

## **UPDATE INFORMATION**

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

## **June 30, 2020 – 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 March 31, 2020



**CODE OF THE CITY OF PORTLAND, OREGON**  
**Insertion Guide for Code Revisions**  
**Office of the City Auditor 503-823-4082**  
**2nd Quarter 2020 (June 30, 2020)**

<b>TITLE</b>	<b>REMOVE OLD PAGES</b>	<b>INSERT NEW PAGES</b>	<b>NEXT PAGE IS</b>	<b>NOTES</b>
<b>17</b>	17.13 – 1 - 18	17.13 – 1 - 17	End of Chapter	Ordinance Nos. 189891, 189924, Measure 26-209 & numbering correction to 17.106.050 E.4.-9. is now E.3.-8.
	17.102 – 1 - 27	17.102 – 1 - 27	End of Chapter	
	17.105 – 1-13	17.105 – 1 – 13	End of Chapter	
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**CHAPTER 17.13 - PARKS AND  
RECREATION SYSTEM DEVELOPMENT  
CHARGE**

(Chapter added by Ordinance No. 172614, effective  
October 1, 1998.)

**Sections:**

- 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
- 17.13.080 Alternative Calculation of SDC Rate.
- 17.13.090 Payment.
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- 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.

**17.13.010 Scope and Purposes.**

(Amended by Ordinance Nos. 181669, 187150 and 189244, effective November 7, 2018.)

- A.** New development within the City of Portland contributes to the need for capacity increases for parks and recreation facilities and, therefore, new development should contribute to the funding for such capacity-increasing improvements. This SDC will fund a portion of the needed capacity-increasing capital improvement projects as identified in the City of Portland Parks and Recreation SDC Capital Improvement Plan (SDC-CIP).
- 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 the 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. The SDC is 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 parks and recreation services based upon the nature of that development.

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- 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 provision of capacity-increasing improvements for parks and recreation facilities as identified in the Parks and Recreation SDC-CIP incorporated as an Appendix to the most recently adopted Parks SDC Methodology Report. The Parks and Recreation SDC-CIP is different from the City of Portland Parks and Recreation Capital Improvement Program and may be modified from time to time by the Council or by the Director, as provided in this Chapter.
- F.** This Chapter is intended only to be a financing mechanism for a portion of the capacity increases needed for parks and recreation facilities associated with new development and does not represent a means to fund maintenance of existing facilities or the elimination of existing deficiencies.
- G.** The SDC imposed by this Chapter is supported by the most recent Park System Development Charge Methodology Update Report adopted by the Council. The Council may from time to time amend or adopt a new SDC Methodology Report by ordinance.

**17.13.020 Definitions.**

(Amended by Ordinance Nos. 173386, 173565, 174617, 176511, 181669, 187150, 189244 and 189924, effective May 15, 2020.)

- A.** “**Acquisition**” means the addition, by purchase or donation, of a real property interest, and includes such physical activities, referred to as “stabilization,” as are necessary to make the land suitable for development or use, including, but not limited to, fencing, demolition of existing structures, landscaping and restoration, or installation of security systems.
- B.** “**Administrator**” means that person designated by the Director to manage and implement this Parks and Recreation SDC program.
- C.** “**Applicant**” means the person or entity who applies for a building permit.
- D.** “**Application**” means the Parks SDC Information Form together with other required forms and documents submitted at the time of application for a building permit.

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- E.** “**Building Official**” means that person, or other designated authority charged with the administration and enforcement of the state building codes for the City, or a duly authorized representative.
- F.** “**Building Permit**” means a permit issued by the City Building Official pursuant to the state building codes.
- G.** “**Campus Housing**” means dormitories and other buildings arranged and designed as living quarters on a college or university campus for students enrolled at that college or university. College or university campus is any property owned or controlled by the college or university within a Conditional Use Master Plan, Impact Mitigation Plan or other campus zone boundary.
- H.** “**Central City**” means the area identified in the SDC Methodology Report as the Central City Service Area, and whose boundaries are included on the map in the SDC Methodology Report. This area is also referred to as the Central City Sub-Area.
- I.** “**City**” means the City of Portland, Oregon.
- J.** “**Condition of Development Approval**” is any 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.
- K.** “**Cost Index**” means the Seattle Engineering News Record (ENR) Construction Cost Index.
- L.** “**Credit**” means the amount by which an Applicant may be able to reduce the SDC fee as provided in this Chapter.
- M.** “**Development Agreement**” means a written agreement approved by the Director that is:
1. An agreement between the City and another entity that includes as an element the conveyance to the City of capacity-increasing Real Property Interests or capacity-increasing capital improvements, for parks and recreation use, in connection with the undertaking of a New Development that is subject to the SDC imposed by this Chapter; or
  2. An agreement between agencies of the City that includes as an element the acquisition of capacity-increasing Real Property Interests or construction of capacity-increasing capital improvements, for parks and recreation use, in connection with a New Development that is subject to the SDC imposed by this Chapter; or

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3. An agreement for the donation of capacity-increasing Real Property Interests or capital improvements, for parks and recreation use, that provides for the consideration of the donation as a Qualified Public Improvement in a subsequent New Development subject to the SDC imposed by this Chapter; or
  4. An agreement under Subsections 1.-3. of this Section that, instead of or in addition to the conveyance of Real Property Interests or capital improvements, provides for donation to the City of money to be used for the acquisition of capacity-increasing Real Property Interests or the development of capacity-increasing capital improvements, for parks and recreation use.
- N.** “**Director**” means the Director of Portland Parks & Recreation for the City of Portland.
- O.** “**Dwelling Unit**” means one or more habitable rooms, as defined in City Code Section 24.15.075.
- P.** “**Non-Central City**” means all portions of the City outside the Central City Service Area.
- Q.** “**Non-Residential Development**” means development which does not include Dwelling Units. When a Development contains both Dwelling Units and other uses, that portion of the Development containing Dwelling Units shall be considered “Residential Development,” and that portion devoted to other uses shall be considered “Non-Residential Development.”
- R.** “**New Development**” means development for which a Building Permit is required, including existing development for which a required Building Permit was not obtained.
- S.** “**Occupancy Group Codes**” means the use codes (A-1, B, H, e.g.) in the Oregon Structural Specialty Code, “Use and Occupancy Classification.”
- T.** “**Occupancy Use Types**” means the occupancy classifications in the Oregon Structural Specialty Code, “Use and Occupancy Classification.”
- U.** “**Parks and Recreation SDC Capital Improvement Plan,**” also called the Parks and Recreation SDC-CIP, means the City program set forth in the “SDC Methodology Report,” as amended in accordance with this Chapter, of projects to be funded with Parks and Recreation SDC revenues.
- V.** “**Permit**” means a Building Permit.
- W.** “**Previous Use**” means the most intensive permitted use conducted at a particular property within 36 months before the date of completed Application. Where the



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property was used simultaneously for several different uses (mixed use), for the purposes of this Chapter all of the specific use categories shall be considered.

- X. “Proposed Use”** means the use proposed by the Applicant for the New Development.
- Y. “Qualified Public Improvement”** means any parks and recreation system capital facility or conveyance of a Real Property Interest that increases the capacity of the City’s Parks and Recreation System, is approved by the Commissioner-in-Charge or designee, and meets the definition and requirements of qualified public improvements under ORS 223.304(4) and 223.304(5). Additionally, unless there is a conflict with ORS 223.304(4) or 223.304(5), the following will be considered qualified public improvements:
1. A conveyance of Real Property Interests or capital improvements for public recreational use specified in a Development Agreement between the City and a developer entered into before the effective date of this Ordinance. Conveyances of Real Property Interests or capital improvements for public recreational use specified in a Development Agreement between the City and a developer entered into after the effective date of this Ordinance are excluded from the definition of “qualified public improvement” unless the Development Agreement specifically provides otherwise. If the Development Agreement does include conveyances of Real Property Interests that are intended to be eligible for Parks SDC Credits, the value of the Real Property Interests must be established at the time the Development Agreement is finalized by the appraisal methods described in Section 17.13.070. The date of valuation is the date of the final Development Agreement. If there are subsequent amendments to the Development Agreement, the date of valuation will be the date of the original Development Agreement unless otherwise specified in future amendments.
  2. A donation of money to the City to be used for acquisition of Real Property Interests or capital improvements for parks and recreational use, if memorialized in a Development Agreement.
  3. A donation of a habitat or trail. If the donation is a habitat, it must be adjacent to a Portland Parks property, or it must be a minimum of 3 contiguous acres with at least 66 percent of its area covered by the City’s environmental overlay zone. If the donation is a trail, it must be a major public trail designated on the City’s Official Zoning Maps.
  4. An improvement or conveyance of Real Property Interests for parks and recreational use that does not otherwise qualify as a Qualified Public Improvement; is not separately eligible for a credit, bonus, or other compensation; and, in the opinion of the Director in their reasonable discretion, serves the City’s public parks and recreation needs.

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- Z.** “**Real Property Interests**” means fee title, easement, or other permanent interests in real property as documented in a written conveyance.
- AA.** “**Remodel**” or “**remodeling**” means to alter, expand or replace an existing structure.
- BB.** “**Resident Equivalent**” means a measure of the impact on parks and recreation facility needs created by Non-Residential Development, as compared to the impact of a resident.
- CC.** “**SDC Methodology Report**” means the methodology report entitled Parks System Development Charge Methodology Update Report, dated April 15, 2015 and adopted as Exhibit A to Ordinance 187150, as may be modified.
- DD.** “**Temporary use**” means a construction trailer or other non-permanent structure.

**17.13.030 Rules of Construction.**

(Amended by Ordinance No 189244, effective November 7, 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; 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, or provisions or events may apply singly or in any combination.
- F.** The word “includes” shall not limit a term to the specific example, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

**17.13.040 Application.**

(Amended by Ordinance Nos. 181669, 187150, 189244 and 189924, effective May 15, 2020.) This Chapter applies to all New Development throughout the City of Portland. The amount of the Parks and Recreation SDC shall be calculated according to this section, using the rates set forth in the SDC Methodology Report.

- A.** Except as otherwise provided in this Chapter, a Parks and Recreation SDC shall be imposed upon all New Development for which an Application is filed on or after the effective date of this ordinance.
- B.** The Applicant shall at the time of Application provide the Administrator with the information requested on an SDC application form regarding the Previous Use and Proposed Use(s) of the property, including the following:
  - 1.** A description of each of the Previous Uses and Proposed Uses for the property for which the Permit is being sought, including the number of Dwelling Units and square footage for the entire property under the Previous Use and for the Proposed Use(s) of the New Development.
  - 2.** For residential uses, the number of residential dwellings and the square footage of each Dwelling Unit.
  - 3.** For non-residential uses, the square footage for each occupancy use type (i.e., office, retail, etc.).
- C.** Except as otherwise provided in this Chapter, the amount of the SDC due shall be calculated as follows:
  - 1.** Calculating the fee for the Proposed Uses (“the Proposed Use Fee”);
    - a.** Multiplying the number of Dwelling Units by their appropriate per-unit fee, based on square footage of each individual dwelling unit;
    - b.** Multiplying the square footage of each non-Dwelling Unit Proposed Use by the appropriate per-square-foot occupancy fee; and
    - c.** Adding the fees for the proposed Dwelling Unit and non-Dwelling Unit uses.
  - 2.** Calculating the credit for the Previous Uses (“the Previous Use Credit”); and
    - a.** Multiplying the number of Dwelling Units by their appropriate per-unit fee, based on square footage of each individual Dwelling Unit;
    - b.** Multiplying the square footage of each non-Dwelling Unit Proposed Use by the appropriate per-square-foot occupancy fee; and

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- c. Adding the credits for the previous Dwelling Unit and non-Dwelling Unit uses.
- 3. Subtracting the Previous Use Credit from the Proposed Use Fee to arrive at the net Park SDC due. If the Previous Use(s) were vacant for more than 36 months prior to the date of the application, the SDC due shall be the full amount of the SDC for the Proposed Use(s) and no credit shall be provided for Previous Use(s).
- D. The dollar amounts of the SDC set forth in the SDC Methodology Report are based on 2013 values and shall be adjusted on July 1, 2017 and thereafter annually on July 1st by the difference of the 3-year moving average of the Cost Index.
- E. Notwithstanding any other provision, the adjustment shall not exceed a total of 6 percent in any year. This is calculated by dividing the proposed new rate by the rate of the prior year, or, if a new rate structure was adopted less than 1 year prior, by the variance from the rate most recently adopted. If the resulting change is greater than 6 percent, the rate will be set at 6 percent variance from the rate of 1 year prior, or, if a new rate structure was adopted less than 1 year prior, by the variance from the rate most recently adopted.

**17.13.050 Application Requirements.**

(Amended by Ordinance Nos. 176955, 181669, 187150 and 189244, effective November 7, 2018.) All Applications must meet the application completeness requirements of the Planning Bureau and Bureau of Development Services. This Ordinance applies to all Applications for Building Permits for New Development, which Applications are not yet complete as of the effective date, and to those which are subsequently submitted or made complete. Fees are assessed based on the rate schedule in use on the date that the permit Application is made complete. For purposes of this Section, a complete Application must meet all the requirements of the Bureau of Development Services.

