Exhibit E

Title 17 Public Improvements

Chapter 17.04 Definitions

17.04.010 Definitions.

The following definitions apply to the entirety of Title 17. Additional Section-specific definitions may be found in other sections.

A. Alley has the definition provided by Portland City Code Section 33.910.030.

B. Best management practices (BMPs) means operational, maintenance and other practices that prevent or reduce environmental, health or safety impacts. BMPs include structural controls, modification of facility processes, and operating and housekeeping pollution control practices.

C. Brownfield means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

D. Building permit means a permit required under Portland City Code Chapter 24 or state administrative rule to erect, construct, enlarge, alter, repair, move, improve, remove, convert, change occupancy group of, or demolish any building or structure, or to do any clearing or grading, or cause any of the same to be done.

E. Chief Engineer means the engineer with the authority, subject to the approval of the City Administrator, to act as the official agent of the bureau or department responsible for a local or public improvement or the lawfully designated subordinate of the City Engineer. For the Bureau of Transportation this is the City Engineer, for the Bureau of Environmental Services this is the Chief Engineer of the Bureau of Environmental Services, and for the Portland Water Bureau this is the Chief Engineer of the Portland Water Bureau.

F. City Engineer means the duly appointed City Engineer, or appropriate designees.

G. Department of Environmental Quality (DEQ) means the Oregon Department of Environmental Quality.

H. Development means all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to exterior display, storage or activities that create the need for additional usage or construction of public infrastructure.

I. Director of the Bureau of Environmental Services means the duly appointed Director of the Bureau of Environmental Services, or the lawfully designated subordinate of the Director of Environmental Services acting under the orders of the Director of the Bureau of Environmental Services.

J. Director of the Bureau of Transportation means the duly appointed Director of the Bureau of Transportation, or the lawfully designated subordinate of the Director of the Bureau of Transportation acting under the orders of the Director of the Bureau of Transportation.

K. Dwelling unit means a building or a portion of a building consisting of one or more rooms that may include sleeping, cooking, and plumbing facilities and are arranged and designed as living quarters for one family or household.

L. Engineer's estimate means the calculation of anticipated total dollar cost of the construction of a public or local improvement project as determined by the City Administrator. The estimate is used in determining the face value of performance bonds where applicable.

M. EPA means the United States Environmental Protection Agency.

N. Frontage means the length of public right-of-way adjacent to a property, measured in feet.

O. Lateral means the underground pipe that connects the plumbing system of a building or buildings to a public or private sewer.

P. Local improvement means an improvement of, on, over or under property that is or will be owned or controlled by the public, by construction, reconstruction, remodeling, repair or replacement, when the improvement is determined by the Council to confer a special benefit on certain properties, and such properties are to be charged through assessment all or a portion of the improvement cost.

Q. Local street means any street classified as a Local Traffic Service Street in the City's adopted Transportation System Plan.

R. Oregon Administrative Rules (OAR) means the State of Oregon Administrative Rules as amended.

S. Owner means an owner-of-record of real property according to the appropriate county's assessment and taxation records.

T. Person means any natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, and/or the manager, lessee, agent, servant, officer, or employee of any of them.

U. Projected future curbline means:

1. The location of the curbline as designated on City plans for street construction;

2. To the edge of existing pavement; or

3. To the appropriate width of the designated street classification as described in TRN-1.09 Design Standards for Public Streets.

V. Public improvement means an improvement of, on, over or under property owned or controlled by the City, or property to be controlled by the City upon plat and easement recording for approved land divisions, by construction, reconstruction, remodeling, repair or replacement, when no property is intended to be charged through assessment any portion of the improvement cost.

W. Public sewer means the entire City sewage, sludge, and stormwater collection, conveyance, treatment, pollution reduction, reuse, and disposal systems, including all pipes, ditches, sumps, manholes, and other system components that:

1. Have been designed for the collection and transport of stormwater, wastewater, or sanitary sewage received from street inlets, sewer service laterals and common private sewer systems; and

2. Were

a. Constructed by the Bureau of Environmental Services; or

b. Accepted by the Bureau of Environmental Services under Section 17.32.055.

X. Public utility means a person currently possessing a franchise or privilege granted by the City to provide utility service, or is a City bureau charged with providing utility service, to the public to generate, transmit or provide any such service within Portland, including but not limited to electricity, telecommunications, natural gas, sewer, water, stormwater, cable or pipeline services.

Y. Public works project means any project performed or financed by a local, state, or federal government that results in the construction of a local improvement or a public improvement.

Z. Responsible Engineer as used in this title means the Engineer with the authority, subject to the approval of the City Administrator, to act as the official agent of the bureau or department responsible for a local or public improvement or the lawfully designated subordinate of the Responsible Engineer. For the Portland Bureau of Transportation this is the City Engineer; for the Bureau of Environmental Services this is the Chief Engineer of the Bureau of Environmental Services; and for the Portland Water Bureau this is the Chief Engineer of the Portland Water Bureau.

AA. Responsible Official means the Official with the authority, subject to the approval of the City Administrator, to act as the official agent of the bureau or department or the

lawfully appointed subordinate of the Responsible Official. For the Bureau of Transportation, this is the Director of the Bureau of Transportation as defined in this Section. For the Bureau of Environmental Services, this is the Director of the Bureau of Environmental Services as defined in this Section. For the Portland Water Bureau, this is the Director of the Portland Water Bureau as defined in this Section.

BB. Street means any street as defined in the City Charter, including all area between property lines, and area dedicated to street use.

CC. Tri-County Metropolitan Transportation District of Oregon (TriMet) is a public agency established under ORS 267.010 to 267.390 that operates mass transit that spans most of the Portland metropolitan area, and/or the manager, lessee, agent, servant, officer, or employee of the organization.

Chapter 17.06 Administration of Public Works Permitting

17.06.010 Purpose and Scope.

This Title establishes regulations affecting or relating to Public Works permit improvements.

17.06.015 Protection of the Public Interest.

No provision of this Title may be construed to create a right in any individual to a permit that, in the opinion of the City, would be inconsistent with the public interest.

17.06.020 Definitions.

For the purposes of this Chapter, the following definition applies:

A. Public Works permit is a permit issued in accordance with Section 17.24.030, Application for Permit, or issued in accordance with Chapter 17.32, Sewer Regulations.

17.06.030 Administrative Rules.

The City Administrator may adopt administrative rules as authorized by Charter.

17.06.040 Appeals Board.

A. Public Works Board of Appeals (PWBA).

> **1.** The Board consists of three members: Chief Engineers from the Bureaus of Environmental Services and Water, and the City Engineer or their designees. Two members will constitute a quorum.

2. The Board annually elects a Chairperson from among the three members of the Board. Meetings of the Board will be held at the call of the Chairperson, who will call meetings at the Public Works Permit Manager's request.

B. Representation from the Bureaus of Fire, Parks and Recreation Forestry Division or Portland Permitting & Development may be called upon by the Public Works Permit Manager at any time to provide staff support related to appeals to be acted upon by the PWBA.

17.06.050 Appeals.

A. Unless prohibited by Portland City Code and rules adopted by the City Administrator, any person whose application for a Public Works Permit is denied or any person who is required pursuant to, or as a written condition of, the grant of a Public Works Permit to incur an expense for the alteration, repair, or construction of a facility in the public right of way, including but not limited to pavement, sidewalk areas, stormwater facilities or utilities may appeal to the Public Works Board of Appeals (PWBA) by serving written notice upon the Public Works Permit Manager. The following actions are not subject to appeal:

1. Approval or denial of requests for design exceptions;

2. Previously established City standards and specifications;

3. Decisions related to the assessment of system development charges;

4. Matters subject to the authority of any other City appeal body;

5. Matters that may be appealed through City or state land use processes.

B. A permit decision, requirement or condition may only be appealed if it is in writing and only on the grounds that it is inconsistent with or contrary to City Code, rules, standards, policy, or is a misapplication or misinterpretation, thereof.

C. An appellant must serve written notice of appeal on the Public Works Permit Manager challenging an appealable permit decision, requirement, or condition. The notice of appeal must be in such form as specified by the Public Works Permit Manager, and must be accompanied by a fee, which will be set on an annual basis by City ordinance, and served within the time for appeal specified in Subsection F. of this Section.

D. Content of the appeal. The appeal must be submitted on forms provided by the Public Works Permit Manager. All information requested on the form must be submitted. The appeal request must include:

1. The public works permit number appealed;

2. The appellant's name, address, signature, phone number;

3. The grounds for the appeal including, at a minimum, the specific City Code provision, rule, standard, or policy with which the decision, requirement, or condition is claimed to be in conflict and a detailed explanation of the alleged conflict;

4. The relief requested; and

5. The required fee.

E. The PWBA may approve, approve with conditions or deny the requested relief. Any such decision made must be consistent with applicable City Code, rules, standards and policies. If the PWBA determines that the requested relief cannot be granted without a change to City policy, the PWBA may recommend such a change in writing to the City Administrator and may incorporate the City Administrator's response into its final decision. The PWBA will transmit to the appellant and the relevant bureaus a written decision on the appeal, including a statement of its basis.

F. Sequence of appeals. The purpose of the appeals procedures is to identify and resolve appealable issues as early as possible, and to ensure an appeal is fully resolved before an applicant moves to subsequent steps in the permit review process. The following sequencing requirements apply to appeals:

1. Appellant may file an appeal during any phase of the permit application and review process. However, an appeal must be submitted during the phase in which the decision is made. For example, a decision made during the 30 percent phase of plan review must be appealed prior to the start of the 60 percent phase.

2. The time required to file and process an appeal will not increase the amount of time allowed by the City for an applicant to file and process a public works permit application. The right to appeal will expire when the permit expires.

G. Decisions of the PWBA are final. They may be reviewed by the Circuit Court pursuant to ORS 34.010 to 34.102.

Chapter 17.08 Local Improvement District Procedure

17.08.010 Definitions and Scopes of Duties.

A. The r**esponsible bureau** for a local improvement is as follows:

1. The Portland Bureau of Transportation is the responsible bureau for street and other transportation improvements;

2. The Bureau of Environmental Services is the responsible bureau for sanitary sewer, stormwater management and other environmental improvements;

3. The Portland Water Bureau is the responsible bureau for water improvements; and

4. The City Administrator will designate the responsible bureau for a local improvement that is not addressed by this Section.

B. Local Improvement District Administrator means the person designated by the City Administrator to administer the City's local improvement district program.

C. Property means includes land irrespective of whether such land is assessed for property taxes. Property for purposes of a future local improvement district assessment does not include equipment that may be assessed by other jurisdictions for property tax purposes. Property for purposes of a local improvement district assessment includes all public real property held in fee simple title but excludes public rights-of-way under public jurisdiction.

D. The City Administrator is responsible for:

1. Preparing a preliminary engineer's estimate and preparing an analysis of proposed significant and material changes to the scope or cost of improvements after formation of a local improvement district prior to preparing plans and specifications;

2. Preparing plans and specifications;

3. Entering into a contract for improvement construction and/or engineering;

4. Handling completion of construction and acceptance of work;

5. Preparing a final engineer's estimate; and

6. Any other work related to engineering or construction.

E. The Local Improvement District Administrator is responsible for:

1. Preparing a petition for a local improvement district and determining the validity of a petition for a local improvement district as appropriate;

2. Recommending an assessment methodology for a local improvement district to City Council;

3. Analyzing financial feasibility of a local improvement district prior to formation;

4. Preparing and filing a resolution of intent for formation of a local improvement district;

5. Publishing and posting notices for the formation hearing of a local improvement district;

6. Preparing and filing a formation ordinance for a local improvement district;

7. Responding to remonstrances against formation of a local improvement district;

8. Presenting significant and material changes to scope or cost of improvements to City Council after formation of a local improvement district;

9. Recommending abandonment of a local improvement district;

10. Determining the total cost of the local improvement;

11. Publishing and posting notice of final assessment for a local improvement district;

12. Preparing and filing the final assessment ordinance for a local improvement district;

13. Responding to objections against final assessment of a local improvement district; and

14. Any other work related to processing or completing local improvement districts.

F. The revenue service and program of the City Administrator will be responsible for:

1. Mailing notices for the formation hearing of a local improvement district at the direction of the Local Improvement District Administrator;

2. Receiving written remonstrances against the formation of a local improvement district, and forwarding such remonstrances to the Local Improvement District Administrator for a response;

3. Maintaining records of preliminary estimates of assessments;

4. Mailing notices for the final assessment hearing for a local improvement district at the direction of the Local Improvement District Administrator;

5. Receiving written objections to the final assessment for a local improvement district, and forwarding such objections to the Local Improvement District Administrator for a response;

6. Entering final assessments for a local improvement district into the docket of City liens upon passage of a final assessment ordinance for a local improvement district;

7. Mailing of notices of final assessment to property owners after passage of the final assessment ordinance and entry into the docket of City liens;

8. Determining the individual financial capacities of property owners, and offering installment payments, if requested; and

9. Obtaining interim financing to pay for local improvement costs prior to bonding.

17.08.020 City Council Control.

Whenever the City Council deems it expedient, it may order an improvement; when the City Council determines that such improvement will afford a special benefit to property within a particular local improvement district, the City Council will classify it as a local improvement, and provide for payment of all or a portion of the cost thereof by imposition and collection of local assessments on the property benefited.

17.08.030 Charter Provisions Applicable.

Charter provisions applicable to local improvements will be followed by the City except where Charter provisions are contrary to state statute or the Oregon Constitution. In case of such conflict, legally applicable City Code will apply.

17.08.040 Initiation of Local Improvement District Formation Proceedings.

A. City Council may, at its discretion, initiate a local improvement district formation proceeding by adopting a resolution of intent to undertake a capital construction project, or part thereof, based on one of more of the following criteria:

1. A valid petition of support per the criteria in Section 17.08.050, signed by property owners and filed with the Local Improvement District Administrator;

2. A recommendation from the responsible bureau;

3. Its own initiative.

B. Where formation of a sewer local improvement district is ordered pursuant to an Environmental Quality Commission Order and a sewer plan has been developed and adopted by the City Council, preparation of the construction plans and specifications for that improvement may begin without action by the City Council.

C. Prior to initiation of local improvement district formation proceedings:

1. The revenue service and program of the City Administrator will identify delinquencies in taxes or City liens of the properties within the proposed local improvement district;

2. The Local Improvement District Administrator will analyze the financial feasibility of the properties within the proposed local improvement district;

3. The Local Improvement District Administrator will analyze project financial feasibility by determining whether the sums assessed together with all unpaid sums then outstanding as assessments against the properties would exceed one-half the real market valuation of the properties as shown on the latest county tax rolls.

17.08.050 Petition for a Local Improvement District.

A. A petition of support may be prepared by the Local Improvement District Administrator or by owners of property that may be specially benefited by the proposed improvement.

B. The petition will include:

1. The name or designation of the improvement;

2. A map or clear description of the location of the improvement;

3. The general character and scope of the improvement; and

4. A proposed assessment methodology.

C. The Local Improvement District Administrator will review a petition for the proposed local improvement district to determine if the petition is valid. A petition will be considered valid only when property owned by petition signers added to property covered by waivers of remonstrance and property owned by the City and Prosper Portland represents more than 50 percent of the property in the proposed local improvement district as measured by the proposed assessment methodology. Property owned by the City, including property owned through Prosper Portland, will be counted in support of formation of a local improvement district.

D. The Local Improvement District Administrator will not consider a petition valid if a petition for a substantially similar local improvement district has been filed in the previous six months and City Council resolved not to proceed with the substantially similar local improvement district.

E. A petition of support will not be disqualified as a result of a subsequent transfer in property ownership. However, the new property owner has a right to remonstrate against the proposed improvement as provided in Chapter 17.08.

17.08.060 Resolution of Intent.

A. The Local Improvement District Administrator will prepare and file a resolution of intent for the City Council’s consideration subsequent to any of the following:

1. After the review specific in Section 17.08.050 the Local Improvement District Administrator determined a petition is valid; or

2. A responsible bureau recommends initiation of a local improvement district; or

3. A member of City Council requests initiation of a local improvement district.

B. The resolution of intent will include the following:

1. The name or designation of the improvement;

2. The location of the improvement;

3. A map or clear description of the local improvement district boundary;

4. The general character and scope of the improvement;

5. A preliminary estimate of the total cost of the local improvement;

6. The proposed assessment methodology;

7. The proportion of funding to be borne by property owners and other sources, if applicable;

8. The designated responsible bureau if the project scope is not addressed by Section 17.08.010;

9. A statement of whether the City Council intends to construct the improvement;

10. Direction to the Local Improvement District Administrator to do one of the following:

a. Initiate formation proceedings on the proposed local improvement district; or

b. Suspend proceedings on the proposed local improvement district; or

c. Terminate the process for forming the proposed local improvement district.

C. If City Council passes a resolution of intent to construct the improvements, City Council will direct the Local Improvement District Administrator to initiate local improvement district formation proceedings as set forth in Section 17.08.070.

D. The City Council may direct that the engineering and construction work will be done in whole or in part by the City, by a contract, by direct employment of labor, by another governmental agency, or by any combination thereof. Projects partially or fully funded by local improvement district revenue will be subject to competitive bidding. Local improvement districts will not be subject to Subsection 5.34.150 H. of Portland City Code unless this Section is waived in the ordinance forming the local improvement district.

E. If a petition is not valid, but the City Council determines that an improvement should be constructed, it may initiate the proceedings by adopting a resolution of intent to construct the improvement.

F. If the City Council determines that some other construction, such as installation of water lines, sewer lines prior to a street improvement, installation of fire hydrants, utility lines or conduits, conduits for underground service for street lights, or any other underground construction should precede the particular proposed improvement, then the City Council may suspend the proceedings for the proposed improvement until such construction has been started or completed.

G. If the City Council passes a resolution of intent to terminate the process for forming the local improvement district or considers but fails to pass a resolution to initiate local improvement district formation proceedings, no further action will be taken by the Local Improvement District Administrator on the local improvement district for a period of six months, other than actions to close the project.

17.08.070 Local Improvement District Formation and Remonstrances.

A. Notice of public hearing.

1. Publication notice: Except as otherwise provided by Charter for changes to street grades, the Local Improvement District Administrator will publish two notices of the City's intent to form a local improvement district by publication in a paper of general circulation in the City at least 14 calendar days before the formation hearing. The notices will include the following information:

a. The time, date and place of the formation hearing before City Council;

b. The name of the proposed local improvement district;

c. A description of the type and scope of improvements to be made;

d. A map or description of the properties proposed for inclusion in the local improvement district for which a legal description is not required;

e. A preliminary estimate of the total cost of the local improvement based on the preliminary engineer's estimate;

f. The methodology or methodologies by which properties will be assessed, which may include neither assessed valuation nor real market valuation as elements;

g. A statement that the proposal could be modified as a result of the testimony at the formation hearing and that property owners should attend the hearing to have an opportunity to testify on proposed changes;

h. A statement mentioning the right to remonstrate, who may remonstrate, how remonstrances can be made, the deadline for filing remonstrances; and where remonstrances must be filed; and

i. Contact information for the Local Improvement District Administrator.

2. Posting notice: At least 14 calendar days before the local improvement district formation hearing, the Local Improvement District Administrator will cause to be posted conspicuously within the proposed local improvement district, at least two notices headed “Notice of Proposed Improvement” in letters not less than one inch in height, and the notices will contain in legible characters the information required in Subsection 17.08.070 A.1. The Local Improvement District Administrator will place an affidavit of the posting of such notices within the project file, stating therein the date when and places where the notices have been posted.

3. Mail notice: At least 21 calendar days before the local improvement district formation hearing on the proposed improvement, the revenue service and program of the City Administrator, at the direction of the Local Improvement District Administrator, will mail to the owner of each property within the proposed local improvement district, a notice containing the following:

a. The information required in Subsection 17.08.070 A.1.;

b. A description of the property; and

c. A preliminary estimate of the assessment for the property.

4. A record will be kept of the mailing, posting and publication of any notice required by this ordinance. Any mistake, error, omission or failure with respect to publication, posting or mailing notice will not affect City Council’s jurisdiction to proceed or otherwise invalidate the local improvement proceedings when notice is provided by at least one of the methods in this Section.

B. Remonstrances.

1. If property owners choose to remonstrate against the proposed improvement such remonstrances must be received by the revenue service and program of the City Administrator by 5:00 p.m. seven calendar days prior to the local improvement district formation hearing. A remonstrance must be in writing and must be delivered in person or by first class U.S. mail to the revenue service and program of the City Administrator. The revenue service and program of the City Administrator is not responsible for remonstrances sent via facsimile or via email. The remonstrance will state the reasons for the objection. Any person acting as agent or attorney with power to act in signing the remonstrance will, in addition to describing the property affected, file with the remonstrance a copy in writing of the authority to represent the owner or owners of property. The revenue service and program of the City Administrator will forward the remonstrance to the Local

Improvement District Administrator for a response. A written remonstrance may be withdrawn at any time before the close of the City Council hearing on the formation of the local improvement district.

2. Owners of property covered by waivers of remonstrance may submit an objection. However, such an objection will not be considered for purposes of determining City Council jurisdiction as provided by Chapter 9 of the City Charter for the particular type of improvement.

3. The number of remonstrances that will defeat formation of a proposed local improvement district will be as provided by Chapter 9 of the City Charter for the particular type of improvement.

C. Formation ordinance.

1. The local improvement district formation ordinance will contain at least the following findings:

a. Name of the proposed local improvement district;

b. A general description of the project scope as may also be shown on a typical section;

c. A description of the proposed local improvement district with a reference to specific local improvement district boundaries, or a map showing the properties proposed for inclusion in the local improvement district;

d. A preliminary estimate of the total cost of the local improvement, including design, construction, engineering, project management and financing;

e. The assessment methodology or methodologies by which benefit within the local improvement district will be assigned;

f. A preliminary estimate of assessments for each property owner within the local improvement district based on the proposed assessment methodology or methodologies;

g. A statement as to the financial feasibility of the local improvement district, based on the preliminary estimate of assessments and outstanding past assessments and taxes; and

h. An exhibit containing findings addressing each remonstrance received, and number of remonstrances received.

2. The local improvement district formation ordinance will contain, at a minimum, directives that:

a. Create the local improvement district;

b. Include benefited properties in the local improvement district as shown on an attached exhibit;

c. State the property owners' share of the costs that the benefited properties will be assessed, and any other entities' shares, as applicable;

d. State the assessment methodology;

e. Direct the City Administrator to arrange for the preparation of plans and specifications;

f. Direct the City Administrator to arrange for construction of the improvement;

g. Direct the revenue service and program of the City Administrator to obtain interim financing to pay for local improvement costs prior to bonding; and

h. Sustain or overrule any remonstrances received.

D. Local improvement district formation hearing.

1. The City Council will hold a public hearing on the proposed improvement. As provided by Subsection 17.08.070 A.3., the hearing will be held at least 21 calendar days after the date notice was deposited in the mail. The City Council may continue or discontinue the proceedings; may direct a modification of its resolution of intent; or may direct formation of the local improvement district and override any remonstrances, provided the City Council retains jurisdiction as provided by Chapter 9 of the City Charter for the particular type of improvement. The City Council may direct a modification to the location or scope of the improvement, and/or to the local improvement district that it deems will be benefited by the improvement; or make such other modifications in the proceedings as it finds reasonable.

2. Modification of scope of improvements: If the City Council significantly and materially modifies the scope of the improvement within the adopted formation ordinance so that an assessment is likely to be significantly and materially increased upon one or more properties, or if the City Council enlarges the local improvement district within the adopted formation ordinance, then a new preliminary estimate of assessments will be made and new notices will be sent to the property owners within the proposed local improvement district, and another hearing will be held. The notice will advise property owners who still wish to remonstrate that their remonstrance must be resubmitted. However, no new publication or posting will be required. In the event of modification that meets the objection of any remonstrance, such remonstrance will not be counted as such unless renewed following such modification.

3. Decision to form local improvement district: Upon completion of the hearing process, the City Council may approve or decline formation of a local improvement district by ordinance. As provided in Subsection 17.08.070 C.1., a decision to approve formation of a local improvement district will be supported by findings supporting a conclusion of special benefit and addressing the remonstrances, and will direct the Local Improvement District Administrator to arrange for construction of the local improvement.

4. If the City Council approves formation of the local improvement district, the City Administrator will arrange for the preparation of plans and specifications. Upon completion, approved plans will be available for inspection at the responsible bureau for at least the minimum time period specified in its records retention and disposition schedule. The local improvement may be constructed and/or engineered in whole or in part by the City or by another government agency, or the City may seek bids for any portion of the local improvement. Projects partially or fully funded by local improvement district revenue will be subject to competitive bidding and will not be subject to Subsection 5.34.150 H. of Portland City Code unless this Section is waived in the ordinance forming the local improvement district.

5. The City Council will have final determination of the kind and character of the local improvement, its location and extent, materials to be used, and all matters contained in the plans and specifications.

6. The City Council will also have final determination of the assessment methodology and boundaries of the local improvement district that is to be assessed for the costs of the improvement, except that the assessment methodology may not include a criterion based on real market valuation or assessed market valuation. The possibility or likelihood that some property contained in the property description of the proposed local improvement district may not be benefited by the proposed improvement will not invalidate the local improvement district description.

7. Upon City Council's passage of an ordinance forming a local improvement district, the assessment methodology may not be changed except by City Council ordinance notwithstanding concurrence among the property owner(s), nor can the assessment obligation be transferred to a property not included in the local improvement district. No release of obligation will be made by the revenue service and program of the City Administrator until after final assessment is made.

17.08.080 Changes to Scope or Cost of Improvements and Notice to Proceed.

A. After formation of a local improvement district, City Council will hold a public hearing to consider significant and material changes to the proposed scope or significant and material changes to the estimate of the total cost of the local improvement district that

may arise during the course of final engineering that would result in a significant and material increase to the future assessment of properties per the assessment methodology established in the formation ordinance.

B. For such a hearing, notice will be in the manner provided by Section 17.08.070. In addition to meeting the provisions of Section 17.08.070, the notice will also state the nature of the proposed modifications to the scope of improvements or to the preliminary estimate of the total cost of the local improvement previously approved at the Local Improvement District formation hearing. Property owners will have the opportunity to remonstrate against the significant and material changes in the manner provided by Section 17.08.070 and the remonstrance only pertains to the significant and material increase and/or the significant and material scope change and not to the original local improvement district as approved by Council per Section 17.08.070. If the improvement district was initiated by petition, no new petition will be required.

C. The City Administrator may issue a notice to proceed to begin construction provided that:

1. There are no significant and material changes to the scope of the local improvements; or

2. There are no significant and material changes to the preliminary estimate of assessments for the benefiting properties in the local improvement district; or

3. The City Council has approved significant and material changes to scope and/or cost of the improvements as provided in this Section.

Construction of the local improvement will be in substantial accordance with the plans and specifications adopted by the City Administrator.

17.08.090 Abandonment of Local Improvement District.

The City Council will have full power and authority to abandon and rescind proceedings for local improvements at any time prior to the final completion of the improvements.

17.08.100 Completion of Construction.

A. After the work financed by the local improvement district has been completed satisfactorily, the City Administrator will prepare a certificate of completion. The City Administrator will also prepare a final engineer’s estimate showing the costs of all engineering and construction work performed. The certificate of completion will be deemed acceptance by the City of the local improvement work.

B. Authorization for final payment will be made as provided by Chapter 5.33 of Portland City Code.

C. The Local Improvement District Administrator will include the final engineer's estimate and a copy of the certificate of completion with the filing of the final assessment ordinance as set forth in Section 17.08.130.

D. Notice of completion of the work need not be provided except as may be required elsewhere in City Code.

E. If a local improvement is substantially complete except for contract closeout, or if a scope of improvement included in the construction contract but not included in the local improvement is incomplete, the City Administrator at the discretion of the responsible bureau may file a written report attesting that the local improvements are complete in lieu of a certificate of completion. The provisions set forth in Subsection 17.08.100 A. apply, except that the written report substitutes for the certificate of completion. Any further project or financing costs incurred subsequent to final assessment will be the responsibility of the responsible bureau, not of the property owners.

17.08.110 Total Cost of Local Improvement.

A. After the work financed by a local improvement district has been accepted as complete, the Local Improvement District Administrator will determine the total cost of the local improvement, including costs identified in the final engineer's estimate and any pending costs.

B. The total cost of the local improvement that may be assessed against the properties specially benefited by the improvement will include, but not be limited to the following:

> **1.** Direct or indirect costs incurred in order to undertake the capital construction project such as the costs of labor, materials, supplies, equipment, permits, survey, engineering, administration, supervision, inspection, insurance, advertising and notification, administration, accounting, depreciation, amortization, operation, maintenance, repair, replacement, contracts, debt service and assessment;
>
> **2.** Financing costs, including interest charges; the costs of any necessary property, right-of-way or easement acquisition and condemnation proceedings; and
>
> **3.** Attorneys' fees and any other actual expense as allowed by state law.
>
> **4.** The total cost of the local improvement that may be assessed against the properties specially benefited by the improvement will not include Portland Bureau of Transportation overhead costs unless this Section is waived in the ordinance forming the local improvement district.

C. Engineering and project management performed by the City in connection with local improvements will be charged at the rate of 100 percent of the direct cost of services performed computed in accordance with the provisions of Portland City Code Section 5.48.030. The City Administrator will prepare a final engineer's estimate of the

engineering and construction costs. A final estimate of the total project costs, including costs reflected in the final engineer's estimate, will be prepared by the Local Improvement District Administrator.

D. The revenue service and program of the City Administrator will maintain a fee schedule that will be used for determining the charge to be made for administrative services and general City administrative services in connection with local improvements. These charges will include a Superintendency fee; a recording fee which will be fixed regardless of the amount of the assessment; and a monthly billing fee if the property owner does not pay the full assessment at the time it is levied.

17.08.120 Alternative Financing Methods.

Nothing contained in this Chapter will preclude the City Council from using any other available means of financing portions of local improvements, including but not limited to city funds, federal or state grants, user charges or fees, revenue bonds, general obligation bonds, or any other legal means of finance. In the event that such other means of financing improvements are used, the City Council may make assessments to pay any remaining part of the total costs of the local improvement.

17.08.130 Final Assessment and Objections.

A. Apportionment of proposed final assessments.

> **1.** Whenever any local improvement, any part of the cost of which is to be assessed upon the property specially benefited by the improvement, is completed in whole, or in such part that the cost of the whole can be determined, the Local Improvement District Administrator will file the final estimate of the total cost of the local improvement and prepare a proposed final assessment according to the assessment methodology approved by City Council upon the properties in the local improvement district, including upon any land owned by the City.
>
> **2.** If the City Council has determined that a portion of the total cost of the local improvement is to be paid from public funds, other than the benefit assessment to be imposed upon land owned by the City and lying within the local improvement fixed by the City Council, the Local Improvement District Administrator will deduct from the total cost of the local improvement such allocation of costs to public funds provided by the City Council and will apportion the remainder of such total cost on the properties within the local improvement.
>
> **3.** When the Local Improvement District Administrator has calculated the assessment for each property, the Local Improvement District Administrator will file the proposed final assessment roll with the City Council through the City Administrator.

B. Notice of proposed final assessments.

1. At least 21 calendar days before the public hearing on the proposed final assessment, the revenue service and program of the City Administrator at the direction of the Local Improvement District Administrator will provide notice to the owner of each property or to the owner's agent as shown in the County tax record either by mail or by personal delivery. The notice will state:

a. The property description;

b. The amount of the proposed final assessment against the property;

c. A statement that this amount could be modified as a result of objections filed by other property owners in the local improvement district unless the cost to property owners is fixed;

d. The date, time and place of the final assessment hearing;

e. The deadline and manner for filing objections to the proposed final assessment; and

f. Contact information for the Local Improvement District Administrator.

2. The Local Improvement District Administrator will publish two notices of the proposed final assessment in a newspaper of general circulation in the City at least 14 calendar days prior to the final assessment hearing.

3. A record will be kept of the mailing and publication of any notice required by this ordinance. Any mistake, error, omission or failure with respect to publication or mailing notice will not affect City Council's jurisdiction to proceed or otherwise invalidate the local improvement proceedings when notice is provided by at least one of the methods in this Section.

C. Final assessment hearing and objections.

1. Any owner of property (except property owned by the City or Prosper Portland) proposed to be assessed a share of the cost of a local improvement may file an objection to the proposed final assessment in writing with the revenue service and program of the City Administrator. The objection must be received by the revenue service and program of the City Administrator no later than 5:00 p.m. seven calendar days prior to the hearing by City Council on the proposed final assessment. The revenue service and program of the City Administrator will forward the objection to the Local Improvement District Administrator for a response. The objection will be filed in the same manner as set forth in Subsection 17.08.070 B. and will state the reasons for the objection. However, objections received to final assessment will not affect City Council jurisdiction over final assessment proceedings.

2. The City Council will hold a hearing on any objections on the date set forth in the notice, and at that time will consider objections made by the owners of

property at the hearing. The hearing may be continued as the City Council may find appropriate.

3. At the hearing, the City Council at its discretion will determine and approve the amount to be assessed upon each property within the local improvement district, which amount does not exceed the special benefits accruing to such property from the improvement and the sum of which amount and other amounts assessed against properties within the local improvement district do not exceed the total cost of the local improvement. The amount of each assessment as determined by City Council will be based on the City Council's finding of special benefit to the property.

D. Final assessment ordinance.

1. The City Council will pass an assessing ordinance that will set forth the assessments against the respective properties within the local improvement district.

2. The ordinance will:

a. Include an exhibit containing findings addressing each objection received, and number of objections received;

b. State the total cost and assessment methodology used;

c. Include a statement that each property is specifically benefited in the amount shown in the assessment roll;

d. Include a statement that the project has been constructed as provided in the adopted plans and specifications, and, if the provisions set forth in Subsection 17.08.100 E. have been invoked, a copy of the written report from the City Administrator attesting that the local improvements are complete in-lieu of a certificate of completion; and

e. Contain a directive to sustain or overrule the objections.

3. Upon passage of the assessing ordinance, the revenue service and program of the City Administrator will enter the assessments in the docket of City liens and follow the assessment procedure set forth in Chapter 17.12. As provided by City Charter, the assessment ordinance will take effect immediately upon passage or on any date fewer than 30 days after passage that is specified in the final assessment ordinance.

4. Claimed mistakes in the calculation of assessments will be brought to the attention of the Local Improvement District Administrator, who will determine whether there has been a mistake. If the Local Improvement District Administrator finds that there has been a mistake, the Local Improvement District Administrator will recommend to the City Council an amendment to the

assessment ordinance to correct the error. On enactment of an amendment, the revenue service and program of the City Administrator will cause the necessary correction to be made in the City lien docket. Such correction will not change assessments against any other property within the local improvement district.

E. Formation of a new local improvement district: In the event a court of law holds that the formation of a local improvement district was invalid or improper procedures were used, property owners may be assessed after the new local improvement district is formed if the properties are again included.

Chapter 17.12 Assessments

17.12.010 Lien Docket and General Assessment Procedure.

A. The City will maintain a lien docket and general assessment procedure as set forth in the Chapter for the assessment of:

1. Local improvement district assessments.

2. System development charge assessments.

3. Sidewalk maintenance and repair assessments.

4. Enforcement of City Code; and

5. Other assessments prescribed by City Code.

B. In addition to the general assessment procedure set forth in this Chapter, specific assessment procedures are set forth as follows:

1. Local improvement district assessment procedures as set forth in Chapter 17.08;

2. System development charge assessment procedures are set forth in Chapters 17.13, 17.14 and 17.15; and

3. Sidewalk maintenance and repair assessment procedures are set forth in Chapter 17.28.

17.12.060 Assessing Ordinance.

The City Council may pass an assessing ordinance, effective immediately upon passage as prescribed in the City Charter, which will set forth the assessments against the respective properties within the assessment district. Upon such passage the revenue service and program of the City Administrator will enter the assessments in the docket of City liens.

17.12.070 Notice of Assessment.

After an assessment has been entered in the lien docket, the revenue service and program of the City Administrator will send a bill for the assessment by mail to each person whose property is assessed or to the owner's agent as shown in the County tax record.

17.12.080 Payment of City's Share.

The City Council may provide for the payment into the particular local improvement assessment fund of any share allocated by the Council to be paid from public funds, and also any assessments imposed by it against City owned property.

17.12.100 Surplus.

If the total cost of an improvement is found to be less than the total sum previously assessed therefor, the surplus will be apportioned and paid in accordance with Charter provisions.

17.12.120 Correction of Mistake in Assessment - Refund or Overpayment.

A mistake in assessment or entry thereof in the lien docket may be corrected as prescribed by the Charter. In case of overpayment because of such mistake or otherwise, the person who paid such excess or the person's legal representative, heirs or assigns, is entitled to repayment of the same by check drawn upon the fund receiving such overpayment.

17.12.130 Segregation of Assessments.

A. A lien against the real property in favor of the City may be segregated on the application of the owner(s), subject to the provisions of this Section and any rules adopted by the City Administrator.

B. Applications must be made to the City Administrator and must include:

1. A legal description of each tract to be segregated;

2. Documentation demonstrating that each tract to be segregated is a lot or parcel created by a subdivision, partition or other division of the original tract of land in accordance with ORS 92.010 to 92.190, and is consistent with all applicable comprehensive plans;

3. The names of the owners of each tract, and the name of each person who will own each parcel should the segregation be approved; and

4. A full legal description that will be assigned by the County Assessor for each lot or parcel that is created as a result of the segregation.

C. No segregation may be made unless each part of the original tract of land after the segregation has a true cash value, as determined from the certificate of the county assessor, of 200 percent or more of the amount of the lien as to each segregated tract concerned.

D. The revenue service and program of the City Administrator will compute a segregation of the lien against the real property on the same basis as it was originally computed and apportioned and will record the segregation in the lien docket. If the original tract has been divided by filing of a condominium plat, the applicant for segregation may propose an alternative, equitable basis for computing segregation of the lien. The alternative proposed segregation will be subject to the Council's approval by ordinance.

E. No assessment may be segregated until all outstanding delinquent City liens on the property are brought current.

F. The revenue service and program of the City Administrator will charge a fee for the segregation of assessments. The fee will be based in part on the number of lots or parcels that result from the segregation. The segregation fee may be amended from time to time and will be stated in the Fees & Charges schedule maintained in the revenue service and program of the City Administrator.

17.12.140 Bonding.

A. Within 30 days of the entry in the lien docket a property owner may apply to pay the assessment, deficit assessment or re assessment or the amount remaining unpaid by installments as stated in the signed installment payment contract. The contract must be in accordance with the terms and provisions of ORS 223.215. The contract must be received by the revenue service and program of the City Administrator subject to the limitations prescribed in this Section. The City may accept contracts after the 30-day period stated in this Section under procedures established by the revenue service and program of the City Administrator.

B. If the sum assessed together with all unpaid sums then outstanding as assessments against the property exceeds one-half the real market valuation of the property as shown on the latest county tax rolls, then the revenue service and program of the City Administrator may reject the application unless the excess is paid in cash with the application and the application is made for the remainder only.

C. If the installment payment contract has been received and is in force, the City Treasurer may accept prepayments of any installments without penalty for the prepayment. Whenever an installment is paid, accrued interest to the due date of the installment on the unpaid assessment balance, plus interest on the past due installment if any, must be paid with the installment.

D. In addition to the procedures provided for in Subsections A. through C. above, the procedures for bonding improvement assessments authorized by the Bancroft Bonding

Act (ORS 223.205, 223.930) may be followed for improvement assessments when the Council so directs in the ordinance making the assessment.

E. For purposes of this Section the term **property owner** means the owner of the Title to real property or the contract purchaser of real property, of record as shown on the last available complete assessment roll in the Office of the County Assessor.

F. Interest rates for bonded assessments will be set using an adjusted rate mechanism. The City Council will set an interim rate by ordinance, which will be applied to the unpaid balance until improvement bonds are sold to finance the bonded assessments. Upon sale of bonds, the revenue service and program of the City Administrator will adjust the interest rate to the rate received by the City on the bond issue (expressed as true interest cost) plus a fee to cover insurance and discount on the bonds. All subsequent payments will be made at the new adjusted rate. Property owners who sign an installment contract for systems development charges will receive the adjusted rate.

G. Bond financing fees will be charged to each installment contract to defray the costs of financing per a fee schedule on file with the revenue service and program of the City Administrator. The fee schedule will include a loan creation fee as well as a bond financing fee. Bond financing fees are in addition to costs set forth in Chapter 17.08.

H. The City may charge a bond reserve fee on each installment payment contract to facilitate the sale of the improvement bonds. Proceeds from the bond reserve fee will be dedicated to a reserve account and used as security for the improvement bonds that the City sells to finance the installment payment contract. A separate bond reserve account will be created for each bond sale as required by the terms of the sale. This fee will be in addition to the fees set forth in Chapter 17.08 and in Subsection 17.12.140 G.

I. The revenue service and program of the City Administrator will charge a billing and service charge, which will be added to each statement and will be in addition to principal, interest, penalties, costs and other fees. This fee will be per a schedule on file with the revenue service and program of the City Administrator. This fee will be in addition to the fees set forth in this Chapter 17.08, Subsections 17.12.140 G. and Subsection 17.12.140 H.

17.12.150 Rebonding.

A. If the Council specifically approves the same, a property owner who has bonded an assessment a portion of which remains unpaid, or a property owner whose assessment on such property has been subdivided as provided in the Charter, may apply for a rebonding if all taxes then due have been paid upon the property, no outstanding liens have been filed against the property, and if all the conditions applicable to initial bonding are met at the time of rebonding application. The rebonding application may include all unpaid assessment amounts remaining due and unpaid. All provisions relating to rebonding contained in the statutes of the State are applicable.

B. As used in this Section, the term **property owner** means the owner of the Title to real property or the contract purchaser of real property, of record as shown on the last available complete assessment roll in the Office of the County Assessor.

17.12.170 Collection.

After 30 days from the date of entry in the lien docket of a sum assessed, whether by initial assessment, deficit assessment or reassessment, the amount of the delinquency together with interest and any costs may be collected as provided in the City Charter.

Chapter 17.13 Parks and Recreation System Development Charge

17.13.010 Scope and Purposes.

A. New development within 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 system development charge (SDC) will fund a portion of the needed capacity-increasing capital improvement projects as identified in the Parks and Recreation SDC Capital Improvement Plan (SDC-CIP).

B. ORS 223.297 through 223.314 grant the City authority to impose an 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.

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 ensure 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 City Administrator 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.

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.

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 Portland City Code or associated rules, 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 City Administrator 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

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. through 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.

O. Dwelling unit means one or more habitable rooms, as defined in Portland City Code Section 24.15.075.

P. Non-Central City means all portions of the City outside the Central City Service Area.

Q. Nonresidential development means development that does not include dwelling units. When a development contains both dwelling units and other uses, that portion of

the development containing dwelling units will be considered “residential development,” and that portion devoted to other uses will be considered “nonresidential 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 property was used simultaneously for several different uses (mixed use), for the purposes of this Chapter all of the specific use categories will 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 City Administrator, 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 Section. 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 Section 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 three 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 City Administrator in their reasonable discretion, serves the City's public parks and recreation needs.

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 nonresidential 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 nonpermanent structure.

17.13.030 Rules of Construction.

For the purposes of administration and enforcement of this Chapter, unless otherwise stated in this Chapter, the following rules of construction 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 will control.

B. The word "must" is always mandatory and not discretionary: the word "may" is permissive.

C. Words used in the present tense include the future; words used in the singular number 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 apply;

2. “Or” indicates that the connected items, conditions, or provisions or events may apply singly or in any combination.

F. The word “includes” does 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.

This Chapter applies to all new development throughout Portland. The amount of the Parks and Recreation SDC will 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 will be imposed upon all new development for which an application is filed on or after the effective date of this Section.

B. The applicant must at the time of application provide the Administrator with the information requested on an SDC application form regarding the previous use and proposed uses 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 uses of the new development.

2. For residential uses, the number of residential dwellings and the square footage of each dwelling unit.

3. For nonresidential 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 will 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

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 uses were vacant for more than 36 months prior to the date of the application, the SDC due will be the full amount of the SDC for the proposed uses and no credit will be provided for previous uses.

D. The dollar amounts of the SDC set forth in the SDC Methodology Report are based on 2013 values and will be adjusted on July 1, 2017, and annually on July 1 by the difference of the three-year moving average of the Cost Index.

E. Notwithstanding any other provision, the adjustment will not exceed a total of six 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 one year prior, by the variance from the rate most recently adopted. If the resulting change is greater than six percent, the rate will be set at six percent variance from the rate of one year prior, or, if a new rate structure was adopted less than one year prior, by the variance from the rate most recently adopted.

17.13.050 Application Requirements.

All applications must meet the application completeness requirements of the Bureau of Planning and Sustainability and Portland Permitting & Development. This Chapter applies to all applications for building permits for new development. 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 Portland Permitting & Development.

17.13.060 Partial and Full Exemptions.

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 portion of the development that qualifies under this Section is eligible for an exemption. The balance of the new development that does not qualify for any exemption under this Section 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.

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. Certain structures and uses are exempt to the extent provided by Section 17.14.070.

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 that includes a mix of exempt and nonexempt forms of development, the applicable exemption(s) apply only to that portion of the new development to which the exemption applies.

17.13.070 SDC Credits.

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 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 will 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 will 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 one month prior to a committee meeting may not be heard until the following quarterly meeting. The Committee will be appointed by the City Administrator and include, but not be limited to, representatives of the following interests:

a. Development community (e.g., Metropolitan Home Builders Association). Up to two representatives.

b. Environmental (e.g., Bird Alliance of Oregon)

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 Metro Chamber).

2. A representative of the City Administrator 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 City Administrator. 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 City Administrator (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 City Administrator 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.

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 Portland City Code Section 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 five 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.

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 alterative 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 nonresidential development, the number of resident equivalents per 1,000 square feet is or will be fewer than the number of resident 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 will 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.

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 Portland City Code. If the applicant elects to pay the SDC in installments, a lien will be placed against the property that is subject to the SDC deferral or installment agreement entered into by the applicant and the City on a form provided by the City and that may provide for the deferral of payments as set forth in Chapter 17.14 of Portland City Code. In any event, the applicant must either pay the SDC in full or enter into an SDC deferral or installment agreement as provided in Portland City Code before the City will issue any building permits.

B. Upon written request of Portland Parks & Recreation, the City Administrator or their designee who carries out the work of the revenue service and program 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 will 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.

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.

A. There is created a dedicated account entitled the “Parks and Recreation SDC Account.” All monies derived from the Parks and Recreation SDC must be placed in the Parks and Recreation SDC Account. Funds in the Parks and Recreation SDC Account must 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 amended, and eligible administrative costs. In this regard, SDC revenues may be used for purposes that 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;

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 may 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.

17.13.120 Challenges and Appeals.

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 City Administrator. An appeal of a City Administrator’s decision, including but not limited to the City Administrator’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 will be in writing and will 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 will be in writing and will 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 will withhold all permits and other approvals applicable to the applicant's property of the new development pending resolution of all appeals under this Chapter unless the SDC is paid in full or the applicant provides, for the pendency of the appeal, a financial guarantee or security for the charge in a form acceptable to the City Attorney.

17.13.130 City Review of SDC.

A. No later than every 10 years as measured from initial enactment, the City must 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, to determine 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.

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.

The City must 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.

The City Administrator may adopt administrative rules as authorized by Charter.

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

The City Administrator 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 City 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 City Administrator 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. If any clause, section or provision of this Chapter is declared unconstitutional or invalid for any reason or cause, the remaining portion of this Chapter will be in full force and effect and be valid as if such invalid portion had not been incorporated in this Chapter. In the event a definition is held to be invalid or is severed, the defined word or term will be deemed to have the meaning given to that word or term under Oregon law if Oregon law contains such a definition. If there is no established definition of the word or term under Oregon law, the word or term will have its ordinary dictionary meaning. The Council's express legislative intent is that this Chapter would have been adopted had such an unconstitutional or otherwise invalid provision not been included in it.

Chapter 17.14 Financing of, and Exemptions from, Systems Development Charges

17.14.010 Purpose.

The purposes of this Chapter are to authorize financing agreements that provide for payments deferrals and installment payments of City system development charges and to provide exemptions from such charges. This Chapter fulfills the following mandates:

A. The requirement of Chapter 722 Oregon Laws of 1977 (ORS 223.207 and 223.208) that the rights and duties accorded the City and property owners by the laws relating to assessments and financing of local improvement districts also apply to assessments and financing of those charges imposed by the City that are defined by Subsections 1 (a) and (b) of Section 2, Chapter 722 Oregon Laws of 1977 (ORS 223.208 (1) (a) and (b)); and

B. The decisions of City Council to establish certain exemptions from the assessment of system development charges.

17.14.020 Definitions.

As used in this Chapter, the following terms are defined as follows:

A. System development charge means a charge imposed pursuant to Chapters 17.13, 17.15, 17.36 and 21.16 of Portland City Code.

