corridor lot line;</li> <li>• On a site with any portion in the special flood hazard area; and/or</li> <li>• On a site with any portion in the South Subdistrict.</li> </ul>	<b>Street</b> all <b>City</b> ≥ 3" <b>Private</b> ≥ 6"	<ul style="list-style-type: none"> <li>• All Street Trees</li> <li>• Nuisance species trees</li> <li>• Trees within 10 feet of buildings, attached structures, or right-of-way improvements</li> <li>• Dead, Dying, or Dangerous trees</li> <li>• Trees associated with the repair and maintenance of water, sewer or storm water lines</li> <li>• Any other 6" to 12" tree provided that at least two trees are planted. [3]</li> <li>Trees removed within 20 feet of the Springwater Corridor must be replaced within 20 feet of the corridor</li> </ul>	<b>Street</b> n/a <b>City</b> ≥ 6" <b>Private</b> ≥ 6"	<ul style="list-style-type: none"> <li>• Trees within 20 feet of the Springwater Corridor lot line; on a site with any portion in the special flood hazard area; and/or on a site with any portion in the South Subdistrict that do not meet the applicable Title 11 situations listed in this table</li> </ul>
Portland International Airport Plan District See: 33.565.540 Applies only to trees located in a "c" or "p" overlay	<b>Street</b> all <b>City</b> ≥ 3" <b>Private</b> ≥ 6"	<ul style="list-style-type: none"> <li>• Trees within 10 feet of buildings or attached structures</li> <li>• Nuisance species trees</li> <li>• Non-native non-nuisance trees</li> <li>• Dead, Dying, or Dangerous trees when wood 12 inches in diameter and greater is left in the same ownership, unless the City Forester approves removal of diseased wood from the site because it will threaten the health of other trees. This does not apply in landscaped areas of golf courses</li> <li>• Trees projecting into a City-designated view corridor</li> </ul>	<b>Street</b> all <b>City</b> all <b>Private</b> all	<ul style="list-style-type: none"> <li>• Healthy native trees that do not meet the applicable Title 11 situations listed in this table</li> </ul>

## TITLE 11 TREES

<b>Table 40-1</b> <b>Tree Removal in Overlay Zones and Plan Districts [1]</b>				
<b>Overlay Zone or Plan District</b>	<b>T11 Tree Size</b>	<b>Title 11 tree permits for removing[2]</b>	<b>T33 Tree Size</b>	<b>Title 33 Zoning Code review for removing</b>
Rocky Butte Plan District See: 33.570.040	<b>Street</b> all <b>City</b> ≥ 3" <b>Private</b> ≥ 6"	<ul style="list-style-type: none"> <li>• All Street Trees</li> <li>• Nuisance species trees</li> <li>• Trees within 10 feet of buildings, attached structures, or right-of-way improvements</li> <li>• Dead, Dying, or Dangerous trees</li> <li>• Trees associated with the repair and maintenance of water, sewer or storm water lines</li> <li>• Any other 6" to 12" diameter tree provided that at least two trees are planted [3]</li> </ul>	<b>Street</b> n/a <b>City</b> ≥ 6" <b>Private</b> ≥ 6"	Trees that do not meet the applicable Title 11 situations listed in this table
South Auditorium Plan District See: 33.580.130	<b>Street</b> all <b>City</b> ≥ 3" <b>Private</b> ≥ 6"	<ul style="list-style-type: none"> <li>• Dead, Dying, or Dangerous trees provided at least one tree is planted in the same general location or in accordance with the adopted landscaping plan</li> </ul>	<b>Street</b> all <b>City</b> ≥ 6" <b>Private</b> ≥ 6"	Trees that do not meet the applicable Title 11 situations listed in this table
Note [1] If a site is in more than one overlay zone or Plan District, the regulations for both areas apply. [2] All Plan Districts and overlay zones require tree replacement, or as allowed by the City Forester. [3] Minimum planting is required to meet zoning code requirements.				

### 11.40.030 Exemptions.

The following are exempt from the requirements of this Chapter:

- A.** Heritage Trees. Heritage Trees are addressed in Chapter 11.20:
- B.** Trees outside City Limits. Trees that are outside the City Limits, including "County Urban Pocket Areas."
- C.** Programmatic permits. Activities carried out by public agencies operating under a programmatic permit per Chapter 11.45.
- D.** Tree Removal in association with development permits addressed through Chapter 11.50, Trees in Development Situations.
- E.** Agricultural use. Trees on lots that are part of an allowed farm or forest operation, including plant nurseries, when such removal is a customary and necessary activity for the associated agricultural use as provided for in Title 33, Planning and Zoning. Timber harvesting is subject to Oregon Department of Forestry requirements, ORS Chapter 527, and OAR Divisions 600-665.
- F.** Work done by the City Forester and City Forestry crews involving City and Street Trees. However, the City Forester shall keep records of the location and number of City and Street Trees planted, pruned, and removed.

# TITLE 11 TREES

## 11.40.040 City and Street Tree Permit Standards and Review Factors.

(Amended by Ordinance No. 188278, effective April 14, 2017.) Type A and B permit applications for tree related work affecting City or Street Trees shall be reviewed using the following applicable review factors and standards in accordance with the application procedures set forth in Chapter 11.30.

**Table 40-2  
Summary of Permit Requirements for City and Street Trees**

Activity	Permit Type	Tree Replacement [1] (See Section 11.40.060)	Public Notice / Public May Appeal
No Permit is required for: - pruning branches <1/2" or roots <1/4" - removing City Trees <3" in diameter; - removing street trees that are sucker shoots, self-sown trees < 1/2"; or - other activities that are exempt from the requirements of this Chapter (see 11.40.030).			
Planting trees Pruning branches larger than 1/2" or roots larger than 1/4" Other activities as described in 11.40.040 A.3	A	n/a	No
Removal of any regulated tree that is: - dead, dying, or dangerous	A	tree for tree	No
<b>Removing up to 4 healthy trees per site, or abutting right of way per year as follows:</b>			
- less than 3" in diameter	A[2]	tree for tree	No
- 3 to <12" in diameter	B	tree for tree	No
- 12 to <20" in diameter	B	tree for tree	No
- 20" and larger in diameter	B	inch for inch	Yes
<b>Removing more than 4 healthy trees per site, or abutting right of way per year as follows:</b>			
- less than 3" in diameter	A [2]	tree for tree	No
- 3 to <12" in diameter	B	tree for tree	No
- > 12" in diameter	B	inch for inch	Yes
- 20" and larger in diameter	B	inch for inch	Yes

[1] "Tree for Tree" means one tree is required to be planted for each tree removed. "inch for inch" means the City Forester may require up to an equivalent number of inches be planted for the total diameter inches of the tree being removed.

[2] Applies to all Street Trees, in addition to any other City Trees planted as part of a landscaping or mitigation requirement, including trees planted to replace trees removed under a previous tree permit.

### A. Standards and Review Factors for Type A Permits for City and Street Trees.

#### 1. Planting. Planting shall meet the specifications in Chapter 11.60 and the following:

- a. Street Trees. If the City Forester determines that a proposed Street Tree planting is suitable for the space available, and that the species of the tree is appropriate for the location, then the City Forester will grant the permit.

The Responsible Engineer may require the City Forester to submit planting proposals in streets for review for the purpose of protecting existing utilities and sewer branches, and to ensure that the proposed

## **TITLE 11 TREES**

trees are not likely to obstruct the visibility of drivers, cyclists or pedestrians.

- b.** City Trees. If the City Forester determines that a proposed planting on City property is of a species of tree appropriate for the site and that the applicant has the written consent of the City bureau to whom responsibility for the property has been assigned, the City Forester will grant the permit.
- 2.** Pruning or root cutting. The City Forester will grant a permit for pruning of branches 1/2 inch or larger or cutting of roots 1/4 inch or larger if the applicant demonstrates to the City Forester's satisfaction that the pruning or root cutting will be performed in accordance with proper arboricultural practices, and that it will not adversely impact the health or structural integrity of the tree.
- 3.** Other activities. A permit is required to attach permanent objects (e.g. lights, signs, or artwork) to a tree or its supports (e.g. guides, wires, stakes), or for any other type of activity the City Forester determines has the potential to harm a City or Street Tree. In reviewing these requests, the City Forester may impose limitations on the method, location, or duration of such activities.
- 4.** Removal. Trees shall be replaced as indicated in Table 40-2. The City Forester will grant a permit to remove a tree if the City Forester determines that the proposed removal is exempt or allowed by Title 33, Planning and Zoning; and meets at least one of the following:
  - a.** Dead trees. The tree is dead or has been damaged beyond repair or where not enough live tissue, green leaves, limbs, roots or branches exist to sustain life.
  - b.** Dying trees. The tree is in an advanced state of decline because it is diseased, infested by insects, or rotting and cannot be saved by reasonable treatment or pruning, or must be removed to prevent spread of the infestation or disease to other trees or is imminently likely to become a danger or die. The City Forester may apply a condition of approval to the permit to require specific disposal methods for infected wood.
  - c.** Dangerous trees. The City Forester will evaluate the removal request by first evaluating practicable alternatives to the removal. If the City Forester finds either that the cost of the alternatives significantly exceeds the value of the tree, or that such alternatives will not substantially alleviate the dangerous condition, the City Forester will grant the permit.

## **TITLE 11 TREES**

- B.** Standards and Review Factors for Type B Permits for City and Street Trees. Because Type B permits for City and Street Trees are required only for removal; the standards and review factors of this Subsection are specific to tree removal.
- 1.** Standards. The City Forester shall determine that the following standards are met before granting a Type B permit:
    - a.** For trees located in one of the overlay zones or plan districts identified in Table 40-1, the proposed removal is exempt or allowed by Title 33, Planning and Zoning;
    - b.** The tree is not required to be preserved by a condition of a land use review, provision of this Title or the Zoning Code, or as part of a required stormwater facility;
    - c.** Trees removed shall be replaced as specified in Table 40-2.
  - 2.** Review Factors. The City, in the absence of extraordinary circumstances, will not permit the removal of a healthy, functioning Street Tree. Maintenance or replacements of sidewalks or curbs, removal of tree litter, or other minor inconveniences do not constitute extraordinary circumstances. Decisions regarding removal of healthy, functioning Street Trees are fact-specific, and are made on a case-by-case basis by the City Forester. In determining whether extraordinary circumstances exist that warrant removal of a healthy tree, the City Forester will consider:
    - a.** Whether the species of tree is appropriate for its location, and whether it is a nuisance species tree;
    - b.** Whether the tree's crown, stem or root growth habit has developed in a manner that would prevent continued healthy growth or is negatively impacting other trees;
    - c.** Whether the maintenance of the tree creates an unreasonable burden for the property owner; and
    - d.** The impact of removal and replanting on the neighborhood streetscape and any adopted historic or other design guidelines.

### **11.40.050 Private Tree Permit Standards and Review Factors.**

Type A and B permit applications for tree related work affecting Private Trees shall be reviewed using the following applicable review factors and standards in accordance with the application procedures set forth in Chapter 11.30.



**Table 40-3  
Summary of Permit Requirements for Private Trees**

<b>Activity</b>	<b>Permit Type</b>	<b>Tree Replacement[1] (See Section 11.40.060)</b>	<b>Public Notice / Public May Appeal</b>
No permit is required for: - planting trees - pruning trees outside of the environmental protection (p), environmental conservation (c), or Pleasant Valley Natural Resource (v) overlay zones; - removal of trees smaller than the sizes regulated by this chapter (see 11.40.020 B.); or - other activities that are exempt from the requirements of this chapter (see 11.40.030)			
Pruning native trees in c, p, or v overlay zones	A	n/a	No
Removal of any tree that is: - dead, dying, or dangerous - a nuisance species identified in the Portland Plant List - located within 10 feet of building or attached structure	A	tree for tree	No
<b>Removing up to 4 healthy non-nuisance species trees per site per year as follows:</b>			
- Smaller than 20" diameter	A	tree for tree	No
- 20" diameter and larger	B	inch for inch	Yes[2]
<b>Removing more than 4 healthy non-nuisance species trees per site per year as follows:</b>			
12" diameter and larger	B	inch for inch	Yes

[1] "Tree for Tree" means one tree is required to be planted for each tree removed, "inch for inch" means the City Forester may require up to an equivalent number of inches be planted for the total diameter inches of the tree being removed.

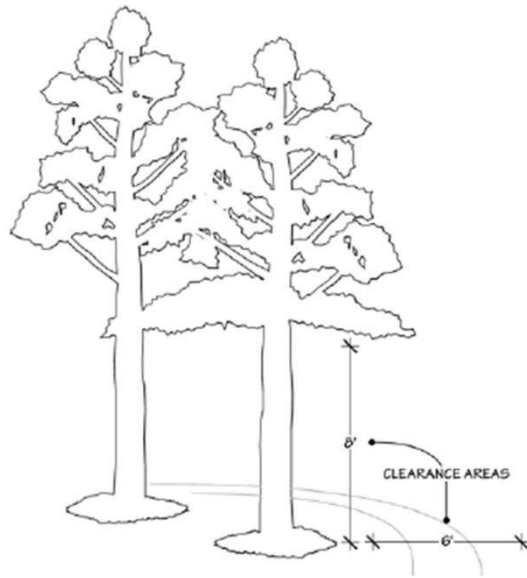
[2] No public notice or opportunity for public appeal is required for removal of one healthy tree > 20" diameter per lot per year in any residential zone.

**A. Standards and Review Factors for Type A Permits for Private Trees.**

- 1. Pruning.** A pruning permit is required only if the tree is a native tree in the Environmental (c, p) or Pleasant Valley Natural Resource (v) Overlay Zones.
  - a. Exceptions.** A permit is not required for pruning trees in the following situations:
    - (1)** Pruning trees located within 10 feet of a building or attached structure;
    - (2)** Pruning coniferous trees that are within 30 feet of structures, when the structure is within the wildfire hazard zone as shown on the City's Wildfire Hazard Zone Map;
    - (3)** Pruning to abate an immediate danger;
    - (4)** Pruning for trail maintenance when not exceeding a height of 8 feet and a width of 6 feet as shown in Figure 40-1; or

## TITLE 11 TREES

**Figure 40-1**  
**Trail Vegetation Pruning and Maintenance Area**



- (5) Crown maintenance and crown reduction of trees within the Portland International Airport Plan District or Cascade Station/Portland International Center Plan District that project above or will, upon maturity project above the height limit delineated by the "h" overlay zone or are identified as attracting wildlife species of concern related to air traffic safety.
- b. Standards. The City Forester will grant a Type A Permit for pruning if the applicant demonstrates to the City Forester's satisfaction that the pruning will meet the following:

  - (1) Pruning is limited to 5 native trees per calendar year per 10,000 square feet of site area;
  - (2) An arborist shall prepare and submit a pruning plan and supervise or conduct the work. The pruning plan shall describe the nature and extent of the proposed pruning as necessary to ensure proper arboricultural practices are followed; and
  - (3) Additional pruning may be allowed if the applicable criteria are met through an environmental review or natural resource review per Title 33, Planning and Zoning.

## **TITLE 11 TREES**

2. Removal. Trees shall be replaced as indicated in Table 40-3. The City Forester will grant a permit to remove a tree if the City Forester determines that the proposed removal is exempt or allowed by Title 33, Planning and Zoning; and meets at least one of the following:
  - a. Dead trees. The tree is dead or has been damaged beyond repair or where not enough live tissue, green leaves, limbs, roots or branches exist to sustain life.
  - b. Dying trees. The tree is in an advanced state of decline because it is diseased, infested by insects, or rotting and cannot be saved by reasonable treatment or pruning, or must be removed to prevent spread of the infestation or disease to other trees or is imminently likely to become a danger or die. The City Forester may apply a condition of approval to the permit to require specific disposal methods for infected wood.
  - c. Dangerous trees. The City Forester may evaluate the removal request by first evaluating practicable alternatives to the removal. If the City Forester finds either that the cost of the alternatives significantly exceeds the value of the tree, or that such alternatives will not substantially alleviate the dangerous condition, the City Forester will grant the permit.
  - d. Nuisance species trees. The tree is listed on the "Nuisance Plant List".
  - e. Trees within 10 feet of a building or attached structure. The trunk of the tree at its base is located completely or partially within 10 horizontal feet of the wall of a building or attached structure.
  - f. Healthy trees. Up to 4 healthy trees may be removed per site per calendar year if each tree meets the following:
    - (1) Each tree is less than 20 inches in diameter;
    - (2) None of the trees are Heritage Trees; and
    - (3) None of the trees are required to be preserved by a condition of a land use review, provision of this Title or the Zoning Code, or as part of a required stormwater facility;

- B. Standards and Review Factors for Type B Permits for Private Trees. Because Type B permits for Private Trees are required only for removal; the standards and review factors of this Subsection are specific to tree removal.

## **TITLE 11 TREES**

- 1.** Standards. The City Forester shall determine that the following standards are met before granting a Type B permit:
  - a.** For trees located in one of the overlay zones or plan districts identified in Table 40-1, the proposed removal is exempt or allowed by Title 33, Planning and Zoning;
  - b.** The tree is not required to be preserved by a condition of a land use review, or provision of this Title or the Zoning Code; and
  - c.** Trees removed shall be replaced as specified in Table 40-3.
- 2.** Review Factors. The City encourages retention of healthy Private Trees where practical alternatives to removal exist, and where those alternatives meet the owner's objectives for reasonable use and enjoyment of the property. Factors are considered to ensure that significant adverse impacts are avoided or mitigated, weighing the broader economic, ecological, and community concerns. These decisions are fact-specific and are made on a case-by-case basis. In making these decisions, the City Forester will consider:
  - a.** Whether there are practical alternatives that meet the owner's objectives without removing the tree;
  - b.** Whether the species of tree is appropriate for its location;
  - c.** Whether the tree's crown, stem, or root growth habit has developed in a manner that would prevent continued healthy growth or is negatively impacting other trees; and
  - d.** Whether the removal will significantly affect public safety or neighborhood character based on the following:
    - (1)** The age, size, form, general condition, pruning history and any unique qualities or attributes of the trees;
    - (2)** The visibility of the trees from public streets and accessways;
    - (3)** The cumulative impacts of current and prior tree removals in the area; and
    - (4)** When the tree is associated with a grove, whether removal of the tree will have a significant adverse impact on the viability of other trees or make other trees considerably more vulnerable to windthrow.

**11.40.060 Tree Replacement Requirements.**

Generally, the City Forester will require replacement of trees removed under a Tree Permit as specified in Subsection A. However, the City Forester may instead allow payment into the Tree Planting and Preservation Fund as specified in Subsection B., or may waive or reduce the replacement requirement as specified in Subsection C.

**A. Tree replacement specifications**

1. Quantity. Specific tree replacement requirements are shown in Tables 40-2 and 40-3. Where the requirement specifies "up to inch for inch" replacement, the City Forester will determine the appropriate number of new trees that are required based on the total number of diameter inches of the trees removed. The replacement requirement will compensate for the lost functions of trees removed, and ensure the application meets the applicable standards and review factors.
2. Planting. Size, species, location, timing of planting, and on-going maintenance of replacement trees shall be in accordance with the technical specifications in Chapter 11.60.

**B. Payment into Tree Planting and Preservation Fund.** When the City Forester determines that there is insufficient or unsuitable area to accommodate some or all of the replacement trees within the street planting area or site, the City Forester may require payment into the Tree Planting and Preservation Fund instead of requiring replacement trees. Payment is based on the adopted fee schedule.

**C. Waivers.** The City Forester may waive or reduce the replacement requirement when the City Forester determines:

1. The abutting right-of-way and site already meet the tree density standards of Chapter 11.50; or
2. That the full mitigation required by this Chapter would impose an unreasonable burden on the applicant.

## **TITLE 11 TREES**

### **CHAPTER 11.45 - PROGRAMMATIC TREE PERMITS**

#### **Sections:**

- 11.45.010 Purpose.
- 11.45.020 Application Requirements.
- 11.45.030 Procedures.
- 11.45.040 Review Factors.
- 11.45.050 Permit Specifications.

#### **11.45.010 Purpose.**

Programmatic Permits may be issued by the City Forester for routine public facility or utility operation, repair and replacement, on-going maintenance programs, and for resource enhancement programs managed by a public agency. The purpose of a Programmatic Permit is to eliminate the need for individual tree removal, pruning or planting permits for ongoing activities that cover a wide geographic area and may include City, Street, and Private Trees. Programmatic permits are not subject to the standards, review factors, or general procedures of the Type A or B permits, but are instead evaluated to prevent cumulative adverse impacts of the activities and ensure that on balance the activities will meet the goals and objectives of the Urban Forest Plan in a reasonable time period. Tree preservation, protection, removal, and planting when associated with a development permit are subject to the procedures found in Chapter 11.50 and not these tree permit requirements.

#### **11.45.020 Application Requirements.**

- A.** Applications for Programmatic Tree Permits shall:
  - 1.** Be made in writing or electronically upon forms furnished by the City;
  - 2.** Be legible, accurate, and contain sufficient information in order to evaluate the request; and
  - 3.** Be accompanied by the correct fee.
- B.** Authority. Programmatic Permits may only be obtained by Public Agencies and Utilities as defined in this Title. Consultation on applicability is encouraged prior to application submittal.

#### **11.45.030 Procedures.**

(Amended by Ordinance Nos. 188278 and 188647, effective November 17, 2017.)

- A.** Requesting Additional Information.
  - 1.** If the City Forester requires additional information to review an application, the City Forester will send a notice to the applicant requesting the additional information.

2. The applicant will have a maximum of 30 days from the date of the City Forester's notice to submit the additional information.
3. If the additional information is not received by the City Forester within 30 days from the date of the City Forester's notice, the application will be voided on the 31st day. The City will not refund the filing fee.

**B.** Notice. When the City Forester determines that the application contains sufficient information, the City Forester shall mail notice by US mail or electronically to all recognized organizations within the geographic area affected by the permit request. The notice shall announce the permit application and provide instructions for obtaining additional information, providing comments or to request notification of the City Forester's decision.

In addition to the public notice, the City Forester will provide a summary of pending and approved Programmatic Permits to the Urban Forestry Commission.

**C.** Decision. The City Forester shall take action to approve, approve with conditions, or deny a Programmatic Permit request within 120 days of determining an application contains sufficient information. The decision will be based on an evaluation of the request against the applicable review factors in Section 11.45.040.

**D.** Permit limitations.

1. Time Limits. The City Forester may approve a Programmatic Permit for a period of up to 5 years. An annual report from the applicant to the City Forester on activity conducted under the permit is required.

2. Tree Size Limits.

a. The programmatic permit will not allow the removal of healthy non-nuisance species trees 6 or more inches in diameter, except as provided in Subsection D.2.b., below.

b. If an applicant requests removal of healthy non-nuisance species trees 6 or more inches in diameter, an opportunity for public appeal shall be provided in accordance with Subsection F.2.b.

c. For any request, the City Forester may further limit allowed tree removal in order to meet the review factors in Section 11.45.040.

3. Tree Work Limits. All work conducted under a programmatic permit must be conducted in accordance with proper arboricultural practices.

**E.** Revocation. The City Forester may revoke a Programmatic Permit upon finding the applicant is not adhering to the limitations imposed or is acting beyond the activities

## **TITLE 11 TREES**

permitted by the Programmatic Permit. Non compliance with the Programmatic Permit may also be cause for any other enforcement action as stated in this Title.

### **F. Appeals.**

- 1.** Timely Filing. Appeals shall be filed on forms as prescribed by the City within 14 days from the date of the written decision. Such appeals shall specifically identify in writing how the decision-maker erred in the decision.
- 2.** Appellant.
  - a.** An applicant may appeal a denial, required conditions or specifications of an approval, or the revocation of any Programmatic Permit. Appeal Hearings will be conducted as specified in Subsections 11.30.040 D. through E.
  - b.** The public may appeal an approval, required conditions or specifications of Programmatic Permits that authorize the removal of healthy non-nuisance species trees 6 or more inches in diameter. Appeal Hearings will be conducted as specified in Subsections 11.30.050 C. through E.
- 3.** Appeal Body Referral. The Appeals Board may refer the appeal request to the full Urban Forestry Commission.

### **11.45.040 Review Factors.**

The City Forester may approve a Programmatic Permit upon finding that the following review factors are met or will be met with conditions:

- A.** The proposed activity will result in a net gain to the urban forest functions and benefits described in the purpose statement of Chapter 11.05, considering the applicants proposed performance measures, proposed tree planting and other proposed means to improve the overall health of the urban forest.
- B.** The applicant's proposed outreach and notification program, if warranted, will adequately and in a timely manner alert neighboring residents, businesses and the City prior to conducting work authorized under the programmatic permit.

### **11.45.050 Permit Specifications.**

Approved permits shall include the following specifications. The City Forester may modify these specifications during the permit period in order to respond to concerns, changes in regulations, or previously unforeseen issues, provided the applicant is notified in writing and provided an opportunity to appeal the change in accordance with Section 11.45.030, above:

- A.** Duration of permit;



**TITLE 11**  
**TREES**

- B.** Geographic area covered by the permit;
- C.** Permitted activities and any restrictions on the method, number, type, location or timing of activities;
- D.** Procedures and thresholds for informing neighboring residents, businesses and the City of upcoming permitted activities; and
- E.** Monitoring, performance tracking and reporting requirements. The City Forester may prescribe rules or procedures that specify the manner in which such tracking and reporting occur.

## **TITLE 11 TREES**

### **CHAPTER 11.50 - TREES IN DEVELOPMENT SITUATIONS**

#### **Sections:**

- 11.50.010 Purpose.
- 11.50.020 When a Tree Plan is Required.
- 11.50.030 Development Impact Area Option for Large Sites and Streets.
- 11.50.040 Tree Preservation Standards.
- 11.50.050 On-Site Tree Density Standards.
- 11.50.060 Street Tree Planting Standards.
- 11.50.070 Tree Plan Submittal Requirements.
- 11.50.080 Changes to Approved Tree Plans and Emergency Tree Removal.
- 11.50.090 Administrative Review.
- 11.50.095 Appeals.

#### **11.50.010 Purpose.**

The regulations of this Chapter support and complement other City development requirements, with a focus on achieving baseline tree preservation and total tree capacity on a site, considering the anticipated use and level of development. This Chapter regulates the removal, protection and planting of trees through the development process to encourage development, where practicable, to incorporate existing trees, particularly high quality or larger trees and groves, into the site design, to retain sufficient space to plant new trees, and to ensure suitable tree replacement when trees are removed. It is the intent of these provisions to lessen the impact of tree removal and to ensure mitigation when tree preservation standards are not met.

#### **11.50.020 When a Tree Plan is Required.**

(Amended by Ordinance No. 188816, effective March 16, 2018.) A tree plan is required in conjunction with all development permits, unless there are no Private Trees 12 inches or more in diameter, no City Trees 6 inches or more in diameter, and/or no Street Trees 3 inches or more in diameter, and the site or activity is exempt from Section 11.50.050 On-Site Tree Density Standards; and Section 11.50.060 Street Tree Planting Standards. If multiple development permits are required for a development proposal, including demolitions and subsequent construction, the same Tree Plan shall be included with each permit. For tree removal when no development permit is required, following completion of the development permit, or when tree preservation does not apply per Subsection 11.50.040 A.1., see Chapter 11.40.

#### **11.50.030 Development Impact Area Option For Large Sites and Streets.**

(Amended by Ordinance No. 188278, effective April 14, 2017.) Where development is proposed on a site larger than one acre or where work is occurring in the street and is not associated with an adjacent development site, the applicant may choose to establish a development impact area. For sites using the development impact area option, tree preservation requirements shall be based on the trees within the development impact area and tree density will be based on meeting Option A as applied only to the area within the

development impact area. Trees may be planted to meet tree density requirement elsewhere on the site.

**11.50.040 Tree Preservation Standards.**

(Amended by Ordinance Nos. 187675, 188278 and 188816, effective March 16, 2018.)

**A.** Where these regulations apply.

- 1.** This Section applies to trees within the City of Portland and trees on sites within the County Urban Pocket Areas in the following situations. On sites where these regulations do not apply, tree removal is subject to the requirements of Chapter 11.40, Tree Permit Requirements.
  - a.** On sites. Development activities with ground disturbance or a construction staging area greater than 100 square feet on unpaved portions of the site within the root protection zone, as defined in Subsection 11.60.030 C.1.a., of one or more Private Trees 12 or more inches in diameter and/or one or more City Trees 6 or more inches in diameter.
  - b.** In streets. Development activities with ground disturbance or construction staging not limited to existing paved surfaces where there are one or more Street Trees 3 or more inches in diameter.
- 2.** Any Heritage Trees and trees required to be preserved through a land use condition of approval or tree preservation plan cannot be removed using the provisions in this Chapter, but may be counted toward the tree preservation requirements of this Section.

**B.** Exemptions. The following are exempt from the tree preservation standards of this Section:

- 1.** On portions of sites located within an IH, IG1, EX, CX, CS, or CM zone.
- 2.** On sites that are less than 5,000 square feet in area.
- 3.** On sites that have existing or proposed building coverage of 85 percent or more.
- 4.** Trees that are dead, dying, dangerous, or a nuisance species, as documented in a Tree Plan per Subsection 11.50.070 B. These are subtracted from the total number of trees to be addressed by the standards.
- 5.** Trees exempted from this standard by a land use decision.

## TITLE 11 TREES

6. Tree preservation requirements approved in a land division or planned development review under Title 33, Planning and Zoning and the requirements of that review are still in effect.
  7. Repair and replacement of existing fences and decks that are not changing in footprint or length when no trees are to be removed as a part of the project.
- C. Tree Preservation Requirement. Any trees preserved shall be protected in accordance with the specifications in Section 11.60.030. The regulations for Private Trees in Subsection 11.50.040 C.1. sunset after December 31, 2019. After December 31, 2019 the regulations in effect will be those in effect on January 1, 2015.
1. Private Trees.
    - a. General tree preservation.
      - (1) Retention. An applicant shall preserve and protect at least 1/3 of the non-exempt trees 12 inches and larger in diameter located completely or partially on the development site, unless mitigation occurs per Subsection 11.50.040 C.1.a.(2) below. Retaining trees at least 6 and less than 12 inches in diameter that are documented in a report prepared by an arborist or landscape professional to be Garry Oak (*Quercus garryana*), Pacific Madrone (*Arbutus menziesii*), Pacific Yew (*Taxus brevifolia*), Ponderosa Pine (*Pinus ponderosa*), or Western Flowering Dogwood (*Cornus nuttallii*) species are not included in the total count of trees on the site but may be used toward meeting the preservation standard.
      - (2) Mitigation. For each tree not preserved and protected below the 1/3 requirement, payment to the Tree Planting and Preservation Fund is required as shown in Table 50-1. The fee is calculated using the per-inch Restoration Fee for Tree Removal in the adopted fee schedule for Title 11. In cases where more than one tree is proposed for removal in excess of that allowed by Subsection 11.50.040 C.1.a.(1), the mitigation payment required to meet the 1/3 retention standard is based on the largest tree or trees proposed for removal.

**Table 50-1  
Required Mitigation**

<b>Size of Tree Removed (inches in diameter)</b>	<b>Required Mitigation</b>
At least 12 and less than 20	The cost of (2) two-inch diameter replacement trees
At least 20 and less than 36	The cost of (4) two-inch diameter replacement trees
At least 36 or more	The cost per inch of tree removed

**b.** Preservation of trees 36 inches or greater.

- (1)** Retention. An applicant shall preserve and protect all non-exempt trees 36 inches in diameter or greater located completely or partially on the development site, unless mitigation and notice occurs per Subsections 11.50.040 C.1.b.(2) and 11.50.040 C.1.b.(3), below. Retention or mitigation of these trees may also be used to meet the standards for general tree preservation in Subsection 11.50.040 C.1.a. above.
- (2)** Mitigation. For each tree 36 or more inches in diameter not preserved and protected, payment to the Tree Planting and Preservation Fund is required as shown in Table 50-1. The fee is calculated using the per-inch Restoration Fee for Tree Removal in the adopted fee schedule for Title 11.
- (3)** Notice. If a tree 36 inches or greater in diameter is not preserved and protected as allowed by Subsection 11.50.040 C.1.b.(2) above, the property owner or the property owner's representative must post a notice on the site and send a notice to the recognized Neighborhood Association and District Coalition in which the site is located. The notices are for notification purposes only. The notices do not provide for public comment on the proposal or for appeal of the proposal. The property owner or the property owner's representative must provide a signed certification to the Bureau of Development Services that a notice was posted on the site and a notice was sent to the Neighborhood Association and District Coalition. The development permit may not be issued until the business day following the day the notification period is completed.
  - (a)** The posted notice must:

## TITLE 11

# TREES

- (i)** Be posted on the site for at least 45 calendar days prior to development permit issuance;
  - (ii)** Be posted within 10 feet of the street lot line nearest the tree or trees to be removed;
  - (iii)** Include the date of posting and the date of the end of the notification period;
  - (iv)** Include a site plan at least 8.5 x 11 inches in size showing the location and description of the trees(s) to be removed including diameter inch size(s); and
  - (v)** Include contact information for the property owner or the property owner's representative.
- The notices to the Neighborhood Association and District Coalition must:
- (i)** Be e-mailed or mailed to the Neighborhood Association and District Coalition using the contact information maintained by the Office of Neighborhood Involvement. If mailed, the notice must be sent via certified or registered mail. The date of the e-mail or the mailing must be at least 45 calendar days prior to development permit issuance;
  - (ii)** Include a description of the trees(s) to be removed including diameter inch size(s); and
  - (iii)** Include contact information for the property owner or the property owner's representative.

## **TITLE 11 TREES**

Portland Housing Bureau may adopt administrative rules for the administration of Subsection 11.50.040 C.1.b.(4).

- c. Exception for Capital Improvement Projects. Trees on private property that are part of a capital improvement project and within the development impact area are regulated as City and Street Trees.

### **2. City and Street Trees.**

- a. Retention. For development on City owned or managed sites, new public streets, or improvements to existing streets, applicants are required to consult with the City Forester at the preliminary project design phase if City or Street Tree removal is likely to occur to complete the project. The purpose of this consultation is to identify potential impacts and opportunities to retain existing trees, as well as any measures required to protect trees on site, on adjacent sites, or in the street.
- b. Mitigation. Any required mitigation specified below shall occur on the site, in the street planter strip, or in the same watershed either by planting or a payment into the Tree Planting and Preservation Fund. The City Forester may reduce or waive the following mitigation requirements.
  - (1) Approved Street Tree removal in conjunction with improvements to partially or fully unimproved streets. Each tree at least 12 inches in diameter that is allowed to be removed shall be replaced with at least one tree. Trees planted to meet Street Tree Planting Standards will be credited toward meeting this requirement.
  - (2) Any other Street or City Tree allowed to be removed that is 6 or more inches in diameter shall be replaced with at least one tree in addition to trees required to meet required tree density or Street Tree planting standards.

### **11.50.050 On-Site Tree Density Standards.**

(Amended by Ordinance Nos. 187675 and 188278, effective April 14, 2017.)

- A. Where these Regulations Apply. This Section applies to sites within the City of Portland and the County Urban Pocket Areas. Unless exempted in Subsection 11.50.050 B., the following are subject to the On-Site Tree Density Standards:
  - 1. New Development;

## **TITLE 11 TREES**

- 2.** Exterior alterations to existing development with a project valuation that is more than the threshold stated in Subsection 33.258.070 D.2.a.

### **B. Exemptions.**

- 1.** The following development activities are exempt from the on-site tree density standards:
  - a.** A specific condition of land use review approval exempts the site from these density standards;
  - b.** The site is within the Portland International Airport Plan District or Cascade Station/Portland International Center Plan District and is subject to the Airport Landscape Standards; see Title 33, Planning and Zoning.
  - c.** On portions of sites located within an IH, IG1, EX, CX, CS, or CM zone.
  - d.** Work conducted under Demolition, Site Development, Septic, Plumbing or Zoning Permits.
- 2.** Sites with the following primary uses are exempt from the on-site tree density standards:
  - a.** Railroad Yards;
  - b.** Waste Related;
  - c.** Agriculture;
  - d.** Aviation and Surface Passenger Terminals;
  - e.** Detention Facilities;
  - f.** Mining;
  - g.** Radio Frequency Transmission Facilities; or
  - h.** Rail Lines and Utility Corridors;

- C.** New development shall meet City specifications and standards in Chapter 11.60 and the on-site tree density requirements in Subsection D., below. Exterior alterations shall meet City specifications and standards in Chapter 11.60 and the on-site tree density requirements in Subsection D., below, but are only required to spend 10 percent of project value on the requirements in Subsection D. and the nonconforming upgrades required by Chapter 33.258, Nonconforming Situations.



**D. On-Site Tree Density Requirements.**

1. **Required Tree Area.** The required tree area is based on the size of the site and the type and size of proposed and existing development as shown in Table 50-2. Applicants may choose Option A or Option B for calculating required tree area except only Option A may be used to apply standards to a "Development Impact Area".

**Table 50-2  
Determining Required Tree Area**

<b>Development Type</b>	<b>Option A</b>	<b>Option B</b>
One and Two Family Residential	40 percent of site or development impact area	Site area minus building coverage of existing and proposed development
Multi Dwelling Residential	20 percent of site or development impact area	
Commercial/Office/Retail/Mixed Use	15 percent of site or development impact area	
Industrial	10 percent of site or development impact area	
Institutional	25 percent of site or development impact area	
Other	25 percent of site or development impact area	

2. **Required Tree Density.** The required tree area shall be planted with some combination of large, medium or small canopy trees at the following rates:

**Table 50-3  
Number of Required Trees and Minimum Planting Area**

<b>Canopy size category (at maturity)</b>	<b>Number of trees required per size of tree area</b>	<b>Min. required planting area per tree (min. dimension)</b>
Large	1 per 1,000 s.f.	150 s.f. (10' x 10')
Medium	1 per 500 s.f.	75 s.f. (5' x 5')
Small	1 per 300 s.f.	50 s.f. (3' x 3')

Refer to Chapter 11.60, Technical Specifications, to calculate tree canopy size categories. When the canopy size category of the tree species is not or cannot be determined, the tree will be considered a small canopy tree.

3. **Tree Density Credits**

## **TITLE 11 TREES**

- a.** Trees planted on site to meet any required stormwater or other landscaping requirement may be counted toward the On-site tree density requirements.
  - b.** Trees that are retained and protected, including trees preserved per Section 11.50.040, may be credited as follows:
    - (1)** Trees between 1.5 and less than 6 inches in diameter count as one small canopy size tree.
    - (2)** Trees 6 or more inches in diameter count as one medium canopy size tree for each full increment of 6 diameter inches.
  - c.** Payment in lieu of planting. The applicant may pay a fee to the Tree Planting and Preservation Fund per Section 11.15.010 equivalent to the cost of planting and establishing one 1.5-inch caliper tree. The fee per tree shall be credited at a rate of one medium canopy size tree.
  - d.** On sites less than or equal to 3,000 square feet, healthy non-nuisance species trees planted or retained in the street planting strip may be credited as described in this Subsection.

### **11.50.060 Street Tree Planting Standards.**

- A.** Where these Regulations Apply.
  - 1.** This Section applies to projects within or fronting on any City-owned or -managed streets.
  - 2.** For alterations where the project value is more than \$25,000, the cost of required Street Tree improvements is limited to 10 percent of the value of the proposed development.
- B.** Exemptions. The following are exempt from the Street Tree planting standards of this Section:
  - 1.** Development activities associated with the following:
    - a.** Additions, alterations, repair or new construction where the project value is less than \$25,000;
    - b.** Activity that is limited to the street, and does not modify or create sidewalks, tree wells, or tree planting areas; or
    - c.** Demolition Permits.

## **TITLE 11 TREES**

2. Where physical constraints preclude meeting the Street Tree planting requirement because:
  - a. Existing above or below grade utilities prevent planting Street Trees; or
  - b. The design of the street will not accommodate Street Tree planting because the planting strip is less than 3 feet wide, there is not a planting strip, or there is insufficient space to add tree wells.

### **C. Street Tree Planting Requirement.**

Any proposed change in width in a public street right-of-way or any other proposed street improvement, including the development of new public streets, shall include areas for tree and landscape planting where practical. Utility connections and specifications for planting such areas shall be integrated into the site plan. Specific locations and species will be determined by the Responsible Engineer and City Forester. Planting in public streets shall meet the specifications in Chapter 11.60 and the following:

1. One Street Tree shall be planted or retained for each full increment of 25 linear feet per side of street frontage. When the required number of trees cannot be planted, a fee in lieu of planting may be required. For City projects, required trees that cannot be planted within the improvement area may be planted elsewhere in the same watershed, instead of paying a fee in lieu of planting.
2. For projects affecting 200 linear feet of frontage or more, the applicant shall consult on the design of such improvements with the City Forester early in the project design phase to identify opportunities to integrate existing trees and maximize new Street Tree planting considering the planter width, the location of existing and proposed utilities, and visibility requirements.
3. When new streets are being created in association with a land division, Street Tree planting may be deferred until the completion of the building permit on each new lot, subject to City Forester approval.

### **11.50.070 Tree Plan Submittal Requirements.**

(Amended by Ordinance Nos. 188278 and 188816, effective March 16, 2018.) A tree plan submittal shall include the following information. The tree plan information may be combined with other relevant plan sheets. The submittal shall include:

- A. Site Plan Requirements. The site plan shall include the following information with sufficient detail to show that the proposal complies with this Title.
  1. Existing improvements;

## **TITLE 11 TREES**

2. Any construction staging areas on site;
3. Proposed alterations including structures, impervious area, grading, and utilities;
4. Existing trees:

**a.** Trees on the site. Indicate the location and the diameter size of:

- (1) Any Heritage Trees and trees required to be preserved as part of a condition of land use approval. These shall be clearly labeled.
- (2) All Private Trees at least 12 inches in diameter and all City Trees at least 6 inches in diameter located completely or partially on the site. On City-owned or -managed sites, the City Forester may require smaller size trees be shown.
- (3) Trees smaller than 6 inches in diameter shall be shown when proposed to be retained for tree density credit.

Applicants using the development impact area option as described in Section 11.50.030, need only identify the trees on the site inside and 25 feet beyond the edge of the development impact area. For all trees shown to be retained on the tree plan (including those beyond the development impact area), tree protection methods detailed in Subsection 11.60.030 C. shall be implemented. Protection may be achieved using the Prescriptive Path or Performance Path.

**b.** Trees in the street. For the street area adjacent to the development site or development impact area, indicate the location and the diameter size of:

- (1) Any Heritage Trees and trees required to be preserved as part of a condition of land use approval
- (2) All trees within the adjacent street that are at least 3 inches in diameter.

Applicants using the development impact area option within the street when not associated with development of an adjacent site as described in Section 11.50.030, shall identify trees 3 or more inches in diameter inside and 15 feet beyond the edge of the development impact area.

When the 15 foot distance extends onto property outside the street, provide estimates of tree size and location for trees 6 or more inches in diameter on these properties. For City projects, the City Forester or project arborist may determine which trees on adjacent properties shall be identified per this Subsection.

5. Proposed tree activity:
  - a. Indicate trees to be retained and proposed tree protection measures meeting the specifications in Chapter 11.60. Trees that are retained but are not protected in accordance with the protection requirements in Chapter 11.60 may not be used to meet preservation or density standards.
  - b. Indicate trees to be removed. It is the applicant's responsibility to obtain the appropriate consent from the adjacent property owner for tree removal when the tree is only partially on the site.
  - c. Show location, species, planting size and number of trees proposed to be planted. Trees to be planted shall meet the specifications in Chapter 11.60.

**B. Narrative requirements.**

1. If alternative tree protection measures are proposed, documentation addressing the requirements in Section 11.60.030, Tree Protection Specifications, shall be included.
2. If a tree is to be exempted from tree preservation standards based on poor tree health or condition, supporting documentation from an arborist shall be included.
3. If a tree is to be exempted from tree preservation standards based on it being listed on the Nuisance Plants List, supporting documentation from a landscape professional or an arborist shall be included.

**11.50.080 Changes to Approved Tree Plans and Emergency Tree Removal.**

- A. When changes are necessary to an approved Tree Plan and the changes will not affect compliance with any applicable conditions of a land use review, the change may be reviewed as a revision to the approved development permit. Any proposed revisions to the Tree Plan will be approved upon demonstrating the applicable tree preservation and density standards are met. When development activity has already commenced on the site and the applicant is proposing to retain alternate trees not

## **TITLE 11 TREES**

previously shown to be protected, an arborist report will be required that documents the alternate tree is healthy and has not been injured by the development activity.

**B.** Emergency Tree Pruning or Removal. Emergency pruning or removal of trees is regulated by this Chapter as follows:

- 1.** If an emergency exists because the condition or location of a tree presents such a clear and present danger to structures or the public that there is insufficient time to obtain a tree permit, the hazardous portion of the tree may be removed without first obtaining a revision to an approved tree plan.
- 2.** Any person who removes a tree under the provisions of this Section shall, within 7 days of such action, apply for a revision to the approved tree plan. The application shall include photographs or other documentation to prove that an emergency existed. The BDS Director will evaluate the information to determine whether an emergency existed. Failure to submit an application or provide information documenting the emergency nature of the event may be pursued as a violation per Chapter 11.70.

### **11.50.090 Administrative Review.**

(Added by Ordinance No. 1888816, March 16, 2018.)

- A.** Whenever a decision has been made under this Chapter, the property owner of the development site or that property owner's representative may request that the decision be reviewed by the BDS Director or City Forester, as applicable. The owner or owner's representative must submit a written request to the City within 180 days of the date of the decision. Such review will be conducted by the BDS Director or City Forester, as applicable. The owner or owner's representative requesting such review will be given the opportunity to present evidence. Following the review, the BDS Director or City Forester, as applicable, will issue a written determination.
- B.** Nothing in this Section limits the authority of either the BDS Director or City Forester to initiate a proceeding in accordance with Title 3 Bureau of Development Services, Title 11 Trees, and Title 22 Hearings Officer.

### **11.50.095 Appeals.**

(Added by Ordinance No. 1888816, March 16, 2018.) A determination issued as stated in Section 11.50.090 may be appealed by the property owner of the development site or that property owner's representative to the Code Hearings Officer, as provided for in Chapter 22.10 of City Code. All appeals from the Code Hearings Officer's determination in accordance with this Section will be by writ of review as authorized by Section 22.04.010 of the City Code and ORS 34.010-34.100.

**CHAPTER 11.60 - TECHNICAL  
SPECIFICATIONS**

**Sections:**

- 11.60.010 Where These Regulations Apply.
- 11.60.020 Tree Planting Specifications.
- 11.60.030 Tree Protection Specifications.
- 11.60.040 Tree Pruning and Root Cutting Specifications.
- 11.60.050 Tree Removal Specifications.
- 11.60.060 Tree Maintenance Specifications and Responsibilities.

**11.60.010 Where These Regulations Apply.**

- A.** City of Portland. This Chapter applies to all regulated trees within the City of Portland.
- B.** County Urban Pocket Areas. Trees in the County Urban Pocket Areas are subject to all regulations of this Chapter except Section 11.60.060, Tree Maintenance Specifications.

**11.60.020 Tree Planting Specifications.**

(Amended by Ordinance No. 188278, effective April 14, 2017.) The following specifications apply to trees planted to meet a requirement of this Title. These specifications may be combined with other requirements as necessary to ensure trees are properly selected, spaced, and sized.

- A.** Prohibited Locations.
  - 1.** In the South Waterfront Plan district area, planting trees is not allowed between the riverfront trail and the river at major or minor viewpoints as designated in Title 33 Planning and Zoning.
  - 2.** In the Columbia South Shore Well Field Wellhead Protection Area as designated in Title 21, planting trees over the top of polyethylene geomembrane liners installed to meet the requirements of the Columbia South Shore Well Field Wellhead Protection Manual is prohibited.
  - 3.** Trees may not be planted on or within 25 feet south of the toe of the Marine Drive levee slope.
- B.** Planting size. In general, the following represent the minimum tree planting size standard; however, the City Forester may allow smaller or require larger trees to suit the site conditions.
  - 1.** Broadleaf trees. Broadleaf trees shall meet the minimum caliper size as determined by the development type listed in Table 60-1:

## TITLE 11 TREES

**Table 60-1  
Broadleaf Tree Size Requirements**

Development Type	Tree Size	
	On Site	Street
One and Two Family Residential	1.5"	1.5"
Multi Dwelling Residential	1.5"	2"
All others	1.5"	2.5"

2. Coniferous trees. Conifer trees shall be a minimum of 5 feet in height.
3. Native tree exception. The minimum planting size for native broadleaf trees may be reduced to ½" caliper on sites when planted in an environmental (c, p), greenway (n, q, or greenway setback and riverward portion of g, i, and r overlay zones), or Pleasant Valley Natural Resource (v) overlay zone. When planting Garry Oak, Pacific Madrone, or native conifers in these areas, the minimum planting size may be reduced to a 3 to 5-gallon container size. For Street Trees in these areas, the City Forester may approve a smaller planting size for native species.