**17.13.060 Partial and Full Exemptions.**

(Amended by Ordinance Nos. 176511, 179008, 181669, 183448, 187150, 189050, 189244, 189323 and 189924, effective May 15, 2020.) The uses listed and described in this Section will be exempt, either partially or fully, from payment of the Parks and Recreation SDC. Any Applicant seeking an exemption under this Section must specifically request that exemption no later than the time of the City's completion of the final inspection. Where New Development consists of only part of one or more of the uses described in this section, only that/those portion(s) of the development which qualify under this section are eligible for an exemption. The balance of the New Development which does not qualify for any exemption under this section will be subject to the full SDC. Should the Applicant dispute any decision by the City regarding an exemption request, the Applicant must appeal as provided by Section 17.13.120. The Applicant has the burden of proving entitlement to any exemption so requested.

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- A. Temporary uses are fully exempt so long as the use or structure proposed in the New Development will be used for not more than 180 days in a single calendar year.
- B. Affordable housing is exempt pursuant to Section 30.01.095.
- C. Alteration permits for commercial interior alteration work are fully exempt, including commercial alterations that change occupancy. This exemption does not apply to alterations that create additional Dwelling Units, nor does it apply to the particular development on a property that previously benefitted from an exemption for mass shelters or short-term housing under Subsection 17.13.060 I.
- D. New construction or remodeling of Dwelling Units where no additional Dwelling Unit(s) are created and the square footage of each remodeled Dwelling Unit does not change the range of square footage in the SDC Methodology Report is fully exempt.
- E. Campus Housing is fully exempt.
- F. For New Development which includes a mix of exempt and non-exempt forms of development, the applicable exemption(s) apply only to that portion of the New Development to which the exemption applies.
- G. Certain accessory Dwelling Units are exempt pursuant to Section 17.14.070.
- H. Mass shelters and short-term housing as provided by Section 30.01.096 of this Code.

**17.13.070 SDC Credits.**

(Amended by Ordinance Nos. 172732, 172758, 173386, 174617, 181669, 187150 and 189244, effective November 7, 2018.) SDC Credits:

- A. The City may grant a Credit against the Parks SDC, which is otherwise assessed for New Development, for any Qualified Public Improvements constructed by or conveyed by the Applicant as part of that New Development. At the time the application for a credit is made, the New Development must be identified by a Building Permit Number. Credit will not be allowed for a Qualified Public Improvement that was conveyed more than 36 months prior to the date of the request for the Credit, unless a Development Agreement provides otherwise. The Applicant bears the burden of evidence and persuasion in establishing entitlement to an SDC Credit and to a particular value of SDC Credit.
- B. To obtain an SDC Credit, the Applicant must specifically request a Credit prior to the City's completion of the final inspection for the New Development. In the request, the Applicant must identify the improvements for which Credit is sought and explain how the improvements meet the requirements for a Qualified Public

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Improvement. The Applicant must also document, with credible evidence, the value of the improvements for which Credit is sought. If, in the Administrator's opinion, the improvements are Qualified Public Improvement, and the Administrator concurs with the proposed value of the improvements, an SDC Credit can be granted, if approved as outlined below. The value of the SDC Credits under this section shall be determined by the Administrator based on the cost of the Qualified Public Improvement, or the value of Real Property Interests, as follows:

1. For Real Property Interests, the 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 will be based upon the anticipated cost of construction. Any such cost estimates must 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. The City will give immediate credits based on estimates, but it will provide for a subsequent adjustment based on actual costs: a refund to the Applicant if actual costs are higher than estimated, and an additional SDC to be paid by the Applicant if actual costs are lower than estimated. The City will inspect all completed Qualified Public Improvement projects before agreeing to honor any credits previously negotiated. The City will limit credits to reasonable costs. Credits will be awarded only in conjunction with an application for development.
  3. For improvements already constructed, value will be based on the actual cost of construction as verified by receipts submitted by the Applicant.
- C. The Administrator will acknowledge receipt of the Applicant's request in writing within 21 days of when the request is submitted. The Administrator will confirm whether the application is complete or indicate additional information needed. The Administrator will provide a written explanation of the process for making the decision on the SDC Credit request.
1. The "Request for Parks SDC Credit for Qualified Public Improvement" (Form PSDC-7) and accompanying information will be sent to the Parks SDC Administration Section, who will prepare a staff report and convene the SDC Credit Review Committee. If Requests are received, the Committee will be convened quarterly. Applications not deemed complete 1 month prior to a committee meeting may not be heard until the following quarterly meeting. The Committee will be appointed by the Commissioner-in-Charge, after consultation with the Director, and include, but not be limited to, representatives of the following interests:

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- a. Development Community (e.g., Metropolitan Home Builders Association). Up to two representatives.
  - b. Environmental (e.g., Portland Audubon Society)
  - c. Public Interest (e.g., League of Women Voters, Urban League). Up to two representatives.
  - d. Neighborhood (one for each SDC Sub-Area)
  - e. Park Advocate (Portland Parks Board Member)
  - f. Business Community (e.g., Portland Business Alliance)
2. A representative of the Commissioner-in-Charge may attend and participate in the discussion but may not vote.
  3. The Applicant may attend the Committee meeting to respond to questions and provide relevant testimony but may not be present during the Committee's deliberation and vote. The Administrator will present the public interest to the committee, including staff findings regarding the application. City Attorney staff may be present to respond to any legal questions. The Committee will review each proposal and the Administrator will provide a record of the Committee members present, the recommendation, along with any minority viewpoints, and minutes of the Committee's discussion, including a summary of factors considered to the Director and Commissioner-in-Charge. If a member of the Committee has a conflict of interest related to a specific application, the member must withdraw from the deliberations and recommendations. Each neighborhood interest representative may only participate in discussions of and recommendations for applications that pertain to the SDC Sub-Area that the member does not represent.
  4. The Director (for SDC credits under \$250,000) or Commissioner-in-Charge (for SDC credits of \$250,000 and over) will make a decision within 30 days of the SDC Credit Review Committee meeting date. If a minority viewpoint is presented along with a majority recommendation, the Commissioner and Director will meet to review jointly before issuing a decision.
  5. Copies of the decision and the Committee recommendations will be shared with the applicant and members of the SDC Credit Review Committee digitally, or as a hard copy if requested. Copies of the decision and Committee recommendations will also be available in the digital City Archives, with a link on the Parks SDC Webpage.

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- D.** If the Applicant disputes the decision to grant or deny an SDC Credit, including the amount of the Credit, the Applicant may appeal as provided in Section 17.13.120.
- E.** When the construction or donation of a qualified public improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, the excess credit may be applied against improvement fees that accrue in subsequent phases of the original development project. For purposes of this paragraph, “subsequent phases of the original development project” means additional New Development that is approved as part of the same regulatory development approval (such as elements approved as part of the same conditional use master plan or planned unit development) or other portions of the same “site” (as defined by PCC 33.901.030) that are explicitly defined in the application for SDC credits as subsequent phases of the original development project. For multi-phased developments, the applicant must describe all subsequent phases at the time application is made for SDC credits and must document to the satisfaction of the SDC Administrator that the subsequent phases are integrally connected with the original development rather than independent projects.
- F.** Parks and Recreation SDC Credits are void and of no value if not redeemed with the City for payment of a Parks and Recreation SDC within 5 years of the date of issuance.
- G.** Notwithstanding any other provisions of this section, with respect to conveyances of Real Property Interests specified in Development Agreements adopted before June 21, 2000, the value of the credit will be 25 percent of the appraised value of the Real Property Interest.

**17.13.080 Alternative Calculation for SDC Rate.**

(Amended by Ordinance Nos. 181669 and 189244, effective November 7, 2018.)

- A.** Pursuant to this section, an Applicant may request an alternative Parks and Recreation SDC rate calculation if the Applicant believes that the Applicant’s SDC should be lower than that calculated by the City.
- B.** Alternative SDC Rate Request
  - 1.** The Applicant’s alternative SDC rate calculation request must provide the Applicant’s reasons that the City’s occupancy assumptions for the class of structures that includes the New Development are inaccurate because:
    - a.** For residential development, the number of persons per Dwelling Unit is or will be fewer than the number of persons per Dwelling Unit established in the SDC Methodology Report; or
    - b.** For non-residential development, the number of resident equivalents per 1,000 square feet is or will be fewer than the number of resident



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equivalents per 1,000 square feet established in the SDC Methodology Report.

2. Alternative SDC rate calculations must be based on analysis of occupancy of classes of structures, not on the intended occupancy of a particular New Development.
3. The City will not entertain an alternative SDC rate calculation request filed after the City has completed the final inspection for the New Development. Upon the timely request for an alternative SDC rate calculation, the Administrator will review the Applicant's calculations and supporting evidence and make a determination within 21 days of submittal.
4. The Applicant must provide complete and detailed documentation, including verifiable dwelling occupancy data, analyzed and certified by a suitable and competent professional. The Applicant's supporting documentation must rely upon generally accepted sampling methods, sources of information, cost analysis, demographics, growth projections, and techniques of analysis. The request must demonstrate that the rate established in the SDC Methodology Report does not accurately reflect the New Development's impact on the City's capital improvements.
5. The Administrator shall apply the Applicant's alternative SDC rate calculation if, in the Administrator's opinion:
  - a. The evidence and assumptions underlying the alternative SDC rate calculation are reasonable, correct and credible and were gathered and analyzed in compliance with generally accepted principles and methodologies consistent with this Section;
  - b. The proposed alternative SDC rate better or more realistically reflects the actual impact of the New Development than the rate set forth in the SDC Methodology Report.
6. The Administrator will respond with a written decision to the Applicant within 21 days of receipt of the Alternative SDC rate calculation request by email or certified mail and either approve or deny the request.

**17.13.090 Payment.**

(Amended by Ordinance Nos. 173565, 181669, 183447, 189244 and 189413, effective March 6, 2019.)

- A. The Parks and Recreation SDC required by this Chapter to be paid is due upon issuance of the Building Permit. However, in lieu of payment of the full Parks and Recreation SDC, the Applicant may elect to pay the SDC in installments as is authorized by ORS 223.208 and Chapter 17.14 of this Code. If the Applicant elects

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to pay the SDC in installments, a lien will be placed against the property that is subject to the 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 Code, before the City will issue any Building Permits.

- B.** Upon written request of Portland Parks & Recreation, the Revenue Division 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.

**17.13.100 Refunds.**

(Amended by Ordinance Nos. 181669 and 189244, effective November 7, 2018.) Refunds may be given by the Administrator in the following instances:

- A.** If the Administrator determines that there was a clerical error in the calculation of the SDC.
- B.** If the City has not expended SDC revenues within 10 years of receipt.
- C.** Upon request by the Applicant, when a building permit application is cancelled.

**17.13.110 Dedicated Account and Appropriate Use of Account.**

(Amended by Ordinance Nos. 181669, 189244 and 189687, effective October 4, 2019.)

- A.** There is created a dedicated account entitled the “Parks and Recreation SDC Account.” All monies derived from the Parks and Recreation SDC shall be placed in the Parks and Recreation SDC Account. Funds in the Parks and Recreation SDC Account shall be used solely for the purpose of providing capacity-increasing capital improvements as identified in the adopted Parks and Recreation SDC-CIP as it currently exists or as is hereinafter amended, and eligible administrative costs. In this regard, SDC revenues may be used for purposes which include, but are not limited to:

1. design and construction plan preparation;
2. permitting;
3. land and materials acquisition, including any costs of acquisition, stabilization, or condemnation;

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4. construction of parks and recreation capital improvements;
  5. design and construction of new drainage facilities or streets required by the construction of parks and recreation capital improvements and structures;
  6. relocating utilities required by the construction of improvements;
  7. landscaping;
  8. construction management and inspection;
  9. surveying, soils and material testing;
  10. acquisition of capital equipment that is, or is an intrinsic part of, a facility;
  11. demolition that is part of the construction of any of the improvements on this list;
  12. 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 parks and recreation facilities; and
  13. direct costs of complying with the provisions of ORS 223.297 to 223.314, including the consulting, legal, and administrative costs required for developing and updating the system development charges methodologies and capital improvement plan; and the costs of collecting and accounting for system development charges expenditures.
- B.** Money on deposit in the Parks and Recreation SDC Account 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 acquisition or maintenance of rolling stock
- C.** The City may prioritize SDC-funded projects and may spend SDC revenues for growth-related projects anywhere in the City. However, the City may not spend, or allocate as a placeholder in the Parks and Recreation SDC Account for future spending, less SDC revenues for local-access parks within any SDC service Sub-Area than the total amount of SDC revenues collected for local-access parks within that Sub-Area.
- D.** The proportional breakdown of the Local Access portion to the Non-Local Access portion of the SDC fee is 43 percent to 57 percent.

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**17.13.120 Challenges and Appeals.**

(Amended by Ordinance Nos. 174617 and 189244, effective November 7, 2018.)