B. Owner or property owner means all persons who appear on the County property tax record for the property subject to the system development charge.

C. Responsible bureau means the City agency, office, organization, division or bureau that is responsible for calculating and maintaining records regarding system development charges.

17.14.030 Application, Consent to Assessment.

Any owner of real property subject to a systems development charge may apply to defer the payment of system development charges, or to pay the charge in installments in a manner similar to that provided for local improvement district assessments. As a condition to such application, the owner must waive any right to challenge the validity or applicability of the charge and must consent to the assessment of the property subject to the charge.

17.14.040 Terms and Conditions of Deferred Payment and Installment Payment Agreements.

A. Deferred payments.

1. The City may authorize the deferred payment of system development charges as follows for periods not to exceed:

a. Six months for a project valued less than or equal to $750,000;

b. Nine months for a project valued greater than $750,000 and less than or equal to $7 million;

c. 12 months for a project valued greater than $7 million; and

d. 24 months for a project that includes new residential units, regardless of project value, provided a completed building permit application has been received by June 30, 2025, and an SDC deferral application that complies with Section 17.14.030 of Portland City Code must be received between April 6, 2023, and August 15, 2025.

2. For purposes of this Section, the City will rely on the value assigned to projects by the City when calculating building permit fees.

3. With the exception of a deferral approved under Subsection A.1.d., of this Section, for which the City will charge no interest during the deferral period, the City will charge simple interest during the deferral period at the interim interest rate established by ordinance pursuant to Chapter 17.12 of Portland City Code.

4. The City will collect fees and charges for the processing and administration of deferred payment agreements as set by general ordinance.

B. Installment payment agreements. Payment of principal and interest must be made in installments as set forth in the signed installment payment contract.

17.14.050 Assessment.

The City Administrator will report to the Council from time to time the contracts to pay system development charges pursuant to this Chapter. If the Council finds that the contracts are in order and that subject property has been permitted to connect to City facilities and has benefited from that connection, it will approve the contracts by ordinance directing the billing for the charges upon the land benefited plus a financing fee. The financing fee will be calculated as set forth in Chapter 17.12 of Portland City Code, Assessments. All such assessments may be combined in one assessment roll and will be entered upon the docket of City liens and collected in the same manner as other local improvement assessments.

17.14.060 Cancellation.

A. Upon written request of the responsible City bureau, the City Administrator may cancel assessments of system development charges without further Council action where the property is not physically connected to the public improvement of where the new development approved by the building permit is not constructed and the building permit is cancelled. The City Administrator will establish administrative guidelines and fees or charges relating to the cancellation of assessments. The revenue service and program of the City Administrator will maintain on file for public inspection a current copy of administrative guidelines and fees or charges.

B. For property that has been subject to a cancellation of assessment of system development charges, a new installment payment contract will be subject to the Code provisions applicable to system development charges and installment payment contracts on file on the date the new contract is received by the City.

17.14.070 System Development Charge Exemptions.

A. Affordable housing developments are exempt from all system development charges as provided by Section 30.01.095 of Portland City Code.

B. Certain developments and uses are exempt from parks and recreation system development charges as provided by Section 17.13.060 of Portland City Code.

C. Certain developments and uses are exempt from transportation system development charges as provided by Section 17.15.050 of Portland City Code.

D. Temporary uses are exempt from sanitary sewer system development charges as provided by Section 17.36.040 of Portland City Code.

E. Certain developments and uses are exempt from water service system development charges as provided by Section 21.16.170 of Portland City Code.

F. An accessory dwelling unit, as that term is defined in Chapter 33.910 of Portland City Code, is exempt from all system development charges under the following conditions:

1. The building permit application for the accessory dwelling unit must have an intake date of August 1, 2018, or later.

2. Prior to issuance of a building permit for the accessory dwelling unit, the applicant must submit a recorded covenant on a form provided by the revenue service and program of the City Administrator. The covenant will prohibit the use of the accessory dwelling unit or any other structure on the property as an accessory short-term rental, as that term is defined in Chapter 33.207 of Portland City Code, for a period of 10 years from the date of permit final inspection. The covenant must be recorded in the deed records for the property before the City will issue the building permit.

3. The City Administrator will enforce the requirements of this Section and may:

> **a.** Adopt, amend, and repeal administrative rules, establish procedures, and prepare forms for the implementation, administration, and enforcement thereof;
>
> **b.** In the event of a violation, use any reasonable means to collect debt, including but not limited to private collection agencies, liens, or lawsuits;
>
> **c.** Impose a civil penalty of up to $500 for failure to pay an application fee within 60 days of the approval of an SDC fee waiver;
>
> **d.** Impose a civil penalty of up to $500 per violation for failure to provide requested information; and
>
> **e.** Waive or reduce for good cause any civil penalty assessed under this Section.

4. If an applicant for an exemption under this Section or a successor-in-interest thereof violates the covenant for an accessory dwelling unit or any requirement of this Section, or if the covenant is terminated according to its terms:

> **a.** The exemption will be terminated and all previously exempt portions of system development charges will become immediately due and payable by the then-owner of the property. The amount owing will be 150 percent of the rates in effect at the time the violation is identified or the covenant is terminated, whichever is later.
>
> **b.** For the purpose of applying any previous use credits, SDC Bureaus will use the timeframe of the ADU building permit intake date. If credits are applicable, SDC Bureaus will apply credits using the rates in effect at the time the violation is identified, or the covenant terminated, whichever is later.

c. A processing fee of $400 per waiver application will apply from August 1, 2018, through June 30, 2019. Thereafter, the City Administrator will publish a fee schedule based on cost recovery.

d. The City may collect reinstated system development charges, processing fees, carrying charges, and the actual costs of collections by recording a property lien pursuant to Title 22 of Portland City Code.

G. Mass, outdoor and short-term shelters are exempt from all system development charges as provided by Portland City Code Section 30.01.096.

H. Occupied recreational vehicles as allowed by Portland City Code Subsections 29.50.050 A.2. and A.5. are exempt from all system development charges.

I. Office-to-residential conversion projects are exempt from all system development charges under the following conditions:

1. The applicant applies before July 1, 2027, for a permit to change the occupancy of a building to Oregon Structural Specialty Code (OSSC) occupancy group R-2 (Residential) for the purpose of establishing residential units, and issuance requires a full seismic upgrade to the building, pursuant to Section 24.85.040 or Subsection 24.85.065 B. of Portland City Code, if applicable.

2. The building was not previously retrofitted under a finalized permit to meet or exceed the Life Safety standard of the 1993 or later editions of the OSSC, ASCE 41, FEMA-178 or ASCE 31 where A_v and A_a = 0.3 or higher was used.

3. The building is on a lot any portion of which is located within an area rated with an opportunity score of 5 according to the Opportunity Map published by the City.

4. Within 30 days of issuance by the Portland Permitting & Development of a Final Certificate of Occupancy, the applicant provides to the responsible bureau all of the following:

a. Documentation from the Portland Permitting & Development attesting that permit applications have been reviewed that collectively will result in:

(1) The building occupancy changing to OSSC occupancy group R-2; and

(2) A full seismic upgrade that meets or exceeds the Seismic Improvement Standards specified in Section 24.85.040 or Subsection 24.85.065 B. of Portland City Code, if applicable, or documentation demonstrating that the seismic upgrade work has been completed.

b. Documentation reflecting the total costs incurred to complete the required seismic upgrades.

5. The applicant submits a recorded covenant on a form provided by the City.

a. The covenant must restrict to residential occupancy for a period of 10 years from the date of permit final inspection those portions of the building indicated as residential units on the permit application.

b. The covenant must be recorded in the deed records for the property before the City will issue the building permit.

c. The City Administrator may enforce the requirements of this Subsection 5. in the same manner as for system development charge exemptions for accessory dwelling units under Subsection 17.14.070 F.3. of Portland City Code. Initially, a processing fee of $600 per application will apply. Thereafter, the City Administrator will publish a fee schedule based on cost recovery.

d. Violations and terminations of a covenant will be addressed in the same manner as for system development charge exemptions for accessory dwelling units under Subsection 17.14.070 F.4. of Portland City Code.

6. This exemption applies only to the building undergoing seismic upgrades in accordance with this Subsection and does not apply to other buildings on the same lot that do not individually meet such requirements.

7. The City will calculate exemption amounts in the manner authorized for calculating system development charges for properties with residential units. The exemption will apply to all residential units, including on-site manager units and shared space, including but not limited to restrooms, community rooms, kitchens, and laundry facilities.

8. The total exemption amount for all system development charges for a building is subject to adjustment by the City and may not exceed the actual costs incurred to complete the required seismic retrofit or $3 million, whichever is less.

Chapter 17.15 Transportation System Development Charge

17.15.010 Scope and Purposes.

A. New development within Portland contributes to the need for capacity increases for roads, multi-modal transportation and related transportation improvements, to enable new development to take advantage of transit systems and, therefore, new development should contribute to the funding for such capacity increasing improvements. This SDC will fund a portion of the needed capacity increases for arterial, boulevard and collector roads, multi-modal transportation improvements and associated bus and transit improvements, sidewalks, bicycle and pedestrian facilities,

street lighting and stormwater drainage and treatment facilities, and other public facilities specified in the City's Transportation System Plan.

B. ORS 223.297 through 223.314 grant the City authority to impose a SDC to equitably spread the costs of essential capacity increasing capital improvements to new development.

C. The SDC is incurred upon application to develop property for a specific use or at a specific density. The decision regarding uses, densities, and/or intensities causes direct and proportional changes in the amount of the incurred charge. This SDC is separate from other fees provided by law or imposed as a condition of development. It is a fee for service because it contemplates a development's receipt of transportation services based upon the nature of that development.

D. The SDC imposed by this Chapter is not a tax on property or on a property owner as a direct consequence of ownership of property within the meaning of Section 11b, Article XI of the Oregon Constitution or legislation implementing that section. This Chapter does not shift, transfer or convert a government product or service, wholly or partially paid for by ad valorem property taxes, to be paid for by a fee, assessment or other charge, within the meaning of Section 11g, Article XI of the Oregon Constitution.

E. The funding provided by this Chapter constitutes a mandatory collection method based upon the guidelines set forth in ORS 223.297 through 223.314 to assure the construction of capacity increasing improvements to arterial, boulevard and collector roads as well as to bicycle, pedestrian and transit facilities as contemplated in the Transportation Element of the Comprehensive Plan, the Transportation System Plan, and the list of projects, referred to as the TSDC Project List, to be funded with money collected under this Chapter. The TSDC Project List is not to be confused with the City's Capital Improvement Program.

F. This Chapter is intended only to be a financing mechanism for the capacity increases needed for major City traffic and collector streets, multi-modal improvements associated with new development and capacity increasing transportation improvements and does not represent a means to fund maintenance of existing roads.

G. The City adopts the methodology report and rate study entitled Transportation System Development Charge Update, referred to as "City Rate Study," as well as the North Macadam Overlay Rate Study and the Innovation Quadrant Overlay Project Report and incorporates by this reference the assumptions, conclusions and findings in the report that refer to the determination of anticipated costs of capital improvements required to accommodate growth.

H. The Transportation SDC provided for in this Chapter is designed to help finance the Transportation System facilities listed in the TSDC Project List as a means of ensuring that adequate capacity is maintained in the City's Transportation System. However, the City specifically recognizes that the entire project list will likely not receive full funding from the proceeds of this SDC, and it is unlikely that every one of the projects listed will

be constructed. The City recognizes that the projects in the TSDC Project List are not comprehensive, and that construction of other projects not included on the TSDC Project List may also advance the policy objective of maintaining capacity in the City's Transportation System.

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

17.15.020 Definitions.

A. Accessway means a walkway that provides pedestrian and/or bicycle passage either between streets or from a street to a building or other destination such as a school, park, or transit stop. Accessways generally include a walkway and additional land on either side of the walkway, often in the form of an easement or right-of-way, to provide clearance and separation between the walkway and adjacent uses. Accessways through parking lots are generally physically separated from adjacent vehicle parking or parallel vehicle traffic by curbs or similar devices and include landscaping, trees and lighting. Where accessways cross driveways, they may be raised, paved or marked in a manner that provides convenient access for pedestrians.

B. SDC Administrator means that person as appointed by the City Administrator to manage and implement this SDC program.

C. Alternative system development charge means any SDC established pursuant to Section 17.15.070 of this Chapter.

D. Applicant means the person who applies for a building permit.

E. Application means the written request by an applicant for a building permit.

F. Building Official means that person, or their designee, certified by the State and designated as such to administer the State Building Codes for the City.

G. Building permit means that permit, including development and zoning permits, issued by the City Building Official pursuant to the State of Oregon Structural Specialty Code or as amended, and the State of Oregon Residential Specialty Code or as amended. In addition, "Building Permit" means the Manufactured Home Installation Permit issued by the City Building Official, relating to the placement of manufactured homes in the City.

H. City means City of Portland, Oregon.

I. City Rate Study means the report entitled Transportation System Development Charge Update, dated June 2017 and adopted as Exhibit A to Ordinance 188619.

J. Comprehensive Plan means the current, adopted Comprehensive Plan of the City.

K. Condition of development approval is a Bureau of Transportation requirement imposed on an applicant by a city land use or limited land use decision, site plan approval or building permit either by operation of law, including but not limited to Portland City Code or Rule or regulation adopted under it, or a condition of approval.

L. Construction Cost Index means the 20-City Construction Cost Index published by the Engineering News Record.

M. Credit means the amount by which an Applicant may be able to reduce the SDC fee as provided in this Chapter.

N. Developer means the person constructing a Qualified Public Improvement or eligible capital improvement prior to the construction of the New Development.

O. Development means all improvements on a site, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, and areas devoted to exterior display, storage or activities that have the effect of generating additional PM Peak Hour Trips. Development includes improved open areas such as plazas and walkways, but does not include natural geologic forms or unimproved land.

P. Director of Transportation means that person or their designee who is responsible for managing the Bureau of Transportation, subject to the approval of the City Administrator.

Q. Finance Director means that person or their designee who is responsible for managing the Finance Department for the City, subject to the approval of the City Administrator.

R. Innovation Quadrant Overlay Project Report means the report entitled Innovation Quadrant Transportation System Development Charge Overlay Project Report, dated May 2011 and adopted as Exhibit A to Ordinance 184756, and as updated in Exhibit A to Ordinance 188758.

S. Innovation Quadrant Transportation System Development Charge TSDC overlay means a transportation system development charge (TSDC) zone over the innovation quadrant area, as it presently exists or may be amended in the future, in which additional SDCs are collected and expended on capacity-increasing projects to serve future users within the innovation quadrant.

T. Institutional development means development associated with a medical or educational institution and associated uses, on a site of at least five acres in area. Medical institutional campuses include medical centers and hospitals. Educational institutional campuses include universities, colleges, high schools, and other similar institutions offering course of study leading to a high school diploma or a degree certified by a recognized accreditation body. Associated uses on institutional campuses may include some commercial or light industrial uses, residential and other uses.

U. ITE Manual means the current edition of that manual entitled “An Institute of Transportation Engineers Informational Report - Trip Generation.” A copy of the ITE Manual will be kept on file with the Bureau of Transportation.

V. Methodology means the narrative, formulas and charts that serve as the framework for determining the system development charges, as set forth in the City Rate Study.

W. Multi-modal means vehicular, transit, bicycle, pedestrian and wheel chair transportation.

X. New development means development on any site that increases overall trip generation from the site according to Table 4-3 of The City Rate Study or pursuant to Section 17.15.070 of this Chapter. Except as provided under Section 17.15.050, new development for purposes of this Chapter includes remodeling to the extent that it generates additional trips.

Y. North Macadam Overlay Rate Study means the report entitled North Macadam Transportation System Development Charge Overlay Rate Study, dated January 2009 and adopted as Exhibit A to Ordinance 182652, and as updated in Exhibit A to Ordinance No. 188757.

Z. North Macadam Transportation System Development Charge TSDC overlay means a transportation system development charge (TSDC) zone over the entire North Macadam urban renewal area (URA), as it presently exists or may be amended in the future, in which additional SDCs are collected and expended on capacity-increasing projects to serve future users within North Macadam.

AA. Over-capacity means that portion of an improvement that is built larger or with greater capacity than is necessary to serve the applicant’s new development or mitigate for transportation system impacts attributable to the applicant’s new development. There is a rebuttable presumption that improvements built to the City’s minimum standards are required to serve the applicant’s new development and to mitigate for transportation system impacts attributable to the applicant’s new development.

BB. Pedestrian connection means a continuous, unobstructed, reasonably direct route between two points that is intended and suitable for pedestrian use. Pedestrian connections include but are not limited to sidewalks, walkways, stairways and pedestrian bridges. On developed parcels, pedestrian connections are generally hard surfaced. In parks and natural areas, pedestrian connections may be soft-surfaced pathways. On undeveloped parcels and parcels intended for redevelopment, pedestrian connections may also include rights-of-way or easements for future pedestrian improvements.

CC. Permit means a building permit.

DD. Person trip means a trip made by a person or persons to and from a Development during the p.m. peak hour.

EE. P.m. peak hour means the 60-minute time period of highest trip generation during the afternoon period between 4:00 p.m. and 6:00 p.m.

FF. Port development means a planned development owned or operated by a unit of government involving a facility used for cargo freight or passenger transportation by air, water, rail or public mass transit, including accessory uses. Uses that are accessory to port development are those that send or receive cargo freight or are related to passenger movement or service.

GG. Previous use means the most recent permitted use conducted at a particular property. Where the site was used simultaneously for several different uses (mixed use), then, for purposes of this Chapter, all of the specific use categories will be considered. Where one use of the site accounted for 70 percent or more of the total area used, then that dominant use will be deemed to be the sole previous use of the site. Where the previous use is composed of a primary use with one or more ancillary uses that support the primary use and are owned and operated in common, that primary use will be deemed to be the sole use of the property for purposes of this Chapter.

HH. Proposed use means the use proposed by the applicant for a new development. Where the applicant proposes several different uses (mixed use) for the new development then, for purposes of this Chapter, all of the specific use categories will be considered. Where the proposed use is composed of a primary use with one or more ancillary uses that support the primary proposed use and are owned and operated in common, that primary use will be deemed to be the sole proposed use of the property for purposes of this chapter.

II. Qualified public improvement means any transportation system capital improvement or conveyance of an interest in real property that increases the capacity of the City's Transportation System and is:

1. Required by the Bureau of Transportation as a condition of the development approval, and

2. Listed on the City's TSDC project list, and

a. Not located on or contiguous to the applicant's new development site, or

b. Located on or contiguous to the applicant's new development site, and in the opinion of the SDC Administrator is an over-capacity improvement or conveyance.

JJ. Remodel or **remodeling** means to alter, expand or replace an existing structure.

KK. Right-of-way means that portion of land that is dedicated for public use including use for pedestrians, bicycles, vehicles and transit, utility placement and signage.

LL. Roads means streets, roads and highways.

MM. Temporary use means a construction trailer or other nonpermanent structure.

NN. Transportation SDC Capital Improvement Plan, also called **TSDC project list**, means the City program set forth in the City Rate Study that identifies all of the major transportation system and facilities capacity, safety, reconstruction, bicycle, pedestrian, transit and bridge improvements projected to be necessary to accommodate existing and anticipated transportation system demands within the next 10 years, and within the next 20 years as described in the North Macadam Overlay Rate Study and Innovation Quadrant Overlay Project Report.

OO. Transportation system development charge, or **SDC,** refers to the fee to be paid under this Chapter.

PP. Transportation SDC rate schedule refers to the listing of fees for development types, as adopted in Ordinance No. 188619 and, if applicable, Ordinance Nos. 182652 and 184756 for the North Macadam and Innovation Quadrant TSDC Overlay areas, respectively.

QQ. Transportation System Plan, or **TSP**, means the current, adopted 20-year plan for transportation improvements in the City.

RR. Trip means person trip.

SS. Vehicle means a motorcycle, automobile, truck, boat or recreational vehicle, but does not include transit, bicycles and motorized wheelchairs for the disabled.

TT. Vehicular means a reference to a vehicle.

UU. Walkway means an area intended and suitable for use by pedestrians, that meets standards of the American with Disabilities Act, located in public right-of-way.

17.15.030 Rules of Construction.

For the purposes of administration and enforcement of this Chapter, unless otherwise stated in this Chapter, the following rules of construction 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 will control.

B. The word “must” is always mandatory and not discretionary; the word “may” is permissive.

C. Words used in the present tense include the future; and words used in the singular number 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 apply;

2. “Or” indicates that the connected items, conditions, provisions or events may apply singly or in any combination.

F. The words “include” and “includes” do not limit a term to the specific example, but are intended to extend the term’s meaning to all other instances or circumstances of like kind or character.

17.15.040 Application.

This Chapter applies to all new development throughout Portland. The amount of the Transportation SDC will be calculated according to this Section. For any new development within the North Macadam Overlay Rate Study boundaries, the transportation SDC will be the sum of two calculations, the first based upon the City Rate Study and the second based upon the North Macadam Overlay Rate Study. For any new development within the innovation quadrant area boundaries, the transportation SDC will be the sum of two calculations, the first based upon the City Rate Study and the second based upon the Innovation Quadrant Overlay Project Report.

A. New development.

1. Except as otherwise provided in this Chapter, a Transportation SDC will be imposed upon all applications for new development.

2. The applicant must, at the time of application, provide the SDC Administrator with the information requested on an SDC application form regarding the previous and proposed uses of the property, including the following:

a. A description of each of the previous and proposed uses for the property for which the permit is being sought, with sufficient detail to enable the City to calculate trip generation for the entire property under the previous use and for the proposed uses of the new development.

b. For residential uses: The number of residential dwellings, including type, e.g., single family or multi family.

c. For commercial uses: The square footage (or other unit of measure, as applicable) for each type of commercial use, e.g., office, retail, etc.

3. Except as otherwise provided in this Chapter, the amount of the SDC due will be determined by estimating the trip generation of the previous uses on the property and the trip generation for all of the proposed uses and then calculating the total SDC for the previous uses and the proposed uses as provided in the Transportation SDC Rate Schedule.

a. If the person trips attributable to the proposed use of the new development are within 15 percent ± of the person trips attributable to the total previous use of the property and do not increase or decrease person trips by more than 25 person trips, the applicant is not required to pay any SDC and is not eligible for any SDC reimbursement or credit.

b. If the person trips attributable to the proposed use of the new development are more than 115 percent of the person trips attributable to the total previous use, the applicant must pay the difference between the SDC attributable to the proposed use and the SDC attributable to the total previous use.

c. If the person trips attributable to the proposed new development are less than 85 percent of the person trips attributable to the total previous uses, and the development had previously paid a Transportation SDC, then the applicant may be eligible for an SDC reimbursement under Section 17.15.060.

4. In the event an identified use does not have a basis for trip determination stated in the City Rate Study, the SDC Administrator will identify the land use or uses that has/have a trip generation rate most similar to the uses in question and apply the trips generation rate most similar to the proposed use or uses.

5. Notwithstanding any other provision, the dollar amounts of the SDC set forth in the Transportation SDC Rate Schedule as well as the North Macadam Overlay Rate Study and the Innovation Quadrant Overlay Project Report will on July 1st of each year be increased or decreased automatically by the difference of the five-year moving average of the 20-City Construction Cost Index published by the Engineering News Record.

B. Institutional development.

1. Institutional development is subject to assessment under this Subsection or under Subsection A. above, at the election of the applicant. If the applicant elects assessment under this Subsection, this method of assessment will be utilized on Institutional properties designated in the election for a period of not less than three years from date of initial election.

2. Within 60 days of election of the alternate assessment under this Subsection, the applicant institution must submit the proposed methodology for counting Trips to the SDC Administrator. The SDC Administrator will determine whether the proposed methodology is acceptable within 20 days from the date of election and

submission, and, if the methodology is rejected, the SDC Administrator will provide an explanation for the decision.

3. Within one year of the date of election of the alternative method of assessment under this Subsection, at the time(s) designated in the accepted method to count Trips, the applicant institution must establish the average p.m. peak hour trip count. Such data and related analysis will be based upon a methodology to calculate Trips accepted by the SDC Administrator.

4. The amount of the SDC will be determined at the end of each 12-month period by multiplying the applicable dollar amount, as provided in the Transportation SDC Rate Schedule, by the change in average p.m. peak hour trip count during the intervening 12-month period. Such SDC, if any, is due and payable within 45 days from the close of the 12-month period.

5. For uses for which the appropriate SDC calculation is a unit of measure other than square feet, such as the number of students, movie screens, etc., the first application submitted for such a use that is subject to this Chapter will establish the baseline number of existing units of measure. No SDC will be assessed against that baseline. A baseline trip rate so established is valid, and need not be recalculated, for the next 12 months.

C. Port development. At the applicant's option, port development may be subject to assessment under Subsection A. of this Section, or under this Subsection.

1. If the applicant elects assessment under this Subsection C., the applicant and the City will negotiate an agreement for the payment of a fee in lieu of the Transportation SDC that includes the following elements:

a. A methodology for estimating the amount of the SDC that would be imposed pursuant to Subsection A. above during a period of either three years or until the expiration of the SDC project list, whichever is less, but in any event not more than 10 years, as specified by the applicant. The methodology will take into account the port development anticipated under the applicant's master plan during the period specified in that plan, the trips that the port development is expected to generate, trip levels against which SDCs have historically been assessed, the anticipated increases or decreases in the dollar amounts of the SDC during the specified period, any applicable credits or exemptions and any other factors that the SDC Administrator deems to be relevant. In no event will the charge estimated under this Subsection be less than the SDC that would otherwise be due for the port development and the applicant must indicate its agreement to the methodology in writing.

b. A payment period will be imposed during which the applicant must pay in full the amount due within 12 months of the applicant's agreement to the methodology.

2. In the event the applicant and the City are unable to agree to a methodology under this Subsection, the normal method of calculating and assessing the SDC under Subsection A. above will apply.

17.15.050 Exemptions and Discounts.

The uses listed and described in this Section are exempt, either partially or fully, from payment of the Transportation SDC. Any applicant seeking an exemption or a discount under this Section must specifically request that exemption within 180 days after building permit issuance for the new development. Where new development consists of only part of one or more of the uses described in this Section, only those portions of the development that qualify under this Section are eligible for an exemption or discount. The balance of the new development that does not qualify for any exemption or discount under this Section will be subject to the full SDC. Should the applicant dispute any decision by the City regarding an exemption or discount request, the applicant must apply for an alternative exemption calculation under Section 17.15.070. The applicant has the burden of proving entitlement to any exemption so requested.

A. Temporary uses are fully exempt so long as the use or structure proposed in the New development will be used not more than 180 days in a single calendar year.

B. New development that will not generate more than 15 percent more person trips than the present use of the property generates and that will not increase person trips by more than 25 person trips is fully exempt.

C. Certain structures and uses are exempt to the extent established by Section 17.14.070 of Portland City Code.

D. Discount of the Transportation SDC may be available for qualified land use types described in this Subsection and located within designated areas of the City. The applicant has the burden of proving entitlement to any discount so requested. For projects located within the North Macadam TSDC Overlay area or Innovation Quadrant TSDC Overlay area, the discount is only applicable to the Citywide TSDC. No discount may be applied to the North Macadam Overlay TSDC or the Innovation Quadrant Overlay TSDC.

1. To qualify for a discount, the applicant must demonstrate the following:

a. The new development will be located within the Central City or other centers as designated by the Bureau of Planning and Sustainability. Other centers include the Gateway Plan District, areas within Town Centers and Neighborhood Centers as mapped in the new 2035 Comprehensive Plan, and parcels within 1,000 feet of light rail stations (excluding single-family, OS, and IG and IH zones).

b. The new development will meet the eligibility criteria listed in the following table:

Residential

Single Family (1,200 square feet or more)	Ineligible
Single Family (1,199 square feet or less)	Ineligible
Multiple Family	Eligible if in mixed use site that is built to at least 75% of max FAR
Senior Housing/Congregate Care/Nursing Home	Eligible if in mixed use site that is built to at least 75% of max FAR

Commercial – Services

Bank	Eligible if in mixed use site that is built to at least 75% of max FAR
Day Care	Eligible if in mixed use site that is built to at least 75% of max FAR
Hotel/Motel	Eligible if in mixed use site that is built to at least 75% of max FAR
Service Station / Gasoline Sales	Ineligible
Movie Theater/Event Hall	Eligible if in mixed use site that is built to at least 75% of max FAR
Carwash	Ineligible
Health Club / Racquet Club	Eligible if in mixed use site that is built to at least 75% of max FAR

Commercial – Institutional

School, K-12	Eligible
University / College / Jr. College	Eligible
Church	Eligible
Hospital	Eligible
Park	Eligible

Commercial - Restaurant

Restaurant (Standalone)	Eligible if in mixed use site that is built to at least 75% of max FAR
Quick Service Restaurant (Drive-Though)	Ineligible

Commercial - Retail

Shopping/Retail	Eligible if in mixed use site that is built to at least 75% of max FAR
Convenience Market	Eligible if in mixed use site that is built to at least 75% of max FAR

Free Standing Retail Store/ Supermarket	Eligible if in mixed use site that is built to at least 75% of max FAR
Car Sales - New / Used	Ineligible

Commercial – Office

Administrative Office	Eligible if in mixed use site that is built to at least 75% of max FAR
Medical Office / Clinic	Eligible if in mixed use site that is built to at least 75% of max FAR

Industrial

Light Industry / Manufacturing	Eligible if in mixed use site that is built to at least 75% of max FAR
Warehousing / Storage	Ineligible
Self-Storage	Ineligible

2. The following Transportation SDC discounts apply to eligible land uses:

a. Central City – 33 percent reduction

b. Other Centers– eight percent reduction

E. Graded Scale: A change in use of an existing building where the gross enclosed floor area does not exceed 3,000 square feet is fully exempt. A change in use of an existing building where the gross floor area is between 3,000 square feet and 5,000 square feet will be assessed on a graded scale. The percentage of the rate to be assessed on the entire existing building will be calculated by the following equation:

(size of existing building - 3,000 square feet) / 2,000 square feet

Examples of Graded Scale Assessment Calculations

(4,000 - 3,000) / 2,000 = 0.50 Existing 4,000 square foot building assessed at 50 percent of the rate

(3,200 - 3,000) / 2,000 = 0.10 Existing 3,200 square foot building assessed at 10 percent of the rate

(4,900 - 3,000) / 2,000 = 0.95 Existing 4,900 square foot building assessed at 95 percent of the rate

F. Alteration permits for tenant improvements, new construction or remodeling are fully exempt where:

1. no additional dwelling unit(s) or structure(s) are created;

2. the use or structure will not result in an increase in additional trips according to the City Rate Study and, if applicable, the North Macadam Overlay Rate Study or the Innovation Quadrant Overlay Project Report;

3. the use or structure is of a temporary nature and is used less than 180 days in a calendar year.

G. The construction of accessory buildings or structures that will not create additional dwelling units or that do not create additional demands on the City's capital improvements are fully exempt.

H. For new development that includes a mix of exempt and nonexempt forms of development, the applicable exemption(s) will apply only to that portion of the New Development to which the exemption applies.

17.15.060 SDC Credits, SDC Credit Transfers and SDC Reimbursements.

A. SDC credits:

1. The City may grant a credit against the Transportation SDC that is otherwise assessed for a new development for eligible capital improvements constructed or dedicated as part of the new development. The applicant bears the burden of evidence and persuasion in establishing entitlement to an SDC credit and to a particular value of SDC credit.

a. To obtain an SDC credit, the applicant must specifically request a credit within 180 days after building permit issuance for the new development. In the request, the applicant must identify the improvement(s) for which credit is sought and explain how the improvement(s) meet the requirements for a qualified public improvement or other eligible improvement pursuant to Subsection 17.15.060 A.1.c. The applicant must also document, with credible evidence, the value of the improvement(s) for which credit is sought, as follows:

(1) For dedicated lands, value will 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.

(3) For improvements already constructed, value will be based on the actual cost of construction as verified by receipts submitted by the applicant.

b. If, in the SDC Administrator's opinion, the improvement(s) are qualified public improvements, and the SDC Administrator concurs with the proposed value of the improvement(s), an SDC credit will be determined by the SDC Administrator as follows:

(1) For improvements on or contiguous to the new development site, only the costs for the over-capacity portion of the improvement as described in the definition of qualified public improvement are eligible for SDC credit. There is a rebuttable presumption that improvements built to the City's minimum standards are required to serve the applicant's new development and to mitigate for transportation system impacts attributable to the applicant's new development.

(2) For qualified public improvements not located on or contiguous to the new development site, the full cost of the improvement may be eligible for SDC credit.

c. The SDC Administrator may grant credit for all or a portion of the costs of capital improvements constructed or dedicated as part of the New Development that do not meet the requirements of qualified public improvements, provided that the improvements are listed on the City's TSDC project list. In such case, the SDC Administrator may determine what portion of the costs are eligible for SDC credit.

d. For all improvements for which credit is sought within the North Macadam Transportation System Development Charge Overlay, the SDC Administrator will apportion the credit based upon the percent of the total SDC attributable to the City Rate Study and the Overlay Rate Study.

e. For all improvements for which credit is sought within the Innovation Quadrant Transportation System Development Charge Overlay, the SDC Administrator will apportion the credit based upon the percent of the total SDC attributable to the City Rate Study and the Innovation Quadrant Overlay Project Report.

f. The Administrator will provide to the applicant a written notice of the City's decision on the SDC credit request, including an explanation thereof, within 21 calendar days of the request being submitted.

g. The applicant may seek an alternative SDC credit calculation under Section 17.15.070. Any request for an Alternative SDC credit calculation must be filed with the SDC Administrator in writing within 10 calendar days of the written decision on the initial credit request.

2. Granting SDC credits to new development prior to commencing construction of new development. When an eligible improvement is built by a developer prior to an applicant applying for building permits for the new development, the City may grant a credit for any eligible improvement(s). Credits issued are pursuant to the following requirements and conditions:

a. The developer must specifically request a credit prior to the first application for a building permit, but after the issuance of the public works permit for the eligible improvement;

b. For improvements yet to be constructed, the developer must provide the City with an enforceable mechanism to guarantee completion of the eligible improvement, either in the form of a performance bond or other financial guarantee acceptable to the SDC Administrator; and

c. The developer must submit written confirmation to the SDC Administrator on the form provided acknowledging:

(1) That SDC credits issued pursuant to this Section are in lieu of any other credits that could be claimed by the developer or other applicants on account of the eligible improvement; and

(2) That it is the developer's obligation to advise subsequent applicants of the new development that SDC credits associated with the eligible improvement have already been issued and that no further credits are available.

3. Where the amount of an SDC credit approved by the SDC Administrator under this Section exceeds the amount of the Transportation SDC assessed by the City upon a new development, the SDC credit may not be transferred to a different development site. An SDC credit may be issued by the City for a particular dollar value to the applicant or developer. The applicant or developer may convey by any means and for any value an SDC credit to any other party to be used on the initial development site.

4. The City previously allowed SDC credits to be transferred to other parties without restriction as to location. The City will continue to honor those SDC credits issued prior to January 1, 2018.

5. The City may accept at face value any SDC credit presented as full or partial payment for the Transportation SDC due on new development, except that SDC credits approved in connection with new development outside the North Macadam Renewal District and applied to new development inside the North Macadam Urban Renewal District may only be applied to the portion of that new development’s SDCs payable under the City Rate Study, and SDC credits approved in connection with new development outside the innovation quadrant and applied to new development inside the innovation quadrant may only be applied to the portion of that new development’s SDCs payable under the City

Rate Study. Neither the City nor any of its employees or officers will be liable to any party for accepting an SDC Credit, approved and issued by the City under this Section, as payment for a Transportation SDC.

6. SDC Credits are void and of no value if not redeemed with the City for payment of a Transportation SDC within 10 years of the date of issuance.

7. It is a violation of this title for any person to counterfeit or forge an SDC Credit or knowingly attempt to negotiate or redeem any counterfeit or forged SDC Credit.

B. SDC reimbursement.

1. If an applicant proposes new development on property on which there is already a use that generates at least 15 percent more person trips than the proposed use generates, or that generates at least 25 more person trips beyond what the proposed use generates, and if the development had previously paid a Transportation SDC, then the applicant may be entitled to an SDC reimbursement. The SDC reimbursement will be in the form of a credit equal to the difference between the SDC rate of the previous use and that for the proposed use. The applicant bears the burden of evidence and persuasion in establishing entitlement to an SDC reimbursement and to a particular amount of such a reimbursement.

2. To obtain an SDC reimbursement, the applicant must request the reimbursement within 180 days after building permit issuance for the new development and must document the basis for the request with traffic reports prepared and certified to by a Professional Engineer.

3. The SDC Administrator will notify the applicant in writing of its decision on the SDC reimbursement request and will provide a written explanation of the decision. For all improvements for which reimbursement is sought within the North Macadam Transportation System Development Charge Overlay, the Administrator will apportion the reimbursement based upon the percent of the total SDC attributable to the SDC calculated from the City Rate Study and from the North Macadam Overlay Rate Study. For all improvements for which reimbursement is sought within the Innovation Quadrant Overlay, the SDC Administrator will apportion the reimbursement based upon the percent of the total SDC attributable to the SDC calculated from the City Rate Study and from the Innovation Quadrant Overlay Project Report.

4. The applicant may seek an Alternative SDC reimbursement calculation under Section 17.15.070 in the same manner as for an alternative SDC rate request. Any request for an alternative SDC reimbursement calculation must be filed with the SDC Administrator in writing within 10 calendar days of the written decision on the initial reimbursement request.

17.15.070 Alternative Calculation for SDC Rate, Credit, Exemption, or Discount.

A. Pursuant to this Section, an applicant may request an alternative SDC calculation, alternative SDC credit determination or alternative SDC exemption, but only under the following circumstances:

1. The applicant believes the number of person trips resulting from the new development is, or will be, less than the number of trips established in the City Rate Study and if applicable, the North Macadam Overlay Rate Study or the Innovation Quadrant Overlay Project Report, and for that reason the applicant's SDC should be lower than that calculated by the City.

2. The applicant believes the City improperly excluded from consideration a qualified public improvement that would qualify for credit under Section 17.15.060, or the City accepted for credit a qualified public improvement, but undervalued that improvement and therefore undervalued the credit.

3. The applicant believes the City improperly rejected a request for an exemption or discount under Section 17.15.050 for which the applicant believes it is eligible.

B. Alternative SDC rate request:

1. If an applicant believes the number of trips resulting from the new development is less than the number of trips established in the City Rate Study and, if applicable, the North Macadam Overlay Rate Study or the Innovation Quadrant Overlay Project Report, the applicant must request an alternative SDC rate calculation, under this Section, within 180 days after building permit issuance for the new development. The City will not entertain such a request filed more than 180 days after building permit issuance for the new development. Upon the timely request for an alternative SDC rate calculation, the SDC Administrator will review the applicant's calculations and supporting evidence and make a determination within 21 calendar days of submittal as to whether the applicant's request satisfies the requirements of this Section.

2. In support of the alternative SDC rate request, the applicant must provide complete and detailed documentation, including verifiable trips generation data, analyzed and certified by a Professional Engineer. The applicant's supporting documentation must rely upon generally accepted sampling methods, sources of information, cost analysis, growth projections and techniques of analysis. The proposed alternative SDC rate calculation must include an explanation by a registered engineer explaining with particularity why the rate established in the City Rate Study and, if applicable, the North Macadam Overlay Rate Study or the Innovation Quadrant Overlay Project Report does not accurately reflect the new development's impact on the City's transportation system.

3. The SDC Administrator may apply the alternative SDC rate if, in the SDC Administrator's opinion, all of the following are true:

a. The evidence and assumptions underlying the alternative SDC rate are reasonable, correct and credible and were gathered and analyzed by a suitable, competent professional in compliance with generally accepted engineering principles and methodologies and consistent with this Section; and

b. The proposed alternative SDC rate was calculated according to a generally accepted methodology; and

c. The proposed alternative SDC rate more realistically reflects the person trips generated by the new development compared to the rate set forth in the City Rate Study and, if applicable, the North Macadam Overlay Rate Study or the Innovation Quadrant Overlay Project Report.

4. If, in the SDC Administrator's opinion, not all of the above criteria are met, the SDC Administrator will provide to the applicant by certified mail, return receipt requested, a written decision explaining the basis for rejecting the proposed alternative SDC rate.

C. Alternative SDC credit request:

1. If an applicant has requested an SDC credit pursuant to Section 17.15.060 and that request has either been denied by the City or approved but at a lower value than desired, the applicant may request an alternative SDC credit calculation under this Section. Any request for an alternative SDC credit calculation must be filed with the SDC Administrator in writing within 10 calendar days of the written decision on the initial credit request.

Upon the timely request for an alternative SDC credit calculation, the SDC Administrator will review the applicant's calculations and supporting evidence and make a determination within 21 calendar days of submittal as to whether the applicant's request satisfies the requirements of this Section.

2. In support of the alternative SDC credit request, the applicant must provide complete and detailed documentation, including appraisals, cost analysis or other estimates of value, analyzed and certified by an appropriate professional, for the improvements for which the applicant is seeking credit. The applicant's supporting documentation must rely upon generally accepted sources of information, cost analysis and techniques of analysis as a means of supporting the proposed alternative SDC credit.

3. The SDC Administrator may grant the alternative SDC credit if, in the SDC Administrator's opinion, all of the following are true:

a. The improvement(s) for which the SDC credit is sought are qualified public improvement(s); and

b. The evidence and assumptions underlying the applicant's alternative SDC credit request are reasonable, correct and credible and were gathered and analyzed by an appropriate, competent professional in compliance with generally accepted principles and methodologies; and

c. The proposed alternative SDC credit is based on a realistic, credible valuation or benefit analysis.

4. If, in the SDC Administrator's opinion, not all of the above criteria are met, the SDC Administrator may deny the request and provide to the applicant by certified mail, return receipt requested, a written decision explaining the basis for rejecting the alternative SDC credit proposal.

D. Alternative SDC exemption or discount request:

1. If an applicant has requested an exemption or discount under Section 17.15.050 and that request has been denied, the applicant may request an alternative SDC exemption or discount under this Section. Any request for an alternative SDC exemption or discount calculation must be filed with the SDC Administrator in writing within 10 calendar days of the written decision on the initial credit request. Upon the timely request for an alternative SDC exemption or discount, the SDC Administrator will review the applicant's request and supporting evidence and make a determination within 21 calendar days of submittal as to whether the applicant's request satisfies the requirements of Section 17.15.050 for exemptions and discounts.

2. In support of the alternative SDC exemption or discount request, the applicant must provide complete and detailed documentation demonstrating that the applicant is entitled to one of the exemptions or discounts described in Section 17.15.050.

3. The SDC Administrator may grant the exemption or discount if, in the SDC Administrator's opinion, the applicant has demonstrated with credible, relevant evidence that it meets the pertinent criteria in Section 17.15.050.

4. Within 21 calendar days of the applicant's submission of the request, the SDC Administrator will provide a written decision explaining the basis for rejecting or accepting the request.

17.15.080 Payment.

A. The Transportation SDC required by this Chapter to be paid is due upon issuance of the building permit. However, in lieu of payment of the full SDC, the applicant may elect to pay the SDC in installments as provided in ORS chapter 223 and Chapter 17.14 of Portland City Code. If the applicant elects to pay the SDC in installments, a lien will be

placed against the property that is subject to the SDC, and that lien will be given first priority as provided by statute. The applicant's election to pay the SDC by installments must be memorialized in an SDC deferral or installment agreement entered into by the applicant and the City on a form provided by the City and that may provide for the deferral of payments as set forth in Chapter 17.14 of Portland City Code. In any event, the applicant must either pay the SDC in full or enter into an SDC deferral or installment agreement as provided in this Section, before the City will issue any building permits.

B. Upon written request of the Bureau of Transportation, the City Administrator may 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 will be subject to the Code provisions applicable to SDCs and installment payment contracts on file on the date the new contract is received by the City.

D. The City is not responsible for, and has no responsibility to honor or enforce agreements made by private parties regarding, the payment or collection of SDC assessments.

17.15.090 Refunds.

Refunds may be given by the SDC Administrator upon finding that there was a clerical error in the calculation of the SDC. Refunds are not allowed for failure to timely claim credit or for failure to timely seek an alternative SDC rate calculation. The City will refund any SDC revenues not expended within 10 years of receipt.

17.15.100. Dedicated Account and Appropriate Use of Account.

A. There is created a dedicated account entitled the "SDC account." All monies derived from the SDC must be placed in the SDC account. Funds in the SDC account may be used solely to provide the TSDC project list capacity increasing improvements according to the TSDC project list as it currently exists or as amended, and eligible administrative costs. All monies derived from the North Macadam Overlay Rate Study must be placed in a sub-account. The monies in the Overlay sub-account may only be spent on projects serving the North Macadam urban renewal area. All monies derived from the Innovation Quadrant Overlay Project Report must be placed in a sub-account. The monies in the Overlay sub-account may only be spent on projects serving the innovation quadrant. In this regard, SDC revenues may be used for purposes that include:

1. project development, design and construction plan preparation;

2. permitting;

3. right-of-way acquisition, including any costs of acquisition or condemnation;

4. construction of new through lanes for vehicular, transit, or bicycle use;

5. construction of turn lanes;

6. construction of bridges;

7. construction of drainage and stormwater management and treatment facilities in conjunction with new roadway construction;

8. purchase and installation of traffic signs and signals;

9. construction of curbs, medians and shoulders;

10. relocating utilities to accommodate new roadway construction;

11. construction management and inspection;

12. surveying and soils and material testing;

13. construction of accessways, bicycle facilities, pedestrian connections and walkways;

14. landscaping;

15. bus pullouts, transit shelters, fixed rail transit systems and appurtenances;

16. costs associated with acquisition of rolling stock;

17. demolition that is part of the construction of any of the improvements on this list;

18. payment of principal and interest, necessary reserves and costs of issuance under any bonds or other indebtedness issued by the City to provide money to construct or acquire transportation facilities; and

19. direct costs of complying with the provisions of ORS 223.297 to 223.314, including the costs of developing system development charges methodologies and providing an annual accounting of system development charges expenditures.

B. Money on deposit in the SDC accounts may not be used for:

1. any expenditure that would be classified as a maintenance or repair expense; or

2. costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements; or

3. costs associated with maintenance of rolling stock.

17.15.110 Challenges and Appeals.

A. Any resident of Portland or any person with interest may challenge the expenditure of SDC revenues by filing a challenge to the expenditure with the SDC Administrator within two years after the date of the disputed SDC revenue expenditure. The fee for filing such a challenge is $250.

B. Except where a different time for an SDC Administrator's determination is provided in this Chapter, all determinations of the SDC Administrator will be in writing and will be delivered to the applicant within 21 calendar days of an application or other applicant request for an SDC Administrator determination. Delivery of such determination will be deemed complete upon the earlier of actual delivery to the applicant or upon deposit by the SDC Administrator in the mail, first class postage prepaid, addressed to the address for notice applicant has designated in the application. Such determination will be accompanied by a notice of the applicant's right to appeal and an outline of the applicable procedures.

C. Any applicant not content with an SDC Administrator's determination may appeal that determination to the Code Hearings Officer as provided in Chapter 22.10 of Portland City Code. Notwithstanding any other provisions of Portland City Code, there is a nonrefundable fee of $250 for any appeal pursuant to this Subsection. Such fee must accompany any such appeal and no such appeal will be considered filed or received until such fee is paid in full.

D. The City will withhold all permits and other approvals applicable to the applicant's property of the new development pending resolution of all appeals under this Chapter unless the SDC is paid in full or the applicant provides, for the pendency of the appeal, a financial guarantee or security for the charge in a form acceptable to the City Attorney.

17.15.120 City Review of SDC.

A. No later than every two years as measured from initial enactment, the City will undertake a review to determine the total SDCs assessed and collected by transportation district and the total SDCs expended and programmed by transportation district and project; to determine that sufficient money will be available to help fund the TSDC project list identified capacity increasing facilities; to determine whether the adopted SDC rate keeps pace with inflation; to determine whether the TSDC project list should be modified; and to ensure that such facilities will not be overfunded by the SDC receipts.

B. In the event that during the review referred to above, it is determined an adjustment to the SDC is necessary for sufficient funding of the TSDC project list improvements listed in the City Rate Study, North Macadam Overlay Rate Study, or the Innovation Quadrant Overlay Project Report or to ensure that such TSDC project list improvements

are not overfunded by the SDC, the City Council may propose and adopt appropriately adjusted SDCs.

C. The City Council may from time to time amend or adopt a new City Rate Study by resolution.

17.15.130 Time Limit on Expenditure of SDCs.

The City must expend SDC revenues within 10 years of receipt, based on the priorities in the TSDC project list.

17.15.140 Administrative Rules and Procedures.

The City Administrator may adopt administrative rules as authorized by Charter and procedures necessary to implement provisions of this Chapter, including the appointment of the SDC Administrator.