- C. Canopy size category. Tree canopy types are categorized as small, medium, or large based on the estimated canopy size at maturity. The "Portland Tree and Landscaping Manual" suggested plant lists include the size categories recognized for many trees. To determine the size category of a tree not listed in the "Portland Tree and Landscaping Manual", the applicant shall provide an objective source of information about the tree's mature height, crown spread, and growth rate. This information can come from published sources, internet sources, or nursery information such as cut sheets.

The canopy size category is calculated according to the following formulas, which incorporate the estimated height and crown spread of a mature specimen and the tree species' growth rate:

1. Small trees have a canopy factor of less than 40, Medium trees have a canopy factor from 40 to 90, and Large trees have a canopy factor greater than 90;
2. Canopy factor = (Mature height of tree) x (Mature canopy spread) x (Growth rate factor) x 0.01;
3. The growth rate factor is 3 for fast-growing trees, 2 for medium-growing trees, and 1 for slow-growing trees.

- D. Species requirements.



## **TITLE 11 TREES**

1. Species diversity. If there are fewer than 8 required trees, they may all be the same species. If there are between 8 and 24 required trees, no more than 40 percent can be of one species. If there are more than 24 required trees, no more than 24 percent can be of one species. This standard applies only to the trees being planted, not to existing trees.

For Street Trees, the City Forester may make an exception to this requirement in order to fulfill or complement an adopted street or landscape plan.

2. Nuisance species. Trees listed in the "Nuisance Plants List" are prohibited for proposed planting or required replacement.
3. Native species. Any trees required to be planted in environmental (c, p), greenway (n, q, or greenway setback and riverward portion of g, i, and r overlay zones), scenic corridors (s), or Pleasant Valley Natural Resource (v) overlay zones shall be native species. Refer to the "Portland Plant List" for information on appropriate native species for the specific site conditions. Planting activities shall be conducted with hand tools, and may not disturb other native vegetation.

In streets, the City Forester may make an exception to allow planting of non-native Street Trees in these areas when the proposed species of tree will not likely displace native species, and the soil conditions, available growing space, or other site constraints make planting a native tree species infeasible.

4. Adopted guidelines. The City Forester will require species that do not conflict with the requirements of this Section and, to the extent practical, are consistent with characteristics set forth in applicable historic design or other adopted guidelines.
5. Street Tree species. Street Tree species shall conform to the City Forester's "Recommended List of Street Trees". The City Forester may approve or require an alternate or unlisted species when the alternate species is an appropriate and viable selection and is consistent with applicable objectives of an adopted area-specific tree plan or guidelines.

### **E. Installation and establishment.**

1. Installation. All required trees shall be planted in-ground, except when in raised planters that are used to meet Bureau of Environmental Services stormwater management requirements. Plant materials shall be installed to current nursery industry standards and proper arboricultural practices. Plant materials shall be labeled for the inspector and properly supported to ensure survival. Support devices such as guy wires or stakes shall not interfere with vehicular or pedestrian movement.

## **TITLE 11 TREES**

2. **Timing.** All trees required or approved to be planted by this Title shall be planted or payment in lieu of planting made prior to the expiration of the permit or City's final acceptance of the project, as applicable. However, it is encouraged that planting occur during the wet months or as per City Forester recommendations. Planting of trees may be deferred between May 1 and September 30 upon filing a performance guarantee as provided in Section 11.10.060 or other assurance deemed acceptable by the City Forester or BDS Director as applicable.
3. **Maintenance.** Maintenance of required trees including meeting the maintenance specifications in this Chapter is the ongoing responsibility of the property owner. Trees that die shall be replaced in kind. The cost of the tree and maintenance is the responsibility of the property owner.

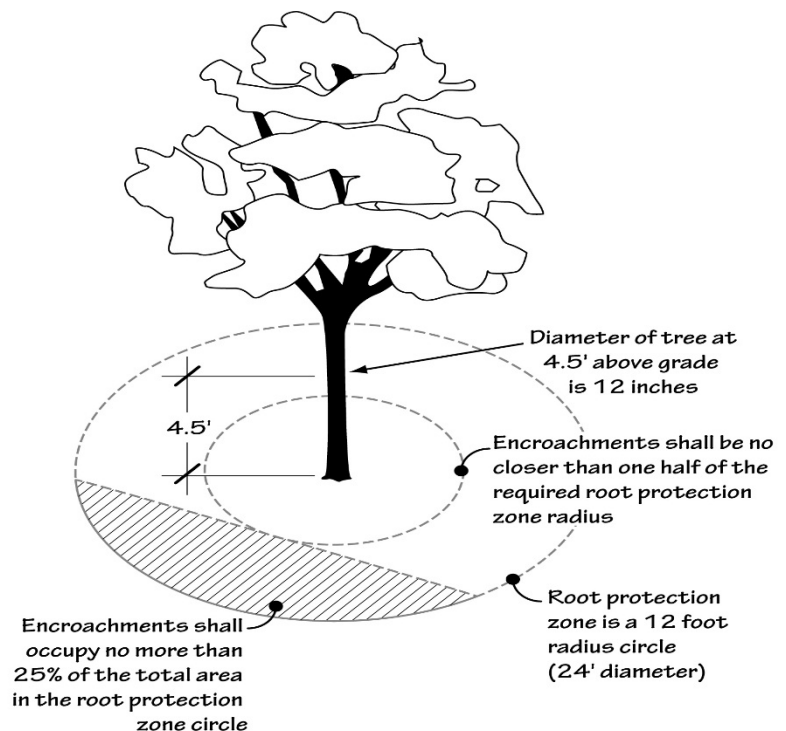
### **11.60.030 Tree Protection Specifications.**

(Amended by Ordinance No. 188278, effective April 14, 2017.)

- A. **Intent.** Tree protection during development helps to reduce the negative impacts of construction. The tree protection regulations keep the foliage crown, branch structure and trunk clear from direct contact and injury by equipment, materials or disturbances; preserve roots and soil in an intact and non-compacted state; and visibly identify the root protection zone in which no soil disturbance is permitted and other activities are restricted. Maintaining these protections through development will lessen undesirable consequences that may result from uninformed or careless acts, preserve both trees and property values, and reduce risks associated with damaged or destabilized trees.
- B. **Applicability.** These standards apply to any tree that is required to be retained on site or in the street during a development activity. Proposed tree protection shall meet the requirements of Subsection C., below, except that the City Forester may approve or require alternate protection methods for Street or City Trees.
- C. **Protection methods.** The Tree Plan shall show that trees retained are adequately protected during construction using one of the methods described below:
  1. **Prescriptive Path.**
    - a. A root protection zone is established as follows:
      - (1) For trees on the development site - a minimum of 1 foot radius (measured horizontally away from the face of the tree trunk) for each inch of tree diameter (see Subsection 11.80.020 C., Measurements):
      - (2) Street Trees – the City Forester may prescribe greater or lesser protection than required for on-site trees.

- (3) Existing encroachments into the root protection zone, including structures, paved surfaces and utilities, may remain. New encroachments into the root protection zone are allowed provided:
- (a) the area of all new encroachments is less than 25 percent of the remaining root protection zone area when existing encroachments are subtracted; and
  - (b) no new encroachment is closer than 1/2 the required radius distance (see Figure 60-1);

**Figure 60-1  
Permissible RPZ Encroachments**



- b. Protection fencing**
- (1) Protection fencing consisting of a minimum 6-foot high metal chain link construction fence, secured with 8-foot metal posts shall be established at the edge of the root protection zone and permissible encroachment area on the development site. Existing structures and/or existing secured

## TITLE 11 TREES

fencing at least 3.5 feet tall can serve as the required protective fencing.

- (2) When a root protection zone extends beyond the development site, protection fencing is not required to extend beyond the development site. Existing structures and/or existing secured fencing at least 3.5 feet tall can serve as the required protective fencing.
  - c. Signage designating the protection zone and penalties for violations shall be secured in a prominent location on each protection fence;
  - d. Installation of landscaping required by Title 33 is allowed within the root protection zone and is not an encroachment. Any in-ground irrigation systems are considered encroachments.
  - e. The following is prohibited within the root protection zone of each tree or outside the limits of the development impact area: ground disturbance or construction activity including vehicle or equipment access (but excluding access on existing streets or driveways), storage of equipment or materials including soil, temporary or permanent stockpiling, proposed buildings, impervious surfaces, underground utilities, excavation or fill, trenching or other work activities; and
  - f. The fence shall be installed before any ground disturbing activities including clearing and grading, or construction starts; and shall remain in place until final inspection.
2. Performance Path. When the prescriptive path is not practicable, the applicant may propose alternative measures to modify the prescriptive root protection zone, provided the following standards are met:
- a. The alternative root protection zone is prepared by an arborist who has visited the site and examined the specific tree's size, location, and extent of root cover, evaluated the tree's tolerance to construction impact based on its species and health, and identified any past impacts that have occurred within the root zone;
  - b. The arborist has prepared a plan providing the rationale used to demonstrate that the alternate method provides an adequate level of protection based on the findings from the site visit described above;
  - c. The protection zone shall be marked with signage, stating that penalties will apply for violations, and providing contact information for the arborist;

## **TITLE 11 TREES**

- d.** If the alternative methods require the arborist be on site during construction activity, the applicant shall submit a copy of the contract for those services prior to permit issuance and a final report from the arborist documenting the inspections and verifying the viability of the trees prior to the City's final inspection;
- e.** If the alternative tree protection method involves alternative construction techniques, an explanation of the techniques and materials used shall be submitted;
- f.** The arborist shall sign the tree preservation and protection plan and include contact information.

The BDS Director may require the proposed tree protection method to be peer reviewed for adequacy; reject the proposal if deemed insufficient to meet Subsection C.2.b, above; or require a performance guarantee per Section 11.10.060 in order to ensure the protection methods are properly implemented.

- 3.** Additional information. The City may request additional information regarding the proposed development, including construction management approaches, if the proposed development and tree protection appear to conflict. The purpose of this provision is to ensure that logistical considerations are adequately addressed in order to prevent the need for changes to the tree protection measures during the construction process.

- D.** Changes to tree protection. Changes to the tree protection measures during the course of the development may be approved as a revision to a permit provided that the change is not the result of an unauthorized encroachment into a root protection zone, and the applicant demonstrates that the tree protection standards of this Section continue to be met. When an unauthorized encroachment has occurred, the city may pursue an enforcement action or other remedy per Chapter 11.70.
- E.** Tree protection inspections. The City Forester or BDS Director may conduct inspections during the course of project activity to determine compliance with this Title and confirm that tree protection zones are being maintained and root protection methods are effective. No person may refuse entry or access to a permitted development site to any authorized representative of the City who provides proper credentials and requests entry for the purpose of conducting a Tree Protection inspection. In addition, no person may obstruct, hamper or interfere with any such representative while in the process of carrying out their official duties.

### **11.60.040 Tree Pruning and Root Cutting Specifications.**

Pruning or root cutting shall be in accord with proper arboricultural practices, using clean and sharp tools. No tree may be excessively pruned or topped as defined in this Title.

## **TITLE 11 TREES**

### **11.60.050 Tree Removal Specifications.**

Trees shall be removed in a manner that will not jeopardize the public safety or damage structures including utility lines or services, or adjacent trees. In most cases, trees shall be entirely removed. Where appropriate, standing dead trees, or snags, may be left by cutting them to a height that will not threaten a target such as people or structures. Fire safety and preventing harmful pests should also be considered. However, well situated snags can function as important wildlife habitat providing nesting sites and a food source for foraging birds.

- A.** Completion. To prevent the creation of hazards from partially removed trees, once work has commenced to remove a tree, this work shall be completed in a timely manner. A tree will be considered completely removed when reduced to a stump no taller than 4.5 feet. The City Forester may grant an exception to this specification to allow snag creation. For Street Tree removals, the City Forester may direct that the stump be ground out up to 18 inches below grade.
- B.** Disposal of wood and woody debris.
  - 1.** City and Street Trees. Disposal, use, or reuse of wood and woody debris from City or Street Trees is at the sole discretion of the City Forester including specific disposal methods for infected wood. Cost for disposal is the responsibility of the property owner (or adjoining property owner for Street Trees). If the City Forester determines that the cost of storage or sale of the wood is not commercially feasible, the City Forester may give such surplus wood to the adjoining property owner or other group as the City Forester may so designate. Unless the City Forester has given the wood to a group, organization, or individual, it is unlawful for any person to possess or dispose of any wood from any City or Street Tree.
  - 2.** Private Trees. Disposal, use, or reuse of wood and woody debris from Private Trees is at the property owner's discretion, provided storage of wood does not constitute a public health or safety nuisance. In environmental (c, p), or Pleasant Valley Natural Resource (v) overlay zone, large woody debris may be required to remain or portions of trees left standing as snags. If the City Forester has determined that the tree is affected by a pathogen or insect infestation that will likely adversely impact surrounding trees, all portions of the tree shall be removed from the site and properly disposed at the property owner's expense.

### **11.60.060 Tree Maintenance Specifications and Responsibilities.**

The following specifications apply to all trees in the city. The purpose of these provisions is to protect the health, safety and welfare of the public, safeguard public infrastructure assets, and ensure the continued health of the urban forest.

- A.** General.

## **TITLE 11 TREES**

1. Permits required. Any person pruning, removing, or conducting any other work on any Street Tree or City Tree and any person removing any regulated Private Tree in order to comply with the requirements of this Section, shall first obtain a Type A tree permit in accordance with the provisions of Chapter 11.30. The application fee may be waived when the City forester has directed the work to be done.
  2. Responsibilities.
    - a. Property owner. It is the duty of every owner of property to maintain trees located on the property or on the adjacent street planting area in accordance with this Section. Further, the owner shall be responsible for all costs associated with such maintenance, removal and any tree replacement, if required.
    - b. Bureau of Transportation. For trees located in center medians, the Bureau of Transportation is responsible for the requirements of this Section.
    - c. Bureau of Environmental Services. For trees located in green street facilities as described in Title 17, the Bureau of Environmental Services is responsible for the requirements in this Section.
  3. City Forester authority for tree maintenance. The City Forester may or may direct others to prune, remove or treat to control insects and disease for any trees in the streets, parks, other City owned or managed properties, or private properties if the City Forester determines that controlling insect infestations, disease or dangerous conditions is needed to maintain the public health, safety or health of the urban forest.
  4. Available remedies. In addition to specific remedies cited in this Section, any infractions or violations of these requirements may additionally be corrected or enforced per the provisions in Chapter 11.70.
- B. Dead, Dying and Dangerous Trees.**
1. All trees which are determined by the City Forester or a private arborist to be dead, dying, or dangerous as defined in this Title are required to be removed to safeguard people or property. The City may require a replacement tree at the property owner's expense.
  2. Conflicting determinations. In the case where there are conflicts in the determinations from a private arborist or arborists, the City Forester shall make the final determination.

## **TITLE 11 TREES**

3. Exceptions. A dead or dying tree that is being maintained as a snag, or does not otherwise result in a public nuisance as described in this Section or Chapter 29.20, Property Nuisances, may remain provided it is not deemed dangerous.

### **C. Dutch Elm Disease prevention and eradication.**

1. Infected elms and elmwood. All species and varieties of elm trees (genus *Ulmus*) infected with the fungus known as Dutch elm disease (*Ophiostoma ulmi* or *Ophiostoma novo-ulmi*) as determined by laboratory analysis are declared to be a public nuisance. It is the duty of any owner of a lot or parcel where infected elmwood is present to promptly remove any such elm tree or dead elmwood under the supervision and direction of the City Forester.
2. Pruning restrictions. Pruning any species or varieties of elm trees between April 15 and October 15 is prohibited. This prohibition may be waived by the City Forester when such pruning is necessary to remove hazard limbs, provide the clearances otherwise required by this Section or for other causes as deemed necessary by the City Forester. In cases where the City Forester has allowed pruning to occur during the pruning prohibition period, the responsible party shall properly dispose of removed elm wood within 24 hours.
3. Authority to inspect. The City Forester is hereby authorized to enter upon any lot or parcel during business hours for the purposes of inspecting any elm tree or dead elmwood situated thereon, obtaining specimens for the purpose of laboratory analysis or to determine whether such tree because it is dead or substantially dead may serve as a breeding place for the European or native elm bark beetle (genus *Scolytus*). If the City Forester determines that the tree serves such purpose, the City Forester may declare the elm tree or dead elmwood a public nuisance.
4. Determination and action. If, based on analysis of specimens removed from any elm tree, it is determined that such tree is infected, or the City Forester determines that any dead or substantially dead elm trees or dead elmwood may harbor the elm bark beetle, the City Forester will serve a written notice requiring the property owner or responsible party to remove, destroy and properly dispose of such trees or dead Elmwood located on the property or on the adjacent street planting area. If the property owner or responsible party fails, neglects or refuses to remove and destroy, or properly dispose of, such elm tree or dead elmwood within 15 days after service of such notice, the City Forester may abate the nuisance as provided in Chapter 11.70.



## **TITLE 11 TREES**

- D.** Clearances. The property owner or responsible party is required to prune or remove, if necessary, any tree located on the property or on the abutting street planting area when said trees are not maintained to meet the branch clearances as set forth below:
- 1.** Sidewalk clearance. Branches of trees extending over sidewalks may not be less than 7½ feet above the sidewalk.
  - 2.** Roadway clearance. Branches of trees extending into any public or private roadway may not be less than 11 feet above the pavement. Moreover, on any street designated as a Regional Trafficway, Major City Traffic Street, District Collector, or a one-way street where parking has been prohibited, branches shall be trimmed to a height of 14 feet above the crown of the street.
  - 3.** Overhead powerline clearance. Branches of any tree may not interfere with any light, pole, or overhead powerline used in connection with or as a part of the City or Public Utility system. In addition to the authority granted to the City to prune or direct property owners to prune trees in violation of this Section, a Public Utility operating pursuant to an approved Programmatic Permit may also prune any tree which interferes with the safe operation of the utility system.
- E.** Visibility. The owner or responsible party shall keep trees located on the property or on the adjacent street planting area from completely or partially obstructing visibility as follows:
- 1.** Visibility of traffic control devices such as directional and informational signs as defined by the Manual of Uniform Traffic Control Devices;
  - 2.** Visibility for drivers, bicyclists, or pedestrians; or
  - 3.** In any way that presents an unreasonable hazard to the travelling public.
- F.** Sidewalks and curbs.
- 1.** Obstructions. The owner or responsible party shall keep the sidewalk adjacent to the owner's property clear of branches, leaves, flowers, fruit or other organic matter that may obstruct or render the passage of persons unsafe.
  - 2.** Repairs. When the curb or sidewalk, or both, abutting any property become damaged or in a state of disrepair because of a tree maintained by the property owner, the repair of the curb or sidewalk, or both, will be treated as other curb or sidewalk repairs in accordance with the provisions of Title 17. The removal of any tree or portion thereof, as the Responsible Engineer in consultation with the City Forester may determine necessary, will be

## **TITLE 11**

### **TREES**

granted through the appropriate tree permit. The City may require alternative construction methods be used in order to retain the tree. If the tree is removed, the City Forester may require that the removed tree be replaced in accordance with the required permit.

**G.** Public waterlines, storm sewers and sanitary sewers.

- 1.** Damage from Roots. Whenever the Responsible Engineer finds that roots of any tree have entered any sewer, drain or waterline in the street or City-owned easement, and are stopping, restricting, retarding the flow of sewage or drainage, or causing waterline leakage or believes that removal of the tree is necessary to reasonably prevent future root entry into the sewage, drainage, or water facility, the Responsible Engineer may refer the condition to the City Forester.
- 2.** Remedies. In addition to the remedies described in Chapter 11.70, the City Forester may remedy the violation by directing the property owner or responsible party to prune the roots or remove the tree. If the City Forester believes that the required amount of root pruning will irreparably damage or destroy the tree, the City Forester will notify the owner and require removal and replacement of the tree. Nothing in this Subsection will be construed to limit the Responsible Engineer's authority to separately invoke abatement proceedings.

**CHAPTER 11.70 - ENFORCEMENT**

**Sections:**

- 11.70.010 Purpose.
- 11.70.020 Where These Regulations Apply.
- 11.70.030 Violations.
- 11.70.040 Enforcement Authority.
- 11.70.050 Prohibited Actions.
- 11.70.060 Inspections and Evidence.
- 11.70.070 Notice and Order.
- 11.70.080 Correcting Violations of this Title.
- 11.70.090 Enforcement Actions.
- 11.70.100 Nuisance Abatement.
- 11.70.110 Summary Abatement.
- 11.70.120 Administrative Review.
- 11.70.130 Appeals to the Code Hearings Officer.
- 11.70.140 Further Appeals.
- 11.70.150 Waivers.

**11.70.010 Purpose.**

This Chapter establishes an enforcement system to prohibit illegal tree activity in order to further the City's goals for optimizing and enhancing the urban forest. The primary focus of this system is to seek corrective action and restoration before seeking more punitive measures. Nevertheless, penalties are necessary to ensure that it does not become less costly to violate the Title than to abide by its requirements. The enforcement actions prescribed herein are established to be effective deterrents for egregious or willing misconduct and are intended to escalate for the severity or repeated nature of the violation.

**11.70.020 Where These Regulations Apply.**

- A.** City of Portland. This Chapter applies to all trees within the City of Portland.
- B.** County Urban Pocket Areas. Trees in the County Urban Pocket Areas are subject to all regulations of this Chapter except Subsections 11.70.050 A. through C. and E. through G. (some Subsections of Prohibited Actions); 11.70.060 B. (a Subsection of Inspections and Evidence); and 11.70.080 C. (a Subsection of Correcting Violations of This Title).

**11.70.030 Violations.**

- A.** Each specific incident and each day of non-compliance for the following may be considered a separate violation of Title 11:
  - 1.** Any failure, refusal or neglect to comply with any provision of this Title;

## **TITLE 11 TREES**

2. Allowing or causing a tree-related condition that threatens to injure the public health or safety, or threatens to damage public or private property; or
  3. Causing or allowing any prohibited actions as cited in this Chapter to occur.
- B.** The following constitute violations of Title 33 Planning and Zoning and not Title 11:
1. Overlay Zones and Plan Districts. Removal of any tree in Overlay Zones or Plan Districts when the removal is not exempt or allowed by Title 33 Planning and Zoning or has not been otherwise authorized through an applicable development permit or land use review.
  2. Conditions of land use reviews. Unauthorized removal of a tree required to be protected as a condition of a land use review while a condition of approval is in effect.

### **11.70.040 Enforcement Authority.**

The City Forester and BDS Director are hereby authorized to enforce this Title utilizing Title 3 adopted remedies and any of the remedies prescribed in this Title. Enforcement responsibilities are summarized in Table 70-1.

When violations occur that involve trees in overlay zones and plan district areas, the City Forester and BDS Director will consult and coordinate their enforcement action to the degree possible in order to avoid the issuance of multiple or conflicting orders.

When violations of the tree maintenance specifications of Section 11.60.060 affect public infrastructure or jeopardize the travelling public, the Responsible Engineer is authorized to invoke summary abatement to correct the violation. In cases where multiple violations of City code exist on a property, the City Forester, BDS Director, and Responsible Engineer are authorized, but not required, to delegate enforcement authority of this Title to another Bureau to facilitate a coordinated remedy and single agency responsible for obtaining compliance.

**Table 70-1  
Summary of Enforcement Authority**

	Heritage Trees	City/Street Trees	Private Trees	Overlay Zones and Plan Districts	
				City/Street Trees	Private Trees
Development permit[1,2,3] (Ch. 11.50)	BDS/CF	BDS/CF	BDS	BDS/CF	BDS
Tree Permit, no development[4] (Ch. 11.40)	CF	CF	CF	CF/BDS	CF/BDS
Maintenance violations[4] (Ch. 11.70)	CF	CF	CF/BDS	CF/BDS	CF/BDS

CF = City Forester      BDS = BDS Director

Note [1] For sites in County Urban Pocket Areas, enforcement applies only to on-site trees, and is done by BDS.

[2] Trees specifically required to be preserved by condition of land use approval that have been removed or damaged will be enforced by the BDS Director through Title 33 Planning and Zoning.

[3] The BDS Director is the lead enforcement authority for violations of development permits issued by BDS. The BDS Director may consult with the City Forester when Heritage, City, or Street Trees are involved. The City Forester is the lead enforcement authority for violations during development not covered under a BDS permit.

[4] The City Forester is the lead enforcement authority when no development is occurring. The City Forester may consult with the BDS Director when the provisions of Titles 29 or 33 are also violated.

#### **11.70.050 Prohibited Actions.**

Any of the following actions constitute violations of this Title and may be declared a nuisance for the purposes of correcting or abating the unlawful action.

- A.** Failure to properly maintain trees. It is unlawful for any person to fail to comply with any of the tree maintenance specifications set forth in Section 11.60.060.
- B.** Conducting regulated activities without a tree permit. It is unlawful for any person to plant, place, prune, alter, remove, destroy, cut, break or injure any tree without first obtaining a tree permit for said action, except as provided in this Title.
- C.** Non-compliance with terms and conditions of a tree permit. It is unlawful for any person to violate the conditions or time limits imposed upon any tree permit.
- D.** Non-compliance with terms and conditions of a development permit. It is unlawful to fail to adhere to the requirements of a development permit for tree preservation, protection or planting.
- E.** Topping and excessive pruning. It is unlawful for any person to top or excessively prune any tree. Trees shall be allowed to grow in their natural form. A tree that has been topped or excessively pruned may be considered "removed" for the purposes of establishing penalties and any replacement requirements. The City may also

## **TITLE 11 TREES**

require the property owner or responsible party to treat the tree as described in Section 11.70.080.

- F.** Attachments to trees. It is unlawful to attach or keep attached to any City or Street Tree, any signs, ropes, wires, chains or other devices whatsoever, when such devices are determined to threaten the viability of the tree or are likely to create a hazard. Any attachments to City or Street Trees are subject to obtaining a tree permit from the City Forester, as stated in Chapter 11.40.
- G.** Interference with tree grates and tree guards. It is unlawful for any person to damage, interfere or otherwise misuse any tree grate or guard set for the protection of any Street Tree, City tree, or Heritage tree. Removal of such devices may only occur as authorized by the City Forester.
- H.** Failure to install or maintain protection measures. It is unlawful for any person to fail to install required tree protection measures prior to commencing any development activity subject to Chapter 11.50. Furthermore, it is unlawful for such person to move any required protection measures, neglect or fail to maintain such measures throughout the development activity, or allow any restricted activity or disturbance to occur within the protection area without prior City approval.
- I.** Removal or failure to maintain required trees. It is unlawful for any person to fail to maintain in a healthy condition, trees required to be planted by virtue of a tree permit or development permit, including landscape trees and trees necessary to meet tree density standards. Any such trees that die shall be replaced.

### **11.70.060 Inspections and Evidence.**

- A.** The City may conduct inspections whenever it is necessary to enforce any provisions of this Title, to determine compliance with this Title or whenever the City has reasonable cause to believe there exists any violation of this Title. Inspections shall occur during business hours. If the responsible party is at the site when the inspection is occurring, the BDS Director, City Forester, or other authorized representative shall first present proper credentials to the responsible party and request entry. If such entry is thereupon refused, the BDS Director or City Forester shall have recourse to any remedy provided by law to obtain entry, including obtaining an administrative search warrant.
- B.** If any tree is removed without a tree removal permit, a violation will be determined by measuring the circumference of the stump at the ground to establish the diameter size of the tree. For purposes of this Subsection, the diameter size of the tree is the circumference divided by 3.14.
- C.** In cases where a tree stump has been removed, the BDS Director or City Forester may use photographs of the tree including the city's most current aerial images to determine if a violation has occurred. For aerial photographs, when the associated

canopy measures 1,600 square feet at the edge of the dripline, this may be considered prima facie evidence of a violation of this Chapter. Nothing in this Subsection will be construed to limit the introduction of other photographic evidence before the Code Hearings Officer.

- D.** When there is insufficient evidence to demonstrate whether a removed tree was a nuisance or native tree species, the tree will be considered as a non-native, non-nuisance tree.
- E.** Tree removal, topping, or other injury caused by natural causes or weather will not be deemed a violation of this Title, provided there is no other clear evidence to suggest that the tree was deliberately removed or injured.

**11.70.070 Notice and Order.**

- A.** Notification required. Except in the case of summary abatement or immediate danger, if the BDS Director or City Forester finds one or more violations of the provisions of this Title on a property or adjacent street, the BDS Director or City Forester shall notify the property owner to prune, remove or take any other action as necessary to correct the violations. Notification to the property owner will be accomplished by mailing a notice to the owner, at the owner's address as recorded in the county assessment and taxation records for the property. The notice may be sent via either first class or certified mail. Notice to the property owner may also be accomplished by posting notice on the property. Additional notice to the responsible party, if different than the owner, may also be provided at the City's discretion.
- B.** Content of the notice. The notice shall include:
  - 1.** The date of posting (if notice was posted at the property);
  - 2.** The street address or a description sufficient for identification of the property;
  - 3.** A statement that one or more violations of this Title exist at the property with a general description of the violations;
  - 4.** Disclosure that penalties, charges, and liens may result from a failure to remedy the violations;
  - 5.** Specification of a response period during which the property may be brought into compliance with this Title before penalties, charges or liens will be assessed; and
  - 6.** Disclosure that the owner's right to request an administrative review to appeal the findings of the notice of violation and a description of the time limits for requesting an administrative review as set forth in this Chapter.

## **TITLE 11 TREES**

- C.** Compliance inspections and penalties. Once a notice has been mailed, the owner will be responsible for all enforcement penalties associated with the property, as described in this Chapter, until the violations are corrected and the City has been so notified. Except in the case of summary abatement, whenever the owner believes that all violations listed in the first or any subsequent notice of violation have been corrected, they shall notify the City.
- D.** Time limits. The BDS Director or City Forester shall set time limits in which the violations of this Title are to be corrected. Failure to comply with the time limits may be considered a separate violation of this Title.
- E.** Information filed with County Recorder. If the City finds violations of this Title on any property, the City may record with the County Recorder information regarding City code violations and possible liens on the property.

### **11.70.080 Correcting Violations of this Title.**

(Amended by Ordinance Nos. 188278 and 188647, effective November 17, 2017.)

- A.** General. The following list of remedies gives the City Forester and BDS Director broad discretion in applying a reasonable and effective means to restore a tree or site where trees have been illegally removed or damaged, or where a dead, dying, dangerous, or nuisance tree has been identified to be preserved to meet Subsection 11.50.040 C.1. The rights and remedies provided in this Chapter are cumulative, are not mutually exclusive, and are in addition to any other rights, remedies and penalties available to the City under any other provision of law including the enforcement actions described in Section 11.70.090. The City Forester or BDS Director may adopt administrative rules to establish priorities and guidelines for the following remedies.
- B.** Standard remedies. Standard remedies are intended to address a wide variety of violations of this Title. Additional remedies specific to City and Street Trees, and trees in development situations are described in Subsections C. and D. When the City determines that a violation of this Title has occurred, any or all of the standard remedies described in this Subsection, and any applicable additional remedies described in this Section may be required depending on the severity and extent of the violation.
  - 1.** Minor Infractions. For minor infractions that do not result in damage to a tree, the City will first seek to correct the violation without penalties. These infractions may include failing to prune or remove a tree in violation of Chapter 11.60, failing to install or maintain tree protection when prohibited activities have not occurred within the root protection zone, or failing to plant a tree as required by a development permit or condition of granting a tree removal permit.



## **TITLE 11 TREES**

2. Treatment. For trees that are damaged but were not removed and where the City Forester concurs that the tree may still be viable, the violation will not be considered an "illegal tree removal" provided:
  - a. The property owner or responsible party contracts for the services of an arborist to assess the damage and prescribe a treatment regimen;
  - b. The property owner or responsible party enters into a contract with an arborist to complete the treatment regimen. The treatment and associated monitoring period shall be at least 1 year, but may be longer; and
  - c. The arborist shall provide the City with updates on the services performed, when they were performed, and the status of the tree's condition at intervals determined by the original treatment regimen. If the tree dies at any time during the treatment and monitoring period, the property owner or responsible party shall remove and replace the tree subject to the tree replacement requirements described in Subsection B.3.
  - d. In lieu of the treatment regimen and monitoring period described above, the City Forester may instead accept a performance guarantee per Chapter 11.10. The performance guarantee shall be sufficient to cover the cost of removing the tree plus the cost of tree replacement as described in Subsection B.3. When the property owner or responsible party selects this option, death of the tree within the 3 year timeframe may be deemed prima facie evidence that the damage was the sole cause of the tree's death.
3. Revised Tree Plan and Payment in Lieu. In cases where a dead, dying, dangerous or nuisance species tree is identified to be preserved to meet Subsection 11.50.040 C.1., the City Forester may require a revision to the submitted tree plan to ensure that only healthy, viable trees are preserved to meet the requirement. If the applicant disagrees with the City's determination on the health or species of a tree to be preserved, an arborist report can be submitted by the applicant to demonstrate compliance. If no trees remain on site to meet the preservation requirement, the applicant may pay the applicable mitigation fee, as defined in Subsection 11.50.040 C.
4. Tree Replacement and Payment in Lieu. The City may require replacement for any trees removed illegally. The City may require greater than tree-for-tree replacement, but may not require greater than inch-for-inch replacement. The amount of replacement trees will be determined by the volume of removed tree canopy. For each tree that the City positively determines was dead, dying, or dangerous, the replacement will be limited

## **TITLE 11 TREES**

to one tree. The responsible party shall enter into a replanting and maintenance plan agreement approved by the City. When the responsible party is unable to accommodate the required replacement planting on the site or adjacent street, the balance of required inches may be paid as a fee in lieu of planting to the Tree Planting and Preservation Fund.

- 5.** Tree Permit Violation Review. The City may require any person who cuts, removes, or damages any tree without a permit as required by this Title or is in non-compliance with any term, condition, limitation or requirement of a tree permit or Tree Plan, to submit an application for a Tree Permit Violation Review. Trees removed in violation of Title 33 Planning and Zoning requirements may also be processed in accordance with the enforcement provisions of that Title.

Tree Permit Violation Applications are processed as Type B permits, and are subject to public notice but not the public appeal procedures of Chapter 11.30. The purpose of this review is to establish appropriate replacement requirements and notify interested parties. Failure to abide by the conditions of the approval will be treated as a repeat offense.

- C.** Additional remedies for City and Street Trees. In addition to the remedies provided by any other provision of this Chapter, when the City Forester determines that a violation of this Title has occurred involving a City Tree or Street Tree, the City Forester may seek additional remedies as described below.

- 1.** Restoration Fees. The City may require any person to pay into the City's Urban Forestry Fund a restoration fee for the damaged or removed tree according to the City's adopted fee schedule. The restoration fee may be doubled if any of the following apply:
  - a.** The person has been convicted of a previous violation of this Title; or
  - b.** The tree was subject to the protection requirements of a Tree Plan.
- 2.** Civil Remedies. The City will have the right to obtain, in any court of competent jurisdiction, a judgment against any person removing or causing damage to any City tree or Street Tree in violation of this Title. In any such action, the measure of damages is the actual replacement value of the damaged or destroyed trees as well as any other consequential damage to other public facilities within the street.

- D.** Additional remedies for Private Trees Subject to a Tree Plan. In addition to the remedies provided by any other provision of this Chapter or other Titles, when the BDS Director determines that a violation of this Title has occurred involving a Private Tree shown to be protected on a Tree Plan, the BDS Director may require

## TITLE 11 TREES

the property owner or responsible party to correct the violation using any of the following remedies.

1. Tree Protection Re-inspection Fee. When an inspection of a site subject to development under an approved Tree Plan finds that tree protection measures have not been installed as required or are not properly maintained, the City may issue a correction notice and require the responsible party to pay a Tree Protection Re-inspection Fee. Payment of the fee is required prior to final inspection.
  2. Tree Plan Revision. For tree removal or injury which results in removal, and where the tree was not required to be preserved by virtue of a land use approval, the BDS Director may require the applicant to prepare a revision to the approved plans and demonstrate conformance with the applicable tree preservation and tree density standards in Chapter 11.50, including any additional tree planting, payments, or preservation of alternate trees.
- E. Additional remedies for Heritage Trees. In addition to the remedies provided by any other provision of this Chapter, when the City Forester determines that a violation of this Title has occurred involving a Heritage Tree, the City Forester may seek additional remedies as described below.
1. Restoration Fees.
    - a. Private Heritage Trees. The City may require any person to pay into the City's Tree Planting and Preservation Fund for the damage or removal of a Heritage Tree, according to the City's adopted Title 11 Tree Fee Schedule.
    - b. City and Street Heritage Trees. The City may require any person to pay into the City's Urban Forestry Fund for the damage or removal of a Heritage Tree, according to the City's adopted Title 11 Tree Fee Schedule.

### **11.70.090 Enforcement Actions.**

(Amended by Ordinance No. 188278, effective April 14, 2017.)

- A. General. The following list of enforcement actions gives the City Forester and BDS Director additional means to obtain compliance with the requirements of this Title. The rights and remedies provided in this Chapter are cumulative, are not mutually exclusive, and are in addition to any other rights, remedies and penalties available to the City under any other provision of law. The City Forester or BDS Director may adopt administrative rules to establish priorities and guidelines for the following enforcement actions.

## **TITLE 11 TREES**

- B.** Standard enforcement actions. Standard enforcement actions may be invoked for general violations of this Title, including conducting tree activities without a required tree permit. In addition to these standard actions, the City Forester may take additional actions for City and Street Tree violations as described in Subsection C.
- 1.** Civil penalties. The City Forester or BDS Director may issue a fee, penalty notice or citation, as applicable, to any person who cuts, removes, prunes or harms any tree without a permit as required by this Title or is otherwise in non-compliance with any term, condition, limitation or requirement of an approval granted under this Title, and require payment of a civil penalty up to \$1,000 per day. Each tree constitutes a separate violation, and each day that the person fails to obtain a permit or remains in non-compliance with a permit or tree plan may also constitute a separate violation.
  - 2.** Initiating a proceeding before the Code Hearings Officer. The City Forester and BDS Director are each authorized to initiate proceedings before the Code Hearings Officer, as stated in the procedures in Title 22 Hearings Officer, to enforce the provisions of this Section when the responsible person fails to respond to the City Forester or BDS Director's notice or citation as described in Subsection B.1, above. The Hearings Officer may order any party to:
    - a.** Abate or remove any nuisance;
    - b.** Install any equipment or plant trees necessary to achieve compliance;
    - c.** Pay to the City of Portland a civil penalty of up to \$1,000 per day. In determining the amount of any civil penalty to be assessed, the Code Hearings Officer will consider the following:
      - (1)** The nature and extent of the property owner or responsible party's involvement in the violation;
      - (2)** The benefits, economic, financial or otherwise, accruing or likely to accrue as a result of the violation;
      - (3)** Whether the violation was isolated and temporary, or repeated and continuing;
      - (4)** The magnitude and seriousness of the violation;
      - (5)** The City's cost of investigation and remedying the violation;
      - (6)** Any other applicable facts bearing on the nature and seriousness of the violation.

# TITLE 11

## TREES

- d. Undertake any other action reasonably necessary to correct the violation or mitigate the effects thereof.
3. Delayed intake of applications.
  - a. Development permits or land use reviews. When a violation of this Title has occurred on a site, the BDS Director may refuse land use or development permit applications until the violation has been satisfactorily resolved.
  - b. Tree permits. When a violation of this Title has occurred, the City Forester may delay intake or review of applications for tree permits from the property owner or other applicant, as identified on the violated permit application, until the violation has been satisfactorily resolved.
4. Disqualification from City contracts. At their discretion, the City Forester or Responsible Engineer may refuse to consider any arborist, builder, landscaper, contractor, or tree service that has been cited for any tree activity in violation of this Title or submitted a falsified report for the criteria required in this Title, as a responsible bidder for any City contracts for a period of 2 years from the date of violation or falsified report.
5. Removal from City's list of local tree care providers. The City Forester may remove any arborist, builder, landscaper, contractor, or tree service that refuses to correct a violation, has been fined for any tree violation of this Title, or submitted a falsified report for the criteria required in this Title, from the list of contractors providing related services for a period of 2 years from the date of violation or report.
6. Abatement. Whenever a responsible party or property owner conducts a prohibited action per Section 11.70.050, the City may pursue abatement proceedings to remove the nuisance. Whenever the City has declared that such nuisance exists, the property liable for the nuisance will be directed to abate the nuisance by following the notice and abatement procedures outlined in this Chapter.
7. Stop Work Orders. When any work is being conducted in violation of this Title, and public health or safety is threatened, the City Forester or BDS Director may issue a stop work order as stated in the requirements of Section 3.30.080.
8. Enforcement fees and penalties.

## **TITLE 11 TREES**

- a.** The City may charge fees and penalties in the form of a monthly enforcement penalty for each property found in violation of this Title that meets the following conditions:
  - (1)** The property is a subject of a notice of violation of this Title as described in Section 11.70.070;
  - (2)** A response period of 30 days has passed since the effective date of the initial notice of violation; and
  - (3)** The property remains out of compliance with the initial notice of violation or any subsequent notice of violation.
- b.** The amount of the fees and penalties in the monthly enforcement penalty shall be charged as set forth in the Title 11, Trees Fee Schedule, as approved by the City Council.
- c.** Properties in violation for 3 months from the initial notice of violation will be assessed fees and penalties in the form of an enforcement penalty that is twice the amount as listed in the Title 11, Trees Fees Schedule, as approved by the City Council.
- d.** Whenever the owner believes that all violations listed in the first or any subsequent notice of violation have been corrected, they shall notify the Director. Upon receipt of such notice, the Director will promptly schedule an inspection of the property and notify the owner if any violations remain uncorrected.
- e.** Once monthly enforcement penalties begin, they will continue until all violations listed in the first or any subsequent notice of violation have been corrected, inspected and approved.
- f.** When a property meets the conditions for charging fees and penalties as described in this Section, the BDS Director or City Forester, as applicable, will file a statement with the City Auditor that identifies the property, the amount of the monthly penalty, and the date from which the charges are to begin. The Auditor will then:
  - (1)** Notify the property owner of the assessment of enforcement penalties;
  - (2)** Record a property lien in the Docket of City Liens;
  - (3)** Bill the property owner monthly for the full amount of enforcement penalties owing, plus additional charges to cover administrative costs of the City Auditor; and

## **TITLE 11 TREES**

- (4)** Maintain lien records until the lien and all associated interest, fees, penalties, and costs are paid in full; and the BDS Director or City Forester, as applicable, certifies that all violations listed in the original or any subsequent notice of violation have been corrected.

**C. Additional Enforcement Actions for City and Street Tree Violations.** The City Forester may impose the following additional actions for City or Street Tree violations.

- 1.** Criminal penalties. In addition to any other remedy provided in this Chapter, the City Attorney, acting in the name of the City, may seek Criminal Penalties in any court of competent jurisdiction. The court may require that any responsible party violating any provision of this Title will, upon conviction, be fined a sum not exceeding \$1,000 or will be imprisoned for a term not exceeding 6 months.
- 2.** Institution of legal proceedings. In addition to any other remedy provided in this Chapter, the City Attorney, acting in the name of the City, may maintain an action or proceeding in any court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of this Title.

**11.70.100 Nuisance Abatement.**

(Amended by Ordinance No. 188278, effective April 14, 2017.)

- A.** Abatement. If, within the time limit set by the City in the notice of violation, any nuisance described in the notice has not been removed and abated, or cause shown, as specified in Sections 11.70.100 through .130 of this Title, why such nuisance should not be removed or abated, or where summary abatement is authorized, the BDS Director or City Forester may cause the nuisance to be removed and abated, including disposal in an approved manner.
- B.** Warrants. The BDS Director or City Forester may request any Circuit Court judge to issue a nuisance abatement warrant whenever entry onto private property is necessary to remove and abate any nuisance, or whenever the BDS Director or City Forester has reasonable cause to believe that there exists upon any property any violation as described in Section 11.70.030 above.
- C.** Grounds for issuance of nuisance abatement warrants; affidavit.
  - 1.** Affidavit. A nuisance abatement warrant will be issued only upon cause, supported by affidavit, particularly describing the applicant's status in applying for the warrant, the statute, ordinance or regulation requiring or authorizing the removal and abatement of the nuisance, the property to be entered, the basis upon which cause exists to remove or abate the nuisance,

## **TITLE 11 TREES**

and a statement of the general types and estimated quantity of the items to be removed or conditions abated.

2. Cause. Cause will be deemed to exist if reasonable legislative or administrative standards for removing and abating nuisances are satisfied with respect to any property, or if there is cause to believe that a nuisance violation exists, as defined in this Title, with respect to the designated property.

### **D. Procedure for issuance of a nuisance abatement warrant.**

1. Examination. Before issuing a nuisance abatement warrant, the judge may examine the applicant and any other witness under oath and shall be satisfied of the existence of grounds for granting such application.
2. Issuance. If the judge is satisfied that cause for the removal and abatement of any nuisance exists and that the other requirements for granting the application are satisfied, the judge will issue the warrant, particularly describing the person or persons authorized to execute the warrant, the property to be entered, and a statement of the general types and estimated quantity of the items to be removed or conditions abated. The warrant will contain a direction that it be executed during business hours, or where the judge has specially determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night.
3. Police assistance. In issuing a nuisance abatement warrant, the judge may authorize any peace officer, as defined in Oregon Revised Statutes, to enter the described property to remove any person or obstacle and to assist the representative of the bureau in any way necessary to enter the property and remove and abate the nuisance.
4. Return. A nuisance abatement warrant shall be executed within 10 working days of its issue and returned to the judge by whom it was issued within 10 working days from its date of execution. After the expiration of the time prescribed by this Subsection, the warrant unless executed is void.

### **E. Cost of nuisance abatement.**

1. Whenever a nuisance is abated by the City, the BDS Director or City Forester shall keep an accurate account of all expenses incurred for each nuisance abated including but not limited to abatement costs, civil penalties, fees, administrative costs, recorders fees and title report charges as set forth in the Title 11, Trees Fee Schedule, as approved by City Council.



## **TITLE 11 TREES**

2. When the City has abated a nuisance maintained by any owner of real property, for each subsequent nuisance which is abated by the City within 2 consecutive calendar years concerning real property, owned by the same person, an additional civil penalty as set forth in the Title 11, Trees Fee Schedule, shall be added to the costs, charges and civil penalties. The additional civil penalty shall be imposed without regard to whether the nuisance abated by the City involved the same real property or is of the same character as the previous nuisance.
3. Costs and penalties resulting from nuisance abatement shall be assessed as a lien upon the real property as provided in Section 11.70.090 Enforcement Actions.

### **11.70.110 Summary Abatement.**

- A. When summary abatement is authorized by this Title, the decision regarding whether or not to use summary abatement will be at the City's discretion. In the case of summary abatement, notice to the owner or occupant of the property prior to abatement is not required.
- B. Following summary abatement, the BDS Director or City Forester, as applicable, shall post upon the property liable for the abatement a notice describing the action taken to abate the nuisance violation. In addition, a Notice of Summary Abatement shall be mailed to the property owner. The notice shall include:
  1. The date the nuisance on the property was abated;
  2. The street address or description sufficient to identify the property;
  3. A statement of the violations of Title 11 that existed at the property and were summarily abated;
  4. Disclosure that penalties, charges and liens will result from the summary abatement; and
  5. Disclosure of the owner's right to appeal the findings of the notice as set forth in this Chapter.

### **11.70.120 Administrative Review.**

- A. Whenever a property owner or responsible party has been given a notice as required by this Chapter and has been directed to make any correction or to perform any act and the owner or responsible party believes the finding of the notice was in error, the owner or responsible party may have the notice reviewed by the BDS Director or City Forester, as applicable. If a review is sought, the owner or responsible party shall submit a written request to the City within 15 days of the date of the notice. Such review will be conducted by the BDS Director or City Forester, as applicable.

## **TITLE 11 TREES**

The owner or responsible party requesting such review will be given the opportunity to present evidence. Following the review, the BDS Director or City Forester, as applicable will issue a written determination.

- B.** Nothing in this Section limits the authority of either the BDS Director or City Forester to initiate a proceeding under Title 22 Hearings Officer.

### **11.70.130 Appeals to the Code Hearings Officer.**

A determination issued as stated in Section 11.70.120 may be appealed to the Code Hearings Officer, as provided for in Chapter 22.10 of City Code.

### **11.70.140 Further Appeals.**

All appeals from the Code Hearings Officer's determination in accordance with Section 11.70.130 will be by writ of review as authorized by Section 22.04.010 of the City Code and ORS 34.010 - 34.100.

### **11.70.150 Waivers.**

The BDS Director or City Forester may grant an exception when the enforcement of the requirements of this Title would cause undue hardship to the owner or occupants of the affected property, or whenever the BDS Director or City Forester deems it necessary in order to accomplish the purpose of this Title.