- A.** Any person 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.
- B.** The Applicant may challenge a decision on an SDC Credit as applied under Section 17.13.070 by providing a written notice of appeal to the Administrator no more than 14 calendar days after the decision is posted online. The Applicant may challenge a decision on an SDC Exemption as applied under Section 17.13.060 or on an SDC Alternative Rate as applied under Section 17.13.080 by providing a written notice of appeal to the Administrator no more than 14 calendar days after the decision is provided to the Applicant. Appeals of decisions of the Administrator will be reviewed by the Director. Appeals of decisions of the Director will be reviewed by the Commissioner-in-Charge. An appeal of a Commissioner's decision, including but not limited to the Commissioner's review of the Director's decision, will be heard by the City Council. Appeals of decisions of the City Council will be reviewable solely under ORS 34.010 through 34.100.
- C.** Except where a different time for an Administrator's decision is provided in this Chapter, all Administrator decisions shall be in writing and shall be sent to the Applicant within 21 days of Administrator receipt of an Application or other Applicant request for an Administrator determination. Except where a different time for an appeal is provided in this Chapter, all appeals shall be in writing and shall be submitted within 14 calendar days after the decision is issued.
- D.** If an Applicant files an appeal under Subsection 17.13.120 B., 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 Applicant provides, for the pendency of the appeal, a financial guarantee or security for the charge in a form acceptable to the City Attorney.

**17.13.130 City Review of SDC.**

(Amended by Ordinance Nos. 181669 and 189244, effective November 7, 2018.)

- A.** No later than every 10 years as measured from initial enactment, the City shall undertake a review to determine that sufficient money will be available to help fund the Parks and Recreation SDC-CIP identified capacity-increasing facilities; to determine whether the adopted SDC rate keeps pace with inflation, whether the Parks and Recreation SDC-CIP should be modified, and to ensure that such facilities will not be over-funded by the SDC receipts.

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- B.** In the event that during the review referred to above, it is determined an adjustment to the SDC is necessary and consistent with state law, the City Council may propose and adopt appropriately adjusted SDCs.
- C.** The City Council may from time to time amend or adopt a new SDC Methodology Report by ordinance.

**17.13.140 Time Limit on Expenditure of SDCs.**

(Amended by Ordinance No. 189244, effective November 7, 2018.) The City shall expend SDC revenues within 10 years of receipt, based on the priorities in the Parks and Recreation SDC-CIP list.

**17.13.150 Implementing Regulations.**

(Amended by Ordinance Nos. 187150 and 189244, effective November 7, 2018.) The Director may adopt and amend by Administrative Rule regulations and procedures to implement the provisions of this chapter. Any Administrative Rule adopted under this Section shall be filed with the Auditor for inclusion in the Portland Policy Documents, in accordance with Chapter 1.07 of this Code. The Administrator may develop forms and procedures as needed to implement this chapter and the Administrative Rules.

**17.13.160 Amendment of the Parks and Recreation SDC-CIP List.**

(Amended by Ordinance Nos. 181669 and 189244, effective November 7, 2018.) The City Council may amend the Parks and Recreation SDC-CIP list as set forth in the SDC Methodology Report, from time to time to add or remove projects as the City deems appropriate. The Administrator may, at any time, change the description of the scope, and timing, for projects included in the Parks and Recreation SDC-CIP list. The Commissioner-in-Charge may change project budgets. Any amendment of the SDC-CIP list that increases an SDC rate may be adopted only by the Council after a public hearing as provided by ORS 223.309(2). An updated SDC-CIP list incorporating changes made under this Section will be posted on the Parks and Recreation website.

**17.13.170 Severability.**

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 clause, section or provision of this Chapter shall be 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. It is hereby declared to be the legislative intent that this Chapter would have been adopted had such an unconstitutional provision not been included herein.



**CHAPTER 17.102 - SOLID WASTE &  
RECYCLING COLLECTION**

(Chapter replaced by Ordinance. No. 182190,  
effective October 10, 2008.)

**Sections:**

- 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.

**17.102.010 Declaration of Policy.**

(Amended by Ordinance No. 189293, effective January 11, 2019.) It is the policy of the City of Portland to reduce the amount of solid waste, both generated and disposed of, by promoting aggressive waste prevention and recycling activities. The City shall promote the development of environmentally and economically sound practices regarding the collection, processing and end use of solid waste, recyclable material and compostable material. In order to attain these goals and protect public health and the environment, the

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City shall regulate collection of solid waste, recyclable and compostable materials within the City. In carrying out this policy, the goals of this Chapter are:

- A.** To promote sustainability of the system of solid waste and recycling collection, by seeking to maximize efficiency, equity and economic vitality, improve worker safety and reduce environmental and human health impacts over the entire life cycle of the materials.
- B.** To set and achieve recycling goals for Portland that are among the highest in the nation.
- C.** To target reductions in toxic waste, to minimize its harmful effects and to reduce greenhouse gas emissions.
- D.** To ensure the safe and sanitary collection, transportation and recovery of solid waste, recyclable and compostable materials.
- E.** To provide Portland residents and businesses the opportunity to recycle more materials through convenient on-site, curbside and depot collection programs and through the addition of recyclable materials to the curbside collection program as appropriate.
- F.** To establish and enforce solid waste, recyclable and compostable material collection standards to ensure uniform, cost effective and high-quality service delivery to all residential customers.
- G.** To establish rates for residential waste collection which are fair to the public, encourage waste reduction, and promote safe, efficient collection.
- H.** To establish and enforce solid waste, recyclable and compostable material collection standards, cost effective and high-quality service delivery and inform collection service options for all commercial customers.
- I.** To promote community awareness in order to achieve the highest participation possible in the solid waste and recycling collection system.
- J.** To enhance solid waste reduction and recycling in the multifamily, commercial, institutional and industrial sectors by ensuring that comprehensive recycling systems are provided at every establishment not covered by the residential franchise, and that owners of the establishments encourage extensive use of those systems by all employees.
- K.** To undertake research, studies and demonstration projects on developing more efficient, economical and effective methods of solid waste reduction, recycling and collection.



**17.102.020 Definitions.**

(Amended by Ordinance Nos. 182671, 186877, 189293 and 189891, effective April 17, 2020.) For purposes of Chapter 17.102, and rules adopted thereunder, 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 meanings commonly accepted in the community.

- A. “Administrative Rule”** means all rules promulgated under Section 17.102.030 of this Chapter.
- B. “Approved Residential Recycler”** means a person that has been granted approved residential recycler status by the Director. Approved residential recycler includes any employees or other persons authorized to act on behalf of the approved residential recycler.
- C. “Assessment”** means a civil penalty assessed for an infraction as provided in Chapter 17.102 or the franchise.
- D. “Assigned Territory”** means an area within the City in which only a franchisee designated by the City may collect solid waste and recyclable material from residential customers.
- E. “Biodiesel”** is a domestic, renewable fuel for diesel engines derived from vegetable oils, or animal fats, designated B100, and which meets the specifications of ASTM #D6751-03a “Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels” or revised ASTM specifications.
- F. “Biodiesel Blend”** is a blend of biodiesel fuel meeting the ASTM #D6751-03a or revised ASTM specifications and ASTM #D5453 “Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence”, or revised ASTM specifications, comprised of biodiesel and ultra-low sulfur diesel fuels blended by a percentage of each individual component. Biodiesel Blend also includes renewable diesel blends, derived from vegetable oils or animal fats through fractional distillation, if the fuel meets a maximum carbon intensity of 56 gCO<sub>2</sub>e/MJ as provided by the Oregon Department of Environmental Quality Clean Fuels Program.
- G. “Business”** means any commercial entity, including industrial and institutional, but not including multifamily complexes or commercial entities that occupy 50 percent or less of the floor area of a residence.
- H. “City”** means the City of Portland, Oregon, and such territory outside of this City over which the City has jurisdiction or control by virtue of any Intergovernmental Agreement or law.

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- I.** “**Collect**” or “**Collection**” means to accept, accumulate, store, process, transport, market or dispose of.
- J.** “**Collection Vehicle**” means any vehicle used for the collection of residential or commercial solid waste, recycling or compostables that is safe to operate and ensures the contents are not littered in the course of servicing customers.
- K.** “**Commercial**” means relating to an entity that is non-residential in nature or, if residential, consists of five or more dwelling units on a single tax lot.
- L.** “**Commercial Collection**” means the collection of solid waste, recyclable and compostable materials in exchange for compensation from:
1. A non-residential source; or
  2. A multifamily residence of five or more dwelling units located on a single tax lot.;
- M.** “**Compensation**” means:
1. Any type of consideration paid for collection service, including, without limitation, rent or lease payments and any other direct or indirect provision of payment of money, goods, services or benefits by owners, tenants, lessees, occupants or similar persons;
  2. The exchange of services between persons; and
  3. The flow of consideration from the person owning or possessing the solid waste recyclable or compostable material to the person providing collection service or from the person providing collection service to the person owning or possessing the solid waste recyclable or compostable material.
- N.** “**Compostable Material**” and “**Compostable**” means yard debris, food scraps and food soiled paper when source separated for controlled biological decomposition. Compostable material shall not include food soiled paper containing plastic or other materials that inhibit controlled biological decomposition.
- O.** “**Composting**” means the series of activities, including collection, separation, and processing, by which compostable materials are recovered from or otherwise diverted from the solid waste stream for controlled biological decomposition. Composting includes composting of source separated organics but not composting of mixed waste.
- P.** “**Covered Food Scraps Generating Business**” means organizations that cook, assemble, process, serve, or sell food or do so as service providers for other enterprises.

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- Q.** “**Customer**” when used to refer to commercial collection service, means a person that has arranged for the collection of solid waste, recyclable or compostable materials, excluding residential collection service covered by a franchise. Where several businesses share containers and service, customer refers only to the person that arranges for the service.
- R.** “**Customer**” when used to refer to residential collection service means any person who receives solid waste, recycling or compostables collection service at a residence (four-plex or smaller) in a franchise territory. The customer need not be the person billed for such service. For rental properties where the owner of the property is required to subscribe for service, the owner shall be considered the customer.
- S.** “**Director**” means the Director of the City’s Bureau of Planning and Sustainability or their authorized representative, designee or agent.
- T.** “**Food Soiled Paper**” means paper products that cannot be recycled into paper products and have been in contact with organic materials to the degree that they would not be able to be recycled into paper products. Food soiled paper includes, but is not limited to, used napkins and paper towels.
- U.** “**Food Scraps**” means waste from fruits, vegetables, meats, dairy products, fish, shellfish, nuts, seeds, grains, coffee grounds, and other food that results from the distribution, storage, preparation, cooking, handling, selling or serving of food for human consumption. Food waste includes but is not limited to excess, spoiled or unusable food and includes inedible parts commonly associated with food preparation such as pits, shells, bones, and peels. Food waste does not include liquids or large amounts of oils and meats which are collected for rendering, fuel production or other non-disposal applications, or any food fit for human consumption that has been set aside, stored properly and is accepted for donation by a charitable organization and any food collected to feed animals in compliance with applicable regulations.
- V.** “**Franchise**” means a franchise for the collection of residential solid waste, recyclable materials and compostables, granted by Ordinance No. 181666, and as amended by subsequent ordinances.
- W.** “**Franchisee**” means a business that has been granted a franchise by Ordinance No. 181666 and subsequent amending ordinances. Franchisee includes any employees or other persons authorized to act on behalf of the franchisee. Franchisee has a meaning identical to that of “grantee” as used in the franchise. A franchisee holds a single franchise for collection service in any and all of its franchise territories, including any territories transferred from other franchisees as approved by the Portland City Council, subsequent to Ordinance No. 181666, and as amended by subsequent ordinances.

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- X.** “**Franchise Territory**” means an area within the City in which only a person granted a franchise by the City may collect residential solid waste, recyclable materials or compostables, from residential customers. A single franchisee may serve more than one franchise territory.
- Y.** “**Independent Commercial Recycler**” means a person who collects only recyclable materials or yard debris from non-residential sources and does not collect solid waste.
- Z.** “**Infraction**” means a failure to comply with Portland City Code Chapter 17.102, the franchise, or the administrative rules promulgated thereunder, as applicable.
- AA.** “**Metro**” means the metropolitan service district responsible for regional solid waste management and planning within Clackamas, Multnomah and Washington Counties.
- BB.** “**Multifamily Complex**” or “**Multifamily**” means any multidwelling building or group of buildings that contain(s) five dwelling units or more on a single tax lot, such as apartments, condominiums, mobile home parks, or houseboat moorages. Multifamily also includes certified or licensed residential care housing, such as adult foster care homes.
- CC.** “**BPS**” means the City’s Bureau of Planning and Sustainability.
- DD.** “**Permittee**” means any person granted a commercial collection permit under Section 17.102.210 of this Chapter.
- EE.** “**Person**” means any individual, partnership, association, firm, trust, estate, a public or private corporation, a local government unit, a public agency, the state or any other legal entity.
- FF.** “**Recyclable Material**” and “**Recyclable**” means material that still has or retains useful physical, chemical, or biological properties after serving its original purpose(s) or function(s), and that can be reused, recycled or composted for the same or other purpose(s).
- GG.** “**Recycling**” means any process by which materials are transformed into new products in such a manner that the original products may lose their identity.
- HH.** “**Residence**” means any dwelling unit that is a four-plex or smaller, regardless of whether it has subscribed for waste collection, or has waste collection, in individual cans, carts or containers. Residence includes multifamily dwellings such as apartment complexes, condominiums, mobile home parks, or houseboat moorages with four units or fewer on a single tax lot. Residence also includes dwelling units used by fraternities or sororities. Residence does not include any multifamily complex as defined in this Section, multi-dwelling building or group of buildings that contain(s) five dwelling units or more on a single tax lot, such as

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condominiums, mobile home parks, or houseboat moorages, nor does residence include certified or licensed residential adult foster care homes. Residence does not include any dwelling where over 50 percent of the entire building is being used for business purposes. Agreements between owners of residences purporting to provide for the collection of solid waste and recyclable on a combined basis shall not alter the status of each dwelling unit as a residence.