17.15.150 Amendment of TSDC Project List.

The City may, by resolution, amend its TSDC project list as set forth in the City Rate Study, North Macadam Overlay Rate Study, or the Innovation Quadrant Overlay Project Report from time to time to add projects the City deems appropriate.

17.15.160 Severability.

The provisions of this Chapter are severable, and it is the intention to confer the whole or any part of the powers provided by those provisions. If any word, definition, clause, section or provision of this Chapter is declared unconstitutional or invalid for any reason or cause, the remaining portion of this Chapter will be in full force and effect and be valid as if such invalid portion thereof had not been incorporated in it. In the event a definition is held to be invalid or is severed, the defined word or term must be deemed to have the meaning given to that word or term under Oregon law if Oregon law contains such a definition. If there is no established definition of the word or term under Oregon law, the word or term will have its ordinary dictionary meaning. It is declared to be the Council's express legislative intent that this Chapter would have been adopted had such an unconstitutional or otherwise invalid provision not been included in it.

Chapter 17.16 General Provisions

17.16.010 Specifications and Authority to Revise.

A. All work done and materials used for a local or public improvement, whether established as a district or allowed by permit, must conform to the provisions of this Title and to the current version of the standard construction specifications.

B. Revisions. The City Administrator may revise the standard construction specifications of the City as needed.

17.16.020 Interpretation of Specifications.

The decision of the City Administrator as to all performances, materials and technical requirements of standard specifications and plans for a local improvement or public improvement will be final and conclusive. The interpretation of all other provisions of standard construction specifications will be determined by the City Attorney.

17.16.030 Progress Payments.

A. Subject to applicable provisions of the City Charter and in accordance with the specifications adopted for particular work by the City Administrator, progress payments may be made by the City periodically as required by the contract for the improvement work, on the basis of a certificate concerning the same, filed with the revenue service and program of the City Administrator by the responsible Engineer.

B. The progress payment certificate will show the amount of work and material applied to the local improvement or public improvement and not included in any prior certificate, the reasonable value of the work and material, the contract price thereof, the amount to be retained pursuant to the contract, and the amount to be paid as a progress payment. Contract provision for the progress payments will be deemed sufficient without further approval by the City Administrator, subject to sufficient allocation of funds by the Council, except that if the contractor is found to be delinquent, if the payment is the last payment to be made before payment of retainage pursuant to the contract, or if any progress payment covers work that is in addition to or an extra over the basic contract, then a progress payment may not be made pursuant to the responsible Engineer's certificate until such certificate has been presented to the City Administrator and approved by the City Administrator or the City Administrator has separately authorized the extra work.

C. On any contract for a local improvement that does not contain a specific provision for progress payments, a single progress payment will be made at the time the final estimate of the Responsible Engineer is filed with the revenue service and program of the City Administrator if such payment is requested by the contractor. The progress payment may not exceed 95 percent of City Administrator-authorized contract costs included in the final estimate. This paragraph is applicable to contracts that are completed after the passage of this Ordinance.

17.16.040 Interest on Progress Payment and Final Warrants.

Payment for work done as a local improvement will be made by warrant drawn on the Local Improvement Assessment Fund for the particular improvement created or to be created when assessments therefor are paid. Any warrant for a progress payment or final warrant drawn against a Local Improvement Assessment Fund, either to be created or already in existence, will bear interest at the rate of six percent per year beginning on the 10th day after the date of the warrant. Total interest on such warrants may not exceed the total amounts collected as interest from the properties assessed. When sufficient money is collected and is in the Local Improvement Assessment Fund

to pay accrued interest on the oldest outstanding warrant and some portion or all of the principal on such warrant, the interest on the warrant will cease as of the day when the principal amount or portion thereof is collected, to the extent of the amount collected.

17.16.050 Progress Payment Not Deemed Final Acceptance.

No progress payment may be deemed a final acceptance or any acceptance of the work or material represented by such progress payment, nor may the progress payment affect the liability of the contractor or the contractor's surety relating to the public work or local improvement.

17.16.060 Division of Warrants.

When money has been collected and is in a Local Improvement Assessment Fund sufficient to pay all or a portion of the principal as well as the accrued interest on the oldest outstanding warrant, upon presentation of the warrant the Treasurer will pay the accrued interest and principal amount collected upon the outstanding warrant and issue a new warrant for the unpaid principal balance. The new warrant will bear interest from the 10th day after the date of the original warrant.

17.16.065 Purchase of Warrants by the City.

The City will purchase local improvement warrants issued for progress payments and final payment to a contractor on a local improvement project under the conditions listed below upon written request from the contractor to the City Finance Officer:

A. Either the official estimate of the Responsible Engineer or the bid of the contractor is less than $50,000,

B. Before the plans and specifications for the project were issued it has been determined by the Finance Officer that funds would be available in the Assessment Collection Fund for this purpose,

C. The plans and specifications for the project will include a provision that such warrants will be purchased by the City from the contractor at the contractor's request,

D. The purchase will be made by the City no earlier than 10 days and no later than 30 days after the issue date,

E. The purchase of final warrants will be at face value without accrued interest. The purchase of progress payment warrants will be at face value discounted by an amount equal to 10 days of interest and without accrued interest.

17.16.070 Claims Against Contractors.

Notwithstanding contractual provisions for payment of progress payment warrants, final payment warrants or payment of retainage, any person given a right by statute to institute an action on the contractor's bond may file a claim with the revenue service and program of the City Administrator for the labor, material, or payment to State funds for which the contractor is liable in connection with the performance of the contract. In the event such claim is filed and the contractor has money due and owing from the City, the money due and owing may not be paid to the contractor until 20 days after the filing of the claim. If, prior to the expiration of such 20 day period, the money due and owing to the contractor has been ordered withheld or paid into court by a court of competent jurisdiction, if the claimant withdraws the claim, or if the contractor orders all or a portion of the amount due and owing to be paid to the claimant, then the revenue service and program of the City Administrator will divide the payment or treat the same as required by such order or withdrawal. However, if the only money due and owing to the contractor is the final retainage, then the City must have first call upon the retained amount for correction of defects in the contract.

17.16.080 Statutory Provisions Relating to Labor and Wages.

All contractors employed by the City must comply with all statutory requirements concerning hours of labor and prevailing wage rates. All certifications required by statute to be filed with the City must be so filed.

17.16.090 Bonding City Property.

If City-owned property is assessed for a local improvement, the City Administrator may make application for bonding and sign the application. For such application, the City Administrator will be deemed the owner on behalf of the City.

17.16.100 Facilities in Street Area Affected by Improvement.

A. If a fire hydrant has been installed at established street grade and in a location approved by the City Administrator, and a local improvement or public improvement requires moving the hydrant, the Portland Water Bureau will, at the direction, of the City Administrator make the necessary change. The cost of the change will be included in the cost of the improvement unless the Council directs payment from public funds.

B. In all other cases, any facility over, upon or under the street area required to be moved either for construction or as the result of a local or public improvement must be changed, moved, removed, or relocated as the City Administrator may direct at the expense of the owner of the facility. The change includes any trenches and filling thereof or other work necessary for the change. However, this does not relieve the contractor from liability or responsibility under contract specifications. Liability of the owner of the facility for such change will be conditioned upon notice in writing given by the contractor at least 10 days preceding the improvement work in the area. In case any such owner fails or refuses to make the change or relocation, then upon direction by the City Administrator the contractor on the improvement may perform such change or relocation, and upon approval of the contractor's bill therefor by the City Administrator, if

the owner of the facility is the owner of land to be assessed for the local improvement, then the City will add the amount of the bill for the work to the local improvement assessment to be assessed upon the property. If the contractor has performed such work of change or relocation of facility, and the owner thereof is not chargeable by assessment of benefit from the improvement, then the contractor must look solely to the owner of such facility for reimbursement of the cost of change or relocation. In case of a public improvement constructed at the expense of City funds, City funds will be chargeable for the cost of moving any City owned facilities.

C. The contractor for a public improvement or local improvement may not interfere with or impede any person engaged in changing or relocating the facility within a street area, as required in this Section.

D. The right is reserved to the City and to owners of public utilities in the street area to enter upon such street area for repairs, changes or installation of additional facilities in the street area of the improvement work.

17.16.110 Facilities in Street Area Damaged by Contractor.

A. If, in the course of the construction of a local or public improvement, the contractor or the contractor’s subcontractor damages or displaces a public improvement, such as a curb, sidewalk, water line or meter, maintenance hole, drainage improvement, or other installation, then the contractor must repair or replace the public improvement at the contractor's own expense in a proper manner as approved by the City Administrator, except:

> **1.** Damage to a sewer or drainage improvement must be repaired in a proper manner as approved by the City Administrator. Contractors may be granted the option of funding the City to make the repairs in their stead; and
>
> **2.** Damage to a water line or meter will be repaired by the Portland Water Bureau and billed to the contractor or others in the manner specified in Title 5, Revenue and Finance, of Portland City Code.

B. If, in the course of the work of a local improvement or public improvement, a contractor damages any underground facility owned by an adjacent property owner and the facility is not located within two feet of the street grade established for that location, the contractor will be liable for the cost of repair or replacement of the facility unless the plans, specifications and contract otherwise specifically prescribe. The repair or replacement must be done by the owner of such facility at the expense of the contractor unless the owner directs the contractor to perform such work.

C. If, in the course of the work of a local improvement or public improvement, a contractor damages any underground facility owned by an adjacent property owner and the facility is located within two feet of the established street grade in the area, then such facility must be repaired, replaced or relocated as directed by the responsible Bureau, subject to approval by the City Administrator, at the expense of the owner

thereof, notwithstanding any failure to notify the owner of the need for relocation or change as prescribed in Section 17.16.100, unless the plans, specifications and contract otherwise prescribe.

17.16.120 Standards.

The City Administrator may establish standards for particular types or classes of work to be performed by contractors or by persons permitted to construct facilities in streets, easements or other public property. Any person constructing the facility must comply with such standards unless otherwise specifically authorized by the City Administrator to deviate from those standards.

17.16.130 Approvals by City Attorney.

All contracts, bonds, insurance policies and all forms to be used by the public pursuant to this Title must first be approved as to form by the City Attorney before filing or use.

Chapter 17.18 General Obligation Improvement Warrants

17.18.010 General Obligation Improvement Warrants Authorized.

Notwithstanding other provisions of this Code, the Council authorizes the financing of local improvements by the issuance of general obligation improvement warrants in accordance with the procedures provided by State law except as otherwise provided in this Chapter. General obligation improvement warrants may be issued when authorized by ordinance in an amount equal to the indebtedness to be incurred by the City in constructing the local improvement including all costs of land acquisition, advertising, engineering and superintendence fees, and any special preliminary services or studies that may be assessed on benefited property, and an amount equal to the amount to be paid by the City to the contractor for the construction of a local improvement, not exceeding the bid price of each contract plus 15 percent for approved change orders. If the local improvement has not yet been bid and a successful bidder accepted, the engineer’s estimate for construction cost may be used.

17.18.020 Procedure for Issuance and Delivery.

A. From time to time, the Council may, upon recommendation of the City Treasurer and Responsible Official, call for bids on the interest rate for general obligation improvement warrants on the estimated amount of proposed assessments for local improvement districts authorized or to be authorized. Bids must meet the conditions and requirements provided for in the authorizing ordinance.

B. Upon return of bids the Council may award to the highest and best qualified bidder offering the most advantageous interest rate, the full amount of general obligation

improvement warrants to be issued for local improvements specified in the ordinance requesting bids. Provided further, the Council may reject any and all bids.

C. The ordinance authorizing the call for bids will also authorize the issuance of the general obligation improvement warrants to the successful bidder as determined by the Council, subject to the provisions of this Chapter. Thereafter, the City Treasurer is authorized to deliver to the successful bidder from time to time as the Treasurer deems necessary general obligation improvement warrants in an amount equal to the indebtedness to be incurred by the City in constructing the local improvement including all costs of land acquisition, advertising, engineering and superintendence fees, and any special preliminary services or studies that may be assessed on benefited property, and an amount equal to the amount to be paid by the City to the contractor for the construction of a local improvement, not exceeding the bid price of each contract plus 15 percent for approved change orders. If the local improvement has not yet been bid and a successful bidder accepted, the engineer's estimate for construction cost may be used.

D. General obligation improvement warrants will be issued in denominations as stated in the ordinance authorizing call for bids; will be numbered consecutively; will be dated the first day of the month in which they are delivered to the successful bidder and will mature within the time provided by State law. The successful bidder must pay accrued interest from the date of the warrants to the time of delivery.

E. The City Treasurer will deposit all proceeds from the issuance of said General Obligation Improvement Warrants in the Improvement Warrant Sinking Fund established in Section 5.04.210 of this Code.

17.18.030 Application of Proceeds.

The proceeds from each series of general obligation improvement warrants issued for a local improvement district construction contract will be retained in the Improvement Warrant Sinking Fund until payment is authorized.

17.18.040 Repayment.

Upon completion of any local improvement contract and the spreading of assessments upon the property benefited by the improvement, all proceeds from the collection of unbonded assessments, the sale of improvement bonds, and the foreclosure of improvement liens for unbonded assessments realized from the local improvement with respect to which such general obligation improvement warrants are issued, will be transferred from the Local Improvement District Assessment Fund created for the particular improvement and placed in the Improvement Warrant Sinking Fund in an account to be applied to the call and payment of such warrants as rapidly as funds are available as provided by statute.

17.18.050 Payment or Bonding Mandatory.

In the event the owner of any property benefited by the construction of a local improvement that has been financed by the issuance of general obligation improvement warrants fails to either pay any assessment upon such property or apply for bonding of such assessment as provided for in Section 17.12.140 of this Code within 60 days of the time the assessment is due and payable, the Treasurer will immediately cause such property to be sold as provided in Charter Section 9-804 and deposit the proceeds of the sale in the Local Improvement District Assessment Fund created for that particular improvement to be transferred to the appropriate account within the Improvement Warrant Sinking Fund.

17.18.060 Provision in Budget.

The Council will provide in its budget for the fiscal year in which general obligation improvement warrants will mature such amount for the payment thereof as may be estimated or determined to be owing thereon and unpaid at the maturity thereof after application of collections made prior to such maturity as provided in this Chapter. Such monies will be placed in the Improvement Warrant Sinking Fund to repay outstanding warrants as needed.

Chapter 17.19 Northwest Transportation Fund

17.19.010 Purpose.

The purpose of the Northwest Transportation Fund is to ensure that a source of funding is available to finance the implementation of mitigation measures and the construction of transportation improvements that become necessary when new development causes the use of transportation facilities in the area to intensify.

17.19.020 Applicability.

The Northwest Transportation Fund applies to commercial development in Subdistrict B in the Guild’s Lake Industrial Sanctuary Plan District and the area north of NW Pettygrove Street, on sites zoned EX in the Northwest Plan District. For each contribution to the Northwest Transportation Fund, a bonus of one square foot of additional floor area above the 1:1 base floor area ratio (FAR) that may be in nonresidential use is earned, up to the maximum total floor area that is allowed on the site. The amount of floor area that is allowed on the site is regulated by Portland City Code Title 33, Planning and Zoning.

17.19.030 Payment.

Applicants must remit the Northwest Transportation Fund fee prior to the issuance of building permits.

A. The Northwest Transportation Fund fee of $2.90 is based upon a cost per square foot of nonresidential development up to the amount of floor area allowed by Portland City Code Title 33, Planning and Zoning. Any appeal of the application of the Northwest

Transportation Fund fee is to the City Administrator. The City Administrator may establish an appeal fee that will cover the full cost of processing the appeal.

B. The Northwest Transportation Fund fee will be increased or decreased on July 1 of each year. The change will occur automatically, and the new dollar amount will be filed with the City Auditor. The change will be based on the 10-year moving average percentage fluctuation of the Oregon Composite Construction Cost Index. Any increase or decrease that is not a multiple of 5 cents will be rounded to the nearest multiple of 5 cents.

C. The Bureau of Transportation is authorized to refund the Northwest Transportation Fund fee, without further Council action, where the nonresidential development approved by building permit is not constructed and the building permit is cancelled. There is a charge of $500 for processing a refund request.

17.19.040 Implementing Regulations.

The City Administrator may adopt administrative rules as authorized by Charter.

17.19.050 Dedicated Account and Appropriate Use of Account.

All monies derived from the Northwest Transportation Fund will be placed in the Northwest Transportation Fund Account. Funds in the Northwest Transportation Fund will be used to provide transportation improvements in the area bounded by NW Pettygrove St, NW Nicolai St, the I-405 freeway, and NW 27th Ave or in the immediate vicinity, as need arises. Funds may be used to address existing transportation deficiencies and the transportation impacts of growth. Funds in the Northwest Transportation Fund may be used for purposes that include:

A. Transportation analysis.

B. Design and construction plan preparation.

C. Permitting.

D. Right-of-way acquisition, including costs of acquisition or condemnation.

E. Relocation of public utilities.

F. Construction of new lanes for vehicular or transit use.

G. Construction of turn lanes.

H. Construction of bridges.

I. Design, purchase and installation of traffic signs and signals.

J. Design and construction of pedestrian or bicycle facilities.

K. Design and construction of drainage facilities.

L. Design and construction of curbs, curb extensions, and medians.

M. Construction management and inspection.

N. Surveying and soils and materials testing, including environmental testing.

O. Landscaping.

P. Transit facilities.

Q. Demolition that is part of the construction of any of the improvements.

R. 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 the transportation facilities.

S. Administrative costs of establishing, maintaining, and administering the fund.

Chapter 17.23 Special Traffic Control District

17.23.010 Application.

This Chapter applies to any use of the street area within the Special Traffic Control District described in Section 17.23.030.

17.23.020 Definitions.

As used in this Chapter, the following terms have the following definitions:

A. Curb means the stone or concrete edging along a street or sidewalk.

B. Maintenance means the function of protecting existing facilities within the street area so as to keep those facilities in safe and convenient operating condition. Under this definition, the work would be of a routine nature and would not involve cutting the pavement.

C. Emergency means any unscheduled repair of existing facilities within the street area that must be accomplished immediately to protect the life, health, and well-being of the public, or to protect public or private property. Under this definition, emergency work encompasses only immediately required repairs and does not include extensive replacement or upgrading of the facility.

17.23.030 Designated Boundary.

The following described Special Traffic Control District will mean and include the following streets in Portland:

The Special Traffic Control District is be bounded by Naito Pkwy to the east and the I-405 Loop to the west, south, and north. In addition to said boundary, the Special Traffic Control District includes the following boundaries: beginning with the intersection of the west line of SW 18th Ave and the south line of SW Salmon St, running thence easterly along said south line of SW Salmon St to the west line of SW 14th Ave, running thence southerly to its intersection with the north line of SW Jefferson, thence easterly to the east line of SW 14th Ave, thence northerly along the east line of SW 14th Ave to its intersection with the north line of West Burnside; thence westerly along the north line of West Burnside to its intersection with the west line of SW 18th Ave; thence southerly along the west line of SW 18th Ave to the place of beginning. And, beginning with Naito Parkway to the west, the Willamette River to the east, SW Clay St to the north, and SW River Pkwy to the south.

17.23.040 Special Jurisdiction.

Within the Special Traffic Control District, the City Administrator may require temporary street closure permits. Such permits may allow for construction, repair, or maintenance of facilities within the street area and use of the street area to facilitate work on private property. The City Administrator may secure information from and coordinate the activities of all parties requesting use of the street area.

17.23.050 Permits Required.

A. Any party desiring to perform work in the street or make use of the street area to perform work on private property must first obtain a temporary street closure permit as prescribed in Chapter 17.24 of Portland City Code and pay the permit fees set forth in Chapter 17.24.

B. Any party performing emergency work must notify the City Administrator at the time work is commenced and when finished. Emergency work may be performed without first obtaining the temporary street closure permit outlined in Subsection A. above or without complying with the requirements of Subsection A. above.

C. Any party desiring to perform work that utilizes the street area in the Special Traffic Control District must obtain approval from the City Administrator to schedule their work. Any party desiring to perform work must distribute notice of work to adjacent businesses five days in advance of proposed work dates. A written schedule of work dates and proof of notification to adjacent businesses must be submitted to the City Administrator prior to final approval being granted.

D. The City Administrator may waive minimum notification requirements as listed above in Subsection C. if work is deemed to have minimal impact to the transportation system.

E. Notwithstanding the other provisions of this Section, the City Administrator may implement additional requirements for permits in the Special Traffic Control District when conditions in the downtown require more stringent regulations.

F. Nothing contained in this Section limits the authority of the City Administrator in maintaining public peace and safety and, upon request from the City Administrator, the party performing any work in the street area must reopen the street area to its normal use as determined by the City Administrator.

17.23.060 Traffic Standards.

Since the intent of this Code Section is to minimize traffic congestion in the Special Traffic Control District, permits issued within the Special Traffic Control District in accordance with Sections 17.23.050 and 17.24.010 must conform to traffic standards established by the City Administrator. Within the special control district, the City Administrator is authorized and directed to enforce the traffic standards or such other traffic control plans as may be required as a condition of the permit. The City Administrator may require any party requesting to use the street area to submit a traffic control plan for review as a condition of granting a permit.

17.23.070 Revocation.

The City Administrator, in carrying out the provisions set forth in this Chapter, may enforce conditions set forth in permits issued under Section 17.23.050. The City Administrator may revoke any permit issued under Section 17.23.050 at any time in the event the public's need requires it, the permittee fails to comply with the conditions of the permit, or for any reason that would have been grounds for denial of the initial permit application.

Chapter 17.24 Permits

17.24.000 Purpose and Intent.

The purpose and intent of this Chapter is to:

A. Permit and manage reasonable access to the public right-of-way of the City;

B. Conserve the limited physical capacity of those public right-of-way held in trust by the City;

C. Ensure that all persons owning or operating facilities within the public right-of-way comply with applicable ordinances, rules and regulations of the City;

D. Ensure that the City can continue to fairly and responsibly protect the public health, safety and welfare of its citizens.

17.24.005 Jurisdiction and Management of Public Right-of-Way.

A. The City has jurisdiction and exercises regulatory management over all public right-of-way within the City, as provided under City Charter, ordinances, and Oregon law.

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

C. No person may occupy or encroach on a public right-of-way without the permission of the City, as provided under Portland City Code.

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

E. The City retains the right and privilege to immediately require any person to remove, move or otherwise adjust its facilities located within the public rights-of-way whenever, in the determination of the City Administrator, the public need requires it. If the person ordered to remove, move, or adjust the facility does not do so as directed by the City Administrator, the City may remove, move or otherwise adjust such facilities with its own forces or contract forces and the full cost of such removal, movement or adjustment will be the responsibility of the person responsible for the facility.

F. The Bureau of Transportation is the agency responsible for management of the public right-of-way, subject to the approval of the City Administrator.

17.24.010 Permits Required.

A. Any person desiring to make a public improvement, do work in, or use the street area must first obtain a permit from the City Administrator as prescribed in this Chapter and pay the permit fees set forth in Section 17.24.020, except for maintenance activities allowed without a permit, as set forth in Sections 17.42.020 and 17.42.025.

B. Except as set forth in Subsection E. below, no person will be granted a permit to install, construct, reconstruct, repair, alter or maintain facilities for the distribution, transmission or collection of sewer, water, gas, petroleum products, steam, electricity, telecommunications, or other service and any associated wires, cables, poles, conduits, appliances or apparatus in, on, over, through or in any manner beneath the surface of the streets unless that person currently possesses a franchise or privilege granted by the City or is a City bureau charged with providing such service to the public to generate, transmit or provide any such service including but not limited to electricity, telecommunications, natural gas, sewer, water, stormwater, and pipeline services within the City.

C. Except for street or transportation facility construction and maintenance work done by or under contract with the City, and except for work allowed to be performed Sections 17.42.020 and 17.42.025, it is unlawful for any person to do any work or perform any act as set forth in this Title without first obtaining a permit. It is unlawful for any person to break up, dig up, cut, excavate or fill in any street or to construct any sidewalk, curb, gutter or to do any work in or upon any street or in any way to tamper

with hard surface pavements without first obtaining a permit for it and paying the fee prescribed in Section 17.24.020. The permit must be obtained from the City Administrator unless specifically provided otherwise in this Title.

D. The failure of any permittee to comply with all permit conditions or related Code and Charter provisions while doing work in the street area will be reasonable cause for revocation of the permit. Upon revocation of the permit, the City may complete the work and charge such costs to the permittee.

E. Licensed plumbing contractors having a valid plumbing permit to install water service lines and a valid authorization from the City Administrator to connect to a public water meter may obtain permits to install water service lines between the property line and the public water meter.

F. The City Administrator may issue permits to the Bureau of Environmental Services for street openings to facilitate connections to public sewers and to install, repair and replace sewer mains, laterals, necessary appurtenances and drainage facilities constructed through public and local improvement procedures. The Bureau of Environmental Services must obtain permits from the City Administrator for use of the street area in accordance with the schedule of fees set forth in Section 17.24.020.

G. The City Administrator may issue permits to the Portland Water Bureau for street openings to facilitate connections to the public water system and to install, repair, and replace water mains, laterals, and necessary appurtenances. The Portland Water Bureau must obtain permits from the City Administrator for use of the street area in accordance with the schedule of fees set forth in Section 17.24.020.

H. The City Administrator may issue permits to a Public Utility for street openings to facilitate connections to the public utilities systems and to allow the Public Utility to install, repair, and replace its poles, mains, laterals, and necessary appurtenances. A Public Utility must obtain permits from the City Administrator for use of the street area in accordance with the schedule of fees set forth in Section 17.24.020.

I. When immediate repairs to an existing at grade, underground or overhead installation become necessary as the result of an emergency or accident involving public hazard or interruption of service to subscribers or customers, the emergency repairs may be started or made without permit after notice to the City Administrator. The owner of such facilities must apply for appropriate permits as soon as possible, not to exceed two business days following discovery of the emergency.

J. The City Administrator may issue permits to Tri-County Metropolitan Transportation District of Oregon (TriMet) for activities not explicitly identified under any existing or future agreements, including the modifications to any existing or future infrastructure to allow for the attachments of telecommunication facilities. TriMet must obtain permits from the City Administrator for use of the street area in accordance with the schedule of fees set forth in Section 17.24.020.

17.24.012 Financial Guarantee Required.

A. When issuing permits under this Chapter, the City Administrator may require a construction bond, performance bonds or other form of financial guarantee as a condition of the permit.

B. The City Administrator may require a maintenance bond or other financial guarantee as a permit condition. The maintenance bond or other financial guarantee must remain in force as long as the person or that person's predecessor has facilities located within the public right-of-way.

C. The acceptable forms and levels of the required financial guarantees will be established by the City Administrator, as maintained on file in the office of the Bureau of Transportation.

17.24.013 Insurance and Indemnification.

A. Insurance. An applicant for a permit under this Chapter must procure insurance, the adequacy of which will be determined by the City Administrator, that names the City as an additional insured entity. The applicant must supply the City with a certificate providing evidence of that insurance prior to issuance of the permit.

B. Indemnification. As a condition of a permit issued under this Chapter, the applicant must indemnify, defend, and hold the City and its officers, employees, and agents harmless from and against all claims, suits, and actions of whatsoever nature; damages or losses; and all expenses and costs incidental to the defense thereof, including attorney fees, resulting from or arising out of the activities of the applicant or its officers, employees, agents, or contractors under the permit. In addition, in situations that occur prior to dedication of the right-of-way, the permittee must acknowledge and assume all risk of loss that may arise if the City or any other public agency subsequently requires changes in or additions to plans or refuses to approve all or any part of the permittee's improvements.

17.24.014 Permits to Construct and Maintain Structures in the Street Area.

A. Except as otherwise provided in Portland City Code, permits to construct, install and/or maintain privately-owned structures in dedicated street area may be issued by the City Administrator only to the owner of the property abutting the half of the street area in which the structure is proposed to be built. Such permits will be revocable at any time as provided in Section 17.24.016. The burdens and benefits of any such permit must run with the property abutting the half of the street area in which the structure is proposed to be built and all such permits must be recorded against the title of the benefitting property except as otherwise specified below. All cost of such recordings must be borne by the permittee. Upon sale or other disposition of the property, the permit must automatically transfer to any new property owner, unless the permit specifically states that it is nontransferable.

B. Permits may be issued to parties other than the owner of the abutting property only under the following circumstances:

1. the Director of the Bureau of Transportation has determined that the permittee is an organization with public responsibilities and is of sufficient permanence to carry insurance, liability and maintenance responsibilities for the full life of the permit; or

2. the permittee is the owner of a benefited property against which the permit is recorded, and the underlying property owner of the right-of-way has agreed to issuance of the permit; or

3. as otherwise provided for in Section 17.24.010, Chapter 17.25, Chapter 17.26 and Chapter 17.56.

C. The benefits and burdens of permits issued to parties other than the owner of the abutting property must run with the party or property specified in the permit, other portions of Portland City Code notwithstanding.

17.24.015 Obligation of Property Owner for Structures in the Street Area.

The owner of any real property will be responsible for maintaining any structures in the half of the street area abutting the owner's property, whether such structures are under City permit or not, except that the abutting owner will not be responsible for the maintenance of structures that have been installed by other than the abutting owner under a permit or other authority granted by the City.

The abutting property owner will be liable to any person who is injured or otherwise suffers damage by reason of the property owner's failure to keep any structure located in the half of the street area immediately abutting his or her property in safe condition and good repair. Furthermore, said abutting property owner will be liable to the City and its officers, agents and employees for any judgment or expense incurred or paid by the City or its officers, agents, or employees by reason of the existence of any such structure in the street area.

17.24.016 Permit Revocation.

Permits for structures in City streets, for public improvements, work in, or use of the street area may be revoked by the City Administrator at any time and for any reason the City Administrator deems to be in the interest of the City, and no grant of any permit, expenditure, or money in reliance thereon or lapse of time will give the permittee any right to the continued existence of a structure or to any damages or claims against the City arising out of revocation.

Upon revocation the permittee, or any successor permittee, must, at the permittee's own cost, remove such structure or equipment associated with work or use of street

area within 90 days after written notice to the permittee by the City of such revocation, unless the City Administrator specifies a shorter period, and must return the street area to the condition of the street area immediately surrounding it, to the satisfaction of the City Administrator. If the permittee does not remove the structure or equipment and/or return the street area to a condition satisfactory to the City Administrator, the City Administrator may do so and the permittee will be personally liable to the City for any and all costs of dismantling the structure or equipment and reconstructing the street area. The costs of removal and reconstruction will be assessed to the permittee and/or will become a lien upon the abutting property until paid by the permittee. The City may sell or otherwise dispose of structures, equipment or parts thereof removed from the public right-of-way under authority of this Section, and the owner of same will not be entitled to any compensation for said items from the City.

17.24.017 Temporary Street Closure.

The City Administrator may close or by permit allow to be closed temporarily any street or portion thereof for the following reasons:

A. To facilitate construction, demolition or installation of facilities on public or private property.

B. To restrict vehicular use of an unimproved street for the protection of the public or to eliminate a neighborhood nuisance.

C. To provide for block parties.

D. To provide for community events.

Such closures will include the requirements of the City Administrator and provide for appropriate insurance as required by the City Administrator protecting the public and the City.

17.24.020 Fees and Charges.

The Council may establish fees and charges. All fees, charges, civil penalties, and fines established by authority of this Title will be listed in the Portland Policy Documents, as amended annually by Council effective with the fiscal year budget.

If a larger fee is required elsewhere in this Title for any class of permit, the larger fee will apply. Otherwise, the fees and charges listed in the Portland Policy Documents must be paid unless the City Administrator has granted a specific permit for a different fee. All fees, charges, civil penalties, and fines established by authority of this Title will be listed in the Portland Policy Documents, as amended annually by Council effective with the fiscal year budget. All fees for recording permits and other documents with the County Recorder must be paid by the property owner or permittee.

17.24.025 Fees for Public Improvement Permits.

A. Engineering and superintendence services in connection with public improvement projects will be charged in accordance with Portland Policy Document TRN 3.450 – Transportation Fee Schedule. The Director of the Bureau of Transportation will review actual yearly program costs of engineering and superintendence to ensure that only usual and ordinary costs are included and adjust the rates accordingly.

17.24.026 Fees for Review of Land Use Applications.

The Council will establish fees that recover the City's costs of participating in pre-application conferences and reviewing applications for land use approvals that are required by either Title 33 or Title 34 of Portland City Code.

A. Policy.

1. Fees are not intended to exceed the Bureau of Transportation's average cost of processing the type of review requested or average cost of participating in pre-application conferences.

2. Fees will include direct costs and overhead charges.

3. Fee schedules will be updated annually and made available in the Portland Policy Documents.

B. Required fees.

1. Each request for a pre-application conference must be accompanied by the applicable fee.

2. All land use review applications requested must be accompanied by the applicable fee.

C. Concurrent applications. When more than one review is requested on the same project, the fee for each review will be charged.

D. Appeal fees. The process and charges for appeals will be as set forth in Portland City Code Subsection 33.750.030 C., Appeal Fees.

E. Fee waivers. The Bureau of Transportation will waive its pre-application and review fees in those cases where the Planning Director has granted a fee waiver under the provisions of Portland City Code Section 33.750.050.

F. Refunds. The Bureau of Transportation will refund fees under the following circumstances:

1. Unnecessary fee. When a fee is accepted by staff for a land use review that is later found to not be required, a full refund will be made.

2. Errors. When an error is made in calculating the fee, the overpayment will be refunded.

3. Full refunds.

a. If, upon receipt of the application by the Bureau of Transportation, it is evident that no transportation review is required, the Transportation review fee will be refunded. The determination of whether a Transportation review is required is at the sole discretion of the City Administrator.

b. If the applicant meets the Bureau of Planning and Sustainability's requirements under Portland City Code Subsection 33.750.060 D. for a 50 percent refund and the Bureau of Transportation has not begun its review, the Transportation review will be refunded. Determination of whether to grant the refund is at the sole discretion of the City Administrator.

4. No refunds.

a. Appeal fees are not refundable except as set forth in Subsections 33.750.050 B. and 33.750.060 C.2.

b. Pre-application conference fees are nonrefundable except as set forth in Subsections F.1. and 2.

c. No refunds will be given once a review has begun.

17.24.030 Application for a Public Improvement Permit to construct a Street or Transportation Facility.

A. All persons or agencies wishing to construct street or transportation facilities as a public improvement will make application to the City Administrator for a permit. The application for permit must contain such information as the City Administrator may designate and must specify the nature of the proposed improvement, the name of the street or streets to be improved or in which the improvement is to be located, the location of any off-street improvements, and the construction completion date.

B. A public improvement permit for a street or transportation facility within a land division may be issued prior to recording of the final plat only after the following:

1. the improvement plans have been approved by the City Administrator,

2. the final plat, is approvable as determined by Portland Permitting & Development,

3. any necessary site permits have been obtained from Portland Permitting & Development,

4. any necessary easements outside the land division have been obtained,

5. the permittee has provided the following:

a. Acknowledgment that the construction is on private property that will be subject to an easement for public improvements or public right-of-way and that will come under public control upon plat and easement recording with the county.

b. Authorization for City personnel to enter upon the particular private property for the purpose of testing, inspection and surveying if required, during the course of construction of the public improvements.

c. Acknowledgment that City inspection personnel may reject or require correction of work not in accordance with the approved plans and standard specifications, which would prevent future acceptance of the improvements.

d. Acknowledgment that all public utilities to be located in public right-of-way must be installed prior to final acceptance of the public street improvements, or as directed by the City Administrator.

e. Acknowledgment that the plat and easements must be recorded with the County prior to final acceptance of the public improvements.

f. Agreement that the permittee will hold the City harmless against any liability that may occur during construction prior to dedication of the right-of-way or recording of the easement, and further agreement that the permittee assumes all risk of loss that may arise in the event the City or any other public agency subsequently requires changes in or additions to plans or refuses to approve all or any part of permittee’s improvements.

g. Agreement that the permittee will, at the permittee's own expense, maintain the public improvements for a period of 24 months following issuance of a certificate of completion by the City Administrator, as assurance against defective workmanship or materials employed in such improvement.

h. Acknowledgment that the issuance of the permit in no way waives any requirements by the City or any other public agency that may be associated with the development of the land division.

6. All other conditions established by the City Administrator have been met.

17.24.035 Deposit Required.

Concurrent with making the permit application, the party desiring the permit must deposit a sum equal to one-half of the estimated cost of engineering and superintendence as determined by the City Administrator except that when a consultant does the design and survey the deposit will be 20 percent of the estimated cost of

engineering and superintendence. This deposit must be determined by using the appropriate schedule of services found in Section 17.24.070. All deposits must be made prior to any design work being done by the consultant. In the event that no permit is issued for the proposed improvement within one year from the time design and plans are reviewed and completed, the City will retain the amount of the deposit as compensation for the preparation of design and plans or efforts of review. If a permit is issued for the proposed improvement within one year from the time such design and plans are completed, the amount of the required deposit will be applied to the cost of the permit fee for such improvements.

17.24.040 Refusal of a Public Improvement Permit.

A. A permit application for a public improvement will be refused when the street grade has not been established, if street grade is applicable directly or indirectly to the proposed improvement, while a proposal to change the grade is pending before the Council, or after plans have been filed with the Council to improve the street.

B. The City Administrator may refuse a permit if, in the City Administrator's judgment, the proposed use or improvement:

1. Is not suitable in the circumstances,

2. Will not be uniform with existing or proposed street improvements in the immediate vicinity, or

3. Includes movement of earth from one portion of street to another.

C. The City Administrator may refuse a permit or establish permit conditions for modification or repair of any nonconforming sewer or drainage systems within existing or proposed right-of-way.

D. The City Administrator may refuse to issue a permit under this Chapter unless the application is modified as the City Administrator may deem necessary. The City Administrator may require the addition of curbs if a sidewalk improvement is proposed. The City Administrator may require the addition of curbs or sidewalks or both if the proposed improvement is a street improvement. If the City Administrator finds that water main extensions are likely to be needed within five years after the completion of a street improvement, the City Administrator may refuse issuance of a street improvement permit unless the water main extensions are provided before the completion of a proposed street improvement. If an application is made for a street improvement and the City Administrator finds that public service installations will be needed below the surface of the street or that sanitary or storm drainage is necessary or that underground facilities are needed for future street light installations, the City Administrator may refuse the application unless such installations are included within the proposal or are arranged to be completed prior to the completion of the proposed street improvement.

17.24.050 Contents of Permit.

A. Any permit issued for the construction of a public improvement or use of the street area may contain such conditions as the City Administrator finds appropriate in the public interest. The permit must specify the kind of work or use allowed by the permit. The date by which the work is to be completed or, if the permit is for use of the street area, the date the use will cease, if applicable.

B. The contents of the permit will include but are not limited to the following items:

1. A requirement for proof of insurance in a form acceptable to the City Attorney. Insurance requirements for use permits will be as specified in TRN-10.21 and per TRN-10.06 Portland in the Streets Administrative Rule.

2. A requirement that the permittee be responsible for a 24-month quality assurance period following issuance of a certificate of completion.

3. If the permit is for a local improvement, a requirement for assurance of performance. If the permit is for a use of the street area, the City Administrator may require an assurance of performance if the City Administrator determines it is needed to protect the public interest.

4. If the permit is for a local improvement, a schedule setting forth when the permitted activity may begin and the date by which the work will be completed.

5. A requirement that all stated fees and charges or estimated fees and charges have been paid and that the applicant will pay the balance of fees and charges above the estimated cost prior to issuance of a certificate of completion.

17.24.055 Assurance of Performance.

A. Assurance of Performance must be for a sum approved by the City Administrator as sufficient to cover 100 percent of the cost of design, superintendence, and construction of improvements authorized under permit. Such assurance may, at the discretion of the City Administrator, be in the form of separate assurances covering individual stages of a staged development or covering the installation of various individual improvements rather than a single assurance of performance covering 100 percent of the cost of all improvements to the entire land division. Deposits for engineering and superintendence as required by Portland City Code Title 17 or by Title 5 are in addition to the filing of such assurances of performance.

B. Assurance of performance for public improvements may be in one of the following forms as approved by the City Attorney:

1. Surety bond executed by a company authorized to transact business in the State of Oregon.

2. Irrevocable letter of credit.

3. Set-aside account

4. Cash deposit.

5. City Council passage of a LID Formation Ordinance for a local improvement district.

6. Other forms as approved by the City Attorney.

C. If an applicant for permit fails to carry out the provisions of the application for permit, or the permittee fails to carry out the provisions of the permit, and the City has unreimbursed expenses resulting from such failure, the City will call on the assurance of performance for reimbursement. If the amount of the assurance of performance exceeds the expenses incurred by the City, the City will release the remainder. If the amount of the assurance for performance is less than the expenses incurred by the City, the applicant or permittee will be liable to the City for the difference. Assurance of performance covering stages or portions of a total development may be released as such stage or portion is completed to the satisfaction of the City Administrator. Twenty percent of all funds deposited as assurance of performance will be retained through the maintenance or quality assurance period; other forms of assurance of performance must contain written provisions for a similar guarantee through the maintenance period.

17.24.060 Permit Conditions.

All work done in streets or other public places must be done in the location approved by the City Administrator and in accordance with plans and specifications prepared or approved by the City Administrator. The permit may include conditions, and the conditions will be binding upon the permittee (see Section 17.24.050). All work done will be subject to the rejection or correction requirements of the City Administrator and subject to the final approval of the City Administrator. Any person or entity performing work in the street area must:

A. Begin the work promptly and diligently pursue the work until the work is completed;

B. Upon completion of the work, make a written report to the City Administrator detailing the manner in which the work was executed, the location of the work and facilities, and other information regarding the work performed as the City Administrator may request. The report must be certified as accurately depicting the horizontal and vertical location, size and type of material of all facilities constructed. The plans need not include details of the nature of the facilities. These plans must be submitted to the City within 60 days after completion of construction. The Director of the Bureau of Transportation may establish the format of such reports.

C. When there are two or more curbs on the same side of the street centerline, lay all pipes, mains, sewers, conduits, lines, when the same are to run lengthwise in any street, at a distance at least three and one-half feet from the curb closest to the street centerline measuring toward the center of the street and at least two feet from the curb closest to the street centerline measuring to the outer edge of the street. All

connections to the pipes, mains, sewers, conduits, and lines lying lengthwise in the street or to any lot must be installed perpendicular to the curb. In cases where compliance with these regulations would cause unnecessary digging up of pavement, disruption of traffic, place a burden on the street system, or otherwise not be in the best interest of the public, the City Administrator may, in their sole discretion, permit or require the laying of pipes, mains, sewers, conduits, lines, in a different location or manner;

D. Keep all stone, macadam, gravel or other pavement material separate from the excavated earth;

E. Refill any trench or hole that has been dug or opened in any street for the purpose of reaching or laying any sewer, gas, water or other pipe or main within 24 hours after laying or reaching the sewer, gas, water or other pipe or main, or as directed by the City Administrator, in the following manner:

1. If the street has not been improved with permanent pavement, the earth excavated from the hole or trench must be refilled and thoroughly compacted until the grade of the roadway previously existing at such trench or hole is reached.

2. If the street has been improved with permanent pavement, the excavated area must be refilled and compacted to the elevation of the bottom of the permanent pavement, which must be re-laid compactly and made to conform to the grade, base and quality of the surrounding street pavement.

F. Erect appropriate traffic control devices and protective measures around the work site, and maintain warning lights or other warning devices as required by the City Administrator at or around the work site during the hours between sunset and sunrise so that pedestrians and operators of vehicles may be duly warned of, and protected from the obstruction;

G. Install and maintain erosion control measures as directed by the City Administrator;

H. Comply with any other directions given by the City Administrator.

17.24.067 Hazardous Substances.

A. Utility corridor fill means fill that:

1. Meets the requirements of the City’s Standard Construction Specifications;

2. May be handled without the need for monitoring of exposure to contaminants under the Oregon OSHA occupational standards for maintenance workers or the use of personal protection equipment above Level D as described in 29 CFR 1910.120;

3. Meets the current DEQ definition of clean fill in OAR 340-093; and

4. The concentrations of any contaminants of concern in the fill material are below the DEQ soil and sediment clean fill screening levels for terrestrial and upland use.

B. Right-of-way access area means:

1. The area within a public right-of-way to a minimum depth of five feet below the final street and sidewalk grade and;

2. Any additional depth or width necessary for maintenance of public or private infrastructure including but not limited to sewers, hydrants, meters, conduits and pole bases as required by the City Administrator.

C. Contaminant barrier means a visual and physical barrier that is of a material, construction and thickness sufficient to minimize transmission of hazardous substances present in the surrounding fill to the utility fill and provide a visual demarcation of the boundary of the utility fill as specified in the City's standard construction specifications or as approved by the City Administrator.

D. In addition to the requirements of this Chapter, permittees must comply with applicable state and federal laws, regulations and orders concerning hazardous substances including but not limited to their use, storage, handling, disposal, remediation, spill reporting and release reporting.

E. Except as provided in Subsection 17.24.067 H., all fill placed in the right-of-way access area as part of a project permitted under this Chapter must be utility corridor fill.

F. Permittees must excavate soil or fill that does not meet the definition of utility corridor fill that is encountered in the right-of-way access area during permitted work and replace it with utility corridor fill.

G. If the soil immediately outside of the right-of-way access area does not meet the definition of utility corridor fill, a contaminant barrier must be placed between the utility corridor fill and surrounding fill.

H. On a site-specific basis, the City Administrator may allow the placement of fill that does not meet the definition of utility corridor fill in the right-of-way access area.

I. If a permittee is required under state, federal or local law to report a spill or release of hazardous substances that occurs at, on, over, under or affects the public right-of-way, the permittee must notify the Bureau of Environmental Services Spill Prevention and Citizen Response Section within 24 hours of such a spill unless otherwise required by state, federal or local law.

J. If a permittee encounters contaminated media within the public right-of-way that poses an imminent threat to human health, the environment, or the waters of the State

or requires the use of personal protective equipment above Level D to conduct the permitted work, the Permittee must notify the City Administrator within two business days of encountering the contaminated media.

17.24.070 Engineering and Superintendence for Street and Transportation Facility Public Improvements.

A. The City Administrator will:

1. Make all necessary surveys;

2. Mark all grades;

3. Prepare, fix, and prescribe all plans and specifications;

4. Provide engineering provisions and approvals;

5. Test and evaluate all project materials and resources as required;

6. Inspect and approve all work done. At the option of the City Administrator, Subsections 17.24.070 A.1., 2., and 3. above may be done by a professionally registered consulting engineer working under private contract with the permittee.

B. If a permittee, person, or agency seeks to have a public improvement constructed under contract in the name of the City, then the permittee will be charged for engineering and superintendence services in an amount equal to the Director of the Bureau of Transportation estimate of the actual costs of such services in accordance with the provisions of Section 5.48.050. This fee must be paid prior to the issuance of permittee's permit for public improvement.

C. If a permittee, person or agency seeks to have a public improvement constructed under private contract between the permittee and a contractor, or if the permittee desires to do the work personally or have it done under his or her direction, then the permittee will be charged for engineering and superintendence services in an amount computed as follows below. This fee must be paid prior to the issuance of permittee's permit for public improvements.

Engineering and superintendence fees:

1. City does design and survey - see Subsection 17.24.025 A.

2. Consultant does design and survey - see Subsection 17.24.025 A.

3. Consultant does design, City does survey - see Subsection 17.24.025 A. plus survey actual costs by authority of Section 5.48.030.

D. If the specifications or other contract documents are not strictly complied with or the work is not completed within the time specified in the permit, the City Administrator may

refuse to accept the work. If the work is refused by the City Administrator, the work will not thereafter be accepted unless corrected to conform to plans and specifications and unless approved by the City Administrator.

17.24.080 Work Done Under Permit.

A. All work done under and in pursuance of a permit must be under the authorization of the City Administrator, who will determine the details of the improvement and whose orders in regard to the improvement and the execution of the same must be obeyed by the applicant for the permit and by the persons doing the work.

B. The City Administrator may refuse issuance of permits for work within the street right-of-way to any Person until the requirements of permits previously issued are complied with. This authority includes, but is not limited to, denial of a permit when the applicant is delinquent in payment of fees or City charges for work performed for the applicant by the City or when the applicant has failed to complete work on any previously issued permit or permits.

17.24.085 Original Documents Become the Property of the City.

Any and all plans, specifications, survey notes or other original documents as required by the City Administrator that were either prepared for or produced during the design or construction of a public improvement become the property of the City and must be delivered to the City Administrator prior to their acceptance of the improvement.