- A.** To carry out the intent of this Section the BDS Director and City Forester shall establish written policies in the form of waivers to explain the exceptions available to property owners. Waivers will include the following information:
  - 1.** An explanation of the purpose of the waiver and a list of the requirements the owner shall meet in order to qualify for the waiver;
  - 2.** An explanation of the period of time during which the waiver will be in effect;
  - 3.** A list of the actions the owner shall perform to fulfill their responsibilities to maintain the waiver and to prevent the waiver from being cancelled.
- B.** The owner shall apply for a waiver in writing. This Section may not be construed so as to evade the provisions of Title 22 Hearings Officer.

**CHAPTER 11.80 - DEFINITIONS AND  
MEASUREMENTS**

**Sections:**

- 11.80.010 Defining Words.  
11.80.020 Definitions and Measurements.

**11.80.010 Defining Words.**

Words used in the tree code have their normal dictionary meaning unless they are listed in Section 11.80.020 below. Words listed in Section 11.80.020 have the specific meaning stated, unless the context clearly indicates another meaning.

**11.80.020 Definitions and Measurements.**

(Amended by Ordinance No. 188278, effective April 14, 2017.)

- A.** Information about the use of terms in the tree code is contained in Section 11.10.030.
- B.** The definition of words with specific meaning in the tree code are as follows:
- 1.** "Appeals Board" is the Urban Forestry Appeals Board. The duties and composition are in Section 11.20.030.
  - 2.** "Arboriculture" refers to the horticultural focus on the study and care of trees and other woody plants.
  - 3.** "Arborist" means a professional listed as a certified arborist by the International Society of Arboriculture or a consulting arborist registered with the American Society of Consulting Arborists.
  - 4.** "Attached Structure" means a structure attached to a building.
  - 5.** "BDS Director" is the Director of the Bureau of Development Services or the BDS Director's designee. The duties of the BDS Director are in Section 11.10.010.
  - 6.** "Building" means a structure that has a roof, is enclosed on at least 50 percent of the area of its sides and required a development permit prior to construction.
  - 7.** "Building Coverage" has the same meaning as in Title 33 Planning and Zoning.
  - 8.** "Business Hours" means 7:30 am to 5 pm, during working days.
  - 9.** "City" is the City of Portland.

## **TITLE 11 TREES**

10. "City Forester" is the Manager of Urban Forestry, or the Manager's designee. The duties of the City Forester are in Section 11.10.010.
11. "Commission" means the Urban Forestry Commission, also referred to as the UFC. The duties and composition are in Section 11.20.020.
12. "Construction Staging Area" means a designated area for the storage of equipment and vehicles, stockpiles, waste bins, and other construction-related materials during a construction project. Any construction trailers are to be included in the construction staging area. In some cases, more than one staging area may be established on site.
13. "County Urban Pocket Areas" refers to properties within unincorporated Multnomah County that are subject to the existing Intergovernmental Agreement to Transfer Land Use Planning Responsibilities Between the City of Portland and Multnomah County.
14. "Diameter" refers to the cross-sectional size expressed in inches of a tree measured 4.5 feet above the ground. See Subsection 11.80.020 C., Measurements.
15. "Days" means calendar days, unless specifically stated as working days. Working days include Monday through Friday, excluding holidays as identified in Human Resources Administrative Rule 6.02.
16. "Development, Alteration" has the same meaning as in Title 33, Planning and Zoning.
17. "Development Impact Area" is the area on a site affected by proposed site improvements, including buildings, structures, parking and loading areas, landscaping, and paved or graveled areas. The development impact area also refers to areas devoted to storage of materials, or construction activities such as grading, filling, trenching, or other excavation necessary to install utilities or access.
18. "Development Permit" refers to permits issued by the City such as building permits, zoning permits, site development permits, public works permits and capital improvement projects.
19. Development Types:
  - a. "Single Dwelling" refers to a house, attached house, or manufactured home with or without an accessory dwelling unit located on its own lot or parcel as those terms are defined in Title 33 Planning and Zoning

## **TITLE 11 TREES**

- b.** "One and Two Family Residential" refers to a house, attached house, duplex, attached duplex, or manufactured home on one lot or parcel as those terms are defined in Title 33 Planning and Zoning
  - c.** "Multi-Dwelling Residential" refers to more than two dwelling units on a single lot or parcel, as well as Group Living, and Single Room Occupancy housing as defined in Title 33 Planning and Zoning.
  - d.** "Commercial/Office/Retail/Mixed Use" means development that includes one or more of the following primary uses. The uses refer to the Use Categories in Title 33 Planning and Zoning: The uses are: Household Living, Commercial Parking, Quick Vehicle Servicing, Office, Retail Sales And Service, Self-Service Storage and Vehicle Repair.
  - e.** "Industrial" means development that includes one or more of the following primary uses. The uses refer to the Use Categories in Title 33 Planning and Zoning. The uses are: Industrial Service, Manufacturing And Production, Warehouse And Freight Movement and Wholesale Sales.
  - f.** "Institutional" means development that includes one or more of the following primary uses. The uses refer to the Use Categories in Title 33 Planning and Zoning. The uses are: Colleges, Community Service, Daycare, Medical Centers, Parks and Open Areas, Religious Institutions and Schools.
  - g.** "Other" means development that includes one or more of the following primary uses referred to in Title 33 Planning and Zoning. The uses are: Commercial Outdoor Recreation, Major Event Entertainment and Basic Utilities.
- 20.** "Injury" means a wound inflicted upon a tree resulting from any activity, including trenching, excavating, altering the grade, smothering within the root protection zone of a tree, bruising, scarring, tearing or breaking of roots, bark, trunk, branches or foliage, herbicide or poisoning, or any other action leading to the death or permanent damage to tree health including the following:
  - a.** "Disturbance" is the various activities from construction or development that may damage trees.
  - b.** "Excessive Pruning" is removing in excess, one-fourth (25 percent) or greater, of the functioning leaf, stem or root area in a single growing season. Exceptions are when clearance from overhead utilities or public improvements is required or to abate a hazardous

## **TITLE 11 TREES**

condition or other public nuisance. Excessive pruning does not include normal pruning that follows ANSI standards, see "Proper Arboricultural Practices," and "Pruning"

- c.** "Removal" is felling, cutting or removing any portion of the crown trunk, or root system of a tree, that results in the loss of physiological viability, or any procedure in which the natural result will lead to the death of the tree, including girdling, poisoning, topping or drowning the tree.
  - d.** "Smothering" is the result of compaction or compression of the soil particles or texture that may result from the movement of heavy machinery and trucks, storage of construction materials, structures, paving, or any other means that creates an upper layer that is impermeable within the root protection zone.
  - e.** "Topping" means the inappropriate pruning practice used to reduce tree height by cutting to a predetermined crown limit without regard to tree health or structural integrity. Topping does not include acceptable pruning practices as described in the American National Standards Institute (ANSI) "A-300 Pruning Standards" and companion "Best Management Practices for Tree Pruning" published by the International Society of Arboriculture, such as crown reduction, utility pruning, or crown cleaning to remove a safety hazard, dead or diseased material. Topping is considered "removal".
- 21.** "Land Use Review" is a procedure for a specific use or development required under Title 33 Planning and Zoning.
- 22.** "Nuisance Plant List" is a list within the "Portland Plant List" that identifies nuisance trees and plants.
- 23.** "Overlay Zones and Plan Districts" refer to any of the following overlay zones or plan districts as shown on the Official Zoning Map, unless the specific regulation states otherwise:
  - a.** Environmental Overlays shown on the Official Zoning Map with a "c" or "p".
  - b.** Pleasant Valley Natural Resource Overlay, shown on the Official Zoning Map with a "v".
  - c.** Willamette River Greenway Overlay Zones, as applied to the Natural "n", or Water Quality "q", overlays and only within or riverward of the greenway setback portion of the Recreational "r",

## **TITLE 11 TREES**

General "g" and Industrial "i" overlays, as designated on the Official Zoning Map.

- d.** Scenic Resources Overlay, for trees located within scenic corridors, shown on the Official Zoning Map with an "s".
  - e.** Aircraft Landing Zone, for trees located within the aircraft landing zone, shown on the Official Zoning Map with an "h".
  - f.** Johnson Creek Basin Plan District, only applied to the South subdistrict, to areas within the special flood hazard area, and to sites that abut the Springwater Corridor.
  - g.** Rocky Butte Plan District.
  - h.** South Auditorium Plan District.
- 24.** "Person" includes any individual, property owner, firm, association, corporation, agency, entity, or organization of any kind.
  - 25.** "Proper Arboricultural Practices" refers to the methods employed during tree planting or cutting or removing any part of the branching structure of a plant in the crown, trunk or root areas in accordance the most recent edition of the American National Standards Institute (ANSI) "A-300 Standards" and published "Best Management Practices" of the International Society of Arboriculture.
  - 26.** "Pruning" is the removal or reduction of parts of a tree that are not requisite to growth or production, are no longer visually pleasing, or are injurious to the health or development of the tree.
  - 27.** "Public Agency" means any public agency or public utility as defined in ORS 757.005, or drainage district as defined in ORS 174.116.
  - 28.** "Recognized Organization" is a neighborhood, community, business, or industrial association, or organization recognized or listed by the Office of Neighborhood Involvement (ONI). Recognized organization also includes the ONI district offices.
  - 29.** "Responsible Engineer" for the Bureau of Transportation this shall be the City Engineer, for the Bureau of Environmental Services this shall be the Chief Engineer of the Bureau of Environmental Services, and for the Portland Water Bureau this shall be the Chief Engineer of the Portland Water Bureau. Each Responsible Engineer may delegate their authority and duties to another employee in the same bureau. The duties are as prescribed in Section 11.10.010.

## **TITLE 11 TREES**

- 30.** "Responsible Party" is a person in control of property in fee ownership or tenancy where a tree is located or property adjacent to a Street Tree. The responsible party may include the owner or owners, lessees, tenants, occupants or other persons in charge. In cases of violations, the responsible party may also include the person, partnership, or corporation who violated the provisions of this Title.
- 31.** "Site" has the same meaning as in Title 33 Planning and Zoning.
- 32.** "Street" has the same meaning in Section 9-101 of the City Charter.
- 33.** "Treatment" is the application of therapeutic remedies or corrections to site conditions when injury to trees has occurred to improve the chances of long term viability. Generally these measures should occur only under the direction of an arborist. Treatment measures include compensatory or corrective pruning, fertilization, inoculation, soil fracturing, grade restoration and supplemental irrigation.
- 34.** "Tree Area" is the amount of area on a development site that is used to calculate the required number of trees to be planted to meet tree density standards.
- 35.** "Tree Plan" is a site plan showing trees to be preserved and protected, planted, or removed. Specific requirements for Tree Plans are in Chapter 11.50.
- 36.** Tree Related Terms:
  - a.** "City Tree" is a tree within City limits that is on property owned or managed by the City. A tree that straddles a property line between private property and City-owned or -managed property is a Private Tree, shared by the City and adjacent property owner. A tree on a property line between City-owned or managed property and the street is a Street Tree.
  - b.** "Dangerous Tree" is one where the condition of the tree presents a foreseeable danger of inflicting damage that cannot be alleviated by treatment or pruning. A tree may be dangerous because it is likely to injure people or damage vehicles, structures, or development, such as sidewalks or utilities.
  - c.** "Dead Tree" is a tree that is dead or has been damaged beyond repair or where not enough live tissue, green leaves, limbs, or branches exist to sustain life as determined by an arborist.



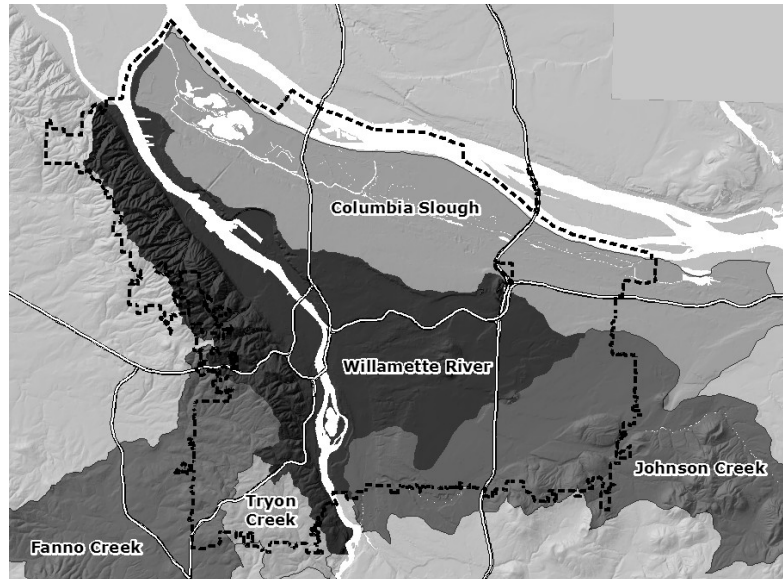
## **TITLE 11 TREES**

- d.** "Dying Tree" is a tree in an advanced state of decline because it is diseased, infested by insects or rotting and cannot be saved by reasonable treatment or pruning, or must be removed to prevent spread of the infestation or disease to other trees or is imminently likely to become a danger or die.
- e.** "Heritage Tree" is a tree designated as a Historic Landmark Tree, a Historic Tree, or a Heritage Tree.
- f.** "Native Tree" is a tree listed on the "Portland Plant List" as native to the Willamette Valley.
- g.** "Non-Native Non-Nuisance Tree" is a tree that is not identified on the Portland Plant List as a native species or a nuisance tree.
- h.** "Nuisance Tree" is a tree of a species listed on the "Nuisance Plant List".
- i.** "Protected Tree" is a tree that shall be retained and protected because of a condition of approval on a land use review, a tree plan, or because it is a Heritage Tree.
- j.** "Private Tree" is a tree on property that is not owned or managed by the City. A tree that straddles a property line between private property and City-owned or –managed property is a Private Tree, shared by the City and adjacent property owner. A tree that straddles a private property line and the street is a Street Tree.
- k.** "Street Tree" means any tree growing in or upon any city managed street. In some cases, property lines lie several feet behind the sidewalk or edge of road pavement. Where a street is not fully improved with curbs or sidewalks but is paved, a tree may be considered a Street Tree if it is located within 15 feet of the edge of pavement, unless a survey by a licensed surveyor or property boundaries can clearly establish otherwise. For completely unimproved streets, the actual property line will be used to demarcate between Private Trees and Street Trees. A tree that straddles a private property line and the street is a Street Tree.
- l.** "Tree" means a perennial, woody stemmed plant that typically supports a distinct crown of foliage and typically reaches a mature height of at least 16 feet and excludes plants listed as shrubs or herbaceous plants in the Tree and Landscaping Manual published by the Bureau of Development Services or the Portland Plant List.

## **TITLE 11 TREES**

- m.** "Tree Grove" is a group of six or more native trees at least 12 inches in diameter, or Oregon white oak trees or Pacific madrone trees that are at least 6 inches in diameter and that form a generally continuous canopy, or are spaced as appropriate for that species or species assemblage. Groves are generally non-linear. Other trees and understory vegetation located within the grove are considered part of the grove and are counted as part of the canopy area. A tree grove may be identified by a qualified professional, such as an arborist or environmental scientist, based on the types, configuration, or functions of a grouping of trees. Functions include structural support and wind protection for the trees within the grove, microclimate and shade, and habitat such as nesting, foraging, and cover for birds and other wildlife.
- 37.** "Utility" is a public utility, business, or organization that supplies energy, gas, heat, steam, water, communications, or other services through or associated with telephone lines, cable service and other telecommunications, sewage disposal and treatment, and other operations for public service. It does not include transportation service, railroad operations, or service otherwise licensed under City Code
- 38.** "Watershed" means one of the areas as shown in Figure 80-1 and further defined by the Bureau of Environmental Services. For the purposes of establishing planting within a specific watershed as part of this Title, watersheds end at the City limits and the following also apply:
  - a.** Columbia Slough – sites on Hayden Island are included in this watershed
  - b.** Willamette River – sites in Northwest Portland that are west of the Willamette River watershed are included in this watershed
  - c.** Fanno Creek/Tryon Creek – these two watersheds are managed as a single watershed unit
  - d.** Johnson Creek – all sites within the Johnson Creek watershed

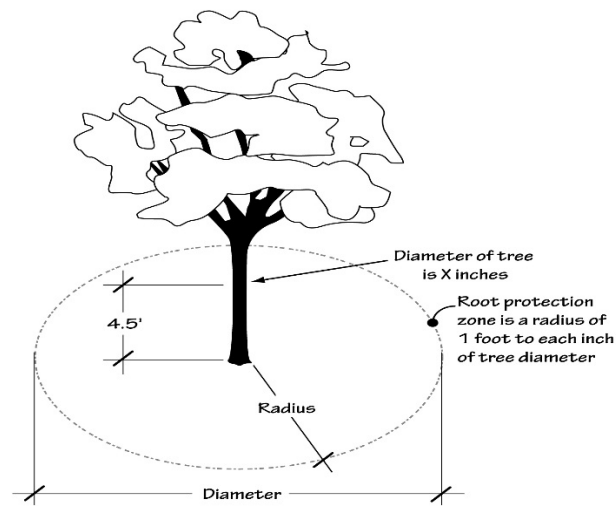
**Figure 80-1  
Watershed Boundaries**



- C. Measurements. For the purposes of establishing distances and other types of required measurements, the following methods are applied.
1. Root Protection Zone (Prescriptive Path). To determine the required root protection zone, measure the size of the tree to be protected. For each diameter inch of the tree, measure one foot away from the tree to establish the radius of the circle surrounding the tree. Each 1 inch diameter of tree requires 1 foot radius for the root protection zone. See Figure 80-2.

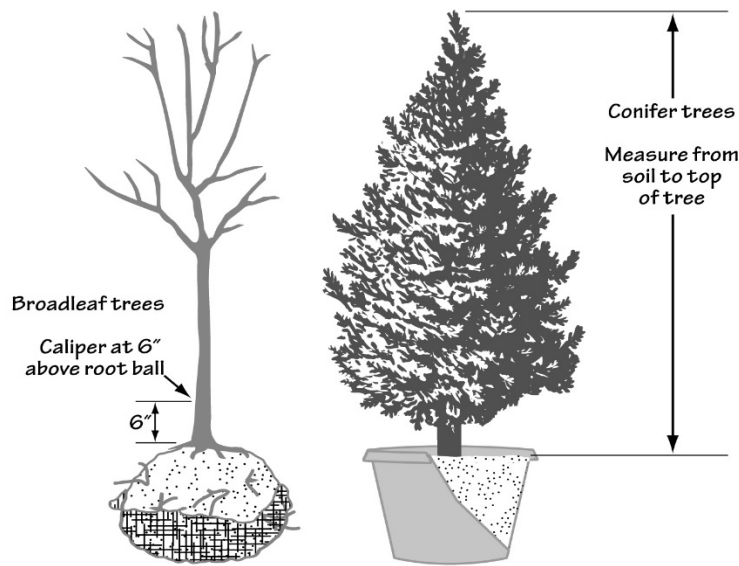
## TITLE 11 TREES

**Figure 80-2**  
**Root Protection Zone**



2. Tree Location. A tree's location for purposes of establishing the applicable requirements of this Title is determined by the trunk at the point where it meets the ground. Surface roots extending from the trunk are not used to determine the tree's location.
3. Measuring Tree Size
  - a. New trees. New trees are measured in caliper inches, which is the diameter of the trunk 6 inches above the soil or root ball for bare root trees. For coniferous trees, tree height is used. See Figure 80-3.

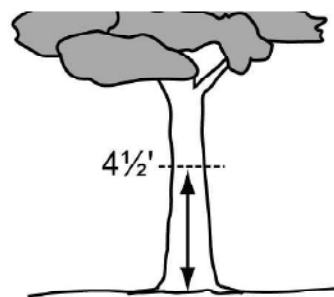
**Figure 80-3  
Measuring Tree Size for New Trees**



**b. Existing trees.**

- (1) Existing trees are generally measured in terms of diameter inches at a height of 4-1/2 feet above the ground. See Figure 80-4. The diameter may be determined by measuring the circumference of the tree trunk and dividing by 3.14.

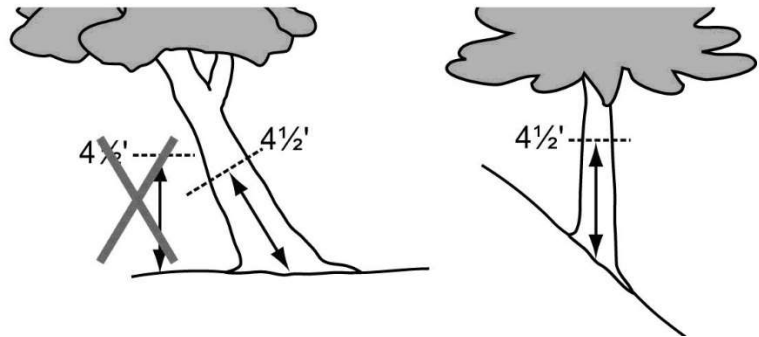
**Figure 80-4  
Measuring Tree Size for Existing Trees**



- (2) When the trunk is at an angle or is on a slope, the trunk is measured at right angles to the trunk 4.5 feet along the center of the trunk axis, so the height is the average of the shortest and the longest sides of the trunk; see Figure 80-5.

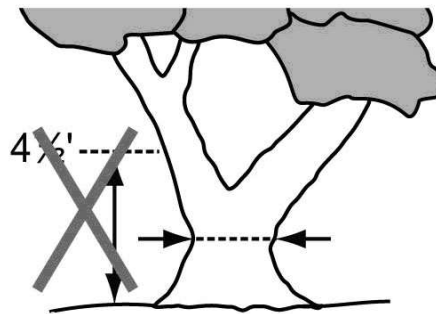
## TITLE 11 TREES

**Figure 80-5**  
**Measuring Existing Trees with an Angle or on Slopes**



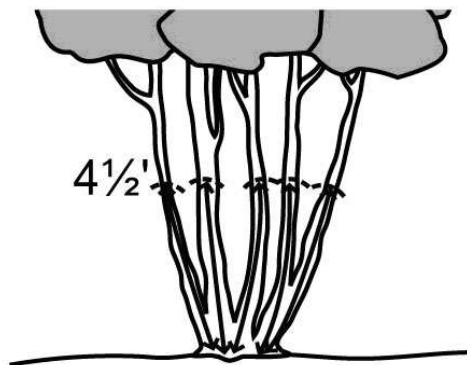
- (3) When the trunk branches or splits less than 4.5 feet from the ground, measure the smallest circumference below the lowest branch. See Figure 80-6.

**Figure 80-6**  
**Measuring Split Trunk Tree**



- (4) For multi-stemmed trees, the size is determined by measuring all the trunks, and then adding the total diameter of the largest trunk to one-half the diameter of each additional trunk (see Figure 80-7). A multi-stemmed tree has trunks that are connected above the ground and does not include individual trees growing close together or from a common root stock that do not have trunks connected above the ground.

**Figure 80-7  
Measuring Multi-stemmed Trees**







## **TITLE 17 - PUBLIC IMPROVEMENTS**

### **TABLE OF CONTENTS**

<b>Chapter 17.04</b>	<b>DEFINITIONS</b>
17.04.010	Definitions.
<b>Chapter 17.06</b>	<b>ADMINISTRATION OF PUBLIC WORKS PERMITTING</b>
17.06.010	Purpose and Scope.
17.06.015	Protection of the Public Interest.
17.06.020	Definitions.
17.06.030	Organization and Rules.
17.06.040	Appeals Panel and Appeals Board.
17.06.050	Appeals.
<b>Chapter 17.08</b>	<b>LOCAL IMPROVEMENT PROCEDURE</b>
17.08.010	Definitions and Scopes of Duties.
17.08.020	City Council Control.
17.08.030	Charter Provisions Applicable.
17.08.040	Initiation of Local Improvement Proceedings.
17.08.050	Petition for a Local Improvement District.
17.08.060	Resolution of Intent.
17.08.070	Local Improvement District Formation and Remonstrances.
17.08.080	Changes to Scope or Cost of Improvements and Notice to Proceed.
17.08.090	Abandonment of Local Improvement District.
17.08.100	Completion of Construction.
17.08.110	Total Cost of Local Improvement
17.08.120	Alternative Financing Methods.
17.08.130	Final Assessment and Objections.
<b>Chapter 17.12</b>	<b>ASSESSMENTS</b>
17.12.010	Lien Docket and General Assessment Procedure.
17.12.060	Assessing Ordinance.
17.12.070	Notice of Assessment.
17.12.080	Payment of City's Share.
17.12.100	Surplus.
17.12.120	Correction of Mistake in Assessment Refund or Overpayment.
17.12.130	Segregation of Assessments
17.12.140	Bonding.
17.12.150	Rebonding.
17.12.170	Collection.
<b>Chapter 17.13</b>	<b>PARKS AND RECREATION SYSTEM DEVELOPMENT CHARGE</b>
17.13.010	Scope and Purposes
17.13.020	Definitions
17.13.030	Rules of Construction

17.13.040	Application
17.13.050	Application Requirements
17.13.060	Partial and Full Exemptions
17.13.070	SDC Credits and SDC Reimbursements
17.13.080	Alternative Calculation of SDC Rate, Credit or Exemption
17.13.090	Payment
17.13.100	Refunds
17.13.110	Dedicated Account and Appropriate Use of Account
17.13.120	Challenges and Appeals
17.13.130	City Review of SDC
17.13.140	Time Limit on Expenditure of SDCs
17.13.150	Implementing Regulations
17.13.160	Amendment of Parks and Recreation SDC-CIP List
17.13.170	Severability

#### **Chapter 17.14      FINANCING SYSTEMS DEVELOPMENT CHARGES**

17.14.010	Purpose.
17.14.020	Definitions.
17.14.030	Application, Consent to Assessment.
17.14.040	Terms and Conditions of Deferred Payment and Installment Payment Agreements.
17.14.050	Assessment.
17.14.060	Cancellation.

#### **Chapter 17.15      TRANSPORTATION SYSTEM DEVELOPMENT CHARGE**

17.15.010	Scope and Purposes.
17.15.020	Definitions.
17.15.030	Rules of Construction.
17.15.040	Application.
17.15.050	Exemptions and Discounts.
17.15.060	SDC Credits, SDC Credit Transfers and SDC Reimbursements.
17.15.070	Alternative Calculation for SDC Rate, Credit, Exemption, or Discount.
17.15.080	Payment.
17.15.090	Refunds.
17.15.100	Dedicated Account and Appropriate Use of Account.
17.15.110	Challenges and Appeals.
17.15.120	City Review of SDC.
17.15.130	Time Limit on Expenditure of SDCs.
17.15.140	Implementing Regulations; Amendments.
17.15.150	Amendment of TSDC Project List.
17.15.160	Severability.

#### **Chapter 17.16      GENERAL PROVISIONS**

17.16.010	Specifications and Authority to Revise.
17.16.020	Interpretation of Specifications.
17.16.030	Progress Payments.

17.16.040	Interest on Progress Payment and Final Warrants.
17.16.050	Progress Payment not Deemed Final Acceptance.
17.16.060	Division of Warrants.
17.16.065	Purchase of Warrants by the City.
17.16.070	Claims against Contractors.
17.16.080	Statutory Provisions Relating to Labor and Wages.
17.16.090	Bonding City Property.
17.16.100	Facilities in Street Area Affected by Improvement.
17.16.110	Facilities in Street Area Damaged by Contractor.
17.16.120	Engineer's Standards.
17.16.130	Approvals by City Attorney.
17.16.140	Acceptance and Release of Property Interests.
<b>Chapter 17.18</b>	<b>GENERAL OBLIGATION IMPROVEMENT WARRANTS</b>
17.18.010	General Obligation Improvement Warrants Authorized.
17.18.020	Procedure for Issuance and Delivery.
17.18.030	Application of Proceeds.
17.18.040	Repayment.
17.18.050	Payment or Bonding Mandatory.
17.18.060	Provision in Budget.
<b>Chapter 17.19</b>	<b>NORTHWEST TRANSPORTATION FUND</b>
17.19.010	Purpose.
17.19.020	Applicability.
17.19.030	Payment.
17.19.040	Implementing Regulations.
17.19.050	Dedicated Account and Appropriate Use of Account.
<b>Chapter 17.23</b>	<b>SPECIAL TRAFFIC CONTROL DISTRICT</b>
17.23.010	Application.
17.23.020	Definitions.
17.23.030	Designated Boundary.
17.23.040	Special Jurisdiction.
17.23.050	Permits Required.
17.23.060	Traffic Standards.
17.23.070	Revocation.
<b>Chapter 17.24</b>	<b>PERMITS</b>
17.24.000	Purpose and Intent.
17.24.005	Jurisdiction and Management of Public Right-of-Way.
17.24.010	Permits Required.
17.24.012	Financial Guarantee Required.
17.24.013	Insurance and Indemnification.
17.24.014	Permits to Construct and Maintain Structures in the Street Area.
17.24.015	Obligation of Property Owner for Structures in the Street Area.
17.24.016	Permit Revocation.

17.24.017	Temporary Street Closure.
17.24.020	Fees and Charges.
17.24.025	Fees for Public Improvement Permits.
17.24.026	Fees for Review of Land Use Applications.
17.24.030	Application for a Public Improvement Permit to construct a Street or Transportation Facility.
17.24.035	Deposit Required.
17.24.040	Refusal of a Public Improvement Permit.
17.24.050	Contents of Permit.
17.24.055	Assurance of Performance.
17.24.060	Permit Conditions.
17.24.067	Hazardous Substances.
17.24.070	Engineering and Superintendence for Street and Transportation Facility Public Improvements.
17.24.080	Work Done Under Permit.
17.24.085	Original Documents Become the Property of the City.
17.24.090	Certificate by City Engineer.
17.24.100	Street Pavement Preservation.
17.24.105	Regulations Governing Excavations and Disturbance of Pavement on Transit Mall.
17.24.110	Record of Permits.
17.24.120	Removal of Improvement.
17.24.130	Preservation of Cobblestones.

## **Chapter 17.25**

### **SIDEWALK CAFES**

17.25.010	Permit Required.
17.25.020	Definitions.
17.25.030	Application Fee and Permit Fee.
17.25.040	Permit Application.
17.25.050	Permit Requirements.
17.25.060	Location Rules and Review.
17.25.070	Liability and Insurance.
17.25.080	Forms and Conditions of Permit.
17.25.090	Denial, Revocation, or Suspension of Permit.
17.25.100	Appeal.

## **Chapter 17.26**

### **SIDEWALK VENDORS**

17.26.010	Conducting a Business on City Sidewalks Unlawful without Permit.
17.26.020	Definitions.
17.26.030	Item for Sale.
17.26.040	Permit Fee.
17.26.050	Application for Permit.
17.26.060	Location Selection.
17.26.070	Location Review.
17.26.080	Payment for Written Consent is Unlawful.
17.26.090	Design Review.

17.26.100	Fire Marshal Inspection.
17.26.110	Application Time Limit.
17.26.120	Form and Condition of Permit.
17.26.125	Renewal of Permits.
17.26.130	Restrictions.
17.26.140	Special Event Designation.
17.26.150	Denial, Suspension or Revocation of Permit.
17.26.160	Appeal.
17.26.170	Penalty for Violation.
17.26.180	Violation a Nuisance, Summary Abatement.

## **Chapter 17.27**

### **STRUCTURAL DRIVEWAYS**

17.27.200	Structural Driveway Defined.
17.27.205	Structural Driveways in Public Streets.
17.27.210	Permit Application.
17.27.220	Engineer's Review.
17.27.230	Design Standards.
17.27.240	Permit.
17.27.250	Revocation of Permit.
17.27.260	Removal of Structural Driveways.
17.27.270	Fees.
17.27.280	Inspection of Construction Required.

## **Chapter 17.28**

### **SIDEWALKS, CURBS AND DRIVEWAYS**

17.28.010	Sidewalk Defined.
17.28.011	Planting and Parking Strip Defined.
17.28.015	Owner Defined.
17.28.020	Responsibility for Sidewalks and Curbs.
17.28.025	Property Owner Responsible for Snow and Ice on Sidewalks.
17.28.030	Notice for Construction of Sidewalks and Curbs.
17.28.035	Curb and Intersection Corner Ramps.
17.28.040	Construction Alternatives.
17.28.050	City Construction if Owner Fails to Construct.
17.28.060	Location, Size and Materials of Sidewalks and Curbs.
17.28.065	Bicycle Parking.
17.28.070	Owners to Repair Sidewalks and Curbs Notice to Repair.
17.28.080	Permit for Sidewalk and Curb Repairs.
17.28.090	Repair by City of Portland.
17.28.100	Driveways Defined.
17.28.110	Driveways Permits and Conditions.
17.28.120	After Construction Driveways Deemed Part of Sidewalk.
17.28.130	Reconstruction of Existing Driveways.
17.28.140	City Charges for Construction or Repair of Sidewalks, Curbs and Driveways.
17.28.150	Billing for Charges.
17.28.160	Assessment of Charges.

**Chapter 17.32            PUBLIC SEWER AND DRAINAGE SYSTEM PERMITS,  
CONNECTIONS AND MAINTENANCE**

17.32.010	Purpose.
17.32.020	Definitions.
17.32.030	Permit Required.
17.32.040	Types of Permits and Reviews
17.32.050	Work Allowed and Required Under Permit.
17.32.060	Permit-Related Records.
17.32.070	Maintenance of Sewer and Drainage Systems.
17.32.080	Use and Access Permits
17.32.090	Connection Permits.
17.32.100	Public Works Permits
17.32.110	Permit and Review Fees.
17.32.120	Reimbursements for Work.
17.32.130	Inspections.
17.32.140	Enforcement.
17.32.150	Compliance Cases and Appeals.
17.32.160	Conflict.
17.32.170	Severability.

**Chapter 17.33            REQUIRED PUBLIC SEWER CONNECTION**

17.33.005	Intent.
17.33.020	Definitions.
17.33.030	Sewer Connection Mandated.
17.33.040	Mandated Sewer System Connection Charges.
17.33.050	Converting Nonconforming Sanitary Sewer Connections.
17.33.060	Required Sanitary Sewer Conversion Charges.
17.33.070	Deferrals of Required Sewer Connections.
17.33.075	Financial Assistance for Required Sewer Connection.
17.33.080	Declaration of Nuisance.
17.33.090	Abatement by Owner.
17.33.100	Connection Enforcement.
17.33.110	Actions before the City Code Hearings Officer.
17.33.130	Notice Sufficiency.
17.33.150	Severability.

**Chapter 17.34            SANITARY DISCHARGES**

17.34.005	Intent of Chapter.
17.34.010	Declaration of Policy.
17.34.020	Definitions.
17.34.030	General Discharge Prohibitions.
17.34.040	Discharge Limitations.
17.34.050	Pretreatment and Pollution Control Required.
17.34.060	Accidental Spill Prevention and Control.
17.34.070	Industrial Wastewater Discharge Permits.
17.34.075	Other Sanitary Discharge Permits or Authorizations.

17.34.080	Inspection and Sampling.
17.34.090	Reporting Requirements.
17.34.110	Enforcement.
17.34.115	Requests for Reconsideration.
17.34.120	Records Retention.
17.34.130	Conflict.
17.34.140	Severability.
17.34.150	Fees.

## **Chapter 17.35      SEPTAGE DISCHARGE**

17.35.010	Definitions.
17.35.020	Permit Required.
17.35.030	Septage Discharge Limitations.
17.35.040	Reserved.
17.35.050	Reserved.
17.35.060	Performance Guaranty.
17.35.070	Fee Schedule.
17.35.080	Collection and Billing.
17.35.085	Inspections.
17.35.110	Enforcement.
17.35.120	Revocation or Amendment of Permit.
17.35.130	Compliance Cases and Appeals.
17.35.140	Conflict.
17.35.150	Severability.

## **Chapter 17.36      SEWER USER CHARGES**

17.36.010	Intent.
17.36.020	Definitions.
17.36.030	Annual Rate Ordinance.
17.36.040	Sewer System Connection Charges.
17.36.050	User Charges.
17.36.060	Special User Charges.
17.36.070	Service Outside the City.
17.36.080	Collection of Charges.
17.36.090	Adjustment of Bills.
17.36.100	Inspection and Enforcement.
17.36.110	Appeal.

## **Chapter 17.37      DOWNSPOUT DISCONNECTION**

17.37.010	Purpose.
17.37.020	Definitions.
17.37.030	Establishment of Downspout Disconnection Program.
17.37.080	Program Enforcement.
17.37.110	Interference with Disconnection Activities Unlawful.
17.37.120	Liability.
17.37.130	Civil Remedies.

- 17.37.150 Bureau Actions.
- 17.37.140 Notice Sufficiency.
- 17.37.160 Severability.

#### **Chapter 17.38**

#### **DRAINAGE AND WATER QUALITY**

- 17.38.010 Authority.
- 17.38.015 Intent.
- 17.38.020 Definitions.
- 17.38.030 Protection of Drainageway Areas.
- 17.38.035 Drainage Management Policies and Standards.
- 17.38.040 Stormwater Management Facilities Required.
- 17.38.041 Parking Lot Stormwater Requirements.
- 17.38.043 Inspections.
- 17.38.045 Enforcement.
- 17.38.050 Erosion Control Required.
- 17.38.055 River Restoration Program.
- 17.38.060 Compliance Cases, Administrative Reviews and Appeals.
- 17.38.070 Conflict.
- 17.38.080 Severability.

#### **Chapter 17.39**

#### **STORM SYSTEM DISCHARGES**

- 17.39.010 Intent.
- 17.39.020 Definitions.
- 17.39.030 Allowable Discharges.
- 17.39.040 Prohibited Discharges.
- 17.39.050 Notification and Control of Illicit Connections and Discharges.
- 17.39.060 Discharge Permits and Other Authorizations.
- 17.39.070 Inspections.
- 17.39.080 Sampling.
- 17.39.090 Reporting Requirements.
- 17.39.100 Records Retention.
- 17.39.110 Enforcement.
- 17.39.120 Compliance Cases and Appeals.
- 17.39.130 Conflict.
- 17.39.140 Severability.

#### **Chapter 17.40**

#### **PROTECTION OF PUBLIC RIGHT-OF-WAY**

- 17.40.010 Injuries to Pavement.
- 17.40.020 Endangering Pavement.
- 17.40.030 Charges for City Patching of Roadway Areas.
- 17.40.040 Damages to Public Right-of-Way.
- 17.40.050 Disposition of Asphalt, Concrete, Rock and Dirt.
- 17.40.060 Disposition of Leaves.



<b>Chapter 17.41</b>	<b>LANDSLIDE ABATEMENT</b>
17.41.010	Purpose.
17.41.020	Definitions.
17.41.030	Applicability.
17.41.040	Landslide As a Nuisance; Costs.
17.41.050	Abatement.
17.41.060	Administrative Review.
<b>Chapter 17.42</b>	<b>PROPERTY OWNER RESPONSIBILITY FOR STREETS</b>
17.42.010	Policy.
17.42.020	Maintenance and Construction Responsibility.
17.42.025	Maintenance Restrictions.
17.42.030	Liability.
17.42.040	Definition.
<b>Chapter 17.44</b>	<b>STREET OBSTRUCTIONS</b>
17.44.010	Unlawful Acts Enumerated.
<b>Chapter 17.43</b>	<b>PEDESTRIAN PLAZAS</b>
17.43.010	Purpose of Establishing Prohibited Conduct.
17.43.020	Pedestrian Plaza Defined.
17.43.030	Soliciting For or Conducting Business.
17.43.040	Unlawful Urination or Defecation.
17.43.050	Unlawful Acts Involving Alcohol, Controlled Substances or Prescription Drugs.
17.43.060	Possession of Weapons.
17.43.070	Structures in Pedestrian Plazas.
17.43.080	Disposing of Rubbish.
17.43.090	Vandalism; Protection of Pedestrian Plaza Property and Vegetation.
17.43.100	Fires and Fireworks Prohibited.
17.43.110	Animals.
17.43.120	Use of Certain Devices or Equipment.
17.43.130	Remote Control Vehicles, Aircraft and Watercraft.
17.43.140	Emergency Pedestrian Plaza Closure.
17.43.150	Trespassing and Areas Closed to the Public.
17.43.160	Condition of Parole or Probation or Judicial or Other Order.
17.43.170	Rules and Regulations, Directions of Police Officers to be Obeyed.
17.43.180	Pedestrian Plaza Exclusions.
<b>Chapter 17.45</b>	<b>ADVERTISING ON BUS BENCHES</b>
17.45.030	Advertising Bench Allowed.
17.45.040	Fee.
17.45.050	Revocation.
17.45.060	Authority.

<b>Chapter 17.46</b>	<b>PUBLICATION BOXES</b>
17.46.010	Definitions.
17.46.020	Publication Boxes within the Right-of-Way.
17.46.030	Limitations on Publication Box Placement.
17.46.040	Co-located Publication Boxes.
17.46.050	Maintenance Requirements.
17.46.060	Enforcement.
17.46.070	Liability.
17.46.080	Appeal.
 <b>Chapter 17.48</b>	 <b>MOVING BUILDINGS</b>
17.48.010	Permit Required.
17.48.020	Application and Fee Deposit.
17.48.030	Moving Permit.
17.48.040	Regulations.
17.48.050	Cutting Wires in Moving Operation.
 <b>Chapter 17.52</b>	 <b>TREES</b>
17.52.010	Relationship to Other City Regulations.
17.52.020	Tree Tubs.
 <b>Chapter 17.56</b>	 <b>PUBLIC UTILITIES</b>
17.56.005	Definitions.
17.56.010	General Bond.
17.56.020	Plans for Underground Construction by Franchise Holder.
17.56.030	Monthly Payments by Utility Companies.
17.56.050	Poles or Wires in Public Area.
17.56.060	Relocation and Discontinuation of Facilities.
17.56.070	Placement of Overhead Wires.
17.56.080	Service Shutoff Outside Premises.
17.56.090	Control of Electrical Currents.
 <b>Chapter 17.60</b>	 <b>UNDERGROUND WIRING DISTRICTS</b>
17.60.010	Designated.
17.60.020	Overhead Wires Prohibited.
17.60.030	Application for Permit.
17.60.040	Designation of Space.
17.60.050	Filing Plans and Specifications.
17.60.060	Issuance of Permit.
17.60.080	Restoration of Streets and Public Use Easements.
17.60.090	Use of Sidewalk Space and Building Fronts.
17.60.100	Location Maps.
17.60.110	Exemptions.
17.60.120	Joint Use of Conduits.

<b>Chapter 17.64</b>	<b>PROTECTION OF CITY OWNED TELECOMMUNICATIONS LINE AND EQUIPMENT, STREET LIGHTING AND TRAFFIC SIGNAL SYSTEMS.</b>
17.64.010	Interference With.
17.64.020	Permit for Interference.
17.64.030	Supervision and Expense of Work.
17.64.040	Use of City Poles or Posts.
<b>Chapter 17.68</b>	<b>STREET LIGHTS</b>
17.68.010	Injuring or Destroying.
17.68.020	Private Street Lighting.
17.68.030	Design Requirements for Special Street Lighting Districts.
17.68.040	Requirements for Lights on New or Reconstructed Streets.
17.68.050	Street Light Removal and Relocation.
<b>Chapter 17.76</b>	<b>FUEL TANKS</b>
17.76.010	Permit Issuance.
17.76.020	Conditions.
17.76.030	Form of Permit.
<b>Chapter 17.80</b>	<b>PLATS AND DEDICATIONS</b>
17.80.010	Approval by Director of the Bureau of Transportation.
17.80.020	Appeal.
<b>Chapter 17.82</b>	<b>LAND DIVISIONS</b>
17.82.010	Administration.
17.82.020	Streets and Alleys.
17.82.030	Partial Width Streets.
17.82.040	Access Control Strips.
17.82.045	Driveway Access Plans.
17.82.050	Temporary Turnarounds.
17.82.060	Public Utility Easements.
17.82.070	Improvements in Land Divisions.
17.82.080	Improvement Procedures for Land Divisions.
17.82.090	Agreement for Construction of Public Improvements.
<b>Chapter 17.84</b>	<b>STREET VACATIONS</b>
17.84.010	Plat Must Be Filed.
17.84.020	Fees.
17.84.030	Preliminary Consideration of Petition.
17.84.040	Bond or Cash Deposit.
17.84.050	Statutory Procedures Applicable.
17.84.060	Consent to Vacation for City as Owner.
17.84.065	Vacation on Council's Own Motion; Notification.

<b>Chapter 17.88</b>	<b>STREET ACCESS</b>
17.88.001	Purpose.
17.88.010	Definitions.
17.88.020	For Building and Planning Actions.
17.88.030	Location of Multiple Dwellings.
17.88.040	Through Streets.
17.88.050	Transportation Impact Study.
17.88.060	Dedication Prior to Permit Approval.
17.88.070	Routes of Travel in Park Areas.
17.88.080	Special Requirements for East Corridor Plan District.
17.88.090	Local Transportation Infrastructure Charge Required.
<b>Chapter 17.92</b>	<b>STREET DESIGNATION</b>
17.92.010	Administration.
17.92.020	Prefixes for Street Designations in the City.
17.92.030	Designation of Streets, Avenues, Boulevards and Drives.
<b>Chapter 17.93</b>	<b>RENAMING CITY STREETS</b>
17.93.010	Criteria for Renaming a City Street.
17.93.020	Selection of Street to be Renamed.
17.93.030	Application Procedures and Fees.
17.93.040	Review of Application and Public Hearings.
17.93.050	City-Initiated Action to Rename a City Street.
17.93.060	Implementation.
<b>Chapter 17.96</b>	<b>SURVEYS, ELEVATIONS AND MONUMENTS</b>
17.96.005	Preservation of Record Monuments.
17.96.050	Datum Plane Established (City of Portland Vertical Datum).
17.96.062	City Benchmarks.
17.96.065	Preservation of City Benchmarks.
17.96.070	Grade Elevations To Be Referred to Datum Plane.
17.96.080	Prior Grades Not Affected.
<b>Chapter 17.100</b>	<b>REMEDIES &amp; PENALTIES</b>
17.100.010	Enforcement Independent of Other Officials.
17.100.020	Responsible Official and Responsible Engineer Designated Representative.
17.100.030	Liability.
17.100.040	Remedies.
17.100.050	Penalty for Violation.
<b>Chapter 17.102</b>	<b>SOLID WASTE &amp; RECYCLING COLLECTION</b>
17.102.010	Declaration of Policy.
17.102.020	Definitions.
17.102.030	Authority of Director to Adopt Rules.
17.102.040	General Requirements for Franchisees and Permittees.
17.102.050	Clean and Efficient Fleet Practices for Franchisees and Permittees.

- 17.102.060 Fees Credited to Solid Waste Management Fund.
- 17.102.070 Fees As a Debt, Enforcement and Collection.
- 17.102.080 Daytime Prohibition of Downtown Garbage Collection.
- 17.102.090 Assessments for Infractions.
- 17.102.100 Right of Appeal and Payment of Assessments.
- 17.102.110 Divulging Particulars of Reports Prohibited.
- 17.102.120 Franchise Administration.
- 17.102.130 Franchise Size Limitation.
- 17.102.140 Residential Collection Franchise Required.
- 17.102.150 Exceptions to Residential Franchise Requirement.
- 17.102.160 Forfeiture and Replacement.
- 17.102.170 Residential Recycling Services.
- 17.102.180 Franchise System Evaluation.
- 17.102.190 Residential Solid Waste and Recycling Rates and Charges.
- 17.102.200 Large Size Container Service to Residential Customers.
- 17.102.210 Commercial Collection Permit Required.
- 17.102.220 Exceptions to Commercial Collection Permit Requirement.
- 17.102.230 Applications for Commercial Collection Permits, Issuance, Denial.
- 17.102.240 Revocation or Suspension of Commercial Collection Permits.
- 17.102.250 Commercial Tonnage Fee.
- 17.102.260 Registration Required for Independent Commercial Recyclers.
- 17.102.270 Businesses and Multifamily Complexes Required to Recycle.
- 17.102.280 Inspections to Determine Compliance with Business Recycling Requirements.
- 17.102.290 Storing solid waste, recycling or compostable containers on the right of way prohibited.
- 17.102.295 Separation of Recyclables, Compost and Solid Waste.
- 17.102.300 Definitions for Ban of Polystyrene Foam Food Containers (PSF).
- 17.102.310 Prohibition on Certain PSF Uses.
- 17.102.320 Exemptions for PSF Use.
- 17.102.330 Enforcement and Notice of Violations for PSF Ban.
- 17.102.340 Fines for PSF Ban.

**Chapter 17.103 SINGLE-USE PLASTIC CHECKOUT BAGS**

- 17.103.010 Purpose.
- 17.103.020 Definitions.
- 17.103.030 Authority of Director to Adopt Rules.
- 17.103.040 Checkout Bag Regulation.
- 17.103.050 Enforcement and Penalties.
- 17.103.060 Severability.

**Chapter 17.104 COMMERCIAL BUILDING ENERGY PERFORMANCE REPORTING**

- 17.104.010 Purpose.
- 17.104.020 Definitions.
- 17.104.030 Authority of Director to Adopt Rules.