- II.** “**Resident**” means any person living in a residence.
- JJ.** “**Residential**” means of or pertaining to a residence.
- KK.** “**Self-haul, Commercial**” when used in reference to solid waste, recyclables or compostables generated by a commercial entity, means the collection and transportation of material from a commercial entity where an owner or employee of the entity hauls the material rather than hiring a permittee or independent commercial recycler to perform this function.
- LL.** “**Solid Waste**” has the meaning given in ORS 459.005(24) (2013), but does not include the following materials:
  - 1.** Sewage sludge, septic tank and cesspool pumpings or other sludge, and grit, screenings and other residues delivered by sewer systems to municipal treatment plants.
  - 2.** Discarded or abandoned vehicles;
- MM.** “**Source Separate**” means that the person who last used recyclable or compostable material separates the material from solid waste and keeps the recyclable or compostable material separate from solid waste.
- NN.** “**Yard Debris**” includes grass clippings, leaves, hedge trimmings and similar vegetative waste generated from residential property or landscaping activities but does not include stumps or similar bulky wood materials.

**17.102.030 Authority of Director to Adopt Rules.**

(Amended by Ordinance Nos. 182671 and 189078, effective July 18, 2018.)

- A.** The Director is hereby authorized to administer and enforce the provisions of this Chapter.
- B.** The Director is authorized to adopt 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 ten nor more than thirty 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

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of the public review process and the location at which copies of the full set of the proposed rules may be obtained.

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. If a substantial modification is made, additional public review shall be conducted, but no additional notice shall be required if such additional review is announced at the meeting at which the modification is made. Unless otherwise stated, all rules shall be effective upon adoption by the Director and shall be filed in the Office of the Director.
3. Notwithstanding paragraphs 2 and 3 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 rule adopted pursuant to this paragraph shall be effective for a period of not longer than one year (365 days). Within five business days of the adoption of an interim rule, the Director shall send notice of the rule to all the following, giving the language of the rule change, describing the purpose of the rule, and inviting the submission of comments.
  - a. Neighborhood associations recognized by the City Office of Community & Civic Life,
  - b. District Coalitions recognized by the City Office of Community & Civic Life,
  - c. Business District Associations identified by the City Office of Community & Civic Life,
  - d. Persons on the BPS list of parties interested in administrative rules, and
  - e. Franchisees and permittees,

**17.102.040 General Requirements for Franchisees and Permittees.**

All franchisees and permittees must comply with applicable federal law, statutes of the State of Oregon, ordinances of Metro or the City and rules and regulations promulgated thereunder.

**17.102.050 Clean and Efficient Fleet Practices.**

(Replaced by the Ordinance No. 185449; amended by Ordinance Nos. 189293 and 189891, effective April 17, 2020) The Director is authorized to draft regulations to protect the public health and the environment. This can include requiring the use of a blend of

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biodiesel fuel in any collection vehicle with a diesel engine and requiring regular replacement of all collection vehicles used by franchisees or permittees within the City.

- A.** All collection vehicles with a diesel engine shall use a blend of biodiesel fuel as specified by the Director, consistent with the requirements set forth in Chapter 16.60.
  
- B.** Fleet Replacement. The intention of the clean and efficient fleet practices is to phase out vehicle emissions that contribute to unhealthy air for Portland residents and to reduce climate change impacts according to the Climate Action Plan.
  - 1.** All Collection Vehicles shall have engines that are 12 years old or newer. "Collection vehicles" that are intended as back-up collection vehicles and older than 12 years are allowed to be used less than 20 percent of a full-time vehicle's hours or miles.
  
  - 2.** Federal Emissions Improvement Adjustments. Due to emissions standard improvements to collection vehicles manufactured in 2010 or newer, collection vehicle restrictions will be adjusted accordingly:
    - a.** As of January 1, 2023, all collection vehicles using diesel fuel shall have engines 13 years old or newer.
  
    - b.** As of January 1, 2024, all collection vehicles using diesel fuel shall have engines 14 years old or newer.
  
    - c.** As of January 1, 2025, all collection vehicles using diesel fuel shall have engines 15 years old or newer and older back up vehicles will no longer be acceptable and subject to infraction. Starting January 1, 2026 collection vehicle age restrictions will continue with a rolling 15-year timeframe for compliance.
  
    - d.** As of January 1, 2025, all collection vehicles providing service to any Portland residential or commercial customer will adhere to the Clean and Efficient Fleet Practices. At this time, exemptions to collection vehicles serving less than 50 percent of Portland customers will be lifted.
  
  - 3.** Diesel Particulate Filter (DPF) Retrofits. Collection vehicles that have been retrofitted with a functioning DPF will not be required to be replaced until January 1, 2025. Diesel Oxidation Catalyst (DOC) retrofits on collection vehicles will not be required to be replaced until January 1, 2020.

**17.102.060 Fees Credited to Solid Waste Management Fund.**  
(Amended by Ordinance No. 182671, effective May 15, 2009.)

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- A. All fees, assessments and interest received by the Bureau of Planning and Sustainability with respect to solid waste collection or disposal shall be deposited with the City Treasurer and credited to the Solid Waste Management Fund.
- B. Monies deposited into the Solid Waste Management Fund shall be used for administration, implementation and operation of solid waste, recycling, composting and sustainable development programs, consistent with all applicable constraints on use of funds. BPS may spend or apply such fees and charges to implement and administer solid waste, recycling, composting and sustainable development policies approved by the Council.
- C. The proceeds from the City's sale of a forfeited franchise shall be deposited with the City Treasurer and credited to the Solid Waste Management Fund. Such proceeds shall be used to offset the City's costs of the process of replacing a franchisee, including its costs for providing any necessary temporary collection services, and to offset program costs to the public.

**17.102.070 Fees As a Debt, Enforcement and Collection.**

- A. All fees, assessments and interest imposed by this Chapter shall be a debt due and owing to the City of Portland and may be collected by civil action in the name of the City of Portland. Any fees and assessments remaining unpaid after the due date shall accrue interest at 1 percent per month, compounded daily from the due date. In addition, the Director may revoke, suspend or deny issuance of any commercial collection permit to permittees who have not paid commercial permit or tonnage fees or infraction assessments by the deadlines provided in this Chapter or in administrative rules adopted pursuant to this Chapter.
- B. Fees, assessments and interest shall be enforced and collected by the Director. The Director may waive or reduce any assessments for good cause, according to and consistent with written policies. The Director may refer collection and enforcement to another agency of the City.

**17.102.080 Daytime Prohibition of Downtown Garbage Collection.**

(Amended by Ordinance No. 189293, effective January 11, 2019.) No person, whether acting as private citizen, principal, employee, agent, franchisee or permittee shall transport any refuse through streets in the district bounded by SW Oak Street, SW First Avenue, SW Yamhill Street and SW Tenth Avenue, except between the hours of 10 p.m. and 10 a.m. or when otherwise authorized by the City Engineer, a city police officer, or the Director.

**17.102.090 Assessments for Infractions.**

- A. The Director may impose assessments as follows:
  - 1. A first violation of this Chapter may be subject to an assessment of up to \$500.



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2. A second violation of this Chapter by the same person may be subject to an assessment of up to \$1,000.
  3. Third and subsequent violations of this Chapter by the same person may be subject to an assessment of up to \$1,500.
  4. Assessments may be imposed on a per month, per day, per incident, per class or such other basis as the Director may determine as appropriate based upon the nature of the infraction.
- B.** The Director shall consider the following criteria in determining the amount of assessments to be imposed under this Section:
1. The nature and extent of the person's involvement in the violation;
  2. Whether the person was seeking any benefits, economic or otherwise, through the violation;
  3. Whether the violation was isolated and temporary, or repeated and continuous;
  4. The length of time from any prior violations;
  5. The magnitude and seriousness of the violation;
  6. The costs of investigation and remedying the violation;
  7. Whether any criminal prosecutions have occurred in regard to the violations; and
  8. Other relevant, applicable evidence bearing on the nature and seriousness of the violation.

**17.102.100 Right of Appeal and Payment of Assessments.**

(Amended by Ordinance Nos. 184288 and 189293, effective January 11, 2019.)

- A.** Any person receiving a Notice of Assessment shall, within ten 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.
- B.** A person may appeal to the Code Hearings Office in accordance with Title 22 of the City Code if the person receives:

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1. A written denial of an application for a commercial collection permit;
  2. Any written suspension or revocation of a commercial collection permit.
- C. A business or property owner may appeal to the Code Hearings Office in accordance with Title 22 of the City Code if they receive a written denial of an application for a limited term extreme economic hardship exemption from the Containers in the Right of Way rules.

**17.102.110 Divulging Particulars of Report Forms Prohibited.**  
(Amended by Ordinance No. 182671, effective May 15, 2009.)

- A. Except as otherwise required by law, it shall be unlawful for the Bureau of Planning and Sustainability or any officer, employee, or agent of the City, to divulge, release or make known in any manner:
1. Any information submitted or disclosed to the City under Section 17.102.250; or,
  2. Any information submitted or disclosed to the City by solid waste collectors regarding past hazardous waste remedial action surcharges.
- B. Nothing in this Section shall be construed to prohibit:
1. The disclosure of the names and addresses of any persons to whom permits have been issued; or
  2. The disclosure of general statistics in a form which would prevent the identification of financial information regarding any individual permittee.

**17.102.120 Franchise Administration.**  
(Amended by Ordinance No. 182671, effective May 15, 2009.) Notwithstanding Section 3.114.020, the Bureau of Planning and Sustainability shall be responsible for administration of residential collection franchises.

**17.102.130 Franchise Size Limit.**  
(Amended by Ordinance No. 184224, effective December 10, 2010.)

- A. No franchisee shall serve residential customers greater than 40 percent of the residential customer base, as determined on a quarterly basis. For purposes of this Section, the Bureau of Planning and Sustainability will calculate the residential customer base and the residential customer cap using the most recent Quarterly Residential Customer Count Report, and shall keep this calculation on file for public reference.
- B. No franchisee shall be a subsidiary corporation of another franchisee.

**17.102.140 Residential Collection Franchise Required.**

(Amended by Ordinance No. 189293, effective January 11, 2019.)

- A.** No person may collect residential solid waste, recyclable or compostable materials, within the City without having obtained a franchise from the City, except as provided in 17.102.150 or 17.102.170 of this Chapter.
- B.** Having obtained a franchise for residential solid waste, recyclable material and compostables collection from the City, no person shall provide or offer to provide such collection in an area within the City other than the assigned territory for which the franchise was issued.
- C.** No person shall accumulate, store collect, transport, dispose of or resource recover solid waste, recyclable materials or compostables, except in compliance with this Chapter, other city ordinances and regulations, and state laws dealing with solid waste management.
- D.** Nothing in this section shall prohibit the City from withdrawing certain solid waste, recyclable materials or compostables collection services by amendment of this Chapter on the basis of finding that such change is appropriate.
- E.** No person other than an approved residential recycler may remove recyclable materials or compostables that are in or next to a residential recycling or compostables container set out at a residence.
- F.** As provided in Section 29.30.140, owners of rental housing shall not collect solid waste generated by their tenants. Owners of rental residences must arrange for collection by a franchisee.

**17.102.150 Exceptions to Residential Franchise Requirement.**

(Amended by Ordinance No. 189293, effective January 11, 2019.)

- A.** A franchise is not required for the collection or transportation of residential solid waste, recyclable materials or yard debris by the following persons:
  - 1.** Persons transporting solid waste, recyclable materials, or compostables, collected outside the City;
  - 2.** Organizations which have been granted non-profit tax status by the federal government or who are organized as non-profit corporations in accordance with ORS Chapter 61 (2007) and who collect residential recyclable materials or compostables without charge to the person who generates those recyclable materials or compostables;
  - 3.** A contractor employed to demolish, construct or remodel a building or structure, including, but not limited to, land clearing operations and

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construction wastes, when collecting or transporting wastes created in connection with such employment;

4. Landscapers, gardeners, tree service contractors, janitors or renderers when collecting or transporting wastes created in connection with such employment;
  5. Persons collecting and transporting waste produced by that person, except for waste produced by a tenant at a rental dwelling. For purposes of this Subsection, solid waste produced by a tenant, licensee, occupant or similar person is produced by that person and not by the landlord;
  6. Persons collecting or transporting only waste tires under a valid waste tire storage or carrier permit pursuant to OAR Chapter 340;
  7. Persons transporting only reusable beverage containers as defined in ORS 459A.725 (2007);
  8. Federal or state agencies that collect, store, transport and dispose of solid waste or those who contract with such agencies to perform the service, but only insofar as the service is performed by or for such agencies; and,
  9. Persons exclusively collecting recyclable materials or compostables, from non-residential sources.
- B.** An organization is not required to have a franchise for the acceptance, storage or transportation of recyclable materials or compostables if those materials are accepted and stored at a depot or depots which accept recyclable material or compostables without a charge to the generator of that recyclable material or compostables.

**17.102.160 Forfeiture and Replacement.**

(Amended by Ordinance Nos. 182671 and 189891, effective April 17, 2020.)