17.24.090 Certificate by City Administrator.

During the course of construction and prior to the issuance of a certificate of completion for a public improvement under this Chapter, the City Engineer will inspect the improvement and determine if the various kinds of work performed are in compliance with the plans, specifications and allowances of the permit as to quality of workmanship. Furthermore, the City Engineer will check the improvement for alignment, proper computation of quantities and conformance with the established grade. If all of the work required is completed and done to the satisfaction of the City Engineer, the City Administrator will give a certificate to that effect. The City Administrator may state that the improvement is accepted, if done within the completion date, as set forth above, and within recorded public right-of-way and easements. Otherwise, the acceptance may be made by the City Administrator on the certification of conformity to Code provisions and proper grades filed by the City Engineer.

17.24.100 Street Pavement Preservation.

After any street has been constructed, reconstructed, or paved by City forces, under City contract, or under permit, the pavement surface may not thereafter be cut or opened for a period of five years.

The City Administrator may grant exemptions to this prohibition in order to facilitate development on adjacent properties, provide for emergency repairs to subsurface facilities, provide for underground service connections to adjacent properties or allow the upgrading of underground utility facilities.

When granting exceptions to this regulation, the City Administrator may impose conditions determined appropriate to insure the rapid and complete restoration of the street and the surface paving. Repaving may include surface grinding, base and sub-base repairs, or other related work as needed, and may include up to full-width surface paving of the roadway.

In addition to the street opening permit, any person who is required to partially or fully repave a street must obtain a street improvement permit and be responsible for the full cost of plan review, construction inspection, material testing, bonding, and all other City expenses related to the work.

If the City Administrator determines that final repaving of the street is not appropriate at that particular time for reasons relating to weather or other short-term problems, the City Administrator may grant a delay until proper conditions allow for repaving.

17.24.105 Regulations Governing Excavations and Disturbance of Pavement on Transit Mall

A. Definitions.

1. For the purposes of this Section the **transit mall** is defined as Fifth Ave and Sixth Ave from the south line of SW Jackson St to the north line of NW Irving Street, NW Irving St from the west line of NW 5th Ave to the east line of NW 6th Ave and SW Jackson St from the west line of SW Fifth Ave to the east line of SW 6th Ave.

2. Transit mall pavement is defined as all surface paving including the curb and any below grade slab or structural element supporting the surface paving located between the curb lines of the transit mall.

3. Emergency for the purpose of this Section means an unanticipated failure of an existing facility that creates a public hazard or an interruption of service to subscribers or customers that cannot be resolved using other routes or facilities.

B. No person may undertake any excavation or disturb the transit mall pavement except as provided below.

1. Maintenance of the brick pavers, curbs, transit way or asphalt pavement by the City or TriMet.

2. In order to provide for repairs to subsurface facilities made necessary by an emergency.

3. In order to provide a utility service connection to an adjacent property when the utility can demonstrate to the satisfaction of the Director of the Bureau of Transportation that there is no alternative means of providing service to the property.

4. The City Administrator may allow a public utility to excavate the transit mall pavement for

a. replacement of an underground facility that has reached the end of its useful life or

b. system expansion necessary to meet the public utilities obligation to serve its customers if, in the opinion of the City Administrator, the public utility has adequately demonstrated that no alternative location or means of providing service can adequately meet that need. The cost of providing service from an alternative location or alternative means will not be a consideration in the City Administrator's decision.

5. The City Administrator may require that an applicant requesting to do work under the provisions of Subsection 17.24.105 B.4. provide a minimum of two years' advance notice of the need to replace or expand facilities to allow for coordination with any planned major maintenance work to be performed by TriMet, the Portland Bureau of Transportation or another utility with permission to operate within Portland.

C. When granting permits to excavate or disturb transit mall pavement, the City Administrator will impose conditions determined appropriate to insure the rapid and compete restoration of the transit mall pavement to the originally constructed pavement section and surfacing.

1. Any person who is required to reconstruct transit mall pavement must provide engineered plans detailing how the work will be done and the transit mall pavement will be restored. The permittee will be responsible for the full cost of the reconstruction. Full cost includes any City fees and charges including but not limited to plan review, construction inspection, traffic mitigation, material testing, and all other expenses related to the work incurred by the Portland Bureau of Transportation.

2. If the City Administrator determines that final restoration of the transit mall pavement is not appropriate at that particular time for reasons relating to weather or other short-term conflict, the City Administrator may grant or order a delay until proper conditions allow for the restoration to occur.

17.24.110 Record of Permits.

The Director of the Bureau of Transportation will keep a record of improvements under permit and the issuance of permits under this Chapter, and the date of certificate of approval and acceptance if made.

17.24.120 Removal of Improvement.

In the event the City Administrator does not accept an improvement made pursuant to permit under this Chapter within one year after completion and tender for approval, then the permittee must remove the same and restore the public area to its prior condition at the permittee's own expense, whenever and to the extent directed by the City Administrator.

17.24.130 Preservation of Cobblestones.

A. As used in this Section, **permit** means a valid permit issued under Section 17.24.010 and **permittee** means a person to whom a permit is issued, or if no permit is required, the person undertaking the work.

B. Cobblestones, also referred to as Belgian building or paving blocks, located in streets of the City are City property and remain City property notwithstanding their excavation by a permittee.

C. It is the duty of the Bureau of Transportation to make available to the permittee a copy of the regulations authorized by this Section.

D. A permittee must preserve for delivery to the City quantities of 150 or more cobblestones displaced by excavations of City streets. A report of the number and location of the cobblestones must be sent to Portland Parks & Recreation, Operations Division, and the permittee must deliver the cobblestones to a site as directed by Portland Parks & Recreation. The City Administrator may issue additional regulations providing for the preservation of cobblestones excavated from City street areas.

E. At the request of the Portland Historical Landmarks Commission, but not less than once annually, Portland Parks & Recreation will advise the Commission of the number of cobblestones then being stored. The deployment of stored cobblestones will be determined by the Portland Historical Landmarks Commission or recommended to the City Council. Criteria for deployment will be established by the Commission.

Chapter 17.25 Outdoor Dining

17.25.010 Permit Required.

Any person desiring to make an improvement, do work in, operate a business, or use the street area for outdoor dining purposes must first obtain a permit from the City Administrator as prescribed in this Chapter and Administrative Rule TRN-10.04 and pay the permit fees set forth in Section 17.25.030.

17.25.020 Definitions.

A. Outdoor dining. For the purposes of this Chapter, outdoor dining means serving food or beverage from a business located in an adjacent building to patrons standing or seated at tables located within the sidewalk or parking lane areas adjacent to the business; however, the outdoor dining umbrella may also include non-food and beverage vending activities that occur within the sidewalk or parking lane areas.

B. Sidewalk. Sidewalk means that portion of the street between the curb lines or the lateral lines of roadway and the adjacent property lines intended for use by pedestrians and includes all areas of a pedestrian plaza as defined under Chapter 17.43.

C. Parking lane. Parking lane means that portion of the street between the curb lines or the lateral lines of roadway and the adjacent travel lane.

D. Transit mall. As defined in Subsection 17.24.105 A.

E. Clear pedestrian zone. The clear pedestrian zone is the area reserved for travel. No outdoor dining operations are allowed in this area and the area must meet City standards and be free of hazards as described in the Sidewalk Maintenance Program Policy & Operating Guidelines (Portland Policy Document TRN-1.11).

F. Area of operation. Area of operation means the outdoor dining area described in the permit within which the business is allowed outdoor dining privileges.

G. Responsible party. Responsible party means an individual who works on-site at the business and is responsible for overseeing the outdoor dining area of operation, such as the restaurant manager or other person with similar responsibility.

H. Permittee. Permittee means the individual or entity who applied for the outdoor dining permit and to whom the permit is issued. The permittee bears ultimate responsibility for the outdoor dining operation.

17.25.030 Application Fee and Permit Fee.

Fees for outdoor dining installations are established by the City Administrator and are assessed as prescribed in TRN-3.450 – Transportation Fee Schedule. The fees are evaluated and updated annually.

Each application for an outdoor dining permit must be accompanied by an application fee. The application fee is nonrefundable and additional to the permit fee. The permit fee must be collected prior to issuance of the permit.

17.25.040 Permit Application.

Application for an outdoor dining permit must be made at the Bureau of Transportation in a form deemed appropriate by the City Administrator. Such application must include the information required in TRN-10.04 and on the application form itself.

17.25.070 Liability and Insurance.

Insurance is required pursuant to TRN-10.21 Insurance Requirements for Permits in the Public Right-Of-Way.

17.25.090 Denial, Revocation or Suspension of Permit.

A. The City Administrator may deny, revoke, or suspend any outdoor dining permit authorized in Portland if it is found:

1. That the provisions of this Chapter have been violated.

2. The permittee does not have insurance that is correct and effective in the minimum amount prescribed in Section 17.25.070.

B. Upon denial or revocation, the City Administrator will give notice of such action to the applicant, responsible party, or permittee in writing stating the action that has been taken and the reason for it. The action will be effective upon giving such notice to the applicant, responsible party, or permittee. Any denial or revocation may be appealed as prescribed in Section 17.25.100 within 20 calendar days of such notice.

17.25.100 Appeal.

If an application for an outdoor dining installation is denied, revoked, or suspended because it does not meet the requirements described in this Chapter or Administrative Rule TRN-10.04, an applicant must first request a reconsideration conference with PBOT's Community Use Permitting Section Supervisor (Supervisor) to afford the applicant an opportunity to present additional information that may not have been considered by the City or to correct factual errors. The City will reconsider the application with the new or corrected information. The request must be submitted in writing to the Supervisor within the time provided in Subsection 17.25.090 B. Any applicant aggrieved by the Supervisor's determination may appeal that determination to the Code Hearings Officer as provided in Chapter 22.10 of this Code. There is no filing fee.

17.25.110 Enforcement.

The City Administrator may inspect and enforce permit compliance related to rules and regulations. Enforcement of rules and regulations will be in accordance with TRN-8.14 (Right-Of-Way Use Enforcement Program).

Chapter 17.26 Sidewalk Vendors

17.26.010 Conducting a Business on City Sidewalks Unlawful without Permit.

No person may conduct business as defined in this Chapter on any Portland sidewalk without first obtaining a permit from the City Administrator and paying the required fee. It is unlawful for any person to sell any goods or services on any sidewalk within Portland except as provided by this Chapter.

17.26.020 Definitions.

A. Conduct business. Conduct business means the act of selling or attempting to sell services, or edible or nonedible items for immediate delivery.

B. Sidewalk. Sidewalk means that portion of the street between the curb lines or the lateral lines of a roadway and the adjacent property line intended for the use of pedestrians and includes all areas of a pedestrian plaza as defined under Chapter 17.43.

C. Commercial zone. Commercial zone means abutting property that is zoned C, Commercial, or E, Employment, pursuant to Title 33, Planning and Zoning, of this Code or any other zone that may be created as a successor zone to such existing commercial zones.

D. Permit operating area. Permit operating area means the sidewalk from the midpoint of one block face to the midpoint of an adjacent block face.

E. Special events. Special events mean an event specifically approved by an individual ordinance or permit granting use of street and sidewalk areas within a specifically defined area for a period of time not exceeding 10 days to a community-based organization.

17.26.030 Item for Sale.

The City Administrator will maintain a list of items and services that are either approved or prohibited for sale from sidewalk vending carts. Any item or service not on the list may be considered for approval based on the following criteria:

A. All items or services to be sold must:

1. Be vended from a regulation size vending cart;

2. Not lead to or cause congestion or blocking of pedestrian traffic on the sidewalk;

3. Involve a short transaction period to complete the sale or render the service;

4. Not cause undue noise or offensive odors;

5. Be easily carried by pedestrians.

Requests to have an item or service considered for approval must be submitted in writing to the City Administrator, who will determine whether the item or service conforms to the above criteria. If the item or service conforms to the above criteria, it will be listed as approved for sale by sidewalk vendors. If the item or service does not conform, it will be listed as prohibited for sale by sidewalk vendors. The decision of the City Administrator, if adverse to the party making the request, may be appealed to the Council.

17.26.040 Permit Fee.

Each application for a permit to conduct business on a sidewalk must be accompanied by an application fee. The application fee is nonrefundable and additional to the permit fee. The permit fee must be collected prior to issuance of the permit. The permit fee between September 1 and December 31 is 30 percent of the yearly permit fee. Permits renewed prior to expiration do not require an application fee.

17.26.050 Application for Permit.

Application for a permit to conduct business on a sidewalk must be made at the office of the City Administrator on a form deemed appropriate by the City Administrator. Such application must include but not be limited to the following information:

A. Name and address of the applicant;

B. The expiration date of applicant’s City business license;

C. Type of items sold or services rendered. Individual applications will be accepted for one type of product or service only.

D. A valid copy of all necessary permits required by State or local health authorities;

E. Insurance is required pursuant to TRN-10.21 Insurance Requirements for Permits Issued by Street Systems Management.

F. Means to be used in conducting business including but not limited to a description of any vending cart, to be used for transport or to display approved items or services.

G. A separate application is required for each vending cart to be used for transportation or display;

H. The proposed location for conducting business and the written consent of the property owner(s) adjacent to the permit operating area, along with a signed statement that permittee will hold the adjacent property owners harmless for any claims for damage to property or injury to persons that may be occasioned by any activity carried on or under the permit. This consent and hold harmless statement must be submitted on a form deemed appropriate by the City Administrator. No application may apply to more than one location. No application will be accepted for

a permit operating area within which a current permit has been issued or an application is pending. Valid 1982 permits that allowed two carts within a permit operating area may apply for renewal provided they have not lapsed or been revoked.

I. No food vendor application will be accepted for a permit operating area where a restaurant or fruit and vegetable market, with direct access to the sidewalk, is adjacent or within 100 feet on the same block. No application will be accepted for a flower vendor for a permit operating area where a flower shop, with direct access to the sidewalk, is adjacent or within 100 feet on the same block. The above requirement may be waived if the application is submitted with the written consent of the proprietor of the restaurant, fruit and vegetable market or flower shop. The consent must be submitted on a form deemed appropriate by the City Administrator.

This provision is not an exception to the location and distance prohibitions included in Section 16.70.550 of Portland City Code and no application will be accepted for a location that would be in violation of that Section.

17.26.060 Location Selection.

A. Permit operating areas that have not been issued a current permit are available only upon receipt of the written consent of the property owners adjacent to the permit operating area.

B. No vendor or vending business may obtain permits for adjacent permit operating areas on the same block. Valid 1982 permits are exempt from this restriction provided they have not lapsed or been revoked.

C. The City Administrator may establish an additional permit operating area on a block face that exceeds 300 feet in length.

17.26.070 Location Review.

Upon receipt of an application for a permit, the City Administrator will review the proposed permit operating area to determine if the said area is suitable for sidewalk vending. In making this determination, the City Administrator will consider the following criteria:

A. The permit operating area must be within a commercial zone.

B. The use of the permit operating area for sidewalk vending must be compatible with the public interest in use of the sidewalk areas as public right-of-way. In making such determination the City Administrator will consider the width of sidewalk, the proximity and location of existing street furniture, including, but not limited to, signposts, lamp posts, parking meters, bus shelters, benches, phone booths, street trees and newsstands, as well as, the presence of bus stops, truck loading zone, taxi

stands or hotel zones to determine whether the proposed use would result in pedestrian or street congestion.

The City Administrator will inform the applicant whether the proposed permit operating area is suitable or unsuitable. The decision of the City Administrator, if adverse to the applicant or any notified party, may be appealed to the City Council.

17.26.080 Payment for Written Consent is Unlawful.

No person or corporation may either pay or accept payment for written consent required for the issuance or continued operation of a sidewalk vending permit.

17.26.090 Design Review.

A. The applicant for a sidewalk vendor permit must submit detailed scale drawings of the cart to be used, material specifications, and an isometric drawing in color of at least two views showing all four sides of the vending cart and any logos, printing or signs that will be incorporated and utilized in the color scheme. The City Administrator will submit the isometric drawings of the vending device to Portland Permitting & Development for approval prior to issuing a permit. Vending carts must be measured by the City Administrator prior to the issuance of a permit or the renewal of a sidewalk vendor's permit to ensure compliance with Section 17.26.090 A. of this Chapter.

B. Portland Permitting & Development will furnish the City Administrator standards required by the Portland Design Commission to be incorporated in the sidewalk vendors application packet.

17.26.100 Fire Marshal Inspection.

Prior to the issuance of any permit, the Fire Marshal will inspect and approve any vending cart to assure the conformance of any cooking or heating apparatus with the provisions of the City Fire Code.

17.26.110 Application Time Limit.

The applicant must complete all reviews, inspections and present all required documents to the City Administrator within 60 days from date of location approval. Failure to meet this requirement may result in cancellation of the application and forfeiture of the application fee. The City Administrator may extend this time limit, upon written request and a finding of reasonable need.

17.26.120 Form and Condition of Permit.

The permit issued will be in a form deemed suitable by the City Administrator. In addition to naming the permittee and other information deemed appropriate by the City Administrator, the permit will contain the following conditions:

A. Each permit will expire at midnight, December 31 of the year issued;

B. The permit issued will be personal only and not transferable in any manner;

C. The permit is valid only when used at the permit operating area designated on the permit. The permit operating area may be changed by submitting a new letter of consent accompanied by an additional application fee;

D. The permit is valid for one cart only;

E. The location within the permit operating area may be changed, either temporarily or permanently, by written notice of the City Administrator;

F. The permit is subject to the further restrictions of this Chapter;

G. The permit as it applies to a given permit operating area may be suspended by the Council for a period up to 10 days when an ordinance providing for a "community event" so provides.

17.26.125 Renewal of Permits.

Application for renewal of permits must be received from November 1 through December 31. An application must be on a form deemed suitable to the City Administrator, accompanied by a permit fee. Applications received after December 31 will be processed as new applications. The City Administrator will review each application to determine that:

A. Any required consent has not been withdrawn;

B. The applicant has a currently effective insurance policy in the minimum amount provided in Subsection 17.26.050 E.;

C. All required permits are current;

D. The cart size is in conformance with Subsection 17.26.130 E. If the City Administrator finds that the application meets all the above requirements, the City Administrator may issue a new permit.

17.26.130 Restrictions.

A. Any person conducting business on the sidewalks of Portland with a valid permit issued under this Chapter may transport and/or display approved items or services upon any vending cart, under or subject to the following conditions:

1. The operating area may not exceed 24 square feet of sidewalk, which must include the area of the vending cart, and, when externally located, the operator and trash receptacle.

2. The length of the vending cart may not exceed six feet.

3. The height of the vending cart, excluding canopies, umbrellas, or transparent enclosures, may not exceed five feet.

B. No person may conduct business on a sidewalk in any of the following places:

1. Within 10 feet of the intersection of the sidewalk with any other sidewalk, except that the City Administrator may waive this restriction in writing for any location upon finding that construction of extra-width sidewalks makes such use consistent with the standards established by Section 17.26.070.

2. Within eight feet of the adjacent property line;

3. Within 10 feet of the extension of any building entrance or doorway, to the curb closest to the property line.

4. Within 10 feet of any handicapped parking space, or access ramp.

C. All persons conducting business on a sidewalk must display in a prominent and visible manner the permit issued by the City Administrator under the provisions of this Chapter and conspicuously post the price of all items sold.

D. All persons conducting business on a sidewalk must pick up any paper, cardboard, wood or plastic containers, wrappers, or any litter in any form that is deposited by any person on the sidewalk or street within 25 feet of the place of conducting business. Each person conducting business on a public sidewalk under the provisions of this Chapter must carry a suitable container for placement of such litter by customers or other persons.

E. All persons conducting business on a sidewalk must obey any lawful order of a police officer to move to a different permitted location to avoid congestion or obstruction of the sidewalk or remove the vending cart entirely from the sidewalk if necessary to avoid such congestion or obstruction.

F. No person may conduct business as defined in this Chapter at a location other than that designated on a permit.

G. No permittee may make any loud or unreasonable noise of any kind by vocalization or otherwise for the purpose of advertising or attracting attention to the permittee’s wares.

H. No permitted vending cart may be left unattended on a sidewalk or remain on the sidewalk between 12:00 a.m. and 6:00 a.m.

I. No permittee may conduct business in violation of the provisions of any ordinance providing for a special event.

17.26.140 Special Event Designation.

The special event designation allows vendors to conduct business on City sidewalks at the Rose Festival parades and other major special events that the City Administrator so designates, subject to the following conditions:

A. Application must be made to the City Administrator on a form deemed appropriate by the City Administrator. Each application must apply to only one event or parade. Application is open to any vendor who possesses a valid sidewalk vending permit. Each application must be accompanied by:

1. All necessary permit fees.

2. The proposed location for conducting business along with the temporary written consent of the property owners adjacent to the permit operating area. This temporary consent must be on a form deemed appropriate by the City Administrator. No application will be accepted for a permit operating area within which a permit has been issued or an application is pending.

B. Application must be made at least five working days prior to an event to qualify for participation.

C. All temporary locations must be on side streets adjacent to the parade or event.

D. Temporary locations are valid only for the date and hours specified by the City Administrator.

E. All other conditions of this Chapter, except as stated in this Chapter, remain in effect.

17.26.150 Denial, Suspension or Revocation of Permit.

A. The City Administrator may revoke or suspend the permit, or deny either the issuance or renewal thereof, of any person to conduct business on the sidewalks of Portland based on the following findings:

1. that such person has violated or failed to meet any of the provisions of this Chapter;

2. that the cart operation has become detrimental to surrounding businesses and/or the public, due to either appearance or condition of the cart.

3. any required permit has been suspended, revoked or canceled; or

4. the permittee does not have a currently effective insurance policy in the minimum amount provided in Section 17.26.050 E.

B. Upon denial, suspension or revocation, the City Administrator will give notice of such action to the permit holder or applicant, as the case may be, in writing stating the action the City Administrator has taken and the reasons for the denial, suspension, or revocation. If the action of the City Administrator is a revocation based on Subsections A.3. and 4. of this Section, the action will be effective upon giving such notice to the permittee. Otherwise, such notice will contain the further provision that it will become final and effective within 10 days. Any revocation effective immediately may also be appealed to the Council by such filing within 10 days. Any revocation, suspension or denial may be appealed to the City Council by filing a written notice of appeal with the City Auditor within 10 days of receipt of notification.

17.26.160 Appeal.

The Auditor will place the appeal on the Council calendar at the first convenient opportunity for it and will notify the City Administrator of it. At the hearing upon appeal, the Council will hear all witnesses including the City Administrator or their representative, who will state the grounds for this action, and the applicant or person whose permit has been revoked or suspended may supply testimony in writing by witnesses or otherwise and may question witnesses on their own behalf or on behalf of the City. The Council will hear and determine the appeal and the decision of the Council will be final and effective immediately.

17.26.170 Penalty for Violation.

Any person violating any of the provisions of this Chapter will, upon conviction, be punished by a fine not exceeding $500 or by imprisonment for a period not exceeding six months, or by both such fine and imprisonment. In the event that any provisions of this Chapter are violated by a firm or corporation, the officer or officers or the person or persons responsible for the violation will be subject to the penalty provided by this Section.

17.26.180 Violation a Nuisance, Summary Abatement.

The placement of any vending cart on any sidewalk in violation of the provisions of this Chapter is declared to be a public nuisance. The City Administrator may cause the removal of any vending cart found on a sidewalk in violation of this Chapter and is authorized to store such vending cart until its owner redeems it by paying the removal and storage charges established by the City.

Chapter 17.27 Structural Driveways

17.27.200 Structural Driveway Defined.

A structural driveway is any structure intended to provide vehicular access to parking and maneuvering space on private property from a public right of way.

17.27.205 Structural Driveways in Public Streets.

The City Administrator may grant a revocable permit to an abutting property owner for the construction and maintenance of a structural driveway within a public street if in the City Administrator's judgment there is no other available means of obtaining vehicular access to a structure on abutting private property.

17.27.210 Permit Application.

The applicant must submit to the City Administrator two complete site plans, two sets of structural plans and calculations bearing the registration stamp and signature of an engineer licensed in the State of Oregon to design structures, and a nonrefundable application fee of $250. The City Administrator may require the applicant to submit a complete geotechnical report and any recommendations made in connection with such report may be required.

17.27.220 City Administrator's Review.

A. The City Administrator will review the application to determine compliance with design standards, possible conflicts with public facilities, and compatibility with existing or future street plans. If, in the course of the review, the City Administrator determines that modifications to the proposed plan are necessary, the applicant must make the requested modifications and resubmit the plan to the City Administrator with all required corrections.

B. The decision of the City Administrator as to the suitability of the proposed location, materials used, technical requirements of specifications and plans will be final and conclusive.

17.27.230 Design Standards.

A. Load ratings and structural design must be in accordance with the most current edition of the Standard Specifications for Highway Bridges published by the American Association of State Highway and Transportation Officials (AASHTO) in effect at the time of permit issuance or such alternative specifications as are adopted by the City Administrator.

B. Structural driveways must have a minimum load rating of H-15 except that in cases where the structural driveway accesses only one single family residential structure from a Local Service Traffic Street as defined by the Transportation Element of the Comprehensive Plan, the City Administrator may allow a structural driveway in conformance with Uniform Building Code standards if, in the opinion of the City Administrator, the circumstances are such that the lower rating will not create a hazard to the public or users of the structural driveway and permanent vehicle barriers are installed to prevent access to the structure by vehicles exceeding eight feet in height.

C. The City Administrator may require vehicle barriers, railings, and other appurtenances in excess of AASHTO standards and higher load ratings if in the City Administrator's opinion such appurtenances are necessary to protect the public and users of the structural driveway.

17.27.240 Permit.

A. Permits for structural driveways will be issued only to the owner of the property abutting the half of the street area in which the structural driveway is proposed to be built. The burdens and benefits of any such permit will run with the property abutting the half of the street area in which the structural driveway is proposed to be built. Upon sale or disposition of the property, the permit will automatically transfer to any new owner of the property, except when the permit specifically prohibits such transfer.

B. The abutting property owner will be liable to any person who is injured or otherwise suffers damage by reason of the property owners use of the street area. Furthermore, the abutting property owners will be liable to the City for any judgment or expense incurred or paid by the City by reason of the existence of a structural driveway in the street area.

C. This permit will be for the use of the street area only, and will not exempt the permittees from obtaining any license or permit required by Portland City Code or Ordinances for any act to be performed under this permit, nor will this permit waive the provisions of Portland City Code, an ordinance, or the City Charter except as stated in this Chapter.

D. The conditions in a permit for a structural driveway are burdens upon the abutting property, which will run with the land, and the permit must be recorded with the Multnomah County Records Division, and the cost of recording must be paid by the applicant.

17.27.250 Revocation of Permit.

A. A structural driveway permit may be revoked by the City Administrator:

1. Upon determination of a public need for the area;

2. If the structural driveway is in conflict with any public improvement plan;

3. If the permittee fails to maintain the structure to the City Administrator's satisfaction;

4. If the permittee allows a dangerous condition, as determined by the City Administrator, to continue for more than twenty days after being given notice to correct the condition; or

5. Upon failure to comply with any condition of the permit.

B. The City Council may revoke any structural driveway permit for any reason the Council determines to be in the best interest of the City.

C. No grant of any permit, expenditure of money in reliance thereon, or lapse of time will give the permittee any right to the continued existence of a structure or to any damages or claims against the City arising out of revocation.

17.27.260 Removal of Structural Driveways.

Upon revocation of the permit, the permittee or any successor permittee must, at permittee's own cost, remove such structure within 30 days after written notice to the permittee by the City of such revocation, unless the City Council specifies a shorter period, and must return the street area in which the structure was located to the condition of the street area immediately surrounding it, to the satisfaction of the City Administrator. If the permittee does not remove the structure and/or return the street area to a condition satisfactory to the City Administrator, the City Administrator may do so, and the permittee will be personally liable to the City for any and all costs of dismantling the structure and reconstructing the street area. The costs of removal and reconstruction will become a lien upon the abutting property until paid by the permittee.

17.27.270 Fees.

The fee for plan review, permit issuance, and any City inspection of structural driveways is the full cost incurred by the City for such services. The minimum fee is $250. If full cost exceeds $250, the applicant must pay any additional costs prior to issuance of the permit. Amounts paid by the applicant in excess of full City costs that exceed the $250 minimum fee will be refunded to the applicant.

17.27.280 Inspection of Construction Required.

The City Administrator may inspect the construction; require the permittee to retain the services of a special inspector who will submit inspection reports directly to the City Administrator, or a combination of the above. It is the permittee's responsibility to obtain the required inspections and failure to do so is grounds for revocation of the permit.

Chapter 17.28 Sidewalks, Curbs and Driveways

17.28.010 Sidewalk Defined.

A **sidewalk** means the portion of the street intended for the use of pedestrians. Unless the street area has been designated as a pedestrian mall, or unless the entire street has been designated primarily for pedestrian use, for the purpose of this Chapter, "sidewalk" is that part of a street on the side there of intended for the use of pedestrians, improved by surfacing.

17.28.011 Planting and Parking Strip Defined.

Planting strip and **parking strip** means the area between the curb, or in the case where there is no curb the edge of the roadway, and the abutting property line not improved by surfacing that is intended for the use of pedestrians. Any openings made in a surfaced area between the roadway and the abutting property line for the purpose of planting trees or other vegetation are considered part of the planting or parking strip. Grates or other coverings of said areas are not considered as surfacing intended for the use of pedestrians.

17.28.015 Owner Defined.

Owner means the owner of the real property or the contract purchaser of real property of record as shown on the last available assessment roll in the office of the county assessor.

17.28.020 Responsibility for Sidewalks and Curbs.

A. The owners of land abutting any street in Portland are responsible for constructing, reconstructing, maintaining and repairing the sidewalks, curbs, driveways and parking strips abutting or immediately adjacent to said land, except as provided in Subsections B. and C. The property owners are liable for any and all damages to any person who is injured or otherwise suffers damage resulting from the defective condition of any sidewalk, curb, driveway or parking strip adjacent to said land, or by reason of the property owners' failure to keep such sidewalk, curb, driveway or parking strip in safe condition and good repair. The property owners are liable to the City for any amounts that may be paid or incurred by the City by reason of all claims, judgment or settlement, and for all reasonable costs of defense, including investigation costs and Attorney fees, by reason of the property owners' failure to satisfy the obligations imposed by the Charter and Portland City Code to maintain, construct, and repair such sidewalks, curbs, driveways and/or parking strips.

B. Curbs are maintained by the City except when in combination with the sidewalk and when they have been willfully damaged or damaged by tree roots. Intersection corners and curbs adjacent to them may be installed by the City when sidewalks and curbs are constructed up to the intersection on the same side of the street.

C. Green street or other public stormwater management facilities located within the right of way may be modified or repaired only by the City or under an appropriate permit from the City Administrator.

D. The City Administrator will maintain general construction and maintenance specifications for sidewalks, curbs, driveways and/or parking strips. The City Administrator will use the specifications to determine compliance with this Chapter of Code. The City Administrator will provide copies of the specification to any person upon request, and make the specifications available for public inspection during normal office hours.

17.28.025 Property Owner Responsible for Snow and Ice on Sidewalks.

A. The owners and occupants of land adjacent to any street in Portland are responsible for snow and ice removal from sidewalks abutting or immediately adjacent to such land, notwithstanding any time limitations.

B. Property owners and occupants are liable for any and all damages to any person who is injured or otherwise suffers damage resulting from failure to remove snow and/or ice accumulations.

C. Property owners and occupants are liable to the City for any amounts paid or incurred consequent from claims, judgment or settlement, and for all reasonable investigation costs and attorney fees, resulting from the responsible property owner's or occupant's failure to remove snow and ice accumulations from such sidewalks as imposed by this Code.

17.28.030 Notice for Construction of Sidewalks and Curbs.

Where the sidewalk or curb in front of any lot, part thereof, or parcel of land is or becomes so worn or deteriorated as, in the opinion of the City Administrator, to require a new sidewalk or curb to be constructed, or where no sidewalk or curb exists and, in the opinion of the City Administrator, a sidewalk or curb or both are needed, the City Administrator will post a notice on the adjacent property headed "Notice to Construct Sidewalk" (or curb, or both). The notice will in legible characters direct the owner, agent, or occupant of the property immediately to construct a sidewalk or curb or both in a good and substantial manner and in accordance with the City ordinances, regulations and plans for the sidewalk or curb, which will be furnished by the City Administrator upon application. The revenue service and program of the City Administrator will file an affidavit of the posting of the notice, stating when and where the same was posted, and will furnish upon request proper specifications, standards and information for the construction thereof. The City Administrator will send by mail a notice to construct the sidewalk or curb, or both, to the owner of the property, if known, or to the agent of the owner, if known, directed to the post office address of the owner or agent, when the post office address is known to the City Administrator. If the post office address is unknown to the City Administrator, the notice will be directed to the owner or agent at the address where the notice was posted. A mistake in the name of the owner or agent, or a name other than that of the owner or agent of such property, or any mistake in the address, will not render void the notice, but in such case the posted notice will be sufficient.

17.28.035 Curb and Intersection Corner Ramps.

A. All newly constructed or reconstructed sidewalk intersection corners must have included, either within the corner or within the curb area immediately adjacent to the corner, ramps allowing access to the sidewalk and street by persons with disabilities as mandated by the Americans with Disabilities Act.

B. The ramps referred to in Subsection A. must be constructed in a good and substantial manner and in accordance with the plans and specifications established by the City Administrator. The particular plan to be used at a given intersection corner must be appropriate to the location as determined by the City Administrator.

17.28.040 Construction Alternatives.

In case three or more adjacent properties are posted with notice to construct a sidewalk, curb, or both as set forth in Section 17.28.030, they may petition for such construction as a local improvement. Otherwise, it is the duty of the owners of properties posted with such notice to construct the sidewalk, curb, or both. Before constructing the sidewalk, curb, or both, the owner, designated agent or the occupant of the property intending to construct the sidewalk, curb, or both must obtain from the City Administrator a permit for the construction that will prescribe the kind of sidewalk, curb, or both to be constructed, the material to be used and the width of the sidewalk, curb, or both. After notice to construct sidewalk, curb, or both has been posted, the owner, agent or occupant must construct the sidewalk, curb, or both within 30 days from the date of posting or within that time must show cause, if any, by a written remonstrance addressed to the City Council stating why the sidewalk, curb, or both should not be constructed. The Council will grant a hearing to the remonstrator at a regular meeting as soon thereafter as the same can be filed on regular Council Calendar. The Council will then determine whether or not the sidewalk or curb, or both, must be constructed. If the remonstrator is not present at the time of such determination by the Council, the revenue service and program of the City Administrator will notify the remonstrator of the Council's determination by mail sent to the address given upon the written remonstrance. Failure of the revenue service and program of the City Administrator to send the notice, or failure of the remonstrator to receive it, or any other mistake of the notice will not render void or ineffective the lien to be imposed upon the property in the event of City construction. If the Council determines that the sidewalk, curb, or both must be constructed, the owner or designated agent or the occupant must within 10 days afterwards begin the construction of the sidewalk, curb, or both and diligently prosecute the work to final completion.

17.28.050 City Construction if Owner Fails to Construct.

If no petition for local improvement is filed, and if the owner, agent or occupant of property posted with notice construct sidewalk or curb, or both, fails, neglects or refuses to begin the construction of the sidewalk or curb within 30 days after posting of notice, or within 10 days after order by the Council in the event of a remonstrance, the City may construct the sidewalk or curb as soon thereafter as such work can be conveniently scheduled. The cost for the City to have the repairs made may be assessed upon the property.

17.28.060 Location, Size and Materials of Sidewalks and Curbs.

The City Administrator will determine the distance between the improved sidewalk and the property line, which, in residential areas, is generally two feet unless a different

distance is specified. The width of the improved sidewalks, the grade thereof, materials for construction or reconstruction, and the location and size of curbs, will be designated by the City Administrator. The class and kind of any fill materials and requirement thereof will be designated by the City Administrator. Based on a finding of necessity, the City Administrator may permit installation of a temporary sidewalk for a specified period, and the City Administrator will designate specifications for the temporary improvement.

17.28.065 Bicycle Parking.

Bicycle parking in the right-of-way adjacent to multifamily, commercial, institutional, employment, or industrial land uses helps to achieve the City's goal of making the bicycle an integral part of daily life in Portland. Bicycle parking in the right-of-way provides convenient, accessible, and clearly visible parking in areas where buildings are generally built to the sidewalk.

A. As a part of street improvements adjacent to developing or redeveloping property, the City Administrator may, where determined appropriate and practicable, require one or more bicycle racks.

B. The location and type of rack will be determined by the City Administrator based on sidewalk width, location of other elements in the right-of-way, and adjacent land uses.

C. Bicycle Parking Fund. An owner of a building without surface parking, or without parking or open areas within 50 feet of the main entrance may choose to pay a fee to the Bureau of Transportation Bicycle Parking Fund in lieu of short-term bicycle parking required by Table 266-6 in Portland City Code Title 33, Planning and Zoning. The Bureau of Transportation will use the collected fees to install bicycle parking and associated improvements in the right-of-way.

> **1.** Authority. The City Administrator may adopt administrative rules as authorized by Charter.
>
> **2.** Calculation of required fund contributions. Applicants must contribute the cost to purchase, install and maintain bicycle parking and associated improvements. The cost to purchase, install, and maintain bicycle parking will be adjusted annually as determined by the City Administrator.
>
> **3.** Payment. The Bicycle Parking Fund fee is due to be paid upon issuance of a building permit. The City Administrator may refund the Bicycle Parking Fund fee where the development approved by building permit is not constructed and the building permit is cancelled.
>
> **4.** Width of sidewalk corridor. The sidewalk corridor where bicycle parking is to be installed must meet or exceed the width recommended in the Pedestrian Design Guide for installation of bicycle parking. In no case may bicycle parking, installed through the Bicycle Parking Fund be placed in a sidewalk corridor of less than 10 feet in width.

17.28.070 Owners to Repair Sidewalks and Curbs Notice to Repair.

After a sidewalk has been improved or constructed, either alone or in combination with a curb, the owner of land abutting the street area in which the sidewalk has been constructed is responsible for maintaining such sidewalk and curb in good repair. If the City Administrator finds that any such sidewalk or curb needs repair, the City Administrator may post a notice on the adjacent property headed “Notice to Repair Sidewalk” (or curb) that will in legible characters direct the owner, agent, or occupant of the property immediately to repair the sidewalk or curb, or both in a good and substantial manner in accordance with the plans, specification and regulations of the City. The City Administrator will send by mail a notice to repair the sidewalk or curb, or both, to the owner, if known, of such property, or to the agent (if known) of the owner, directed to the post office address of the owner or agent when known, or if the post office address is unknown, the notice will be directed to the owner or agent at the address where the notice was posted. A mistake in the name of the owner or agent, or a name other than that of the true owner or agent of the property, or mistake in address will not invalidate said notice, but in such case the posted notice will be sufficient.

17.28.080 Permit for Sidewalk and Curb Repairs.

After notice to repair defective sidewalk or curb, or both, has been posted, the owner, agent or occupant must make the repairs within 60 calendar days from the date of posting. Any person desiring to repair a defective sidewalk, curb or both, either before or after notice to repair has been posted, must first obtain a permit. The permit will prescribe the kind of repair to be made, the material to be used, and specifications therefore, including the location and size. Any person desiring to construct or reconstruct sidewalk or curb, or both, must first obtain a permit therefore and pay the fees elsewhere prescribed in Chapter 17.24.

17.28.090 Repair by the City.

If the owner, agent or occupant of any lot, part thereof or parcel of land that has been posted with notice to repair a sidewalk or curb, or both, fails, neglects or refuses to make repairs within the period of 60 calendar days after posting, the City Administrator may as soon as the work can be conveniently scheduled, make the repairs, and the cost will be determined and assessment made as provided in this Chapter.

17.28.110 Driveways - Permits and Conditions.

A. Purpose. Ensure that driveway locations promote the safe and orderly flow of pedestrians, bicycles, and vehicular traffic, preserve on-street parking, preserve or establish street trees, maximize opportunities for vegetated stormwater management, reduce conflicts with pedestrians and bicycles and enhance the pedestrian environment.

B. Authority. The City Administrator may issue a permit to construct a driveway in the public right-of-way subject to the conditions and requirements of this Chapter. The City Administrator may refer any driveway permit application to the Oregon Department of

Transportation for a review of the operation, location and width. The City Administrator may recommend such conditions and limitations regarding the location and operation of driveways as are found necessary to ensure the safe and orderly flow of pedestrian, bicycles and vehicular traffic, avoid adverse effects on transit operations, and preserve on-street parking.

The City Administrator may require an applicant for a driveway permit to provide evidence that the proposed driveway will access legal parking and maneuvering space on property as specified in Portland City Code Title 33. The City Administrator may refuse to issue a permit if the applicant cannot show evidence Portland Permitting & Development has determined that the driveway will access a legal parking space.

The City Administrator may require repair and/or reconstruction of an adjacent or abutting driveway, curb or sidewalk, or a portion thereof that will be impacted as a result of the construction of a new or reconstructed driveway.

C. Driveway definition: For the purposes of this Code section, a driveway is a gravel or paved way for vehicular traffic extending from the roadway to the adjacent property line(s) for the purpose of providing access to parking as provided under Portland City Code Chapter 33.266.

D. Reconstruction and revocation of existing driveways.

1. The City Administrator may revoke any driveway permit or require the modification of any driveway if:

a. The area occupied by the driveway is needed for right-of-way purposes; or

b. Continued operation of the driveway interferes with the safe and orderly flow of pedestrians, bicycles or vehicular traffic; or

c. The abutting owner has failed to comply with all specifications and conditions of the permit; or

d. The driveway does not access a legal parking space on abutting property per Portland City Code Title 33.

2. The Council may revoke any driveway permit if it deems such action will be in the public interest.

E. Enforcement: Within 60 calendar days of written notice from the City Administrator to close or modify a driveway, the abutting property owner must obtain any required permits and make the required corrections. If the abutting owner fails to make the required corrections within 60 calendar days, the City may perform the required work at the expense of the abutting property owner and the cost will be determined and assessment made as provided in this Chapter.

F. Exceptions. For any driveway that does not conform with the requirements of this chapter and administrative rule TRN-10.40, review and approval through a Driveway Design Exception is required. Any applicant requesting a Driveway Design Exception must provide information, as determined necessary by the City Administrator, to support the application. The City Administrator may establish conditions and limitations deemed necessary to ensure the safe and orderly flow of pedestrian and vehicular traffic. Appeal of the decision can be submitted in writing to the City Administrator. The City Administrator will review the determination and send a final decision to the applicant.

G. References. Refer to administrative rule “TRN-10.40 – Driveways – Operation and Location” for additional requirements.

Refer to City of Portland Standard Drawings for additional design requirements.

17.28.120 After Construction Driveways Deemed Part of Sidewalk.

After a driveway has been constructed, it will be deemed a part of the sidewalk whether or not there is a sidewalk improvement extending along the balance of the frontage property, for all purposes of repair or reconstruction. Requirements relating to construction or reconstruction of a sidewalk as provided in this Chapter, are applicable to reconstruction of a driveway, except that the property owner will have no option to petition for a local improvement solely for such purpose.

17.28.130 Reconstruction of Existing Driveways.

If the City Administrator finds that any driveway does not conform to the requirements of this Chapter and should be reconstructed for the protection or convenience of pedestrians or vehicles using the street area, the City Administrator may post notice and require the reconstruction or removal of the driveway. If the abutting property owner fails to make the required corrections within 60 days the City may perform the required work at the expense of the abutting property owner, and the cost will be determined and assessment made as provided in this Chapter.

17.28.140 City Charges for Construction or Repair of Sidewalks, Curbs and Driveways.

The property owner will be charged for the construction, reconstruction or repair of sidewalks, curbs and driveways. The cost for the City to have repairs made will be assessed as a lien upon the property.

A. Special structural, excavation and fill jobs and jobs in areas of traffic and pedestrian congestion will be charged at the discretion of the City Administrator. Determination of whether a job is of special type will be made by the City Administrator.

B. Cost basis charges for work may be made at the discretion of the City Administrator if the actual cost can be conveniently and accurately determined.

17.28.150 Billing for Charges.

A. When work is completed by the City on any construction, reconstruction or repair of a sidewalk, curb or driveway, the amount of the charge will be determined by the City Administrator and reported to the revenue service and program of the City Administrator. The revenue service and program of the City Administrator will calculate a proposed assessment that includes the amount of the improvement charge plus 10 percent of the charge to defray the administrative costs of notice, assessment and lien recording.

B. The revenue service and program of the City Administrator will prepare a proposed assessment notice for the owner of each property or the owner's agent of the affected property as shown in the County tax records. The notice will be mailed at least 21 calendar days before the public hearing on the proposed assessment, and the notice will consist of the following information:

1. The legal description and site address of the property;

2. The amount of the proposed assessment against the property;

3. The manner and deadline for filing a written remonstrance to the proposed assessment amount;

4. The date, time and location of the public hearing for Council consideration of the proposed assessment; and

5. Contact information for sidewalk repair.

C. Any owner of property proposed to be assessed for sidewalk repair may file a remonstrance to the proposed assessment with the revenue service and program of the City Administrator. The remonstrance must be in writing and received by the revenue service and program of the City Administrator via US mail or hand delivered no later than 5:00 PM eight calendar days prior to the hearing by the City Council on the proposed final assessment. Upon receipt of a timely filed remonstrance, the revenue service and program of the City Administrator will remove the property from the filing of the proposed assessment before the City Council hearing date, and will refer the remonstrance to the responsible bureau for follow-up and response.

D. The revenue service and program of the City Administrator will mail the proposed assessment notice by first class mail to the owners of the affected property. The notice will be deemed given upon deposit in the U.S. mail.

17.28.160 Assessment of Charges.

A. The revenue service and program of the City Administrator will refer to the City Administrator or responsible bureau all remonstrances and remove from further assessment action the proposed assessments that are associated with the

remonstrances. The City Administrator or responsible bureau will review each remonstrance by taking the following actions:

1. Determine whether the improvement work was required by Code and whether the conditions required the improvements, whether the required improvements are consistent with Code and City specifications, and whether the improvement charges are calculated as provided by Code; and

2. Determine the extent of actions or adjustments that are necessary to bring the proposed assessment into compliance with Code and program standards; and

3. Mail a statement of findings to the remonstrating property owner, and file a copy with the revenue service and program of the City Administrator. The findings will include a statement that the property owner may appeal the determination.

4. If a property owner concludes that this determination is not consistent with City Code, they may request an appeal before a Code Hearings Officer under the provisions of Portland City Code Chapter 22.10. The associated property will be removed from further assessment action until the appeal is resolved. The Code Hearings Officer will notify the appellant and the revenue service and program of the City Administrator of their determination. The affected property will be included in the next group assessment for City Council approval, unless the Code Hearings Officer annuls, reverses, or remands the assessment or the Code Hearings Officer's decision is appealed by writ of review.

B. Following adoption of the assessing ordinance, the revenue service and program of the City Administrator will mail a final assessment notice to the owners of the affected property as shown on the last available assessment roll in the office of the county assessor. The notice will be deemed given upon deposit in the U.S. mail. The notice will contain the following information:

1. The legal description and site address of the property;

2. The final assessment amount;

3. A statement that the final assessment is recorded in the docket of City liens, and is a lien that has first priority against the property as provided by state statute;

4. The manner and deadline for paying the final assessment in full or requesting to pay the final assessment in installments if authorized by Code;

5. The interest, penalties and collections costs that may be charged if the final assessment is not paid or an installment payment contract is not filed before the deadline contained in the notice; and

6. A statement that delinquent final assessments may be collected by foreclosure and property sale.

C. The revenue service and program of the City Administrator will maintain a docket of City liens containing final assessments on property. Any unpaid final assessment will be recorded in the City lien docket, and it will be binding upon the property owner and all subsequent property owners of the property or any segregated part of it. The docket will stand thereafter as a lien docket the same as ad valorem property taxes assessed in favor of the City against each lot or parcel of land until paid, for the following:

1. The amount of the unpaid final assessments docketed, with accrued interest at the rate determined by the City Council, or in the case of an installment contract, at the rate set forth in the contract; and

2. Any additional interest, penalties, or billing charges imposed by the City with respect to any installments of final assessments that are not paid when due.

D. All unpaid final assessments together with accrued and unpaid interest and penalties and billing charges are a lien on each lot or parcel of land respectively, in favor of the City and the lien will have first priority over all other liens and encumbrances whatsoever.

E. The City will enforce assessment liens and installment payment contracts under this Chapter in the same manner as other City assessments as set forth in Portland City Code Title 5.

Chapter 17.32 Public Sewer and Drainage System Permits, Connections, Maintenance, and Damage

17.32.010 Purpose.

This Chapter addresses access and connection or damage to, and the use, construction, modification, maintenance, repair, and removal of, components of the City sewer, storm sewer and drainage systems, and their easements. This Chapter operates in conjunction with Chapter 17.38 to regulate the collection, conveyance and disposal of sanitary and stormwater discharges from public and private properties. This Chapter is administered by the City Administrator through the Bureau of Environmental Services (BES).