- 17.104.040 Energy Performance Tracking and Reporting for Covered Buildings.
- 17.104.050 Energy Performance Reporting Schedule.
- 17.104.060 Transparency of Energy Performance Information.
- 17.104.070 Notification and Posting.
- 17.104.080 Utility Data Access.
- 17.104.090 Building Data Access.
- 17.104.100 Enforcement and Penalties.
- 17.104.110 Right of Appeal and Payment of Assessments.
- 17.104.120 Annual Review of Reported Information.

**Chapter 17.105 MOTOR VEHICLE FUEL TAX**

- 17.105.010 Tax Imposed.
- 17.105.015 Temporary Tax of 4 Years.
- 17.105.020 Use of Tax Revenues.
- 17.105.025 Definitions.
- 17.105.030 License Requirements.
- 17.105.035 License Applications and Issuance.
- 17.105.040 Failure to Secure License.
- 17.105.045 Amount and Payment of Tax.
- 17.105.050 Revocation of License.
- 17.105.055 Cancellation of License.
- 17.105.060 Remedies Cumulative.
- 17.105.065 Billing Purchasers.
- 17.105.070 Failure to Provide Invoice or Delivery Tag.
- 17.105.075 Transporting Motor Vehicle Fuel or Use Fuel in Bulk.
- 17.105.080 Exemption of Weight Receipt Holders.
- 17.105.085 Exemption of Export Fuel.
- 17.105.090 Exemption of Motor Vehicle Fuel or Use Fuel Sold or Distributed to Dealers.
- 17.105.095 Payment of Tax and Delinquency.
- 17.105.100 Monthly Statement of Dealer, Seller or User.
- 17.105.105 Failure to File Monthly Statement.
- 17.105.106 Refunds.
- 17.105.110 Examinations and Investigations.
- 17.105.115 Limitation on Credit for or Refund of Overpayment and on Assessment of Additional Tax.
- 17.105.120 Examining Books and Accounts of Carriers of Motor Vehicle Fuel of Use Fuel.
- 17.105.125 Records to be Kept by Dealers, Sellers and Users.
- 17.105.130 Records to be Kept 3 Years.
- 17.105.135 Citizen Oversight Committee; Annual Audits.
- 17.105.140 Tax Effective If Passed.
- 17.105.145 Administrative Rules.

**Chapter 17.106 DECONSTRUCTION OF BUILDINGS LAW**

- 17.106.005 Short Title.

- 17.106.010 Purpose.
- 17.106.020 Definitions.
- 17.106.030 Authority of Director to Adopt Rules.
- 17.106.040 Regulations.
- 17.106.050 Enforcement and Penalties.
- 17.106.060 Right of Appeal.

**Chapter 17.108      RESIDENTIAL ENERGY PERFORMANCE RATING AND DISCLOSURE**

- 17.108.010 Purpose.
- 17.108.020 Definitions.
- 17.108.030 Authority of Director to Adopt Rules.
- 17.108.040 Energy Performance Rating and Disclosure for Covered Buildings.
- 17.108.050 Exemptions and Waivers.
- 17.108.060 Enforcement and Penalties.
- 17.108.070 Right of Appeal and Payment of Assessments.





**CHAPTER 17.15 - TRANSPORTATION**  
**SYSTEM DEVELOPMENT CHARGE**

(Chapter added by Ordinance No. 171301, effective  
July 18, 1997.)

**Sections:**

- 17.15.010 Scope and Purposes.
- 17.15.020 Definitions.
- 17.15.030 Rules of Construction.
- 17.15.040 Application.
- 17.15.050 Exemptions and Discounts.
- 17.15.060 SDC Credits, SDC Credit Transfers and SDC Reimbursements.
- 17.15.070 Alternative Calculation for SDC Rate, Credit, Exemption, or Discount.
- 17.15.080 Payment.
- 17.15.090 Refunds.
- 17.15.100 Dedicated Account and Appropriate Use of Account.
- 17.15.110 Challenges and Appeals.
- 17.15.120 City Review of SDC.
- 17.15.130 Time Limit on Expenditure of SDCs.
- 17.15.140 Implementing Regulations; Amendments.
- 17.15.150 Amendment of TSDC Project List.
- 17.15.160 Severability.

**17.15.010 Scope and Purposes.**

(Amended by Ordinance Nos. 181322, 182652, 184756 and 188619, effective January 1, 2018.)

- A. New development within the City of Portland contributes to the need for capacity increases for roads, multi-modal transportation and related transportation improvements, to enable new development to take advantage of transit systems and, therefore, new development should contribute to the funding for such capacity increasing improvements. This SDC will fund a portion of the needed capacity increases for arterial, boulevard and collector roads, multi-modal transportation improvements and associated bus and transit improvements, sidewalks, bicycle and pedestrian facilities, street lighting and stormwater drainage and treatment facilities, and other public facilities specified in the City of Portland Transportation System Plan.
- B. ORS 223.297 through 223.314 grant the City authority to impose a SDC to equitably spread the costs of essential capacity increasing capital improvements to new development.
- C. The SDC is incurred upon application to develop property for a specific use or at a specific density. The decision regarding uses, densities, and/or intensities causes direct and proportional changes in the amount of the incurred charge. This SDC is

## **TITLE 17**

### **PUBLIC IMPROVEMENTS**

separate from other fees provided by law or imposed as a condition of development. It is a fee for service because it contemplates a development's receipt of transportation services based upon the nature of that development.

- D.** The SDC imposed by this Chapter is not a tax on property or on a property owner as a direct consequence of ownership of property within the meaning of Section 11b, Article XI of the Oregon Constitution or legislation implementing that section. This Chapter does not shift, transfer or convert a government product or service, wholly or partially paid for by ad valorem property taxes, to be paid for by a fee, assessment or other charge, within the meaning of Section 11g, Article XI of the Oregon Constitution.
- E.** The funding provided by this Chapter constitutes a mandatory collection method based upon the guidelines set forth in ORS 223.297 through 223.314 to assure the construction of capacity increasing improvements to arterial, boulevard and collector roads as well as to bicycle, pedestrian and transit facilities as contemplated in the Transportation Element of the City Comprehensive Plan, City of Portland Transportation System Plan and the list of projects, referred to as the TSDC Project List, to be funded with money collected under this Chapter. The TSDC Project List is not to be confused with the City of Portland Capital Improvement Program.
- F.** This Chapter is intended only to be a financing mechanism for the capacity increases needed for major City traffic and collector streets, multi-modal improvements associated with new development and capacity increasing transportation improvements and does not represent a means to fund maintenance of existing roads.
- G.** The City hereby adopts the methodology report and rate study entitled Transportation System Development Charge Update, hereinafter referred to as "City Rate Study," as well as the North Macadam Overlay Rate Study and the Innovation Quadrant Overlay Project Report and incorporates herein by this reference the assumptions, conclusions and findings in the report which refer to the determination of anticipated costs of capital improvements required to accommodate growth.
- H.** The Transportation SDC provided for in this Chapter is designed to help finance the Transportation System facilities listed in the TSDC Project List as a means of ensuring that adequate capacity is maintained in the City's Transportation System. However, the City specifically recognizes that the entire project list will likely not receive full funding from the proceeds of this SDC, and it is unlikely that every one of the projects listed will be constructed. The City recognizes that the projects in the TSDC Project List are not comprehensive, and that construction of other projects not included on the TSDC Project List may also advance the policy objective of maintaining capacity in the City's Transportation System.

**TITLE 17**  
**PUBLIC IMPROVEMENTS**

- I.** In conjunction with the Transportation System capacity objectives of this Chapter, the City places a high priority on the development of affordable housing. The development of affordable housing promotes the public purpose of providing quality housing options for families and individuals earning 60 percent or less of the Area Median Income. Providing an exemption from the Transportation SDC will make it possible to develop more and better affordable housing within the metropolitan area.

**17.15.020 Definitions.**

(Amended by Ordinance Nos. 171698, 172677, 173121, 175717, 176782, 181322, 182389, 182652, 184756, 185459, 188619, 188757 and 188758, effective January 3, 2018.)

- A.** “**Accessway**” means a walkway that provides pedestrian and/or bicycle passage either between streets or from a street to a building or other destination such as a school, park, or transit stop. Accessways generally include a walkway and additional land on either side of the walkway, often in the form of an easement or right-of-way, to provide clearance and separation between the walkway and adjacent uses. Accessways through parking lots are generally physically separated from adjacent vehicle parking or parallel vehicle traffic by curbs or similar devices and include landscaping, trees and lighting. Where Accessways cross driveways, they may be raised, paved or marked in a manner which provides convenient access for pedestrians.
- B.** “**Administrator**” means that person as appointed by the Director of Transportation to manage and implement this SDC program.
- C.** “**Alternative System Development Charge**” means any SDC established pursuant to Section 17.15.070 of this Chapter.
- D.** “**Applicant**” means the person who applies for a Building Permit.
- E.** “**Application**” means the written request by an Applicant for a Building Permit.
- F.** “**Building Official**” means that person, or their designee, certified by the State and designated as such to administer the State Building Codes for the City.
- G.** “**Building Permit**” means that permit, including development and zoning permits, issued by the City Building Official pursuant to the State of Oregon Structural Specialty Code or as amended, and the State of Oregon Residential Specialty Code or as amended. In addition, Building Permit shall mean the Manufactured Home Installation Permit issued by the City Building Official, relating to the placement of manufactured homes in the City.
- H.** “**City**” means City of Portland, Oregon.

## **TITLE 17**

### **PUBLIC IMPROVEMENTS**

- I. “City Rate Study”** means the report entitled Transportation System Development Charge Update, dated June 2017 and adopted as Exhibit A to Ordinance No. 188619.
- J. “Comprehensive Plan”** means the current, adopted Comprehensive Plan of the City of Portland.
- K. “Condition of Development Approval”** is a Bureau of Transportation requirement imposed on an Applicant by a city land use or limited land use decision, site plan approval or building permit either by operation of law, including but not limited to the City Code or Rule or regulation adopted thereunder, or a condition of approval.
- L. “Construction Cost Index”** means the 20-City Construction Cost Index published by the Engineering News Record.
- M. “Credit”** means the amount by which an Applicant may be able to reduce the SDC fee as provided in this Chapter.
- N. “Developer”** means the person constructing a Qualified Public Improvement or eligible capital improvement prior to the construction of the New Development.
- O. “Development”** means all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to exterior display, storage or activities that have the effect of generating additional PM Peak Hour Trips. Development includes improved open areas such as plazas and walkways, but does not include natural geologic forms or unimproved land.
- P. “Director of Transportation”** means that person or their designee who is responsible for managing the Bureau of Transportation.
- Q. “Finance Director”** means that person or their designee who is responsible for managing the Finance Department for the City of Portland.
- R. “Innovation Quadrant Overlay Project Report”** means the report entitled Innovation Quadrant Transportation System Development Charge Overlay Project Report, dated May 2011 and adopted as Exhibit A to Ordinance No. 184756, and as updated in Exhibit A to Ordinance No. 188758.
- S. “Innovation Quadrant Transportation System Development Charge TSDC Overlay”** means a transportation system development charge (TSDC) zone over the Innovation Quadrant area, as it presently exists or may be amended in the future, in which additional SDCs are collected and expended on capacity-increasing projects to serve future users within the Innovation Quadrant.

**TITLE 17**  
**PUBLIC IMPROVEMENTS**

- T. “Institutional Development”** means development associated with a medical or educational institution and associated uses, on a site of at least five acres in area. Medical institutional campuses include medical centers and hospitals. Educational institutional campuses include universities, colleges, high schools, and other similar institutions offering course of study leading to a high school diploma or a degree certified by a recognized accreditation body. Associated uses on institutional campuses may include some commercial or light industrial uses, residential and other uses.
- U. “ITE Manual”** means the current edition of that manual entitled “An Institute of Transportation Engineers Informational Report - Trip Generation.” A copy of the ITE Manual shall be kept on file with the Bureau of Transportation.
- V. “Methodology”** means the narrative, formulas and charts that serve as the framework for determining the system development charges, as set forth in the City Rate Study.
- W. “Multi-Modal”** means vehicular, transit, bicycle, pedestrian and wheel chair transportation.
- X. “New Development”** means Development on any site which increases overall Trip generation from the site according to Table 4-3 of The City Rate Study or pursuant to Section 17.15.070 of this Chapter. Except as provided under Section 17.15.050, New Development for purposes of this Chapter includes remodeling to the extent that it generates additional Trips.
- Y. “North Macadam Overlay Rate Study”** means the report entitled North Macadam Transportation System Development Charge Overlay Rate Study, dated January 2009 and adopted as Exhibit A to Ordinance 182652, and as updated in Exhibit A to Ordinance No. 188757.
- Z. “North Macadam Transportation System Development Charge TSDC Overlay”** means a transportation system development charge (TSDC) zone over the entire North Macadam urban renewal area (URA), as it presently exists or may be amended in the future, in which additional SDCs are collected and expended on capacity-increasing projects to serve future users within North Macadam.
- AA. “Over-capacity”** means that portion of an improvement that is built larger or with greater capacity than is necessary to serve the Applicant’s New Development or mitigate for transportation system impacts attributable to the Applicant’s New Development. There is a rebuttable presumption that improvements built to the City’s minimum standards are required to serve the Applicant’s New Development and to mitigate for transportation system impacts attributable to the Applicant’s New Development.

## TITLE 17

### PUBLIC IMPROVEMENTS

- BB. “Pedestrian Connection”** means a continuous, unobstructed, reasonably direct route between two points that is intended and suitable for pedestrian use. Pedestrian connections include but are not limited to sidewalks, walkways, stairways and pedestrian bridges. On developed parcels, pedestrian connections are generally hard surfaced. In parks and natural areas, pedestrian connections may be soft-surfaced pathways. On undeveloped parcels and parcels intended for redevelopment, pedestrian connections may also include rights-of-way or easements for future pedestrian improvements.
- CC. “Permit”** means a Building Permit.
- DD. “Person Trip”** means a Trip made by a person or persons to and from a Development during the PM Peak Hour.
- EE. “PM Peak Hour”** means the 60-minute time period of highest Trip generation during the afternoon period between 4 p.m. and 6 p.m.
- FF. “Port Development”** means a planned development owned or operated by a unit of government involving a facility used for cargo freight or passenger transportation by air, water, rail or public mass transit, including accessory uses. Uses that are accessory to Port Development are those which send or receive cargo freight or are related to passenger movement or service.
- GG. “Previous use”** means the most recent permitted use conducted at a particular property. Where the site was used simultaneously for several different uses (mixed use), then, for purposes of this Chapter, all of the specific use categories shall be considered. Where one use of the site accounted for 70 percent or more of the total area used, then that dominant use will be deemed to be the sole previous use of the site. Where the previous use is composed of a primary use with one or more ancillary uses that support the primary use and are owned and operated in common, that primary use shall be deemed to be the sole use of the property for purposes of this Chapter.
- HH. “Proposed use”** means the use proposed by the Applicant for a New Development. Where the Applicant proposes several different uses (mixed use) for the New Development then, for purposes of this Chapter, all of the specific use categories shall be considered. Where the proposed use is composed of a primary use with one or more ancillary uses that support the primary proposed use and are owned and operated in common, that primary use shall be deemed to be the sole proposed use of the property for purposes of this chapter.
- II. “Qualified Public Improvement”** means any transportation system capital improvement or conveyance of an interest in real property that increases the capacity of the City’s Transportation System and is:

**TITLE 17**  
**PUBLIC IMPROVEMENTS**

1. Required by the Bureau of Transportation as a condition of the Development approval, and
  2. Listed on the City's TSDC Project List, and
    - a. Not located on or contiguous to the Applicant's New Development site, or
    - b. Located on or contiguous to the Applicant's New Development site, and in the opinion of the Administrator is an Over-Capacity improvement or conveyance.
- JJ. "Remodel" or "Remodeling"** means to alter, expand or replace an existing structure.
- KK. "Right-of-Way"** means that portion of land that is dedicated for public use including use for pedestrians, bicycles, vehicles and transit, utility placement and signage.
- LL. "Roads"** means streets, roads and highways.
- MM. "Temporary Use"** means a construction trailer or other non-permanent structure.
- NN. "Transportation SDC Capital Improvement Plan,"** also called TSDC Project List, means the City program set forth in the City Rate Study that identifies all of the major transportation system and facilities capacity, safety, reconstruction, bicycle, pedestrian, transit and bridge improvements projected to be necessary to accommodate existing and anticipated transportation system demands within the next 10 years, and within the next 20 years as described in the North Macadam Overlay Rate Study and Innovation Quadrant Overlay Project Report.
- OO. "Transportation System Development Charge," or "SDC,"** refers to the fee to be paid under this Chapter.
- PP. "Transportation SDC Rate Schedule"** refers to the listing of fees for development types, as adopted in Ordinance No. 188619 and, if applicable, Ordinance Nos. 182652 and 184756 for the North Macadam and Innovation Quadrant TSDC Overlay areas, respectively.
- QQ. "Transportation System Plan," or "TSP,"** means the current, adopted 20-year plan for transportation improvements in the City.
- RR. "Trip"** means Person Trip.
- SS. "Vehicle"** means a motorcycle, automobile, truck, boat or recreational vehicle, but does not include transit, bicycles and motorized wheelchairs for the disabled.

## **TITLE 17**

### **PUBLIC IMPROVEMENTS**

**TT. “Vehicular”** means a reference to a vehicle.

**UU. “Walkway”** means an area intended and suitable for use by pedestrians, that meets standards of the American with Disabilities Act, located in public right-of-way.

#### **17.15.030 Rules of Construction.**

(Amended by Ordinance No. 188619, effective January 1, 2018.) For the purposes of administration and enforcement of this Chapter, unless otherwise stated in this Chapter, the following rules of construction shall apply:

- A.** In case of any difference of meaning or implication between the text of this Chapter and any caption, illustration, summary table, or illustrative table, the text shall control.
- B.** The word “shall” is always mandatory and not discretionary; the word “may” is permissive.
- C.** Words used in the present tense shall include the future; and words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.
- D.** The phrase “used for” includes “arranged for,” “designed for,” “maintained for,” and “occupied for.”
- E.** Where a regulation involves two or more connected items, conditions, provisions, or events:
  - 1.** “And” indicates that all the connected terms, conditions, provisions or events shall apply;
  - 2.** “Or” indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
- F.** The words “include” and “includes” shall not limit a term to the specific example, but are intended to extend the term’s meaning to all other instances or circumstances of like kind or character.

#### **17.15.040 Application.**

(Amended by Ordinance Nos. 181322, 182652, 184756, 185195, 185459, 187210 and 188619, effective January 1, 2018.) This Chapter applies to all New Development throughout the City of Portland. The amount of the Transportation SDC shall be calculated according to this section. For any New Development within the North Macadam Overlay Rate Study boundaries, the transportation SDC shall be the sum of two calculations, the first based upon the City Rate Study and the second based upon the North Macadam Overlay Rate Study. For any New Development within the Innovation Quadrant area boundaries, the transportation SDC shall be the sum of two calculations, the first based



upon the City Rate Study and the second based upon the Innovation Quadrant Overlay Project Report.

**A. New Development.**

- 1.** Except as otherwise provided in this Chapter, a Transportation SDC shall be imposed upon all Applications for New Development.
- 2.** The Applicant shall at the time of Application provide the Administrator with the information requested on an SDC application form regarding the previous and proposed use(s) of the property, including the following:
  - a.** A description of each of the previous and proposed uses for the property for which the Permit is being sought--with sufficient detail to enable the City to calculate Trip generation for the entire property under the previous use and for the proposed use(s) of the New Development.
  - b.** For residential uses--the number of residential dwellings, including type, e.g., single family or multi family.
  - c.** For commercial uses--the square footage (or other unit of measure, as applicable) for each type of commercial use, e.g., office, retail, etc.
- 3.** Except as otherwise provided in this Chapter, the amount of the SDC due shall be determined by estimating the Trip generation of the previous use(s) on the property and the Trip generation for all of the proposed use(s) and then calculating the total SDC for the previous use(s) and the proposed uses(s) as provided in the Transportation SDC Rate Schedule.
  - a.** If the Person Trips attributable to the proposed use of the New Development are within 15 percent  $\pm$  of the Person Trips attributable to the total previous use of the property and do not increase or decrease Person Trips by more than 25 Person Trips, the Applicant is not required to pay any SDC and is not eligible for any SDC reimbursement or credit.
  - b.** If the Person Trips attributable to the proposed use of the New Development are more than 115 percent of the Person Trips attributable to the total previous use, the Applicant shall pay the difference between the SDC attributable to the proposed use and the SDC attributable to the total previous use.
  - c.** If the Person Trips attributable to the proposed New Development are less than 85 percent of the Person Trips attributable to the total

## **TITLE 17**

### **PUBLIC IMPROVEMENTS**

previous use(s), and the Development had previously paid a Transportation SDC, then the Applicant shall be eligible for an SDC reimbursement under Section 17.15.060.

4. In the event an identified use does not have a basis for Trip determination stated in the City Rate Study, the Administrator shall identify the land use or uses that has/have a Trip generation rate most similar to the use(s) in question and apply the Trips generation rate most similar to the proposed use or uses.
5. Notwithstanding any other provision, the dollar amounts of the SDC set forth in the Transportation SDC Rate Schedule as well as the North Macadam Overlay Rate Study and the Innovation Quadrant Overlay Project Report shall on July 1st of each year be increased or decreased automatically by the difference of the 5-year moving average of the 20-City Construction Cost Index published by the Engineering News Record.

#### **B. Institutional Development.**

1. Institutional Development shall be subject to assessment under this Subsection or under Subsection A. above, at the election of the Applicant. If the Applicant elects assessment under this Subsection, this method of assessment shall be utilized on Institutional properties designated in the election for a period of not less than three years from date of initial election.
2. Within 60 days of election of the alternate assessment under this Subsection, the Applicant Institution shall submit the proposed methodology for counting Trips to the Administrator. The Administrator shall determine whether the proposed methodology is acceptable within 20 days from the date of election and submission, and, if the methodology is rejected, the Administrator shall provide an explanation for the decision.
3. Within one year of the date of election of the alternative method of assessment under this Subsection, at the time(s) designated in the accepted method to count Trips, the Applicant Institution shall establish the average PM Peak Hour Trip count. Such data and related analysis shall be based upon a methodology to calculate Trips accepted by the Administrator.
4. The amount of the SDC shall be determined at the end of each 12-month period by multiplying the applicable dollar amount, as provided in the Transportation SDC Rate Schedule, by the change in average PM Peak Hour Trip count during the intervening 12-month period. Such SDC, if any, shall be due and payable within 45 days from the close of the 12-month period.

**TITLE 17**  
**PUBLIC IMPROVEMENTS**

5. For uses for which the appropriate SDC calculation is a unit of measure other than square feet, such as the number of students, movie screens, etc., the first Application submitted for such a use that is subject to this Chapter shall establish the baseline number of existing units of measure. No SDC shall be assessed against that baseline. A baseline Trip rate so established shall be valid, and need not be recalculated, for the next 12 months.
- C. Port Development. At the Applicant's option, Port Development may be subject to assessment under Subsection A. of this Section, or under this Subsection.
1. If the Applicant elects assessment under this Subsection C., the Applicant and the City shall negotiate an agreement for the payment of a fee in lieu of the Transportation SDC that includes the following elements:
    - a. A methodology for estimating the amount of the SDC which would be imposed pursuant to Subsection A. above during a period of either 3 years or until the expiration of the SDC project list, whichever is less, but in any event not more than 10 years, as specified by the Applicant. The methodology shall take into account the Port Development anticipated under the Applicant's master plan during the period specified in that plan, the Trips that the Port Development is expected to generate, Trip levels against which SDCs have historically been assessed, the anticipated increases or decreases in the dollar amounts of the SDC during the specified period, any applicable credits or exemptions and any other factors which the Administrator deems to be relevant. In no event shall the charge estimated under this Subsection be less than the SDC that would otherwise be due for the Port Development and the Applicant shall indicate its agreement to the methodology in writing.
    - b. A payment period shall be imposed during which the Applicant shall pay in full the amount due within 12 months of the Applicant's agreement to the methodology.
  2. In the event the Applicant and the City are unable to agree to a methodology under this Subsection, the normal method of calculating and assessing the SDC under Subsection A. above shall apply.

**17.15.050 Exemptions and Discounts.**

(Amended by Ordinance Nos. 171698, 173437, 177198, 181322, 182389, 182652, 183679, 183448, 184756, 185195, 185987, 187821, 188619, 188757 and 188758, effective January 3, 2018.) The uses listed and described in this section shall be exempt, either partially or fully, from payment of the Transportation SDC. Any Applicant seeking an exemption or a discount under this Section shall specifically request that exemption within 180 days after building permit issuance for the New Development. Where New Development consists of only part of one or more of the uses described in this section, only that/those portion(s) of

## TITLE 17

### PUBLIC IMPROVEMENTS

the development which qualify under this section are eligible for an exemption or discount. The balance of the New Development which does not qualify for any exemption or discount under this section shall be subject to the full SDC. Should the Applicant dispute any decision by the City regarding an exemption or discount request, the Applicant must apply for an alternative exemption calculation under Section 17.15.070. The Applicant has the burden of proving entitlement to any exemption so requested.

- A. Temporary Uses are fully exempt so long as the use or structure proposed in the New development will be used not more than 180 days in a single calendar year.
- B. New Development that will not generate more than 15 percent more Person Trips than the present use of the property generates and that will not increase Person Trips by more than 25 Person Trips shall be fully exempt.
- C. Affordable housing is exempt to the extent established by Section 30.01.095.
- D. Discount of the Transportation SDC may be available for qualified land use types described in this Subsection and located within designated areas of the City. The Applicant has the burden of proving entitlement to any discount so requested. No discount based on the person trip methodology shall be provided for any SDC within the North Macadam Overlay area or the Innovation Quadrant Overlay area.
  - 1. To qualify for a discount, the Applicant must demonstrate the following:
    - a. The New Development will be located within the Central City or other centers as designated by the Bureau of Planning and Sustainability. Other centers include the Gateway Plan District, areas within Town Centers and Neighborhood Centers as mapped in the new 2035 Comprehensive Plan, and parcels within 1,000 feet of light rail stations (excluding single-family, OS, and IG and IH zones).
    - b. The New Development will meet the eligibility criteria listed in the following table:

Residential	
Single Family (1,200 square feet or more)	Ineligible
Single Family (1,199 square feet or less)	Ineligible
Multiple Family	Eligible if in mixed use site that is built to at least 75% of max FAR
Senior Housing/Congregate Care/Nursing Home	Eligible if in mixed use site that is built to at least 75% of max FAR

**TITLE 17  
PUBLIC IMPROVEMENTS**

<b>Commercial – Services</b>	
Bank	Eligible if in mixed use site that is built to at least 75% of max FAR
Day Care	Eligible if in mixed use site that is built to at least 75% of max FAR
Hotel/Motel	Eligible if in mixed use site that is built to at least 75% of max FAR
Service Station / Gasoline Sales	Ineligible
Movie Theater/Event Hall	Eligible if in mixed use site that is built to at least 75% of max FAR
Carwash	Ineligible
Health Club / Racquet Club	Eligible if in mixed use site that is built to at least 75% of max FAR
<b>Commercial – Institutional</b>	
School, K-12	Eligible
University / College / Jr. College	Eligible
Church	Eligible
Hospital	Eligible
Park	Eligible
<b>Commercial - Restaurant</b>	
Restaurant (Standalone)	Eligible if in mixed use site that is built to at least 75% of max FAR
Quick Service Restaurant (Drive-Though)	Ineligible
<b>Commercial - Retail</b>	
Shopping/Retail	Eligible if in mixed use site that is built to at least 75% of max FAR
Convenience Market	Eligible if in mixed use site that is built to at least 75% of max FAR
Free Standing Retail Store/ Supermarket	Eligible if in mixed use site that is built to at least 75% of max FAR
Car Sales - New / Used	Ineligible
<b>Commercial – Office</b>	
Administrative Office	Eligible if in mixed use site that is built to at least 75% of max FAR
Medical Office / Clinic	Eligible if in mixed use site that is built to at least 75% of max FAR
<b>Industrial</b>	
Light Industry / Manufacturing	Eligible if in mixed use site that is built to at least 75% of max FAR
Warehousing / Storage	Ineligible
Self-Storage	Ineligible

## TITLE 17

### PUBLIC IMPROVEMENTS

2. The following Transportation SDC discounts apply to eligible land uses:

a. Central City – 33 percent reduction

b. Other Centers– 8 percent reduction

E. Graded Scale: A change in use of an existing building where the gross enclosed floor area does not exceed 3,000 square feet is fully exempt. A change in use of an existing building where the gross floor area is between 3,000 square feet and 5,000 square feet shall be assessed on a graded scale. The percentage of the rate to be assessed on the entire existing building shall be calculated by the following equation:

$$(\text{size of existing building} - 3,000 \text{ square feet}) / 2,000 \text{ square feet}$$

#### Examples of Graded Scale Assessment Calculations

$(4,000 - 3,000) / 2,000 = 0.50$  Existing 4,000 square foot building assessed at 50% of the rate

$(3,200 - 3,000) / 2,000 = 0.10$  Existing 3,200 square foot building assessed at 10% of the rate

$(4,900 - 3,000) / 2,000 = 0.95$  Existing 4,900 square foot building assessed at 95% of the rate

F. Alteration permits for tenant improvements, new construction or remodeling are fully exempt where:

1. no additional dwelling unit(s) or structure(s) are created;

2. the use or structure will not result in an increase in additional Trips according to the City Rate Study and, if applicable, the North Macadam Overlay Rate Study or the Innovation Quadrant Overlay Project Report;

3. the use or structure is of a temporary nature and is used less than 180 days in a calendar year.

G. The construction of accessory buildings or structures which will not create additional dwelling units or which do not create additional demands on the City's capital improvements are fully exempt.

H. Any newly permitted and constructed accessory dwelling unit (ADU) conforming to the Title 33 definition of an ADU will qualify for a waiver of SDC fees if a complete building permit application is submitted for the ADU from April 15, 2010 through July 31, 2018, provided that the Applicant receiving a waiver obtains an occupancy permit no later than June 30, 2019. If an occupancy permit is not

**TITLE 17**  
**PUBLIC IMPROVEMENTS**

obtained by June 30, 2019, an occupancy permit will not be issued until the SDC is paid at the rates in effect at the time the occupancy permit is issued.

- I. For New Development which includes a mix of exempt and non-exempt forms of development, the applicable exemption(s) shall apply only to that portion of the New Development to which the exemption applies.

**17.15.060 SDC Credits, SDC Credit Transfers and SDC Reimbursements.**

(Amended by Ordinance Nos. 172677, 173121, 173437, 174936, 181322, 182652, 184756, 185195 and 188619, effective January 1, 2018.)

**A. SDC Credits:**

1. The City may grant a credit against the Transportation SDC, which is otherwise assessed for a New Development, for eligible capital improvements constructed or dedicated as part of the New Development. The Applicant bears the burden of evidence and persuasion in establishing entitlement to an SDC Credit and to a particular value of SDC Credit.
  - a. To obtain an SDC Credit, the Applicant must specifically request a credit within 180 days after building permit issuance for the New Development. In the request, the Applicant must identify the improvement(s) for which credit is sought and explain how the improvement(s) meet the requirements for a Qualified Public Improvement or other eligible improvement pursuant to Subsection 17.15.060 A.1.c. The Applicant shall also document, with credible evidence, the value of the improvement(s) for which credit is sought, as follows:
    - (1) For dedicated lands, value shall be based upon a written appraisal of fair market value by a qualified, professional appraiser based upon comparable sales of similar property between unrelated parties in an arms-length transaction.
    - (2) For improvements yet to be constructed, value shall be based upon the anticipated cost of construction. Any such cost estimates shall be certified by a professional architect or engineer or based on a fixed price bid from a contractor ready and able to construct the improvement(s) for which SDC Credit is sought.
    - (3) For improvements already constructed, value shall be based on the actual cost of construction as verified by receipts submitted by the Applicant.

## **TITLE 17**

### **PUBLIC IMPROVEMENTS**

- b.** If, in the Administrator's opinion, the improvement(s) are Qualified Public Improvements, and the Administrator concurs with the proposed value of the improvement(s), an SDC Credit shall be determined by the Administrator as follows:

  - (1)** For improvements on or contiguous to the New Development site, only the costs for the Over-Capacity portion of the improvement as described in the definition of Qualified Public Improvement are eligible for SDC Credit. There is a rebuttable presumption that improvements built to the City's minimum standards are required to serve the Applicant's New Development and to mitigate for transportation system impacts attributable to the Applicant's New Development.
  - (2)** For Qualified Public Improvements not located on or contiguous to the New Development site, the full cost of the improvement may be eligible for SDC Credit.
- c.** The Administrator may grant credit for all or a portion of the costs of capital improvements constructed or dedicated as part of the New Development that do not meet the requirements of Qualified Public Improvements, provided that the improvements are listed on the City's TSDC Project List. In such case, the Administrator may determine what portion of the costs are eligible for SDC Credit.
- d.** For all improvements for which Credit is sought within the North Macadam Transportation System Development Charge Overlay, the Administrator shall apportion the Credit based upon the percent of the total SDC attributable to the City Rate Study and the Overlay Rate Study.
- e.** For all improvements for which Credit is sought within the Innovation Quadrant Transportation System Development Charge Overlay, the Administrator shall apportion the Credit based upon the percent of the total SDC attributable to the City Rate Study and the Innovation Quadrant Overlay Project Report.
- f.** The Administrator will provide to the Applicant a written notice of the City's decision on the SDC Credit request, including an explanation thereof, within 21 calendar days of the request being submitted.
- g.** The Applicant may seek an alternative SDC Credit calculation under Section 17.15.070. Any request for an Alternative SDC Credit



**TITLE 17**  
**PUBLIC IMPROVEMENTS**

calculation must be filed with the Administrator in writing within 10 calendar days of the written decision on the initial Credit request.

2. Granting SDC Credits to New Development Prior to Commencing Construction of New Development. When an eligible improvement is built by a Developer prior to an Applicant applying for Building Permits for the New Development, the City may grant a credit for any eligible improvement(s). Credits issued are pursuant to the following requirements and conditions:
  - a. The Developer must specifically request a credit prior to the first Application for a Building Permit, but after the issuance of the Public Works Permit for the eligible improvement;
  - b. For improvements yet to be constructed, the Developer shall provide the City with an enforceable mechanism to guarantee completion of the eligible improvement, either in the form of a performance bond or other financial guarantee acceptable to the Administrator; and
  - c. The Developer shall submit written confirmation to the Administrator on the form provided acknowledging:
    - (1) That SDC credits issued pursuant to this Section are in lieu of any other credits that could be claimed by the Developer or other Applicants on account of the eligible improvement; and
    - (2) That it is the Developer's obligation to advise subsequent Applicants of the New Development that SDC credits associated with the eligible improvement have already been issued and that no further credits are available.
3. Where the amount of an SDC Credit approved by the Administrator under this Section exceeds the amount of the Transportation SDC assessed by the City upon a New Development, the SDC Credit may not be transferred to a different development site. An SDC Credit shall be issued by the City for a particular dollar value to the Applicant or Developer. The Applicant or Developer may convey by any means and for any value an SDC Credit to any other party to be used on the initial development site.
4. The City previously allowed SDC Credits to be transferred to other parties without restriction as to location. The City will continue to honor those SDC Credits issued prior to January 1, 2018.
5. The City shall accept at face value any SDC Credit presented as full or partial payment for the Transportation SDC due on New Development,

## **TITLE 17**

### **PUBLIC IMPROVEMENTS**

except that SDC credits approved in connection with New Development outside the North Macadam Renewal District and applied to New Development inside the North Macadam Urban Renewal District may only be applied to the portion of that New Development's SDCs payable under the City Rate Study, and SDC credits approved in connection with New Development outside the Innovation Quadrant and applied to New Development inside the Innovation Quadrant may only be applied to the portion of that New Development's SDCs payable under the City Rate Study. Neither the City nor any of its employees or officers shall be liable to any party for accepting an SDC Credit, approved and issued by the City under this Section, as payment for a Transportation SDC.

6. SDC Credits are void and of no value if not redeemed with the City for payment of a Transportation SDC within 10 years of the date of issuance.
7. It shall be a violation of this title for any person to counterfeit or forge an SDC Credit or knowingly attempt to negotiate or redeem any counterfeit or forged SDC Credit.

#### **B. SDC Reimbursement.**

1. If an Applicant proposes New Development on property on which there is already a use that generates at least 15 percent more Person Trips than the proposed use generates, or that generates at least 25 more Person Trips beyond what the proposed use generates, and if the Development had previously paid a Transportation SDC, then the Applicant shall be entitled to an SDC reimbursement. The SDC reimbursement shall be in the form of a credit equal to the difference between the SDC Rate of the previous use and that for the proposed use. The Applicant bears the burden of evidence and persuasion in establishing entitlement to an SDC reimbursement and to a particular amount of such a reimbursement.
2. To obtain an SDC reimbursement, the Applicant must request the reimbursement within 180 days after building permit issuance for the New Development and must document the basis for the request with traffic reports prepared and certified to by a Professional Engineer.
3. The Administrator shall notify the Applicant in writing of its decision on the SDC Reimbursement request and shall provide a written explanation of the decision. For all improvements for which Reimbursement is sought within the North Macadam Transportation System Development Charge Overlay, the Administrator shall apportion the Reimbursement based upon the percent of the total SDC attributable to the SDC calculated from the City Rate Study and from the North Macadam Overlay Rate Study. For all improvements for which Reimbursement is sought within the Innovation Quadrant Overlay, the Administrator shall apportion the Reimbursement

**TITLE 17**  
**PUBLIC IMPROVEMENTS**

based upon the percent of the total SDC attributable to the SDC calculated from the City Rate Study and from the Innovation Quadrant Overlay Project Report.

4. The Applicant may seek an Alternative SDC Reimbursement calculation under Section 17.15.070 in the same manner as for an Alternative SDC Rate request. Any request for an Alternative SDC reimbursement calculation must be filed with the administrator in writing within 10 calendar days of the written decision on the initial reimbursement request.

**17.15.070 Alternative Calculation for SDC Rate, Credit, Exemption, or Discount.**

(Amended by Ordinance Nos. 181322, 182652, 184756 and 188619, effective January 1, 2018.)

- A. Pursuant to this section, an applicant may request an alternative SDC calculation, alternative SDC credit determination or alternative SDC exemption, but only under the following circumstances:

1. The Applicant believes the number of Person Trips resulting from the New Development is, or will be, less than the number of Trips established in The City Rate Study and if applicable, the North Macadam Overlay Rate Study or the Innovation Quadrant Overlay Project Report, and for that reason the Applicant's SDC should be lower than that calculated by the City.
2. The Applicant believes the City improperly excluded from consideration a Qualified Public Improvement that would qualify for credit under Section 17.15.060, or the City accepted for credit a Qualified Public Improvement, but undervalued that improvement and therefore undervalued the credit.
3. The Applicant believes the City improperly rejected a request for an exemption or discount under Section 17.15.050 for which the Applicant believes it is eligible.

- B. Alternative SDC Rate Request:

1. If an Applicant believes the number of Trips resulting from the New Development is less than the number of Trips established in The City Rate Study and, if applicable, the North Macadam Overlay Rate Study or the Innovation Quadrant Overlay Project Report, the Applicant must request an alternative SDC rate calculation, under this section, within 180 days after building permit issuance for the New Development. The City shall not entertain such a request filed more than 180 days after building permit issuance for the New Development. Upon the timely request for an alternative SDC rate calculation, the Administrator shall review the Applicant's calculations and supporting evidence and make a determination

## **TITLE 17**

### **PUBLIC IMPROVEMENTS**

within 21 calendar days of submittal as to whether the Applicant's request satisfies the requirements of this Section.

2. In support of the Alternative SDC rate request, the Applicant must provide complete and detailed documentation, including verifiable Trips generation data, analyzed and certified by a Professional Engineer. The Applicant's supporting documentation must rely upon generally accepted sampling methods, sources of information, cost analysis, growth projections and techniques of analysis. The proposed Alternative SDC Rate calculation shall include an explanation by a registered engineer explaining with particularity why the rate established in the City Rate Study and, if applicable, the North Macadam Overlay Rate Study or the Innovation Quadrant Overlay Project Report does not accurately reflect the New Development's impact on the City's transportation system
3. The Administrator shall apply the Alternative SDC Rate if, in the Administrator's opinion, all of the following are true:
  - a. The evidence and assumptions underlying the Alternative SDC Rate are reasonable, correct and credible and were gathered and analyzed by a suitable, competent professional in compliance with generally accepted engineering principles and methodologies and consistent with this Section; and
  - b. The proposed Alternative SDC rate was calculated according to a generally accepted methodology; and
  - c. The proposed alternative SDC rate more realistically reflects the Person Trips generated by the New Development compared to the rate set forth in the City Rate Study and, if applicable, the North Macadam Overlay Rate Study or the Innovation Quadrant Overlay Project Report.
4. If, in the Administrator's opinion, not all of the above criteria are met, the Administrator shall provide to the Applicant by certified mail, return receipt requested, a written decision explaining the basis for rejecting the proposed alternative SDC rate.

#### **C. Alternative SDC Credit Request:**

1. If an Applicant has requested an SDC Credit pursuant to Section 17.15.060 and that request has either been denied by the City or approved but at a lower value than desired, the Applicant may request an Alternative SDC Credit calculation under this section. Any request for an Alternative SDC Credit calculation must be filed with the Administrator in writing within 10 calendar days of the written decision on the initial credit request.

**TITLE 17**  
**PUBLIC IMPROVEMENTS**

Upon the timely request for an Alternative SDC Credit calculation, the Administrator shall review the Applicant's calculations and supporting evidence and make a determination within 21 calendar days of submittal as to whether the Applicant's request satisfies the requirements of this Section.

2. In support of the Alternative SDC credit request, the Applicant must provide complete and detailed documentation, including appraisals, cost analysis or other estimates of value, analyzed and certified by an appropriate professional, for the improvements for which the Applicant is seeking credit. The Applicant's supporting documentation must rely upon generally accepted sources of information, cost analysis and techniques of analysis as a means of supporting the proposed Alternative SDC credit.
3. The Administrator shall grant the Alternative SDC Credit if, in the Administrator's opinion, all of the following are true:
  - a. The improvement(s) for which the SDC Credit is sought are Qualified Public Improvement(s); and
  - b. The evidence and assumptions underlying the Applicant's Alternative SDC Credit request are reasonable, correct and credible and were gathered and analyzed by an appropriate, competent professional in compliance with generally accepted principles and methodologies; and
  - c. The proposed alternative SDC Credit is based on a realistic, credible valuation or benefit analysis.
4. If, in the Administrator's opinion, not all of the above criteria are met, the Administrator shall deny the request and provide to the Applicant by certified mail, return receipt requested, a written decision explaining the basis for rejecting the Alternative SDC Credit proposal.

**D. Alternative SDC Exemption or Discount Request:**

1. If an Applicant has requested an exemption or discount under Section 17.15.050 and that request has been denied, the Applicant may request an Alternative SDC exemption or discount under this section. Any request for an Alternative SDC exemption or discount calculation must be filed with the Administrator in writing within 10 calendar days of the written decision on the initial credit request. Upon the timely request for an Alternative SDC exemption or discount, the Administrator shall review the Applicant's request and supporting evidence and make a determination within 21 calendar days of submittal as to whether the Applicant's request satisfies the requirements of Section 17.15.050 for exemptions and discounts.

## **TITLE 17**

### **PUBLIC IMPROVEMENTS**

2. In support of the Alternative SDC exemption or discount request, the Applicant must provide complete and detailed documentation demonstrating that the Applicant is entitled to one of the exemptions or discounts described in Section 17.15.050.
3. The Administrator shall grant the exemption or discount if, in the Administrator's opinion, the Applicant has demonstrated with credible, relevant evidence that it meets the pertinent criteria in Section 17.15.050.
4. Within 21 calendar days of the Applicant's submission of the request, the Administrator shall provide a written decision explaining the basis for rejecting or accepting the request.

#### **17.15.080 Payment.**

(Amended by Ordinance Nos. 173437, 181322, 182389, 183447 and 188619, effective January 1, 2018.)

- A. The Transportation SDC required by this Chapter to be paid is due upon issuance of the Building Permit. However, in lieu of payment of the full SDC, the applicant may elect to pay the SDC in installments as provided in ORS chapter 223 and Chapter 17.14 of this Code. If the Applicant elects to pay the SDC in installments, a lien will be placed against the property that is subject to the SDC, and that lien will be given first priority as provided by statute. The Applicant's election to pay the SDC by installments shall be memorialized in an SDC Deferral or Installment Agreement entered into by the Applicant and the City on a form provided by the City, and which may provide for the deferral of payments as set forth in Chapter 17.14 of this Code. In any event, the Applicant shall either pay the SDC in full or enter into an SDC Deferral or Installment Agreement as provided in this section, before the City will issue any building permits.
- B. Upon written request of the Bureau of Transportation, the City Auditor is authorized to cancel assessments of SDCs without further Council action, where the New Development approved by the Building Permit is not constructed and the Building Permit is cancelled.
- C. For property that has been subject to a cancellation of assessment of SDCs, a new installment payment contract shall be subject to the Code provisions applicable to SDCs and installment payment contracts on file on the date the new contract is received by the City.
- D. The City of Portland shall not be responsible for, nor have any responsibility to honor or enforce agreements made by private parties regarding the payment or collection of SDC assessments.

**17.15.090 Refunds.**

(Amended by Ordinance Nos. 181322 and 188619, effective January 1, 2018.) Refunds may be given by the Administrator upon finding that there was a clerical error in the calculation of the SDC. Refunds shall not be allowed for failure to timely claim credit or for failure to timely seek an Alternative SDC Rate calculation. The City shall refund any SDC revenues not expended within ten (10) years of receipt.

**17.15.100. Dedicated Account and Appropriate Use of Account.**

(Amended by Ordinance Nos. 181322, 182652, 184756 and 188619, effective January 1, 2018.)

A. There is created a dedicated account entitled the “SDC Account.” All monies derived from the SDC shall be placed in the SDC Account. Funds in the SDC Account shall be used solely to provide the TSDC Project List capacity increasing improvements according to the TSDC Project List as it currently exists or as hereinafter amended, and eligible administrative costs. All monies derived from the North Macadam Overlay Rate Study shall be placed in a sub-account. The monies in the Overlay sub-account shall only be spent on projects serving the North Macadam urban renewal area. All monies derived from the Innovation Quadrant Overlay Project Report shall be placed in a sub-account. The monies in the Overlay sub-account shall only be spent on projects serving the Innovation Quadrant. In this regard, SDC revenues may be used for purposes which include:

1. project development, design and construction plan preparation;
2. permitting;
3. right-of-way acquisition, including any costs of acquisition or condemnation;
4. construction of new through lanes for vehicular, transit, or bicycle use;
5. construction of turn lanes;
6. construction of bridges;
7. construction of drainage and stormwater management and treatment facilities in conjunction with new roadway construction;
8. purchase and installation of traffic signs and signals;
9. construction of curbs, medians and shoulders;
10. relocating utilities to accommodate new roadway construction;
11. construction management and inspection;

**TITLE 17**  
**PUBLIC IMPROVEMENTS**

12. surveying and soils and material testing;
13. construction of Accessways, bicycle facilities, Pedestrian Connections and Walkways;
14. landscaping;
15. bus pullouts, transit shelters, fixed rail transit systems and appurtenances;
16. costs associated with acquisition of rolling stock;
17. demolition that is part of the construction of any of the improvements on this list;
18. payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the City to provide money to construct or acquire transportation facilities; and
19. direct costs of complying with the provisions of ORS 223.297 to 223.314, including the costs of developing system development charges methodologies and providing an annual accounting of system development charges expenditures.

**B.** Money on deposit in the SDC Accounts shall not be used for:

1. any expenditure that would be classified as a maintenance or repair expense; or
2. costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements; or
3. costs associated with maintenance of rolling stock.

**17.15.110 Challenges and Appeals.**

(Amended by Ordinance Nos. 173121, 181322 and 188619, effective January 1, 2018.)

- A.** Any resident of Portland or any person with interest may challenge the expenditure of SDC revenues by filing a challenge to the expenditure with the Administrator within two years after the date of the disputed SDC revenue expenditure. The fee for filing such a challenge shall be \$250.
- B.** Except where a different time for an Administrator's determination is provided in this Chapter, all determinations of the Administrator shall be in writing and shall be delivered to the Applicant within 21 calendar days of an Application or other Applicant request for an Administrator determination. Delivery of such determination shall be deemed complete upon the earlier of actual delivery to the Applicant or upon deposit by the Administrator in the mail, first class postage



**TITLE 17**  
**PUBLIC IMPROVEMENTS**

prepaid, addressed to the address for notice Applicant has designated in the Application. Such determination shall be accompanied by a notice of the Applicant's right to appeal and an outline of the procedures therefore.