- A.** In the event that the Director finds grounds for declaring a forfeiture, according to the terms of the franchise awarded by Ordinance No. 181666 and as amended by subsequent ordinances, the Director shall make a recommendation for Council action on the matter, following procedures specified in the BPS's adopted rules.
- B.** In preparing for the transfer of a forfeited franchise, the Director shall solicit applications following a public notification. The Director shall identify criteria to evaluate applicants' qualifications to assume the franchise responsibilities, such as related experience; technical, financial, and operational capability; equity and diversity; sustainability; resiliency; and efficiency. The Director may conduct an appraisal of the value of the forfeited franchise and give the selected applicant the opportunity to purchase the franchise from the City within a specified time period.

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- C.** In cases where a franchisee abruptly ceases to provide collection service, and there is insufficient time to conduct an appraisal and permanently transfer a franchise, the Director may recommend that the Council appoint a temporary service provider. If the Council makes such an appointment, it may also guarantee a minimum level of revenue to that company, in order to encourage companies who would not otherwise be willing to assume this responsibility on a short-term basis. Such minimum level of revenue would be achieved by the City's supplementing revenues received by the temporary service provider from its temporary customers.

**17.102.170 Residential Recycling Services.**

(Amended by Ordinance Nos. 189293 and 189891, effective April 17, 2020.)

- A.** No person shall provide residential recycling collection without first applying for and receiving approval as an approved residential recycler.
- B.** To have status as an approved residential recycler an applicant must receive the City's approval of recycling collection and processing plans prior to initiation of collection service, and at subsequent times as provided in the administrative rules.
- C.** To receive approval as a residential recycler, the City must first approve an applicant's recycling collection and processing plans data through means detailed in the residential administrative rules.
- D.** To receive approval as an approved residential recycler, an applicant shall submit a recycling collection and processing plans on forms provided by the Director and shall include, at a minimum, the following information:
- 1.** Number of residential households to be served;
  - 2.** Description of recycling collection equipment;
  - 3.** Address and City zoning classification of all processing/storage sites that relate to collection services provided in the City;
  - 4.** Description of all processing and storage activities that relate to collection services provided in the City;
  - 5.** List of markets where each recyclable material will be sold;
  - 6.** List of the number of staff, their positions and full-time equivalent (FTE) for each;
  - 7.** Address and phone number of office;
  - 8.** Cost of recycling collection and processing equipment, the financial institution used and type of financing obtained; and

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9. Any subcontracted collection services, including the names of the providers, description of the services provided and the number of customers served.
  10. Written consent of the franchisee in whose territory the applicant seeks to provide collection service.
  11. Other information as deemed relevant and necessary by the Director.
- E.** The Director shall review the recycling collection and processing plans submitted by an applicant to determine if the plan sets out reasonable means and methods to deliver high quality recycling to City residents, and which are capable of meeting administrative rule standards for residential recycling service delivery. The Director shall notify the applicant of the decision on their status as an approved residential and any recommended modifications if approval is not given. Approved residential recyclers shall use recycling containers that meet the Director's specifications.
- F.** An applicant's failure to receive the Director's approval of a plan shall result in denial of the City's permission for that applicant to provide recycling collection service and the appointment of another approved residential recycler by the Director to provide recycling collection service to those residential customers.

**17.102.180 Franchise System Evaluation.**

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

- A.** Periodically the Director shall prepare and submit a report to the City Council on the status and performance of the franchise collection system. The report shall comment on progress toward achievement of the relevant goals identified in Section 17.102.010 and as otherwise described in BPS's budget documents.
- B.** Commencing at least five years prior to the expiration of the franchise term, the City Council shall evaluate the franchise system to determine if the system is achieving waste reduction, increased recycling, and cost-effective collection service. Such evaluation shall include an opportunity for public discussion and comment.

**17.102.190 Residential Solid Waste and Recycling Rates and Charges.**

For all service levels of franchised residential collection, rates and charges shall be as set forth in Figures 6 and 6-1 published at the end of Title 17.

**17.102.200 Large Size Container Service to Residential Customers.**

- A.** Any residential putrescible waste collected in containers exceeding two yards capacity shall be emptied within seven days of the empty container being placed at the residence.

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- B.** Commercial permittees are prohibited from providing collection of any putrescible waste more than four times in a 365-day period to residential customers without the express written permission of the franchisee in whose territory the collection would be occurring.
- C.** Within the City, franchisees are prohibited from providing containers larger than two cubic yards which are emptied more than four times in a 365-day period to residential customers outside their franchise territory.

**17.102.210 Commercial Collection Permit Required.**

(Amended by Ordinance Nos. 182671, 189293 and 189891, effective April 17, 2020.)

- A.** No person shall provide commercial collection of solid waste, compostables and recyclable material within the City without having a currently valid commercial collection permit from the Bureau of Planning and Sustainability, except as provided in Section 17.102.220. Permits shall be issued annually, with the permit being valid for the period beginning July 1 and ending June 30. No expenditure of money, lapse of time or other act or thing, shall give the permittee any vested rights or other property rights.
- B.** The Director may impose conditions upon the issuance of a permit which are necessary to implement the provisions of this Chapter or administrative rules promulgated under Section 17.102.030. Conditions shall include but not be limited to:
  - 1.** Permittees must comply with the provisions of this Chapter and administrative rules promulgated under Section 17.102.030.
  - 2.** If a permittee provides solid waste collection services to a customer, the permittee must offer recycling collection services to the customer. The permittee shall also offer compostable material collection services to a customer that is a covered food scrap generating business subject to the requirements of Subsection 17.102.270 A.1.c.
    - a.** Permittees may provide recycling and compostable material collection services either directly or through third-party providers. Where a permittee provides such services through a third party provider, the permittee shall be responsible for reporting to the City the quantities of all materials collected by that provider on its behalf within the City.
    - b.** In providing recycling and compostable material collection services, permittees shall use containers that comply with the City's administrative rules.

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3. If the Director determines that a permittee is delivering as waste, loads containing significant amounts of recyclable materials to a transfer station, reload, or landfill, the Director shall work with the permittee to identify customers on the routes serviced in those loads for the purpose of providing customer outreach, assistance and education.
  4. Permittees may charge a person who source separates recyclable material - and makes it available for reuse or recycling - less, but not more, for collection and disposal of solid waste and collection of recyclable material than the collection service charges a person who does not source separate recyclable material. This subsection does not affect charges for the collection of food scraps.
- C. Any person who provides commercial collection of solid waste within the City without a current commercial collection permit from the City shall be subject to an assessment as provided by Section 17.102.090.
  - D. No person who is not authorized by the customer may remove recyclable material that is set out by the customer for recycling.
  - E. As provided in Section 29.30.140, owners of rental housing shall not collect solid waste generated by their tenants. Owners of multifamily complexes must arrange for collection by a permittee.

**17.102.220 Exceptions to Commercial Collection Permit Requirement.**

(Amended by Ordinance No. 189891, effective April 17, 2020.) A commercial collection permit is not required for the collection or transportation of commercial solid waste by any of the following:

- A. Persons transporting solid waste collected outside the City;
- B. A contractor employed to demolish, construct or remodel a building or structure, including, but not limited to, land clearing operations and construction wastes, when collecting or transporting wastes created in connection with such employment. However, any subcontracted service employed exclusively to collect and transport construction wastes, is required be a current commercial permittee and subject to all fees associated with waste hauling in the City of Portland;
- C. Landscapers, gardeners, farmers, tree service contractors, janitors or renderers when collecting or transporting wastes created in connection with such employment;
- D. Persons collecting or transporting only waste tires under a valid waste tire storage or carrier permit pursuant to OAR Chapter 340;
- E. Persons transporting only reusable beverage containers as defined in ORS 459A.725 (2007);



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- F.** Federal or state agencies that collect, store, transport and dispose of solid waste or those who contract with such agencies to perform the service, but only insofar as the service is performed by or for such agencies; and
- G.** Persons exclusively collecting recyclable or compostable materials from anyone other than residential customers. However, persons exclusively collecting commercial food scraps are not exempt.

**17.102.230 Applications for Commercial Collection Permits, Issuance, Denial.**

(Amended by Ordinance Nos. 184288 and 189293, effective January 11, 2019.)

- A.** Applications for commercial collection permits required by Chapter 17.102 shall be submitted to the Director. The Director shall prepare application forms and make them available upon request.
- B.** Each application for a commercial collection permit shall be accompanied by a nonrefundable fee of \$350.
- C.** An applicant for a commercial collection permit shall submit an application that sets forth the following information:
  - 1.** The name, address and telephone number of the business or proposed business;
  - 2.** Whether the applicant is organized as a sole proprietorship, partnership, limited partnership, family limited partnership, joint venture, association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization for doing business;
    - a.** If a partnership, the application must set forth the names, addresses and telephone numbers of each general or managing partner.
    - b.** If a corporation, or limited liability company, the application must set forth the corporate or company name and the names, addresses and telephone numbers of every person owning more than twenty percent of the business;
    - c.** If the business is organized in some other form, the application must set forth the name, address and telephone number of the designated contact person for the business.
  - 3.** A City of Portland business license number.
  - 4.** A signed statement that the permittee shall hold harmless the City of Portland, its officers and employees and shall indemnify the City of Portland, its officers and employees for any claims for damage to property

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or injury to persons which may be occasioned by any activity carried on under the terms of the commercial collection permit. Permittee shall furnish and maintain such public liability, food products liability, and property damage insurance as will protect permittee, property owners, and City from all claims for damage to property or bodily injury, including death, which may arise from operations under the permit or in connection therewith. Such insurance shall provide General Liability coverage insurance with a combined single limit of not less than \$1,000,000 per occurrence for bodily injury and property damage. Such insurance shall be without prejudice to coverage otherwise existing therein, and shall name as additional insureds the City of Portland, their officers and employees with respect to the permittee's activities carried on under the terms of the commercial collection permit, and shall further provide that the policy shall not terminate or be canceled prior to the completion of the contract without 30 days written notice to the Auditor.

5. Any other information that the Director may reasonably feel is necessary to accomplish the goals of this Chapter.
- D. Applications shall contain a written declaration, verified by the applicant, to the effect that the statements made therein are true.
  - E. Applications shall contain written demonstration of adequate staff, equipment and collection vehicles necessary to provide services as required under Subsection 17.102.210 B.2.
  - F. The Director may investigate and verify data reported in the permit application.
  - G. The permittee shall provide written notice to the Director within 10 days of any changes in the information provided in the application that occurs after the application is submitted.
  - H. The Director shall approve issuance of a commercial collection permit to the applicant after payment of the required fee, completion of the application form and following an evaluation of the information provided with the application. The Director may deny the issuance of a commercial collection permit to an applicant under the following conditions:
    1. The permit application contains falsehoods or facts that cannot be verified;
    2. The applicant has failed to pay fees, assessments and interest as provided in Chapter 17.102;
    3. The applicant has been found by a court of competent jurisdiction to have practiced fraud or deceit upon the City; or,

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4. The applicant has had their permit revoked during the two years prior to the application. For purposes of this section, "applicant" includes any individual who was a managing partner, or who owned or controlled more than 20 percent of the voting interests in the permittee whose permit was revoked.
- I. There shall be no right to renewal of a commercial collection permit; each application shall be considered as it would be for a new permit notwithstanding that the applicant has previously been issued a permit.
- J. Denial of an application may be appealed to the Code Hearings Officer as provided in accordance with procedures set forth in Chapter 22.10 of the City Code.

**17.102.240 Revocation or Suspension of Commercial Collection Permits.**

(Amended by Ordinance Nos. 184288, 189293 and 189891, effective April 17, 2020.)

- A. The Director may suspend or revoke a commercial collection permit under the following conditions:
  1. One or more of the permit conditions is being violated;
  2. The permittee is in violation of any of the provisions of this Chapter or the commercial administrative rules for solid waste and recycling.
  3. The permittee has failed to pay fees and assessments as provided in Chapter 17.102.
  4. The permittee has been found by a court of competent jurisdiction to have practiced fraud or deceit upon the City.
- B. The Director shall consider the following criteria in determining whether to revoke or suspend the commercial collection permit due to violations of the provisions of this Chapter or the commercial administrative rules for solid waste and recycling:
  1. The nature and extent of the permittee's involvement in the violation;
  2. Whether the permittee was seeking any benefits, economic or otherwise, through the violation;
  3. Whether the violation was isolated and temporary, or repeated and continuous;
  4. The magnitude and seriousness of the violation;
  5. The relative harms of continued collection service from the permittee and the potential for service disruption;

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6. Whether any criminal prosecutions have occurred in regard to the violations; and
  7. Other relevant, applicable evidence bearing on the nature and seriousness of the violation.
- C. Revocation or suspension of a permit may be appealed to the Code Hearings Officer as provided in accordance with procedures set forth in Chapter 22.10 of the City Code.

**17.102.250 Commercial Tonnage Fee.**

(Amended by Ordinance Nos. 183828, 185349, 187771 and 189037, effective July 1, 2018.) Commercial permittees shall, when invoiced quarterly by the Director, pay a tonnage fee to the City. Fees shall be assessed up to \$12.60 per ton of commercial solid waste collected within the City and deposited in disposal facilities authorized by Metro. Payments shall be made within 30 days of the date of the invoice. Interest shall accrue at 1 percent per month on balances which remain unpaid as of 30 days after the date of invoice, compounded daily from the due date.

**17.102.260 Registration Required for Independent Commercial Recyclers.**

(Amended by Ordinance Nos. 182671 and 189891, effective April 17, 2020.)