17.32.020 Definitions.

The following definitions apply to this Chapter:

A. Building sewer means that portion of the horizontal piping system that receives the discharge of building drains and extends to a public sewer, private sewer, private sewage disposal system, or other approved discharge point; and is located on private property.

B. Capacity means the flow volume or rate for which a specific facility is designed to safely contain, receive, convey, infiltrate, or reduce pollutants from sanitary sewage, stormwater, wastewater, or other discharge in order to meet a specific performance standard.

C. City storm sewer and drainage system means a City conveyance or system of conveyances, including but not limited to pipes, pumps, drainage ditches, constructed channels, groundwater-related disposal systems, underground injection control devices, stormwater management facilities, and storm drains, that are designed or used to collect and transport stormwater. City storm sewer and drainage systems does not include natural streams, creeks, ponds, lakes, a combined sewer, or any part of a Publicly Owned Treatment Works, as defined in 40 CFR 403.3.

D. Combined sewer means a sewer designed to convey both sanitary sewage and stormwater.

E. Commercial or industrial occupancy means any structure or facility in which preparation, processing, treating, making, compounding, assembling, mixing, improving, or storing any product or any solid, liquid or gaseous material for commercial or industrial purposes occurs, or in which cleaning, processing or treating of tanks, vats, drums, cylinders or any other container used in transportation or storage of any solid, liquid or gaseous material for commercial or industrial purpose occurs.

F. Connection means the connection of all sanitary waste and drainage disposal lines from all development on a property to the public sewer and drainage system.

G. Conveyance means the transport of sanitary sewage, stormwater, wastewater or other discharge from one point to another point.

H. Director means the Director of the Bureau of Environmental Services or the Director’s designee.

I. Discharge point means the connection point or destination for a discharge leaving a site.

J. Drainage means the flow of waters across public and private properties.

K. Drainage improvements means management facilities or modifications to storm sewers, drainage systems or drainage patterns to address safety issues, increase capacity, or improve water flows or quality.

L. Green street means a vegetated stormwater management facility located within a public or private right-of-way.

M. Groundwater discharge means a discharge pumped or directed from the ground. Groundwater-related discharges include but are not limited to, subsurface water from site remediation and investigations, well development, Brownfield development,

discharges from footing and foundation drains, and subsurface water associated with construction or property management dewatering activities.

N. Nonconforming sewer means a private sewer system that accesses the public sewer by any of the following:

1. A sewer lateral draining more than one property that conveys the discharge to the public sewer in the public right-of-way (ROW) or in a public sewer easement, also known as a “party” sewer. Exception: This does not apply to Middle Housing Land Division (MHLD) shared sewers that meet all City requirements and standards.

2. A sewer lateral crossing one or more properties without the benefit of a recorded easement that meets City standards.

3. A nonconforming private sewer line.

4. A sewer lateral in the public ROW or in a public sewer easement with an alignment or other physical characteristic contrary to the approved standards of the Sewer and Drainage Facilities Design Manual (SDFDM).

O. Public right-of-way means the area within the confines of a dedicated public street, an easement owned by the City, or other area dedicated for public use for streets or public facilities.

P. Public sewer easement is a grant of the right by a property owner to the City to use land for placement and maintenance of public sewer facilities.

Q. Responsible party means, except as separately defined by applicable administrative rule, any person who, regardless of knowledge or intent, causes or contributes to a violation of this Chapter or associated rules.

R. Route of conveyance means the BES-approved path of conveyance from a property or private stormwater system to the approved discharge point.

S. Route of service means the BES-approved path of connection of a building sewer or private stormwater conveyance to a City sewer, storm sewer or drainage system.

T. Sampling manhole means a manhole in a sewer lateral or other monitoring access that is acceptable to BES, and that allows for observation, sampling or measurement of all discharges to the City’s sewer or drainage system.

U. Stormwater means water that originates as precipitation on a particular site, basin, or watershed.

V. Wye means a connection joint or pipe between a public sewer and more than one sewer service lateral, building sewer, or common private sewer system.

17.32.030 Protection of the City Sewer and Drainage System.

A. Except for emergency repairs described in Subsection 17.32.030 B., it is unlawful for any person to take the following actions without first obtaining authorization and approval from the City Administrator via permit, contract, or other legal agreement and paying applicable fees:

1. Access any public sewer component;

2. Encroach into a City sewer easement;

3. Dig up, break into, excavate, disturb, dig under, or undermine any public street or City sewer easement;

4. Make a connection, obstruct or interfere with the public sewer;

5. Damage, connect, modify or remove any component of the public sewer; or

6. Direct water, from any source, on private property to run onto any City sidewalk, street, easement or right of way.

B. In the case of the need for emergency repair to a component of the public sewer to protect public health, safety or the environment, the person making the repair may commence work without first obtaining a permit provided that:

1. The person immediately notifies the City of the need for repair;

2. Any emergency repair work is limited to what is needed to remove the emergency situation as deemed necessary by City Administrator;

3. The work is performed in compliance with standard City construction specifications, the Sewer and Drainage Facilities Design Manual, the Source Control Manual, and the Stormwater Management Manual; and

4. The person making repairs files an application for a BES permit within three business days of the emergency and complies with all permit conditions and pays all applicable fees.

C. Repair of nonconforming sewers located in public right-of-way or a City easement is prohibited unless the City Administrator determines that it is in the public interest to allow the nonconforming system to remain.

D. The City Administrator may require a permit and approval from the City Administrator to construct and attach drainage improvements to the public sewer system as needed to provide stormwater drainage for public streets.

E. Except as otherwise allowed by the City Administrator, it is unlawful for any person to allow or cause a connection that will result in the discharge of sanitary sewage into a City storm sewer and drainage system.

F. Except as otherwise allowed by the City Administrator, it is unlawful for any person to allow or cause a connection that will result in the discharge of storm drainage, collected groundwater or other water to a public sewer designated by the City Administrator to be used solely for sanitary sewage.

G. Except as otherwise allowed by the City Administrator, it is unlawful for any person to allow or cause damage to the public sewer. In addition to the enforcement tools listed in Section 17.32.140, each responsible party is jointly, severally, and strictly liable for all of the City's reasonable costs to repair, replace, or conduct any other work needed to restore the public sewer and any associated facilities or properties to their pre-damage condition and functionality, including consequential damages, third-party damages, and associated legal costs.

17.32.040 Types of Permits and Reviews.

The City has established a permitting system to review, approve and enforce proposals to access, use, connect to, modify, repair or remove components of the City sewer, storm sewer and drainage system. Administrative rules identify application submittal requirements, permit issuance decision-making, inspection, bond, and warranty requirements.

A. In general, the City Administrator authorizes the following permits, reviews, and authorizations:

1. Access and system use permits for limited use of sewer systems for monitoring, sampling or other nonstructural activity;

2. Encroachment reviews for City sewer and drainage systems and their easements, including both temporary staging and permanent structural modifications;

3. Connection permits for new laterals or permanent routing of any discharges to the City sewer, storm sewer or drainage system;

4. Public works permits for construction, modification, repair or removal of a component to the City sewer, storm sewer or drainage system; and

5. Pre-issuance reviews on projects in the vicinity of City sewer, storm sewer and drainage systems that are required to obtain other City permits or authorizations to conduct work.

6. Authorization of the activities described in Section 17.32.030 through a binding contract or other legally binding agreement or a BES discharge permit or authorization.

B. The City Administrator may refuse to issue a permit if:

1. In the judgment of the City Administrator, the proposed work or activity is not suitable in the circumstances or will not be consistent with or protective of existing or proposed public sewer, storm sewer or drainage improvements or activities in the immediate vicinity;

2. The application is not modified as the City Administrator deems necessary;

3. The City Administrator has not issued a street opening permit if the public sewer or drainage improvement or proposed work or activity is occurring or will occur within a public right-of-way or area to be designated as a public right-of-way;

4. The application is to repair, replace or upgrade an existing private sewer or drainage system that is nonconforming; or

5. The requirements of any previously issued permit have not been met including the payment of delinquent fees or City charges.

17.32.050 Work Allowed and Required Under Permit.

A. Upon receipt of the completed application, proper and satisfactory bond, and payment of all applicable fees, the City Administrator may issue the requested permit, unless there are reasons of public interest to the contrary. The permit may include restrictions or conditions as deemed necessary by the City Administrator.

B. All persons doing work under a permit must comply with all the conditions of the permit as specified by the City Administrator and perform work to the standards set by the City Administrator. The City Administrator may establish standards for particular types or classes of work to be performed by persons permitted to work on BES facilities in streets, easements, or other public property. Such conditions may include:

1. Full payment of permit fees.

2. Specifics about the kind of work and the time in which the work is to be completed.

3. Such other requirements as the City Administrator finds appropriate in the public interest.

C. The City Administrator may refuse to accept work that is not in full compliance with the plans, specifications, permit or other contract documents. If the work is refused, it will not be accepted unless it is brought into full compliance.

1. All work must comply with the following design and construction standards;

a. Sanitary, wastewater or other discharges to the sanitary or combined system must comply with the Sewer and Drainage Facilities Design Manual and the Source Control Manual.

b. Stormwater, groundwater discharge or other waters discharged to the City's storm sewer and drainage system must comply with the Stormwater Management Manual, the Source Control Manual, and Chapter 17.38.

D. All components of the City sewer, storm sewer and drainage system must be located within public rights-of-way, including easements. The width of public rights-of-way must be adequate to allow reasonable access for inspection, maintenance, repair and replacement, using standard construction methods. The minimum width for City sewer, storm sewer or drainage easements located outside of the public right-of-way is 15 feet. The City Administrator may require enlargement of an easement as necessary to address topographic conditions, the design of the improvement, or other relevant factors.

E. It is unlawful for any person who obtains a permit to fail or refuse to immediately remove all surplus sand, earth, rubbish, and other material from public streets and other public areas. All public streets, easements, and other public properties must be repaired or replaced to a condition satisfactory to the City Administrator at the permittee's own expense for the period of two years from the date of the completion of the work, as acknowledged in writing by the City.

17.32.060 Permit-Related Records.

BES will keep a record of permitted activities and improvements made under permit, permits issued under this Chapter, permit conditions, and the dates of acceptance of improvements. Any plans, specifications, survey notes, or other original documents as required by the City Administrator that were prepared for or produced during permit application or the design of, construction of, or connection to of a public sewer or drainage improvement, become the property of the City and must be delivered to the City Administrator before acceptance of the improvement by the City Administrator. The permittee must provide copies of any sampling data or other information obtained as a result of accessing the City sewer, storm sewer and drainage system.

17.32.070 Maintenance of Sewer and Drainage Systems.

Sewer system maintenance obligations including inspection, rehabilitation, routine cleaning and repair are based on ownership of the system:

A. Private systems. A sewer or drainage system that was not constructed by the City, built under a public works permit, or otherwise accepted pursuant to Subsections 17.32.070 B.1. or B.2. must be maintained by the parties served by the system, regardless of whether the system is located within a public right-of-way.

1. If any portion of an existing sewer or drainage system extends into a public right-of-way, the property owner must obtain a permit pursuant to Chapter 17.24 before beginning work within the right-of-way.

2. For a sewer or drainage system located in a public right-of-way that is under either private or unclear ownership, the City Administrator may grant or deny a permit to repair, upgrade, or replace the system as provided by Section 17.32.030. Such a system may only remain in the public right-of-way at the discretion of the City Administrator.

3. Incidental, inadvertent, or emergency City maintenance of private sewer or drainage systems or systems with unclear ownership does not obligate the City to perform future maintenance, imply acceptance of the system, or confer ownership of the system on the City.

B. Public systems. A sewer or drainage system constructed by the City, constructed under a public works permit, or accepted by the City pursuant to Subsections 17.32.070 B.1. or B.3. will be maintained by the City as explained below in this Section unless otherwise specified by written agreement with the City.

1. Limits of City maintenance responsibility. The City maintains City sewer and drainage improvements that are located in City rights-of-way and that are described as part of the City sewer, storm sewer and drainage system. However, the City only maintains laterals as follows:

a. For a City-paved street with curbs, the City will maintain a lateral from the sewer main to the street-side curb face nearest the property being served. If there is more than one curb, as with stormwater facilities, the City will maintain to the street-side curb face closest to the property line. Otherwise, the City will maintain only the wye or tee connection for laterals.

b. For a City-paved street without curbs, the City will maintain a lateral from the sewer main to the edge of the City paved street area.

c. Under Subsections 17.32.070 B.1.a. and b., when the sewer main is located in the right-of-way between the property line and the street-side curb face closest to the property line, the City will maintain only the wye or tee connection for the lateral.

d. For an unpaved street, the City will maintain those portions of any lateral within an area of right-of-way up to 28 feet wide and centered on the centerline of the City right-of-way, as determined by the City, as follows:

(1) When the sewer main is within the 28-foot maintenance area, the City will maintain the lateral to the limit of the maintenance area;

(2) When the sewer main is outside the 28-foot maintenance area and at least a portion of the lateral lies within the maintenance area, the City will maintain the lateral to the limit of the maintenance area; and

(3) When the sewer main is outside the 28-foot maintenance area and no portion of the lateral lies within the maintenance area, the City will maintain only the wye or tee connection for the lateral.

e. In City sewer, storm sewer and drainage system easements, the City will maintain public sewer mains and only the wye or tee connections for laterals.

f. Those portions of a lateral not addressed by Subsections 17.32.070 B.1.a. through d. are the responsibility of the property owner receiving service through the lateral.

2. Acceptance of systems with unclear ownership.

a. The City Administrator may agree to conduct future maintenance of a sewer or drainage system located in a public right-of-way or City utility easement where the ownership is unclear if, in the judgment of the City Administrator, the public will benefit as a result and:

(1) The system conveys only domestic sanitary or stormwater flows from residential property; or

(2) The system has been specifically modified through City permit or by the City to accept stormwater flows from City rights-of-way or other City-controlled property.

b. Acceptance of a system under this Section does not include or imply acceptance by the City of any maintenance responsibility, cost, liability or damage that arises from conditions or use of the system before acceptance by the City.

3. Acceptance of systems from other agencies, utilities, or individuals. The City Administrator may accept sewer, storm sewer and drainage systems from other public or private utilities, public agencies, nonprofit groups or other persons as the City Administrator deems appropriate. This acceptance my include full ownership or only assumption of maintenance responsibilities.

4. Adoption of Private Systems in the Public Right-of-Way. The City Administrator may agree to take ownership of a private sewer system or drainage improvement in the City right-of-way as provided by administrative rule. At the discretion of the City Administrator, a system meeting the following general criteria may be adopted:

a. All the properties connected to the system are participating in the City's Nonconforming Sewer Conversion Program pursuant to Chapter 17.33;

b. The sewer system conveys only domestic sanitary or stormwater flows from residential property;

c. The owners of all properties connected to the system provide the City with detailed information about the design, location, and condition of the system, and the properties connected to it as specified by administrative rule; and

d. The owners of all the properties connected to the system relinquish all claims to the system.

5. A system accepted under Subsection 17.32.070 B.1. or adopted under Subsection 17.32.070 B.2. will be added to the City maintenance roles as of the date of acknowledgment by the City Administrator.

6. The City's responsibility for maintenance of any sewer or drainage system, branch or connection point is subject to the City's annual budget appropriation and will be limited to the level of service dictated by the City Council's discretionary budget decision. The City assumes no responsibility for activities requiring a level of maintenance in excess of the level for which funds have been appropriated.

7. Any private piping, collection or conveyance structures needed to provide service to or used to transport discharges to the City's sewer, storm sewer or drainage system, will be the sole responsibility of the property owners(s) served by such systems. System installation, maintenance and repair will occur at the expense of the applicable property owner(s).

8. Volunteer maintenance. Property owners adjacent to City green street or other drainage improvement are not responsible for routine maintenance of the facilities, but BES-approved volunteers may voluntarily perform any of the following tasks:

a. Trash, debris, and sediment removal;

b. Weed removal;

c. Leaf pick up and removal;

d. Watering of vegetation;

e. Clearing inlets and outlets to allow stormwater to freely enter and exit the facility; and

f. Planting vegetation with written approval from BES.

C. Nuisance abatement.

1. The City Administrator may determine that a sewer or drainage improvement located in a public right-of-way that is under either private or unclear ownership constitutes a public nuisance if it:

a. Impairs or threatens to impair the operation, maintenance or installation of any street or public utility;

b. Is so deteriorated that its flows infiltrate or threaten to infiltrate any public utility or impact or threaten to impact the support structures of any street or public utilities;

c. Violates City operation, maintenance or construction standards or rules, or

d. Otherwise creates a public health or safety hazard.

2. Summary abatement of the nuisance is authorized when the City Administrator determines it is necessary to take immediate action to meet the purposes of this Title.

3. Notice to the responsible party before summary abatement is not required. Following summary abatement, the City Administrator will notify all owners identified in this Chapter or Portland City Code Chapter 25.09 as having maintenance or repair responsibilities. An error in the name of the property owner or address listed in the county assessment and taxation records will not affect the sufficiency of the notice.

4. The City will bill each property that the City determines caused or contributed to the nuisance to recover the costs of abatement. If the amount due is not paid in full within 30 days of the date of notice, the City may place a lien against the property.

17.32.080 Use and Access Permits.

A. Access to or use of the City sewer, storm sewer and drainage system requires the written approval of the City Administrator and payment of all applicable fees. Public agencies or City discharge permittees may be eligible for multi-use or programmatic permits. Structural modification of the City sewer, storm sewer and drainage systems requires a public works permit under Section 17.32.100.

B. Drainage system modifications. Modifications of any public or private stormwater management systems require the written approval of the City Administrator.

17.32.090 Connection Permits.

Connecting to a City sewer, storm sewer or drainage system, requires the written permission of the City Administrator and payment of all applicable fees. A permit application must include the purpose of the work; the name of the street or proposed or existing easement or right of way where work is proposed; the location of potentially affected components of the City sewer, storm sewer and drainage system; the location of the building or lot to be connected by the work (if any); and the location and the area to be drained.

A. If the application is for a permit is to connect a commercial or industrial occupancy it must also include:

1. A description of the business, a plat of the property, plans and specifications for any special installations;

2. A description of the character and quantity of waters and wastes to be discharged through the connection;

3. A proposed schedule for work; and

4. Any further information required by the City Administrator.

B. If the application is for a permit to connect properties outside the City limits, connection approval will be at the sole discretion of the City Administrator. No connection from property outside the City limits or within a neighboring jurisdiction will be permitted that, in the opinion of the City Administrator, may overload or otherwise compromise any component of the City sewer, storm sewer or drainage system. Connection of properties outside the City's boundaries is subject to the requirements and limitations of the City's adopted urban services policy.

1. Application for a permit to connect must be made in writing by the owner or other person having a recorded equitable interest in the property for which the connection is desired. Before a permit can be issued, all fees and special charges must be paid and any permits that may be required for street or highway opening and use must be obtained.

2. Any person connecting a property outside the City limits to the City sewer, storm sewer or drainage system may be required to enter into a maintenance agreement.

3. Flows from outside the City limits may be required to meet the standards in the Source Control Manual, the Stormwater Management Manual or the Sewer Drainage Facilities Design Manual, as determined by the City Administrator based on the needs of the City sewer, storm sewer and drainage system.

C. All permitted work must meet the following general sewer and drainage system construction standards, if applicable:

1. All discharges must be routed to the City sewer, storm sewer and drainage system by gravity service when possible, unless otherwise approved by the City Administrator.

2. If separate City storm and sanitary sewers are available, separate connection must be made to the City's sewer, storm sewer and drainage system from the private property:

a. Sanitary sewage from private property must be separately conveyed to the property line and connected through individual laterals for discharge to the City separate sanitary or combined sewer.

b. Drainage from private property, whether from the roof of a building, the surface of a structure, footings of a structure or any other surface, groundwater discharge or other drainage must be conveyed separately from sanitary sewage to City systems via an approvable route of conveyance or discharge point to the City storm sewer and drainage system;

c. If separate storm and sanitary sewers are not available, but a combined sewer is available, the City Administrator may require or allow:

(1) Separate connections for the separate sewage lines from the property to the City's combined sewer;

(2) Joining of the separate lines at the curb line closest to the property line or edge of an easement for single discharge into the City's combined sewer; or

(3) Onsite infiltration of surface, groundwater discharge or other drainage to minimize or eliminate the need for offsite discharge.

3. All discharges must be connected via an approved route of service or route of conveyance to a discharge point approved by the City Administrator.

D. The City Administrator may require that a property owner modify or abandon an existing sewer connection when a new or renovated public sewer becomes available. The City Administrator may dictate a new route of service or route of conveyance and new approved connection point to the City sewer, storm sewer and drainage system for sewage, wastewater or other drainage discharges. A new connection may be:

1. Required or provided by BES as part of an infrastructure replacement project that addresses issues such as but not limited to pipe stability, capacity expansion, water quality improvement, or reduction of inflow or infiltration into existing laterals.

2. Required for a property with a private sewer, storm sewer and drainage system located in City right-of-way to obtain a City encroachment permit; or

3. Required in order to remove an illegal connection that is subject to an enforcement action.

17.32.100 Public Works Permits.

A. The construction, modification, repair or removal of a component of the City sewer, storm sewer and drainage system requires a public works permit prior to beginning work. All applicants must complete a public works application form that provides:

1. A description of the proposed work and the applicable public improvements.

2. Locations and names of proposed streets where work is proposed, location of any off-street improvements, and the name of a new proposed plat development, if any.

3. Any other information the City Administrator deems appropriate.

A permit may be issued by the City Administrator after the sewer or drainage improvement plans and/or description of proposed work have been approved by the City Administrator.

B. Prior to City issuance of a permit, the applicant must provide a performance bond, cash, or other financial guarantee in an amount sufficient to pay the estimated for construction, engineering, and other costs for the City to perform the permitted work.

C. The City Administrator will only issue a permit for the construction of a public sewer or drainage improvement in advance of plat recording of a subdivision or planned unit development after:

1. The sewer or drainage improvement plans have been approved;

2. The final plat, with or without required signatures affixed, has been submitted to Portland Permitting & Development;

3. Portland Permitting & Development has given written assurances that subdivision or planned unit development approval conditions have been or will be met;

4. All applicable easements outside the subdivision or planned unit development have been obtained, and

5. The applicant has complied with Section 17.32.050 of Portland City Code.

6. The issuance of a City public works permit in no way waives any requirements by the City or any other public agency that may be associated with the development of a plat or Planned Unit Development.

D. Persons wishing to utilize City design services must include payment of a deposit in an amount to be determined by the City Administrator with the permit application. All deposits must be made before any City design work begins. BES will retain the deposit as compensation for the preparation of design and plans or for review efforts if:

1. A permit application or issued public works permit has had no action or communication for one year from the previous contact; or

2. A permit is not issued for the proposed improvement within one year from the time the design and plans are reviewed and completed.

3. If a public works permit is issued for the proposed improvement within one year from the time the design and plans are completed, the amount of the required deposit will be applied to the cost of the permit fee for such improvements.

E. In addition to the standard permit conditions of Section 17.32.050, public works permits must meet the following standard conditions:

1. The resulting public improvement must be located in a public easement or public right of way and will come under City control upon plat and easement recording with the County.

2. The permittee must agree to indemnify, defend, and hold the City harmless in writing against any liability that may arise from or in connection with the permitted activity prior to any dedication of rights-of-way or recording of easements. The permittee must assume all risk of loss that may arise in the event the City or any other public agency subsequently requires changes in or additions to plans or refuses to approve all or any part of the permittee's improvements.

3. The permittee must, at the permittee's own expense, maintain any permitted City sewer or drainage improvement for a period of 24 months following the issuance of a letter of permit completion by the City Administrator. The warranty period ensures that workmanship and materials are not defective and that the improvement is operating properly. BES may extend the warranty period for any repairs, alterations or rehabilitations that need to occur during the original warranty period.

4. Any drainage improvements made on private property and private or shared private/public facility systems allowed in a City right-of-way or easement will remain the maintenance responsibility of the private property owner as a condition of the approved permit and associated maintenance agreement unless accepted as a City maintenance responsibility by the City Administrator.

5. All plats and easements must be recorded with the County prior to final acceptance of the public sewer or drainage improvements.

F. Acceptance of improvements.

1. Notice of construction completion. During the course of construction, and before issuance of a letter of permit completion or a certificate of completion from the City Administrator, the City Administrator will inspect the sewer or drainage improvement and to determine if the improvements were constructed in compliance with the plans, specifications and conditions of the permit and if they meet City standards for quality of workmanship. The City Administrator will check the improvement for alignment and conformance with the established grade. Once this acceptance is garnered, the maintenance and warranty period will commence.

2. Certificate of Completion of the maintenance and warranty period. All of the work required during the warranty period must be completed to the satisfaction of the City Administrator prior to completion certificate issuance and issuance of a warranty completion certificate accepting the improvement.

3. If the City Administrator does not accept a public sewer or drainage improvement within one year after completion of the warranty period, the permittee must remove the improvement and restore the public area to at least its prior condition or to the extent directed by the City Administrator at the permittee's expense.

17.32.110 Permit and Review Fees.

Permit and review fees are established by the BES annual rate ordinance required by Chapter 17.36. The City Administrator may withhold issuance of any permit until applicable connection charges and review fees are paid in full. Multi-tiered permit fees may be applicable.

A. Access, use and encroachment reviews and permits. Sewer access, use and encroachment permit review fees will recover the cost of BES reviews including all applicable overhead and inspection charges.

B. Connection permits. Connection permit review fees will recover the cost of all City reviews including all applicable overhead charges for review and inspection. Overhead rates are set annually by the City Administrator.

C. Public works permits. Public works permit review fees recover the true costs of engineering and superintendence services in connection with public sewer or drainage improvement projects based on City records of time, materials, services, overhead and indirect costs incurred to provide the services. Public works permit and review fees recover the costs for all projects completing work whether performed by contract in the name of the City, by private contract between a permittee and a contractor, or directly by the permittee.

D. All fees must be paid prior to receiving a permit and commencing work.

E. BES may withhold a portion of permit fees and charges to cover costs associated with opening and reviewing a permit. Canceled connection, use, encroachment, proximity review and standard public works permits are generally not eligible for refund unless meeting the criteria set by the City Administrator. Complex public works permits are eligible for refund of the applicable portions of the public works permit deposit not already spent on City design or review services.

17.32.120 Reimbursements for Work.

A. Backflow device reimbursement. A property owner may submit an application for partial reimbursement of the cost for installation of a sewer backflow device on a combined sewer line. To be eligible, the building or structure must be connected to the City combined sewer system and be in an area vulnerable to sewer backups, as determined by the City Administrator. All backflow devices installed pursuant to this Section will be owned by the building owner, who must assume the costs of maintenance, repair and replacement.

1. Backflow devices must be installed per Portland City Code Title 25, Plumbing Regulations.

2. If the reimbursement is approved, the building owner must pay the first $100 of the cost of such installation, and the City pays the next $1,500 of such costs. The building owner must pay any amount in excess of $1,600. Payment to the property owner of the City's share of the expense is made upon Portland Permitting & Development's final inspection and the owner's submittal of the plumber's billing for the work.

3. City participation in the cost of installation does not guarantee or in any manner warrant any backflow device, nor does the City give any guarantee that the device will prevent future flooding. The City does not assume any responsibility for damages incurred as a result of flooding subsequent to installation of any backflow device. The owner may look to a warranty or guarantee from the manufacturer of the backflow device or the installation contractor.

B. Sewer and drainage system improvements.

1. Improvements required for development. As a general rule, all expenses incurred for the construction of public sewer and drainage system improvements required to serve a developing property or as a condition of approval are the sole responsibility of the property owner or their agent. Public sewer and drainage system improvements required to serve the developing property that incidentally benefit other properties or the City are not eligible for cost-sharing reimbursement, including but not limited to situations where a sewer extension passes properties located between the existing public sewer and the developing property.

2. City-requested improvements. When the City requests improvements to the public sewer and drainage system that exceed the applicable City design standards otherwise required to serve the developing property, the City may enter into a mutual cost-sharing agreement with the property owner or their agent. Cost-sharing amounts are based on available funds. Only the proportional costs associated with the excess improvements, as determined by the City Administrator, are eligible for cost-sharing reimbursement.

3. Amount of Cost share. As general policy, the City will reimburse the difference in cost between the improvements required to serve the developing property and the additional improvements requested by the City.

a. Certain common improvement types will be reimbursed using standard unit costs that are established based on recent engineering estimates, project costs, and bid estimates.

b. Other improvements that are completed as part of the development project that further the bureau's system planning goals and benefit the City are eligible for cost-sharing reimbursements at the sole discretion of the City Administrator. These will be evaluated on a case-by-case basis and documented in a mutual cost-sharing agreement. Bureau-estimated reimbursement amounts will be based on recent, previous construction costs. All reimbursements are subject to available funding.

17.32.130 Inspections.

A. Right of entry. To the extent permitted by law, BES may enter all private and public premises at any time for the purpose of inspecting for potential violations, connections or for any other lawful purpose. This authorization includes but is not limited to inspection surveying, sampling, testing, photographic documentation, record examination, copying, and installation of devices. Entry may not be conditioned upon BES representatives signing any type of confirmation, release, consent, acknowledgement, or agreement.

B. Entry protocols.

1. The BES representative will present a City photo identification card at the time of entry.

2. The BES representative will comply with reasonable, routine safety and sanitary requirements of the facility or site as provided by the facility operator at the time of entry. The facility operator must provide the BES representative with any facility-specific safety protective equipment necessary for entry.

17.32.140 Enforcement.

A. Violations. It is a violation for any person to fail to comply with the requirements of this Chapter or associated rules. Each day a violation occurs or continues may be considered a separate violation. The City Administrator will hold each responsible party jointly and severally for complying with BES enforcement actions. Violations of this Chapter or associated rules include, but are not limited to:

1. Failure to obtain a permit for actions in Section 17.32.030, including failure to supply correct application materials;

2. Failure to comply with the conditions of a permit;

3. Failure to comply with the conditions of or prohibited access to a public sewer or drainage easement;

4. Failure to comply with a written directive or timeline of the City Administrator made under authority of this Chapter;

5. Damage, regardless of intent, to any component of the public sewer;

6. Unauthorized modification of the public sewer; and

7. Failure to comply with enforcement actions as identified in the BES Enforcement Program administrative rules (PPD item ENB-4.15).

B. Enforcement tools. The City Administrator may use any or all of the following tools to enforce this Chapter or associated administrative rules: notice of investigation, warning notice, notice of violation, compliance order, requirement to obtain a permit, notice of termination, withholding of permits, withholding of final inspection, violation abatement, legal action, criminal case referral, or referral to other regulatory agencies. City enforcement actions are described in program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15).

C. Civil penalties. A responsible party may be assessed civil penalties of up to $10,000 per day per violation according to program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15). Penalties and other charges will accrue interest from the date of initial City notice assessing the penalty until the penalty is paid in full.

D. Cost recovery. The City Administrator may recover all reasonable costs incurred by the City that are attributable to or associated with violations of this Chapter or associated administrative rules per PPD item ENB-4.15.

E. City summary abatement. To the extent permitted by law, the City Administrator may recover from a responsible party all costs incurred by the City to summarily abate the following:

1. A violation that is not remedied through required corrective actions;

2. A situation that poses an imminent danger to human health, public safety, or the environment; or

3. Continued noncompliance with Portland City Code or associated rules.

F. Nothing in this Chapter is intended to impose liability on the City for any injury or damage resulting from the failure of any person to comply with the provisions of this Chapter.

17.32.150 Administrative Reviews, Appeals, and Compliance Cases.

A. Reviews and appeals. A person may request a modification to a City Administrator decision related to this Chapter via an administrative review with BES staff, unless administrative review is limited by administrative rule. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal with the Code Hearings Officer per Title 22 of Portland City Code, unless appeal is limited by administrative rule.

B. BES Code Compliance Cases. BES may file a case before the Code Hearings Officer under Title 22 of Portland City Code to compel compliance with City regulations. The person committing the violation will be offered the opportunity to present evidence.

17.32.160 Conflict.

This Chapter supersedes all ordinances or elements thereof to the extent that they are inconsistent with or conflict with any part of this Chapter.

17.32.170 Severability.

If any provision, paragraph, word, or Section of this Chapter or associated administrative rules is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, and Sections will not be affected and will continue in full force and effect.

Chapter 17.33 Connection to the Public Sewer

17.33.010 Intent.

The intent of this Chapter is to support the City’s responsibility to protect public health, water quality, and the environment by identifying the general circumstances and site conditions that will require a property owner to connect their property, structure, use or activity to the public sewer as that term is defined in Chapter 17.04. This chapter specifically applies to connections from properties, structures, uses or activities with plumbing facilities that require wastewater disposal to the public sewer.

17.33.020 Definitions.

The following definitions and the definitions of Chapter 17.04 and of Chapter 17.32 apply to this Chapter:

A. Director means the Director of the Bureau of Environmental Services or the Director's designee.

B. Nonconforming private sewer line means a sewer pipe in the public right-of-way (ROW), typically running parallel to the curb or other longitudinal edge, that has not been adopted or accepted as a public improvement by the City Administrator.

C. Nonconforming sewer means a private sewer system that accesses the public sewer by any of the following:

1. A sewer lateral draining more than one property that conveys the discharge to the public sewer in the ROW or in a public sewer easement, also known as a "party" sewer. Exception: This does not apply to Middle Housing Land Division (MHLD) shared sewers that meet all City requirements and standards.

2. A sewer lateral crossing one or more properties without the benefit of a recorded easement that meets City standards.

3. A nonconforming private sewer line.

4. A sewer lateral in the public ROW or in a public sewer easement with an alignment or other physical characteristic contrary to the approved standards of the Sewer and Drainage Facilities Design Manual (SDFDM).

D. Onsite wastewater treatment system means any existing or proposed subsurface onsite wastewater treatment and dispersal system, as those terms are used in Oregon Administrative Rules Chapter 340, Divisions 71 and 73.

17.33.030 Sewer Connections.

A property with any of the following circumstances and site conditions must be connected to the public separate sanitary or combined sewer system, which are both considered sanitary sewers for the purposes of this Chapter. All connections to the sanitary sewer must be along an approved route-of-service as described in Chapter 17.32 and BES Administrative Rule ENB-4.07, and comply with City design, construction, maintenance, and operational standards.

A. Plumbing fixtures connected. As a general policy, all plumbing fixtures from which wastewater is or may be discharged must connect to and discharge into the public sewer system. Exceptions to this requirement include situations where it can be demonstrated to the satisfaction of the City that an onsite wastewater treatment system or other alternative means of sewage disposal can otherwise be lawfully permitted.

B. Public sewer is or becomes available. An existing structure served by a lawfully-permitted onsite wastewater treatment system may be required to connect at the

discretion of the City, in consultation with the sanitarian, when a public sewer system becomes available. In general, any expansion, remodel, alteration, or change in use that increases the capacity requirements of the onsite wastewater treatment system will require the property owner to abandon the onsite system and connect to public sewer system.

C. Nonconforming sewer. A property using a nonconforming sewer must abandon the nonconforming connection or convert to a conforming sewer connection when noticed by the City. Requirements for converting nonconforming sewer connections are established in BES Administrative Rule ENB-4.27 (BES Nonconforming Sewer Conversion Program).

D. Source Control Manual. A property with structures or activities that are described in Administrative Rule ENB-4.26 (BES Source Control Manual) and that require drainage to the sanitary sewer must connect to the public sewer when required as a condition of a development permit or when the City notifies the property owner thereof.

E. Threat to public health, water quality, or the environment. The City may require a property owner to connect their property, structure, or activity to the public sewer system pursuant to its jurisdictional authority to protect public health, water quality, and the environment.

17.33.040 Financial Assistance for Required Sewer Connections.

BES may provide financial assistance to eligible property owners to assist with sewer connections and to prevent disruption of service. Financial assistance in the form of loans and payment deferrals is available as described in Administrative Rule ENB-4.28 (BES Financial Assistance Program).

17.33.050 Inspections.

A. Right of entry. To the extent permitted by law, BES may enter all private and public premises at any time for the purpose of inspecting for potential violations, connections, or for any other lawful purpose. This authorization includes but is not limited to inspection surveying, sampling, testing, photographic documentation, record examination, copying, and installation of devices. Entry may not be conditioned upon BES representatives signing any type of confirmation, release, consent, acknowledgement, or agreement.

B. Entry protocols.

> **1.** The BES representative will present a City photo identification card at the time of entry.
>
> **2.** The BES representative will comply with reasonable, routine, safety and sanitary requirements of the facility or site as provided by the facility operator at

the time of entry. The facility operator must provide the BES representative with any facility-specific safety protective equipment necessary for entry.

3. City staff executing an abatement order may enter the property to the extent allowed by law.

17.33.060 Declaration of Nuisance and Abatement Orders.

Any property not connected to the public sewer system as required under this Chapter is declared a nuisance and subject to abatement or correction by the City. The City Administrator is authorized to take actions to abate a nuisance, including work in public rights-of-way or easements, authority to order remediation on private or public property, and the expenditure of City funds. If the nuisance described in the notice issued to the property owner is not remedied or evidence is not provided establishing that such nuisance does not exist, the City may request an abatement order from the Code Hearings Officer. The order will include authorization for the City to access private or public property for nuisance abatement purposes. Costs of nuisance abatement incurred by the City may be assessed as a lien against the property in accordance with the provisions of Portland City Code Chapter 22.06.

17.33.070 Enforcement.

A. Violations. It is a violation for any person or responsible party to fail to comply with the requirements of this Chapter or associated rules. Each day a violation occurs or continues may be considered a separate violation. BES may hold each such person or responsible party solely responsible for complying with BES enforcement actions. Violations of this Chapter or associated rules include, but are not limited to:

1. Failure to make a sewer connection in compliance with the requirements of the Source Control Manual or of this Chapter;

2. Failure to convert or abandon a nonconforming sewer connection;

3. Failure to maintain an existing onsite wastewater treatment system;

4. Any action to obstruct, impede, or interfere with any officer, employee, contractor, agent, or authorized representative of the City who is engaged in work under an abatement order issued by the Code Hearings Officer;

5. Failure to comply with a written order of the City Administrator, made under the authority of this Chapter, within the specified time; and

6. Failure to comply with enforcement actions as identified in Administrative Rule ENB-4.15 (BES Enforcement Program).

B. Enforcement tools. BES may use any or all of the following tools to enforce this Chapter or associated administrative rules: Notice of investigation, warning notice, notice of violation, compliance order, requirement to obtain a permit, notice of

termination, withholding of City permits, withholding of City services, violation or nuisance abatement, legal action, criminal case referral, or referral to other regulatory agencies. BES enforcement actions are described in program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15).

C. Civil penalties. A person or responsible party violating this Chapter or associated rules may be assessed civil penalties of up to $10,000 per day per violation according to program-specific administrative rules and the BES Enforcement Program Administrative Rules (PPD item ENB-4.15). Penalties and other charges will accrue interest from the date of initial City notice assessing the penalty until the penalty is paid in full.

D. Cost recovery. The City Administrator may recover from the person or responsible party all reasonable costs incurred by the City that are attributable to or associated with violations of this Chapter or associated administrative rules per PPD item ENB-4.15.

E. City summary abatement. To the extent permitted by law, the City Administrator may recover from the person or persons responsible for the violation all costs incurred by the City to abate summarily the following:

1. A violation that is not remedied through required corrective actions;

2. A situation that poses an imminent danger to human health, public safety, or the environment; or

3. Continued noncompliance with the Portland City Code or associated rules

F. Notice to responsible parties prior to summary abatement is not required. Following summary abatement, BES will notify all persons identified as having directed or benefitted from the violation. An error in the name of a property owner or address listed in the county assessment or taxation records will not affect the sufficiency of the notice. BES will bill each responsible party in order to recover the costs of the abatement.

G. Nothing in this Chapter is intended to impose liability on the City for any injury or damage resulting from the failure of any person to comply with the provisions of this Chapter.

17.33.080 Administrative Reviews, Appeals, and Compliance Cases.

A. Administrative reviews and appeals. An affected property owner may request a modification to a BES decision related to this Chapter via an administrative review with BES staff unless administrative review is limited by administrative rule. After the requestor has exhausted all BES administrative reviews, the requestor may file for an appeal with the Code Hearings Officer per Portland City Code Title 22 unless appeal is limited by administrative rule.

B. BES Code compliance cases. BES may file a case before the Code Hearings Officer under Portland City Code Title 22 to order compliance with City regulations. Any property owner who fails to comply with this Chapter or associated administrative rules

may be summoned to a Code hearing. The Code Hearings Officer is authorized to order compliance with City sewer connection regulations, including site entry to construct a compliant connection to the public sewer.

17.33.090 Conflict.

Except as expressly provided by the City Council, this Chapter supersedes all ordinances and elements of ordinances to the extent that they are inconsistent with or conflict with any part of this Chapter.

17.33.100 Severability.

If any provision, paragraph, word, or Section of this Chapter or associated rules is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, and Sections will not be affected and will continue in full force and effect.

Chapter 17.34 Sanitary Discharges

17.34.005 Intent of Chapter.

It is the intent of the City to provide needed sewer service to all users while meeting the outlined objectives. This Chapter provides the structure under which the service will be provided for industrial wastewater dischargers so that the system is protected and can continue to provide efficiently for the wastewater treatment needs of the City. This chapter describes a group of regulations that applies to all sanitary discharges, including those regulated under BES pre-treatment and City discharge authorization programs. This Chapter applies to all separate sanitary and combined sewer systems, which are both considered sanitary sewers for the purposes of this chapter.

17.34.010 Declaration of Policy.

It is the policy of the Bureau of Environmental Services (BES) to provide the planning, engineering and administration necessary to develop and manage sewer facilities that are adequate for the conveyance, treatment and disposal of wastewater from within the City and to operate the sewer system in such a manner that protects public health and the environment. In carrying out this policy, the objectives of this Chapter are:

A. to prevent pollutants from entering the sewer system that would interfere with its normal operation or contaminate the resulting sludge;

B. to prevent the introduction of pollutants into the sewer system that would not be adequately treated and will pass through into the environment;

C. to improve the opportunity for recycling and reclamation of wastewater and sludge;

D. to ensure protection of worker safety and health;

E. to ensure that all dischargers comply with applicable federal, state and local laws and regulations governing wastewater discharges and that sanctions for failure to comply are imposed.

17.34.020 Definitions.

As used in this Chapter and associated rules, the following definitions apply:

A. Branch sewer means the public portion of the underground piping system that connects from the plumbing system of a building or buildings to a public sewer.

B. Categorical pretreatment standards mean limitations on pollutant discharges to POTWs from specific types of new or existing industrial users. These standards are promulgated by the EPA in accordance with Sections 307 (b) and (c) of the Clean Water Act. This term includes prohibitive limitations established pursuant to 40 CFR 403.5

C. Clean Water Act (CWA) means the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251 et seq.).

D. Combined sewer means a sewer designed to convey both sanitary sewage and stormwater.

E. Director means the Director of The Bureau of Environmental Services or the Director’s designee.

F. Discharge means any disposal, injection, dumping, spilling, pumping, emitting, emptying, leaching, leaking, or placing of any material so that such material enters or is likely to enter a waterbody, groundwater, or a public sewer or drainage system.

G. Discharge authorization (DA) means a written approval by the City Administrator that prescribes certain requirements or restrictions for a discharge to the City sewer and drainage system.

H. Discharger means any person who causes or permits a direct or indirect discharge to the City’s sewer and drainage system.

I. Domestic waste means any waste consistent with that generated from single or multiple residential dwellings including, but not limited to, wastes from bathrooms, laundries and kitchens.

J. Domestic wastewater means any water that contains only domestic waste.

K. Hazardous substance means any substances referenced in section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S. Code §9601 et seq.), section 502(13) of the Clean Water Act or other substance at concentrations specified in those lists or, if no concentration is specified, at concentrations designated by the City Administrator.

L. Industrial user means any person who discharges industrial or commercial wastewater to the City sewer system.

M. Industrial wastewater means any discharge resulting from, or used in connection with, any process of industry, manufacturing, commercial food processing, business, agriculture, trade or research. Industrial wastewater includes, but is not limited to, the development, recovery or processing of natural resources and leachate from landfills or other disposal sites.

N. Industrial wastewater discharge permit means a permit to discharge industrial wastewater into the City sewer system that is issued under Section 17.34.070 and that prescribes certain discharge requirements and limitations.

O. Interference means a discharge that alone or in conjunction with other discharges, inhibits or disrupts the normal operation of the City sewer system or contributes to a violation of any requirement of the POTW's NPDES permit. This includes any increase in the magnitude or duration of a violation, any increase in cost due to damage to the system, additional treatment of sewage, sewage sludge use or disposal, or in compliance with local, state or federal regulations or permits related to sewage treatment and sludge disposal.

P. National Pollutant Discharge Elimination System (NPDES) means the Clean Water Act (40 CFR Part 122) regulations that require dischargers to control and reduce pollutants in discharges to waters of the United States

Q. Pollutant means an elemental or physical material that can be mobilized or dissolved by water or air and that could create a negative impact to human health, safety, or the environment.

R. POTW means Publicly Owned Treatment Works, which includes any devices and systems, owned by a state or municipality, used in the collection, transportation, storage, treatment, recycling and reclamation of wastewater.

S. Pretreatment means the reduction of the amount of pollutants, the elimination of pollutants, or the alteration of the nature of pollutant properties in wastewater in accordance with federal, state and local laws, regulations and permits prior to or in lieu of discharging or otherwise introducing such pollutants into the City sewer system.

T. Slugload means any discharge that is nonroutine or episodic and that has a reasonable potential to cause interference, pass-through, or violation of applicable local, state or federal regulations, including City local limits or conditions of the City's NPDES permit. Slugloads include but are not limited to accidental spills and non-customary batch discharges.

U. Toxic substance means any chemical listed in Oregon's water quality standards for toxic pollutant tables in OAR, Division 340-041-0033; the CWA effluent guidelines list of toxic pollutants at 40 CFR 401.15; or the toxic chemical release reporting specific toxic

chemical listings at 40 CFR 372.65 at concentrations specified in those lists or, if no concentration is specified, at concentrations designated by the City Administrator.

V. Upset means an exceptional incident in which a discharger temporarily is in a state of noncompliance with the applicable categorical pretreatment standards of this Chapter or associated rules. Upset must be due to factors beyond the reasonable control of the discharger and not caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation of treatment facilities.

W. Wastewater means any non-domestic sewage flows including but not limited to washwaters, industrial wastewater, commercial discharges, and other nonstormwater discharges.

17.34.030 General Discharge Prohibitions.

A. It is unlawful to discharge industrial wastewater into the City sewer system except in compliance with this Chapter and associated rules.

B. Prohibited discharges. It is unlawful to discharge, cause to discharge, or allow to discharge directly or indirectly into the City sewer system any substance, alone or in combination with others, that may inhibit, interfere with, injure, harm, damage, create a hazard to or impair the performance of the City's conveyance, collection or treatment processes and systems. Prohibited discharges also include those that create or could create a nuisance or a threat to human health or the environment or that:

1. Contains substances that are not amenable to treatment or reduction by the sewage treatment process employed or are only partially amenable to treatment;

2. Contain liquids, solids, or gases that, either alone or by interaction, may cause a fire or an explosion or injure the sewer system or wastestreams;

3. Have a closed cup flashpoint of less than 140 degrees Fahrenheit (60 degrees Celsius) using test methods prescribed at 40 CFR 261.21 or could cause the atmosphere in any portion of the sewer system to reach a concentration of 10 percent or more of the Lower Explosive Limit (LEL);

4. Contain solids or viscous substances that may solidify or become discernibly viscous at temperatures above 0 degrees Celsius (32 degrees Fahrenheit) or are capable of obstructing the flow of wastewater or cause other interference with the operation of the sewer system;

5. Contain noxious, malodorous or toxic liquids, gases, vapors, fumes, or solids, in amounts that may violate the general prohibitions of Subsection 17.34.030 B.;

6. Contains hazardous or toxic substances, either alone or in combination with other substances may adversely affect receiving waters or in amounts that may violate the general prohibitions of Subsection 17.34.030 B.;

7. Have a pH of less than 5.0 or more than 11.5 without prior approval by the City Administrator;

8. Are hotter than 65 degrees Celsius (149 degrees Fahrenheit) or are hot enough to inhibit biological activity or cause the temperature of the treatment plant influent to exceed 27 degrees Celsius (80 degrees Fahrenheit);

9. Contain material trucked or hauled from a cesspool, holding or septic tank or any other nondomestic source, except such material received at designated locations under City contract or permit;

10. Contain any material other than domestic waste larger than 0.65 centimeters (1/4 inch) in any dimension;

11. Contain dissolved solids may violate the general prohibition of Subsection 17.34.030 B.;

12. Contain excessive color that is not removed in the treatment process;

13. Contain radioactive material, except in compliance with a current permit issued by the Oregon State Health Division or other state or federal agency having jurisdiction;

14. Contain petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin in amounts that may cause interference or pass through;

15. Contain non-contact cooling water without prior approval by the City Administrator;

16. May cause sewer system effluent or treatment residues, sludges, or scums to be unsuitable for reclamation and reuse;

17. Constitute a slugload per administrative rule;

18. Constitute a batch discharges without written permission from the City Administrator;

19. Exceeds discharge limits adopted in permits or administrative rules;

20. May cause the City to violate the terms of its NPDES permit; or

21. May cause the City to violate sludge use or disposal criteria, treatment guidelines, or other applicable regulations developed under the Clean Water Act (33 USC 1251-1387), the Solid Waste Disposal Act (42 USC 6901-6992k), the Clean Air Act (42 USC 7401 -7671q), the Toxic Substances Control Act (15 USC 2601-2692), or any other federal or state statutes.