- C. Any Applicant not content with an Administrator's determination may appeal that determination to the Code Hearings Officer as provided in Chapter 22.10 of this Code. Notwithstanding any other provisions of this Code, there shall be a non-refundable fee of \$250 for any appeal pursuant to this subsection. Such fee must accompany any such appeal and no such appeal shall be considered filed or received until such fee is paid in full.
- D. The City shall withhold all permits and other approvals applicable to the Applicant's property of the New Development pending resolution of all appeals under this Chapter unless the SDC is paid in full or the Applicant provides, for the pendency of the appeal, a financial guarantee or security for the charge in a form acceptable to the City Attorney.

**17.15.120 City Review of SDC.**

(Amended by Ordinance Nos. 181322, 182652, 184756 and 188619, effective January 1, 2018.)

- A. No later than every two (2) years as measured from initial enactment, the City shall undertake a review to determine the total SDCs assessed and collected by transportation district and the total SDCs expended and programmed by transportation district and project; to determine that sufficient money will be available to help fund the TSDC Project List identified capacity increasing facilities; to determine whether the adopted SDC Rate keeps pace with inflation; to determine whether the TSDC Project List should be modified; and to ensure that such facilities will not be overfunded by the SDC receipts.
- B. In the event that during the review referred to above, it is determined an adjustment to the SDC is necessary for sufficient funding of the TSDC Project List improvements listed in the City Rate Study, North Macadam Overlay Rate Study, or the Innovation Quadrant Overlay Project Report or to ensure that such TSDC Project List improvements are not overfunded by the SDC, the City Council may propose and adopt appropriately adjusted SDCs.
- C. The City Council may from time to time amend or adopt a new City Rate Study by resolution.

**17.15.130 Time Limit on Expenditure of SDCs.**

(Amended by Ordinance No. 188619, effective January 1, 2018.) The City shall expend SDC revenues within ten (10) years of receipt, based on the priorities in the TSDC Project list.

## **TITLE 17**

### **PUBLIC IMPROVEMENTS**

#### **17.15.140 Implementing Regulations; Amendments.**

(Amended by Ordinance Nos. 171698, 181322 and 188619, effective January 1, 2018.) The City Council delegates authority to the Director of Transportation to adopt administrative rules and procedures necessary to implement provisions of this Chapter including the appointment of an SDC program Administrator. All rules pursuant to this delegated authority shall be filed with the Office of the City Auditor and be available for public inspection.

#### **17.15.150 Amendment of TSDC Project List.**

(Amended by Ordinance Nos. 182652 and 188619, effective January 1, 2018.) The City may, by resolution, amend its TSDC Project List as set forth in the City Rate Study, North Macadam Overlay Rate Study, or the Innovation Quadrant Overlay Project Report from time to time to add projects the City deems appropriate.

#### **17.15.160 Severability.**

(Amended by Ordinance Nos. 181322 and 188619, effective January 1, 2018.) The provisions of this Chapter are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any word, definition, clause, section or provision of this Chapter is declared unconstitutional or invalid for any reason or cause, the remaining portion of this Chapter shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein. In the event a definition is held to be invalid or is severed, the defined word or term shall be deemed to have the meaning given to that word or term under Oregon law if Oregon law contains such a definition. If there is no established definition of the word or term under Oregon law, the word or term shall have its ordinary dictionary meaning. It is hereby declared to be the Council's express legislative intent that this Chapter would have been adopted had such an unconstitutional or otherwise invalid provision not been included herein.

**CHAPTER 17.23 - SPECIAL TRAFFIC  
CONTROL DISTRICT**

(Chapter replaced by Ordinance No. 184957,  
effective November 25, 2011.)

**Sections:**

- 17.23.010 Application.
- 17.23.020 Definitions.
- 17.23.030 Designated Boundary.
- 17.23.040 Special Jurisdiction.
- 17.23.050 Permits Required.
- 17.23.060 Traffic Standards.
- 17.23.070 Revocation.

**17.23.010 Application.**

This Chapter shall apply to any use of the street area within the Special Traffic Control District described in Section 17.23.030.

**17.23.020 Definitions.**

(Amended by Ordinance No. 185397, effective July 6, 2012.) As used in this Chapter, the following terms shall have the following definitions:

- A. **“Curb”** shall mean the stone or concrete edging along a street or sidewalk.
- B. **“Maintenance”** shall mean the function of protecting existing facilities within the street area so as to keep those facilities in safe and convenient operating condition. Under this definition, the work would be of a routine nature and would not involve cutting the pavement.
- C. **“Emergency”** shall mean any unscheduled repair of existing facilities within the street area which must be accomplished immediately to protect the life, health, and well being of the public, or to protect public or private property. Under this definition, “emergency” work shall encompass only immediately required repairs and shall not include extensive replacement or upgrading of the facility.

**17.23.030 Designated Boundary.**

The following described Special Traffic Control District will mean and include the following streets in the City:

The Special Traffic Control District shall be bounded by Naito Parkway to the east and the I-405 Loop to the west, south, and north. In addition to said boundary, the Special Traffic Control District shall include the following boundaries: beginning with the intersection of the west line of SW 18th and the south line of SW Salmon, running thence easterly along said south line of SW Salmon Street to the west line of SW 14th Avenue, running thence southerly to its intersection with the north line of SW Jefferson, thence easterly to the east line of SW 14th Avenue, thence northerly along the east line of SW 14th Avenue to its

## **TITLE 17**

### **PUBLIC IMPROVEMENTS**

intersection with the north line of West Burnside; thence westerly along the north line of West Burnside to its intersection with the west line of SW 18th Avenue; thence southerly along the west line of SW 18th to the place of beginning. And, beginning with Naito Parkway to the west, the Willamette River to the east, SW Clay Street to the north, and SW River Parkway to the south.

#### **17.23.040 Special Jurisdiction.**

Within the Special Traffic Control District, the Director of the Bureau of Transportation shall have the authority to require temporary street closure permits. Such permits may allow for construction, repair, or maintenance of facilities within the street area and use of the street area to facilitate work on private property. The Director of the Bureau of Transportation shall have the authority to secure information from and coordinate the activities of all parties requesting use of the street area. The authority of the Director of the Bureau of Transportation shall not repeal the authority of the Building Bureau as outlined in Chapters 44 and 45 of the Uniform Building Code or as outlined in Section 17.44.020 of the Code of the City of Portland, Oregon.

#### **17.23.050 Permits Required.**

(Amended by Ordinance Nos. 187632 and 188692, effective January 1, 2018.)

- A.** Any party desiring to perform work in the street or make use of the street area to perform work on private property shall first obtain a temporary street closure permit as prescribed in Chapter 17.24 of the Code of the City of Portland, Oregon, and pay the permit fees set forth in Chapter 17.24.
- B.** Any party performing emergency work shall notify the Director of the Bureau of Transportation at the time work is commenced and when finished. Emergency work may be performed without first obtaining the temporary street closure permit outlined in Subsection A. above or without complying with the requirements of Subsection A. above.
- C.** Any party desiring to perform work that utilizes the street area in the Special Traffic Control District shall obtain approval from the Director of the Bureau of Transportation to schedule their work. Any party desiring to perform work shall distribute notice of work to adjacent businesses five days in advance of proposed work dates. A written schedule of work dates and proof of notification to adjacent businesses shall be submitted to the Director of the Bureau of Transportation prior to final approval being granted.
- D.** The Director of the Bureau of Transportation may waive minimum notification requirements as listed above in Subsection C. if work is deemed to have minimal impact to the transportation system.
- E.** Notwithstanding the other provisions of this Section, the Director of the Bureau of Transportation shall have the authority to implement additional requirements for

**TITLE 17**  
**PUBLIC IMPROVEMENTS**

permits in the Special Traffic Control District when conditions in the downtown require more stringent regulations.

- F. Nothing contained herein shall limit the authority of the Director of the Bureau of Transportation in maintaining public peace and safety and upon request from the Director of the Bureau of Transportation the party performing any work in the street area shall reopen the street area to its normal use as determined by the City Traffic Engineer.

**17.23.060 Traffic Standards.**

Since the intent of this Code Section is to minimize traffic congestion in the Special Traffic Control District, permits issued within the Special Traffic Control District in accordance with Sections 17.23.050 and 17.24.010 must conform to traffic standards established by the City Traffic Engineer. Within the special control district, the Director of the Bureau of Transportation is hereby authorized and directed to enforce the traffic standards or such other traffic control plans as may be required as a condition of the permit. The Director of the Bureau of Transportation or City Traffic Engineer may require any party requesting to use the street area to submit a traffic control plan for review as a condition of granting a permit.

**17.23.070 Revocation.**

The Director of the Bureau of Transportation in carrying out the provisions set forth herein may enforce conditions set forth in permits issued under Section 17.23.050. The Director of the Bureau of Transportation may revoke any permit issued under Section 17.23.050 at any time in the event the public's need requires it, the permittee fails to comply with the conditions of the permit, or for any reason which would have been grounds for denial of the initial permit application.



situations which occur prior to dedication of the right of way, the permittee acknowledges and assumes all risk of loss which may arise in the event the City or any other public agency subsequently requires changes in or additions to plans or refuses to approve all or any part of permittee's improvements.

**17.24.014 Permits to Construct and Maintain Structures in the Street Area.**

(Amended by Ordinance No. 187403, effective October 28, 2015.)

- A.** Except as otherwise provided in this Code, permits to construct, install and/or maintain privately-owned structures in dedicated street area may be issued by the Director of the Bureau of Transportation only to the owner of the property abutting the half of the street area in which the structure is proposed to be built. Such permits shall be revocable at any time as provided in Section 17.24.016. The burdens and benefits of any such permit shall run with the property abutting the half of the street area in which the structure is proposed to be built and all such permits shall be recorded against the title of the benefitting property except as otherwise specified below. All cost of such recordings shall be borne by the permittee. Upon sale or other disposition of the property, the permit shall automatically transfer to any new property owner, unless the permit specifically states that it is nontransferable.
- B.** Permits may be issued to parties other than the owner of the abutting property only under the following circumstances:

  - 1.** the Director of the Bureau of Transportation has determined that the permittee is an organization with public responsibilities and is of sufficient permanence to carry insurance, liability and maintenance responsibilities for the full life of the permit; or
  - 2.** the permittee is the owner of a benefited property against which the permit is recorded, and the underlying property owner of the right of way has agreed to issuance of the permit; or
  - 3.** as otherwise provided for in Section 17.24.010 and Chapter 17.56.
- C.** The benefits and burdens of permits issued to parties other than the owner of the abutting property shall run with the party or property specified in the permit, other portions of this code notwithstanding.

**17.24.015 Obligation of Property Owner for Structures in the Street Area.**

The owner of any real property shall be responsible for maintaining any structures in the half of the street area abutting the owner's property, whether such structures are under City permit or not, except that the abutting owner shall not be responsible for the maintenance of structures which have been installed by other than the abutting owner under a permit or other authority granted by the City of Portland.

The abutting property owner shall be liable to any person who is injured or otherwise suffers damage by reason of the property owner's failure to keep any structure located in

## **TITLE 17**

### **PUBLIC IMPROVEMENTS**

the half of the street area immediately abutting his or her property in safe condition and good repair. Furthermore, said abutting property owner shall be liable to the City of Portland, its officers, agents and employees, for any judgment or expense incurred or paid by the City its officers, agents or employees, by reason of the existence of any such structure in the street area.

#### **17.24.016 Permit Revocation.**

(Amended by Ordinance No. 188692, effective January 1, 2018.) Permits for structures in City streets, for public improvements, work in, or use of the street area may be revoked by the Director of the Bureau of Transportation at any time and for any reason the Director of the Bureau of Transportation deems to be in the interest of the City, and no grant of any permit, expenditure or money in reliance thereon, or lapse of time shall give the permittee any right to the continued existence of a structure or to any damages or claims against the City arising out of revocation.

Upon revocation the permittee, or any successor permittee, shall at permittee's own cost remove such structure or equipment associated with work or use of street area within 90 days after written notice to the permittee by the City of such revocation, unless the Director of the Bureau of Transportation specifies a shorter period, and shall return the street area to the condition of the street area immediately surrounding it, to the satisfaction of the Director of the Bureau of Transportation. If the permittee does not remove the structure or equipment and/or return the street area to a condition satisfactory to the, Director of the Bureau of Transportation, the Director of the Bureau of Transportation may do so, and the permittee shall be personally liable to the City for any and all costs of dismantling the structure or equipment and reconstructing the street area. The costs of removal and reconstruction shall be assessed to the permittee and/or will become a lien upon the abutting property until paid by the permittee. The City may sell or otherwise dispose of structures, equipment or parts thereof removed from the public right of way under authority of this Section, and the owner of same shall not be entitled to any compensation for said items from the City.

#### **17.24.017 Temporary Street Closure.**

(Amended by Ordinance No. 185212, effective March 21, 2012.) The Director of the Bureau of Transportation may close or by permit allow to be closed temporarily any street or portion thereof for the following reasons:

- A.** To facilitate construction, demolition or installation of facilities on public or private property.
- B.** To restrict vehicular use of an unimproved street for the protection of the public or to eliminate a neighborhood nuisance.
- C.** To provide for block parties.
- D.** To provide for community events alcohol prohibited or community events alcohol allowed.



## **TITLE 17**

### **PUBLIC IMPROVEMENTS**

Such closures shall include the requirements of the Traffic Engineer and provide for appropriate insurance as required by the Director of the Bureau of Transportation, protecting the public and the City.

A person will be denied a permit under PCC Section 17.24.017 C. & D. if more than 50 percent of the property owners abutting the street to be closed object to the closure or if another City Bureau objects to the closure based on concerns for neighborhood livability such as noise, disorderly conduct, litter, or public safety.

A person who is denied a permit under PCC Section 17.24.017 C. & D. may appeal the matter to City Council. The applicant shall file with the City Auditor within five days after denial a written notice of appeal. The notice shall identify the decision that is being appealed, and include the appellant's name, address, phone number, signature, and a clear statement of the specific reason(s) for the appeal. Upon receipt of such appeal, the Auditor shall then place the matter upon the Calendar of the City Council. At the hearing, the Council may affirm or modify the decision of the Director of the Bureau of Transportation as the Council may deem necessary.

#### **17.24.020 Fees and Charges.**

The Director of the Bureau of Transportation and/or City Council may establish fees and charges. All fees, charges, civil penalties, and fines established by authority of this Title will be listed in the Portland Policy Documents, as amended annually by Council effective with the fiscal year budget.

If a larger fee is required elsewhere in this Title for any class of permit, the larger fee shall apply, otherwise the fees and charges listed in the Portland Policy Documents shall be paid unless the Transportation Director or Council has granted a specific permit for a different fee. All fees, charges, civil penalties, and fines established by authority of this Title will be listed in the Portland Policy Documents, as amended annually by Council effective with the fiscal year budget. All fees for recording permits and other documents with the County Recorder shall be paid by the property owner or permittee.

#### **17.24.025 Fees for Public Improvement Permits.**

(Amended by Ordinance No. 187486, effective January 8, 2016.)

- A. Engineering and superintendence services in connection with public improvement projects shall be charged in accordance with Portland Policy Document TRN 3.450 – Transportation Fee Schedule. The City Engineer shall review actual yearly program costs of engineering and superintendence to insure that only usual and ordinary costs are included and adjust the rates accordingly.

#### **17.24.026 Fees for Review of Land Use Applications.**

The Bureau of Transportation shall establish fees which recover the Bureau of Transportation's costs of participating in pre-application conferences and reviewing applications for land use approvals which are required by either Title 33 or Title 34 of the Code of the City of Portland.

- A. Policy

## **TITLE 17**

### **PUBLIC IMPROVEMENTS**

1. Fees are not intended to exceed the Bureau of Transportation's average cost of processing the type of review requested or average cost of participating in pre-application conferences.
  2. Fees shall include direct costs and overhead charges.
  3. Fee schedules shall be updated annually and made available in the Portland Policy Documents.
- B. Required Fees**
1. Each request for a pre-application conference shall be accompanied by the applicable fee.
  2. All land use review applications requested must be accompanied by the applicable fee.
- C. Concurrent Applications.** When more than one review is requested on the same project, the fee for each review will be charged.
- D. Appeal Fees.** The process and charges for appeals shall be as set forth in Subsection 33.750.030 C. Appeal Fees.
- E. Fee Waivers.** The Bureau of Transportation will waive its pre-application and review fees in those cases where the Planning Director has granted a fee waiver under the provisions of Section 33.750.050.
- F. Refunds.** The Bureau of Transportation will refund fees under the following circumstances:
1. Unnecessary Fee. When a fee is accepted by staff for a land use review that is later found to not be required, a full refund will be made.
  2. Errors. When an error is made in calculating the fee, the overpayment will be refunded.
  3. Full Refunds.
    - a. If upon receipt of the application by the Bureau of Transportation, it is evident that no transportation review is required, the Transportation review fee will be refunded. The determination of whether a Transportation review is required is at the sole discretion of the Director of the Bureau of Transportation.
    - b. If the applicant meets the Bureau of Planning's requirements under Subsection 33.750.060 D. for a 50 percent refund and the Bureau of Transportation has not begun its review, the Transportation review

**TITLE 17**  
**PUBLIC IMPROVEMENTS**

will be refunded. Determination of whether to grant the refund is at the sole discretion of the Director of the Bureau of Transportation.

4. No Refunds.
  - a. Appeal fees are not refundable except as set forth in Subsections 33.750.050 B. and 33.750.060 C.2.
  - b. Pre-application conference fees are non-refundable except as set forth in Subsection F. 1. and 2.
  - c. No refunds shall be given once a review has begun.

**17.24.030 Application for a Public Improvement Permit to construct a Street or Transportation Facility.**

- A. All persons or agencies wishing to construct street or transportation facilities as a public improvement shall make application to the Director of the Bureau of Transportation for a permit. The application for permit shall contain such information as the Director of the Bureau of Transportation may designate, and shall specify the nature of the proposed improvement, the name of the street or streets to be improved or in which the improvement is to be located, the location of any off street improvements and the completion date therefor.
- B. A public improvement permit for a street or transportation facility within a land division may be issued prior to recording of the final plat only after the following:
  1. the improvement plans have been approved by the City Engineer,
  2. the final plat, is approvable as determined by the Bureau of Development Services,
  3. any necessary site permits have been obtained from the Bureau of Development Services,
  4. any necessary easements outside the land division have been obtained,
  5. the permittee has provided the following:
    - a. Acknowledgment that the construction is on private property which is to become easement for public improvements or public right of way and to come under public control upon plat and easement recording with the county.
    - b. Authorization for City personnel to enter upon the particular private property for the purpose of testing, inspection and surveying if

## **TITLE 17**

### **PUBLIC IMPROVEMENTS**

required, during the course of construction of the public improvements.

- c. Acknowledgment that City inspection personnel may reject or require correction of work not in accordance with the approved plans and standard specifications, which would prevent future acceptance of the improvements.
- d. Acknowledgment that all public utilities to be located in public right of way must be installed prior to final acceptance of the public street improvements, or as directed by the Director of the Bureau of Transportation.
- e. Acknowledgment that the plat and easements must be recorded with the County prior to final acceptance of the public improvements.
- f. Agreement that the permittee will hold the City of Portland harmless against any liability which may occur during construction prior to dedication of the right of way or recording of the easement, and further agreement that the permittee assumes all risk of loss which may arise in the event the City or any other public agency subsequently requires changes in or additions to plans or refuses to approve all or any part of permittee's improvements.
- g. Agreement that the permittee shall, at the permittee's own expense, maintain the public improvements for a period of 24 months following issuance of a certificate of completion by the City Engineer, as assurance against defective workmanship or materials employed in such improvement.
- h. Acknowledgment that the issuance of this permit in no way waives any requirements by the City or any other public agency which may be associated with the development of the land division.

- 6. Any other conditions established by the Director of the Bureau of Transportation and or the City Engineer have been met.

#### **17.24.035 Deposit Required.**

Concurrent with making the permit application the party desiring the permit shall deposit a sum equal to one half of the estimated cost of engineering and superintendence as determined by the Director of the Bureau of Transportation except that when a consultant does the design and survey the deposit shall be 20 percent of the estimated cost of engineering and superintendence. This deposit shall be determined by using the appropriate schedule of services found in Section 17.24.070. All deposits must be made prior to any design work being done by the consultant. In the event that no permit is issued for the proposed improvement within 1 year from the time design and plans are reviewed

and completed, the City shall retain the amount of the deposit as compensation for the preparation of design and plans or efforts of review. In the event a permit is issued for the proposed improvement within 1 year from the time such design and plans are completed, the amount of the required deposit shall be applied to the cost of the permit fee for such improvements.

**17.24.040 Refusal of a Public Improvement Permit.**

- A.** A permit application for a public improvement shall be refused when the street grade has not been established, if street grade is applicable directly or indirectly to the proposed improvement, while a proposal to change the grade is pending before the Council, or after plans have been filed with the Council to improve the street.
- B.** The Director of the Bureau of Transportation may refuse a permit if in his/her judgment the proposed use or improvement:

  - 1.** Is not suitable in the circumstances,
  - 2.** Will not be uniform with existing or proposed street improvements in the immediate vicinity, or
  - 3.** Includes movement of earth from one portion of street to another.
- C.** The City Engineer delegates to the Chief Engineer of the Bureau of Environmental Services authority to refuse a permit or establish permit conditions for modification or repair of any nonconforming sewer or drainage systems within existing or proposed right-of-way.
- D.** The Director of the Bureau of Transportation may refuse to issue a permit hereunder unless the application is modified as the Director of the Bureau of Transportation may deem necessary. The Director of the Bureau of Transportation may require the addition of curbs if a sidewalk improvement is proposed. The Director of the Bureau of Transportation may require the addition of curbs or sidewalks or both if the proposed improvement is a street improvement. If the Director of the Bureau of Transportation finds that water main extensions are likely to be needed within 5 years after the completion of a street improvement, the Director of the Bureau of Transportation shall refuse issuance of a street improvement permit unless the water main extensions are provided before the completion of a proposed street improvement. If an application is made for a street improvement and the Director of the Bureau of Transportation finds that public service installations will be needed below the surface of the street or that sanitary or storm drainage is necessary or that underground facilities are needed for future street light installations, the Director of the Bureau of Transportation may refuse the application unless such installations are included within the proposal or are arranged to be completed prior to the completion of the proposed street improvement.

## **TITLE 17**

### **PUBLIC IMPROVEMENTS**

#### **17.24.050 Contents of Permit.**

- A.** Any permit issued for the construction of a public improvement or use of the street area may contain such conditions as the Director of the Bureau of Transportation finds appropriate in the public interest. The permit shall specify the kind of work and or use allowed by the permit. The date by which the work is to be completed or if the permit is for use of the street area the date the use shall cease if applicable.
- B.** The contents of the permit shall include but are not limited to the following items:
  - 1.** A requirement for proof of insurance in a form acceptable to the City Attorney.
  - 2.** A requirement that the permittee shall be responsible for a 24-month quality assurance period following issuance of a certificate of completion.
  - 3.** If the permit is for a local improvement a requirement for assurance of performance shall be required. If the permit is for a use of the street area the Director of the Bureau of Transportation may require an assurance of performance if he or she determines it is needed to protect the public interest.
  - 4.** If the permit is for a local improvement a schedule setting forth when the permitted activity may begin and the date by which the work will be completed.
  - 5.** A requirement that all stated fee's and charges or estimated fee's and charges have been paid and that the applicant will pay the balance of fee's and charges above the estimated cost prior to issuance of a certificate of completion.

#### **17.24.055 Assurance of Performance.**

- A.** Assurance of Performance shall be for a sum approved by the Director of the Bureau of Transportation as sufficient to cover 100 percent of the cost of design, superintendence, and construction of improvements authorized under permit. Such assurance may, at the discretion of the Director of the Bureau of Transportation, be in the form of separate assurances covering individual stages of a staged development or covering the installation of various individual improvements rather than a single assurance of performance covering 100 percent of the cost of all improvements to the entire land division. Deposits for engineering and superintendence as required by Title 17 or by Title 5 are in addition to the filing of such assurances of performance.
- B.** Assurance of performance for public improvements may be in one of the following forms as approved by the City Attorney:

**TITLE 17**  
**PUBLIC IMPROVEMENTS**

1. Surety bond executed by a company authorized to transact business in the State of Oregon.
  2. Irrevocable letter of credit.
  3. Set-aside account
  4. Cash deposit.
  5. City Council passage of a LID Formation Ordinance for a local improvement district.
  6. Other forms as approved by the City Attorney.
- C. If an applicant for permit fails to carry out the provisions of the application for permit, or the permittee fails to carry out the provisions of the permit, and the City has unreimbursed expenses resulting from such failure, the City shall call on the assurance of performance for reimbursement. If the amount of the assurance of performance exceeds the expenses incurred by the City, it shall release the remainder. If the amount of the assurance for performance is less than the expenses incurred by the City, the applicant or permittee shall be liable to the City for the difference. Assurance of performance covering stages or portions of a total development may be released as such stage or portion is completed to the satisfaction of the Director of the Bureau of Transportation. Twenty percent of all funds deposited as assurance of performance will be retained through the maintenance or quality assurance period; other forms of assurance of performance shall contain written provisions for a similar guarantee through the maintenance period.

**17.24.060 Permit Conditions.**

(Amended by Ordinance No. 185397, effective July 6, 2012.) All work done in streets or other public places shall be done in the location approved by the Director of the Bureau of Transportation and in accordance with plans and specifications prepared or approved by the City Engineer. The permit may include conditions, and the conditions shall be binding upon the permittee (see Section 17.24.050). All work done shall be subject to the rejection or correction requirements of the City Engineer and subject to the final approval of the City Engineer. Any person or entity performing work in the street area shall:

- A. Begin the work promptly and diligently pursue the work until the work is completed;
- B. Upon completion of the work, make a written report to the Director of the Bureau of Transportation detailing the manner in which the work was executed, the location of the work and facilities, and other information regarding the work performed as the Director of the Bureau of Transportation may request. The report shall be certified as accurately depicting the horizontal and vertical location, size and type

## **TITLE 17**

### **PUBLIC IMPROVEMENTS**

of material of all facilities constructed. The plans need not include details of the nature of the facilities. These plans shall be submitted to the City within sixty (60) days after completion of construction. The Director of the Bureau of Transportation may establish the format of such reports.

- C.** When there are two or more curbs on the same side of the street centerline, lay all pipes, mains, sewers, conduits, lines, when the same are to run lengthwise in any street, at a distance at least 3-1/2 feet from the curb closest to the street centerline measuring toward the center of the street and at least 2 feet from the curb closest to the street centerline measuring to the outer edge of the street. All connections to the pipes, mains, sewers, conduits, and lines laying lengthwise in the street or to any lot shall be installed perpendicular to the curb. In cases where compliance with these regulations would cause unnecessary digging up of pavement, disruption of traffic, place a burden on the street system, or otherwise not be in the best interest of the public, the Director of the Bureau of Transportation may in his or her sole discretion permit and or require the laying of pipes, mains, sewers, conduits, lines, in a different location or manner;
- D.** Keep all stone, macadam, gravel or other pavement material separate from the excavated earth;
- E.** Refill any trench or hole that has been dug or opened in any street for the purpose of reaching or laying any sewer, gas, water or other pipe or main within 24 hours after laying or reaching the sewer, gas, water or other pipe or main, or as directed by the Director of the Bureau of Transportation, in the following manner:

  - 1.** If the street has not been improved with permanent pavement, the earth excavated from the hole or trench shall be refilled and thoroughly compacted until the grade of the roadway previously existing at such trench or hole is reached.
  - 2.** If the street has been improved with permanent pavement, the excavated area shall be refilled and compacted to the elevation of the bottom of the permanent pavement, which shall be re-laid compactly and made to conform to the grade, base and quality of the surrounding street pavement.
- F.** Erect appropriate traffic control devices and protective measures around the work site, and maintain warning lights or other warning devices as required by the Traffic Engineer at or around the work site during the hours between sunset and sunrise so that pedestrians and operators of vehicles may be duly warned of, and protected from the obstruction;
- G.** Install and maintain erosion control measures as directed by the Director of the Bureau of Transportation;



**TITLE 17**  
**PUBLIC IMPROVEMENTS**

- H.** Comply with any other directions given by the Director of the Bureau of Transportation.

**17.24.067 Hazardous Substances.**

(Amended by Ordinance No. 185397, effective July 6, 2012.)

- A.** “**Utility corridor fill**” means fill that:

1. Meets the requirements of the City’s Standard Construction Specifications;
2. May be handled without the need for monitoring of exposure to contaminants under the Oregon OSHA occupational standards for maintenance workers or the use of personal protection equipment above Level D as described in 29 CFR 1910.120;
3. Meets the current DEQ definition of clean fill in OAR 340-093; and
4. The concentrations of any contaminants of concern in the fill material are below the DEQ soil and sediment clean fill screening levels for terrestrial and upland use.

- B.** “**Right-of-way access area**” means:

1. The area within a public right-of-way to a minimum depth of five feet below the final street and sidewalk grade and;
2. Any additional depth or width necessary for maintenance of public or private infrastructure including but not limited to sewers, hydrants, meters, conduits and pole bases as required by the Director of the Bureau of Transportation.

- C.** “**Contaminant barrier**” means a visual and physical barrier that is of a material, construction and thickness sufficient to minimize transmission of hazardous substances present in the surrounding fill to the utility fill and provide a visual demarcation of the boundary of the utility fill as specified in the City’s standard construction specifications or as approved by the Director of the Bureau of Transportation with the concurrence of the Director of the Bureau of Environmental Services.

- D.** In addition to the requirements of this Chapter, permittees shall comply with applicable state and federal laws, regulations and orders concerning hazardous substances including but not limited to their use, storage, handling, disposal, remediation, spill reporting and release reporting.

- E.** Except as provided in Subsection 17.24.067 H., all fill placed in the right-of-way access area as part of a project permitted under this Chapter shall be utility corridor fill.

## **TITLE 17**

### **PUBLIC IMPROVEMENTS**

- F.** Permittees shall excavate soil or fill that does not meet the definition of utility corridor fill that is encountered in the right-of-way access area during permitted work and replace it with utility corridor fill.
- G.** If the soil immediately outside of the right-of-way access area does not meet the definition of utility corridor fill, a contaminant barrier shall be placed between the utility corridor fill and surrounding fill.
- H.** On a site-specific basis, the Director of the Bureau of Transportation with the concurrence of the Director of the Bureau of Environmental Services may allow the placement of fill that does not meet the definition of utility corridor fill in the right-of-way access area.
- I.** If a permittee is required under state, federal or local law to report a spill or release of hazardous substances that occurs at, on, over, under or affects the public right-of-way, the permittee must the Bureau of Environmental Services Spill Prevention and Citizen Response Section within 24 hours of such a spill unless otherwise required by state, federal or local law.
- J.** If a permittee encounters contaminated media within the public right-of-way that poses an imminent threat to human health, the environment, or the waters of the State or requires the use of personal protective equipment above Level D to conduct the permitted work, the Permittee must notify the Director of Bureau of Transportation and Director of the Bureau of Environmental Services within two business days of encountering the contaminated media.

#### **17.24.070 Engineering and Superintendence for Street and Transportation Facility Public Improvements.**

- A.** The City Engineer shall:
  - 1.** Make all necessary surveys;
  - 2.** Mark all grades;
  - 3.** Prepare, fix, and prescribe all plans and specifications;
  - 4.** Provide engineering provisions and approvals;
  - 5.** Test and evaluate all project materials and resources as required;
  - 6.** Inspect and approve all work done. At the option of the City Engineer, Subsections 17.24.070 A.1., 2., and 3. above may be done by a professionally registered consulting engineer working under private contract with the permittee.

**TITLE 17**  
**PUBLIC IMPROVEMENTS**

- B.** If a permittee, person, or agency seeks to have a public improvement constructed under contract in the name of the City, then the permittee shall be charged for engineering and superintendence services in an amount equal to the Director of the Bureau of Transportation estimate of the actual costs of such services in accordance with the provisions of Section 5.48.050. This fee shall be paid prior to the issuance of permittee's permit for public improvement.
- C.** If a permittee, person or agency seeks to have a public improvement constructed under private contract between the permittee and a contractor, or if the permittee desires to do the work personally or have it done under his or her direction, then the permittee shall be charged for engineering and superintendence services in an amount computed as follows below. This fee shall be paid prior to the issuance of permittee's permit for public improvements.

Engineering and superintendence fees:

1. City does design and survey - see Subsection 17.24.025 A.
  2. Consultant does design and survey - see Subsection 17.24.025 A.
  3. Consultant does design, City does survey - see Subsection 17.24.025 A. plus survey actual costs by authority of Section 5.48.030.
- D.** If the specifications or other contract documents are not strictly complied with or the work is not completed within the time specified in the permit, the Director of the Bureau of Transportation shall refuse to accept the work. If the work is refused by the Director of the Bureau of Transportation, it shall not thereafter be accepted unless corrected to conform to plans and specifications and unless approved by the City Council.

**17.24.080 Work Done Under Permit.**

- A.** All work done under and in pursuance of a permit shall be under the authorization of the Director of the Bureau of Transportation, who shall determine the details of the improvement and whose orders in regard to the improvement and the execution of the same shall be obeyed by the applicant for the permit and by the persons doing the work.
- B.** The Director of the Bureau of Transportation shall have the authority to refuse issuance of permits for work within the street right of way to any Person until the requirements of permits previously issued are complied with. This authority includes, but is not limited to, denial of a permit when the applicant is delinquent in payment of fees or City charges for work performed for the applicant by the City or when the applicant has failed to complete work on any previously issued permit or permits.

## **TITLE 17**

### **PUBLIC IMPROVEMENTS**

#### **17.24.085 Original Documents Become the Property of the City.**

Any and all plans, specifications, survey notes or other original documents as required by the Director of the Bureau of Transportation that were either prepared for or produced during the design or construction of a public improvement, become the property of the City and shall be delivered to the Director of the Bureau of Transportation prior to acceptance of the improvement by the City Engineer.

#### **17.24.090 Certificate by City Engineer.**

During the course of construction and prior to the issuance of a certificate of completion for a public improvement under this Chapter, the City Engineer shall inspect the improvement and determine if the various kinds of work performed are in compliance with the plans, specifications and allowances of the permit as to quality of workmanship. Furthermore, the City Engineer shall check the improvement for alignment, proper computation of quantities and conformance with the established grade. If all of the work required is completed and done to the satisfaction of the City Engineer, the City Engineer shall give a certificate therefor to that effect and that the improvement is accepted, if done within the completion date, as hereinabove set forth, and within recorded public right of way and easements. Otherwise, the acceptance may be made by the Council on the certification of conformity to Code provisions and proper grades filed by the City Engineer.

#### **17.24.100 Street Pavement Preservation.**

After any street has been constructed, reconstructed, or paved by City forces, under City contract, or under permit, the pavement surface shall not thereafter be cut or opened for a period of 5 years.

The Director of the Bureau of Transportation may grant exemptions to this prohibition in order to facilitate development on adjacent properties, provide for emergency repairs to subsurface facilities, provide for underground service connections to adjacent properties or allow the upgrading of underground utility facilities.

When granting exceptions to this regulation, the Director of the Bureau of Transportation may impose conditions determined appropriate to insure the rapid and complete restoration of the street and the surface paving. Repaving may include surface grinding, base and sub-base repairs, or other related work as needed, and may include up to full-width surface paving of the roadway.

In addition to the street opening permit, any person who is required to partially or fully repave a street shall obtain a street improvement permit and be responsible for the full cost of plan review, construction inspection, material testing, bonding, and all other City expenses related to the work.

If the Director of the Bureau of Transportation determines that final repaving of the street is not appropriate at that particular time for reasons relating to weather or other short term problems, the Director of the Bureau of Transportation may grant a delay until proper conditions allow for repaving.

#### **17.24.105 Regulations Governing Excavations and Disturbance of Pavement on Transit Mall.**

##### **A. Definitions.**

**TITLE 17**  
**PUBLIC IMPROVEMENTS**

1. For the purposes of this Section the Transit Mall is defined as Fifth Avenue and Sixth Avenue from the south line of SW Jackson Street to the north line of NW Irving Street, NW Irving Street from the west line of NW 5th Avenue to the east line of NW 6th Avenue and SW Jackson Street from the west line of SW Fifth Avenue to the east line of SW 6th avenue.
  2. Transit Mall Pavement is defined as all surface paving including the curb and any below grade slab or structural element supporting the surface paving located between the curb lines of the Transit Mall.
  3. Emergency for the purpose of this section means an unanticipated failure of an existing facility that creates a public hazard or an interruption of service to subscribers or customers that cannot be resolved using other routes or facilities.
- B.** No person shall undertake any excavation nor disturb the Transit Mall Pavement except as provided below.
1. Maintenance of the brick pavers, curbs, transit way or asphalt pavement by the City or TriMet.
  2. In order to provide for repairs to subsurface facilities made necessary by an emergency.
  3. In order to provide a utility service connection to an adjacent property when the utility can demonstrate to the satisfaction of the Director of the Bureau of Transportation that there is no alternative means of providing service to the property.
  4. The Director of the Bureau of Transportation may allow a public utility to excavate the transit mall pavement for,
    - a. replacement of an underground facility that has reached the end of its useful life or,
    - b. system expansion necessary to meet the public utilities obligation to serve its customers if, in the opinion of the Director of Transportation, the public utility has adequately demonstrated that no alternative location or means of providing service can adequately meet that need. The cost of providing service from an alternative location or alternative means shall not be a consideration in the Director of Transportation's decision.
  5. The Director of the Bureau of Transportation may require that an applicant requesting to do work under the provisions of Subsection 17.24.105 B.4. provide the Director a minimum of two years advance notice of the need to

## **TITLE 17**

### **PUBLIC IMPROVEMENTS**

replace or expand facilities to allow for coordination with any planned major maintenance work to be performed by TriMet, the Portland Bureau of Transportation or another utility with permission to operate within the City of Portland.

- C.** When granting permits to excavate or disturb Transit Mall pavement , the Director of the Bureau of Transportation will impose conditions determined appropriate to insure the rapid and complete restoration of the Transit Mall Pavement to the originally constructed pavement section and surfacing.
  - 1.** Any person who is required to reconstruct Transit Mall Pavement shall provide engineered plans detailing how the work will be done and the Transit Mall pavement will be restored. The permittee shall be responsible for the full cost of the reconstruction. Full cost includes any City fee's and charges including but not limited to plan review, construction inspection, traffic mitigation, material testing, and all other expenses related to the work incurred by the Portland Bureau of Transportation.
  - 2.** If the Director of the Bureau of Transportation determines that final restoration of the Transit Mall pavement is not appropriate at that particular time for reasons relating to weather or other short term conflict, the Director of the Bureau of Transportation may grant or order a delay until proper conditions allow for the restoration to occur.

#### **17.24.110 Record of Permits.**

The Director of the Bureau of Transportation shall keep a record of improvements under permit and the issuance of permits under this Chapter, and the date of certificate of approval and acceptance if made.

#### **17.24.120 Removal of Improvement.**

In the event the Director of the Bureau of Transportation or the City Council does not accept an improvement made pursuant to permit under this Chapter within 1 year after completion and tender for approval, then the permittee shall remove the same and restore the public area to its prior condition at the permittee's own expense, whenever and to the extent directed by the Director of the Bureau of Transportation.

#### **17.24.130 Preservation of Cobblestones.**

- A.** As used in this Section, “permit” means a valid permit issued under Section 17.24.010 and “permittee” means a person to whom a permit is issued, or if no permit is required, the person undertaking the work.
- B.** Cobblestones, also referred to as Belgian building or paving blocks, located in streets of the City are City property and remain City property notwithstanding their excavation by a permittee.

**TITLE 17**  
**PUBLIC IMPROVEMENTS**

- C.** It is the duty of the Bureau of Transportation to make available to the permittee a copy of the regulations authorized by this Section.
- D.** A permittee shall preserve for delivery to the City quantities of 150 or more cobblestones displaced by excavations of City streets. A report of the number and location of the cobblestones shall be sent to the Bureau of Parks, Operations Division, and permittee shall deliver the cobblestones to a site as directed by the Bureau of Parks. The Commissioner of the Bureau of Parks hereby is delegated authority to issue additional regulations providing for the preservation of cobblestones excavated from City street areas.
- E.** At the request of the Portland Historical Landmarks Commission, but not less than once annually, the Bureau of Parks shall advise the Commission of the number of cobblestones then being stored. The deployment of stored cobblestones shall be determined by the Portland Historical Landmarks Commission (and/or recommended to the City Council). Criteria for deployment shall be established by the Commission.





**CHAPTER 17.100 - REMEDIES &  
PENALTIES**

(Chapter replaced by Ordinance No. 155257,  
effective October 27, 1983.)

**Sections:**

- 17.100.010 Enforcement Independent of Other Officials.
- 17.100.020 Responsible Official and Responsible Engineer Designated Representative.
- 17.100.030 Liability.
- 17.100.040 Remedies.
- 17.100.050 Penalty for Violation.

**17.100.010 Enforcement Independent of Other Officials.**

(Amended by Ordinance No. 173295, effective April 28, 1999.) The authority of Responsible Officials and Responsible Engineers to enforce the provisions of this Title is independent of and in addition to the authority of other City officials to enforce the provisions of any Title of the City Code.

**17.100.020 Responsible Official and Responsible Engineer Designated Representative.**

(Amended by Ordinance No. 173295, effective April 28, 1999.) Responsible Officials and Responsible Engineers as used in this Chapter shall include their representatives.

**17.100.030 Liability.**

(Amended by Ordinance No. 173295, effective April 28, 1999.) The Responsible Officials and Responsible Engineers, or authorized representatives of the Responsible Officials and Responsible Engineers charged with the enforcement of this Title, acting in good faith and without malice in the discharge of their duties, shall not thereby render themselves personally liable for any damage that may accrue to persons or property as a result of any act or by reason of any act or omission in the discharge of their duties. Any suit brought against the Responsible Officials and Responsible Engineers or employee because of such act or omission performed by them in the enforcement of any provision of this Title shall be defended by legal counsel provided by this jurisdiction until final termination of such proceedings.

**17.100.040 Remedies.**

(Amended by Ordinance No. 173295, effective April 28, 1999.)

- A. In addition to any other remedies or penalties provided by this Title or by any other law, the Responsible Officials and Responsible Engineers may enforce the provisions of this Title by:
  - 1. Instituting an action before the Code Hearings Officer as set out in Title 22 of this Code, or

**TITLE 17**  
**PUBLIC IMPROVEMENTS**

2. Causing appropriate action to be instituted in a court of competent jurisdiction, or
  3. Taking such other actions as the Responsible Officials and Responsible Engineers in the exercise of their discretion deem appropriate.
- B.** Nothing in this Section shall be construed to afford a person the right of appeal, pursuant to Chapter 22.10, to the Code Hearings Officer from a decision or determination of the Responsible Officials and Responsible Engineers, or any bureau designated under Chapter 3.12 of this Code.

**17.100.050 Penalty for Violation.**

(Amended by Ordinance Nos. 173295 and 188692, effective January 1, 2018.) Any person who violates any provision of this title shall be subject to a civil penalty as specified in the adopted Transportation Fee Schedule. In the event that any provision of this Title is violated by a firm or corporation, the officer or officers or person or persons responsible for the violation shall be subject to the penalty herein provided.

**CHAPTER 17.108 - RESIDENTIAL ENERGY  
PERFORMANCE RATING AND  
DISCLOSURE**

(Chapter added by Ordinance No. 188143, effective  
January 1, 2018.)

**Sections:**

- 17.108.010 Purpose.
- 17.108.020 Definitions.
- 17.108.030 Authority of Director to Adopt Rules.
- 17.108.040 Energy Performance Rating and Disclosure for Covered Buildings.
- 17.108.050 Exemptions and Waivers.
- 17.108.060 Enforcement and Penalties.
- 17.108.070 Right of Appeal and Payment of Assessments.

**17.108.010 Purpose.**

The purpose of this Chapter is to provide information to homebuyers about residential building energy performance. This information is designed to enable more knowledgeable decisions about the full costs of operating homes and to motivate investments in home improvements that lower utility bills, reduce carbon emissions, and increase comfort, safety and health for home owners. This Chapter shall be known as the Home Energy Score Program.

**17.108.020 Definitions.**

For purposes of Chapter 17.108 the following terms shall be understood to have the meanings specified in this Section. Terms, words, phrases, and their derivatives used but not specifically defined in this Chapter shall have their commonly understood meanings.

- A. “Accessory Dwelling Unit”** means a second dwelling unit created on a lot with a house, attached house, or manufactured home. The second unit is created auxiliary to, and is always smaller than, the house, attached house, or manufactured home. The unit includes its own independent living facilities including provision for sleeping, cooking, and sanitation, and is designed for residential occupancy by one or more people, independent of the primary dwelling unit.
- B. “Administrative Rule”** means the rules promulgated under Section 17.108.030 of Chapter 17.108.
- C. “Asset Rating”** means a numerical value calculated by a home energy performance score system. The asset rating is an easy-to-produce rating designed to help homeowners and homebuyers gain useful information about a house's energy performance and recommendations on cost-effective energy efficiency improvements. For existing houses, the asset rating is produced based on an in-house assessment that can be completed in less than an hour. For new houses, the asset rating may be produced based on design documents for the house.

**TITLE 17**  
**PUBLIC IMPROVEMENTS**

- D. “Covered Building”** means any residential structure containing a single dwelling unit or house, regardless of size, on its own lot. “Covered building” also includes attached single dwelling unit, regardless of whether it is located on its own lot, where each unit extends from foundation to roof, such as a row house, attached house, common-wall house, duplex, or townhouse. “Covered building” does not include detached accessory dwelling units or manufactured dwellings. “Covered building” also does not include single dwelling units used solely for commercial purposes.
- E. “Director”** means the Director of the Bureau of Planning and Sustainability or his or her authorized representative, designee or agent.
- F. “Energy”** means electricity, natural gas, propane, steam, heating oil, wood or other product sold for use in a building, or renewable on-site electricity generation, for purposes of providing heating, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities.
- G. “Homebuilder”** means an individual or business entity building new construction single dwelling unit housing within the City of Portland to be listed for sale.
- H. “Home Energy Assessor”** means a person who is certified as a home energy assessor by the Oregon Construction Contractors Board to determine home energy performance scores for residential dwelling units.
- I. “Home Energy Performance Report”** means the report prepared by a home energy assessor in compliance with Oregon Administrative Rules adopted by Oregon Department of Energy for Oregon Home Energy Score Standard. The Report must include the following information:
1. The home energy performance score and an explanation of the score;
  2. An estimate of the total annual energy used in the home in retail units of energy, by fuel type;
  3. An estimate of the total annual energy generated by on-site solar electric, wind electric, hydroelectric, and solar water heating systems in retail units of energy, by type of fuel displaced by the generation;
  4. An estimate of the total monthly or annual cost of energy purchased for use in the covered building in dollars, by fuel type, based on the current average annual retail residential energy price of the utility serving the covered building at the time of the report and the average annual energy prices of non-regulated fuels, by fuel type, as provided by the Oregon Department of Energy;

**TITLE 17**  
**PUBLIC IMPROVEMENTS**

5. The current average annual utility retail residential energy price in dollars, by fuel type, and the average annual energy prices of non-regulated fuels, by fuel type, provided by the Oregon Department of Energy and used to determine the costs described in Subsection 17.108.020 I.4. of this section;
  6. At least one comparison home energy performance score that provides context for the range of possible scores. Examples of comparison homes include, but are not limited to, a similar home with Oregon's average energy consumption, the same home built to Oregon energy code, and the same home with certain energy efficiency upgrades;
  7. The name of the entity that assigned the home energy performance score and that entity's Construction Contractors Board license number if such a license is required by law;
  8. The date the building energy assessment was performed; and
  9. For reports that meet all requirements of Oregon Administrative Rules adopted by Oregon Department of Energy for Oregon's Home Energy Performance Score Standard, the statement "This report meets Oregon's Home Energy Performance Score standard" must be included on home energy performance reports.
- J. "Home Energy Performance Score"** means an asset rating that is based on physical inspection of the home or design documents used for the home's construction.
- K. "Home Energy Performance Score System"** means a system that incorporates building energy assessment software to generate a home energy performance score and home energy performance report. Examples of home energy performance score systems include, but may not be limited to, the U.S. Department of Energy Home Energy Score, the Energy Performance Score (EPS) or the Home Energy Rating System (HERS).
- L. "House"** means a detached dwelling unit located on its own lot.
- M. "Listed publicly for sale"** means listing the covered building for sale by printed advertisement, internet posting, or publicly displayed sign.
- N. "Manufactured Dwelling"** means a dwelling unit constructed off of the site which can be moved on the public roadways. Manufactured dwellings include residential trailers, mobile homes, and manufactured homes.
- O. "Manufactured Home"** means a manufactured dwelling constructed after June 15, 1976 in accordance with federal manufactured housing construction and safety standards (HUD code) in effect at the time of construction.