- A. No person shall provide collection service as an independent commercial recycler within the City without having registered with the Bureau of Planning and Sustainability, by providing BPS with a copy of their City of Portland Business License, with their Business License number, or with a copy of their current annual Business License exemption application or request submitted to the City's Revenue Bureau.
- B. All independent commercial recyclers who collect at least 25 tons of recyclables and/or yard debris in the City per year shall report quarterly to BPS on the amounts of recyclables collected in the City, on forms provided by BPS. If a person only collects food scraps from commercial sources, that person is required to be a commercial permittee.

**17.102.270 Businesses and Multifamily Complexes Required to Recycle.**

(Amended by Ordinance No. 189293, effective January 11, 2019.)

- A. Waste Prevention and Recycling Requirements.
  1. To achieve the City's waste prevention and recycling goals as set forth in Section 17.102.010, all businesses within the City shall comply with waste prevention, recycling and composting requirements as set forth in the administrative rules established by the Director. The following recycling requirements shall be in effect:

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- a. All businesses and multifamily complexes shall recycle 75 percent of the solid waste they produce;
  - b. All businesses shall recycle all of their paper and containers. For the purposes of this Section, containers means all recyclable metal, plastic and glass containers;
  - c. Covered food scraps generating businesses shall separate their food scraps for collection.
  - d. For all building projects within the City where the total job cost (including both demolition and construction phases) exceeds \$50,000, the general contractor shall ensure that 75 percent of the solid waste produced on the job site is recycled. In addition, certain materials generated on the job site shall be recycled in compliance with administrative rules established by the Director. For an affected building project where there is no general contractor, this requirement applies to the property owner is the person responsible for ensuring compliance with the recycling requirements.
2. Commercial customers that provide garbage collection service to business tenants as part of their rental/lease, shall provide recycling and, where appropriate, compostable collection systems that will enable the business tenants to recycle in compliance with administrative rules established by the Director.
  3. All multifamily complexes within the City shall establish recycling systems for their tenants' use, in compliance with administrative rules established by the Director.
- B.** The Director may monitor compliance with the requirements of Subsection A by reviewing available information including, but not limited to, information reported by the customers on their recycling activities, as well as onsite inspections.
- C.** Any business or any other person may sell or exchange at fair market value its own recyclable materials which are source separated for reuse or recycling. This Chapter and any administrative rules promulgated hereunder are not intended to limit the ability of any person to compete openly to provide recycling collection service to businesses within the City of Portland.

**17.102.280 Inspections to Determine Compliance with Business Recycling Requirements.**

- A.** The Director shall be responsible for the administration and enforcement of Section 17.102.270 relating to recycling goals for businesses and multifamily complexes. In furtherance of these responsibilities, the Director shall have the authority to inspect sites, buildings and other structures and equipment for compliance with

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Section 17.102.270. The Director shall establish a program for the periodic inspection of businesses and multifamily complexes for compliance with these requirements. The program shall identify the frequency, priority and types of inspections, subject to the availability of staff and budgeted funds.

- B.** Right of Entry. The Director may enter the premises of any business or multifamily complex, except private residences, between the hours of 9:00 am and 5:00 pm on any business day to conduct inspections for the purpose of determining compliance with recycling requirements established pursuant to Section 17.102.270. The Director shall first present proper credentials and request entry. If entry is refused, the Director may attempt to gain entry by obtaining an inspection warrant. Failure to respond to repeated requests may constitute refusal for entry. For the purposes of Section 17.102.280, the premises shall include the common areas of the business or multifamily complex used to store solid waste, recycling or compostable materials.
- C.** Warrants. Whenever an inspection is necessary to determine compliance with Section 17.102.270 and the Director has been refused entry, the Director may apply to any Circuit Court judge to obtain an inspection warrant for the inspection of the premises of a business or multifamily complex. The inspection warrant is a court order authorizing entry onto the premises of a business or multifamily complex for the purposes of conducting an inspection to determine compliance with the requirements of Section 17.102.270.
- D.** Grounds for Issuance of Inspection Warrants; Affidavit.
  - 1.** Affidavit. An inspection warrant shall be issued only upon cause, supported by affidavit, particularly describing the applicant's status in applying for the inspection warrant, the applicable code sections or regulation requiring or authorizing the inspection, the property to be inspected and the purpose for which the inspection is to be made including the basis upon which cause exists to inspect. In addition, the affidavit shall contain either a statement that entry has been sought and refused.
  - 2.** Cause. Cause shall be deemed to exist if the affidavit demonstrates that:
    - a.** The inspection is authorized pursuant to reasonable legislative or administrative standards for conducting a routine, periodic or area inspection are satisfied with respect to the premises of a business or multifamily complex;
    - b.** There is a reasonable basis for believing that a condition of nonconformity with Section 17.102.270 exists with respect to the designated property; or,

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- c.** An inspection is reasonably believed to be necessary in order to discover or verify the condition of the property for conformity with any of the requirements of Section 17.102.270 or any regulations promulgated pursuant thereto.

**E.** Procedure for Issuance of Inspection Warrant.

- 1.** Examination. Before issuing an inspection warrant, the judge may examine under oath the applicant and any other witness and shall be satisfied of the existence of grounds for granting such application.
- 2.** Issuance. If the judge is satisfied that cause for the inspection exists and that the other requirements for granting the application are satisfied, the judge shall issue an inspection warrant, particularly describing the person or persons authorized to execute the inspection warrant, the property to be entered and the purpose of the inspection. The inspection warrant shall contain a direction that it be executed on any business day between the hours of 9:00 a.m. and 5:00 p.m., 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 an inspection warrant, the judge may authorize any peace officer, as defined in Oregon Revised Statutes, to enter the described property to assist the person authorized to execute the inspection warrant in any way necessary to complete the inspection.

**F.** Execution of Inspection Warrants

- 1.** In executing an inspection warrant, the person authorized to execute the warrant shall, before entry into any occupied premises of a business or multifamily complex, make a reasonable effort to present the person's credentials, authority and purpose to an occupant or person in possession of the premises of the business or the multifamily complex designated in the inspection warrant and show the occupant or person in possession of the property the warrant or a copy thereof upon request. The person authorized to execute the warrant shall leave a copy of the inspection warrant at the premises.
- 2.** Return. The inspection warrant must be executed within 10 working days of its issue. The return of warrant must be submitted 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 inspection warrant shall be void unless it has been timely executed.

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**17.102.290 Storing Solid Waste, Recycling or Compostable Containers in the Right of Way Prohibited.**

(Amended by Ordinance Nos. 182671, 184288 and 189293, effective January 11, 2019.)

- A.** No person may store, or cause to be stored, containers of solid waste, recycling or compostables in public right-of-way without a permit from the City Engineer, the City Traffic Engineer, or the Bureau of Planning and Sustainability. For the purposes of this Section, storage means leaving containers in the right of way for more than 2 hours either before or after collection during normal business hours. If collection occurs after normal business hours, containers may be placed in the right of way at the close of business but must be removed from the right of way by the start of the following business day or within 24 hours of set out, whichever occurs first.
- B.** The Director may provide exemptions from Subsection A. for extreme economic hardship. Criteria for eligibility shall be based upon such factors as financial hardship for the property or business owner, conditions related to the property and resources necessary to provide adequate on-site, interior storage space for garbage and recycling containers. Exempted property shall be subject to the requirements of this Section following the termination of the hardship exemption. Exemptions shall be for no more than two years. Exemptions may be renewed upon reapplication by the property owner or business owner, after a re-evaluation of eligibility by the Director. Exemptions shall be personal to the property or business owner, and shall not be assignable, transferable or otherwise be conveyable. Exempted property shall be subject to the requirements of Subsection A. following expiration of any hardship exemption granted by the Director.
- C.** The Director shall develop administrative rules and procedures for determining extreme economic hardships under Subsection B., using the process under Section 17.102.030. The Director shall also adopt standards for space requirements for storage of containers of solid waste, recycling or compostables in new construction and when major alterations are made to existing buildings.
- D.** The Bureau of Planning and Sustainability may charge fees to business and property owners who apply for an extreme economic hardship exemption to recover costs of administering the exemption program. All fees are stated in the Fee Schedule adopted by City Council. Fees will be updated on an as needed basis. The approved Fee Schedule is available through the Bureau of Planning and Sustainability.
- E.** Denial of a request for exemption for extreme economic hardship may be appealed to the Code Hearings Officer in accordance with procedures set for in Chapter 22.10.



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**17.102.295 Separation of Recyclables, Compost and Solid Waste.**

(Added by Ordinance No. 185452, effective July 21, 2012.) It shall be a violation of Chapter 17.102 for any customer to:

- A. Place in a recycling cart, recycling container or recycling bin any plastic bag, diapers, pet waste, Styrofoam, wood, food, yard debris, or any Solid Waste; or,
- B. Place in a compost cart or compost container any plastic bag, diapers, pet waste, Styrofoam, or any Solid Waste.

**17.102.300 Definitions for Ban of Polystyrene Foam Food Containers (PSF).**

(Repealed by Ordinance No. 189271, effective January 4, 2019.)

**17.102.310 Prohibition on Certain PSF Uses.**

(Repealed by Ordinance No. 189271, effective January 4, 2019.)

**17.102.320 Exemptions for PSF Use.**

(Repealed by Ordinance No. 189271, effective January 4, 2019.)

**17.102.330 Enforcement and Notice of Violations for PSF Ban.**

(Repealed by Ordinance No. 189271, effective January 4, 2019.)

**17.102.340 Fines for PSF Ban.**

(Repealed by Ordinance No. 189271, effective January 4, 2019.)



**CHAPTER 17.105 - MOTOR VEHICLE FUEL  
TAX**

(Chapter added by Resolution 37185 (approved at  
May 17, 2016 election); effective May 17, 2016.)

**Sections:**

- 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.

**17.105.010 Tax Imposed.**

(Amended by Ordinance No. 188086, effective December 16, 2016.) A Motor Vehicle Fuel Tax is hereby imposed on every Dealer, Seller, or User. The tax imposed shall be paid monthly to the City. The Tax Administrator is authorized to exercise all supervisory and administrative powers with regard to the enforcement, collection and administration of the Motor Vehicle Fuel Tax, including all powers specified in ORS 319.010 to 319.430, and ORS 310.510 to 310.990.

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**17.105.015 Temporary Tax of 4 Years.**

(Amended by Resolution 37480 (approved at May 19, 2020 election); effective May 19, 2020.) This Chapter will be in full force and effect upon enactment. The Motor Vehicle Fuel Tax established in Section 17.105.045 shall be imposed beginning on the tax implementation date established by the Tax Administrator and shall sunset 4 years after the tax implementation date. The tax implementation date shall not be earlier than January 1, 2021. The Tax Administrator is authorized to collect amounts receivable under this Chapter for taxes and penalties accrued prior to the termination of the Motor Vehicle Fuel Tax.

**17.105.020 Use of Tax Revenues.**

- A.** For the purpose of this Section, Motor Vehicles Fuel Tax net revenues means the revenue from the tax and penalties imposed by this Chapter remaining after interest, collection, administrative, other costs, refunds, and credits are deducted from Motor Vehicle Fuel Tax revenues.
- B.** The City shall use Motor Vehicles Fuel Tax net revenues only for construction, reconstruction, improvement, repair, maintenance, operation and use of public Highways, roads and streets as described in the Oregon Constitution, Article IX, Section 3a.
- C.** The type of projects to be completed will be those approved and undertaken out of the Street Repair and Traffic Safety Program, and will include but not be limited to projects in the following categories:
  - 1.** Street Repair
  - 2.** Safe Routes to Schools
  - 3.** Sidewalk Completion
  - 4.** High Crash Corridor Safety Improvements
  - 5.** Reducing Bicycle/Car conflicts
  - 6.** Intersection Safety Improvements

**17.105.025 Definitions.**

(Amended by Ordinance No. 188086, effective December 16, 2016.) As used in this Chapter, unless the context requires otherwise, the following words and phrases shall mean:

- A.** City means the City of Portland.
- B.** Dealer means any Person who:

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1. Imports or causes to be imported Motor Vehicle Fuel or Use Fuel for sale, use or Distribution in the city, but Dealer does not include any Person who imports into the city Motor Vehicle Fuel or Use Fuel in quantities of 500 gallons or less purchased from a supplier who is licensed as a Dealer hereunder if that Dealer assumes liability for the payment of the applicable Motor Vehicle Fuel Tax to the City and Dealer does not include terminal storage facilities; or
  2. Produces, refines, manufactures or compounds Motor Vehicle Fuel or Use Fuel in the city for use, Distribution or sale in the city; or
  3. Acquires in the city for sale, use or Distribution in the city Motor Vehicle Fuel or Use Fuel with respect to which there has been no Motor Vehicle Fuel Tax previously incurred.
- C. Distribution. In addition to its ordinary meaning, the delivery of Motor Vehicle Fuel by a Dealer or Seller to any Service Station or into any tank, storage facility or series of tanks or storage facilities connected by pipelines. Use Fuel is withdrawn directly for sale or for delivery into the fuel tanks of Motor Vehicles whether or not the Service Station, tank or storage facility is owned, operated or controlled by the Dealer or Seller.
- D. Highway means every way, thoroughfare and place of whatever nature, open for use of the public for the purpose of vehicular travel.
- E. Motor Vehicle means all vehicles, engines or machines, movable or immovable, operated or propelled by the use of Motor Vehicle Fuel.
- F. Motor Vehicle Fuel includes gasoline, mogas, methanol and any other flammable or combustible gas or liquid, by whatever name such gasoline, diesel, mogas, methanol, gas or liquid is known or sold, usable as fuel for the operation of Motor Vehicles, except gas, mogas, methanol or liquid, the chief use of which, as determined by the Tax Administrator, is for purposes other than the propulsion of Motor Vehicles upon the Highways.
- G. Motor Vehicle Fuel Tax means the tax imposed on Motor Vehicle Fuel and Use Fuel in this Chapter.
- H. Person means any natural Person, association, firm, partnership, corporation, joint venture or other business entity.
- I. Seller means
  1. A person that sells Motor Vehicle Fuel or Use Fuel to a user of vehicles; or