C. A discharge or flow resulting from and emergency situation such as a water line break or firefighting by the Portland Fire Bureau will not be prohibited from discharging to the sewer during the period of the emergency. Any repairs made after the period of emergency has ceased will comply with all regulations of Portland City Code.

17.34.040 Discharge Limitations.

A. It is unlawful for a discharger to discharge wastes or wastewater to the City sewer system in excess of limitations established in an industrial wastewater discharge permit or in violation of the prohibited discharges in Section 17.34.030. The City Administrator will establish specific discharge limitations under separate rules to meet the objectives of this Chapter.

B. It is unlawful for a discharger to use dilution as a partial or complete substitute for adequate treatment to achieve compliance with the standards and limitations set forth in this Chapter, administrative rules, or in an industrial wastewater discharge permit issued pursuant to the Chapter. The City Administrator may impose mass limitations on dischargers who are using dilution to meet the applicable pretreatment standards or requirements of this Chapter, administrative rules or in other cases where the City Administrator determines that the imposition of mass limitations is appropriate.

C. The City Administrator may authorize the use of equivalent concentration limits in lieu of mass limits for certain industrial categories, and allow the conditional use of equivalent mass limit in lieu of concentration-based limits where appropriate.

D. Termination or limitation. Notwithstanding prior acceptance into the City sewer system of industrial wastewater, if the City Administrator finds that industrial wastewater from a particular commercial or industrial occupancy or a class of similar occupancies cause or may cause damage, interference, hazard or nuisance to the City sewer system, City personnel or the receiving waters, the City Administrator may limit the characteristics or volume of the industrial wastewater accepted or may terminate acceptance. Notice of the limitation or termination will be given in writing to the occupant of the property or posted on the property involved, and will specify the date when the limitation or termination is to be effective. It is unlawful for any person to discharge or permit the discharge of industrial wastewater in violation of this notice.

17.34.050 Pretreatment and Pollution Control Required.

A. The City Administrator may require dischargers to install treatment facilities or make structural modifications to their facilities or equipment, or make operation changes, process modifications, or take other measures to protect the City sewer system, to comply with requirements of this Chapter or any applicable state or federal requirements. The City Administrator may require that such actions be taken within the shortest reasonable time. Compliance deadlines will be based on construction time and the confirmed or potential impact of the untreated industrial wastewater on the City sewer system. Such structures and site modifications must be reviewed and approved by the City Administrator to determine sufficiency.

B. Any requirement of this Chapter may be incorporated as a part of an industrial wastewater discharge permit issued under Section 17.34.070 or any other enforcement document and made a condition of issuance of such permit or discharge authorization for the industrial wastewater from such facility.

C. Plans, specifications and other information relating to the construction or installation of required pretreatment facilities and source control measures must be submitted to the City Administrator. A permit or permit review may be required. No construction or installation may commence until written approval of plans and specifications by the City Administrator is obtained. No person, by virtue of such approval, will be relieved of compliance with other local, state or federal laws relating to construction and permits. Every facility must be constructed in accordance with the approved plans and specifications and installed and maintained at the expense of the discharger.

17.34.060 Accidental Spill Prevention and Control.

A. Notification. Any person becoming aware of spills or uncontrolled discharges of hazardous or toxic substances or of substances prohibited under Section 17.34.030 directly or indirectly into the City sewer system must immediately report such discharge by telephone to the Director and to any other authorities required under other local, state, or federal laws or regulations.

B. Written notice. Within five days following an accidental discharge as described in Subsection A. above, the discharger must submit to the Director a detailed written report describing the cause of the discharge and the measures to be taken to prevent similar future occurrences. Such notification will not relieve the discharger from any fines, civil penalties, or other liability that may be imposed under the authority of this Chapter, associated rules, or other applicable law.

C. Posted notice. A notice that informs employees of an industrial wastewater discharger of the notification requirement in Subsection 17.34.060 A. above and that contains information regarding reporting in the event of such a discharge must be posted in a conspicuous place and must be visible to all employees who may reasonably be expected to observe such a discharge.

D. Preventive measures. Direct or indirect connections or entry points that could allow spills or uncontrolled discharges of hazardous or toxic substances or of substances prohibited under Section 17.34.030 to enter the City sewer system must be eliminated or labeled and controlled so as to prevent the entry of wastes in violation of this Chapter. The City Administrator may require the discharger to install or modify equipment or make other changes necessary to prevent such discharges as a condition of issuance of an industrial wastewater discharge permit or as a condition of discharge authorization to the City sewer system. A schedule of compliance will be established by the City Administrator for completion of required actions within the shortest reasonable period of time. Inability to comply with this schedule without an extension of time by the City Administrator is a violation of this Chapter.

E. Accidental Spill Prevention Plans.

1. Dischargers that handle, store or use hazardous or toxic substances or substances prohibited under Section 17.34.030 on their sites must prepare and submit to the City Administrator an Accidental Spill Prevention Plan, according to the requirements set out in administrative rule, within 60 days after notification by the City Administrator or as required by an industrial wastewater discharge permit.

17.34.070 Industrial Wastewater Discharge Permits.

A. Requirement for a permit. Except as provided in Subsection 17.34.070 B., an industrial wastewater discharger must have an industrial wastewater discharge permit prior to discharging into the City sewer system if:

1. The discharge is required to be permitted under procedures contained in the City's approved pretreatment program; or

2. The discharger is a significant industrial user, which includes:

a. All industrial users subject to Categorical Pretreatment standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N; and

b. Any other industrial user that:

(1) Discharges an average of at least 25,000 gallons per day or more of process wastewater to the POTW (excluding domestic, noncontact cooling and boiler blowdown wastewater);

(2) Contributes a process waste stream that makes up five percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or

(3) Is designated as such by the City Administrator on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement in accordance with 40 CFR 403.8(f)(6),

3. The City Administrator may determine that an industrial user meeting the criteria above is not a "significant industrial user" if the discharge has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement in accordance with 40 CFR 403.8(f)(6).

B. Existing discharges.

1. If discharges occur prior to the date that an industrial wastewater discharge permit is required, the discharger will be notified in writing by the City

Administrator that such a permit is required. Such existing dischargers may be allowed to continue discharging into the City sewer system without an industrial wastewater discharge permit until a permit is issued or denied, provided the discharger files a completed environmental survey and application for an industrial wastewater discharge permit within 90 days of receipt of the notice.

2. Discharges that require an industrial wastewater discharge permit and are allowed to continue discharging without such a permit under Subsection 17.34.070 B.1. must comply with the requirements of this Chapter and associated rules.

C. Application for industrial wastewater discharge permit.

1. Existing significant industrial users must submit application for a permit on a form provided by the City Administrator within 180 days after the effective date of a categorical pretreatment standard issued by the U.S. EPA or within 90 days after receiving notification from the City Administrator that such a standard has been issued, whichever is sooner.

2. New source dischargers. Any new source discharger determined by the City Administrator to be a significant industrial user must submit an application for a permit on a form provided by the City Administrator within 90 days of notification by the City Administrator. However, a new source discharger may not discharge to the sewer system without a permit.

3. Submission of the application for permit required by this Section will satisfy the requirements of 40 CFR 403.12(b).

4. The application for permit will not be considered complete until all information required by the application form, requirements of this Chapter, or by administrative is provided. All fees must be paid and the certification statement required by 40 CFR 403.12(b)(6) signed by the authorized representative. The City Administrator may grant specific exemptions for these items.

D. Issuance of industrial wastewater discharge permits.

1. Industrial wastewater discharge permits will be issued or denied by the City Administrator within 90 days after a completed application is received, unless that period is extended in writing by the City Administrator for good and valid cause.

2. Industrial wastewater discharge permits will contain conditions that meet the requirements of this Chapter, administrative rules and applicable state and federal laws and regulations.

3. If pretreatment facilities are needed to meet the applicable pretreatment standards or requirements in an industrial wastewater discharge permit, the permit will require the installation of such facilities on a compliance schedule.

4. Whenever an industrial wastewater discharge permit requires installation or modification of pretreatment facilities or a process change necessary to meet discharge standards or spill control requirements, a compliance schedule will be included that establishes the date for installation of the pretreatment facilities or process changes. The compliance schedule may contain appropriate interim dates for completion of specified tasks. Compliance dates established in a permit cannot exceed federal categorical deadline dates.

5. Industrial wastewater discharge permits will expire no later than five years after the effective date of the permit and may not be transferable except with prior notification and approval from the City Administrator.

6. The City Administrator may deny the issuance of an industrial wastewater discharge permit if the discharge could result in violations of local, state or federal laws or regulations; cause interference or damage to any portion of the City sewer system; or create an imminent or potential hazard to human health or the environment.

E. Modification of permits.

1. An industrial wastewater discharge permit may be modified for good and valid cause at the written request of the permittee or at the discretion of the City Administrator.

2. Permittee modification requests must be submitted to the City Administrator and must contain a detailed description of all proposed changes in the discharge. The City Administrator may request any additional information needed to adequately review the application or assess its impact.

3. The City Administrator may deny a request for modification if they determine that the change will result in violations of local, State or federal laws or regulations, will cause interference or damage to any portion of the City sewer system, or will create an imminent or potential hazard to human health or the environment.

4. If a permit modification is made at the direction of the City Administrator, the permittee will be notified in writing of the proposed modification at least 30 days prior to its effective date and informed of the reasons for the changes.

F. Change in a permitted discharge. A modification to the permittee’s discharge permit must be issued by the City Administrator before any significant increase is made in the volume or level of pollutants in an existing permitted discharge to the City sewer system. Changes in the discharge involving the introduction of a wastewater not previously included in the industrial wastewater discharge permit application or involving the addition of new pollutants will be considered new discharges, requiring application under Section 17.34.070.

G. Renewal of permits. A permittee must apply for renewal of its industrial wastewater discharge permit at least 90 days prior to the expiration date of the existing permit. Upon timely application for renewal, an existing permit will remain effective until the renewed permit is issued or denied.

H. Administrative review and appeal of permit or permit modification. Upon receipt of an industrial wastewater discharge permit or permit modification, a permittee may request administrative review of any of its terms or conditions in accordance with provisions established in this Chapter and its associated administrative rules. After a permittee has exhausted BES administrative review, a permittee may appeal any of the permit's terms or conditions to the Code Hearings Officer in accordance with procedures set out at Chapter 22.10 of Portland City Code. Administrative review by BES and appeal to the Code Hearings Officer may be limited by administrative rule.

17.34.075 Other Sanitary Discharge Permits or Authorizations

The City may require authorization for any discharge to the sanitary or combined sewer of materials that violate the discharge prohibitions listed in 17.34.030.

A. Authorization may take the form of a written authorization for an intermittent or ongoing discharge. Authorization may also require the adherence to management practices to reduce pollutant releases associated with the authorized discharge

B. Dischargers may be required to provide:

> **1.** Evaluation of the proposed discharge, including: sampling, prior to being granted authorization to discharge.
>
> **2.** Adequate information and access to the location or process creating the discharge, to allow the City to fully evaluate any pretreatment needs for authorizing the discharge.

C. The City may require pretreatment for any discharge to the City's sewer system, including but not limited to requirements specified in 17.34.050.

D. Noncompliance with these requirements is subject to the enforcement steps specified in 17.34.110 and in the associated Sanitary System Discharge administrative rules.

17.34.080 Inspection and Sampling.

A. Inspection.

> **1.** Right of entry. To the extent permitted by law, BES may enter all private and public premises at any time for the purpose of inspecting for potential violations, connections or for any other lawful purpose. This authorization includes but is not limited to inspection, sampling, testing, photographic documentation, record examination, copying, and installation of devices. Entry may not be conditioned

upon BES representatives signing any type of confirmation, release, consent, acknowledgement, or other type of agreement. The City may install on the discharger's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and metering operations.

2. Entry protocols.

a. The BES representative will present a City photo identification card at the time of entry;

b. The BES representative will comply with reasonable, routine safety and sanitary requirements of the facility or site as provided by the facility operator at the time of entry. The facility operator must provide the BES representative with any facility-specific safety protective equipment necessary for entry.

B. Sampling.

1. Samples of wastewater being discharged into the sewer system must be representative of the discharge. Other sampling locations may be required by permit. All sampling and analyses must be performed in accordance with the procedures set forth in 40 CFR Part 136, as amended, and with any other test procedures approved by EPA. If there are no approved test procedures the City Administrator may approve other analytical procedures. The results of all samples taken must be reported.

2. Samples taken by City personnel for the purpose of determining compliance with the requirements of this Chapter or administrative rule may be split with the discharger, or a duplicate sample provided in the instance of fats, oils and grease, if requested by the discharger before or at the time of sampling.

C. Sampling manhole or access. The City Administrator may require an industrial wastewater discharger to install and maintain at the discharger's expense a suitable monitoring access such as a manhole in the discharger's branch sewer to allow observation, sampling and measurement of all industrial wastewaters being discharged into the City sewer system. Any monitoring access must be constructed in accordance with plans approved by the City Administrator and must be designed so that flow measuring and sampling equipment can be conveniently installed. Access to the monitoring access must be available to City representatives at all times.

17.34.090 Reporting Requirements.

A. Periodic compliance reports.

1. The City Administrator may require reporting by industrial wastewater dischargers that are not required to have an industrial wastewater discharge permit if information or data is needed to establish a sewer charge, determine the

treatability of the effluent, or determine any other factor that is related to the operation and maintenance of the sewer system.

2. The Discharger must submit reports to the City Administrator during the months of June and December, unless required on other dates or more frequently by the City Administrator based on the nature of the effluent over the previous reporting period.

3. The report must include a record of the mass and concentrations of the permit-limited pollutants that were measured. Reports must include a record of all flow measurements taken at designated sampling locations. The City Administrator may accept reports of average and maximum flows estimated by verifiable techniques if the City Administrator determines that actual measurement is not feasible. Additional information must be included as required by this Chapter or administrative rules.

4. The City Administrator may require self-monitoring by the discharger or, if requested by the discharger, the City Administrator may agree to have BES staff perform the periodic compliance monitoring needed to prepare the periodic compliance report required under this Section.

B. Final compliance report. Any discharger subject to Subsection 17.34.090 A. must submit to the City Administrator a report indicating the nature and concentration of all prohibited or regulated substances contained in its discharge and the average and maximum daily flow in gallons. The report must state whether the applicable pretreatment standards or requirements are being met on a consistent basis and, if not, what additional operation and maintenance and pretreatment is necessary to bring the discharger into compliance. The discharger must submit reports.

1. Within 90 days following the date for final compliance with applicable pretreatment standards and requirements set forth in this Chapter, administrative rule, or an industrial wastewater discharge permit; or

2. If the discharger is a new source discharger, within 30 days following commencement of the introduction of wastewater into the City sewer system by the discharger.

C. The discharger must certify and sign all applications, reports, and reporting information in accordance with 40 CFR 403.12.L and 403.6(a)2(ii);

D. Confidential information.

1. Any records, reports or information obtained under this Chapter or administrative rule will be available to the public or any governmental agency without restriction unless classified by the City Administrator as confidential. In order to obtain a confidential classification on all or part of any records, reports or information submitted, the discharger must:

a. Submit a written request to the City Administrator identifying the material that is desired to be classified as confidential and;

b. Demonstrate to the satisfaction of the City Administrator that records, reports, or information are exempt from disclosure pursuant to the Oregon Public Records Law.

2. Effluent data, as defined in 40 CFR 2.302, submitted pursuant to this Chapter may not be classified as confidential.

3. Records, reports, or information classified as confidential by the City Administrator will not be released or made part of any public record or hearing unless such release is ordered by the District Attorney or a court of competent jurisdiction; provided, however, such confidential information will, when required by law or governmental regulation, and upon written request, be made available to state or federal agencies having jurisdiction, duties or responsibilities relating to this Chapter, the National Pollutant Discharge Elimination System or applicable Oregon laws and regulations.

F. Notification of hazardous or toxic substance discharge. An industrial user must notify the City Administrator in writing of any discharge into the sewer system of a substance that, if otherwise disposed of, would be a hazardous waste or toxic substance. Such notification must be in accordance with the requirements of rules adopted pursuant to this Chapter.

G. Notification of violation. An industrial user must report noncompliance with permit limits within 24 hours of becoming aware of the noncompliance. The industrial user must repeat the sampling and analysis and submit results to the City Administrator within 30 days of becoming aware of the violation.

H. Notification of changed discharge. All industrial users must promptly notify the City Administrator in advance of any substantial change in the volume or character of pollutants in their discharge.

17.34.110 Enforcement.

A. Violations. It is a violation for any person to fail to comply with the requirements of this Chapter or associated rules. Each day a violation occurs or continues may be considered a separate violation. BES will hold the person or persons solely responsible for complying with BES enforcement actions. Violations of this Chapter or associated rules include, but are not limited to:

1. Failure to obtain a permit when required for discharge, including failure to supply correct application materials;

2. Failure to comply with the conditions of a permit;

a. Exceedances of discharge limits. Each pollutant discharge that exceeds a discharge limit is considered a separate violation;

3. Discharges prohibited by Section 17.34.030;

4. Failure to comply with a written directive or timeline of the City Administrator made under authority of this Chapter;

5. Failure to comply with enforcement actions as identified in the BES Enforcement Program administrative rules (PPD item ENB-4.15); and

6. Where a discharge causes interference or pass through, the discharger may have a valid affirmative defense if it is demonstrated that:

a. The discharger did not know or have reason to know that the discharge, alone or in conjunction with a discharge or discharges from other sources, would cause pass through or interference; and

b. The discharge was in compliance with properly developed local limits prior to and during the pass through or interference; or

c. If a local limit designed to prevent pass through or interference has not been developed for the pollutants that caused the pass through or interference, the discharge:

(1) Occurred prior to and during the pass through or interference; and

(2) Did not change substantially in nature or constituents from prior discharge activity that was regularly in compliance with the requirements of this Chapter and associated rules.

B. Significant noncompliance. Any significant industrial user or any other discharger who violates the criteria described in 3., 4., 5. or 9. of this Subsection will be considered to be in significant noncompliance with this Chapter for one or more of the following:

1. Chronic violations of wastewater discharge limits. Chronic violations occur when at least 66 percent of all of the measurements taken during a six-month period exceed any pretreatment standard for the same pollutant parameter.

2. Technical Review Criteria (TRC) violations. TRC violations occur when at least 33 percent of all of the measurements taken for the same pollutant parameter during a six-month period equal or exceed the product of the pretreatment standard multiplied by the applicable TRC (TRC = 1.4 for BOD, TSS, fats, oil, and grease; and 1.2 for all other pollutants except pH).

3. Any other violation of any pretreatment standard that the City Administrator determines has caused, alone or in combination with other discharges,

interference or pass through (including endangering the health of POTW personnel or the general public).

4. Any discharge of a pollutant that has caused imminent danger to human health, welfare or to the environment.

5. Any discharge that requires the City Administrator to use emergency authority to halt or prevent discharge.

6. Failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in an industrial wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance.

7. Failure to provide, within 30 days after the due date, required reports such as applications, baseline monitoring reports, 90-day compliance reports, periodic self-monitoring reports, and reports on compliance with compliance schedules.

8. Failure to accurately report noncompliance.

9. Any other violation or group of violations that the City Administrator determines will adversely affect the operation or implementation of the local pretreatment program.

C. Enforcement tools. BES may use any or all of the following tools to enforce this Chapter or associated administrative rules: notice of investigation, warning notice, notice of violation, compliance order, requirement to obtain a permit, notice of termination, withholding of permits, violation abatement, legal action, criminal case referral, or referral to other regulatory agencies. BES enforcement actions are described in program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15).

D. Civil penalties. Dischargers violating this Chapter or associated rules may be assessed civil penalties of up to $10,000 per day per violation according to program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15). Failure to pay a civil penalty within 30 days following a final determination regarding the penalty is grounds for permit revocation or termination of the permittee’s discharge. Penalties and other charges will accrue interest from the date of initial City notice assessing the penalty until the penalty is paid in full.

E. Cost recovery. The City Administrator may recover all reasonable costs incurred by the City that are attributable to or associated with violations of this Chapter or associated administrative rules per PPD item ENB-4.15. Failure to pay costs related to a civil penalty or summary abatement within 30 days following a final determination is grounds for permit revocation or termination of the permittee’s discharge.

F. City summary abatement. To the extent permitted by law, the City Administrator may recover from the person causing the violation all costs incurred by the City to summarily abate the following:

1. A violation that is not remedied through required corrective actions;

2. A situation that poses an imminent danger to human health, public safety, or the environment; or

3. Continued noncompliance with Portland City Code or associated rules.

G. Nothing in this Chapter is intended to impose liability on the City for any injury or damage resulting from the failure of any person to comply with the provisions of this Chapter.

H. Termination or prevention of a discharge or permit revocation.

1. The City Administrator may terminate or prevent a discharge into the City sewer system or revoke an industrial wastewater discharge permit if:

a. The discharge or threatened discharge presents or may present:

(1) A danger to human health or welfare or the environment; or

(2) Potential interference with the operation of the City sewer system;

b. The permit to discharge into the City sewer system was obtained by misrepresentation of any material fact or by lack of full disclosure;

c. The discharger violates any requirement of this Chapter or an industrial wastewater discharge permit; or

d. Such action is directed by a court of competent jurisdiction.

2. Notice of termination of discharge or permit revocation will be provided to the discharger or posted on the subject property prior to terminating the discharge or revoking a permit.

a. In situations that do not present an imminent danger to health or the environment or an imminent threat of interference with the sewer system, the notice will:

(1) Be provided in writing;

(2) Contain the reasons for the termination of the discharge or permit revocation;

(3) Contain the effective date of City action;

(4) Contain the duration of the termination;

(5) Provide contact information of a City contact;

(6) Be signed by the City Administrator; and

(7) Will be received or refused at the business address of the discharger no less than 30 days prior to the effective date of termination.

b. In situations where there is an imminent danger to human health or welfare or the environment or an imminent threat of interference with the operation of the sewer system, the City Administrator may immediately terminate an existing discharge, prevent a new discharge, or revoke a permit after providing informal notice to the discharger or after posting such notice on the subject property. Informal notice may be verbal or written and will include the effective date and time and a brief description of the reason. Within three working days following the informal notice, a written formal notice as described in Subsection 17.34.110 H.2.a. will be provided to the discharger.

3. The City Administrator may reinstate an industrial wastewater discharge permit that has been revoked or may reinstate industrial wastewater treatment service upon clear and convincing proof by the discharger of the elimination of the noncompliant discharge or conditions creating the threat of endangerment or interference.

I. Annual publication. A list of Significant Industrial Users that BES considers to be in significant noncompliance with this Chapter will be published annually in the newspaper of general circulation in Portland, summarizing the enforcement actions taken against industrial users during a prior twelve-month period.

17.34.115 Requests for Reconsideration.

Administrative review and appeal. A person may request a modification to a City Administrator decision related to this Chapter via an administrative review with BES staff, unless administrative review is limited by administrative rule. After the requestor has exhausted all administrative review, the requestor may file for an appeal with the Code Hearings Officer per Portland City Code Title 22, unless appeal is limited by administrative rule.

17.34.120 Records Retention.

All dischargers subject to this Chapter must retain and preserve for no less than three years all records, books, documents, memoranda, reports, correspondence and summaries relating to monitoring, sampling and chemical analyses made by or on behalf of the discharger in connection with its discharge. This period of retention may be

extended per 40 CFR 493.12(o)(2) when requested by the City Administrator, DEQ, or EPA during the course of any unresolved litigation regarding the discharger. The discharger must retain and preserve all records that pertain to matters that are the subject of any enforcement or litigation activities brought by the City until all enforcement activities have concluded and all appeals deadlines have expired.

17.34.130 Conflict.

This Chapter supersedes all other ordinances and their elements to the extent that they are inconsistent with or conflict with any part of this Chapter.

17.34.140 Severability.

If any provision, paragraph, word, or Section of this Chapter or associated rules is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, Sections and Chapters will not be affected and will continue in full force and effect.

17.34.150 Fees.

A. The Council will set annual fees by ordinance for all industrial wastewater discharge permits. In proposing fees to the Council, the City Administrator will consider: process wastewater discharge flow; industrial user classification; permit status (new or renewed); self-monitoring frequency; city monitoring frequency; regulatory history and any regulatory permits or special requirements.

B. Permit fees. Fees for each fiscal year are set July 1 and billed as soon after the following January 1 as is practical.

C. The Council may also set fees for all non-routine, non-domestic batch discharges to the sewer system. Service fees for such discharges not otherwise addressed in an industrial wastewater discharge permit will be calculated at a rate per occurrence, in addition to other applicable charges. The rate will be established, annually, by general ordinance.

Chapter 17.35 Septage Discharge

17.35.010 Definitions.

As used in this Chapter the following definitions apply:

A. Columbia Boulevard Wastewater Treatment Plant (CBWTP) means the City of Portland's wastewater treatment plant located at 5001 N Columbia Blvd, Portland, Oregon.

B. Director means the Director of the Bureau of Environmental Services or the Director's designee.

C. Holding tank means a tanks with no drain field that is required to be pumped out on a regular basis.

D. Operator in charge means the operator in charge, hereafter referred to as "operator," is the designated operator on duty at the Columbia Boulevard Wastewater Treatment Plant or other designated location who supervises and directs any discharge of septage.

E. Septage means domestic wastes in a tank or container such as chemical toilets.

F. Tri-County Area means the area within Multnomah, Clackamas and Washington Counties.

17.35.020 Permits Required.

Only those persons possessing a valid septage discharge permit issued from the City will be allowed to discharge septage at the Columbia Boulevard Wastewater Treatment Plant (CBWTP).

A. Permits will authorize discharges for one year, unless a shorter time frame is authorized by the City Administrator.

B. The City may issue permits for the discharge of septage at CBWTP after receipt of the following:

1. A Septage Discharge Permit Application form;

2. A copy of a valid sewage disposal service license issued by the DEQ;

3. A current DEQ Sewage Pumping Equipment Description/Inspection form for each vehicle identified on the permit;

4. A performance guaranty as described in 17.35.060 of this Chapter;

5. A copy of insurance coverage at or above those levels required by the Oregon Public Utility Commission;

6. Effective July 1, 1994, a certificate of completion, or the ability to receive such certification within 30 days of permit approval, by applicant personnel at the City's "Septage Hauler Training Class." Personnel of an approved septage hauler must attend the City's Septage Hauler Training Class. The class will inform haulers about the City's Septage Receiving Program and the operational process at CBWTP. Certification renewals may be requested on an annual basis and may be required upon request of the City Administrator or when permittee personnel changes occur.

7. The City will impose appropriate conditions in permits to ensure compliance with requirements of this Chapter.

C. No provision of this Section may be construed to create any right to the disposition of septage at a City facility inconsistent with the public interest of the City.

17.35.030 Septage Discharge Limitations.

The City will accept discharge of septage at the CBWTP that originates within the Tri-County area and is subject to the provisions of this Chapter.

A. Discharge of process waste from commercial and industrial locations is prohibited.

B. Unauthorized discharge of septage into the sewer system within the jurisdiction of the City or the Tri-County area is prohibited.

C. The City will have full authority to refuse a load, limit the amount of discharge and/or establish necessary restrictions on discharge under the following conditions:

1. Unacceptable acidic or alkaline strength or corrosive properties;

2. Septage is from a non-approved source;

3. Failure to supply complete, accurate and verifiable septage information;

4. Operator observed inconsistencies between certified contents and actual contents;

5. Operational or capacity limitations at CBWTP. Loads will be rejected during wet weather events.

17.35.040 Reserved.

17.35.050 Reserved.

17.35.060 Performance Guaranty.

Each applicant, except governmental agencies, must post a performance guaranty in a form including but not limited to a surety bond, penal bond, performance bond, irrevocable letter of credit, pledge of assets, or other form that must be approved by the City Attorney. The amount will be determined by the conditions of the permit and the number and capacity of the applicant’s vehicles. Minimum coverage must be $10,000. All changes in personnel and equipment must be reported to the City within 30 days. The value of the performance guaranty will be forfeited to the City under any of the following conditions:

A. The discharge of septage in violation of Section 17.35.030;

B. The discharge of septage at unauthorized locations in the Tri-County area (or the City);

C. Effective July 1, 1994, failure to make timely payment, pursuant to Subsection 17.35.090 B., of charges billed under this Chapter. (Forfeiture of guaranty up to amount of overdue charges only, after notice of intent to demand payment from guarantor.)

17.35.070 Fee Schedule.

A. Discharge permit holders are subject to the following septage discharge fees:

1. Annual discharge permit fee. Fees are to be paid on an annual basis at time of permit application.

2. Discharge rates. Each delivery received at the plant is subject to discharge rates, which will be applied to full tank capacity of the delivery vehicle. The plant may accept partial loads on a pre-approved basis. Measurement disputes between septage haulers and City personnel will be resolved by a process established by the City Administrator.

3. After-hours fee. Deliveries received at the plant outside of normal business hours are subject to an after-hours fee.

B. Septage discharge fees and rates are adopted, annually, by general ordinance to establish sewer and drainage rates and charges.

17.35.080 Collection and Billing.

The operator is directed to provide one copy of the load certificate to the permittee, retain two copies of each load certificate executed by permittee, and to convey one copy of each load certificate to the office of the City as may be required by the Office of Management and Finance.

The City will mail a monthly statement of account to each permittee. Failure to pay the amount shown within 30 days of the date of billing will result in imposition of interest fees, as named in Portland City Code Title 5, Section 5.48.040, on the amount past due.

17.35.085 Inspections.

A. Right of entry. To the extent permitted by law, BES may enter all private and public premises at any time for the purpose of inspecting for potential violations, connections or for any other lawful purpose. This authorization includes but is not limited to inspection, sampling, testing, photographic documentation, record examination, copying, and installation of devices. Entry may not be conditioned upon BES representatives signing any type of confirmation, release, consent, acknowledgement, or agreement.

B. Entry protocols.

1. The BES representative will present a City photo identification card at the time of entry.

2. The BES representative will comply with reasonable, routine safety and sanitary requirements of the facility or site as provided by the facility operator at the time of entry. The facility operator must provide the BES representative with any facility-specific safety protective equipment necessary for entry.

17.35.110 Enforcement.

A. Violations. It is a violation for any person to fail to comply with the requirements of this Chapter or associated rules. Each day a violation occurs or continues may be considered a separate violation. BES will hold the person or persons solely responsible for complying with BES enforcement actions. Violations of this Chapter or associated rules include, but are not limited to:

1. Failure to obtain a septage hauler permit;

2. Failure to comply with training requirements;

3. Discharge of wastes violating Section 17.35.050;

4. Failure to pay discharge fees or provide a performance guarantee; or

5. Failure to comply with enforcement actions as identified in the BES Enforcement Program administrative rules (PPD item ENB-4.15)

B. Enforcement tools. BES may use any or all of the following tools to enforce this Chapter or associated administrative rules: notice of investigation, warning notice, notice of violation, compliance order, requirement to obtain a permit, notice of termination, withholding of permits, violation abatement, legal action, criminal case referral, or referral to other regulatory agencies. BES enforcement actions are described in program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15).

C. Civil penalties. Persons violating this Chapter or associated rules may be assessed civil penalties of up to $10,000 per day per violation according to program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15). Penalties and other charges will accrue interest from the date of initial City notice assessing the penalty until the penalty is paid in full.

D. Cost recovery. The City Administrator may recover all reasonable costs incurred by the City that are attributable to or associated with violations of this Chapter or associated administrative rules per PPD item ENB-4.15.

E. City summary abatement. To the extent permitted by law, the City Administrator may recover from the person causing the violation all costs incurred by the City to summarily abate the following:

1. A violation that is not remedied through required corrective actions;

2. A situation that poses an imminent danger to human health, public safety, or the environment; or

3. Continued noncompliance with Portland City Code or associated rules.

F. Nothing in this Chapter is intended to impose liability on the City for any injury or damage resulting from the failure of any person to comply with the provisions of this Chapter.

17.35.120 Revocation or Amendment of Permit.

All septage discharge permits issued to an applicant by the City may be revoked for any of the following reasons:

A. Failure to accurately certify the source of a load of septage prior to discharge.

B. Failure to pay all charges for discharge within 60 days of billing by the City.

C. Any act that is named as a cause for forfeiture of the performance guaranty, as outlined in Section 17.35.060.

D. Septage permits may be amended for the following reasons:

1. A change occurs in a permittee's operations that affect the applicability of this Chapter's provisions.

2. The amendment is required by the applicable State or federal laws or regulations.

17.35.130 Administrative Reviews, Appeals, and Compliance Cases.

A. Administrative review and appeal. A person may request a modification to a BES decision related to this Chapter via an administrative review with BES staff, unless administrative review is limited by administrative rule. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal with the Code Hearings Officer per Portland City Code Title 22, unless appeal is limited by administrative rule.

B. BES Code Compliance cases. BES may file a case before the Code Hearings Officer under Portland City Code Title 22 to compel compliance with City regulations. The person committing the violation will be offered the opportunity to present evidence.

17.35.140 Conflict.

This Chapter supersedes all ordinances or elements thereof to the extent that they are inconsistent with or conflict with any part of this Chapter.

17.35.150 Severability.

If any provision, paragraph, word, or Section of this Chapter or associated administrative rules is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, and sections will not be affected and will continue in full force and effect.

Chapter 17.36 Public Sewer and Drainage System Service Charges and Fees

17.36.010 Intent.

This Chapter governs the collection of public sewer and drainage system service charges and fees by the Bureau of Environmental Services (BES) as authorized by the Council. It also includes collection processes applicable to other charges assessed by BES.

17.36.020 Definitions.

The following definitions apply to this Chapter:

A. Billing error means an instance in which a calculation or method used by the City for billing is not consistent, in the determination of the City, with adopted City Code or administrative rule provisions for billing sewer volume and stormwater management charges.

B. Biochemical Oxygen Demand (BOD) means the quantity of oxygen utilized in the biochemical oxidation of organic matter per 40 CFR 136, “Guidelines Establishing Test Procedures for the Analysis of Pollutants.”

C. Connection charge is a general term used to describe any charge assessed by the city for providing public sewer and stormwater management services to a property. Connection charges include, but are not limited to, system development charges (SDCs).

D. Director means the Director of BES or the Director’s designee.

E. Equivalent dwelling unit (EDU) means the estimated monthly equivalent impact on the public sewer and drainage system of an average residential single-dwelling development.

F. Equivalent service unit (ESU) means a measure of a property’s impact on the City’s stormwater management services. For residential uses, it is based on the estimated average occupancy of a dwelling. For commercial ratepayers, it is based on an estimated class average stormwater billable area.

G. Extra-strength charge means the additional charge to wastewater dischargers who have constituent discharges at concentrations above levels normally expected in

domestic wastewater, as determined by this Chapter, administrative rule, and annual rate ordinance.

H. High-strength wastewater means wastewater that has a BOD concentration in excess of 300 mg/L or a TSS concentration in excess of 350 mg/L.

I. Impervious area means the measured or estimated area of impervious surfaces on a site.

J. Impervious surface means any surface exposed to rainwater off of which most water runs. Impervious surfaces include, but are not limited to, rooftops, walkways, patios, driveways, vegetated or pervious areas over pavement or structures, parking lots or storage areas, concrete or asphalt paving, and compacted gravel or compacted soil.

K. Net new stormwater billable area means the difference between existing stormwater billable area on a property and any increase in stormwater billable area that results from a proposed use of the property.

L. Rate means the multiplication factor used to generate a service charge based on cost-per-unit proxies including, but not limited to, gallons of discharge, drainage fixture units, or square feet. Rates can be multiplied by other factors.

M. Ratepayer means a person who:

1. Has the right to possession of a property;

2. Causes or permits the discharge of sanitary sewage into the public sewer and drainage system; or

3. Benefits directly or indirectly from sewer or stormwater management services provided to the property by the City.

N. Rolling average means the average of the 10 most recent monthly averages of representative City- and/or self-monitoring events for the purpose of calculating an extra-strength sewage charge rate, unless another period is approved by the City Administrator.

O. Sanitary sewage means wastewater discharged to the public sewer and drainage system by permit or other approval of the City Administrator and includes, but is not limited to, domestic wastewater, industrial and commercial process wastewater, and contaminated stormwater.

P. Stormwater billable area means the sum of a property’s impervious area and area of pervious pavement, excluding areas covered by compacted soils and compacted gravels.

Q. Stormwater management services means services and actions that collect, convey, detain, retain, treat, or dispose of stormwater. These services include managing stormwater runoff from public streets, mitigating flooding, preventing erosion, improving water quality of stormwater runoff, collecting and conveying stormwater runoff from private properties when runoff exceeds the capacity of private facilities to manage stormwater onsite, mitigating impacts to natural habitats caused by stormwater runoff, and protecting properties and natural habitats from hazardous soils and materials that are discharged from private properties and public rights-of-way.

R. System development charge means a charge imposed on development that creates new or increased demand of the public sewer and drainage system.

S. Temporary connection means a connection to the public sewer and drainage system where the duration of the connection is less than three years and connection and disconnection each occur only once. A connection made to the public sewer and drainage system made for the purpose of environmental remediation will not be considered a temporary connection unless approved by the City Administrator.

T. Temporary structure means a structure, including associated surface impervious areas, that is separate and distinct from all other structures and is created and removed in its entirety within three years.

U. Total suspended solids (TSS) means the total suspended matter that either floats on the surface or is suspended in water or wastewater and that is removable by laboratory filtering in accordance with 40 CFR 136 Table B.

V. User charge means a charge for the use or benefit of public sanitary or stormwater management services.

17.36.030 Annual Rate Ordinance.

Charges authorized by this Chapter pay for the City to provide sewer and stormwater management services. Charges are calculated based on true costs of service or may be based on rates per unit volume, usage, or area served. Charges, fees, and rates are established through the BES rate ordinance, adopted annually by the City Council.

17.36.040 System Development Charges.

All development projects that create a new or increased demand on the public sewer and drainage system are subject to sanitary and stormwater SDCs. SDCs are intended to promote equity between new and existing customers by recovering a proportionate share of the cost of existing and future capital facilities that serve or will serve the developing property.

A. Sanitary system development charge. Sanitary SDCs for residential and nonresidential development are based on the net increase of sanitary flow to the public sewer and drainage system as measured by proposed drainage fixture units (DFU). For

the purposes of calculating sanitary SDCs, DFU values are determined based on the Oregon Plumbing Specialty Code (OPSC). The methodologies used to calculate sanitary SDCs and SDC credits are described in Administrative Rule ENB-4.05. Sanitary SDC credits, if available, remain with the property to which they were purchased and are not transferable.

B. Stormwater system development charges. Stormwater SDCs for residential and nonresidential development are based on the net increase of impact on the storm system using measured square feet of stormwater billable area on a site. The methodologies used to calculate stormwater SDCs and SDC credits are described in Administrative Rule ENB-4.05. Stormwater SDC credits, if available, remain with the property to which they were purchased and are not transferable.

C. Payment. Payment of SDCs is required prior to issuance of a building permit, connection permit, or plumbing permit.

1. Prepayment. A person may pre-pay connection charges by providing a letter of intent that includes the parcel description and address, if applicable, and an estimate of DFUs, stormwater billable area, and dwelling units. The City Administrator may grant a refund at any time for excess charges at the rate in effect at the time of building permit or connection. Prepayment does not guarantee reserved system capacity or usage of public sewer and drainage system.

2. Bonding. The City Administrator may accept a cash or surety bond posted by the owner of the occupancy in lieu of immediate payment of the charge if:

a. The amount of DFUs, stormwater billable area, or dwelling units for the occupancy cannot be determined before the permit is issued; or

b. The City Administrator has determined the amount of DFUs, stormwater billable area, or dwelling units for the occupancy but the applicant does not agree with the City Administrator’s determination.

3. Deferral. Users who qualify to defer SDCs but who want to connect to the system can defer payment until such date as the City Administrator may specify as authorized by ordinance. The charge in effect at the time of connection is applied at time of payment. Deferred connection charges are delinquent when not paid after a period of 90 days from the date due and bear interest and penalties. Users may convert the deferral to an installment payment loan.

D. Temporary use. Temporary structures and connections are not subject to SDCs. SDCs, including penalties and interest charges, become due and payable for structures or connections that are not removed within three years. Temporary structures and temporary connections are not exempt from paying user charges, including extra-strength charges.

E. Exemptions. Certain structures and uses are exempt from some or all SDCs as described in Portland City Code Chapter 17.14 and Administrative Rule ENB-4.05.

17.36.050 User Charges.

A. Sanitary sewer services.

1. Sanitary sewer user charge. All ratepayers who discharge to the City's sanitary sewer system must pay the sanitary sewer user charge. Charges for sanitary sewer services may include, but are not limited to, sanitary sewer volume charges and account service charges. These charges are calculated on a routine basis, such as monthly, bi-monthly, or quarterly frequencies. The methodologies used to calculate sanitary sewer user charges are described in Administrative Rule ENB-4.09. Rates are published in the annual rate ordinance, Binding City Policy ENB-4.20.

a. Residential. Residential ratepayers are billed based on the actual metered water volume recorded during the winter billing period as described in Administrative Rule ENB-4.09. The winter billing period is designed to estimate water volume used indoors and discharged to the sanitary sewer system.

(1) During the non-winter billing period, residential ratepayers are billed based on a winter average, minimum use average, or class average as described in Administrative Rule ENB-4.09.

(2) Class average. Class average volumes are assigned for:

(a) Any ratepayer account for which the City does not receive meter reads to verify water use, including those with private or alternative water sources;

(b) New ratepayer accounts started outside the winter billing period; and

(c) Existing ratepayer accounts that have insufficient data to determine the winter average or billable sewer volume.

b. Nonresidential. Nonresidential ratepayers, including commercial, industrial, and institutional users, are billed sanitary sewer user charges based on metered or estimated sewer discharge volume multiplied by the nonresidential sewer services rate. Methods for measuring or estimating sewer volume include charge meters, process inflow meters or water meters, historical water use, measured discharge, or other methods approved by the City. Any measured or estimated volume determinations that include water not entering the sewer system may be eligible for a reduction in sewer user volume charges pursuant to Administrative Rule ENB-4.32.

(1) Mixed use. Where residential and nonresidential uses share the same water supply, the City calculates charges for sanitary sewer service in the same manner as those for nonresidential uses unless water usage is metered or billed separately for residential and nonresidential uses.

(2) Mobile discharges. User charges are applicable to all wastewater discharges to the City sewer system regardless of the source. In circumstances where the wastewater discharge is not from a fixed location, including, but not limited to, ships, barges, houseboats, and other movable facilities or dwelling units, the Director will estimate the volume of water to which user charges apply unless the ratepayer has provided another method of determining the volume that has been approved by the City Administrator.

(3) Contaminated stormwater. In areas served by separated storm and sanitary sewer systems, the City may accept the discharge of contaminated stormwater into the sanitary sewer. The discharge volumes will be determined by the amount of impervious area producing the contaminated stormwater plus the average rainfall or data obtained from a discharge meter. Discharges of contaminated stormwater are charged at the nonresidential sewer user rate.

(4) Clean water discharges. Non-contact cooling water or water condensed from steam that has been put to no other use may be discharged into the sanitary system as clean water. Charges are the same as for other sewer uses and are calculated based on the nonresidential sewer user rate multiplied by the measured or estimated volume of water discharged to the sanitary sewer system. Ratepayers authorized to discharge clean water to the sanitary sewer system are subject to Administrative Rule ENB-4.32. Rates are published in the annual rate ordinance, Binding City Policy ENB-4.20.

c. Private and alternative water source use. User charges may be adjusted in cases where water is supplied solely from a private source including, but not limited to, wells, springs, rivers or creeks, non-City sources, or from a partial supply in addition to water furnished by the City:

(1) Residential. Residential ratepayers are charged based on a class average volume for their alternative source water use.

(2) Nonresidential. Ratepayers must meter the private or alternative water supply as an inflow, or a discharge as described Administrative Rule ENB-4.32, and are charged accordingly.

2. Extra-strength charge. Extra-strength sewer charges must be paid by any ratepayer who discharges high-strength wastewater to the City's separate sanitary or combined sewer system. Ratepayers are charged an extra-strength sewer charge in addition to the nonresidential sanitary sewer user volume charges as described in Administrative Rule ENB-4.25.

a. Basis of charge. Extra-strength charges are based on the following:

(1) The concentration of pollutants as identified Administrative Rule ENB-4.25.

(2) The total metered water volume supplied to the premises. The extra-strength charge may be reduced where commercial or industrial wastewater is discharged separately from domestic sanitary wastes or non-contact cooling waters and the user provides a meter or other measurement method as identified in administrative rule. For multiple tenant buildings with shared water service, extra-strength charges will be apportioned by class of individual tenant with an estimated volume as a portion of the total sewer bill.

(3) The billing methodologies identified in Administrative Rule ENB-4.25, which include:

(a) Measured ESC Method. This method is based on rolling average sampling and analysis of the ratepayer's wastewater discharge volume and pollutant loading. Billing is based on a rolling average of sample results as described in Administrative Rule ENB-4.25.

(b) Class Average ESC Method. This method is based on a ratepayer's business type and its assumed average discharge concentration per the Class Average Table included in Administrative Rule ENB-4.25.

b. The City Administrator may approve a custom billing methodology for a ratepayer when the characteristics of their wastewater discharge make it impractical to apply the calculation methodologies as prescribed in administrative rule. Custom billing methodologies will be consistent with the intent and purpose of this Chapter and Administrative Rule ENB-4.25.

B. Stormwater management services.

1. Stormwater management user charge. All ratepayers who receive a direct or indirect benefit from City stormwater management services are subject to the stormwater management user charge. This charge is based on the user's proportionate share of City stormwater management services.

a. The ratepayer identified on the City utility billing account is assumed to be the user of stormwater management services and responsible for the user charge. If the property is not subject to other City utility charges, the City Administrator will determine the ratepayer responsible for the user charge.

2. Basis of charge. Stormwater user charges are calculated based on the site's measured or estimated stormwater billable area and equivalent service units. The following areas are excluded from a property's stormwater billable area: Right-of-way dedicated to the public and over which the City exercises regulatory jurisdiction and management; and outdoor recreation areas, except for associated parking lots and buildings, that are owned by governmental bodies and available to the general public at all times without fees for use.

a. Class average. A property's stormwater billable area is assumed to be equal to the class average stormwater billable area for the property's class unless the property has been measured to the satisfaction of the City Administrator.

3. User service charges. Stormwater user charges are calculated based on the user's proportionate share of City stormwater management services. The methodologies used to calculate stormwater user charges are described in Administrative Rule ENB-4.09. Rates are published in the annual rate ordinance, Binding City Policy ENB-4.20.

a. Residential. Residential users are charged based on tiered class averages, class averages, or measured stormwater billable area, depending on the number of dwelling units on a tax lot.

b. Nonresidential. Nonresidential users are charged based on measured stormwater billable area.

c. Drainage districts. Users within a drainage district boundary are charged a unique rate for each user type. The basis of charge is the same as for users in the rest of the city.

d. Multiple accounts on a single tax lot. Where multiple nonresidential ratepayer accounts are associated with a single tax lot, BES will allocate all stormwater management user charges to a single account.

4. Clean river rewards. Ratepayers that control and manage the quality and quantity of stormwater runoff from their properties may receive discounts towards the eligible component of the total stormwater management charge. Discount amounts are based on meeting the applicable standards of the Stormwater Management Manual (SWMM). Clean River Rewards program requirements are described in Administrative Rule ENB-4.16.

5. Authorized non-stormwater discharges to the Municipal Separate Storm Sewer System (MS4). Users authorized to discharge allowable non-stormwater discharges to the City's MS4 are charged a unique rate based on the measured or estimated volume of water discharged. Ratepayers authorized to discharge non-stormwater discharges to the storm system are subject to Administrative Rule ENB-4.13. Rates are published in the annual rate ordinance, Binding City Policy ENB-4.20.