## TITLE 17

### PUBLIC IMPROVEMENTS

- P. “Mobile Home”** means a manufactured dwelling constructed between January 1, 1962, and June 15, 1976, in accordance with the construction requirements of Oregon mobile home law in effect at the time of construction.
- Q. “Real estate listings”** means any public real estate listing of homes for sale in the City of Portland. “Real estate listings” include listing a home for sale by a property owner or by a licensed real estate agent. “Real estate listings” include any printed advertisement, internet posting, or publicly displayed sign, including but not limited to Regional Multiple Listing Service, Redfin, Zillow, Trulia and other third party listing services. “Real estate listings” are required to include the Home Energy Performance Score and the Home Energy Performance Report.
- R. “Residential Trailer”** means a manufactured dwelling constructed before January 1, 1962, which was not constructed in accordance with federal manufactured housing construction and safety standards (HUD code), or the construction requirements of Oregon mobile home law.
- S. “Sale”** means the conveyance of title to real property as a result of the execution of a real property sales contract. “Sale” does not include transfer of title pursuant to inheritance, involuntary transfer of title resulting from default on an obligation secured by real property, change of title pursuant to marriage or divorce, condemnation, or any other involuntary change of title affected by operation of law.
- T. “Seller”** means any of the following:
1. Any individual or entity possessing title to a property that includes a covered building, or
  2. The association of unit owners responsible for overall management in the case of a condominium or other representative body of the jointly-owned building with authority to make decisions about building assessments and alterations, or

#### **17.108.030 Authority of Director to Adopt Rules.**

The Director is authorized to administer and enforce provisions of this Chapter.

- A.** The Director is authorized to adopt administrative rules, procedures, and forms to implement the provisions of this Chapter.
1. Any rule adopted pursuant to this section shall require a public review process. Not less than 10 nor more than 30 days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include the place, time and purpose of the public review process and the location at which copies of the full set of the proposed rules may be obtained.

**TITLE 17**  
**PUBLIC IMPROVEMENTS**

2. During the public review, the Director shall hear testimony or receive written comment concerning the proposed rules. The Director shall review the recommendations; taking into consideration the comments received during the public review process, and shall either adopt the proposed rules, modify or reject them. Unless otherwise stated, all rules shall be effective upon adoption by the Director and shall be filed in the Office of the Director and with the City Auditor's Portland Policy Documents repository.
  3. Notwithstanding Subsections 17.108.030 A.1. and 2. of this Section, an interim rule may be adopted by the Director without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the specific reasons for such prejudice. Any interim rule adopted by the Director shall be effective for a period no longer than one year after the date that the interim rule is adopted. Within 5 business days of the adoption of an interim rule, the Director shall provide notice of the rule, giving the language of the rule change, describing the purpose of the rule, and inviting the submission of comments. At a minimum, notice will be provided to the following:
    - a. Neighborhood associations recognized by the City Office of Neighborhood Involvement,
    - b. District Coalitions recognized by the City Office of Neighborhood Involvement, and
    - c. Persons on the list maintained by the Director of parties interested in the Home Energy Score Program.
- B. The Director may temporarily suspend or modify the requirements of this Chapter based on a determination that such requirements are temporarily infeasible due to economic or technical circumstances. The Director's determination to temporarily suspend or modify shall be filed as a report with the City Council. The Director's determination shall be effective after the Council has accepted the report.

**17.108.040 Energy Performance Rating and Disclosure for Covered Buildings.**

Prior to publicly listing any covered building for sale, the seller of a covered building, or the seller's designated representative, shall:

- A. Obtain a home energy performance report of such building from a state licensed home energy assessor, and;
- B. Provide a copy of the home energy performance report:
  1. To all licensed real estate agents working on the seller's behalf; and

## **TITLE 17**

### **PUBLIC IMPROVEMENTS**

2. To prospective buyers who visit the home while it is listed publicly for sale; and
  3. To the Director for quality assurance and evaluation of policy compliance.
- C. Include the Home Energy Performance Score in all real estate listings, including the Home Energy Performance Report if attachments are accepted by the listing service.

#### **17.108.050 Exemptions and Waivers.**

- A. The Director may exempt a seller from the requirements of this Chapter if the seller submits documentation that the covered building will be sold through of any of the following:
1. A foreclosure sale,
  2. A trustee's sale,
  3. A deed-in-lieu of foreclosure sale, or
  4. Any pre-foreclosure sale in which seller has reached an agreement with the mortgage holder to sell the property for an amount less than the amount owed on the mortgage.
- B. The Director may exempt a seller from the requirements of this Chapter after confirming that compliance would cause undue hardship for the seller under the following circumstances:
1. The covered building qualifies for sale at public auction or acquisition by a public agency due to arrears for property taxes,
  2. A court appointed receiver is in control of the covered building due to financial distress,
  3. The senior mortgage on the covered building is subject to a notice of default,
  4. The covered building has been approved for participation in Oregon Property Tax Deferral for Disabled and Senior Citizens, or equivalent program as determined by the Director, or
  5. The responsible party is otherwise unable to meet the obligations of this Chapter as determined by the Director.
- C. The Director may exempt a seller from the requirements of this Chapter where the Director determines that compliance with the requirements of Section 17.108.040 would cause undue hardship under any of the following circumstances:



**TITLE 17**  
**PUBLIC IMPROVEMENTS**

1. The low-income qualified seller demonstrates household income is at or below 60 percent of median household income for the Portland-Vancouver-Hillsboro, OR-WA Metropolitan Statistical Area,
  2. The low-income qualified seller has been approved for participation in Oregon Low-Income Home Energy Assistance Program,
  3. The low-income qualified seller has been approved for participation in Free and Reduced Price Meals through Oregon Department of Education, or
  4. The low-income qualified seller is otherwise unable to meet the obligations of this Chapter as determined by the Director.
- D.** The Director may provide a waiver from the requirements of this Chapter for homebuilders or sellers using scoring products that are not compliant with Oregon Administrative Rules adopted by Oregon Department of Energy for Oregon's Home Energy Performance Score Standard. The waiver will allow homebuilders or sellers currently using Energy Performance Scores (EPS) or Home Energy Rating System (HERS) to temporarily continue the use of these asset rating tools.

**17.108.060 Enforcement and Penalties.**

- A.** It shall be a violation of this Chapter for any person to fail to comply with the requirements of this section or to misrepresent any material fact in a document required to be prepared or disclosed by this Chapter.
- B.** Any building owner or person who fails, omits, neglects, or refuses to comply with the provisions of this Chapter shall be subject to:
1. Upon the first violation, the Director may issue a written warning notice to the entity or person, describing the violation and steps required to comply.
  2. If the violation is not remedied within 90 days after issue of written warning notice, the Director may assess a civil penalty of up to \$500. For every subsequent 180-day period during which the violation continues, the Director may assess additional civil penalties of up to \$500.

**17.108.070 Right of Appeal and Payment of Assessments.**

After being issued a written warning notice of a first violation, any person receiving a subsequent notice of violation shall, within 10 days of issuance of the notice, either pay to the City the stated amount of the assessment or request an appeal hearing by the Code Hearings Officer in accordance with procedures set forth in Chapter 22.10 of the City Code. The filing of an appeal request shall stay the effective date of the assessment until the appeal is determined by the Code Hearings Officer. If, pursuant to said appeal hearing, payment of the assessment is ordered, such payment must be received by the Director or postmarked within 15 calendar days after the order becomes final.



## **TITLE 24 - BUILDING REGULATIONS**

### **TABLE OF CONTENTS**

<b>Chapter 24.10</b>	<b>ADMINISTRATION AND ENFORCEMENT</b>
24.10.010	Title.
24.10.020	Purpose.
24.10.030	Scope.
24.10.040	Codes.
24.10.050	Organization.
24.10.060	Enforcement.
24.10.070	Application for Permits.
24.10.075	Bureau of Development Services Administrative Appeal Board.
24.10.080	Building Code Board of Appeal.
24.10.085	Structural Engineering Advisory Committee.
24.10.087	Alternative Technology Advisory Committee
24.10.090	Pre-application and Pre-construction Meetings.
24.10.095	Commercial and Industrial Minor Structural Labels.
24.10.100	Fees.
 <b>Chapter 24.15</b>	 <b>DEFINITIONS</b>
24.15.010	General.
24.15.020	Abandoned Structure.
24.15.030	Agreement/Contract to Repair Work.
24.15.040	Approved Testing Agency.
24.15.045	Boarded.
24.15.050	Building.
24.15.060	Dangerous Structure.
24.15.065	Derelict Commercial Building.
24.15.070	Director.
24.15.075	Dwelling Unit.
24.15.080	Exterior Property Area.
24.15.090	Hearings Officer.
24.15.100	Imminently Dangerous.
24.15.110	Inspections Manager.
24.15.115	Master Permit/Facilities Permit Program
24.15.120	Owner.
24.15.130	Repair.
24.15.140	Residential Structure.
24.15.150	Requested Inspection.
24.15.160	Service Station Site.
24.15.170	Substandard.
24.15.180	Special Inspector.
24.15.190	Subject Structure.
24.15.200	Structure.
24.15.215	Tree Removal.

24.15.220	Unoccupied.
24.15.230	Unsafe.
24.15.240	Unsecured.
24.15.250	Value/Valuation.
24.15.260	Warehousing.
<b>Chapter 24.20</b>	<b>SPECIAL INSPECTIONS</b>
24.20.010	General.
24.20.020	Selection of the Special Inspectors and/or Agencies.
24.20.030	General Duties of the Special Inspector.
<b>Chapter 24.25</b>	<b>MOVING OF BUILDINGS</b>
24.25.010	General.
24.25.020	Permit Information Required.
24.25.030	Direction of City Engineer.
24.25.040	Housing Code Inspection Report Required.
<b>Chapter 24.30</b>	<b>HOME OCCUPATIONS</b>
24.30.010	Permits Required.
24.30.020	Compliance with Planning and Zoning Regulations.
24.30.030	Fees for Home Occupations.
<b>Chapter 24.40</b>	<b>USE OF AND PROJECTIONS OVER PUBLIC STREETS AND PROPERTY</b>
24.40.010	Street Use.
24.40.020	Dirt on Streets from Construction Projects.
24.40.030	Fees.
<b>Chapter 24.45</b>	<b>PARKING AND DRIVEWAY SURFACES</b>
24.45.010	General.
24.45.020	Minimum Surfacing Standards for Parking Areas and Garages for Passenger Cars and Trucks not Exceeding 1/2-Ton Capacity and Driveways Serving Structure 150 Feet or Less from an Improved Public Right-of-Way.
24.45.030	Minimum Surfacing Standards for Driveways Serving Structures More than 150 Feet from an Improved Public Right-of-Way.
24.45.040	Minimum Surfacing Standards for Trucks Over 1/2-Ton Capacity and Other Vehicles.
24.45.050	Private Streets.
<b>Chapter 24.50</b>	<b>FLOOD HAZARD AREAS</b>
24.50.010	Purpose.
24.50.020	General.
24.50.030	Flood Related Definitions.
24.50.040	FIA Study and Flood Hazard Maps.
24.50.050	Flood Hazard Areas and Flood Protection Elevations.
24.50.060	Provisions for Flood Hazard Reduction.

24.50.065	Recreational Vehicles located in Areas of Special Flood Hazard or Base Flood Zones.
24.50.070	Appeals and Variances.
<b>Chapter 24.51</b>	<b>WILDFIRE HAZARD ZONES</b>
24.51.010	Purpose.
24.51.020	Definitions.
24.51.030	Wildfire Hazard Zone Map Adoption.
24.51.040	Map Revision Process.
24.51.050	Appeals of Decisions Made by the Chief.
24.51.060	General.
<b>Chapter 24.55</b>	<b>BUILDING DEMOLITION</b>
24.55.100	Demolition - Debris - Barricades - Nuisances.
24.55.150	Definitions.
24.55.200	Residential Demolition Delay - Housing Preservation.
24.55.205	Site Control Measures in Residential Demolitions.
24.55.210	Major Residential Alterations and Additions.
<b>Chapter 24.60</b>	<b>FENCES</b>
24.60.020	Barbed Wire Fencing.
<b>Chapter 24.65</b>	<b>SIDEWALK VAULT OPENINGS</b>
24.65.010	Location of Sidewalk Vault Openings.
24.65.020	Number of Sidewalk Vault Openings.
24.65.030	Sidewalk Elevators.
24.65.040	Operation of Sidewalk Elevators.
24.65.050	Plans Required.
<b>Chapter 24.70</b>	<b>CLEARING AND GRADING</b>
24.70.010	General.
24.70.020	Permits.
24.70.030	Hazards.
24.70.040	Special Definitions.
24.70.050	Information on Plans and in Specifications.
24.70.060	Bonds.
24.70.070	Cuts.
24.70.080	Fills.
24.70.090	Setbacks.
24.70.100	Drainage and Terracing.
24.70.120	Grading Inspection.
24.70.130	Completion of Work.
<b>Chapter 24.75</b>	<b>UNIFORM BUILDING ADDRESS SYSTEM</b>
24.75.010	Uniform System.
24.75.020	Size and Location of Building Numbers.

24.75.030	Administration.
24.75.040	Owner Responsibility.
24.75.050	Alteration of Building Number - Improper Number.
24.75.060	Building Defined.
24.75.070	Enforcement.

## **Chapter 24.85**

## **SEISMIC DESIGN REQUIREMENTS FOR BUILDINGS**

24.85.010	Scope.
24.85.015	Structural Design Meeting.
24.85.020	Seismic Related Definitions.
24.85.030	Seismic Improvement Standards.
24.85.040	Change of Occupancy or Use.
24.85.050	Building Additions or Structural Alterations.
24.85.051	Mezzanine Additions.
24.85.055	Structural Systems Damaged by Catastrophic Events.
24.85.056	Structural Systems Damaged by an Earthquake.
24.85.060	Required Seismic Evaluation
24.85.065	Seismic Strengthening of Unreinforced Masonry Bearing Wall Buildings.
24.85.067	Voluntary Seismic Strengthening.
24.85.070	Phasing of Improvements.
24.85.075	Egress Through Existing Buildings.
24.85.080	Application of Other Requirements.
24.85.090	Fee Reductions.
24.85.095	Appeals.

## **Chapter 24.90**

## **MANUFACTURED DWELLING INSTALLATION AND ACCESSORY STRUCTURES, MANUFACTURED DWELLING PARKS, RECREATION PARKS, RECREATIONAL PARK TRAILER INSTALLATION AND ACCESSORY STRUCTURES**

24.90.010	Purpose.
24.90.020	Scope.
24.90.030	Adoption of Codes and Regulatory Authority.
24.90.040	Definitions.
24.90.050	Administration and Enforcement.
24.90.060	Special Regulation.
24.90.070	Permit Application.
24.90.080	Violations.
24.90.090	Appeals.

# **TITLE 24 - BUILDING REGULATIONS**

## **TITLE 24**

### **BUILDING REGULATIONS**

#### **CHAPTER 24.10 - ADMINISTRATION AND ENFORCEMENT**

##### **Sections:**

24.10.010	Title.
24.10.020	Purpose.
24.10.030	Scope.
24.10.040	Codes.
24.10.050	Organization.
24.10.060	Enforcement.
24.10.070	Application for Permits.
24.10.075	Bureau of Development Services Administrative Appeal Board.
24.10.080	Building Code Board of Appeal.
24.10.085	Structural Engineering Advisory Committee.
24.10.087	Alternative Technology Advisory Committee
24.10.090	Pre-application and Pre-construction Meetings.
24.10.095	Commercial and Industrial Minor Structural Labels.
24.10.100	Fees.

##### **24.10.010 Title.**

This Title shall be known as the “Building Regulations,” and may be so cited and pleaded and is referred to herein as “this Title.”

##### **24.10.020 Purpose.**

(Amended by Ordinance Nos. 163908 and 187432, effective December 4, 2015.) The purpose of this Title is to provide minimum performance standards to safeguard the health, safety, welfare, comfort, and security of occupants and users of buildings and structures within the City, and will provide for the use of modern methods, devices, materials, techniques, and practicable maximum energy conservation by regulating and controlling the design, construction, quality of materials, use, and occupancy, location and maintenance of all buildings, structures and land within this jurisdiction.

##### **24.10.030 Scope.**

(Amended by Ordinance Nos. 163237, 163908, 165678 and 176783, effective August 30, 2002.) The provisions of this Title shall apply to the construction, alteration, moving, demolition, repair, and use of any building, structure or land, and to any land clearing or grading within the City. Exceptions are work in the public right-of-way as approved by the City Engineer; publicly constructed sanitary and storm sewer systems and facilities approved by the BES Chief Engineer; and public utility towers and poles, mechanical equipment not specifically regulated in this Code.

##### **24.10.040 Codes.**

(Amended by Ordinance Nos. 158651, 162695, 163908, 164950, 166111, 166436, 169312, 169905, 172737, 174891, 177414, 177433, 178745, 179125, 181359, 182370, 184140, 185545, 185798, 186932 and 188781, effective January 24, 2018.)



**TITLE 24**  
**BUILDING REGULATIONS**

- A.** Structural Specialty Code. The provisions of the State of Oregon Structural Specialty Code 2014 Edition, as published by the International Code Council and known as the International Building Code 2012 Edition and amended by the Building Codes Division of the Oregon Department of Consumer and Business Services are hereby adopted by reference. The Structural Specialty Code is on file in the Development Services Center of the City of Portland.
- B.** Compliance with recognized standards. Where requirements of this Title do not provide necessary regulation or are not fully detailed with regard to processes, methods, specifications, equipment testing, and maintenance, standards of design, performance, and installation, and other pertinent criteria, the applicable standards and recommendation of the National Fire Protection Association, as set forth in its National Fire Code shall apply, a copy of which is on file in the City Auditor's Office. Said volumes and all subsequent editions are hereby incorporated in this Title by reference.
- C.** Application of other titles. Nothing in this Title is intended to permit the establishment or conversion of any structure or use of any land in any zone which is not in accordance with the applicable sections of Title 25 (Plumbing Regulations), Title 26 (Electrical Regulations), Title 27 (Heating and Ventilating Regulations), Title 33 (Planning and Zoning Regulations).
- D.** Residential code. The provisions of the State of Oregon, Residential Specialty Code, 2017 Edition, as published by the International Code Council, and known as the International Residential Code, 2015 Edition, and amended by the Building Codes Division of the Oregon Department of Consumer and Business Services, including the appendices and standards adopted by the State of Oregon, is hereby adopted by reference. The Residential Specialty Code is on file in the Development Services Center of the City of Portland.
- E.** Energy Efficiency Specialty Code. The provisions of the State of Oregon Energy Efficiency Specialty Code 2014 Edition, as published by the International Code Council and known as the International Energy Conservation Code, 2009 Edition and amended by the Building Codes Division of the Oregon Department of Consumer and Business Services, are hereby adopted by reference. The Energy Efficiency Specialty Code is on file in the Development Services Center of the City of Portland.

**24.10.050      Organization.**

(Amended by Ordinance Nos. 176955 and 188647, effective November 17, 2017.)

- A.** Bureau of Development Services. The Bureau of Development Services shall be under the jurisdiction of the Director designated by the appointing authority.

## **TITLE 24**

### **BUILDING REGULATIONS**

- B.** Director to enforce Title. General. The Director is hereby authorized and directed to enforce all provisions of this Title. For such purpose the Director shall have the powers of a law enforcement officer.
- C.** Deputies. The Director may appoint officers, inspectors, and assistants and other employees. The Director may also deputize employees as may be necessary to carry out the duties of the Bureau of Development Services.
- D.** Right of Entry. Whenever an inspection is necessary to enforce any of the provisions of this Title, or whenever the Director or the Director's duly authorized representative has reasonable cause to believe that there exists in any building or upon any premises any condition which makes such building or premises substandard as defined within this Title, or upon presentation of a lawfully issued warrant, the Director may enter such building or premises at all reasonable times to inspect or to perform any imposed duty and shall have recourse to every remedy provided by law to secure entry.

#### **24.10.060 Enforcement.**

(Amended by Ordinance Nos. 168340, 176955, 187432 and 188647, effective November 17, 2017.)

- A.** All permitted work shall be subject to inspection by the Director, and certain work shall have continuous inspection by special inspectors as specified in Section 24.20.
- B.** The Director, upon notification from the permit holder or his agent, shall either approve of those portions of the construction requiring inspection or shall notify the permit holder, or the permit holder's agent, in writing, wherein the same fails to comply with the provisions of this Title.
- C.** Stop Work Orders. When it is necessary to obtain compliance with this Title, the Director may issue a stop work order requiring that all work, except work directly related to elimination of the violation, be immediately and completely stopped. If the Director issues a stop work order, activity subject to the order may not be resumed until such time as the Director gives specific approval in writing. The stop work order will be in writing, except when an emergency condition exists, the Director may issue a stop work order orally, followed by a written stop work order. All stop work orders will conform to the requirements of City Code Section 3.30.080. Any person subject to a stop work order may seek review of the order by the Director and may appeal the Director's determination in accordance with City Code Section 3.30.080.
- D.** It is unlawful for any person, firm, or corporation to erect, construct, enlarge, alter, repair, move, improve, remove, convert or demolish, equip, use, occupy, or maintain any building or structure in the City, or cause the same to be done, contrary to or in violation of any of the provisions of this Title.

**TITLE 24**  
**BUILDING REGULATIONS**

- C.** A copy of the appeal shall be provided to the Chief at the same time that it is filed with the Board. The Chief shall have fourteen days from the date of the appeal to respond, in writing, to the Board and all appellants.
- D.** The Board shall issue a notice of a hearing date and the place and time of the hearing. Notice shall be provided to the appellants and the Chief.
- E.** The Board shall then hold a hearing upon any such appeal. After considering the issues raised on appeal, and the reasonableness of the Chief's interpretation of applicable criteria, the Board shall, by majority vote, affirm or modify the Chief's decision. The Board's decision shall be based solely upon the criteria set out in this Chapter and shall include findings addressing the facts and the criteria. The decision of the Board shall have full force and effect. A certified copy of the decision shall be delivered to the appellant.

Any appeal of the Board's decision shall by writ of review.

**24.51.060 General.**

(Amended by Ordinance Nos. 178745 and 179125, effective April 1, 2005.)

- A.** In addition to the other City codes, all structures located in wildfire hazard zones as identified in the Wildfire Hazard Zone map shall meet the applicable requirements in the State of Oregon Structural Specialty Code or the Residential Specialty Code as applicable.
- B.** The requirements in Chapter 24.75, Uniform Building Address System, supercede the requirements found in OSSC Appendix L, Section L101.7, for premises identification.

## **TITLE 24**

### **BUILDING REGULATIONS**

#### **CHAPTER 24.55 - BUILDING DEMOLITION**

(Chapter amended by Ordinance No. 171455,  
effective August 29, 1997.)

##### **Sections:**

- 24.55.100 Demolition - Debris - Barricades - Nuisances.
- 24.55.150 Definitions.
- 24.55.200 Residential Demolition Delay - Housing Preservation.
- 24.55.205 Site Control Measures in Residential Demolitions.
- 24.55.210 Major Residential Alterations and Additions.

##### **24.55.100 Demolition - Debris - Barricades - Nuisances.**

(Amended by Ordinance Nos. 171455 and 187017, effective April 19, 2015.) It is unlawful for any owner or persons in control of any such structure which is being demolished, or which has been damaged by fire, to leave any portion of the structure unsupported for more than 1 hour, if such section is liable to collapse or is in any way a danger to the public. In no event shall a portion of the structure be left unsupported for more than 24 hours. Suitable barricades shall be provided to prevent access to the vicinity of any unsupported section of the structure. Any permanent structural supports provided as a result of application to this section shall be designed by a structural engineer registered to practice in the State of Oregon and hired by the applicant. All such designs, calculations, drawings, and inspection reports shall be approved by the Director.

All combustible debris or material shall be removed from the premises on which the demolition is carried out within 30 days from the completion of the demolition, or from the stoppage of the work thereon if the work remains uncompleted. All non-combustible debris or material resulting from demolition shall be removed within 30 days after the completion of the demolition or stoppage thereof, unless the Director extends the time therefore because of weather, terrain, or other special circumstances, but such extension shall not exceed 3 months. It is unlawful for any owner or person in possession of real property to permit the debris to remain on the property without disposal in excess of the periods mentioned above or of any specific extension thereof as set forth above.

Any of the above-mentioned things existing while there is a duty to remove or correct the same, shall constitute a public nuisance. Any unsupported portions of a building or structure existing beyond the periods set forth above shall be subject to summary abatement by the City. The abatement shall be in accordance with the procedure set forth in Title 18, Chapter 18.03, Nuisance Abatement.

All structures to be demolished shall be taken down in a safe manner. The streets or sidewalks shall not be littered with rubbish and shall be wet down, if necessary. During any demolition work, all receptacles, drop boxes, shafts, or piping used in such demolition work shall be covered in an appropriate manner. After removal of any structure all foundations that are not to be used for new construction shall be removed and all excavations filled in compliance with Chapter 24.70 of this Title, to a level of the adjoining grade. Plans shall be submitted for any new construction proposed, utilizing the remaining foundations. Any remaining foundations approved for further use shall be barricaded by a

**TITLE 24**  
**BUILDING REGULATIONS**

fence no less than 6 feet high maintained until the new construction has progressed sufficiently to remove any hazards to the public. Such period of time is not to exceed 30 days. For regulations on the use of public streets and protection of pedestrians during demolition see Chapter 24.40 of this Title.

**24.55.150 Definitions.**

(Added by Ordinance No. 187017; amended by Ordinance No. 188802 effective February 1, 2018.)

- A.** Demolition. Demolition means removal of the entire superstructure down to the subflooring, such that none of the existing superstructure is maintained. Demolition includes removal of all exterior walls. It also includes alteration, abandonment or removal of all of the existing perimeter foundation.
- B.** Major Residential Alteration or Addition. Major alteration or addition means doing any of the following:

  - 1.** adding any new story, including a basement or other below-grade structure. Raising a structure to meet the required headroom in a basement is considered the same as creating a basement,
  - 2.** increasing or replacing 50 percent or more of the exterior wall area on any floor. If the subflooring under an exterior wall is removed, it will be treated as if the wall was removed,
  - 3.** adding total new floor area to the existing structure that exceeds 800 square feet, or
  - 4.** adding an area exceeding 100 percent of the existing foundation footprint area of the structure.
- C.** Recognized organization. Recognized organization includes neighborhood coalitions and neighborhood associations recognized by the Portland Office of Neighborhood Involvement.
- D.** Subflooring. Subflooring means the bottom-most structural floor laid as a base for a finished floor.
- E.** Superstructure. Superstructure means the part of the building or construction entirely above its foundation or basement.
- F.** Demolition Manager. Demolition manager means the person designated by the property owner or demolition permit applicant who will be responsible for implementing and overseeing the Demolition Plan and who will be the contact person for BDS and other regulatory agencies regarding the Demolition Plan. The Demolition Manager must complete training and be an accredited inspector, as that

## **TITLE 24**

### **BUILDING REGULATIONS**

term is defined in OAR 340-248-0010(1), unless the Demolition Manager designates another person who has the training and is an accredited inspector and who is on-site during all mechanical demolition and deconstruction activities. The Demolition Manager must have knowledge regarding erosion and sediment control, site control, and proper handling of materials generated from the demolition activities. The Demolition Manager is a “responsible party” as defined in this Section 24.55.150.

- G.** Demolition Plan. Demolition plan means the plan signed by the Demolition Manager that outlines the techniques and equipment that the Demolition Manager will use on the demolition site to control dust and debris generated during the demolition activities. The Demolition Plan must also include the anticipated timeframe for the demolition, a description of the site control measures set forth in Section 24.55.205 C. and monitoring processes that will be followed on the site before, during, and after the demolition activities, details of pedestrian protection where required, and a description of how the site will be secured against accessibility by any unauthorized persons. The Demolition Plan must include erosion and sediment control measures required by this Chapter 24.55, Title 10 and Chapter 17.39 of the Portland City Code, the City of Portland Erosion and Sediment Control Manual, the City of Portland Source Control Manual, and any other City of Portland regulations governing erosion, sediment control, stormwater control, or wastewater generated from the demolition activities covered by this Section 24.55.205. The Plan must also include contact information for the Demolition Manager.
- H.** Mechanical demolition activities. Mechanical demolition activities means pulling down any part of a structure using mechanical tools such as cranes, bulldozers, excavators, rams, or similar heavy machinery.
- I.** Deconstruction. Deconstruction means demolition via the systematic dismantling of a structure or its parts, typically in the opposite order it was constructed, which can include the selective use of heavy machinery.
- J.** Full deconstruction. Full deconstruction means systematically dismantling 100% of the building, including finishes, core, shell, frame, mechanical, electrical, and plumbing fixtures and only using machinery to move and process materials once they are removed.
- K.** Lead-containing. Lead-containing means paint or other surface coatings that contain lead equal to or exceeding 1.0 milligram per square centimeter, 0.5 percent by weight, or 5,000 parts per million (ppm).
- L.** Responsible party. Responsible party means the property owner or person authorized to act on the owner’s behalf and any person causing or contributing to a violation of this Title.

**24.55.200 Residential Demolition Delay - Housing Preservation.**

(Amended by Ordinance Nos. 171455, 176955, 187017, 187711, 188259 and 188802, effective February 1, 2018.)

- A.** Purpose. The residential demolition delay provisions are intended to allow an adequate amount of time to help save viable housing in the City while recognizing a property owner's right to develop or redevelop property. The regulations provide an opportunity for public notice of impending residential demolitions and coordination of the efforts of various City bureaus. The regulations also encourage seeking alternatives to demolition. The provisions accomplished this through a two part process:

  - 1. a 35 day notice period during which demolition is delayed, and
  - 2. a possible 60-day extension of the demolition delay period.
- B.** Where the delay applies. The residential demolition delay regulations of this Section (24.55.200) apply to sites with residential structures in areas with a residential Comprehensive Plan Map designation. The regulations only apply to applications for demolition of residential structures. They do not apply to demolitions of accessory structures such as garages or other outbuildings.
- C.** Application for building permit for demolition.

  - 1. Signed statement. The application for a building permit for demolition must include a statement signed by the owner(s) of the property. The statement must acknowledge that the owner(s) are aware of the primary uses permitted under the current zoning on the site without a conditional use, zone change, Comprehensive Plan Map amendment, or other land use approval and that such an approval will be required before other uses will be permitted on the site. The statement may be on forms that the Director may make available.
  - 2. Delay in issuing. The building permit for demolition will not be issued except as provided for in this Section (24.55.200).
- D.** Notification.

  - 1. Mailed notice. Within 5 days of receipt of a complete application for a residential demolition permit, the Bureau of Development Services will mail written notice of the demolition request to all properties within 150 feet of the site to be demolished, to the recognized organization(s) whose boundaries include the site, to the Architectural Heritage Center/Bosco-Milligan Foundation, Inc., and to the Historic Preservation League of Oregon, dba Restore Oregon. A complete application means when the Bureau of Development Services has received a complete permit

## **TITLE 24**

### **BUILDING REGULATIONS**

application, project plans and the intake, review and notice fees have been paid. The notification letter will contain at least the following information.

- a.** Notice that the site has been proposed for demolition,
  - b.** The date the application for demolition was received,
  - c.** Notice that there is a demolition delay period of 35 days which may be extended upon request from the recognized organization(s) whose boundaries include the site or an interested party,
  - d.** The contact information of the applicant,
  - e.** The last day that requests for extended delay may be submitted, and
  - f.** The location where more information is available.
- 2.** Posted notice. Not more than 2 weeks nor less than 72 hours before demolition activity commences, the applicant must post door hangers provided by the Bureau of Development Services on all properties within 300 feet of the site to be demolished. The notice must contain all of the following information.
  - a.** Name and phone number of the Demolition Manager.
  - b.** Notice that the site has been proposed for demolition,
  - c.** The demolition permit number,
  - d.** The approximate date demolition activity will commence,
  - e.** Contact information of the agencies that regulate asbestos and lead-based paint,
  - f.** Contact information for the applicant,
  - g.** Recommended safety information for surrounding properties, such as closing windows and keeping children away from the site, and
  - h.** The location where more information is available.
- E.** 35-day notice period. The building permit for residential demolition will not be issued during the 35-day notice period. The notice period begins on the day the complete permit application is received and all intake fees have been paid. If no written request to extend the demolition delay is received during the 35-day notice



**TITLE 24**  
**BUILDING REGULATIONS**

period as provided in Subsection 24.55.200 F. below, then the Bureau of Development Services will issue the building permit for demolition.

- F.** Requests for extension of demolition delay period. Requests to extend the demolition delay period may be made as follows:
- 1.** Who may request. Requests to extend the demolition delay period an additional 60 days may be made by a recognized organization whose boundaries include the site or any other interested party.
  - 2.** How to request. The request to extend the demolition delay period must be made in writing, on forms provided by the Bureau of Development Services. The request must be submitted to the Bureau of Development Services by 4:30 p.m. on the last day of the initial 35-day notice period. The request must be accompanied by an appeal of the demolition permit application submitted to the Bureau for a hearing before the Code Hearings Officer, as provided in Subsection 24.55.200 H. below, along with the appeal fee or a waiver of the fee and all documents the appealing party wants in the record to support the appeal. A fee waiver will only be granted to recognized organizations whose boundaries include the site.
- G.** 60-day extension of residential demolition delay period. If a signed request for extension of the demolition delay is received as provided in Subsection 24.55.200 F. above, issuance of the building permit for demolition will be stayed until the Code Hearings Officer has rendered a decision of the appeal filed as provided in Subsection 24.55.200 H. below.
- H.** Appeal of the residential demolition permit application. An interested party may appeal issuance of the demolition permit by completing an appeal application on forms provided by the Bureau. The appeal application must be accompanied by the appeal fee or a fee waiver, along with all documents the appealing party wants in the record to support the appeal. Appeals will be forwarded to the Code Hearings Officer and will be governed by the provisions in Chapter 22.10, unless there is a conflict between Chapter 22.10 and this Section, in which case this Section shall apply. The provisions of Chapter 22.03 shall not apply to appeals under this Section, except for Sections 22.03.050 (Hearing Procedure), 22.03.080 (Evidence), and 22.03.110 (Orders). The appeal may be filed any time within the initial 35-day delay period. The demolition permit may not be issued from the time the Bureau receives an appeal application and the fee or fee waiver, until the Code Hearings Officer has rendered a decision or the 60-day extension period has expired. If the fee waiver is denied, the appealing party must submit the appeal fee to the Bureau within three business days of the denial or the appeal will be rejected. The appealing party has the burden of proving that it is actively pursuing an alternative to demolition and must demonstrate all of the following:

## **TITLE 24**

### **BUILDING REGULATIONS**

- 1.** The requesting party has contacted the property owner or property owner's representative to request a meeting to discuss alternatives to demolition by sending a letter to the property owner by registered or certified mail, return receipt requested;
  - 2.** The particular property subject to the demolition permit application has significance to the neighborhood. Evidence of the significance may include, but is not limited to, architectural significance, the age and condition of the structure or other factors;
  - 3.** The requesting party has a plan to save the structure; and
  - 4.** The requesting party has a reasonable potential to consummate the plan within 95 days of the date the Bureau accepted the complete demolition permit application by providing a pro-forma budget and either evidence of funds on hand or a fund raising plan sufficient to meet the financial requirements of that budget
- I.** Moving as an alternative. If the applicant decides to move the structure instead of demolishing it, then the demolition notice period and/or extended delay period becomes moot. The demolition delay period is automatically terminated when a building permit to move the structure from the site and a building permit to relocate the structure to another site are issued.
- J.** Findings of the Code Hearings Officer. If the Code Hearings Officer finds that the requesting party has demonstrated that it is actively pursuing an alternative to demolition and has met all of the criteria in Subsection 24.55.200 H. (1. – 4.) above, the Code Hearings Officer may grant an extension of the demolition delay for up to 60 additional days from the date the initial 35 day delay period has expired. If the Code Hearings Officer finds that the requesting party has not met its burden, then the Bureau may issue the demolition permit immediately upon receipt of the decision, provided that all other requirements for issuing the demolition permit have been satisfied.
- K.** End of the extension period. If the Code Hearings Officer has not rendered a decision within the 60-day extension period as provided in Subsections 24.55.200 H. and J. above, the building permit for demolition may be issued any time after 60 days have elapsed since the expiration of the initial 35-day notice period. In no event will the permit issuance be delayed more than 95 days from the date the Bureau received the complete demolition permit application if all other requirements for issuing the demolition permit have been satisfied.
- L.** Exceptions to demolition delay.

**TITLE 24**  
**BUILDING REGULATIONS**

1. The provisions of this Section (24.55.200) do not apply to applications for building permits for demolition that are required by the City to remove structures because of a public hazard, nuisance, or liability. The structure must be subject to a demolition order from the City, or be the subject of enforcement proceedings for demolition and be stipulated by the owner as a dangerous building, in order to be exempt from the demolition delay provisions.
2. The provisions of this Section (24.55.200) do not apply to applications for building permits for demolition of structures that are subject to the demolition review provisions of Title 33. In this situation, the provisions of Title 33, Planning and Zoning, apply to the application. Any application not subject to the demolition review provisions of Title 33 is subject to the demolition delay provisions of this Section (24.44.200).

**24.55.205 Site Control Measures in Residential Demolitions.**

(Added by Ordinance No. 188802, effective February 1, 2018.)

- A. Scope. The provisions of this Section 24.55.205 apply to demolitions involving the following, regardless of zoning or Comprehensive Plan Map designation:
  1. Structures used for residential purposes with four or fewer dwelling units, including mixed use structures. “Mixed use” for purposes of this Section 24.55.205 means the combination on a site of residential uses with commercial or industrial uses.
  2. Any detached accessory structures with a floor area over 200 square feet on a site with a structure covered by Subsection 1. above. “Accessory structure” for purposes of this Section 24.55.205 means a structure not greater than 3,000 square feet in floor area, and not more than two stories in height, the use of which is accessory to and incidental to that of the main structure.
- B. Documentation Required. A permit to demolish a structure within the scope of this Section as defined in Subsection A. above will not be issued until the Bureau of Development Services (BDS) has received all of the following:
  1. A copy of the asbestos survey required under Oregon Revised Statutes 468A.757 and Oregon Administrative Rules Chapter 340, Division 248, as each of these is amended from time-to-time.
  2. If asbestos is identified in the asbestos survey:
    - a. For friable asbestos removal, a copy of the ASN1 (friable notification form) and a close-out letter from the licensed asbestos

## **TITLE 24**

### **BUILDING REGULATIONS**

abatement contractor verifying all of the asbestos identified in the asbestos survey has been abated; and

- b.** For non-friable asbestos removal, a copy of an ANS6 (nonfriable asbestos notification form), and a copy of the ASN4 (asbestos waste shipment form).
- 3.** A Demolition Plan as described in Section 24.55.150.
- 4.** If the structure to be demolished was built before January 1, 1978, it will be presumed to contain lead-based paint, unless a copy of lead-test results conducted by an “inspector” or “risk assessor,” as those terms are defined on OAR 333-069 and as that section is amended from time-to-time, that shows the structure does not have lead-containing materials is submitted to the Bureau of Development Services with the application for a demolition permit.
- 5.** Unless the lead-test results outlined in Subsection 4. above show that the structure does not have lead-containing materials, if the structure to be demolished was built before January 1, 1978, and the person performing the demolition is a contractor, as defined in ORS 701.005 (5)(a), the person performing the demolition must submit proof to BDS verifying that the person has one of the certifications specified in OAR 333-068-0070, as that section is amended from time-to-time, or has hired a person with one of the specified certifications to perform the mechanical demolition activities or deconstruction on the site.

#### **C. Requirements for Demolitions**

- 1.** Accredited inspector. The Demolition Manager or an accredited inspector, as that term is defined in OAR 340-248-0010(1), must be present during all mechanical demolition activities and deconstruction on the site.
- 2.** Lead hazard reduction. Prior to commencing mechanical demolition activities, all painted exterior non-structural surfaces, including, but not limited to, doors, windows, railings, soffits, trim, exterior porches (except for concrete or masonry materials), and all layers of siding (unless such surfaces have been tested as set forth in Section B.4. above and found not to contain lead-containing paint) must be removed, and all such materials must be placed in 6 mil plastic and deposited in a covered container. During the removal of these exterior painted materials, 6-mil plastic sheeting or equivalent must be placed at the base of the exterior shear wall and extend at least 10 feet beyond the perimeter of the structure or work area, whichever is greater. If a property line prevents 10 feet of ground covering, vertical containment must be erected to protect neighboring properties.

**TITLE 24**  
**BUILDING REGULATIONS**

3. Dust suppression. During mechanical demolition activities, including transfer and loading of materials, the structure, equipment parts that come in direct contact with building materials, and debris must be continuously wetted with a water spray sufficient in volume and force to prohibit airborne emission of dust and particulates from leaving the site. In addition, the entire demolition site and all debris piles must be wetted down each day prior to commencing mechanical demolition activities and at the end of each day during which mechanical demolition activities have occurred.
4. Wind speed. Mechanical demolition activities must be suspended when winds exceed 25 MPH, verified regularly during mechanical demolition activities by using a hand-held anemometer prior to commencing mechanical demolition activities each day and any time wind speeds noticeably increase. Only deconstruction or other activities that do not generate dust may be conducted on the site when winds exceed 25 MPH.
5. Containment of demolition debris on-site. Containment measures to prevent suspect asbestos-containing material, lead-based paint, and any other pollutants, as defined in the City of Portland Erosion and Sediment Control Manual, from running off the site must be employed consistent with Portland City Code Title 10 and the Solid Waste and Materials Management provisions of the City of Portland Erosion and Sediment Control Manual. If stormwater or any other water generated on the site pools or is collected onsite, including but not limited to water generated from dust suppression activities, then written authorization from the City is required to discharge into a City storm, sanitary, or combined sewer system, unless the Demolition Manager arranges to have the water pumped and hauled off-site for proper disposal. The site will be required to employ approved best management practices, such as settling and filtration, prior to discharge per Portland City Code Subsections 17.34.030 B. and 17.39.040 C.10., and City of Portland Sanitary Discharge and Pretreatment Program Administrative Rules, ENB-4.03(3)(B) and (C).
6. Demolition debris. Any non-salvageable materials and debris generated from demolition activities, including deconstruction, that is deposited into any receptacle, drop box, dumpsters shaft, or piping and any debris left on the site, must be covered at the end of each work day with non-permeable plastic.
7. Exceptions for Full Deconstruction. If the structure to be demolished will be fully deconstructed in accordance with the deconstruction requirements outlined in Portland City Code Subsection 17.106.040 B. and the Portland Deconstruction Administrative Rules adopted October 31, 2016, Parts 4.1 and 4.2, as amended from time-to-time, then the lead hazard reduction requirements in Subsection 2., except the requirement for horizontal and

## **TITLE 24**

### **BUILDING REGULATIONS**

vertical plastic protection; the wetting techniques outlined in Subsection 3., except the requirement to wet mechanically transferred and loaded materials; and the wind restrictions in Subsection 4. above do not apply during deconstruction activities.

- 8.**     **Exemption for Unsafe or Hazardous Structures.** An applicant may request an exemption from the lead hazard reduction requirements in Subsection 2. above if the structure is structurally unsafe or otherwise hazardous to human life to the extent that the activities described in Subsection 2. above could not be safely executed. The request must accompany the application for the demolition permit, unless the unsafe or hazardous condition is not discovered until after the permit application has been submitted. Reasons for exemption consideration could include, but are not limited to, extensive fire damage, drug manufacturing, or severe structural issues that cannot be mitigated without complete mechanical demolition. Request for an unsafe or hazardous structure exemption must be submitted to the Bureau of Development Services and include all of the following:

  - a.**     A letter on company or organization letterhead from one of the following professionals stating that performing the lead hazard reduction requirements would not be safe:

    - (1)**     Structural Engineer licensed in the State of Oregon.
    - (2)**     Bureau of Development Services.
    - (3)**     Hazardous material professional with credentials to perform work in the State of Oregon.
  - b.**     A statement by a professional listed in Subsection a.(1) or (3) above who provides a letter indicating that neither the professional, a relative of the professional, nor a business entity with which the professional is associated has a financial or other interest in the property or project. “Relative” means the spouse, parent, stepparent, child, sibling, step-sibling, son-in-law, or daughter-in-law of the professional.
  - c.**     Supporting evidence documenting the condition of the structure and reasons why the lead hazard reduction activities are not recommended due to safety concerns.
- 9.**     **Notification and Posting.** All demolitions that are subject to the provisions of this Section 24.55.205 must comply with the notification requirements in Subsection 24.55.200 D.2. All such sites must also be posted with a sign during demolition activities that meets the requirements of Portland City

Code Subsection 10.30.020 B.8.a. and includes the name and telephone number of the Demolition Manager, in addition to the information required in Subsection 10.30.020 B.8.a.

**D. Demolition-Related Inspections**

1. BDS will conduct an initial pre-demolition site assessment to determine whether the site control measures outlined in the Demolition Plan, erosion control measures, sediment control measures, and site security are adequate based on specific site conditions or other City regulations. The initial site assessment will be used to review the Demolition Plan, including final site grading and any necessary permanent site control measures. In addition, the initial site assessment will ensure that there is a Demolition Manager and that a copy of the Demolition Plan is on site.
2. Except for accessory structures, BDS may conduct an inspection during demolition activities to confirm the Demolition Plan is being properly implemented and maintained during the demolition process, and any dust-suppression and other site control equipment described in the Demolition Plan are on-site.
3. BDS will conduct a post-demolition inspection to verify that site grading has been completed, permanent soil stabilization measures are in place, and the premises is secure as detailed in the Demolition Plan.

**E. Enforcement**

1. Stop Work Orders. When necessary to obtain compliance with this Section 24.55.205, the Director may issue a stop work order as described in Portland City Code Section 3.30.080 requiring that all work, except work directly related to elimination of the violation, be immediately and completely stopped. Any person subject to a stop work order may seek administrative review of the order and may appeal the Director's administrative determination as provided in Portland City Code Section 3.30.080.
2. Citation Process and Fines
  - a. Citation Process
    - (1) Correction Notice. If BDS finds the demolition project does not comply with any provision of this Section 24.55.205, BDS will issue a correction notice stating the provision(s) violated and the required correction(s) to bring the project into compliance.

## TITLE 24

### BUILDING REGULATIONS

- (2) Citation for Violations. If a violation for which a correction notice has been issued is not corrected, or if the same responsible party is found to have violated any provision of this Section 24.55.205 on a different project within the City, BDS may issue a citation to the responsible party for such violation. For the purposes of this Section 24.55.205, the responsible party is defined in Section 24.55.150.
- (3) Citation service. A citation may be personally delivered to the responsible party, or may be served by Registered or Certified Mail to the responsible party. For purposes of this Subsection, service by Registered or Certified mail is complete and effective when a correctly addressed notice is deposited with the postal service after being either certified or registered by the postal service.
- (4) Fines and corrections. The citation will state the section of this Section 24.55.205 violated, the fine imposed, and the corrective action required.
- (5) Corrections not made. If corrections are not made and the violation(s) continue, BDS may impose additional citations or pursue other enforcement remedies as authorized under Portland City Code Section 3.30.040, including assessment of Administrative Enforcement Fees and revocation of issued demolition or building permits.
- (6) Citation appeals. Issuance of a citation may be appealed by requesting an Administrative Review, see Subsection G below.

- b. Fines. Fines are established for violations of this Section 24.55.205 as set forth in the Enforcement Fee and Penalty Schedule as adopted by the City Council. These fines will be assessed as a result of an issued citation for violations of this Section 24.55.205 and are in addition to any other fines authorized by law.

1st Offense – a first offense is based on a single inspection, even if there are multiple violations. For any subsequent offenses, a separate fine may be assessed for each violation of this Section 24.55.205.

Additional violations after the first offense will be set at the maximum amount per individual violation allowed by the fee scheduled adopted by the City Council, unless the Director finds



**TITLE 24**  
**BUILDING REGULATIONS**

mitigating factors that justify a lesser fine. Multiple citations can be issued to the responsible party for continued violations of this Section 24.55.205, and each day of non-compliance may be considered a separate violation.

Fines must be received by the Bureau of Development Services within 15 calendar days of the date on the citation, or within 15 calendar days of the final administrative review of the Director or the published decision of a citation appealed to the Code Hearings Officer, unless the Code Hearings Officer specifies a different date.

If the citation fine is not paid within 15 calendar days, the fine(s) indicated on the citation will double and the unpaid citation amount may, at the discretion of the Director, be assessed as a City lien against the property.