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- 2. If the Motor Vehicle Fuel or Use Fuel is dispensed at a non-retail facility, the person that owns the users accounts and bills the users for Motor Vehicle Fuel purchased at a non-retail facility.
- J. Service Station means any place operated for the purpose of retailing and delivering Motor Vehicle Fuel or Use Fuel into the fuel tanks of Motor Vehicles.
- K. Street Repair and Traffic Safety Program means the City of Portland program in the Transportation Operating Fund where Motor Vehicle Fuel Tax net revenue pursuant to this chapter is deposited and street repair and traffic safety expenditures are recorded.
- L. Terminal Storage Facility means any fuel storage facility that has marine or pipeline access.
- M. Tax Administrator means the City Council, the City Council's designees, or any Person or entity with whom the City Council contracts to implement the Motor Vehicle Fuel Tax program or a portion thereof.
- N. Use Fuel means any combustible gas or material of a kind used for the generation of power to propel a Motor Vehicle on the Highways except Motor Vehicle Fuel as defined in Subsection 17.105.025 F. above.
- O. User means the Person required to obtain a User's License as required in ORS 319.550.
- P. User's License means the license required in ORS 319.550.
- Q. Weight Receipt means a receipt issued by the Oregon Department of Transportation, stating the combined weight of each self-propelled or motor-driven vehicle.

**17.105.030 License Requirements.**

(Amended by Ordinance No. 188086, effective December 16, 2016.) No Dealer, Seller or User shall sell, use, or distribute any Motor Vehicle Fuel or Use Fuel until they have secured a Dealer's, Seller's, or User's license as required herein.

**17.105.035 License Applications and Issuance.**

(Amended by Ordinance No. 188086, effective December 16, 2016.)

- A. Every Person, who is a Dealer or Seller of Motor Vehicle Fuel in the City of Portland, shall make application to the Tax Administrator for a license authorizing such Person to engage in business as a Dealer or Seller in the City of Portland. Every Person who is required to have the User's License pursuant to ORS 319.550 shall make application to the Tax Administrator for a license authorizing such Person to use fuel in the City of Portland.

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- B.** Applications for the license shall be made on forms prescribed by the Tax Administrator.
- C.** Applications shall include, among other items as may be required by the Tax Administrator:
  - 1.** The business name under which the applicant transacts business.
  - 2.** The address of applicant's principal place of business and location of distributing stations in and within three miles of the city.
  - 3.** The name and address of the managing agent, the names and addresses of the several Persons constituting the firm or partnership or, if a corporation, the name under which the corporation is authorized to transact business and the names and addresses of its principal officers and registered agent, as well as primary transport carrier.
- D.** If an application for a Dealer's license, Seller's license or User's License is complete and accepted for filing, the Tax Administrator shall issue to the Dealer, Seller or User a license in such form as the Tax Administrator may prescribe to transact business in the city. A license issued hereunder is not assignable, and is valid only for the Dealer, Seller or User in whose name it is issued.
- E.** The Tax Administrator shall retain all completed applications together with a record of all licensed Dealers, Sellers and Users.

**17.105.040 Failure to Secure License.**

(Amended by Ordinance No. 188086, effective December 16, 2016.)

- A.** If a Dealer, Seller or User sells, distributes, or uses any Motor Vehicle Fuel or Use Fuel without first filing the application and obtaining the license required by Section 17.105.035, the Motor Vehicle Fuel Tax on all Motor Vehicle Fuel or Use Fuel sold, distributed or used by that Dealer, Seller or User shall be immediately due and payable.
- B.** The Tax Administrator shall determine, from as many available sources as the Tax Administrator determines reasonable, the amount of tax due, shall assess the Dealer, Seller or User for the tax due together with a penalty of 100 percent of the tax. In any suit or proceeding to collect the tax or penalty or both, the assessment shall be prima facie evidence that the Dealer, Seller or User therein named is indebted to the City in the amount of the tax and penalty stated.
- C.** Any tax or penalty assessed pursuant to this Section may be collected in the manner prescribed in Section 17.105.095 with reference to delinquency in payment of the fee or by an action at law.

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- D.** In the event any suit or action is instituted to enforce this Section, if the City is the prevailing party, the City shall be entitled to recover from the Person sued reasonable attorney's fees at trial or upon appeal of such suit or action, in addition to all other sums provided by law.

**17.105.045 Amount and Payment of Tax.**

(Amended by Ordinance No. 188086, effective December 16, 2016.) In addition to any fees or taxes otherwise provided for by law, every Dealer, Seller or User engaging in the city in the sale, use or Distribution of Motor Vehicle Fuel or Use Fuel shall:

- A.** Not later than the 25th day of each calendar month, submit a report to the Tax Administrator on forms prescribed by the Tax Administrator of all Motor Vehicle Fuel sold, used or distributed by them in the city as well as all such fuel sold, used or distributed in the city by a purchaser thereof upon which sale, use or Distribution the Dealer or Seller has assumed liability for the applicable Motor Vehicle Fuel Tax during the preceding calendar month.
- B.** Except as provided in ORS 319.690 and ORS 319.692, not later than the 20th day of each calendar month, submit a report to the Tax Administrator on forms prescribed by the Tax Administrator of all Use Fuel sold, used or distributed by them in the city as well as all such fuel sold, used or distributed in the city by a purchaser thereof upon which sale, use or Distribution the Dealer or Seller has assumed liability for the applicable Motor Vehicle Fuel Tax during the preceding calendar month.
- C.** Pay a Motor Vehicle Fuel Tax computed on the basis of 10 cents per gallon of such Motor Vehicle Fuel or Use Fuel so sold, used or distributed as shown by such statement in the manner and within the time provided in this Code or Administrative Rules promulgated in accordance with this Chapter.

**17.105.050 Revocation of License.**

(Amended by Ordinance No. 188086, effective December 16, 2016.)

- A.** The Tax Administrator may revoke the license of any Dealer, Seller, or User who fails to comply with any provision of this Chapter. The Tax Administrator shall mail, by certified mail addressed to the Dealer, Seller or User at their last known address appearing in the files of the Tax Administrator, a notice of intent to revoke. The notice of revocation shall provide the reason(s) for revocation which include, but are not limited to, failure to register for a license, failure to remit the tax, failure to file required reports or any information as required by the Tax Administrator, or failure to pay any penalty or interest assessments.
- B.** A Dealer, Seller or User has the right to protest a notice of revocation to the Tax Administrator in writing within 14 days. The Tax Administrator must forward the appeal, including the reasons for the determination, to the Business License Appeals Board within 30 days. The Tax Administrator may prescribe by



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Administrative Rule procedures for the protest and appeal of license revocations. The license revocation shall become effective when the local protest and appeal process provided in Administrative Rules is completed and a final decision has been issued.

**17.105.055 Cancellation of License.**

(Amended by Ordinance No. 188086, effective December 16, 2016.)

- A. The Tax Administrator may, upon written request of a Dealer, Seller or User, cancel a license issued to that Dealer, Seller or User. The Tax Administrator shall, upon approving the Dealer's, Seller's or User's request for cancellation, set a date not later than 30 days after receipt of the written request, after which the license shall no longer be effective.
- B. The Tax Administrator may, after 30 days' notice has been mailed to the last known address of the Dealer, Seller or User, cancel the license of Dealer, Seller or User upon finding that the Dealer, Seller or User is no longer engaged in the business of a Dealer, Seller or User.

**17.105.060 Remedies Cumulative.**

Except as otherwise provided in Sections 17.105.095 and 17.105.105, the remedies provided in Sections 17.105.040, 17.105.050, and 17.105.055 are cumulative. No action taken pursuant to those sections shall relieve any Person from the penalty provisions of this Code.

**17.105.065 Billing Purchasers.**

(Amended by Ordinance No. 188086, effective December 16, 2016.) Dealers in Motor Vehicle Fuel or Use Fuel shall render bills to all purchasers of Motor Vehicle Fuel or Use Fuel. The bills shall separately state and describe the different products sold or shipped thereunder and shall be serially numbered except where other sales invoice controls acceptable to the Tax Administrator are maintained.

**17.105.070 Failure to Provide Invoice or Delivery Tag.**

(Amended by Ordinance No. 188086, effective December 16, 2016.) No Person shall receive and accept Motor Vehicle Fuel or Use Fuel from any Dealer, or pay for the same, or sell or offer the Motor Vehicle Fuel or Use Fuel for sale, unless the Motor Vehicle Fuel or Use Fuel is accompanied by an invoice or delivery tag showing the date upon which Motor Vehicle Fuel or Use Fuel was delivered, purchased or sold and the name of the Dealer in Motor Vehicle Fuel or Use Fuel.

**17.105.075 Transporting Motor Vehicle Fuel or Use Fuel in Bulk.**

(Amended by Ordinance No. 188086, effective December 16, 2016.) Every Person operating any conveyance for the purpose of hauling, transporting or delivering Motor Vehicle Fuel or Use Fuel in bulk shall, before entering upon the public Highways of the city with such conveyance, have and possess during the entire time of the hauling or transporting of such Motor Vehicle Fuel or Use Fuel, an invoice, bill of sale or other written

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statement showing the number of gallons, the true name and address of the seller or consignor, and the true name and address of the buyer or consignee, if any, of the same. The Person hauling such Motor Vehicle Fuel or Use Fuel shall, at the request of any officer authorized by law to inquire into or investigate such matters, produce and offer for inspection the invoice, bill of sale or other statement.

**17.105.080 Exemption of Weight Receipt Holders.**

(Amended by Ordinance No. 188086, effective December 16, 2016.) Use Fuel sold to holders of a Weight Receipt shall not be charged the Use Fuel Tax.

**17.105.085 Exemption of Export Fuel.**

(Amended by Ordinance No. 188086, effective December 16, 2016.)

- A. The Motor Vehicle Fuel Tax imposed by Section 17.105.010 shall not be imposed on Motor Vehicle Fuel or Use Fuel:
  - 1. Exported from the city by a Dealer; or
  - 2. Sold by a Dealer for export by the purchaser to an area or areas outside the city in containers other than the fuel tank of a Motor Vehicle, but every Dealer shall be required to report such exports and sales to the city in such detail as may be required
  
- B. In support of any exemption from Motor Vehicle Fuel Taxes claimed under this Section other than in the case of stock transfers or deliveries in the Dealer's own equipment, every Dealer must execute and file with the Tax Administrator an export certificate in such form as shall be prescribed, prepared and furnished by the Tax Administrator, containing a statement, made by some Person having actual knowledge of the fact of such exportation, that the Motor Vehicle Fuel or Use Fuel has been exported from the city, and giving such details with reference to such shipment as the Tax Administrator may require. The Tax Administrator may demand of any Dealer such additional data as is deemed necessary in support of any such certificate, and failure to supply such data will constitute a waiver of all right to exemption claimed by virtue of such certificate. The Tax Administrator may, in a case where the Tax Administrator believes no useful purpose would be served by filing of an export certificate, waive the filing of the certificate. Any Motor Vehicle Fuel or Use Fuel carried from the city in the fuel tank of a Motor Vehicle shall not be considered as exported from the city.
  
- C. No Person shall, through false statement, trick or device, or otherwise, obtain Motor Vehicle Fuel for export as to which the Motor Vehicle Fuel Tax has not been paid and fail to export the same, or any portion thereof, or cause the Motor Vehicle Fuel or any portion thereof not to be exported, or divert or cause to be diverted the Motor Vehicle Fuel or any portion thereof to be used, distributed or sold in the city and fail to notify the Tax Administrator and the Dealer from whom the Motor Vehicle Fuel was originally purchased of their act.

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- D.** No Dealer, Seller, User, or other Person shall conspire with any Person to withhold from export, or divert from export or to return Motor Vehicle Fuel or Use Fuel to the city for sale or use so as to avoid any of the fees imposed herein.
- E.** In support of any exemption from taxes on account of sales of Motor Vehicle Fuel or Use Fuel for export by the purchaser, the Dealer shall retain in their files for at least 3 years, an export certificate executed by the purchaser in such form and containing such information as is prescribed by the Tax Administrator. This certificate shall be prima facie evidence of the exportation of the Motor Vehicle Fuel or Use Fuel to which it applies only if accepted by the Dealer in good faith.

**17.105.090 Exemption of Motor Vehicle Fuel or Use Fuel Sold or Distributed to Dealers.**  
(Amended by Ordinance No. 188086, effective December 16, 2016.)