C. Portland Harbor Superfund charge.

1. The City calculates and collects user charges for the Portland Harbor Superfund Program. If the property is not subject to other City utility charges, the City Administrator determines the ratepayer responsible for the Portland Harbor Superfund charge. This user charge appears as a line item on the City utility bill and is the sum of the following two rate calculations:

a. Sanitary volume. This portion of the charge is the billed sanitary sewer user volume multiplied by the Portland Harbor Superfund Sanitary Volume rate.

b. Stormwater billable area. This portion of the charge is the stormwater billable area multiplied by the Portland Harbor Superfund Impervious Area rate.

D. Batch discharges and construction dewatering. Users authorized for batch discharges and construction dewatering are charged based on the estimated or metered volume water discharged to the public sewer and drainage system. Rates are determined by the type of sewer system receiving the discharge as published in the annual rate ordinance, Binding City Policy ENB-4.20. Additional review fees and charges, including extra-strength charges, may be applied as described in this Chapter and administrative rule.

E. Submeter program fees, charges, and credits. A ratepayer may request or be directed to participate in the submeter program to assess sewer and stormwater management service user charges accurately. A program participant is required to pay both the Portland Water Bureau and the BES administrative or special meter charges for each meter in use, which are assessed on each billing cycle. Submeter program requirements, fees, charges, and credits are described in Administrative Rule ENB-4.32.

17.36.060 Additional Service Fees.

The following fees are only applicable to certain user groups and are assessed in addition to other user charges. Users may be subject to one or more of these charges. The applicable charge rates are provided in the BES annual rate ordinance.

A. Development review fees. The Council may establish fees for the review of development, including building plans and land use proposals, to ensure compliance with the requirements of this Title. The City Administrator may direct Portland Permitting & Development to manage the collection of these fees on behalf of BES. The City Administrator has the discretion and authority to waive all or a portion of development review fees and may adopt rules and procedures to refund, reduce, or waive development review fees in administrative rule or BES's annual rate ordinance.

B. Industrial wastewater permit fees. Permitted industrial users must pay industrial wastewater permit fees based on the level of permit complexity, regulatory history, and amount of BES administrative oversight. Fee components are based on whether an industrial discharger is a categorical industrial user, significant industrial user, or neither. Additional charges, including extra-strength charges, may be applied as described in this Chapter and administrative rule. Discharge rates are published in the BES annual rate ordinance, Binding City Policy ENB-4.20.

C. Batch discharge authorization review fees. Users requesting authorization for controlled discharge of a discrete, contained volume of wastewater from their site must pay the batch discharge review fee. This fee reimburses the City for services including, but not limited to, site research, system capacity analysis, pretreatment and source control evaluation, permit administration, and monitoring. Batch discharge volumes are charged at the nonresidential sanitary sewer rate and may be subject to additional extra-strength charges. Discharge rates are published in the BES annual rate ordinance, Binding City Policy ENB-4.20.

D. Construction dewatering permit review fees. Users requesting authorization for temporary construction dewatering to the public sewer must pay a dewatering permit review fee. This fee reimburses the City for services including, but not limited to, site research, system capacity analysis, pretreatment and source control evaluation, permit administration, and monitoring. Discharge rates are determined by the receiving sewer system as published in the annual rate ordinance, Binding City Policy ENB-4.20. Discharges to the sanitary sewer system may be subject to additional extra-strength sewer charges.

E. Discharge duthorization (DA) review fees. Users that request or that are required to obtain a DA pursuant to Portland City Code Chapters 17.34 or 17.39 must pay a discharge authorization review fee. This fee reimburses the City for services including, but not limited to, site research, system capacity analysis, pretreatment and source control evaluation, permit administration, and monitoring. Discharge rates are determined by the receiving sewer system as provided in the BES annual rate ordinance, Binding City Policy ENB-4.20. Discharges to the sanitary sewer system may be subject to additional extra-strength sewer charges.

F. Additional sampling fees. Additional City sampling and analysis beyond the cost already incorporated in other compliance or monitoring fees is based on cost-of-service principles and recovers the cost of materials and services provided by BES.

G. Administrative fees and penalties. The City may charge administrative fees and penalties to users for, but not limited to, the collection of delinquent utility bills, processing special tax assessments, denial of entry, or falsification of records. Fees are published in the annual rate ordinance, Binding City Policy ENB-4.20, or are based on the City's cost recovery principles.

H. Charges for other services. For the provision of services for which a charge is not otherwise established by Code, administrative rule, or policy, charges will be calculated as provided in the City's comprehensive financial management policies. Charges are calculated based upon cost-of-service principles and recover the cost of materials and services provided by BES.

17.36.070 Service Outside the City.

A. The City charges for the use of sanitary sewer and stormwater management services from properties outside the city in compliance with the City's urban services policy and based on annually-established rates.

B. The City Administrator determines whether a property is inside or outside of the city limits. For purposes of this Section, the property is outside of the city limits where 66.7 percent or more of the assessed valuation of the property is recorded in the records of the County Assessor as lying beyond the city limits.

C. The City Administrator may require, and the City Administrator may enter into, agreements for and on behalf of the City permitting connection and providing sanitary sewer or stormwater management services to properties outside the city when the City Administrator finds such service feasible and appropriate.

17.36.080 Collection of Charges.

A. All charges for services provided to a property are the responsibility of, in the City's sole determination, the ratepayer or, if different, the property owner. This responsibility may attach to the ratepayer's or property owner's subsequent City utility accounts and applies whether the ratepayer or property owner is the sole user of the services or furnishes them in turn to third parties.

1. For an account for which the City does not have the ability to curtail water service, the City may certify to the appropriate County Tax Assessor the amount of any delinquent user charges, fees, and penalties associated with services provided. Those charges, fees, and penalties will then be assessed and collected in the same manner as property taxes.

a. The City may include in the assessed amount additional penalties. Penalties will be described in BES's annual rate ordinance.

b. Both tenant-occupied and owner-occupied properties are subject to assessment. The owner of a tenant-occupied property may be subject to

collection efforts and special tax assessment for all unpaid City utility charges, fees, and penalties.

B. Billing due dates. User charges are computed monthly, bimonthly, or quarterly, coincident with user charges for water service.

1. When billed with the utility bill, user charges are due and payable on the date provided on the utility bill. The City may prorate user charges for a portion of a utility billing period based on the effective date of the sanitary sewer or stormwater management service.

2. For ratepayers who do not receive water service from the City, user charges will be computed and billed monthly, bimonthly, or quarterly.

C. Collections. Upon determination by the City Administrator that a charge is past due or otherwise delinquent, the City may avail itself of the full range of actions authorized by Portland City Code.

D. Discontinuation of services. Charges not paid in accordance with the due date in the bill or invoice may be subject to water shutoff pursuant to Title 21 of Portland City Code. The City Administrator may also discontinue sanitary sewer service by plugging the sewer service line to properties whose delinquent user charges exceed $10,000 for a period of 90 days or more. Ratepayers and property owners must be notified in writing of the City's intent to plug the sewer not less than 30 days prior to disconnection. Payment of, or a City-approved payment plan for, the delinquent amount, including outstanding user charges, accrued interest and collection costs, and all costs associated with plugging and reconnecting the sewer line, must be received by the City before the property may be reconnected to the public sewer.

17.36.090 Adjustments, Corrections, and Refunds.

A. The City Administrator may authorize an adjustment of up to $5,000 to a ratepayer's utility account separate from or in addition to the amount of a billing error correction when it is deemed necessary for the proper conduct of the business of BES to do so.

B. When BES determines that a billing error has occurred, the City Administrator may authorize an adjustment of the ratepayer's utility account for the period of the error, not to exceed three years from the date the error is identified and documented by BES. Corrections can only be made when consumption or billable area data and billing amounts can be validated by ratepayer or City records, to the satisfaction of the City Administrator.

C. Except as set forth in this Subsection, a ratepayer's eligibility for an adjustment will end six months after the date a final bill was issued for the subject account. The City Administrator may authorize an adjustment to the outstanding balance of a closed utility account more than six months after the issuance of the account's final bill if the error resulted from fraudulent activity or inaccurate information provided to the City.

D. Adjustments will be in the form of credits or additional charges to active utility accounts. Refunds for billing adjustments are reserved for ratepayers who do not have active utility accounts and must be approved by the City Administrator.

E. Ratepayers who receive a back-billing or a delayed billing resulting from a City billing error will be offered the opportunity to pay the balance due over a set period based on then-current City collection policies.

17.36.100 Financial Assistance

BES may provide financial assistance to eligible property owners to assist with sewer connections and to prevent disruption of service. Financial assistance in the form of loans and payment deferrals is available as described in Administrative Rule ENB-4.28.

17.36.110 Inspections.

A. Right of entry. To the full extent permitted by the law, the City may enter all private and public premises at any time for the purpose of inspecting sources of potential or actual discharges to the public sewer and drainage system and to perform any other lawful act required by or authorized under Portland City Code or ordinances of the City, the Charter, or state or federal law. This authorization includes but is not limited to inspection, sampling, testing, photographic documentation, record examination, copying, and installation of devices as necessary to conduct sampling, inspection, testing, monitoring, and metering operations to determine compliance with the requirements of this Chapter. City representatives may not be required to, and will not, sign any type of confirmation, release, consent, acknowledgement, or other type of agreement as a condition of entry.

B. Conditions for entry.

> **1.** The City representative will present appropriate credentials at the time of entry.
>
> **2.** The City representative will comply with routine safety and sanitary requirements of the facility or site to be inspected as provided by the facility operator at the time of entry. The facility operator must provide the City representative with any facility-specific safety protective equipment necessary for entry.

17.36.120 Enforcement.

A. Violations. It is a violation for any person to fail to comply with the requirements of this Chapter or associated rules. Each day a violation occurs or continues may be considered a separate violation. BES will hold the person or persons solely responsible for complying with BES enforcement actions. Violations of this Chapter or associated rules include, but are not limited to:

1. Meter tampering. It is unlawful to install, change, bypass, adjust, or alter any metering device or piping arrangement connected therewith in order to falsify the quantity of water discharging to the public sewer and drainage system.

2. Sampling tampering. It is unlawful to tamper in any manner with City-owned or City-installed sampling equipment or samples therefrom.

3. Falsifying applications of record. Ratepayers shown to have falsified applications and records may be subject to enforcement.

4. Denial of entry. Ratepayers that do not allow the City right-of-entry as described in this Chapter may be subject to enforcement.

B. Enforcement. Enforcement actions may include, but are not limited to:

1. Withholding of City services;

2. Withholding of City permits;

3. Reversal or suspension of reduced charges or credits, as appropriate, and disqualification from applicable program participation;

4. Account billing for the full amount of water passing through the supply meter or an amount deemed appropriate by the City Administrator; and

5. Assessed civil penalties per Administrative Rule ENB-4.15.

C. Civil remedies.

1. In addition to the remedies provided by any other provision of this Chapter, the City may obtain, in any court of competent jurisdiction, a judgment against a person or property failing to comply with the provisions of this Chapter. In any such action, the measure of damages will be the costs for abatement by the City, administrative costs, permit charges, overhead costs, penalties, and other charges as determined by the City Administrator.

2. In addition to any other remedy provided in this Chapter, the City Attorney, acting in the name of the City, may commence and maintain an action or proceeding in any court of competent jurisdiction to compel compliance with, or prevent by injunction, the violation of any provision of this Chapter.

17.36.130 Administrative Review and Appeal.

A ratepayer, property owner, or owner’s agent may request modification of a City Administrator decision related to this Chapter as described in this Chapter via administrative review with BES staff to the extent allowed by administrative rule. After the requestor has exhausted all BES administrative reviews, the requestor may appeal

a City Administrator decision to the Code Hearings Officer per Portland City Code Title 22 to the extent allowed by administrative rule.

Chapter 17.37 Downspout Disconnection

17.37.010 Purpose.

The purpose of downspout disconnection is to remove stormwater from the combined sewer system to reduce the cost of large conveyance, storage, and treatment facilities needed to capture and treat stormwater or combined sewage.

17.37.020 Definitions.

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

A. Combined sewer means a sewer designed to convey both sanitary sewage and stormwater.

B. Director means the Director of the Bureau of Environmental Services or the Director's designee.

C. Disconnection means physically plugging or capping the direct stormwater connection to a sewer and redirecting the stormwater either onto the surface of the property or under ground. This may require alterations to gutters, downspouts and landscaping.

> **1.** For properties that have a branch constructed to the edge of the property line from a public separated storm system, disconnection from the combined sewer may be accomplished by direct stormwater connection through a lateral to the public storm system. New storm connections to the City sewer or storm system are subject to the Stormwater Management Manual requirements for new connections to public systems.
>
> **2.** For properties where surface or underground disposal of roof water is not feasible, disconnection may include a curb cut that discharges roof water to a curbed street. New storm connections to the city sewer or storm system are subject to the Stormwater Management Manual requirements for new connections to public systems.
>
> **3.** New stormwater facilities are required to meet the requirements of the Stormwater Management Manual.

D. Downspout means the conductor that conveys storm water from the gutter on the exterior of a building or other structure to another place of disposal.

E. Program area means the boundaries of the Downspout Disconnection Program area as shown on the map in administrative rules.

F. Workers authorized by the Director means, but is not limited to, City employees and contractors hired by the City.

17.37.030 Establishment of Downspout Disconnection Program.

A. Eligibility. Properties located within the boundaries of the disconnection area as shown on the map within the program administrative rules. A property is eligible for participation if the property:

1. Meets the "residential use" criteria in Portland City Code Chapter 33.920; or

2. Meets the "commercial use" criteria in Portland City Code Chapter 33.920, and has site conditions that would allow for safe and effective disconnection as identified in Section 17.32.040.

B. Deadlines. The Downspout Disconnection Program will pursue the objective of managing stormwater directly connected to the combined sewer on eligible properties in the program area and removing necessary amounts of stormwater from the combined sewer no later than the deadlines in the Downspout Disconnection Program Administrative Rules. Deadlines may be met sooner based upon the schedule for the projects in specific sewer basins.

C. Procedures. Disconnection procedures and policies are described in the Downspout Disconnection Program Administrative Rules. All downspouts that are disconnected from the combined sewer through this program must conform to the disconnection methods or systems approved by the City Administrator. Technical assistance will be provided to property owners, upon request, to determine the most appropriate method of stormwater management.

D. Access to eligible property. For the purpose of administering this Chapter, the City Administrator may, with consent from the property owner or occupant and upon production of proper identification, enter upon the land or premises of eligible property. The purpose of such entry is to survey a downspout to determine whether it is connected, to provide technical assistance regarding proper disconnection, to disconnect downspouts, to correct or otherwise fix disconnected downspouts, to reconnect downspouts that do not meet program standards, or to inspect downspouts that have been disconnected.

E. Ownership of private stormwater systems. The property owner must own the new private stormwater management system and be responsible for ensuring that the new private system is properly maintained and operated.

F. Reconnection of disconnected downspouts at participating properties.

1. Property owners in mandatory program areas are prohibited from reconnecting to the combined sewer unless the City determines that the disconnection poses a threat to health, safety or property and approves the reconnection. Homeowners

must contact the Downspout Disconnection Program if they believe reconnection is necessary.

2. Property owners in the voluntary area must contact the Downspout Disconnection Program if they plan to reconnect their downspout(s).

17.37.080 Program Enforcement.

Any property whose downspouts have not been granted an exception and remain connected to the combined sewer system in violation of Subsection 17.37.030 B.3. is declared a nuisance and subject to abatement or correction. Whenever the City Administrator believes such a nuisance exists, a notice will be posted on the property directing that the nuisance be abated or corrected. The City retains the right to take any or all of the following enforcement actions if the property owner or their agent fails to abate this nuisance:

A. Summary abatement. If the property owner or their agent continues to ignore or refuses to abate the declared nuisance, the City reserves the right to obtain an order from the City Code hearings officer to summarily abate the nuisance on subject property. The City may attempt to bill the property owner for the costs of disconnection from the combined sewer.

B. Civil remedy. The City may obtain, in any court of competent jurisdiction, a judgment against the person or property failing to disconnect from the combined sewer in accordance with the provisions of Section 17.37.030. In any such action, the measure of damages will be the costs for abatement by the City, administrative costs, permit fees, overhead costs, penalties, and other charges as determined by the City Administrator.

C. Court action. In addition to any other remedy provided in this Chapter, the City Attorney, acting in the name of the City, may maintain an action or proceeding in any court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of this Chapter.

D. Withholding of BES Services. Except as provided elsewhere in this Title or when the public welfare is endangered; the Bureau of Environmental Services may at its discretion withhold from the owner(s) (or the owner’s agent) of disconnection delinquent property as defined in Section 17.37.030, any service that is provided by the Bureau. This may include, but is not limited to:

1. Refusal of acceptance of application for permits relating to development on any property of the said owner(s).

This withholding may continue until the disconnection delinquency no longer exists.

E. Administrative review and appeal. Property owners or their agents may request an administrative review of a BES decision related to this Chapter, unless administrative review is limited by administrative rule. After the requestor has exhausted all BES

administrative review, the requestor may file for an appeal with the Code Hearings Officer per Portland City Code Title 22, unless appeal is limited by administrative rule.

1. In the event that the City needs to enforce the terms of the Code Hearings Officer's order referred to in Section 17.37.080, an administration fee of $300 for each occurrence and associated costs for each occurrence for enforcing the terms of the order will be billed to the property owner of the property in accordance with the provisions of Portland City Code Chapter 22.06. If the administrative fee remains unpaid after 90 days, the administrative fee will be made a lien on the property in accordance with the provisions of Chapter 22.06.

17.37.110 Interference with Disconnection Activities Unlawful.

It is unlawful for any person to attempt to obstruct, impede, or interfere with any officer, employee, contractor, agent, or authorized representative of the City whenever such officer, employee, contractor, agent, or authorized representative of the City is engaged in the work of disconnecting downspouts from the combined sewer under the authority of an order of the Code Hearings Officer issued pursuant to Subsection 17.37.080 C. above.

17.37.120 Liability.

Neither the City nor any of its officers, employees, contractors, agents, or authorized representatives may be liable for any damage to or loss of the real property of any improvements, emblements, or personal property thereon due to the enforcement or administration of this Chapter.

17.37.130 Civil Remedies.

A. In addition to the remedies provided by any other provision of this Chapter, the City may obtain, in any court of competent jurisdiction, a judgment against the person or property failing to disconnect from the combined sewer in accordance with the provisions of Section 17.37.030. In any such action, the measure of damages will be the costs for abatement by the City, administrative costs, permit fees, overhead costs, penalties, and other charges as determined by the City Administrator.

B. In addition to any other remedy provided in this Chapter, the City Attorney, acting in the name of the City, may maintain an action or proceeding in any court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of this Chapter.

17.37.140 Notice Sufficiency.

For the purposes of any noticing procedure as set forth by this Chapter, notice will be deemed to have been received upon mailing of that notice. An error in the name of the owner or agent of the owner or the use of a name other than that of the true owner or agent for the property will not render the notice void.

17.37.150 Bureau Actions.

All City bureaus will, to the fullest extent consistent with their authority, carry out their programs in such a manner as to further the provisions of this Title, and will cooperate to the fullest extent in enforcing the provisions of this Chapter.

17.37.160 Severability.

If any provisions of this Chapter, or its application to any person or circumstances, is held to be invalid, the remainder of this Chapter, or the application of the provision to other persons or circumstances, will not be affected.

Chapter 17.38 Drainage and Water Quality

17.38.010 Authority.

The City Administrator is responsible for administering the requirements of this Chapter. The City Administrator has the authority and responsibility to adopt rules, procedures, and forms to implement the provisions of this Chapter.

17.38.015 Intent.

The intent of this Chapter is to provide for the effective management of stormwater, groundwater, and drainage, and to protect and improve water quality in Portland.

17.38.020 Definitions.

For the purposes of this Chapter, the following definitions apply:

A. Capacity means the flow volume or rate for which a specific facility is designed to safely contain, receive, convey, infiltrate, or reduce pollutants from sanitary sewage, stormwater, wastewater, or other discharge in order to meet a specific performance standard.

B. Conveyance means the transport of sanitary sewage, stormwater, wastewater or other discharge from one point to another point.

C. Director means the Director of the Bureau of Environmental Services, or the Director’s designee.

D. Discharge means any disposal, injection, dumping, spilling, pumping, emitting, emptying, leaching, leaking or placing of any material so that such material enters or is likely to enter a water body, groundwater, or a public sewer and drainage system.

E. Discharge point means the connection point of a site to a receiving system.

F. Discharge rate means the rate of flow of a discharge expressed in a unit of volume per unit of time.

G. Drainage reserve means the regulated area adjacent to and including a drainageway. A drainage reserve is required to protect the water quality and hydrology of the drainageway.

H. Drainageway means a constructed or natural channel or depression that may at any time collect and convey water. A drainageway and its drainage reserve function together to manage flow rate, volume, and water quality. A drainageway may be permanently or temporarily inundated.

I. Groundwater means subsurface water that occurs in soils and geological formations that are fully saturated. Groundwater fluctuates seasonally and includes perched groundwater.

J. Groundwater discharge means a discharge of water pumped or directed from the ground. Groundwater discharges include but are not limited to subsurface water from site remediation and investigations, well development, Brownfield development, discharges from footing and foundation drains, and subsurface water associated with construction or property management dewatering activities.

K. Impervious area means the measured or estimated area of impervious surface on a site.

L. Impervious surface means any surface exposed to rainwater off of which most water runs. Impervious surfaces include, but are not limited to, rooftops, walkways, patios, driveways, vegetated or pervious areas over pavement or structures, parking lots or storage areas, concrete or asphalt paving, and compacted gravel or compacted soil.

M. Infiltration means the percolation of water into the ground. Infiltration is often expressed as a rate (unit of distance per unit of time) that is determined through an infiltration test.

N. Pollutant. See Portland City Code Section 17.39.020, Definitions.

O. Practicable means available and capable of being done as determined by the City Administrator, after taking into consideration of factors such as cost, resources, existing technology, and logistics in light of overall project purpose.

P. Public right-of-way means the area within the confines of a dedicated public street, an easement owned by the City, or other area dedicated for public use.

Q. Receiving system means any system that may receive stormwater or other discharges. Receiving systems include, but are not limited to: surface water bodies, groundwater, and sewer or drainage systems.

R. Redevelopment means any development activity that requires demolition or removal of existing structures or impervious surfaces at a site and replacement with new impervious surfaces. Stormwater management requirements for redevelopment are found in the Stormwater Management Manual.

S. Responsible party means, except as separately defined by applicable administrative rule, any person who, regardless of knowledge or intent, causes or contributes to a violation of this Chapter or associated rules.

T. Source control means a structural or operational measure to prevent or control the release or potential release of pollutants generated by certain site characteristics and uses.

U. Stormwater means water that originates as precipitation on a particular site, basin, or watershed.

V. Stormwater management means techniques used to reduce pollutants from, detain, retain, or provide a discharge point for stormwater.

W. Stormwater management facility means a facility or other technique used to reduce volume, flow rate or pollutants from stormwater. Stormwater management facilities may reuse, collect, convey, detain, retain, treat, or provide a discharge point for stormwater.

X. Temporary structure means a structure that is separate and distinct from all other structures and is created and removed in its entirety within three years, including all impervious area associated with the structure. Outdoor shelters as defined by Portland City Code Title 33 and as approved by City Council are also considered temporary structures.

Y. Tract means a parcel of land designated as part of a land division per Portland City Code Title 33 that is not a lot, lot of record, or a public right-of-way.

Z. Waters of the State as defined by state law.

AA. Waters of the US as jointly defined by the US Army Corps of Engineers and the Environmental Protection Agency.

BB. Wetland means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, marshes, bogs, and similar areas except those constructed as pollution reduction or flow control facilities wholly outside Waters of the US and Waters of the State.

17.38.030 Protection of Drainageway Areas.

A. Authority. The City Administrator may require drainage reserves or tracts over seeps, springs, wetlands and drainageways as necessary to maintain or improve hydrologic conveyance and water quality of natural and constructed channels, ditches, seeps, springs, intermittent flow channels and other open linear depressions. Standards and criteria for imposing drainage reserves or tract requirements are adopted by administrative rule. Placement or sizing of drainage reserves does not relieve property owners of their responsibility to manage stormwater in a manner that complies with the duties of property owners under applicable law.

B. Required management of a drainage reserve. Drainage reserves and tracts must be maintained to protect hydrology and water quality. No encroachments, such as but not limited to structures, culverts, excavations, or fills, may be constructed in drainage reserves or tracts unless authorized by the City Administrator. All changes must also comply with other regulations as described in Portland City Code Title 33 and Title 24.

C. Implementation. BES will identify drainageways and place drainage reserves as specified in the Stormwater Management Manual.

17.38.035 Drainage Management Policies and Standards.

A. Stormwater must be managed in as close proximity to the development or redevelopment site as is practicable. This section is intended to prevent a net negative impact on nearby streams, wetlands, groundwater, and other water bodies. All local, state, and federal permit requirements related to implementation of stormwater management facilities must be met by the owner/operator prior to facility use.

1. The City may enter into agreements with property owners to manage stormwater flows through methods other than onsite controls:

a. In facilities where public and private property flows co-mingle.

b. In offsite managed areas that are “traded” for required onsite management areas related to new development and redevelopment. The City may require more than a 1:1 exchange on the amount of required management area.

2. All discharges from a site must be routed through a discharge point to a receiving system as approved by the City Administrator. Approval of discharge points is subject to the following:

a. The discharge must be conveyed along a route of service approved by the City Administrator.

b. The discharge point must comply with the following:

(1) The Sewer and Drainage Facilities Design Manual and the Source Control Manual, for sanitary, wastewater, or other discharges to the sanitary or combined system.

(2) The Stormwater Management Manual and the Source Control Manual, for stormwater and other discharges to the City's storm and drainage system, groundwater, or surface water.

B. The quality of stormwater leaving the site after development or redevelopment must be treated to the extent practicable to reduce the discharge of pollutants based on the following criteria:

1. Except as allowed under Subsection B.2. below, the development or redevelopment must fully treat all stormwater:

a. Onsite;

b. Within the original parcel from which the new parcel was created; or

c. In an approved offsite facility with sufficient capacity, as determined by the City Administrator.

2. The owner of a development or redevelopment with a stormwater discharge that cannot practicably comply with Subsection B.1. above may, with written City Administrator approval, meet stormwater requirements by:

a. Managing stormwater in an offsite facility designed to treat flows from the subject property and managed by the site developer/owner or another legal agent:

b. Managing stormwater in an offsite facility designed to treat flows from the subject property and operated by the City; or

c. Paying a stormwater offsite management fee as required by the Stormwater Management Manual.

3. Stormwater management facilities required for development or redevelopment must be designed, installed and maintained in accordance with the Stormwater Management Manual.

4. Land use activities of particular concern as pollution sources may be required to implement additional pollution controls and source controls including but not limited to those management practices specified in the Control Manual.

5. The City Administrator is authorized to exempt land uses, discharge locations or other areas of Portland from the requirements of this Subsection if onsite pollution reduction or pollution control is not needed or desirable due to limited pollutant loads or offsite methods of pollution control are available. All exemptions are specified in the Stormwater Management Manual and the Source Control Manual.

C. The quantity and flow rate of stormwater leaving the site after development or redevelopment must be equal to or less than the quantity and flow rate of stormwater leaving the site before development or redevelopment, as much as is practicable, based on the following criteria:

1. Except as allowed under Subsection C.2. below, stormwater will be fully managed:

a. Onsite;

b. Within the original parcel from which the new parcel was created; or

c. In a privately developed offsite facility with sufficient capacity, as determined by the City Administrator.

2. The owner of a development or redevelopment with stormwater discharges that cannot practicably comply with Subsection C.1. above may, with written BES approval, meet stormwater requirements by either:

a. Managing stormwater in an offsite facility designed for the volume and rate of flows from the subject property and managed by the site developer/site owner or another legal agent;

b. Managing stormwater in an offsite facility designed for the volume and rate of flows from the subject property and operated by the City; or

c. Paying a stormwater offsite management fee as required by the Stormwater Management Manual.

3. Development and redevelopment must mitigate all project impervious surfaces through retention and on-site infiltration to the maximum extent practicable. Where on-site retention is not possible, or is limited, development and redevelopment must detain stormwater through a combination of measures that prevent an increased rate of flow leaving a site during a range of storm frequencies as specified in the Stormwater Management Manual.

4. The City Administrator is authorized to exempt areas of Portland from the quantity or flow rate control requirements if flow control is not needed or desirable because there is sufficient capacity and limited impacts to the receiving drainage system. All exemptions will be specified in the Stormwater Management Manual.

5. Any development or redevelopment that discharges to a tributary of the Willamette River, other than the Columbia Slough, must design stormwater management facilities to minimize hydromodification impacts from storm events as determined by the City Administrator.

6. Site drainage facilities must be designed to safely convey less frequent, higher flows to an approved discharge point with adequate capacity without damage to the receiving system, whether natural or constructed.

D. The pumping and discharge of groundwater to a City receiving system may be allowed only after a BES discharge authorization has been obtained, as required in the Source Control Manual. The application for that authorization must demonstrate that groundwater discharges meet the associated requirements in the Source Control Manual and Chapters 17.34 and 17.39, which govern both quality and quantity of groundwater discharges.

E. All conveyance systems must be analyzed, designed and constructed for existing tributary offsite stormwater and developed onsite stormwater from the proposed project in compliance with the City's Sewer and Drainage Facilities Design Manual. The general goal of these standards is to convey both onsite and offsite waters in a way that meets the capacity needs of the City conveyance system, is protective of public health and safety, and minimizes environmental impacts in the downstream receiving system.

F. All stormwater management facilities, source controls, and drainage systems must comply with the standards of the Stormwater Management Manual and the Source Control Manual and may require permit review and approval before commencement of work. Public systems must be reviewed and approved by the City Administrator in compliance with the sizing and location standards in the Stormwater Management Manual. Private onsite systems must be reviewed and approved by the City Administrator for compliance with the stormwater hierarchy and other guidance specified in the Stormwater Management Manual and the Source Control Manual, and may be reviewed by the City for compliance with the plumbing code regulations in Section 25.01.020 and the state building codes. The City Administrator may require a written certification from the design professional on completion of the project to confirm that the facility or a component of the facility has been installed in compliance with the approved plans. Installation or modification of any stormwater system or source control, whether it involves structural changes, changes to planting schemes, or the management of drainage area in addition to what was previously approved, may require a permit from or review by the City Administrator.

17.38.040 Stormwater and Water Quality Management Required.

A. Applicability. Unless exempt by rule, sites that propose one or more of the following site improvements or site activities must comply with the standards of the Stormwater Management Manual and the Source Control Manual to the extent each applies under its respective terms:

1. Development and redevelopment activities that create or replace impervious area must manage stormwater for retention, pollution reduction, and flow and volume control requirements as required by this Chapter. Impervious area threshold requirements are determined by the Stormwater Management Manual.

2. Modification to or construction of new areas with pollution-generating activities of concern as identified by rule. These areas must be constructed with applicable onsite controls;

3. New connections or new drainage areas routed into a receiving system or from one receiving system to another. These connections most often are generated from decommissioning of private, onsite drainage or groundwater related systems;

4. A retrofit project that will install new stormwater management or source control facilities to manage and treat stormwater from existing impervious surfaces or sites uses. Retrofit requirements are determined by the Stormwater Management Manual and Source Control Manual.

5. Any development on a property with a drainageway that requires a drainage reserve.

B. A plat, site plan, building permit, tenant improvement, public works project, or any improvement requiring a City permit will not be approved unless the conditions of the plat, permit or plan approval meet requirements established by the City Administrator and specified in the Stormwater Management Manual and the Source Control Manual.

17.38.041 Operations and Maintenance Requirements.

A The owner of a development or redevelopment site that must comply with the standards of the Stormwater Management Manual or the Source Control Manual, to the extent each applies under its terms, must submit an operations and maintenance (O & M) plan and complete an O & M form for the required stormwater management facilities, drainage reserves, and source control facilities for review and approval by the City Administrator, unless otherwise exempted by the Stormwater Management Manual or Source Control Manual.

1. The information in the O & M plan must satisfy the applicable requirements in the Stormwater Management Manual and Source Control Manual, as determined by the City.

2. A stormwater management facility that receives stormwater from a public right-of-way will be considered a public facility, and maintained by the City, unless the associated right-of-way is not part of the City’s road maintenance system.

3. The City Administrator may enter into agreements with property owners specifying ownership and maintenance responsibilities for joint stormwater management facilities where public and private property flows commingle.

4. Failure to properly operate or maintain a stormwater management or source control facility according to the O & M plan may result in an enforcement action, including a civil penalty, as specified in Section 17.38.045.

5. A stormwater management facility that serves more than one lot must be clearly identified as being owned in common by all of the owners of the lots served by the facility, a homeowners' association, a public agency, or a nonprofit organization. If the facility is owned in common, each of the owners is jointly and severally for its O & M.

6. A copy of the O & M plan and O & M form must be filed with BES. Staff may require the O & M plan and O & M form to be recorded and filed with the appropriate county Department of Assessment and Taxation.

7. It is a violation of this Chapter to remove or modify a stormwater management facility in a manner that will or could deviate from permitted site plans, without prior written approval from BES.

8. Failure to properly maintain and protect a drainageway that has a drainage reserve according to the O & M plan may result in an enforcement action, including a civil penalty, as specified in Section 17.38.045.

B. The City Administrator may file instruments in county deed records to inform future property owners of regulations and conditions of approval related to the property as provided in this Chapter and associated rules, including the Stormwater Management Manual.

17.38.043 Inspections.

A. Right of entry. To the extent permitted by law, BES may enter all private and public premises at any time for the purpose of inspecting for potential violations or connections or for any other lawful purpose required by or authorized under Portland City Code or ordinances of the City, the Charter, or state or federal law. This authorization includes but is not limited to inspection, sampling, testing, photographic documentation, record examination, copying, and installation of devices. Entry may not be conditioned upon BES representatives signing any type of confirmation, release, consent, acknowledgement, or other type of agreement.

B. Entry protocols.

1. The BES representative will present a City photo identification card at the time of entry.

2. The BES representative will comply with reasonable, routine safety and sanitary requirements of the facility or site as provided by the facility operator at the time of entry. The facility operator must provide the BES representative with any facility-specific safety protective equipment necessary for entry.

17.38.045 Enforcement.

A. Violations. It is a violation for any person to fail to comply with the requirements of this Chapter and associated rules. Each day a violation occurs or continues may be

considered a separate violation. The City Administrator will determine the responsible party for compliance including, but not limited to, the owner or owners of the facility, the owner or owners of the property, anyone known or suspected to have caused the violation, or any combination thereof. Violations of this Chapter or associated rules include, but are not limited to:

1. Failure to construct stormwater management or source control facilities to the standards of the Stormwater Management Manual, Source Control Manual or this Chapter;

2. Failure to comply with a written order of the City Administrator, made under authority of this Chapter, within the specified time;

3. Failure to comply with any condition of an O & M plan or agreement issued under the authority of this Chapter or administrative rules within a specified time;

4. Failure to maintain a stormwater management or source control facility leading to a potential or actual operating deficiency of the facility;

5. Failure to have a properly recorded, accurate O & M form or plan, as appropriate, on file with BES;

6. Failure to comply with enforcement actions as identified in the BES Enforcement Program Administrative Rules (PPD item ENB-4.15);

7. Failure to comply with drainage reserve rules in the Stormwater Management Manual; and,

8. Any action to obstruct, impede, or interfere with any officer, employee, contractor, agent, or authorized representative of the City who is engaged in work under an abatement order issued by a Code Hearings Officer.

B. Enforcement tools. BES may use any or all of the following tools to enforce this Chapter or associated administrative rules: notice of investigation, warning notice, notice of violation, compliance order, requirement to obtain a permit, notice of termination, withholding of permits, withholding of City service, violation or nuisance abatement, legal action, criminal case referral, or referral to other regulatory agencies. BES enforcement actions are described in program-specific administrative rules and the BES Enforcement Program Administrative Rules (PPD item ENB-4.15).

C. Civil penalties. Persons violating this Chapter or associated rules may be assessed civil penalties of up to $10,000 per day per violation according to program-specific administrative rules and the BES Enforcement Program Administrative Rules. Penalties and other charges will accrue interest from the date of initial City notice assessing the penalty until the penalty is paid in full.

D. City summary abatement. To the extent permitted by law, the City Administrator may recover from the responsible party for the violation all costs incurred by the City to summarily abate the following:

1. A violation that is not remedied through required corrective actions;

2. A situation that poses an imminent danger to human health, public safety, or the environment; or

3. Continued noncompliance with Portland City Code or associated rules.

E. Notice to responsible parties prior to summary abatement is not required. Following summary abatement, BES will notify all persons identified as having directed or benefitted from the violation. An error in the name of a property owner or address listed in the county assessment or taxation records will not affect the sufficiency of the notice. BES will bill each responsible party that BES determines caused, contributed to, or benefitted from the violation in order to recover the costs of the abatement.

F. Cost recovery. The City Administrator may recover from the responsible party all reasonable costs incurred by the City that are attributable to or associated with the violations of this Chapter or associated administrative rules.

G. Nothing in this Chapter is intended to impose liability on the City for any injury or damage resulting from the failure of any person to comply with the provisions of this Chapter.

17.38.050 Erosion Control Required.

All construction work on property or in the public right-of-way within Portland must comply with Portland City Code Title 10, Erosion and Sediment Control Regulations.

17.38.055 River Restoration Program.

BES may implement river, stream, wetland and associated habitat restoration programs including, but not limited to, a mitigation bank and in-lieu fee program for implementation of Portland City Code Titles 17, 24, and 33 provisions. BES may accept funds from in-lieu fees, mitigation bank credits, donations, program administrative fees, and other sources and may expend such funds for environmental restoration, enhancement and improvement activities.

17.38.060 Compliance Cases, Administrative Reviews and Appeals.

A. Administrative reviews and appeals. A person may request a modification to a BES decision related to this Chapter via an administrative review with BES staff, unless administrative review is limited by administrative rule. After the requestor has exhausted all BES administrative reviews, the requestor may file for an appeal with the Code Hearings Officer per Portland City Code Title 22 unless appeal is limited by administrative rule.

B. BES Code compliance cases. BES may file a case before the Code Hearings Officer under Title 22 to order compliance with City regulations. Any responsible party who fails to comply with this Chapter or associated administrative rules may be summoned to a Code hearing. The Code Hearings Officer is authorized to order compliance with City regulations including entry onto private property.

17.38.070 Conflict.

Except as expressly provided by the City Council, this Chapter supersedes all ordinances or elements of ordinances to the extent that they are inconsistent with or conflict with any part of this Chapter.

17.38.080 Severability.

If any provision, paragraph, word, or Section of this Chapter or associated administrative rules is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, and sections will not be affected and will continue in full force and effect.

Chapter 17.39 Storm System Discharges

17.39.010 Intent.

The Bureau of Environmental Services (BES) is authorized to facilitate the development and management of the City's storm sewer and drainage system facilities to adequately convey, manage and protect the water quality of discharges of stormwater runoff. This Chapter applies to the City storm sewer and drainage systems as defined in this Chapter. This Chapter provides BES the authority to ensure these systems are operated in a manner that protects public health and the environment.

17.39.020 Definitions.

As used in Chapter 17.39:

A. Capacity means the flow volume or rate for which a specific facility is designed to safely contain, receive, convey, infiltrate, or reduce pollutants from sanitary sewage, stormwater, wastewater, or other discharge in order to meet a specific performance standard.

B. City storm sewer and drainage system means a City conveyance or system of conveyances, including but not limited to pipes, pumps, drainage ditches, constructed channels, groundwater-related disposal systems, underground injection control devices, stormwater management facilities, and storm drains, that are designed or used to collect and transport stormwater. City storm sewer and drainage system does not include natural streams, creeks, ponds, lakes, a combined sewer, or part of a Publicly Owned Treatment Works, as defined in 40 CFR 122.2.

C. Clean Water Act (CWA) is the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.).

D. Code of Federal Regulations (CFR) means the codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government.

E. Director means the Director of the Bureau of Environmental Services or the Director's designee.

F. Discharge means is any disposal, injection, dumping, spilling, pumping, emitting, emptying, leaching, leaking or placing of any material so that such material enters or is likely to enter a waterbody, groundwater or a public sewer and drainage system.

G. Discharge Authorization (DA) means a written approval by the City Administrator that prescribes certain requirements or restrictions for a discharge to the City sewer and drainage system.

H. Discharger means any person who causes or permits a direct or indirect discharge to the City sewer and drainage system.

I. Groundwater means subsurface water that occurs in soils and geological formations that are fully saturated. Groundwater fluctuates seasonally and includes perched groundwater.

J. Groundwater discharge means a discharge of water pumped or directed from the ground. Groundwater discharges include but are not limited to subsurface water from site remediation and investigations, well development, Brownfield development, discharges from footing and foundation drains, and subsurface water associated with construction or property management dewatering activities.

K. Illicit connection means any connection to the City’s storm sewer and drainage system not approved by the City or not in compliance with a valid City permit.

L. Illicit discharge means any discharge to the storm sewer and drainage system that is not composed entirely of stormwater and is not authorized under Sections 17.39.030 or 17.39.040.

M. Interference means a discharge that, alone or in conjunction with other discharges, inhibits or disrupts the normal operation of the City’s storm sewer and drainage system or contributes to a violation of any requirement of the City’s NPDES Municipal Separate Storm Sewer System Discharge Permit. This includes any increase in the magnitude or duration of a violation, any increase in cost due to damage to the system, and any requirement for specialized treatment of stormwater caused by such a discharge.

N. National Pollutant Discharge Elimination System (NPDES) means the Clean Water Act (40 CFR Part 122) regulations that require dischargers to control and reduce pollutants in discharges to waters of the United States.

O. Pollutant means an elemental or physical material that can be mobilized or dissolved by water or air and that could create a negative impact to human health, safety, or the environment.

P. Process wastewater means any water used during manufacturing or processing that comes into direct contact with or results from the production, or handling of a raw material, intermediate product, or finished product, including any by-product or waste product.

Q. Representative sample means a sample that is collected by grab, composite or other technique that adequately reflects the quality of sediments or discharge for a specific area or entire site. Sampling must be conducted in accordance with 40 CFR Part 136 or a method approved by EPA or BES.

R. Sampling manhole means a monitoring access point, such as a manhole in a sewer lateral, that is acceptable to BES and that allows for observation, sampling, or measurement of all discharges to the City's sewer or drainage system.

S. Stormwater means water that originates as precipitation on a particular site, basin, or watershed.

T. Toxic substance means any chemical listed in Oregon's water quality standards for toxic pollutant tables in OAR, Division 340-041-033; the CWA effluent guidelines list of toxic pollutants at CFR 401.15; or the toxic chemical release reporting specific toxic chemical listings at 40 CFR 372.65 at concentrations specified in those lists or, if no concentration is specified, at concentrations determined pursuant to BES Storm and Drainage Discharge Rules.

U. Underground Injection Control (UIC) System means any system or structure that is intended to discharge fluids below the ground surface. Examples of UICs include, but are not limited to sumps, drywells, trench drains, and infiltration galleries.

V. UIC Water Pollution Control Facility (WPCF) Permit means the Safe Drinking Water Act (40 CFR Part 144) and Oregon Administrative Rules (OAR 340-44) regulating the construction and operation of Class V UICs for stormwater discharges.

17.39.030 Allowable Discharges.

The following discharges are allowed to enter the City storm sewer and drainage system without notice to or authorization from the City unless required under administrative rules:

A. Stormwater that does not contain toxic substances and is not otherwise prohibited.

B. Non-stormwater discharges authorized by the City's Water Pollution Control Facility (WPCF) Class V Underground Injection Control (UIC) or NPDES Municipal Storm Sewer System (MS4) Discharge permit, except for those discharges subject to the use of BMPs by administrative rule.

17.39.040 Prohibited Discharges.

The following discharges to the City's storm sewer and drainage system are prohibited:

A. Any discharge in violation of the conditions of the discharger's NPDES or other permit or authorization.

B Any discharge that is intentionally routed to City UIC systems.

C. Any discharge with any of the following characteristics or materials:

1. A pH outside the range of applicable water quality standards in OAR Division 340-041;

2. A visible sheen;

3. A visible discoloration including, but not limited to, those attributable to dyes and inks, except for non-toxic dyes used or approved by the City to investigate the potential source of an illicit connection;

4. Heat that could damage or interfere with any element of the City's storm sewer and drainage system or that causes or contributes to a violation of the receiving-water temperature standards;

5. Toxic substances at concentrations that cause or contribute to violations of in-stream water quality standards set by DEQ or that exceed remedial action goals defined in a DEQ or EPA Record of Decision for the protection of surface water or sediment;

6. Refuse, rubbish, garbage, discarded or abandoned objects, articles, or accumulations of discharges that contain visible floating solids;

7. A process wastewater, unless authorized to discharge under a DEQ permit;

8. A volume that causes or contributes to an exceedance of the planned capacity of the storm sewer and drainage system, as established by the City Administrator;

9. Liquids, solids, or gases that, either alone or by interaction, could cause a fire or an explosion including: waste streams with a closed-cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Celsius (using test methods described by 40 CFR 261.21); or discharges that cause the atmosphere in any portion of the City's storm sewer and drainage system to reach a concentration of 10 percent or more of the Lower Explosive Limit per National Institute for Occupational Safety and Health standards;

10. A substance that causes or may cause a nuisance, hazard, interference, obstruction or damage to the City's storm sewer and drainage system, City personnel, the general public, receiving waters, or associated sediments; or

11. Any substance that causes or contributes to a violation of the terms of the City's NPDES MS4 Discharge Permit or Water Pollution Control Facility (WPCF) for Class V UIC Permit or in-stream water quality standards set by the State of Oregon.

D. Existing Discharges. Dischargers found to violate Section 17.39.040 may be required to obtain a BES discharge permit or authorization or the discharge may be terminated regardless of past acceptance by the City.

17.39.050 Notification and Control of Illicit Connections and Discharges.

A. Notification by telephone must be provided to BES and other authorities as applicable for the following conditions:

1. Illicit Connections. Notice must be provided within twenty-four hours after discovery of an illicit connection to the City's storm sewer and drainage system.

2. Illicit Discharges. Notice must be provided immediately after discovery of the illicit discharge. Written reports must also be submitted to BES within five days of discovery of an illicit discharge or as otherwise specified by a BES discharge permit or authorization.

B. Control and abatement. Dischargers must immediately take all reasonable steps to minimize the effects of an illicit discharge to the City storm sewer and drainage system or any waters of the state. These actions may include cleaning the impacted public and private system components under City direction or performing additional monitoring to determine the nature and extent of the discharge.

C. Protection of City systems. Dischargers must eliminate or control direct or indirect spills or discharges into the City's storm sewer and drainage system. The City Administrator may require dischargers to make structural or operational modifications to their facilities, equipment, or drainage systems or to take other measures to protect the City's storm sewer and drainage system. Such structures and site modifications must be reviewed and approved by the City Administrator to determine sufficiency. A permit or permit review may be required.

17.39.060 Discharge Permits and Other Authorizations.

A. BES discharge permit or authorization may be required for discharges not subject to NPDES or UIC WPCF permit requirements for discharges that would:

1. Interfere with or harm the City storm sewer and drainage system;

2. Contribute to a violation of the City's NPDES stormwater discharge permit;

3. Contribute to a violation of the City's UIC WPCF stormwater permit;

4. Degrade the receiving surface water or groundwater; or

5. Have a negative effect on human health, safety or the environment.

B. A BES discharge permit or authorization request must be submitted and approved before non-routine or one-time discharges of materials except for those discharges that are allowed under Section 17.39.030.

C. A discharge request must be submitted and BES must approve or deny the permit before continuous or routine discharge occurs of materials other than stormwater that are not allowed under Section 17.39.030. A discharger must apply for a BES discharge permit or authorization when required by BES either at the time of development application or at the time of discovery of a discharge meeting the criteria of Subsection 17.39.060 A.

D. The discharger must allow site inspections by BES to verify site conditions or submit additional information, reports and plans as part of the DA or BES discharge permit request, such as:

1. A Stormwater Pollution Control Plan (SWPCP) that describes measures to eliminate, reduce and control the level of pollutants in discharges;

2. An Accidental Spill Prevention Plan (ASPP) that documents facility or discharger-specific spill response procedures and describes measures to prevent the release of prohibited or deleterious materials to the City storm sewer and drainage system;

3. A Best Management Practices (BMP) Plan that describes actions to reduce or eliminates pollutants and hydrologic impacts associated with a discharge; or

4. Monitoring data to characterize the types and loads of pollutants in the discharges.

E. The City Administrator will provide the discharger written notice of approval or denial of the request to discharge and information on how to request further administrative review of the decision.

F. Any new or potential discharger identified through the City's development review process must undergo a source control review. Such review will identify any site controls, City permit, or DA submittals needed to approve and accept any new discharge.