- F.** Demolition Permit Compliance Prerequisite for New Building Permit. No building permit for a new structure on the site that is subject to the demolition permit (including all lots in a land division or lot confirmation) will be issued until the final inspection for the demolition permit has been completed and approved.
- G.** Administrative Review and Appeals. If a responsible party has received a stop work order or written citation and the responsible party believes the order or citation has been issued in error, the responsible party may request that the order or citation be reviewed by the Director or designee. The responsible party must submit a written request for an Administrative Review within 15 calendar days of the date of the order or citation. An Administrative Review appeal fee, see current BDS Enforcement fee schedule, is due when the written request for an Administrative Review is requested. This fee will only be refunded if it is determined that all of the contested violations were cited in error. A written Administrative Review determination will be served on the responsible party by regular mail.

A responsible party may appeal the written Administrative Review determination to the City Code Hearings Office in accordance with Chapter 22.10 of the Portland City Code.

**24.55.210 Major Residential Alterations and Additions.**

(Added by Ordinance No. 187017, effective April 19, 2015.)

- A.** Purpose. The delay provisions are intended to provide notice of a major residential alteration or addition to recognized organizations and to surrounding neighbors.
- B.** Where the delay applies. The major residential alteration and addition delay applies to sites with residential structures in areas with a residential Comprehensive Plan Map designation. The regulations only apply to applications for major alteration

## **TITLE 24**

### **BUILDING REGULATIONS**

and additions of residential structures. They do not apply to accessory structures such as garages or other outbuildings.

- C.** Delay in issuing. The building permit for a major residential alteration or addition will not be issued except as provided for in this Section (24.55.210).
- D.** Notification.
  - 1.** Emailed notice. At least 35 days before a building permit is issued for a major residential alteration or addition, the applicant for the permit must email a letter to the recognized organization(s) whose boundaries include the site that contains at least the following information.
    - a.** Notice that an application for a major alteration or addition has been or will be submitted to the Bureau of Development Services,
    - b.** The date the application was filed, if applicable,
    - c.** A general description of the proposed alteration or addition,
    - d.** Notice that there is a delay period of 35 days from the date the notice is sent, and
    - e.** The contact information of the applicant.
  - 2.** Posted notice. At least 35 days before the building permit is issued for the major residential alteration or addition, the applicant must post door hangers provided by the Bureau of Development Services on the properties abutting or across the street from the site of the project. See Figure 200-1 in Section 24.55.200. The notice must contain all of the following information.
    - a.** Notice that an application for a major alteration or addition has been or will be submitted to the Bureau of Development Services,
    - b.** The permit application number, if an application has already been filed,
    - c.** The approximate date the construction activity will commence,
    - d.** Contact information of the agencies that regulate asbestos and lead-based paint, and
    - e.** Contact information for the applicant.

**TITLE 24**  
**BUILDING REGULATIONS**

- E.** Required information prior to permit issuance. Prior to issuing a major alteration or addition permit, the delay period must expire and the applicant must submit to the Bureau of Development Services:
- 1.** A copy of the sent email and a list of the names and email addresses of all recognized organizations that received the notification and the date the notifications were emailed, certified by the applicant or the owner or owner's agent, and
  - 2.** A copy of the door hanger and a list of addresses of all properties that received the notification and the date the notifications were posted, certified by the applicant or the owner or owner's agent.
- F.** End of the delay period. The building permit for the major alteration or addition may be issued any time after the end of the 35-day notice period.
- G.** Expiration of permit application. If for any reason, the permit application for a major residential alteration or addition expires prior to issuance of the permit or if an issued permit expires prior to the project being commenced, a new permit application, notification and delay period will be required.

**24.55.250 Enforcement.**

(Repealed by Ordinance No. 171455, effective August 29, 1997.)

**24.55.300 Referral to the Hearings Officer.**

(Repealed by Ordinance No. 171455, effective August 29, 1997.)

**24.55.350 Appeals.**

(Repealed by Ordinance No. 171455, effective August 29, 1997.)

**24.55.400 Rehabilitation and Repair under Direction of Council.**

(Repealed by Ordinance No. 171455, effective August 29, 1997.)

**24.55.450 Contracts to Repair or Demolish.**

(Repealed by Ordinance No. 171455, effective August 29, 1997.)

**24.55.500 Warehousing of Structures.**

(Repealed by Ordinance No. 171455, effective August 29, 1997.)

**24.55.550 Interference with Demolition or Repair Prohibited.**

(Repealed by Ordinance No. 171455, effective August 29, 1997.)

**24.55.600 Demolition - Debris - Barricades - Nuisances.**

(Repealed by Ordinance No. 171455, effective August 29, 1997.)

**TITLE 24**  
**BUILDING REGULATIONS**

**24.55.650 Demolition Permits - Investigations.**

(Repealed by Ordinance No. 163608, effective November 7, 1990.)

**24.55.700 Demolition Delay - Housing Preservation.**

(Repealed by Ordinance No. 171455, effective August 29, 1997.)

**24.55.750 Administrative Review.**

(Repealed by Ordinance No. 171455, effective August 29, 1997.)

**24.55.800 Appeals to the Code Hearings Officer.**

(Repealed by Ordinance No. 171455, effective August 29, 1997.)

**24.55.850 Dangerous Building Enforcement Fees.**

(Repealed by Ordinance No. 171455, effective August 29, 1997.)

**TITLE 24**  
**BUILDING REGULATIONS**

**CHAPTER 24.60 - FENCES**

(Chapter amended by Ordinance No. 176585,  
effective July 5, 2002.)

**Sections:**

24.60.020      Barbed Wire Fencing.

**24.60.010      Fences Around Swimming Pools.**

(Repealed by Ordinance No. 180330, effective August 18, 2006.)

**24.60.020      Barbed Wire Fencing.**

(Added by Ordinance No. 176585, effective July 5, 2002.) It is unlawful for any person to construct or maintain a fence containing barbed wire, unless the barbed wire is placed not less than 6 inches above the top of the fence and the fence is not less than 4 feet high.

**TITLE 24**  
**BUILDING REGULATIONS**

**CHAPTER 24.65 - SIDEWALK VAULT  
OPENINGS**

**Sections:**

- 24.65.010 Location of Sidewalk Vault Openings.
- 24.65.020 Number of Sidewalk Vault Openings.
- 24.65.030 Sidewalk Elevators.
- 24.65.040 Operation of Sidewalk Elevators.
- 24.65.050 Plans Required.

**24.65.010 Location of Sidewalk Vault Openings.**

The outer edge of all openings constructed in sidewalks for fuel, elevators, stairs, or other purposes shall be located not less than 2 feet from the curb line and the inner edge of any sidewalk opening will not be any closer than 3 feet to the property line.

**24.65.020 Number of Sidewalk Vault Openings.**

There shall not be more than one opening for each individual building frontage and in no case openings closer than 25 feet to an existing sidewalk opening.

**24.65.030 Sidewalk Elevators.**

Openings in sidewalks provided for in Section 24.65.010 shall be supplied with doors attached to a frame built into the sidewalk and shall be capable of supporting a load of 100 pounds per square foot. The door shall be constructed of sheet steel or other approved metal which has an approved non-slip surface. The dimensions of the door in any direction shall not exceed the dimension of the opening by more than 6 inches. The doors and frames shall be so constructed and maintained that there is no projection above or below the sidewalk exceeding 1/4 inch and existing doors which do not conform to the requirements shall be changed to conform within a period of 10 days after notice is given to change the same. Sidewalk doors shall be provided with a metal guard which, when the doors are open, will hold the doors open. This guard shall be located on the side of the sidewalk opening nearest the property line. The guard shall be made in the form of a grating with openings not exceeding 6 inches in dimension and so arranged that a child cannot get under or through the guard. This guard shall not be required for doors having metal gratings which are level with the sidewalk when the doors are open and the elevator platform is below the sidewalk level. Such gratings shall be capable of supporting a load of 100 pounds per square foot. Elevators having these sidewalk gratings shall be provided with a 3/4-inch steel bar to hold the doors open.

**24.65.040 Operation of Sidewalk Elevator.**

- A. When not in operation the elevator shall be kept in its down position and the sidewalk doors shall be closed.
- B. When the elevator is being raised, pedestrians shall be warned of the fact by an automatic warning device approved by the Director.

**TITLE 24**  
**BUILDING REGULATIONS**

- C. The sidewalk elevator shall not be raised sooner than 15 minutes prior to a delivery and shall be placed in a down position and the sidewalk doors closed within 15 minutes of the completion of a delivery.

**24.65.050 Plans Required.**

The construction of sidewalk vaults shall be considered as part of a building and plans shall be submitted showing the construction of the same.

## **TITLE 24**

### **BUILDING REGULATIONS**

#### **CHAPTER 24.70 - CLEARING AND GRADING**

(Chapter amended by Ordinance Nos. 184522,  
185448 and 186053, effective January 1, 2015.)

##### **Sections:**

24.70.010	General.
24.70.020	Permits.
24.70.030	Hazards.
24.70.040	Special Definitions.
24.70.050	Information on Plans and in Specifications.
24.70.060	Bonds.
24.70.070	Cuts.
24.70.080	Fills.
24.70.090	Setbacks.
24.70.100	Drainage and Terracing.
24.70.120	Grading Inspection.
24.70.130	Completion of Work.

##### **24.70.010 General.**

(Amended by Ordinance Nos. 165678, 168340, 184522, 185448 and 186053, effective January 1, 2015.) The provisions of this Chapter shall regulate clearing, grading and earthwork construction on private property. Tree removal, whether associated with clearing, grading, earthwork construction or conducted separately shall be regulated pursuant to Title 11, Trees. Erosion control is regulated by Title 10.

##### **24.70.020 Permits.**

(Amended by Ordinance Nos. 165678, 168340 172209, 173532, 173979, 184522, 185448 and 186053, effective January 1, 2015.) Permits for clearing and grading are required as specified in this Section. Where a specific activity does not require a clearing or grading permit, a separate tree permit may still be required, as specified in Title 11 Trees. Where a clearing or grading development permit shows trees to be removed and has been reviewed and approved by the City, a separate tree permit is not required in conjunction with the clearing or grading permit. An erosion, sediment and pollutant control plan if required by Title 10 shall be submitted with clearing or grading permit applications. Applicants for permits made in conjunction with land divisions shall be responsible for all clearing, grading, tree removal and erosion control within the land division, even where a specific activity is exempt from an individual permit.

- A.** Clearing Permits. A permit is required and shall be issued in accordance with Section 24.10.070 for clearing activities in the following areas:



**TITLE 24**  
**BUILDING REGULATIONS**

1. The Tualatin River sub-basins, Johnson Creek Basin Plan District, environmental zones, greenway zones, or natural resource management plans; or
  2. Property larger than five acres. Except that no permit shall be required for clearing an area less than 5,000 square feet.
- B.** Grading Permits. A permit is required and shall be issued in accordance with Section 24.10.070 for all grading operations with the exception of the following:
1. Grading in an area, where in the opinion of the Director, there is no apparent danger, adverse drainage, or erosion effect on private/public property, or inspection is not necessary;
  2. An excavation below finished grade for basements and footings of a building, retaining wall, or other structure authorized by a valid building permit. This shall not exempt any fill made with the material from such excavation nor exempt any excavation having an unsupported height greater than 5 feet after the completion of such structure.
  3. Cemetery graves.
  4. Refuse disposal sites controlled by other regulations.
  5. Excavations for wells or tunnels.
  6. Mining, quarrying, excavating, processing, stockpiling of rock, sand, gravel, aggregate, or clay where established and provided for by law provided such operations do not affect the lateral support or increase the stresses in or pressure upon any adjacent or contiguous property.
  7. Exploratory excavations under the direction of soil (geotechnical) engineers or engineering geologists.
  8. An excavation which
    - a. Is less than 2 feet in depth, or
    - b. Which does not create a cut slope greater than 5 feet in height and steeper than 1-1/2 horizontal to 1 vertical.
  9. A fill less than 1 foot in depth, and placed on natural terrain with a slope flatter than 5 horizontal to 1 vertical, or less than 3 feet in depth, not intended to support structures, which does not obstruct a drainage course and which does not exceed 10 cubic yards on any one lot.

## **TITLE 24**

### **BUILDING REGULATIONS**

- C.** Tree Removal. Removal of trees six-inches and larger in diameter shall be reviewed with the clearing or grading permits as part of the Tree Plan review pursuant to Title 11. When removing 5 or more trees on a site with an average slope of at least 20 percent, applicants shall provide a geotechnical engineering report that assesses the stability of the site after tree felling and root grubbing operations.
- D.** Permits required under this Chapter shall be obtained before the commencement of any tree removal, root grubbing or soil disturbance takes place.

#### **24.70.030 Hazards.**

(Amended by Ordinance No. 165678, effective July 15, 1992.) The Director may determine that any clearing, grading, or geologic condition on private property has or may become a hazard to life and limb, or endanger property, or cause erosion, or adversely affect drainage or the safety, use or stability of a public way or drainage channel. Upon receipt of notice in writing from the Director, the owner shall mitigate the hazard and be in conformity with the requirements of this Title. The Director may require that plans and specifications and engineering reports be prepared in compliance with this Chapter.

#### **24.70.040 Special Definitions.**

The definitions contained in this Section relate to excavation and grading work only as outlined in this Chapter.

- A.** “Approval” shall mean a written engineering or geological opinion concerning the progress and completion of the work.
- B.** “As graded” is the surface conditions exposed on completion of grading.
- C.** “Bedrock” is in-place solid rock.
- D.** “Bench” is a relatively level step excavated into earth material on which fill is to be placed.
- E.** “Borrow” is earth material acquired from an off-site location for use in grading on a site.
- F.** “Civil engineer” shall mean a professional engineer registered in the State to practice in the field of civil works.
- G.** “Civil engineering” shall mean the application of the knowledge of the forces of nature, principles of mechanics, and the properties of materials to the evaluation, design, and construction of civil works for the beneficial uses of mankind.
- H.** “Clearing” is the cutting or removal of vegetation which results in exposing any bare soil.

**TITLE 24**  
**BUILDING REGULATIONS**

- I.** “Compaction” is the densification of a fill by mechanical means.
- J.** “Earth material” is any rock, natural soil, or fill and/or any combination thereof.
- K.** “Engineering geologist” shall mean a geologist experienced and knowledgeable in engineering geology and registered as an engineering geologist in the State of Oregon.
- L.** “Engineering geology” shall mean the application of geologic knowledge and principles in the investigation and evaluation of naturally occurring rock and soil for use in the design of civil works.
- M.** “Erosion” is the wearing away of the ground surface as a result of the movement of wind, water, and/or ice.
- N.** “Excavation” is the mechanical removal of earth material.
- O.** “Fill” is a deposit of earth material placed by artificial means.
- P.** “Geological hazard” shall mean a potential or apparent risk to persons or property because of geological or soil instability either existing at the time of construction or which would result from construction.
- Q.** “Grade” shall mean the vertical location of the ground surface.
- R.** “Existing grade” is the grade prior to grading.
- S.** “Rough grade” is the stage at which the grade approximately conforms to the approved plan.
- T.** “Finish grade” is the final grade of the site which conforms to the approved plan.
- U.** “Grading” is any excavating or filling or combination thereof.
- V.** “Key” is a designed compacted fill placed in a trench excavated in earth material beneath the toe of a proposed fill slope.
- W.** “Site” is any lot or parcel of land or contiguous combination thereof, under the same ownership, where grading is performed or permitted.
- X.** “Slope” is an inclined ground surface the inclination of which is expressed as a ratio of horizontal distance to vertical distance.
- Y.** “Soil” is naturally occurring surficial deposits overlying bedrock.

## **TITLE 24**

### **BUILDING REGULATIONS**

- Z.** “Soil (Geotechnical) engineer” shall mean a civil engineer competent by education, training, and experience in the practice of soil engineering.
- AA.** “Soil (Geotechnical) engineering” shall mean the application of the principles of soil mechanics in the investigation, evaluation, and design of civil works involving the use of earth materials and the inspection and testing of the construction thereof.
- BB.** “Terrace” is a relatively level step constructed in the face of a graded slope surface for drainage and maintenance purposes.

#### **24.70.050 Information on Plans and in Specifications.**

(Amended by Ordinance Nos. 173532, 184522, 185448 and 186053, effective January 1, 2015.) Plans and specifications shall be submitted in accordance with Section 24.10.070 and in addition shall comply with the following:

- A.** Plans shall be drawn to scale upon substantial paper or cloth and shall be of sufficient clarity to indicate the nature and extent of the work proposed and show in detail that they will conform to the provisions of this Title and all relevant laws, ordinances, rules, and regulations. The first sheet of each set of plans shall give the location of the work and the name and address of the owner and the person by whom they were prepared.

The plans shall include the following information.

- 1.** General vicinity of the proposed site.
- 2.** Property limits and accurate contours of existing ground and details of terrain and area drainage for the site and surrounding area.
- 3.** Limiting dimensions, elevations, or finish contours to be achieved by the grading and the proposed drainage channels and related construction.
- 4.** Detailed schedule of when each portion of the site is to be graded; how long the soil is to be exposed; and when the area is to be covered with buildings, paving, new vegetation or temporary erosion control measures.
- 5.** Detailed plans of all surface and subsurface drainage devices, walls, cribbing, dams, and other protective devices to be constructed with, or as a part of, the proposed work together with a map showing the drainage area and the estimated runoff of the area served by any drains.
- 6.** Location of any buildings or structures on the property where the work is to be performed and the location of any buildings or structures on land of adjacent owners or trees in the adjacent rights-of-way that are within 15 feet of the property or which may be affected by the proposed grading operations.

**TITLE 24**  
**BUILDING REGULATIONS**

7. Specifications shall contain information covering construction and material requirements.
8. Civil engineering report. The civil engineering report, when required by the Director, shall include hydrological calculations of runoff and the existing or required safe storm drainage capacity outlet of channels both on site and off site, and 1 in 100 year flood elevations for any adjacent watercourse. The report shall include recommendations for stormwater control and disposal.
9. Soil (Geotechnical) engineering report. The soil engineering report, when required by the Director, shall include data regarding the nature, distribution, and strength of existing soils, design criteria, and conclusions and recommendations applicable to the proposed development. The report shall include recommendation for subdrainage, and for groundwater control and disposal. Recommendations included in the report and approved by the Director shall be incorporated in the plans and specifications. For single family residences, a surface reconnaissance and stability questionnaire may be substituted for a formal soils report at the discretion of the Director.
10. Engineering geology report. The engineering geology report, when required by the Director, shall include an adequate description of the geology of the site, and conclusions and recommendations regarding the effect of geologic conditions on the proposed development and site(s) to be developed.

Recommendations included in the report and approved by the Director shall be incorporated in the grading plans and specifications.

- B.** Issuance. Section 24.10.070 is applicable to grading permits. The Director may require that:

1. The amount of the site exposed during any one period of time be limited; and
2. Grading work be scheduled to avoid weather periods or avoid critical habitat use periods for areas existing on, or adjacent to, the development site.

Subsequent to the issuance of the grading permit, the Director may require that grading operations and project designs be modified if delays occur which can result in weather generated problems not considered at the time the permit was issued.

## **TITLE 24**

### **BUILDING REGULATIONS**

#### **24.70.060 Bonds.**

The Director may require bonds in such form and amounts as may be deemed necessary to assure that the work, if not completed in accordance with the approved plans and specifications, will be corrected to eliminate hazardous conditions.

In lieu of a surety bond the applicant may file a cash bond or instrument of credit with the Director in an amount equal to that which would be required in the surety bond.

#### **24.70.070 Cuts.**

- A.** General. Unless otherwise recommended in the approved soil engineering and/or engineering geology reports, cuts shall conform to the provisions of this Section.
- B.** Slope. The slope of cut surfaces shall be no steeper than is safe for the intended use. Cut slopes shall be no steeper than 2 horizontal to 1 vertical.
- C.** Drainage and terracing. Drainage and terracing shall be provided as required by Section 24.70.100.

#### **24.70.080 Fills.**

- A.** General. Unless otherwise recommended in the approved soil engineering report fills shall conform to the provisions of this Section.

In the absence of an approved soil engineering report these provisions may be waived for minor fills not intended to support structures. Such fills shall be subject to review at the discretion of the Director.

- B.** Ground preparation. The ground surface shall be prepared to receive fill by removing vegetation, noncomplying fill, top-soil, and other unsuitable materials scarifying to provide a bond with the new fill, and where slopes are steeper than 5 to 1, and the height greater than 5 feet, by benching into competent material or sound bedrock as determined by the soils engineer. The bench under the toe of a fill on a slope steeper than 5 to 1 shall be at least 10 feet wide. The area beyond the toe of fill shall be sloped for sheet overflow or a paved drain shall be provided. Where fill is to be placed over a cut the bench under the toe of a fill shall be at least 10 feet wide but the cut must be made before placing fill and approved by the soils engineer and engineering geologist as a suitable foundation for fill. Unsuitable soil is soil which in the opinion of the Director or the civil engineer or the soils engineer or the engineering geologist, is not competent to support either soil or fill, to support structures or to satisfactorily perform the other functions for which the soil is intended.
- C.** Fill material. Only permitted material free from tree stumps, detrimental amounts of organic matter, trash, garbage, sod, peat, and similar materials shall be used. Rocks larger than 6 inches in greatest dimension shall not be used unless the method

of placement is properly devised, continuously inspected, and approved by the Director.

The following shall also apply:

1. Rock sizes greater than 6 inches in maximum dimension shall be 10 feet or more below grade, measured vertically.
  2. Rocks shall be placed so as to assure filling all voids with fines. Topsoil may be used in the top 12-inch surface layer to aid in planting and landscaping.
- D.** Compaction of fill. All fills shall be compacted to a minimum relative dry density of 90 percent as determined in accordance with ASTM Standard D-1557-78. Field density verification shall be determined in accordance with ASTM Standard D-1556-82 or equivalent and must be submitted for any fill 12 inches or more in depth where such fill may support the foundation for a structure. A higher relative dry density, or additional compaction tests, or both, may be required at any time by the Director.
- E.** Fill slope. The slope of fill surfaces shall be no steeper than is safe for the intended use. Fill slopes shall be no steeper than 2 horizontal to 1 vertical.
- F.** Drainage and terracing. Drainage and terracing shall be provided and the area above fill slopes and the surfaces of terraces shall be graded and paved as required by Section 24.70.100.

**24.70.090 Setbacks.**

- A.** General. The setbacks and other restrictions specified by this Section are minimal and may be increased by the Director, or by the recommendation of the civil engineer, soils engineer, or engineering geologist, if necessary for safety and stability or to prevent damage of adjacent properties from deposition or erosion or to provide access for slope maintenance and drainage. Retaining walls may be used to reduce the required setbacks when approved by the Director.
- B.** Setbacks from property lines. The tops of cuts and toes of fill slopes shall be set back from the outer boundaries of the permit area, including slope right areas and easements, in accordance with Figure No. 2 and Table No. 24.70-C at the end of this Chapter.
- C.** Design standards for setbacks. Setbacks between graded slopes (cut or fill) and structures shall be provided in accordance with Figure No. 3 and Table No. 24.70-C at the end of this Chapter.

## **TITLE 24**

### **BUILDING REGULATIONS**

#### **24.70.100 Drainage and Terracing.**

(Amended by Ordinance No. 173270, effective May 21, 1999.)

- A.** General. Unless otherwise indicated on the approved grading plan, drainage facilities and terracing shall conform to the provisions of this Section.
- B.** Terrace. Terraces at least 6 feet in width shall be established at not more than 30-foot vertical intervals on all cut or fill slopes to control surface drainage and debris except that where only one terrace is required, it shall be at mid-height. For cut or fill slopes greater than 60 feet and up to 120 feet in vertical height one terrace at approximately mid-height shall be 12 feet in width. Terrace widths and spacing for cut and fill slopes greater than 120 feet in height shall be designed by the civil engineer and approved by the Director. Suitable access shall be provided to permit proper cleaning and maintenance.

A single run of swale or ditch shall not collect runoff from a tributary area exceeding 13,500 square feet (projected) without discharging into a downdrain.

- C.** Subsurface drainage. Cut and fill slopes shall be provided with subdrainage as necessary for stability. Adequate culverts shall be laid under all fills placed in natural watercourses and along the flow line of any tributary branches in such a manner that the hydraulic characteristics of the stream are not adversely altered. In addition, subdrainage shall be installed if active or potential springs or seeps are covered by the fill. All culverts/subdrainage shall be installed after the suitable subgrade preparation. Design details of culverts/subdrainage shall be shown on each plan and be subject to the approval of the Director and of other government/private agencies as may be required.

A subdrain system shall be provided for embedded foundation/ retaining walls and floor slabs where ground water or seepage has a potential to affect the performance of the structure. The plans shall indicate

- 1. subdrainage details with appropriate specifications,
- 2. location of footing subdrain/discharge lines and,
- 3. method of disposal.

In lieu of above, walls/floors may be waterproofed and designed to resist hydrostatic pressure.

- D.** Disposal. All drainage facilities shall be designed to carry waters to the nearest practicable drainageway or approved stormwater management facility, as approved by the Director and/or other appropriate jurisdiction as a safe place to deposit such



**TITLE 24**  
**BUILDING REGULATIONS**

waters. Erosion of ground in the area of discharge shall be prevented by installation of non-erosive downdrains or other devices.

Building pads shall have a drainage gradient of 2 percent toward approved drainage facilities, unless waived by the Director.

Exception: The gradient from the building pad may be 1 percent if all of the following conditions exist throughout the permit area:

1. No proposed fills are greater than 10 feet in maximum depth.
  2. No proposed finish cut or fill slope faces have a vertical line in excess of 10 feet.
  3. No existing slope faces, which have a slope face steeper than 10 horizontal to 1 vertical, have a vertical height in excess of 10 feet.
- E. Interceptor drains. Paved interceptor drains shall be installed along the top of all cut slopes where the tributary drainage area above slopes towards the cut and has a drainage path greater than 40 feet measured horizontally. Interceptor drains shall be paved with a minimum of 3 inches of concrete or gunite and reinforced. They shall have a minimum depth of 12 inches and a minimum paved width of 30 inches measured horizontally across the drain. The slope of the drain shall be approved by the Director.

**24.70.110 Erosion Control.**

(Repealed by Ordinance No. 173979, effective March 1, 2000.)

**24.70.120 Grading Inspection.**

(Amended by Ordinance No. 188647, effective November 17, 2017.)

- A. General. All grading operations for which a permit is required shall be subject to inspection by the Director. When required by the Director, special inspection of grading operations and special testing shall be performed in accordance with the provisions of Section 24.70.120 C.
- B. Grading designation. All grading in excess of 5,000 cubic yards shall be performed in accordance with the approved grading plan prepared by a civil engineer and shall be designated as “engineered grading.” Grading involving less than 5,000 cubic yards may also be designated as “engineered grading” by the Director if the grading will
1. support a building or structure of a permanent nature;
  2. support other engineering works such as, but not limited to, tanks, towers, machinery, retaining wall, and paving;

## **TITLE 24**

### **BUILDING REGULATIONS**

3. be deemed a potential hazard under Section 24.70.030. The permittee with the approval of the Director may also choose to have the grading performed as “engineered grading.” Otherwise, the grading shall be designated as “regular grading.”

- C. Engineered grading requirements. For engineered grading, it shall be the responsibility of the civil engineer who prepares the approved grading plan to incorporate all recommendations from the soil engineering and engineering geology reports into the grading plan. The civil engineer shall also be responsible for the professional inspection and approval of the grading within the civil engineer’s area of technical specialty. This responsibility shall include, but need not be limited to, inspection and approval as to the establishment of line, grade, and drainage of the development area. The civil engineer shall act as the coordinating agent in the event that need arises for liaison between the other professionals, the contractor, and the Director. The civil engineer shall also be responsible for the preparation of revised plans and the submission of as-graded grading plans upon completion of the work. The grading contractor shall submit in a form prescribed by the Director a statement of compliance to said as-graded plan.

Soil engineering and engineering geology reports shall be required as specified in Section 24.70.050. During grading all necessary reports, compaction data, and soil engineering and engineering geology recommendations shall be submitted to the civil engineer and the Director by the soil engineer and the engineering geologist. The soil engineer’s area of responsibility shall include, but need not be limited to, the professional inspection and approval concerning the preparation of ground to receive fills, testing for required compaction, stability of all finish slopes, and the design of buttress fills, where required, incorporating data supplied by the engineering geologist.

The engineering geologist’s area of responsibility shall include, but need not be limited to, professional inspection and approval of the adequacy of natural ground for receiving fills and the stability of cut slopes with respect to geological matters, and the need for subdrains or other ground water drainage devices. The engineering geologist shall report the findings to the soil engineer and the civil engineer for engineering analysis.

The Director shall inspect the project at the various stages of work requiring approval and at more frequent intervals necessary to determine that adequate control is being exercised by the professional consultants.

- D. Regular grading requirements. The Director may require inspection and testing by an approved testing agency. The testing agency’s responsibility shall include, but need not be limited to, approval concerning the inspection of cleared areas and benches to receive fill, and the compaction of fills. When the Director has cause to

believe that geological factors may be involved the grading operation will be required to conform to “engineered grading” requirements.

- E.** Notification of noncompliance. If, in the course of fulfilling their responsibility under this Chapter, the civil engineer, the soil engineer, the engineering geologist, or the testing agency finds that the work is not being done in conformity with this Chapter or the approved grading plans, the discrepancies shall be reported immediately in writing to the person in charge of the grading work and to the Director. Recommendations for corrective measures, if necessary, shall be submitted.
- F.** Transfer of responsibility for approval. If the civil engineer, the soil engineer, the engineering geologist, or the testing agency of record are changed during the course of the work, the work shall be stopped until the replacement has agreed to accept the responsibility within the area of their technical competence for approval upon completion of the work.

**24.70.130 Completion of Work.**

(Amended by Ordinance No. 188647, effective November 17, 2017.)

- A.** Final reports. Upon completion of the rough grading work and that final completion of the work the Director may require the following reports and drawings and supplements thereto:

  - 1.** An as-graded grading plan prepared by the civil engineer including original ground surface elevations, as-graded ground surface elevations, lot drainage patterns, and locations and elevations of all surface and sub-surface drainage facilities. The civil engineer shall provide approval that the work was done in accordance with the final approved grading plan.
  - 2.** A Soil Grading Report prepared by the soil engineer including locations and elevations of field density tests, summaries of field and laboratory tests and other substantiating data and comments on any changes made during grading and their effect on the recommendations made in the soil engineering investigation report. The soil engineer shall provide approval as to the adequacy of the site for the intended use.
  - 3.** A Geological Grading Report prepared by the engineering geologist including a final description of the geology of the site including any new information disclosed during the grading and the effect of same on recommendations incorporated in the approved grading plan. The engineering geologist shall provide approval as to the adequacy of the site for the intended use as affected by geological factors.

**TITLE 24**  
**BUILDING REGULATIONS**

- B.** Notification of completion. The permittee or his agent shall notify the Director when the grading operation is ready for final inspection. Final approval shall not be given until all work including installation of all drainage facilities and their protective devices and all erosion control measures have been completed in accordance with the final approved grading plan and the required reports have been submitted.

**CHAPTER 24.75 - UNIFORM BUILDING  
ADDRESS SYSTEM**

(Chapter added by Ordinance No. 161984, effective  
July 1, 1989.)

**Sections:**

- 24.75.010 Uniform System.
- 24.75.020 Size and Location of Building Numbers.
- 24.75.030 Administration.
- 24.75.040 Owner Responsibility.
- 24.75.050 Alteration of Building Number - Improper Number.
- 24.75.060 Building Defined.
- 24.75.070 Enforcement.

**24.75.010 Uniform System.**

- A.** There is established a uniform system of numbering all buildings in separate ownership or occupancy in the City dividing the City into five general districts. In establishing the system Williams Avenue and the center line of the Willamette River southerly from Glisan Street shall constitute the north and south base line from which the numbers on all buildings running easterly and westerly from said streets shall be extended each way, upon the basis of one number for each ten feet of property frontage, wherever possible, starting at the base line with the number 1 continuing with consecutive hundreds at each intersection, wherever possible; provided, however, that streets running easterly and westerly in that district south of Jefferson Street and lying between Front Avenue and the Willamette River shall have the prefix "0" placed before the assigned number, said numbers starting at Front Avenue with the number 1 and continuing with consecutive hundreds at each intersection, where possible. All even numbers shall be placed upon buildings on the southerly side of streets, avenues, alleys and highways, and all odd numbers shall be placed upon buildings on the northerly side of streets, avenues, alleys and highways. Burnside Street shall constitute the east and west base line from which the numbers on all streets running north and south from said streets shall be extended each way, upon the basis of one number for each 10 feet of property frontage, wherever possible, starting at the base line with number 1 and continuing with consecutive hundreds at each intersection, wherever possible. All even numbers shall be placed upon buildings on the easterly side of streets, avenues, alleys, and highways, and all odd numbers upon buildings on the westerly side of said streets, avenues, alleys, and highways. Freestanding buildings on private streets which are separately owned or occupied shall be separately numbered so as to most closely conform to this system. Each portion of a building which is separately owned or occupied and has a separate entrance from the outside shall have a separate number assigned to it.

## **TITLE 24**

### **BUILDING REGULATIONS**

- B.**     **Suffixes to Building Numbers.**     Where building address requirements exceed numbers available within the numbering system, the Director may use the suffix “A”, “B”, “C”, etc. as may be required to provide the numbering required by this Chapter.

#### **24.75.020     Size and Location of Building Numbers.**

All numbers placed in accordance with this Chapter shall be permanently affixed to a permanent structure and of sufficient size and so placed as to be distinctly legible from the public way providing primary access to the building. All numbers shall be posted as nearly as possible in a uniform place and positioned on the front of each building near the front entrance. Where outside illumination is provided, the numbers shall be placed so as to be illuminated by the outside light. In instances where building mounted numbers are not distinctly visible from a public way, a duplicate set of numbers shall be permanently affixed to a permanent structure at the primary entranceway to such property. If, in the judgment of the Director, the numbering, sequence, legibility, size or location does not meet the requirements as set forth above, the property owner or agent therefor shall be notified and within 30 days shall make such changes as required in the notification.

#### **24.75.030     Administration.**

The Director shall assign address numbers, keep records of address assignments, and exercise such other powers as are necessary to carry out the provisions of this Chapter.

#### **24.75.040     Owner Responsibility.**

Whenever any new building is erected, modified, or occupied in a manner requiring an address assignment, the owner or owner’s agent shall procure the correct address number or numbers designated by the Director and pay required fees.

The owner or agent shall prior to occupancy or within 30 days of assignment, whichever occurs later, place the assigned address number(s) upon the building or in a manner and location as provided in this Chapter.

#### **24.75.050     Alteration of Building Number - Improper Number.**

It is unlawful for any person to cause or knowingly permit a building number to be displayed which is different than that assigned pursuant to this Chapter. It is unlawful for any person to own or have possession of a building which does not display the number assigned pursuant to this Chapter in the manner provided by this Chapter.

#### **24.75.060     Building Defined.**

As used in this Chapter, “building” is any structure used or intended for supporting or sheltering any use or occupancy.

#### **24.75.070     Enforcement.**

The Director shall provide written notices to the owner of any building in violation of the provisions of this Title. The notice shall state the violations existing and specify the owner has 30 days to obtain compliance.

**TITLE 24**  
**BUILDING REGULATIONS**

In the event the owner fails or neglects to comply with the violation notice in the prescribed time the Director may gain compliance by:

- A.** Instituting an action before the Code Enforcement Hearings Officer as provided in Title 22 of the City Code, or
- B.** Causing appropriate action to be instituted in a court of competent jurisdiction, or
- C.** Taking such other action as the Director deems appropriate.

**TITLE 24**  
**BUILDING REGULATIONS**

**CHAPTER 24.80 - DERELICT COMMERCIAL  
BUILDINGS**

(Chapter repealed by Ordinance No. 171455,  
effective August 29, 1997.)



**CHAPTER 24.85 - SEISMIC DESIGN  
REQUIREMENTS FOR EXISTING  
BUILDINGS**

(Chapter added by Ordinance No. 168627, effective  
March 22, 1995.)

**Sections:**

- 24.85.010 Scope.
- 24.85.015 Structural Design Meeting.
- 24.85.020 Seismic Related Definitions.
- 24.85.030 Seismic Improvement Standards.
- 24.85.040 Change of Occupancy or Use.
- 24.85.050 Building Additions or Structural Alterations.
- 24.85.051 Mezzanine Additions.
- 24.85.055 Structural Systems Damaged by Catastrophic Events.
- 24.85.056 Structural Systems Damaged by an Earthquake.
- 24.85.060 Required Seismic Evaluation
- 24.85.065 Seismic Strengthening of Unreinforced Masonry Bearing Wall Buildings.
- 24.85.067 Voluntary Seismic Strengthening.
- 24.85.070 Phasing of Improvements.
- 24.85.075 Egress Through Existing Buildings.
- 24.85.080 Application of Other Requirements.
- 24.85.090 Fee Reductions.
- 24.85.095 Appeals.

**24.85.010 Scope.**

(Amended by Ordinance No. 178831, effective November 20, 2004.)

- A.** The provisions of this chapter prescribe the seismic design requirements for existing buildings undergoing changes of occupancy, additions, alterations, catastrophic damage, fire, or earthquake repair, or mandatory or voluntary seismic strengthening. The requirements of this chapter only apply to buildings for which a building permit has been applied for to change the occupancy classification, add square footage to the building, alter or repair the building.
- B.** Under the authority provided by State law, the provisions of this chapter prescribing seismic rehabilitation standards for existing buildings can be used in lieu of meeting the requirements of the current edition of the State of Oregon Structural Specialty Code.

**24.85.015 Structural Design Meeting.**

(Added by Ordinance No. 178831, effective November 20, 2004.) Upon request, BDS engineering staff is available to meet with an owners design engineer to review proposed

## **TITLE 24**

### **BUILDING REGULATIONS**

seismic strengthening plans in a pre-design meeting. A written record of the meeting discussion and determinations will be placed in the permit record.

#### **24.85.020 Seismic Related Definitions.**

(Amended by Ordinance Nos. 169427, 170997, 178831, 180917 and 187192, effective July 17, 2015.) The definitions contained in this Section relate to seismic design requirements for existing buildings outlined in this Chapter.

- A.** ASCE 41 means the Seismic Evaluation and Retrofit of Existing Buildings ASCE/SEI 41-13 published by the American Society of Civil Engineers and the Structural Engineering Institute.
- B.** ASCE 41 Evaluation means the process of evaluating an existing building for the potential earthquake-related risk to human life posed by that building, or building component, and the documentation of that evaluation, performed and written according to the provisions of ASCE 41. Tier 1 and Tier 2 deficiency based evaluation for both structural and non-structural components using the Basic Performance Objective for Existing Buildings (BPOE) as defined in ASCE 41 shall be the performance objective for the evaluation, unless a Tier 3 evaluation is required by ASCE 41
- C.** ASCE 41-BPOE Improvement Standard means the Tier 1 and Tier 2 Deficiency based retrofit for both structural and non-structural components using the Basic Performance Objective for Existing Buildings (BPOE) as defined in ASCE 41, unless a Tier 3 evaluation is required by ASCE 41.
- D.** ASCE 41-BPON Improvement Standard means Tier 3 Retrofit for both structural and non-structural components using the Basic Performance Objective Equivalent to New Buildings (BPON) as defined in ASCE 41.
- E.** ATC 20 means the latest Edition of the manual on “Procedures for Post Earthquake Safety Evaluation of Buildings” published by Applied Technology Council.
- F.** BDS means the City of Portland’s Bureau of Development Services.
- G.** BPOE- Basic Performance Objective for Existing Buildings: A series of defined Performance Objectives based on a building’s Risk Category meant for evaluation and retrofit of existing buildings; See Table 2-1 of ASCE 41.
- H.** BPON- Basic Performance Objective Equivalent to New Building Standards: A series of defined Performance Objectives based on a building’s Risk Category meant for evaluation and retrofit of existing buildings to achieve a level of performance commensurate with the intended performance of buildings designed to a standard for new construction; See Table 2-2 of ASCE 41.

**TITLE 24**  
**BUILDING REGULATIONS**

- I.** BSE-1E: Basic Safety Earthquake-1 for use with the Basic Performance Objective for Existing Buildings, taken as a seismic hazard with a 20 percent probability of exceedance in 50 years, except that the design spectral response acceleration parameters  $S_x$ s and  $S_x1$  for BSE-1E seismic hazard level shall not be taken as less than 75 percent of the respective design spectra response acceleration parameters obtained from BSE-1N seismic hazard level and need not be greater than BSE-2N at a site.
- J.** BSE-1N: Basic Safety Earthquake-1 for use with the Basic Performance Objective Equivalent to New Buildings Standards, taken as two-thirds of the BSE- 2N.
- K.** BSE-2E: Basic Safety Earthquake-2 for use with the Basic Performance Objective for Existing Buildings, taken as a seismic hazard with a 5 percent probability of exceedance in 50 years, except that the design spectral response acceleration parameters of  $S_x$ s and  $S_x1$  for BSE-2E seismic hazard level shall not be taken as less than 75 percent of the respective design spectra response acceleration parameters obtained from BSE- 2N Seismic hazard level and may not be greater than BSE-2N at a site.
- L.** BSE-2N: Basic Safety Earthquake-2 for use with the Basic Performance Objective Equivalent to New Buildings Standards, taken as the ground shaking based on Risk-Targeted Maximum Considered Earthquake (MCER) per ASCE 7 at a site.
- M.** Building Addition means an extension or increase in floor area or height of a building or structure.
- N.** Building Alteration means any change, addition or modification in construction.
- O.** Catastrophic Damage means damage to a building that causes an unsafe structural condition from fire, vehicle collision, explosion, or other events of similar nature.
- P.** Essential Facility has the same meaning as defined in the OSSC.
- Q.** Fire and Life-safety for Existing Buildings (FLE<sub>x</sub>) Guide means a code guide published by the Bureau of Development Services, outlining alternative materials and methods of construction that are allowed for existing buildings in Portland.
- R.** FM 41 Agreement means a joint agreement between Portland Fire & Rescue, the Bureau of Development Services and a building owner to schedule improvements to the building following a determination of the fire and life safety hazards posed by the existing condition of the building as provided under Oregon law.
- S.** Live/Work Space means a combination working space and dwelling unit. A live/work space includes a room or suite of rooms on one or more floors designed for and occupied by not more than one family and including adequate working

## **TITLE 24**

### **BUILDING REGULATIONS**

space reserved for the resident's occupancy. A live/work space is individually equipped with an enclosed bathroom containing a lavatory, water closet, shower/and or bathtub and appropriate venting.

- T.** Net Floor Area means the entire area of a structurally independent building, including an occupied basement, measured from the inside of the permanent outer building walls, excluding any major vertical penetrations of the floor, such as elevator and mechanical shafts.
- U.** Occupant Load means the number of persons for which the means of egress of a building or portion thereof is designed. The occupant load shall be calculated based on occupant load factors in the table assigned to each space in the Oregon Structural Specialty Code (OSSC).
- V.** Oregon Structural Specialty Code (OSSC) means the provisions of the State of Oregon Structural Specialty Code as adopted by Section 24.10.040 A.
- W.** Reinforced Masonry means masonry having both vertical and horizontal reinforcement as follows:
  - 1.** Vertical reinforcement of at least 0.20 in<sup>2</sup> in cross-section at each corner or end, at each side of each opening, and at a maximum spacing of 4 feet throughout. One or two story buildings may have vertical reinforcing spaced at greater than 4 feet throughout provided that a rational engineering analysis is submitted which shows that existing reinforcing and spacing provides adequate resistance to all required design forces without net tension occurring in the wall.
  - 2.** Horizontal reinforcement of at least 0.20 in<sup>2</sup> in cross-section at the top of the wall, at the top and bottom of wall openings, at structurally connected roof and floor openings, and at a maximum spacing of 10 feet throughout.
  - 3.** The sum of the areas of horizontal and vertical reinforcement shall be at least 0.0005 times the gross cross-sectional area of the element.
  - 4.** The minimum area of reinforcement in either direction shall not be less than 0.000175 times the gross cross-sectional area of the element.
- X.** Risk Category: A categorization of a building for determination of earthquake performance based on Oregon Structural Specialty Code (OSSC).
- Y.** Roof Covering Repair or Replacement means the installation of a new roof covering following the removal of an area of the building's roof covering exceeding 50 percent or more of the total roof area within the previous five year period.

**TITLE 24**  
**BUILDING REGULATIONS**

- Z.** Unreinforced Masonry (URM) means adobe, burned clay, concrete or sand-lime brick, hollow clay or concrete block, hollow clay tile, rubble and cut stone and unburned clay masonry that does not satisfy the definition of reinforced masonry as defined herein. Plain unreinforced concrete shall not be considered unreinforced masonry for the purpose of this Chapter.
- AA.** Unreinforced Masonry Bearing Wall means a URM wall that provides vertical support for a floor or roof for which the total superimposed vertical load exceeds 100 pounds per lineal foot of wall.
- BB.** Unreinforced Masonry Bearing Wall Building means a building that contains at least one URM bearing wall.

**24.85.030 Seismic Improvement Standards.**

(Amended by Ordinance Nos. 170997 and 178831, effective November 20, 2004.) For changes of occupancy structural additions, building alterations and catastrophic or earthquake damage repair, the design standard shall be the current edition of the OSSC unless otherwise noted by this Chapter.

**24.85.040 Change of Occupancy or Use.**

(Amended by Ordinance Nos. 169905, 170997, 178831 and 187192, effective July 17, 2015.) The following table shall be used to classify the relative hazard of all building occupancies:

<b>TABLE 24.85-A</b>		
<b>Relative Hazard Classification</b>	<b>OSSC Occupancy Classification</b>	<b>Seismic Improvement Standard</b>
5 (Highest)	A, E, I-2, I-3, H-1, H-2, H-3, H-4, H-5	OSSC or ASCE 41-BPON
4	R-1, R-2, SR, I-1, I-4	
3	B, M	41-BPOE
2	F-1, F-2, S-1, S-2	
1 (Lowest)	R-3, U	

- A.** Occupancy Change to a Higher Relative Hazard Classification. An occupancy change to a higher relative hazard classification will require seismic improvements based upon the factors of changes in the net floor area and the occupant load increases as indicated in Table 24.85-B below. All improvements to either the OSSC or ASCE 41 improvement standard shall be made such that the entire building conforms to the appropriate standard indicated in Table 24.85-B.

**TITLE 24  
BUILDING REGULATIONS**

<b>TABLE 24.85-B</b>				
<b>Percentage of Building Net Floor Area Changed</b>		<b>Occupant Load Increase</b>	<b>Required Improvement Standard</b>	<b>Relative Hazard Classification</b>
1/3 of area or less	and	Less than 150	None	1 through 5
More than 1/3 of area	or	150 and above	ASCE 41-BPOE	1, 2, and 3
More than 1/3 of area	or	150 and above	OSSC or ASCE 41-BPON	4 and 5

Multiple occupancy changes to a single building may be made under this section without triggering a seismic upgrade provided the cumulative changes do not exceed 1/3 of the building net floor area or add more than 149 occupants with respect to the legal building occupancy as of October 1, 2004.

- B. Occupancy Change to Same or Lower Relative Hazard Classification.** An occupancy change to the same or a lower relative hazard classification or a change in use within any occupancy classification will require seismic improvements using either the OSSC or ASCE 41 improvement standard, as identified in Table 24.85-A above, where the change results in an increase in occupant load of more than 149 people as defined by the OSSC. Where seismic improvement is required, the entire building shall be improved to conform to the appropriate improvement standard identified in Table 24.85-A.

Multiple occupancy changes to a single building may be made under this section without triggering a seismic upgrade provided the cumulative changes do not result in the addition of more than 149 occupants with respect to the legal building occupancy as of October 1, 2004.

- C. Occupancy Change to Live Work Space.** Any building occupancy classified as relative hazard category 1, 2, or 3 may undergo a change of occupancy to live/work space provided that:
1. The building shall be improved such that the entire building conforms to the ASCE 41-BPOE improvement standard; and
  2. The building meets the fire and life safety standards of either the FLEEx Guide or the current OSSC.
  3. Any Unreinforced Masonry bearing wall building converted to live/work space, regardless of construction costs, shall be improved such that the entire building conforms to the ASCE 41-BPOE improvement standard.

- D.**     Occupancy Change to Essential Facilities. All structures which are being converted to essential facilities, as defined in the OSSC, shall comply with current state code seismic requirements or ASCE 41-BPON improvement standard, regardless of other requirements in this section.

**24.85.050     Building Additions or Structural Alterations.**

(Amended by Ordinance Nos. 178831 and 187192, effective July 17, 2015.) An addition that is not structurally independent from an existing building shall be designed and constructed such that the entire building conforms to the seismic force resistance requirements for new buildings unless the following two conditions listed below are met. Furthermore, structural alterations to an existing building or its structural elements shall also meet the following two conditions:

- A.**     The addition or structural alteration shall comply with the requirements for new buildings; and
- B.**     Any existing lateral load-carrying structural element whose demand-capacity ratio with the addition(s) or structural alteration(s) considered is no more than 10 percent greater than its demand-capacity ratio with the addition(s) or structural alteration(s) ignored shall be permitted to remain unaltered. For purposes of this paragraph, comparisons of demand-capacity ratios and calculation of design lateral loads, forces, and capacities shall account for the cumulative effects of additions and structural alterations since original construction.