- A.** Notwithstanding Section 17.105.095 of this Chapter, if the first sale, use or distribution of Motor Vehicle Fuel is from one licensed Dealer to another licensed Dealer, the selling or distributing Dealer is not required to pay the Motor Vehicle Fuel Tax imposed in this Chapter. When the purchasing or receiving Dealer first sells, uses or distributes the fuel, that Dealer shall pay the Motor Vehicle Fuel Tax regardless of whether the sale, use or distribution is to another licensed Dealer.
- B.** The Seller of Use Fuel shall collect the Motor Vehicle Fuel Tax at the time the fuel is dispensed or placed for a price into a receptacle on a motor vehicle, from which receptacle the fuel is supplied to propel the vehicle, unless one of the following situations applies:
  - 1.** The vehicle into which the Seller delivers or places the fuel bears a valid permit or users emblem issued by the Department of Transportation in accordance with Section 17.105.080.
  - 2.** The fuel is dispensed at a nonretail facility, in which case the Seller shall collect any tax owed at the same time the seller collects the purchase price from the person to whom the fuel was dispensed at the nonretail facility. A Seller is not required to collect the tax under this paragraph from a person who certifies to the Seller that the use of the fuel is exempt from the tax imposed under this Chapter.
  - 3.** A cardlock card is used for purchase of the fuel at an attended portion of a retail facility equipped with a cardlock card reader, in which case the cardlock card issuer licensed in this state is responsible for collecting and remitting the tax unless the person making the purchase certifies to the seller that the use of the fuel is exempt from the tax imposed under this Chapter.
- C.** The holder of a User's License shall collect the Motor Vehicle Fuels Tax as provided in ORS 319.510 through ORS 319.880.

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- D.** A Dealer who renders monthly statements to the Tax Administrator as required by this Chapter shall show separately the number of gallons of Motor Vehicle Fuel sold or delivered to Dealers.
- E.** A Seller who renders monthly statements to the Tax Administrator as required by this Chapter shall show separately the number of gallons of Use Fuel sold or delivered.

**17.105.095 Payment of Tax and Delinquency.**

(Amended by Ordinance No. 188086, effective December 16, 2016.)

- A.** The Motor Vehicle Fuel Tax imposed by this Chapter shall be paid to the Tax Administrator pursuant to Section 17.105.045.
- B.** Except as provided in Subsections 17.105.095 D. and F., if payment of the tax on Motor Vehicle Fuel is not paid as required by Subsection 17.105.095 A., a penalty of 1 percent of such tax shall be assessed and be immediately due and payable.
- C.** Except as provided in Subsections 17.105.095 D. and F., if payment of the tax on Use Fuel is not paid as required by Subsection 17.105.095 A., a penalty of 10 percent of such tax shall be assessed and be immediately due and payable.
- D.** Except as provided in Subsection 17.105.095 F., if the payment of the tax and penalty in Subsection 17.105.095 B., if any, is not made on or before the 1st day of the next month following that month in which payment is due, a further penalty of 10 percent of the tax shall be assessed. Said penalty shall be in addition to the penalty provided for in Subsection 17.105.095 B. and shall be immediately due and payable.
- E.** If the Motor Vehicle Fuel Tax imposed by this Chapter is not paid as required by Subsection 17.105.095 A., interest shall be charged at the rate of .0329 percent per day until the tax, interest and penalties have been paid in full.
- F.** Penalties imposed by this Section shall not apply if a penalty has been assessed and paid pursuant to Section 17.105.040. The Tax Administrator may for good cause shown waive any penalties assessed under this Section.
- G.** If any Person fails to pay the Motor Vehicle Fuel Tax, interest, or any penalty provided for by this Section, the Tax Administrator shall commence and prosecute in any court of competent jurisdiction an action at law to collect the amounts due. Such action may be taken on the sole authority of the Tax Administrator.
- H.** In the event any suit or action is instituted to collect the Motor Vehicle Fuel Tax, interest, or any penalty provided for by this Section, if the City is the prevailing party, the City shall be entitled to recover from the Person sued reasonable attorney's fees at trial or upon appeal of such suit or action, in addition to all other sums provided by law.

**17.105.100 Monthly Statement of Dealer, Seller or User.**

(Amended by Ordinance No. 188086, effective December 16, 2016.) Every Dealer, Seller or User in Motor Vehicle Fuel or Use Fuel shall provide to the Tax Administrator on or before the date required in Section 17.105.045 on forms prescribed, prepared and furnished by the Tax Administrator, a statement of the number of gallons of Motor Vehicle Fuel or Use Fuel sold, distributed or used by the Dealer, Seller or User during the preceding calendar month. The statement shall be signed by the Dealer, Seller or User or the Dealer's, Seller's or User's agent.

**17.105.105 Failure to File Monthly Statement.**

(Amended by Ordinance No. 188086, effective December 16, 2016.) If a Dealer, Seller or User fails to file any statement required by Section, the Tax Administrator shall determine from as many available sources as the Tax Administrator determines reasonable the amount of Motor Vehicle Fuel or Use Fuel sold, distributed or used by such Dealer, Seller or User for the period unreported, and such determination shall in any proceeding be prima facie evidence of the amount of fuel sold, distributed or used. The Tax Administrator shall assess the Dealer, Seller or User for the Motor Vehicle Fuel Tax upon the amount determined, adding a penalty of 10 percent of the tax for non-reporting. The penalty shall be cumulative to other penalties provided in this Code.

**17.105.106 Refunds.**

Refunds on the Motor Vehicle Fuel Tax will be made pursuant to any refund provisions of Chapter 319 of the Oregon Revised Statutes, including but not limited to ORS 319.280, 319.320, and 319.831. Claim forms for refunds may be obtained from the Tax Administrator's office.

**17.105.110 Examinations and Investigations.**

(Amended by Ordinance No. 188086, effective December 16, 2016.) The Tax Administrator, or duly authorized agents, may make any examination of accounts, records, stocks, facilities and equipment of Dealers, Sellers, Service Stations, Users and other Persons engaged in storing, selling or distributing Motor Vehicle Fuel or other petroleum product or products within this city, and such other investigations as it considers necessary in carrying out the provisions of this Chapter. If the examinations or investigations disclose that any reports of Dealers, Sellers, Users, or other Persons filed with the Tax Administrator pursuant to the requirements herein, have shown incorrectly the amount of gallonage of Motor Vehicle Fuel or Use Fuel distributed or the tax accruing thereon, the Tax Administrator may make such changes in subsequent reports and payments of such Dealers, Sellers, Users, or other Persons, or may make such refund or credit, as may be necessary to correct the errors disclosed by its examinations or investigation. The Dealer, Seller or Users shall reimburse the City for the reasonable costs of the examination or investigation if the action discloses that the Dealer, Seller or User paid 95 percent or less of the tax owing for the period of the examination or investigation. In the event that such an examination or investigation results in an assessment by and an additional payment due to the City, such additional payment shall be subject to interest at the rate of .0329 percent per day from the date the original tax payment was due.

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**17.105.115 Limitation on Credit for or Refund of Overpayment and on Assessment of Additional Tax.**

(Amended by Ordinance No. 188086, effective December 16, 2016.)

- A. Except as otherwise provided in this Code, any credit for erroneous overpayment of tax made by a Dealer, Seller or User taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a Dealer, Seller or User must be taken or filed within 3 years after the date on which the overpayment was made to the City.
- B. Except in the case of a fraudulent report or failure to make a report, every notice of additional tax proposed to be assessed under this Code shall be served on Dealers, Sellers and Users within 3 years from the date upon which such additional taxes become due or were paid, whichever is later, and shall be subject to penalty as provided in Section 17.105.095.
- C. In the case of the filing of a false or fraudulent report, a failure to file a required report, or willful refusal to remit the tax, an assessment may be made, or a proceeding for the collection of such assessment may be commenced, at any time.

**17.105.120 Examining Books and Accounts of Carriers of Motor Vehicle Fuel or Use Fuel.**

(Amended by Ordinance No. 188086, effective December 16, 2016.) The Tax Administrator or duly authorized agents of the Tax Administrator may at any time during normal business hours examine the books and accounts of any carrier of Motor Vehicle Fuel or Use Fuel operating within the city for the purpose of enforcing the provisions of this Code.

**17.105.125 Records to be Kept by Dealers, Sellers and Users.**

(Amended by Ordinance No. 188086, effective December 16, 2016.) Every Dealer, Seller and User of Motor Vehicle Fuel or Use Fuel shall keep a record in such form as may be prescribed or approved by the Tax Administrator of all purchases, receipts, sales and Distribution of Motor Vehicle Fuel or Use Fuel. The records shall include copies of all invoices or bills of all such sales and shall at all times during the business hours of the day be subject to inspection by the Tax Administrator or authorized officers or agents of the Tax Administrator.

**17.105.130 Records to be Kept 3 Years.**

(Amended by Ordinance No. 188086, effective December 16, 2016.) Every Dealer, Seller and User shall maintain and keep, for a period of 3 years and 6 months, all records of Motor Vehicle Fuel or Use Fuel used, sold and distributed within the city by such Dealer, Seller or User, together with stock records, invoices, bills of lading and other pertinent papers as may be required by the Tax Administrator. In the event such records are not kept within the state of Oregon, the Dealer, Seller or User shall reimburse the Tax Administrator for all travel, lodging, and related expenses incurred by the Tax Administrator in examining such records. The amount of such expenses shall be assessed in addition to the tax imposed by Section 17.105.010.

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**17.105.135 Citizen Oversight Committee; Annual Audits.**

- A. The City will appoint a citizen oversight committee that is representative of the city's diverse communities to ensure the Motor Vehicle Fuel Tax is being implemented as required, to monitor revenues and review expenditures made, and to report their findings in a public record to the City Council on an annual basis. The committee will be comprised of a minimum of 8 and a maximum of 20 members.
- B. The use of Motor Vehicle Fuel Tax net revenues will be audited annually.

**17.105.140 Chapter Effective If Passed.**

(Amended by Resolution 37480 (approved at May 19, 2020 election); effective May 19, 2020.) Chapter 17.105 of this Code does not take effect unless Measure 26-209 is approved by the people according to elections results for the election held in the City on May 19, 2020.

**17.105.145 Administrative Rules.**

The Tax Administrator has authority to promulgate administrative rules in accordance with this Chapter which shall have the same force and effect as any other provision of Chapter 17.105.





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submitting a written request for exemption, together with supporting evidence, when submitting a demolition permit application.

- F.** Determination of an Exemption. The Director will make the final determination of exemption based on evidence submitted by the applicant as well as an inspection to confirm conditions and unsuitability. The demolition permit will not be issued until the final determination is made on the exemption request. Should the applicant disagree with the final determination the determination may be appealed by the applicant under Subsection 17.106.060 B.

**17.106.050 Enforcement and Penalties.**

(Amended by Ordinance Nos. 189413 and 189761, effective January 20, 2020. Corrected under authority of PCC Section 1.01.035 on May 19, 2020.)

- A.** The Director may impose penalties on any responsible party who fails to comply with the requirements of this Chapter or who has misrepresented any material fact in a document or evidence required to be prepared or submitted by this Chapter.
1. A first violation of this Chapter may be subject to a penalty of up to \$500.
  2. A second violation of this Chapter by the same person may be subject to a penalty of up to \$1,000.
  3. Third and subsequent violations of this Chapter by the same person may be subject to a penalty of up to \$1,500.
  4. Penalties may be imposed on a per month, per day, per incident, or such other basis as the Director may determine as appropriate based upon criteria in Subsection E below.
  5. Any person receiving a notice of violation shall, within 10 days of issuance of the notice, either pay to the City the stated amount of the penalty or request an appeal as provided in Section 17.106.060.
- B.** Heavy Machinery.
1. Improper use of heavy machinery in violation of this Chapter may be subject to a penalty of up to \$10,000.
  2. Any person receiving a notice of violation shall, within 10 days of issuance of the notice, either pay to the City the stated amount of the penalty or request an appeal as provided in Section 17.106.060.
- C.** Additional Enforcement Actions for Certified Deconstruction Contractors. The Director may impose the following additional remedies for Certified Deconstruction Contractors.

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1. A first violation of this Chapter may result in removal from the list of approved Certified Deconstruction Contractors for up to 6 months.
  2. A second violation of this Chapter may result in removal from the list of approved Certified Deconstruction Contractors for up to 12 months.
  3. Third and subsequent violations may result in revocation of certification whereby a contractor may not apply for recertification for a period of 18 months.
  4. Temporary removal from the list of approved Certified Deconstruction Contractors will expire immediately following the term of removal and will not require further action from the Director.
- D.** Stop Work Orders. When necessary to obtain compliance with this Chapter, 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 and posted at a conspicuous location at the site. When an emergency condition exists, a stop work order may be issued orally, followed by a written stop work order. It is unlawful for any person to remove, obscure, mutilate or otherwise damage a stop work order. 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 Subsection 17.106.060 B.
- E.** The Director will consider the following criteria in determining the amount of penalties or remedies to impose under this Section:
1. The nature and extent of the person's involvement in the violation;
  2. Whether the person was seeking any benefits, economic or otherwise, through the violation;
  3. Whether other similar prior violations have occurred with that person;
  4. Whether the violation was isolated and temporary, or repeated and continuous;
  5. The length of time from any prior violations;
  6. The magnitude and seriousness of the violation;
  7. The costs of investigation and remedying the violation;
  8. Other relevant, applicable evidence bearing on the nature and seriousness of the violation.