**24.85.051     Mezzanine Additions.**

(Added by Ordinance No. 178831, effective November 20, 2004.) A mezzanine addition shall not require seismic strengthening of the entire building when all of the following conditions are met:

- A.**     Entire building strengthening is not required by any other provision contained in this Title;
- B.**     The net floor area of the of the proposed mezzanine addition is less than 1/3 of the net floor area of the building;
- C.**     The mezzanine addition does not result in an occupant load increase, as defined by the OSSC, of more than 149 people; and
- D.**     Subsections 24.85.050 A. - C. shall also apply to mezzanine additions.

**24.85.055     Structural Systems Damaged by Catastrophic Events.**

(Added by Ordinance No. 170997; amended by Ordinance Nos. 178831 and 187192, effective July 17, 2015.)

## **TITLE 24**

### **BUILDING REGULATIONS**

- A.** Building Lateral Load Resisting systems along any principal axis damaged less than or equal to 50 percent.
  - 1.** If a building is damaged by a catastrophic event such that less than or equal to 50 percent of the capacity of the existing lateral load resisting system along any principal axis of the building are damaged, only the damaged lateral load resisting components of the building's structural system must be designed and constructed to current provisions of the OSSC. These components must also be connected to the balance of the undamaged lateral load resisting system in conformance with current code provisions. Undamaged components need not be upgraded to current lateral load provisions of the current code, unless required by other provisions of this title.
  - 2.** New lateral system vertical elements must be compatible with any existing lateral system elements, including foundations. In multistory buildings, the engineer shall confirm that the new lateral system vertical elements do not introduce soft or weak story seismic deficiencies, as defined by ASCE 41, where they did not previously exist, or make existing conditions more hazardous.
- B.** Building Lateral Load Resisting systems along any principal axis damaged more than 50 percent. Where a building is damaged by a catastrophic event such that more than 50 percent of the capacity of the existing lateral load resisting system along any principal axis of the building is damaged, all lateral load resisting components of the entire building's structural system along that principal axis must be designed and constructed to the current provisions of the OSSC or ASCE 41-BPON improvement standard.

#### **24.85.056 Structural Systems Damaged by an Earthquake.**

(Added by Ordinance No. 178831; amended by Ordinance No. 187192, effective July 17, 2015.) As a result of an earthquake, the Director may determine through either an ATC 20 procedure or through subsequent discovery any structure or portion thereof to be in an unsafe condition as defined by State law. As a result of making this determination, the Director may declare the structure or portion thereof to be a public nuisance and to be repaired or rehabilitation as provided in Subsections 24.85.056 A.-C., or abated by demolition or removal in accordance with Title 29. For the purposes of this Section, an "unsafe condition" includes, but is not limited to any portion, member or appurtenance of a building that has become detached or dislodged or appears likely to fail or collapse and thereby injure persons or damage property; or any portion of a building or structure that has been damaged to the extent that the structural strength or stability of the building is substantially less than it was prior to the damaging event.



**TITLE 24**  
**BUILDING REGULATIONS**

- A.** Buildings built prior to January 1, 1974 with lateral support systems that have unsafe conditions shall be repaired or improved to resist seismic forces such that the repaired lateral system conforms to the ASCE 41-BPOE improvement standard.

  - 1.** Where less than 50 percent of the lateral support system has been damaged, only the damaged elements must be repaired.
  - 2.** Where 50 percent or more of the lateral support system has been damaged, then the entire lateral support system must be repaired to resist seismic forces such that the repaired system conforms to the ASCE 41-BPOE improvement standard.
- B.** Buildings built on or after January 1, 1974 with lateral support systems that have unsafe conditions shall be repaired or improved to resist seismic forces such that the repaired lateral system conforms to the code to which the building was originally designed, but not less than that required to conform to the ASCE 41-BPOE improvement standard.

  - 1.** Where less than 50 percent of the lateral support system has been damaged, only the damaged elements must be repaired.
  - 2.** Where 50 percent or more of the lateral support system has been damaged, then the entire lateral support system must be repaired to resist seismic forces such that the repaired system conforms to the code to which the building was originally designed, but not less than that required to conform to the ASCE 41-BPOE improvement standard.
- C.** New lateral system vertical elements must be compatible with any existing lateral system elements, including foundations. In multistory buildings, the engineer shall confirm that the new lateral system vertical elements do not introduce soft or weak story seismic deficiencies, as defined by ASCE 41, where they did not previously exist, or make existing conditions more hazardous.

**24.85.060 Required Seismic Evaluation.**

(Added by Ordinance No. 169427; amended by Ordinance Nos. 178831 and 187192, effective July 17, 2015). When an alteration for which a building permit is required has a value (not including costs of mechanical, electrical, plumbing, permanent equipment, painting, fire extinguishing systems, site improvements, eco-roofs and finish works) of more than \$175,000, an ASCE 41 evaluation is required. This value of \$175,000 shall be modified each year after 2004 by the percent change in the R.S Means Construction Index for Portland on file with the Director. A letter of intent to have an ASCE 41 evaluation performed may be submitted along with the permit application. The evaluation must be completed before any future permits will be issued. The following shall be exempted from this requirement:

**TITLE 24**  
**BUILDING REGULATIONS**

- A.** Buildings constructed or renovated to seismic zone 2, 2b or 3 under a permit issued after January 1, 1974.
- B.** Detached One- and two-family dwellings, and their accessory structures.
- C.** Single story, light frame metal and light wood frame buildings, not more than 20 feet in height from the top surface of the lowest floor to the highest interior overhead finish and ground area of 4,000 square feet or less.

A previously prepared seismic study may be submitted for consideration by the Director as equivalent to an ASCE 41 evaluation.

**24.85.065 Seismic Strengthening of Unreinforced Masonry Bearing Wall Buildings.**

(Added by Ordinance No. 169427; amended by Ordinance Nos. 170997, 178831 and 187192, effective July 17, 2015). When any building alterations or repairs occur at an Unreinforced Masonry Bearing Wall Building, all seismic hazards shall be mitigated as set forth in Subsections 24.85.065 A. and B. A previously permitted seismic strengthening scheme designed in accordance with FEMA 178/310/ASCE 31 may be submitted for consideration by the Bureau Director as equivalent to the ASCE 41 improvement standard:

- A.** Roof Repair or Replacement. When a roof covering is repaired or replaced, as defined in 24.85.020, the building structural roof system, anchorage, and parapets shall be repaired or rehabilitated such that, at a minimum, the wall anchorage for both in-plane and out-of-plane forces at the roof and parapet bracing conform to the ASCE 41-BPOE improvement standard. In-plane brick shear tests are not required as part of the ASCE evaluation under this subsection.
- B.** Additional Triggers.
  - 1.** Building alterations or repair. When the cost of alteration or repair work which requires a building permit in a 2 year period exceeds the following criteria, then the building shall be improved to resist seismic forces such that the entire building conforms to the ASCE 41-BPOE improvement standard.

<b>Table 24.85-C</b>	
Building Description	Cost of Alteration or Repair
Single Story Building	\$40 per square foot
Buildings Two Stories or Greater	\$30 per square foot

- 2.** Special building hazards. Where an Unreinforced Masonry Building of any size contains any of the following hazards, the building shall be seismically improved if the cost of alteration or repair exceeds \$30 per square foot:

**TITLE 24**  
**BUILDING REGULATIONS**

- a. The Building possesses an Occupancy Classification listed within the Relative Hazard Category 5 as determined in Section 24.85.040 of this Chapter; or
  - b. The building is classified as possessing either vertical or plan irregularities as defined in the OSSC.
- 3. Exclusions from cost calculations. Costs for site improvements, eco-roofs, mandated FM41 agreements, mandated ADA improvements, mandated non-conforming upgrades under Title 33, mandated elevator improvements and mandated or voluntary seismic improvements or work exempted from permit as described in Chapter 1 of the OSSC will not be included in the dollar amounts listed in Subsections 24.85.065 B.1. and 2.
- 4. Live/Work spaces in Unreinforced Masonry buildings. See Section 24.85.040 B for requirements when a Unreinforced Masonry building is converted to contain live/work spaces.
- 5. Automatic cost increase. The dollar amounts listed in Subsections 24.85.065 B.1. and 2. shall be modified each year after 2004 by the percent change in the R.S. Means of Construction Cost Index for Portland, Oregon. The revised dollar amounts will be made available at the Development Services Center.

**24.85.067 Voluntary Seismic Strengthening.**

(Added by Ordinance No. 178831, effective November 20, 2004.) Subject to permit approval, a building may be strengthened to resist seismic forces on a voluntary basis provided all of the following conditions are met:

- A. Mandatory seismic strengthening is not required by other provisions of this Title;
- B. The overall seismic resistance of the building or elements shall not be decreased such that the building is more hazardous;
- C. Testing and special inspection are in accordance with the OSSC and the City of Portland Administrative Rules;
- D. The standard used for the seismic strengthening is clearly noted on the drawings along with the pertinent design parameters; and
- E. A written narrative shall be clearly noted on the drawings summarizing the building lateral system, seismic strengthening and known remaining deficiencies. The summary information shall reflect the level of analysis that was performed on the building.

## **TITLE 24**

### **BUILDING REGULATIONS**

#### **24.85.070 Phasing of Improvements.**

(Amended by Ordinance No. 178831, effective November 20, 2004.)

- A.** The Director may approve a multi-year phased program of seismic improvements when the improvements are pre-designed and an improvement/implementation plan is approved by the Director. The maximum total time allowed for completion of phased improvements shall be ten years. A legal agreement between the building owner and the City of Portland shall be formulated outlining the phased seismic improvements and shall be recorded with the property deed at the County.
- B.** Upon review, the Director may extend the maximum time for the phased improvements. The Director shall adopt rules under Section 3.30.035 describing the process for granting an extension.

#### **24.85.075 Egress Through Existing Buildings.**

(Added by Ordinance No. 178831, effective November 20, 2004.) The building structure and seismic resistance of an egress path through, under or over an existing building must meet the required seismic improvement standard specified in Section 24.85.040, Table 24.85-A, under any of the following conditions:

- A.** The egress path is from an adjacent new building or addition and the new building or addition area equals 1/3 or more of the existing building area; or,
- B.** The egress path is from an adjacent existing building that undergoes alterations or a change of occupancy requiring its egress path(s) meet the seismic improvement standards as required by this Chapter; or
- C.** The additional occupant load, as determined by the OSSC, using the egress path through the existing building is 150 people or more.

#### **24.85.080 Application of Other Requirements.**

(Amended by Ordinance No. 178831, effective November 20, 2004.) Building permit applications to improve the seismic capability of a building shall not trigger: accessibility improvements so long as the seismic improvement does not lessen accessibility; fire life safety improvements so long as the seismic improvement does not lessen the buildings fire resistance or exiting capability; landscape improvements required by Chapter 33; street tree improvements required by Section 20.40.070.

Conformance with these regulations may not exempt buildings from future seismic regulations.

#### **24.85.090 Fee Reductions.**

(Amended by Ordinance No. 178831, effective November 20, 2004.) Building permit, plan review and fire life safety review fees for structural work related to seismic strengthening covered by this Chapter will be waived when such fees total less than \$2,500, and will be and reduced by 50 percent when such fees would total \$2,500 or more.

**TITLE 24**  
**BUILDING REGULATIONS**

**24.85.095 Appeals.**

(Amended by Ordinance No. 178831, effective November 20, 2004.) Because unanticipated circumstances may arise in the enforcement of these requirements for existing buildings, consideration as to the reasonable application of this Chapter may be addressed through the Board of Appeals as provided in Section 24.10.080.

**TITLE 24**  
**BUILDING REGULATIONS**

**CHAPTER 24.90 - MANUFACTURED  
DWELLING INSTALLATION AND  
ACCESSORY STRUCTURES,  
MANUFACTURED DWELLING PARKS,  
RECREATION PARKS, RECREATIONAL  
PARK TRAILER INSTALLATION AND  
ACCESSORY STRUCTURES**

(Chapter added by Ordinance No. 169312;  
Amended by Ordinance No. 185798 effective  
December 12, 2012).

**Sections:**

- 24.90.010 Purpose.
- 24.90.020 Scope.
- 24.90.030 Adoption of Codes and Regulatory Authority.
- 24.90.040 Definitions.
- 24.90.050 Administration and Enforcement.
- 24.90.060 Special Regulation.
- 24.90.070 Permit Application.
- 24.90.080 Violations.
- 24.90.090 Appeals.

**24.90.010 Purpose.**

The purpose of this Chapter is to provide minimum standards for the following:

- A.** Installation and maintenance of manufactured dwellings and accessory structures.
- B.** Development and maintenance of manufactured dwelling parks.
- C.** Installation and maintenance of park trailers and recreational vehicle accessory structures.
- D.** Development and maintenance of recreational vehicle parks.

**24.90.020 Scope.**

(Amended by Ordinance No. 185798, effective December 12, 2012.) Regulation under this Chapter covers all installations or alteration of manufactured dwellings, recreational park trailers and other recreational vehicles, and accessory structures. Regulation under this Chapter covers the development and maintenance of manufactured dwelling parks, recreational vehicle parks, recreation parks, picnic parks, and organizational camps.

**24.90.030 Adoption of Codes and Regulatory Authority.**

(Amended by Ordinance Nos. 176955 and 185798, effective December 12, 2012.)

**TITLE 24**  
**BUILDING REGULATIONS**

- A.**     Manufactured Dwelling Installation Specialty Code. The provisions of the State of Oregon, Manufactured Dwelling Installation Specialty Code, 2010 Edition, as developed at the direction of the Building Codes Division of the Oregon Department of Consumer and Business Services through the Residential and Manufactured Structures Board, is hereby adopted by reference. The Manufactured Dwelling Installation Specialty Code is on file in the Development Services Center of the City of Portland.
- B.**     Manufactured Dwelling and Park Specialty Code. The following provisions of the State of Oregon, Manufactured Dwelling and Park Specialty Code, 2002 Edition, as developed at the direction of the Oregon Building Codes Division Administrator through the Oregon Manufactured Structures and Parks Advisory Board, a copy of which is on file in the Development Services Center of the City of Portland, are hereby adopted by reference:

  - 1.**     All of Chapter One (Administration), except the following:

    - a.**     1-1.4 (Design Loads)
    - b.**     1-2.4 (Energy Conservation Equivalents)
    - c.**     1-3 (Manufactured Dwellings Sold “As Is”)
    - d.**     1-6.7 (Plot Plans Required)
    - e.**     1-6.8 (Plot Plans Not Required)
    - f.**     1-6.11 (Multiple-family Housing Plans)
    - g.**     1-7.12 (Manufactured Dwelling Installation Permits)
    - h.**     1-8.6 (Visual Inspections)
    - i.**     1-8.7 (Appliance Inspections)
    - j.**     1-8.9 (Alteration Inspections)
    - k.**     1-8.11 (Quality Assurance Inspections)
    - l.**     1-8.13 (Installation Inspections)
    - m.**     1-9 (Insignias and Labels)
    - n.**     1-10 (Certifications), except section 1-10.2.1 (Certificates of Occupancy Required) is adopted

**TITLE 24**  
**BUILDING REGULATIONS**

- o. 1-11 (License Required) –all, except for introductory language and paragraph (h) in 1-11.3 (Electrical) and introductory language and paragraph (i) in 1-11.4 (Plumbing) are adopted
  2. All of Chapter Ten (Manufactured Dwelling Park Construction) and the corresponding tables and figures
  3. Appendix A (Definitions)
  4. Appendix B (Acronyms)
  5. Appendix C (Symbols)

C. The City of Portland through the Bureau of Development Services (“Bureau”) adopts regulatory authority for the installation maintenance and alteration of manufactured dwellings and accessory structures as authorized in ORS 446.250 and 446.253, and OAR 918-500-0055; for the development and maintenance of manufactured dwelling parks as authorized in ORS 446.062 and 446.430 and OAR 918-600-0010; for the development and maintenance of recreation parks, picnic parks and organizational camps as authorized in ORS 455.170; and for the installation, maintenance and alteration of residential park trailers, other recreational vehicles and accessory structures as authorized in ORS 455.170 and OAR 918-525-0370. Nothing contained herein provides regulatory authority when delegation of authority is expressly withheld by the State.

**24.90.040 Definitions.**

(Amended by Ordinance No. 185798, effective December 12, 2012.) For the purposes of this Chapter definitions contained in Chapter 24.15 shall apply in conjunction with definitions found in ORS 446.003, ORS 455.010, OAR 918-500-0005, OAR 918-525-0005, OAR 918-600-0005 and OAR 918-650-0005. Definitions in ORS or OAR shall take precedence over other conflicting definitions.

**24.90.050 Administration and Enforcement.**

(Amended by Ordinance Nos. 176955 and 185798, effective December 12 , 2012.) This Chapter shall be administered and enforced in conformance with applicable provisions of the 2010 Edition of the Oregon Manufactured Dwelling Installation Specialty Code, the provisions of the 2002 Edition of the Oregon Manufactured Dwelling and Park Specialty Code adopted by reference in Subsection 24.90.030 B. of this Chapter, and the Oregon Administrative Rules contained in Chapter 918 Division 500, 515, 525, 530, 600 and 650.

**24.90.060 Special Regulation.**

Manufactured Dwellings and Cabanas installed on a residential lot shall be certified by the manufacturer to have an exterior thermal envelope meeting performance standards which reduce levels equivalent to the performance standards required of single family dwellings



constructed under the state building code. Skirting and permanent enclosures shall be required for all park trailer and cabana installations.

**24.90.070 Permit Application.**

(Amended by Ordinance No. 185798, effective December 12, 2012.) Permits are required for the establishment, construction, enlargement, alteration or removal of manufactured dwelling parks, recreation parks, and organizational camps. Permit applications, plans and specifications and permit issuance shall conform to Section 24.10.070, and applicable Oregon Administrative Rules. Permits are required for the installation or alteration of manufactured dwellings, recreational park trailers, recreational vehicles as defined in OAR 918-525-0005, and accessory structures. Plans and specifications are required in conformance with Section 24.10.070 and applicable Oregon Administrative Rules except when:

- A. All installation is within an existing manufactured dwelling park and all the installation is performed in accordance with the manufacturer's approved installation instructions.
- B. All installation is within an existing recreational vehicle or combination park, and all installation is performed under OAR 918-530-0005 through 918-530-0120.

When the Director determines special installation or construction requires design by a registered engineer or architect, such design shall be submitted in triplicate and approved by the Bureau prior to commencement or continuance of installation or construction.

**24.90.080 Violations.**

(Amended by Ordinance No. 185798, effective December 12, 2012.) Any person who violates any provision of this Chapter and/or any codes adopted herein shall be subject to the penalties as prescribed by law.

**24.90.090 Appeals.**

(Amended by Ordinance Nos. 185798 and 187432, effective December 4, 2015.) Any person aggrieved by a decision of the Bureau related to the application and interpretation of the Codes listed in Section 24.90.030 of this Chapter may request an administrative appeal with the Administrative Appeal Board in accordance with Section 24.10.075. Any person aggrieved by a final decision of the Building Official made under Section 24.10.075 may appeal the decision to the appropriate Board of Appeal described in Sections 24.10.080, 25.07, 26.03.070 and 27.02.031. Within 30 days of the final appeal finding by the Board of Appeal, an appellant who continues to be aggrieved may appeal to the appropriate State Specialty Advisory Board pursuant to ORS 455.690.

**TITLE 24**  
**BUILDING REGULATIONS**

**CHAPTER 24.95 - SPECIAL DESIGN  
STANDARDS FOR FIVE STORY  
APARTMENT BUILDINGS**

(Chapter repealed by Ordinance No. 185798,  
effective December 12, 2012.)

FIGURES & TABLES

BASIC FLOODPLAIN RELATIONSHIPS

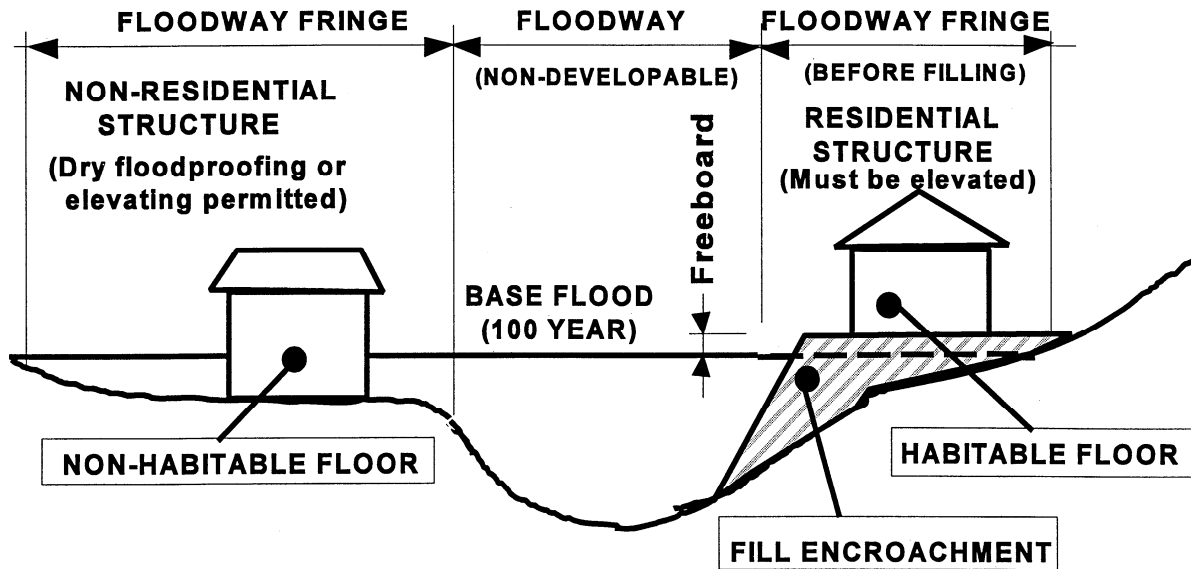


FIGURE 1 (Section 24.50.070)

**TITLE 24  
BUILDING REGULATIONS**

**FIGURE 2 (24.70)**

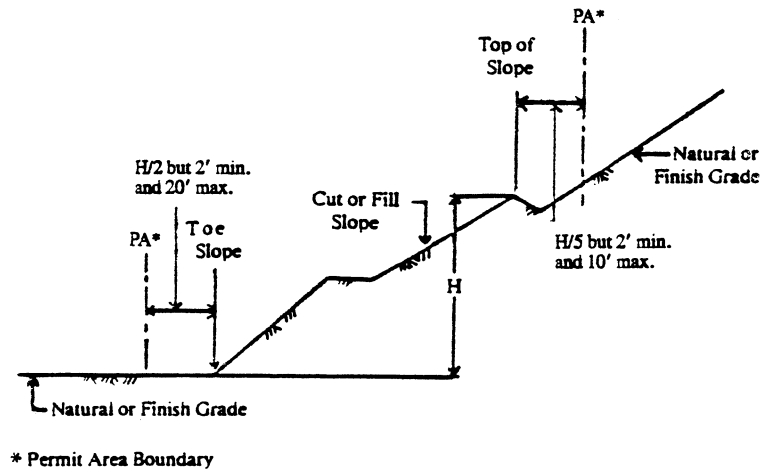


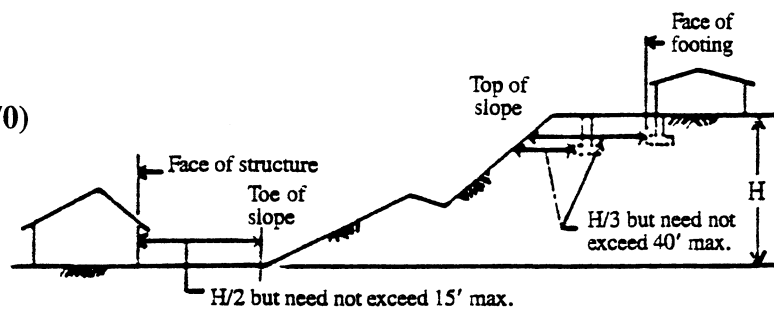
Table No. 24.70-C  
Required Setbacks from permit area boundary (in feet)

**TABLE 24-70C**

H	SETBACKS	
	a	b'
Under 5	0	1
5 - 30	$H/2$	$H/5$
Over 30	15	6

Additional width may be required for interceptor drain.

**FIGURE 3 (24.70)**



# **TITLE 25 - PLUMBING REGULATIONS**

## **TITLE 25 PLUMBING REGULATIONS**

### **CHAPTER 25.01 - TITLE AND SCOPE**

#### **Sections:**

- 25.01.010 Title.
- 25.01.020 Scope-Oregon State Plumbing Specialty Code.

#### **25.01.010 Title.**

This Title shall be known as the “Plumbing Regulations,” may be so cited and pleaded and will be referred to herein as “this Title.”

#### **25.01.020 Scope - Oregon Plumbing Specialty Code.**

(Amended by Ordinance Nos. 162694, 164949, 168183, 169905, 174891, 179125, 182370, 185545, 186932 and 188781, effective January 24, 2018.) This Title shall apply to all plumbing done within the City, except sewer facilities installed by the City Engineer through contract or by City work force in any public place or right-of-way for the disposal of sanitary or storm drainage and water supply facilities installed by the Water Engineer through contract or City work force in any public place or right-of-way for supplying the water service.

The provisions of the Uniform Plumbing Code, 2015 edition, including the appendix and installation standards, published by the International Association of Plumbing and Mechanical Officials, as amended by the Building Codes Division of the Oregon Department of Consumer and Business Services, and known as the 2017 Edition of the Oregon Plumbing Specialty Code, are hereby adopted by reference. The Plumbing Specialty Code is on file in the Development Services Center of the City of Portland.

#### **25.01.025 Specialty Solar Code.**

(Repealed by Ordinance No. 168183, effective November 1, 1994.)

#### **25.01.030 Residential Code.**

(Repealed by Ordinance No. 182370, effective November 26, 2008.)

## **TITLE 26 - ELECTRICAL REGULATIONS**

(Title replaced by Ordinance No. 171978, effective March 1, 1998.)

# **TITLE 26**

## **ELECTRICAL REGULATIONS**

### **CHAPTER 26.01 - TITLE AND SCOPE**

#### **Sections:**

- 26.01.010 Title
- 26.01.020 Purpose
- 26.01.030 Code Adoption

#### **26.01.010 Title.**

This Title shall be known as Title 26, Electrical Regulations and will be referred to herein as “this Title.”

#### **26.01.020 Purpose.**

The purpose of this Title is to provide minimum standards to safeguard life or limb, health, property, and public welfare by regulating and controlling the design, construction, installation, quality of materials, location, operation and maintenance of all electrical systems within the City of Portland’s area of regulatory responsibility.

#### **26.01.030 Code Adoption.**

(Amended by Ordinance Nos. 174891, 176956, 177414, 179125, 182370, 185545, 186932 and 188781, effective January 24, 2018.) The provisions of the State of Oregon Electrical Specialty Code, 2017 Edition, as published by the National Fire Protection Association (NFPA) and known as the NFPA 70, National Electrical Code (NEC) 2017 Edition and amended by the Building Codes Division of the Oregon Department of Consumer and Business Services, including the appendices and Electrical Standards adopted by the State of Oregon, are hereby adopted by reference.

These codes and standards are on file in the Development Services Center of the City of Portland. This Title shall prevail except where specifically prohibited by the Oregon Revised Statutes and the Oregon Administrative Rules.



**30.01.085      Portland Renter Additional Protections.**

(Added by Ordinance No. 187380; amended by Ordinance Nos. 188219, 188519, 188558, 188628 and 188849, effective March 7, 2018.)

- A. In addition to the protections set forth in the Residential Landlord and Tenant Act, the following additional protections apply to Tenants that have a Rental Agreement for a Dwelling Unit covered by the Act. For purposes of this chapter, unless otherwise defined herein, capitalized terms have the meaning set forth in the Act.
- B. A Landlord may terminate a Rental Agreement without a cause specified in the Act only by delivering a written notice of termination (the “Termination Notice”) to the Tenant of (a) not less than 90 days before the termination date designated in that notice as calculated under the Act; or (b) the time period designated in the Rental Agreement, whichever is longer. Not less than 45 days prior to the termination date provided in the Termination Notice, a Landlord shall pay to the Tenant, as relocation assistance, a payment (“Relocation Assistance”) in the amount that follows: \$2,900 for a studio or single room occupancy (“SRO”) Dwelling Unit, \$3,300 for a one-bedroom Dwelling Unit, \$4,200 for a two-bedroom Dwelling Unit and \$4,500 for a three-bedroom or larger Dwelling Unit. For purposes of this Subsection, a Landlord that declines to renew or replace an expiring Rental Agreement is subject to the provisions of this Subsection. The requirements of this Subsection are intended to apply per Dwelling Unit, not per individual Tenant. In the event that a Landlord is selling a Dwelling Unit to a buyer that is required to take occupancy of the Dwelling Unit within 60-days of closing as condition of the buyer’s federal mortgage financing, then the notice period for the Termination Notice will be adjusted to accommodate the federal 60-day occupancy requirement so long as the Landlord pays the Tenant the required amount of Relocation Assistance prior to the termination date.
- C. A Landlord may not increase a Tenant's Rent or Associated Housing Costs by 5 percent or more over a rolling 12-month period unless the Landlord gives notice in writing (the “Increase Notice”) to each affected Tenant: (a) at least 90 days prior to the effective date of the Rent increase; or (b) the time period designated in the Rental Agreement, whichever is longer. The Increase Notice must specify the amount of the increase, the amount of the new Rent or Associated Housing Costs and the date, as calculated under the Act, when the increase becomes effective. If, within 45 calendar days after a Tenant receives an Increase Notice indicating a Rent increase of 10 percent or more within a rolling 12-month period and a Tenant provides written notice to the Landlord of the Tenant’s request for Relocation Assistance (the “Tenant’s Notice”), then, within 31 calendar days of receiving the Tenant’s Notice, the Landlord shall pay to the Tenant Relocation Assistance in the amount that follows: \$2,900 for a studio or SRO Dwelling Unit, \$3,300 for a one-bedroom Dwelling Unit, \$4,200 for a two-bedroom Dwelling Unit and \$4,500 for a three-bedroom or larger dwelling unit. After the Tenant receives the Relocation Assistance from the Landlord, the Tenant shall have 6 months from the effective

**TITLE 30**  
**AFFORDABLE HOUSING**

date of the Rent increase (the “Relocation Period”) to either: (i) pay back the Relocation Assistance and remain in the Dwelling Unit and, subject to the Act, shall be obligated to pay the increased Rent in accordance with the Increase Notice for the duration of the Tenant’s occupancy of the Dwelling Unit; or (ii) provide the Landlord with a notice to terminate the Rental Agreement in accordance with the Act (the “Termination Notice”). In the event that the Tenant has not repaid the Relocation Assistance to the Landlord or provided the Landlord with the Termination Notice on or before the expiration of the Relocation Period, the Tenant shall be in violation of this Subsection. For purposes of this Subsection, a Landlord that conditions the renewal or replacement of an expiring Rental Agreement on the Tenant’s agreement to pay a Rent increase of 10 percent or more within a rolling 12-month period is subject to the provisions of this Subsection. For purposes of this Subsection, a Landlord that declines to renew or replace an expiring Rental Agreement on substantially the same terms except for the amount of Rent or Associated Housing Costs terminates the Rental Agreement and is subject to the provisions of this Subsection. The requirements of this Subsection are intended to apply per Dwelling Unit, not per individual Tenant. For purposes of this Subsection, a Tenant may only receive and retain Relocation Assistance once per tenancy per Dwelling Unit.

- D.** A Landlord shall include a description of a Tenant’s rights and obligations and the eligible amount of Relocation Assistance under this Section 30.10.085 with each and any Termination Notice, Increase Notice, and Relocation Assistance payment.
- E.** A Landlord shall provide notice to PHB of all payments to Tenants of Relocation Assistance within 30 days of making such payments. This Subsection shall be effective beginning May 1, 2018.
- F.** For the purposes of this Section 30.10.085, the expiration of Rent concessions is not considered a substantial change to a Rental Agreement.
- G.** After a Landlord completes and submits the required exemption reporting forms to PHB, the provisions of this Section 30.10.085 that pertain to Relocation Assistance do not apply to the following:
  - 1.** Rental Agreements for week-to-week tenancies;
  - 2.** Tenants that occupy the same Dwelling Unit as the Landlord;
  - 3.** Tenants that occupy one Dwelling Unit in a Duplex where the Landlord’s principal residence is the second Dwelling Unit in the same Duplex;
  - 4.** Tenants that occupy an Accessory Dwelling Unit that is subject to the Act in the City of Portland so long as the owner of the Accessory Dwelling Unit lives on the site;

**TITLE 30**  
**AFFORDABLE HOUSING**

5. a Landlord that temporarily rents out the Landlord's principal residence during the Landlord's absence of not more than 3 years;
6. a Landlord that temporarily rents out the Landlord's principal residence during the Landlord's absence due to active duty military service;
7. a Dwelling Unit where the Landlord is terminating the Rental Agreement in order for an immediate family member to occupy the Dwelling Unit;
8. a Dwelling Unit regulated as affordable housing by a federal, state or local government for a period of at least 60 years;
9. a Dwelling Unit that is subject to and in compliance with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
10. a Dwelling Unit rendered uninhabitable not due to the action or inaction of a Landlord or Tenant;
11. a Dwelling Unit rented for less than 6 months with appropriate verification of the submission of a demolition permit prior to the Tenant renting the Dwelling Unit.
12. a Dwelling Unit where the Landlord has provided a fixed term tenancy and notified the Tenant prior to occupancy, of the Landlord's intent to sell or permanently convert the Dwelling Unit to a use other than as a Dwelling Unit subject to the Act.

A Landlord that authorizes a property manager that is subject to, and manages property in accordance with ORS 696, to manage only one Dwelling Unit, does not waive the one Dwelling Unit exemption as a result of the collective number of Dwelling Units managed by such a property manager. For purposes of the exemptions provided in this Subsection, "Dwelling Unit" is defined by PCC 33.910, and not by ORS 90.100. For purposes of the exemptions provided in this Subsection, "Accessory Dwelling Unit" is defined by PCC 33.205. For purposes of the exemptions provided in this Subsection, "Duplex" is defined by PCC 33.910.

- H.** A Landlord that fails to comply with any of the requirements set forth in this Section 30.01.085 shall be liable to the Tenant for an amount up to 3 times the monthly Rent as well as actual damages, Relocation Assistance, reasonable attorney fees and costs (collectively, "Damages"). Any Tenant claiming to be aggrieved by a Landlord's noncompliance with the foregoing has a cause of action in any court of competent jurisdiction for Damages and such other remedies as may be appropriate.

## **TITLE 30**

### **AFFORDABLE HOUSING**

- I.** In carrying out the provisions of this Section 30.01.085, the Director of PHB, or a designee, is authorized to adopt, amend and repeal administrative rules to carry out and administer the provisions of this Section 30.01.085.

#### **30.01.090 City Subsidy Projects - Long-Term Affordability Requirements.**

(Amended by Ordinance Nos. 186028, 187380 and 188440, effective July 8, 2017.)

- A.** City Subsidy Projects that in the future request and receive a City Subsidy from PDC, PHB or other City bureau or agency for the purpose of creating or preserving rental housing affordable to households below 80 percent of MFI, will be subject to a minimum of 60 year affordability contract requirements developed by PHB consistent with the implementing charge in Subsection 30.01.090 B. Notwithstanding the foregoing, City Subsidy Projects that receive a Rental Rehabilitation Conditional Grant will be subject to a minimum of 10 year affordability contract requirement in accordance with the Rental Rehabilitation Conditional Grant Product Guidelines.
- B.** All City Bureaus and agencies administering affordable rental housing subsidy programs will be responsible for implementing this section. As the primary agency charged by the City to negotiate and confer affordable housing subsidies, PHB will develop implementing strategies consistent with the 60 year affordability principles contained in this section, the Administrative Procedures Implementing Title 30.01 and the approved 1998/99 Consolidated Plan, Principle III (Ordinance No. 172259).

#### **30.01.095 Partial and Full Exemptions of System Development Charges for Affordable Housing Developments.**

(Added by Ordinance No. 183448; Amended by Ordinance Nos. 186712, 186744, 187380 and 187975, effective September 7, 2016.)

- A.** The purpose of this Section is to reduce the costs of developing permanent affordable housing by exempting system development charges for qualified affordable housing developments. This section advances a Council-recognized public policy goal to provide for a diversity of housing types to meet the needs of the citizens of the City.
- B.** The City will exempt qualified affordable housing developments from paying all or part of system development charges required by Code. The Applicant must apply for exemptions under this Section prior to the date the City issues the permit on the new development. Where new development consists of only part of one or more of the uses described in this Section, only that portion of the development that qualifies under this Section is eligible for an exemption. The balance of the new development that does not qualify for any exemption under this Section is subject to system development charges to the full extent authorized by Code or general

**TITLE 30**  
**AFFORDABLE HOUSING**

ordinance. The Applicant has the burden to prove entitlement to exemptions so requested.

- C.** The City shall calculate exemptions in the manner authorized for calculating system development charges for rented and owner-occupied residential properties. Non-residential properties or the non-residential portion of mixed-use developments are not eligible for exemptions provided by this Section. Exemptions are applicable to the portions of residential properties that are directly used in providing housing for its low-income residents such as on-site manager units and shared space including but not limited to restrooms, community rooms and laundry facilities.
- D.** To obtain the exemption, the applicant must present to the City, at the time of Application, documentation from PHB that the development qualifies for the exemption pursuant to this Chapter. Applicant must also pay an administration fee per unit on rental and/or owner-occupied units as determined by PHB.
- E.** The City shall require the recording of real property covenants in the deed records for properties receiving exemptions under this Section in order to ensure compliance, or to provide remedies for failure to restrict units, or both. Deed restrictions may be used by PHB in order to restrict sale prices and rents charged for exempt units, or to provide remedies for failure to restrict units, or both.
- F.** Applicants shall meet the following affordable housing qualifications to be exempt from paying all or a portion of system development charges based on the type of housing provided:

  - 1.** Rental Units.

    - a.** For purposes of this Section, "affordable" for rental housing means that the rent and expenses associated with occupancy such as utilities or fees, does not exceed 30 percent of the gross household income at the level of the rent restrictions.
    - b.** The units receiving an exemption shall be affordable to households earning 60 percent or less of MFI at time of occupancy and shall be leased, rented or made available on a continuous basis to persons or households whose incomes are 60 percent or less of MFI, as adjusted by household size and as determined by HUD for the Portland Metropolitan Area, except as provided for below. Such units shall remain affordable for a period of 60 years.
    - c.** Effective July 1, 2014, developments of new buildings in Old Town/Chinatown shall be eligible for exemption subject to the following conditions:

**TITLE 30**  
**AFFORDABLE HOUSING**

- (1)** Units must be located in the Old Town/Chinatown Action Plan Focus Area;
- (2)** Financial need must be verified through project pro forma underwriting conducted by the PDC;
- (3)** All units shall remain affordable for a period of not less than 10 years, to persons or households whose incomes are 100 percent or less of MFI, as adjusted by household size and as determined by HUD for the Portland Metropolitan Area, and for not less than 5 years thereafter shall continue to remain affordable to persons or households whose incomes are 120 percent or less of MFI, as so described; and
- (4)** The exemption granted by this Subsection shall not be available to developments for which a building permit application is filed on or after July 1, 2019, or after permit applications have been filed for development of 500 qualifying units, in the aggregate, whichever occurs first.

**2. Owner-Occupied Units.**

- a.** For the purposes of this Section, “Affordable” means that ownership units are sold to persons or households whose incomes are at or below 100 percent of MFI for a family of four as determined annually for the Portland Metropolitan Area by HUD, which income may be adjusted upward for households with more than four persons; and
- b.** The ownership units sell at or below the price limit as provided by Subsection 3.102.090 D.

**3. Mass Shelters.**

- a.** For the purposes of this Section, “affordable” means that shelter is provided on a daily basis without a fee.
- b.** A mass shelter is a structure that contains one or more open sleeping areas, or is divided only by non-permanent partitions, furnished with cots, floor mats, or bunks. Individual sleeping rooms are not provided. The shelter may or may not have food preparation or shower facilities. The shelter is managed by a public or non-profit agency to provide shelter. The number of beds is determined by the maximum number of people who can be given overnight accommodations at one time on the site.

**TITLE 30**  
**AFFORDABLE HOUSING**

- c.** Mass shelters shall provide shelter for a minimum of 10 years.
- G.** Pursuant to Section 30.01.040, the PHB is responsible for enforcing property covenants and other agreements with applicants that are conditions of receiving exemptions provided by this Section. PHB may adopt, amend and appeal administrative rules, establish procedures, and prepare forms for implementation, administration and compliance monitoring consistent with the provisions of this Section.

In the event that an applicant violates the covenants, agreements or other requirements that were established by the City as a condition of approval of an exemption application, or the owner of the property wants to remove the affordability covenants of Subsection 30.01.095 F., the City shall terminate the exemption and make due and payable all previously exempt portions of system development charges based on rates in effect on the date of the submittal of a complete building permit application, plus accrued interest from the date of the issuance of the building permit to the date of the termination of the exemption calculated with the interim interest rate in effect on the date of the termination of the exemption as set by general ordinance pursuant to Section 17.12.140, and a processing fee of \$250 due to each City bureau exempting system development charges and to PHB as the administrator. The City may collect reinstated system development charges, processing fees, carrying charges and the actual costs of collections by recording a property lien pursuant to Title 22.

**30.01.100 Compliance and Enforcement.**

(Amended by Ordinance No. 186028, effective May 15, 2013.)

- A.** PHB shall develop and implement procedures to enforce the provisions of this code. Such procedures should include, where feasible, record notice of the applicability of this code to affected properties, filing a lien to enforce the provisions of this code, and developing civil penalties or other enforcement provisions necessary or appropriate to enforce this code.
- B.** The City Attorney's Office may enforce the provisions of this code on behalf of the City in any court of competent jurisdiction or City administrative body.

**30.01.110 No Restriction of Powers of Eminent Domain; Severability.**

- A.** This Chapter shall not be construed to restrict the City’s existing authority to exercise powers of eminent domain through condemnation as outlined in state law.
- B.** If any part or provision of this Chapter, or application thereof to any person or circumstance, is held invalid, the remainder of this Chapter and the application of the provision or part thereof, to other persons not similarly situated or to other

## **TITLE 30**

### **AFFORDABLE HOUSING**

circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Chapter are severable.

#### **30.01.120 Inclusionary Housing.**

(Added by Ordinance No. 188163, effective February 1, 2017.)

**A. Purpose Statement.** The purposes of the Inclusionary Housing (“IH”) Program are:

1. Increase the number of units available to households earning 80 percent or less of MFI, with an emphasis on households earning 60 percent or less of MFI;
2. Responsibly allocate resources to increase housing opportunities for families and individuals facing the greatest disparities;
3. Create affordable housing options in high opportunity neighborhoods, those with superior access to quality schools, services, amenities and transportation; and
4. Promote a wide range of affordable housing options with regard to size, amenities and location.

**B. Administration.**

1. PHB will certify whether the applicant’s proposed development meets the standards and any administrative requirements set forth in this Section.
2. PHB may adopt, amend and repeal Administrative Rules and prepare forms for the implementation, administration and compliance monitoring consistent with the provisions of this Section. The Director of PHB, or a designee, has authority to make changes to the Administrative Rules as is necessary to meet current program requirements. PHB Administrative Rules will set forth clear and objective criteria for determining whether a development meets the minimum standard of affordable units (“IH Units”).
3. PHB will review the Inclusionary Housing outcomes periodically in order to determine if the IH Program options and incentives in Subsection 30.01.120 C. are consistent with City goals and market conditions.

**C. Financial Incentives.** The following financial incentives are provided for the respective options of IH Program compliance:

1. When the proposed development will include 20 percent of the units or total number of bedrooms configured into IH Units at or below 80 percent MFI, or for developments outside of the Central City Plan District, 15 percent of



**TITLE 30**  
**AFFORDABLE HOUSING**

the units or total bedrooms configured into IH units at or below 80 percent MFI for applications filed on or before December 31, 2018:

- a.** Ten-year property tax exemption in accordance with City Code Chapter 3.103 for the IH Units. If the development is in the Central City Plan district, as designated in City Code Chapter 33.510, and has maximum base 5:1 FAR or greater, before including density bonus granted through City Code Chapter 33.510, the tax exemption applies to all residential units; and
  - b.** Construction Excise Tax exemption for the IH Units in accordance with Subsection 6.08.060 A.2.
- 2.** When the proposed development will include 10 percent of the units or total number of bedrooms configured into IH units at or below 60 percent MFI, or for developments outside the Central City Plan District, 8 percent of the units or total number of bedrooms configured into IH units at or below 60 percent MFI for applications filed on or before December 31, 2018:
  - a.** Ten-year property tax exemption according to City Code Chapter 3.103 for the IH units. If the development is in the Central City Plan District, as designated in City Code Chapter 33.510, and has maximum base 5:1 FAR or greater, before including density bonus granted through City Code Chapter 33.510, the tax exemption applies to all residential units; and
  - b.** Construction Excise Tax exemption for the IH Units in accordance with Subsection 6.08.060 A.2.; and
  - c.** SDC exemption for the IH Units in accordance with Section 30.01.095.
- 3.** When the proposed development elects to construct IH Units offsite:
  - a.** Construction Excise Tax exemption for the Receiving Site's IH Units in accordance with Subsection 6.08.060 A.2.; and
  - b.** SDC exemption for the Receiving Site's IH Units in accordance with Section 30.01.095.
- 4.** When the applicant elects to dedicate IH Units in an existing development, there are no financial incentives provided under Section 30.01.120.
- 5.** When the applicant elects the fee-in-lieu option, there are no financial incentives provided under Section 30.01.120.

**TITLE 30**  
**AFFORDABLE HOUSING**

**D. Standards.** Developments providing IH Units must satisfy the following standards:

1. The IH Units must meet clear and objective administrative criteria that ensure a reasonable equivalency between the IH Units and the market-rate units in the development;
2. The IH Units shall remain affordable for a period of 99 years;
3. Owners of property subject to the IH Program are required to sign a Regulatory Agreement to be recorded with the property where the IH Units are located;
4. The owner or a representative shall submit annual documentation of tenant income and rents for the IH Units to PHB;
5. The City may inspect the IH Units for fire, life and safety hazards and for compliance with IH Program requirements and may inspect files documenting tenant income and rents of the IH Units; and
6. Subsequent failure to meet the requirements of the IH Program previously determined at the time the permit is reviewed will result in a penalty equal to the amount of the current fee-in-lieu calculation plus accrued interest, and could result in legal action if unpaid.
7. When the IH Units are configured based on a percentage of the total number of bedrooms within the proposed development, the IH Units must be provided in 2 or more bedrooms per unit.

**E.** To the extent that a financial incentive as set forth in this Section is not available to a development that otherwise complies with City Code Chapter 33.245, the IH Program will not be applicable to the development. If the IH Program is not applicable to the development, PHB will provide a letter certifying that the development is not subject to any IH Program requirements.

**F. Fee-In-Lieu.** When the applicant elects the fee-in-lieu option, they fee-in-lieu per gross square foot of the proposed development is:

**a.** For developments in zones outside the Central City Plan District

<b>Zone/FAR</b>	<b>Fee per GSF on or before December 31, 2018</b>
CN1, CO1, CO2, CM, CS, CG, CX plus EG1, EG2, EX and R3, R2, R1, RH and RX zones	\$19.50

**TITLE 30**  
**AFFORDABLE HOUSING**

<b>Zone/FAR</b>	<b>Fee per GSF after December 31, 2018</b>
CM1 at Base FAR	\$23.83
CM1 with Bonus FAR	\$25.79
CM2 at Base FAR	\$25.79
CM2 with Bonus FAR	\$26.50
CM3 at Base FAR	\$26.03
CM3 with Bonus FAR	\$28.58

**b.** For developments in zones within the Central City Plan District

<b>Zone/FAR</b>	<b>Fee per GSF</b>
3:1/4:1 FAR	\$27.39
3:1/4:1 Base with Bonus FAR	\$28.57
5:1/6:1 FAR	\$28.57
5:1/6:1 Base with Bonus FAR	\$28.99
8:1 FAR	\$28.99
8:1 Base with Bonus FAR	\$29.81
9:1 FAR	\$29.81
9:1 Base with Bonus FAR	\$29.42
12:1 FAR	\$29.42
12:1 Base with Bonus FAR	\$29.85
15:1 FAR	\$27.39
15:1 Base with Bonus FAR	\$28.57

**c.** For Bonus FAR in non-residential developments

<b>Fee Schedule for Bonus FAR for non-residential occupancy/use</b>
\$24 per square foot of Bonus FAR