17.39.070 Inspections.

A. Right of entry. To the full extent permitted by the law, BES may enter all private and public premises at any time for the purpose of inspecting for potential violations, connections or for any other lawful purpose required by or authorized under Portland City Code or ordinances of the City, the Charter, or state or federal law. This authorization includes but is not limited to inspection, sampling, testing, photographic documentation, record examination, copying, and installation of devices. Entry may not be conditioned upon BES representatives signing any type of confirmation, release, consent, acknowledgement or other type of agreement.

B. Entry protocols.

1. The BES representative will present a City photo identification card at the time of entry.

2. The BES representative will comply with reasonable, routine safety and sanitary requirements of the facility or site to be inspected as provided by the facility operator at the time of entry. The facility operator must provide the BES representative with any facility-specific safety protective equipment necessary for entry.

17.39.080 Sampling.

BES may sample or require a discharger to provide a representative sample of any discharge, or any material intended to be discharged, for the purposes of characterization or to determine compliance with Section 17.39.040, applicable permit conditions, DEQ or EPA requirements, or BES discharge permit or authorization.

A. Dischargers may submit monitoring data gathered for other purposes that also satisfies these requirements. Dischargers must conduct sampling and analysis in accordance with 40 CFR Part 136 or other EPA- or BES-approved methods.

B. All dischargers with continuous or routine discharges must provide a sampling manhole or other City-approved sampling location upstream of the physical connection or discharge point into the City system. City access to the sampling location must be provided.

17.39.090 Reporting Requirements.

A. Reports. Dischargers may be required to submit reports or other technical information needed to determine compliance with this Chapter. Such reports may include evaluations of site conditions, visual observations of discharges, discharge sampling results, summaries of operational and maintenance activities, compliance schedules for implementing remediation activities, or other information as requested by the City Administrator to characterize discharges and site conditions. The City may accept reports required by NPDES or other discharge permits. Reports must be submitted in a timely manner as required by the City Administrator.

B. Fraud and false statements. Dischargers making false statements in any submittal, report or other document required by this Chapter or associated rules are subject to the enforcement provisions of this Chapter and any other applicable local and state laws and regulations.

17.39.100 Records Retention.

Dischargers subject to this Chapter must maintain and preserve for no fewer than five years any records, books, documents, memoranda, reports, correspondence and document summaries relating to observation, sample collection and analysis conducted in order to comply with this Chapter or associated rules. All records that are the subject of any enforcement or litigation activities brought by the City must be retained and preserved by the discharger until all enforcement activities have concluded and all periods of limitation with respect to any and all appeals have expired.

17.39.110 Enforcement.

A. Violations. It is a violation for any person to fail to comply with the requirements of this Chapter or associated rules. Each day a violation occurs or continues may be considered a separate violation. BES will hold the person or persons solely responsible for complying with BES enforcement actions. Violations of this Chapter or associated rules include, but are not limited to:

1. Discharges with any of the attributes of the prohibited discharge list of Section 17.39.040;

2. Failure to meet any requirement or condition of a BES discharge permit or authorization, including exceedances of a discharge limit, issued under the authority of this Chapter or associated rules;

3. Failure to comply with a BES discharge permit or authorization-related submittal schedule or a violation remediation schedule;

4. Failure to pay review fees or assigned penalties for violations; or

5. Failure to comply with enforcement actions as identified in the BES Enforcement Program administrative rules (PPD item ENB-4.15).

B. Enforcement tools. BES may use any or all of the following tools to enforce this Chapter or associated administrative rules: notice of investigation, warning notice, notice of violation, compliance order, requirement to obtain a permit, notice of termination, withholding of permits, violation abatement, legal action, criminal case referral, or referral to other regulatory agencies. BES enforcement actions are described in program-specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15).

C. Civil penalties. Dischargers violating this Chapter or associated rules may be assessed civil penalties of up to $10,000 per day per violation according to program-

specific administrative rules and the BES Enforcement Program administrative rules (PPD item ENB-4.15). Penalties and other charges will accrue interest from the date of initial City notice assessing the penalty until the penalty is paid in full. Dischargers violating this Chapter will be solely responsible for reimbursing the City's abatement expenses.

D. Cost recovery. The City Administrator may recover all reasonable costs incurred by the City that are attributable to or associated with violations of this Chapter or associated administrative rules per PPD item ENB-4.15. Failure to pay costs related to a civil penalty or summary abatement within 30 days following a final determination is grounds for permit revocation or termination of the permittee's discharge

E. City summary abatement. To the extent permitted by law, the City Administrator may recover from the person causing the violation all costs incurred by the City to summarily abate the following:

1. A violation that is not remedied through required corrective actions;

2. A situation that poses an imminent danger to human health, public safety, or the environment; or

3. Continued noncompliance with the Portland City Code or associated rules.

F. Nothing in this Chapter is intended to impose liability on the City for any injury or damage resulting from the failure of any person to comply with the provisions of this Chapter.

17.39.120 Administrative Reviews, Appeals, and Compliance Cases.

A. Administrative review and appeal. A person may request a modification to a BES decision related to this Chapter via an administrative review with BES staff, unless administrative review is limited by administrative rule. After the requestor has exhausted all BES administrative review, the requestor may file for an appeal with the Code Hearings Officer per Portland City Code Title 22, unless appeal is limited by administrative rule.

B. BES Code compliance cases. BES may file a case before the Code Hearings Officer under Portland City Code Title 22 to compel compliance with City regulations. The person committing the violation will be offered the opportunity to present evidence in the case.

17.39.130 Conflict.

This Chapter supersedes all other ordinances or elements thereof to the extent that they are inconsistent with or conflict with any part of this Chapter are hereby repealed to the extent of such inconsistency or conflict.

17.39.140 Severability.

If any provision, paragraph, word or Section of this Chapter or associated rules is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, and sections will not be affected and will continue in full force and effect.

Chapter 17.40 Protection of Public Right-of-Way

17.40.010 Injuries to Pavement.

A. It is unlawful for any person to cause or permit to come in contact with any paved roadway, curb or sidewalk, any corrosive or other substance that may tend to disintegrate or injure such pavement. This does not apply to salt or salt mixtures placed thereon to melt snow or ice.

B. It is unlawful for any person to cause or permit any object to fall upon or be placed upon any paved roadway, curb or sidewalk of such weight or other characteristic as to crack, break or disturb the pavement surface. This does not apply to ordinary wear and tear from vehicular traffic.

C. It is unlawful for any person to cause or permit to be placed upon any pavement without immediately removing the same, any concrete, plaster or other material likely to adhere to the pavement. However, during the course of construction upon adjacent property, the City Administrator may issue a permit for such activity if the City Administrator determines that sufficient protection will be provided to prevent injury to the pavement.

D. It is unlawful for any person to cause or permit any fire to be kindled or made upon any paved roadway, curb or sidewalk or to heat any material in close proximity to such paved surface.

17.40.020 Endangering Pavement.

In the course of construction under a permit issued by the City, it is unlawful for any person to cause or permit any undermining of any pavement not cut or to be replaced as a part of the work; to tunnel under street area without providing complete support of the pavement above such tunnel; to cause or permit to be washed away the ground or fill material supporting pavement; to make any excavation within street area pursuant to permit without securely and safely bracing such excavation so as to prevent the sides or walls of the excavation from falling or caving in; to cause or permit any excavation to be made on private property adjacent to street area without securely and safely bracing the wall or side of the excavation near the paved area so as to prevent falling or caving in and to protect the support of the pavement; or to cause or permit any other act to be done that would tend to endanger the direct or lateral support of the pavement.

17.40.030 Charges for City Patching of Roadway Areas.

Any person who has dug up or cut into the roadway surface of a street paved with bituminous paving may request the City to replace the roadway area by patching the

pavement. This does not apply to local improvements, public improvements under permit, or general maintenance of roadway areas by the City. The applicant must first prepare the area, if the base has been disturbed, by removing any excavated material from below the pavement and filling and compacting the same to sub-base level with gravel, all at his own expense. The applicant must pay for the repair on a cost basis. The cost basis will include the actual costs of all labor, equipment, materials and supervision required to do the work along with appropriate overhead costs as determined in accordance with provisions of the finance regulations.

17.40.040 Damages to Public Right-of-way.

A. If in the City Administrator's opinion the public right-of way has been negligently or intentionally damaged, the City Administrator may act to identify the person responsible for such damage. The City Administrator may then issue a notice requiring the responsible person to repair and restore the public right of way to the City Administrator's satisfaction.

B. Once the responsible person has been notified to repair the public right-of-way to the City Administrator's satisfaction, the responsible person must undertake to make and complete the repairs within 20 days.

C. If the responsible person fails, neglects or refuses to make repairs within the specified time, the City Administrator may;

> **1.** Institute an action before the Code Hearings Officer as set out in Title 22 of Portland City Code, or
>
> **2.** Cause appropriate action to be instituted in a court of competent jurisdiction, or
>
> **3.** Taking such other actions as the City Administrator, in the exercise of their discretion, deems appropriate including, but not limited to, summary abatement.

17.40.050 Disposition of Asphalt, Concrete, Rock and Dirt.

A. All asphalt, concrete, rock and dirt removed from existing infrastructure in the public right-of-way must be disposed of at the direction of the City Administrator, who has the authority for the disposal of such materials.

B. The asphalt, concrete, rock and dirt from existing infrastructure in the right-of-way are often recycled by the City into an aggregate and back fill products, which the City uses as road base on residential streets, trench fill and back fill. If the City generates more of these recycled products than it can use, the Director of the Bureau of Transportation may sell or donate the materials.

> **1.** Pricing of the materials to be sold will be based on current market price and reviewed at least biannually by the Bureau of Transportation.

C. The City Administrator may levy a fee for accepting and processing asphalt, concrete, rock and dirt from third parties for the purposes of recycling.

> **1.** Pricing of this service (tipping fee) will be based on current market price and reviewed at least biannually by the Bureau of Transportation.

D. Revenue generated by selling these materials and services will be returned to the Bureau of Transportation.

17.40.060 Disposition of Leaves.

A. All leaves collected from the public right-of-way must be disposed of at the direction of the City Administrator, who has the authority for the disposal of such materials.

B. The leaves collected from the existing right-of-way are often processed into compost, which the City uses as erosion control and soil amendment. If the City generates more of these recycled products than it can use, the Director of the Bureau of Transportation may sell or donate the materials.

> **1.** Pricing of the materials to be sold will be based on current market price and reviewed at least biannually by the Bureau of Transportation.

C. The City Administrator may levy a fee for accepting and processing leaves or other matter consistent with composting from third parties for the purposes of recycling.

> **1.** Pricing of this service (tipping fee) will be based on current market price and reviewed at least biannually by the Bureau of Transportation.

D. Revenue generated by selling these materials and services will be returned to the Bureau of Transportation.

Chapter 17.41 Landslide Abatement

17.41.010 Purpose.

The purpose of this Section is to protect the public from hazards created by landslides that deposit material on the public right-of-way, remove material from the public right-of-way or threaten the stability of the right-of-way. The intent of this Section is to provide for the immediate abatement of a landslide by the responsible property owner or, if necessary, by the City.

17.41.020 Definitions.

For purposes of this Chapter 17.41:

A. Costs means any costs, direct or indirect, incurred by the City in the abatement of a landslide. Costs may include, but are not limited to, those associated with the removal

of debris, traffic control and barricading, engineering, construction, erosion control, reforestation, restoration and repair of existing public facilities, City overhead as provided in Portland City Code Section 5.48.030, and the revenue service and program of the City Administrator charges established in Subsection 17.12.020 B.

B. Landslide means any detached mass of soil, rock, or debris that is of sufficient size to cause damage and moves down a slope or stream channel.

C. Owner means the person or persons shown on the most recent property tax records.

D. Responsible property means the property or properties abutting that portion of the public right-of-way on which materials have been deposited by a landslide, or property or properties that has caused the instability of the public right-of-way.

17.41.030 Applicability.

This Chapter applies to:

A. Landslides that originate on private property and deposit material on the public right-of-way; and

B. Landslides in unimproved public right-of-way as defined by Chapter 17.42 of Portland City Code.

C. Landslides in public right-of-way caused by actions on property abutting such public right-of-way.

D. Landslides that threaten the stability of the public right-of-way.

17.41.040 Landslide as a Nuisance; Costs.

A. A landslide is a public nuisance. The nuisance is subject to abatement as provided by Portland City Code Title 29, except as provided in this Chapter. Abatement by the City will be conducted at the direction of the City Administrator. The City Administrator may direct summary abatement where there is an immediate threat to the public safety.

B. Recovery of costs incurred by the City in the abatement of a landslide will be as provided in Title 29, and such costs will be assessed to the responsible property.

17.41.050 Abatement.

A. The owner of the responsible property is required to abate the landslide.

B. Abatement of a landslide includes:

1. Immediate work necessary to remove the debris from any areas where it would constitute or create a hazard to the public and to temporarily stabilize the slope; and

2. Permanent stabilization of the slope, as necessary, through engineered solutions such as retaining walls or riprap. Plans and specifications for permanent stabilization must be prepared by a professional engineer registered in the State of Oregon and must be approved by the City Administrator.

C. If summary abatement is not directed, the City Administrator may post notice on the responsible property of the requirement for immediate abatement, including dates by which the abatement must be commenced and completed. Such notice will also be mailed to the owner and/or occupant of the responsible property. If the abatement is not commenced or completed within the time provided in the notice, the City Administrator may cause the landslide to be abated and the costs assessed against the responsible property.

D. Where necessary, the City Administrator may also post and mail notice regarding the requirement for permanent stabilization of the slope. Such notice will include the date by which plans for such permanent stabilization must be submitted to the City Administrator. If such plans are not submitted by the stated date, the City Administrator may cause the permanent stabilization portion of the abatement to be accomplished and the cost assessed against the responsible property.

E. Before beginning any work in the right-of-way, the owner of the responsible property must obtain the permits required by Chapter 17.24 of Portland City Code.

F. A building permit is required for permanent stabilization work performed on private property. Such permits must be approved by the City Administrator.

G. If at any stage of the abatement, the owner of the responsible property fails to comply with the requirements imposed by the City Administrator, the City Administrator may cause the abatement to be completed by the City and the cost assessed against the responsible property.

H. If there is more than one responsible property, the City Administrator will apportion all costs incurred by the City in abatement based on the front footage of the slide area in the right-of-way.

I. Nothing in Portland City Code may be deemed to prevent a party required by this Chapter to pay for abatement of a landslide from exercising any rights the party may have against the party or parties who may have caused the landslide.

17.41.060 Administrative Review.

Administrative review will be conducted as provided in Portland City Code Title 29, except that the review will be conducted by the City Administrator. An appeal must be to the Code Hearings Officer as provided in Chapter 22.10 of Portland City Code.

Chapter 17.42 Property Owner Responsibility for Streets

17.42.010 Policy.

A. It has been and remains the policy of the City that streets are constructed at the expense of abutting property owners and are maintained by abutting property owners until street improvements are constructed to the applicable standards of, and accepted for maintenance by, the City. Until a street improvement has been constructed to City standards and the City has expressly assumed responsibility for street maintenance, it is the exclusive duty of the abutting property owners to construct, reconstruct, repair and maintain the non-maintained street in a condition reasonably safe for the uses that are made of the street and adjoining properties. Streets that have not been improved to City standards are not and will not be maintained or improved at City expense, except at the discretion of the City and as provided in Portland City Code and the Charter.

The City may, at its discretion, conduct maintenance and repair activities on gravel streets and alleys. Such an action will not constitute an express or implicit decision by the City to accept maintenance responsibility for such a street or alley.

B. Disputes regarding the condition of the non-maintained street are private actions among affected property owners.

17.42.020 Maintenance and Construction Responsibility.

The City assumes no responsibility for maintenance, construction or reconstruction of any street until and unless:

A. The street has been constructed to City standards and specifications; and

B. The City has expressly accepted maintenance responsibility for the street by the City Administrator.

17.42.025 Maintenance Restrictions.

A. Notwithstanding anything to the contrary in this Title 17, residents and property owners are not required to obtain a permit to maintain public streets abutting their properties if those streets have not been accepted for maintenance by the City or any other jurisdictions, provided the following conditions are met:

1. The travel lane location and width of the street remains the same;

2. There is no resulting change in existing drainage patterns outside the public right-of-way;

3. Drainageways located within public rights-of-way are not filled in or otherwise altered in any manner that could impact the flow of water;

4. The materials used for maintaining the street are equivalent to the existing street materials, except that gravel may be used to resurface a dirt road;

5. Asphalt, concrete or other man-made materials may not be applied to existing dirt or gravel surfaces, nor may existing dirt or gravel surfaces be converted to a paved surface;

6. The maintenance activities and resulting condition of the street do not adversely affect surrounding properties;

7. Trees in the public right-of-way are not removed or pruned unless a tree permit has been obtained as provided in Portland City Code Title 11, Trees; and

8. Speed bumps or other types of devices intended to slow traffic are not constructed.

B. The City Administrator retains final authority to regulate all maintenance and construction activities in the public right-of-way, regardless of whether a permit is required or obtained.

C. The City Administrator retains exclusive authority to establish traffic control devices as provided in Portland City Code Sections 16.10.080 and 16.10.200. This includes, but is not limited to, all regulatory, warning, and guide signs, and all types of pavement markings.

17.42.030 Liability.

The owner of land abutting any street that has not been improved to City standards and accepted for maintenance will be liable for all damages to any person who is injured or otherwise suffers damages resulting from the defective condition of the street or by reason of the property owner's failure to keep the street in safe condition and good repair. The property owner will be liable to the City for any amounts that may be paid or incurred by the City by reason of all claims, judgments or settlements, and for all reasonable costs of defense, including investigation costs and attorney fees, by reason of the property owner's failure to satisfy the obligations imposed by the Charter and Portland City Code to maintain, construct and repair such streets.

Chapter 17.43 Pedestrian Plazas

17.43.010 Purpose of Establishing Prohibited Conduct.

The purpose of this Chapter is to preserve pedestrian plazas areas as defined by the Portland Bureau of Transportation (PBOT) for the enjoyment, safety, comfort and convenience of the public and to enhance the orderly administration of the pedestrian plazas, by prohibiting conduct that unreasonably interferes with the administration and lawful use of the pedestrian plaza. The purpose of this Chapter is not to punish any person for prior conduct, but, rather, to provide civil and non-punitive regulations the Council finds necessary to prevent nuisances and to protect the health, welfare and safety of the public using the pedestrian plazas. Any violation of the provisions of this Chapter is punishable in accordance with these rules.

17.43.020 Pedestrian Plaza Defined.

Pedestrian plazas are places designated by the City as unique places where licensed businesses and pedestrians come together. They are not parks. Therefore, sitting or lying down is not allowed. Travel through pedestrian plazas should be unfettered, however, conduct incidental to travel, such as speech or expression, is allowed if it is performed in a reasonable amount of time that does not detract from the enjoyment of the plaza by all persons and if it is done in a manner that is consistent with the use of the plaza as a unique place conducive to pedestrian enjoyment.

17.43.030 Soliciting For or Conducting Business.

A. Except as expressly permitted under the terms of a lease, concession or permit, no person may solicit for or conduct any business in a pedestrian plaza.

B. For purposes of this Section, **solicit for or conduct any business** means:

1. Sell or offer to sell any article or service;

2. Display goods, or descriptions or depictions of goods or services, with the intent to engage any member of the public in a transaction for the sale of any good or service; or

3. Perform or engage in any act with the intent or expectation of receiving payment in any form from any person.

C. Nothing in this Section prohibits any act by any police officer in the scope of employment or duty, or by any person performing any work on behalf of the City, nor may this Section be construed to prohibit any act protected under the circumstances by the federal or state constitution.

17.43.040 Unlawful Urination or Defecation.

No person may urinate or defecate in any pedestrian plaza except in a convenience station designed for that purpose; or blow, spread, or place any nasal or other bodily discharge; or spit, urinate, or defecate on the floors, walls, partitions, furniture, fittings, or on any portion of any public convenience station or in any place in such station, excepting directly into the particular fixture provided for that purpose; or place any bottle, can, cloth, rag, or metal, wood, or stone substance in any of the plumbing fixtures in any such station.

17.43.050 Unlawful Acts Involving Alcohol, Controlled Substances or Prescription Drugs.

A. No person may sell or consume any alcoholic beverage, or possess any open container of alcoholic beverage, in any pedestrian plaza, except under a concession contract or lease, or by permit issued under Chapter 17.24 or 17.25. Such permit may

include any conditions as, in the discretionary judgment of PBOT, will promote the preservation of the pedestrian plaza for the peaceful enjoyment of the public at large.

B. No person may commit any of the following acts in a pedestrian plaza:

1. Sell, distribute, make available or offer to provide a controlled substance or prescription drug to another;

2. Package, possess or store a controlled substance;

3. Transport a controlled substance or materials intended to be used in the packaging of a controlled substance;

4. Solicit another to provide, make available, sell or distribute a controlled substance or prescription drug to any person; or

5. With the intent to engage in any act prohibited by this Section, seek, meet, approach or encounter another.

C. Nothing in Subsection B. of this Section prohibits the possession in a pedestrian plaza of medications prescribed to the person or to a person under that person's care, if and under such conditions as possession of such substance is otherwise lawful.

D. Nothing in Subsection B. of this Section prohibits the possession in a pedestrian plaza by any person 21 years of age or older of not more than one ounce of usable cannabis, so long as that cannabis is in a closed container.

E. For purposes of this Section, **controlled substance** has the meaning provided in ORS 475.005(6), and **prescription drug** has the meaning provided in ORS 689.005(6).

17.43.060 Possession of Weapons.

No person may possess in any pedestrian plaza anything specifically designed for and presently capable of causing, or carried with the intent to threaten or cause, bodily harm to another. Things prohibited under this Section include, but are not limited to: any firearm, pellet gun, spring-loaded weapon, stun gun or taser, any knife having a blade that projects or swings into position by force of a spring or by centrifugal force, any knife with a blade longer than three and one-half inches, any dirk, dagger, ice-pick, sling shot, slungshot, metal knuckles, nunchaku, studded handcoverings, swords, straight razors, tear gas containers, saps, sap gloves, hatchets or axes. The prohibitions of this Section do not apply to handguns lawfully carried by persons exempt from local regulation under ORS 163.173. The prohibitions of this Section do not apply to any thing possessed or used to carry out actions authorized by any contract or permit in any pedestrian plaza.

17.43.070 Structures in Pedestrian Plazas.

Except as permitted under these rules, no person may excavate for, erect, install or place, or do any act as part of or commencement of excavation, erection, installation or

placement of any permanent or temporary structure or facility in or on any pedestrian plaza. This Section does not prohibit the mere carrying of any item in or through a pedestrian plaza, nor does it prohibit the use or placement of personal accessories, such as purses, backpacks or bags, or the use or placement of wheelchairs, walkers or baby carriages or child strollers in any pedestrian plaza, except in areas where those items are prohibited by the City Administrator.

17.43.080 Disposing of Rubbish.

A. No person may place any garbage, or other rubbish, or refuse or debris, nor may any person deposit or leave birdseed, breadcrumbs or other food particles or food waste, in or upon any pedestrian plaza. Nothing in this Section prohibits any person from eating food in any pedestrian plaza, nor do the prohibitions of this Section apply to the incidental loss of food particles that cannot reasonably be collected and properly disposed of.

B. No person may enter any pedestrian plaza with garbage, or other rubbish or refuse or debris that has originated from outside the pedestrian plaza, for the purpose of disposing of any of the rubbish, refuse, or debris in the pedestrian plaza.

C. The prohibitions of this Section do not apply to the disposal, in receptacles provided for that purpose, of garbage or refuse that results from the normal use of the pedestrian plaza for recreational or other lawful purposes.

17.43.090 Vandalism; Protection of Pedestrian Plaza Property and Vegetation.

A. No person may take, remove, destroy, break, cut, injure, mutilate, or deface in any way or attach any thing to, any structure, monument, statue, vase, fountain, wall, fence, railing, gate, vehicle, bench, or other property in any pedestrian plaza. No person may remove, destroy, break, injure, mutilate, or deface in any way in any pedestrian plaza any shrub, fern, plant, flower, or other vegetation. No person may plant, prune, remove, destroy, break, injure, mutilate, or deface in any way in any pedestrian plaza any tree without a permit from the City Administrator under the provisions of Portland City Code Title 11. This provision does not prohibit authorized work done for, by or on behalf of the City.

B. No person may, without prior authorization, take, use, or have in the person’s possession any equipment belonging to the City and designated for pedestrian plaza or recreation use, outside of the limits of the established pedestrian plaza.

17.43.100 Fires and Fireworks Prohibited.

A. No person may light any fire in any pedestrian plaza, except in areas and/or facilities designated by the City Administrator for such use and in conformance with all applicable laws.

B. No person may possess or ignite any fireworks in any pedestrian plaza.

C. Notwithstanding any other provision of Portland City Code, a person who violates this Section will not be subject to exclusion under these rules, or to criminal enforcement under Section 1.01.140 of Portland City Code. Rather, any person violating this Section will be required to leave the pedestrian plaza in which the offense occurred for the remainder of the day. Enforcement will be administered by Police. All Portland Police Bureau Officers, including all Transit Officers, are authorized to enforce pedestrian plaza rules.

17.43.110 Animals.

A. No person may injure, harm, disturb, or molest any wild or domestic animal in any pedestrian plaza.

B. All dogs within any pedestrian plaza must be held securely on a leash, no more than eight feet in length, at all times.

C. No person may hitch any animal to any tree, shrub, fence, railing, or other structure or facility in any pedestrian plaza, except to such structures or facilities as are designated for that purpose.

D. No person may bring or keep any animal in any pedestrian plaza if the animal is not within the person's immediate reach and control.

E. No person may allow any animal in that person's ownership, possession, custody or control to injure any other person or animal or damage any property in any pedestrian plaza. Any person so allowing any animal to cause any such injury or damage will be liable for the costs of impounding the animal.

F. No person may allow any animal in the person's possession, custody or control to discharge any fecal material in any pedestrian plaza unless the person promptly removes and disposes of the fecal material in an appropriate receptacle. No person may allow any animal in the person's possession, custody or control to enter or remain in any pedestrian plaza unless the person has in the person's possession the equipment necessary to remove and properly dispose of any fecal material deposited by the animal in the pedestrian plaza.

G. No person owning, in control of or responsible for any animal may allow that animal to be in any pedestrian plaza if the animal is not in compliance with applicable Multnomah County animal control regulations; provided, however, that dogs otherwise complying with those regulations may be off leash in designated off-leash areas or during designated off-leash hours.

H. Any animal in any pedestrian plaza in violation of any provision of this Section may be impounded, at the expense of the animal's owner, on the order of any police officer or of any animal control officer.

I. The prohibitions of this Section do not apply to animals while in the course of the official performance of police or rescue activities.

J. Notwithstanding any other provision of Portland City Code, any person violating this Section is subject only to a civil penalty not to exceed $150 for each violation. Any person assessed a civil penalty under this Subsection may appeal the citation to the Code Hearings Officer in accordance with the provisions of Title 22 of Portland City Code.

17.43.120 Use of Certain Devices or Equipment.

A. No person may ride or operate a skateboard on any table, chair, bench, fountain area, planter, or sculpture located in a pedestrian plaza.

B. No person may operate any motorized vehicle or motorized wheeled vehicle or motorized wheeled device in any pedestrian plaza, except designated vehicle areas, or by permit. The prohibitions of this Section do not apply to authorized service or emergency vehicles or to the following electric mobility devices used by persons who need assistance to be mobile, and used in accordance with all applicable pedestrian plaza and traffic rules:

> **1.** “Electric assisted bicycle” as defined in ORS 801.258;
>
> **2.** “Motorized wheelchair,” “Mobility scooter” or “Power chair” defined as an electric powered transportation device for one person in a seated position, with feet resting on floorboards or foot rests, and incapable of exceeding a speed of 20 mph; or
>
> **3.** “Human or personal transporter system” defined as a self-balancing, electric-powered transportation device with two wheels, able to turn in place, and designed to transport one person in a standing position, with a top speed of 20 mph.

C. No person may operate an electric mobility device in a pedestrian plaza in an unsafe manner or at a speed exceeding 15 mph, or, when pedestrians are present, at a speed exceeding five mph, or fail to yield the right-of-way to all pedestrians.

17.43.130 Remote Control Vehicles, Aircraft and Watercraft.

No person may operate any remote-controlled internal combustion powered vehicle, or any remote-controlled electric or internal combustion powered watercraft or aircraft, in, on or over any pedestrian plaza, except in such places the City Administrator may designate for such use.

17.43.140 Emergency Pedestrian Plaza Closure.

A. In case of an emergency, or in case where life or property are endangered, all persons, if requested to do so by any police officer, must depart from the portion of any

pedestrian plaza specified by that police officer, and must remain off that pedestrian plaza or that portion of the pedestrian plaza until permission is given to return.

B. Whenever it is in the interest of public health or safety to do so, the Mayor, the City Administrator, or a police officer may close any pedestrian plaza, or any part of it, and may erect or cause to be erected barricades prohibiting access to any such pedestrian plaza, or part of it, at appropriate locations. Notices that any pedestrian plaza, or part of it, is closed will be posted at appropriate locations during the period of such closure, if feasible; however, failure to post such notices will not invalidate such closure nor will it invalidate any exclusion for violating this Section.

C. No person may enter any pedestrian plaza or any part of it that has been closed under this Section, or remain in such pedestrian plaza, or part of it, after having been notified of the closure and having been requested to leave by the Mayor, the City Administrator, or a police officer. A closure under this Section will not exceed 18 hours without the written approval of the Mayor.

D. When a state of emergency is declared under Section 15.04.040 of Portland City Code, the Mayor or other persons authorized by Section 15.08.020 or by Subsection B. of this Section may close any pedestrian plaza and recreation facility to normal use and may designate that facility for emergency operations, which operations may include providing emergency services to the public, subject to the following conditions:

1. The scope of use of pedestrian plaza facilities during such emergency will be defined by approved City emergency plans or by the Mayor.

2. If emergency services are provided in any pedestrian plaza facility, members of the public may be allowed into the facility, under the control of and subject to restrictions and conditions established by the organization responsible for the emergency operations at that facility.

3. Costs incurred by PBOT for emergency operations will be submitted to the City's Office of Emergency Management for reimbursement. Costs reimbursable under this Section include facility operating costs, costs to repair damage caused by the emergency operations, and the costs to restore the facility to the condition it was in at the commencement of the emergency.

4. As soon as practicable after the state of emergency is officially terminated, any pedestrian plaza facility closed on account of the emergency or used for emergency operations will re-open for normal use.

17.43.150 Trespassing and Areas Closed to the Public.

A. No person, without the consent of the City Administrator or a police officer, may enter any pedestrian plaza upon which the words "no admittance," or similar words indicating that entry is prohibited or restricted, are displayed.

B. No person may ride, drive, or walk on such parts or portions of the pedestrian plazas or pavements as are closed to public travel, nor may any person interfere with barriers erected in any pedestrian plaza.

C. No person may enter or remain in any pedestrian plaza in violation of an exclusion issued under this Section.

17.43.160 Condition of Parole or Probation or Judicial or Other Order.

No person may be in any pedestrian plaza when that person is required by any term or condition of the person's parole, probation, post-prison supervision, pretrial release agreement or other judicial order, to stay out of the pedestrian plaza. No person may be in any pedestrian plaza at any time if an exclusion of the person from that pedestrian plaza under these rules is in effect.

17.43.170 Rules and Regulations, Directions of Police Officers to be Obeyed.

No person may violate any rule or regulation established under the authority of these rules, nor refuse or fail to obey any lawful direction of a police officer. For purposes of this Section, a direction of a police officer is lawful if it directs a person to obey, or to cease a violation of, any law, rule or regulation applicable in the pedestrian plaza, or if it is otherwise reasonably related to protection of the health, welfare or safety of the person or of any other person in the pedestrian plaza or to the prevention of damage to property, or if it is reasonably necessary to preserve the peace or to prevent the disruption of any organized activity or permitted event in the pedestrian plaza, or if it relates to enforcement of any state law or City ordinance.

17.43.180 Pedestrian Plaza Exclusions.

A. In addition to other remedies provided for violation of these rules, or of any of the laws of the State of Oregon, any police officer may exclude any person who violates any applicable provision of law in any pedestrian plaza from that pedestrian plaza in accordance with the provisions of this Section.

B. For purposes of this Section, "applicable provision of law" includes any applicable provision of Portland City Code, of any City ordinance, or of any rule or regulation promulgated by the City under this Title, any applicable criminal or traffic law of the State of Oregon, any law regarding controlled substances or alcoholic beverages, any applicable County ordinance or regulation, and any ordinance or regulation adopted by the Tri-County Metropolitan Transportation District of Oregon (TriMet) governing any TriMet facility in that pedestrian plaza. For purposes of this Section, "applicable" means relating to the person's conduct in the pedestrian plaza.

C. An exclusion issued under the provisions of this Section will be for 30 days. If the person to be excluded has been excluded from any pedestrian plaza at any time within two years before the date of the present exclusion, the exclusion will be for 90 days. If

the person to be excluded has been excluded from one or more pedestrian plazas on two or more occasions within two years before the date of the present exclusion, the exclusion will be for 180 days.

D. Before issuing an exclusion under this Section, a police officer will first give the person a warning and a reasonable opportunity to desist from the violation. An exclusion will not be issued if the person promptly complies with the direction and desists from the violation. Notwithstanding the provisions of this Subsection, no warning will be required if the person is to be excluded for engaging in conduct that:

1. Is classified as a felony or as a misdemeanor under the following Chapters of the Oregon Revised Statutes, or is an attempt, solicitation or conspiracy to commit any such felony or misdemeanor defined in ORS:

a. Chapter 162 - Offenses Against the State and Public Justice;

b. Chapter 163 - Offenses Against Persons;

c. Chapter 164 - Offenses Against Property, except for ORS 164.805, Offensive Littering;

d. Chapter 165 - Offenses Involving Fraud or Deception;

e. Chapter 166 - Offenses Against Public Order; Firearms and Other Weapons; Racketeering;

f. Chapter 167 - Offenses Against Public Health, Decency and Animals;

g. Chapter 475 - Controlled Substances; Illegal Drug Cleanup; Paraphernalia; Precursors; or

2. Otherwise involves a controlled substance or alcoholic beverage; or

3. Has resulted in injury to any person or damage to any property; or

4. Constitutes a violation of any of the following provisions of Portland City Code:

a. Section 14A.40.030 - Indecent Exposure;

b. Section 14A.40.040 - Loitering to Solicit Prostitution;

c. Section 14A.40.050 - Unlawful Prostitution Procurement Activities;

d. Section 14A.60.010 - Possession of a Loaded Firearm in a Public Place;

e. Section 14A.60.020 - Discharge of a Firearm;

f. Section 14A.60.030 - Tear Gas and Stun Guns;

g. Section 14A.60.040 - Explosives and Bottle Bombs;

5. Is conduct for which the person previously has been warned or excluded for committing in any pedestrian plaza.

E. Written notice will be given to any person excluded from any pedestrian plaza under this Section. The notice will specify the date, length and place of the exclusion, will identify the provision of law the person has violated and will contain a brief description of the offending conduct. The notice will inform the excluded person of the right to appeal, including the time limit and the place of delivering the appeal. It will be signed by the issuing party. Warnings of consequences for failure to comply will be prominently displayed on the notice.

F. A person receiving such notice of exclusion may appeal to the Code Hearings Officer in accordance with the provisions of Title 22 of Portland City Code. The Code Hearings Officer will uphold the exclusion if, upon the Code Hearings Officer's de novo review, the preponderance of evidence admissible under the provisions of Title 22 of Portland City Code convinces the Code Hearings Officer that, more likely than not, the person in fact committed the violation, and if the exclusion is otherwise in accordance with law.

G. At any time within the period of exclusion, a person receiving such notice of exclusion may apply in writing to the Mayor for a waiver of some or all of the effects of the exclusion for good reason. If the Mayor grants a waiver under this Subsection, the Mayor will promptly notify the Portland Police Bureau's Records Division of such action. In exercising discretion under this Subsection, the Mayor will consider the seriousness of the violation for which the person has been excluded, the particular need of the person to be in the pedestrian plaza during some or all of the period of exclusion, such as for work or to attend or participate in a particular event (without regard to the content of any speech associated with that event), and any other criterion the Mayor determines to be relevant to the determination of whether or not to grant a waiver. Notwithstanding the granting of a waiver under this Subsection, the exclusion will be included for purposes of calculating the appropriate length of exclusions. The decision of the Mayor to grant or deny, in whole or in part, a waiver under this Subsection is committed to the sole discretion of the Mayor, and is not subject to appeal or review.

H. If an appeal of the exclusion is timely filed under this Section, the effectiveness of the exclusion will be stayed, pending the outcome of the appeal. If the exclusion is affirmed, the remaining period of exclusion will be effective immediately upon the issuance of the Hearings Officer's decision, unless the Hearings Officer specifies a later effective date.

I. If a person is issued a subsequent exclusion while a previous exclusion is stayed pending appeal (or pending judicial review, should a court stay the exclusion), the stayed exclusion will be counted in determining the appropriate length of the subsequent exclusion. If the predicate exclusion is set aside, the term of the subsequent exclusion will be reduced, as if the predicate exclusion had not been issued. If multiple exclusions issued to a single person for a single pedestrian plaza are simultaneously

stayed pending appeal, the effective periods of those that are affirmed will run consecutively.

J. No person may enter or remain in any pedestrian plaza at any time during which there is in effect a notice of exclusion issued under this Section excluding that person from that pedestrian plaza.

Chapter 17.44 Street Obstructions

17.44.010 Unlawful Acts Enumerated.

A. It is unlawful for any person to obstruct or cause to be obstructed any roadway, curb or sidewalk by leaving or placing, any object, material or article that may prevent free passage over any part of such street or sidewalk area. This Section does not authorize any action in violation of any other Title or regulation.

B. It is unlawful for any person to erect or cause to be erected any structure in, over or upon any dedicated street area, except that the City Administrator may, based on findings of necessity, grant permission for walls, fences and steps, that otherwise comply with the Code of the City. Also, on buildings whose front is located on the property line, the City Administrator may allow decorative facings, certain types of utility meters, utility valves, and other utility appurtenances, to extend into the street area an amount that does not interfere with the public use of said street. The City Administrator, upon determining a public need for areas occupied by such walls, fences, steps, facings, or utility meter valves and other appurtenances, may revoke said permission and the property owner or utility will be required to remove them from the street area.

C. It is unlawful for any person to erect or cause to be erected any sign in, over, or upon any public right of way. For the purposes of this section, “sign” is defined as provided in Portland City Code Title 32.

D. This Section does not apply to:

> **1.** Any use, sign, or structure for which a permit has been issued or that is erected under authority of any Title;
>
> **2.** Motor vehicles lawfully parked pursuant to City Regulations;
>
> **3.** Barricades placed by or with the approval of the City Administrator; nor
>
> **4.** Temporary closures and occupancies pursuant to this Chapter.
>
> **5.** Merchandise in the course of delivery may be placed on the sidewalk while actively loading and unloading for not longer than two hours provided that the provisions of City Code Section 14.50.030 Sidewalk Use are complied with.

Chapter 17.45 Advertising on Bus Benches

17.45.030 Advertising Bench Allowed.

For the free use and accommodation of persons waiting for public transportation, benches may be placed on the street area between the property line and the back of the through pedestrian zone and between the curb closest to the street center line and front of the through pedestrian zone in the public right of way of the City, and such benches may bear advertising messages. Permits for benches bearing advertisements may be granted only to the Tri-County Metropolitan Transit District (TriMet). For purposes of this Chapter, the term “bench” also applies to transit shelters owned, operated and maintained by TriMet.

17.45.040 Fee.

An annual fee as prescribed in Section 17.24.010 will be collected for every permit issued to install an advertising bench. This fee is due July 1 and must be paid by July 15. Permits may be issued without payment of any fee for benches where no advertising or other message will be displayed.

17.45.050 Revocation.

The City Administrator may revoke any permit issued under Sections 17.45.030 - 17.45.040 at any time in the event the public’s need requires it, the permittee fails to comply with the conditions of the permit, for any fraud or misrepresentation in the application, or for any reason that would have been grounds for denial of the initial application.

17.45.060 Authority.

The City Administrator is authorized to enter into an intergovernmental agreement with TriMet to govern procedures in the issuance of permits under this Section.

Chapter 17.46 Publication Boxes

17.46.010 Definitions.

A. Abandoned publication box means a publication box (including a co-located publication box) that has remained empty for 30 or more days. The basis for the conclusion that the publication box has not been stocked with new materials for 30 days or more will be documented in the enforcement records.

B. ADA ramp means a combined ramp and landing to accomplish a change in level at a curb in order to provide access to pedestrians using wheelchairs.

C. Co-located publication box means a publication box designed to dispense two or more different publications.

D. Crosswalk means any crosswalks either “marked” of “unmarked”. A “marked crosswalk” is any portion of a roadway at an intersection or elsewhere that is distinctly indicated for pedestrian crossing by lines or other markings on the surface of the roadway. An “unmarked crosswalk” is the imagined extension of a sidewalk or shoulder across a street at an intersection. An unmarked crosswalk exists at all intersections unless specifically marked otherwise.

E. Distributor means a person responsible for placing, installing, or maintaining a Publication Box.

F. Publication box means a free standing self-service or coin-operated box, container, or other dispenser installed, used, or maintained on the sidewalk or public right-of-way for the sale or distribution of newspapers, periodicals, or other publications to the general public.

G. Person means any natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, and/or the manager, lessee, agent, servant, officer, or employee of any of them.

H. Publication means any printed material.

I. Right-of-way means property subject to public use for existing or future streets, curbs, planting strips, or sidewalks. Property subject to a right-of-way may be through an express, implied, or prescriptive easement granted to or controlled by the City or other public entity or may be owned by the City or other public entity in fee simple or other freehold interest. The Portland Bureau of Transportation, as stewards of the right-of-way, administers and regulates use of the public right-of-way on behalf of the City.

J. Sidewalk means that portion of the street between the curb lines or the lateral lines of roadway and the adjacent property lines intended for use by pedestrians.

K. Street means all that area dedicated to public use for public street purposes and includes, but is not limited to, roadways, parkways, alleys and sidewalks.

L. Through pedestrian zone means the area intended for pedestrian travel as defined by the Portland Pedestrian Design Guide.

M. Transit platform means any Portland StreetCar platform or TriMet bus stop, bus layover zone or light rail station platform. This definition applies (but is not limited to) transit facilities located on public or private streets, in transit centers and on the transit mall.

17.46.020 Publication Boxes within the Right-of-Way.

Publication boxes may be placed within the right-of-way as allowed by this Chapter.

17.46.030 Limitations on Publication Box Placement.

A. All publication boxes must be placed on a sidewalk, parallel to the curb and face the through pedestrian zone.

B. Publication boxes that meet all of the requirements of this code may be chained to a sign post, street light or signal/utility pole. If the sign post, street light or signal/utility pole is painted a plastic or rubber coated steel chain/cable is required. The distance between the publication box and the sign post, street light, or signal/utility pole may be no more than six inches. If the sign post, street light, or signal/utility pole is not owned by the City, then the written permission of the owner of such property is required.

C. Publication boxes may not be fastened in any way to street furniture, public art, bicycle racks or street trees.

D. Publication boxes placed within the right-of-way must be located in groupings with a combined length of no greater than 10 feet, immediately abutting one another. At least 20 feet must be left clear of publication boxes between groupings of publication boxes along the same block face.

E. The maximum height of any publication box is 50 inches. The maximum width of any publication box is 24 inches. The maximum depth of any such publication box is 24 inches.

F. Publication boxes cannot be located:

1. within a traffic island, median or traffic circle;

2. within five feet of any crosswalk;

3. within five feet of a fire hydrant;

4. within five feet of a drinking fountain;

5. within five feet of any public art;

6. within five feet of any driveway, alley, or curb cut;

7. within five feet of any portion of an ADA ramp;

8. within five feet of a marked disabled parking space;

9. within five feet of a marked loading or taxi zone;

10. within a transit platform unless allowed by Portland StreetCar or TriMet;

11. at any distance less than two feet from the street side face of the curb, measured to the side of the publication box closest to the curb;

12. within the corner of two intersecting sidewalk corridors, as determined by the adjacent property lines extended;

13. where the unobstructed through pedestrian zone is less than eight feet within pedestrian districts and city walkways, or six feet on all other sidewalks. (Sidewalk classification for this purpose will be determined pursuant to the City's Transportation System Plan);

14. where the publication box may cause damage to any landscaping, including but not limited to lawn, flowers, shrubs or trees;

15. where the publication box may cause damage to or interfere with the use of pipes, vault areas, telephone or electrical cables/wires or other utility facilities;

16. on any grating, manhole cover or access lid;

17. where the publication box obstructs access to parked vehicles;

18. where the publication box obscures any fixed regulatory or informational sign.

17.46.040 Co-located Publication Boxes.

A. A person may install a co-located publication box, at the person's own expense, in compliance with all of the following conditions:

1. Placement of the co-located publication box complies with all sections of this Chapter and all required permits have been obtained (per TRN-8.08);

2. The proposed co-located publication box provides sufficient compartments for distribution of all publications being distributed within 175 feet of the proposed location for the co-located publication box as of the date of installation of the co-located publication box; and

3. The co-located publication box permittee agrees in writing as a condition of issuance of a permit to be responsible for ensuring compliance with the maintenance requirements of this Chapter for the co-located publication box.

4. A person who installs a co-located publication box may not charge a distributor for distribution of its publication from the co-located publication box.

B. Once a co-located publication box has been installed, no freestanding publication boxes may be placed within 175 feet of the co-located publication box. If the co-located publication box is full, a distributor who wishes to distribute a publication at that location may do so by installing, at its own expense, an additional identical co-located publication box immediately adjacent to the existing co-located publication box. The additional co-located publication box must comply with all other requirements of this chapter for placement of co-located publication box. Once installed the maintenance and management will be the responsibility of the permittee of the existing co-located publication box.

C. No permittee of a co-located publication box may accept anything of value for the display of any speech or image on the co-located publication box. The distributor may display the publication within the window to which that box is assigned in the co-located publication box. The distributor may also display any speech or image of its choice, limited to no more than four inches in height, on each of the following: the front, side, back and door of the co-located publication box. No other speech or image may be displayed with the exception of the notice required by Subsection 17.46.050 B.

D. Co-located publication boxes must be black in color and the design must be similar to existing co-located publication boxes installed around Pioneer Courthouse Square. Co-located publication boxes within design districts may be subject to Design Review and through that process may be allowed to vary in standard color or other elements.

17.46.050 Maintenance Requirements.

A. Each publication box charging a fee must be equipped with a coin return mechanism to permit the person using the machine to secure an immediate refund in the event the person is unable to receive the publication paid for. The coin return mechanisms must be maintained in good working order. (This requirement does not apply to publication boxes used for distributing free publications.)

B. Each publication box must have affixed to it in a readily visible place so as to be seen by anyone using the publication box a notice setting forth the name and business address of the distributor and the telephone number of a working telephone service to call to report a violating condition, a malfunction, or to secure a refund in the event of a malfunction of the coin return mechanism. In a co-located publication box the required information is for the permittee of the box.

C. Each publication box must be sufficiently weighted, or attached to a sign post, street light or signal/utility pole as per, Subsection 17.46.030 B., or to another publication box to provide stability and safety.

D. Publication boxes may not have free-flying materials attached to them, such as balloons, windsocks, papers, etc.

E. Each publication box must be maintained in a neat and clean condition and in good repair at all times. Specifically, each publication box must be serviced and maintained so that:

1. it is reasonably free of dirt and grease;

2. it is reasonably free of chipped, faded, peeling and cracked paint;

3. it is reasonably free of rust and corrosion;

4. it is reasonably free of graffiti, litter and other debris;

5. clear plastic or glass parts are unbroken and reasonably free of cracks, dents, blemishes and discoloration;

6. paper or cardboard parts or inserts are reasonably free of tears, peeling or fading;

7. structural parts are not broken or unduly misshapen.

17.46.060 Enforcement.

A. If a publication box (including a co-located publication box) is found to be in violation of any section of this Chapter, an attempt will be made to contact the permittee of a co-located publication box, or the distributor of the publication box to provide notification of the violation. In the event the City is unable to contact the permittee or distributor after 15 days of noted violation, the publication box (including a co-located publication box) will be deemed abandoned.

B. Violations that are not corrected within 15 days of notification will be subject to fine per the Transportation Fee Schedule (per TRN-3.450).

C. Publication boxes (including a co-located publication boxes) with violations that go uncorrected for 30 days after notification, as well as publication boxes (including a co-located publication boxes) that remain empty for a period of 30 consecutive days will be deemed abandoned and may be removed by the City. The City will store all removed publication boxes (including a co-located publication boxes) for three months, during which time the permittee of a co-located publication box, or the distributor of the publication box may redeem them after paying any outstanding fines, penalties and storage fees. After three months, the City may auction, sell, or dispose of any publication boxes (including a co-located publication boxes) that is not redeemed from storage.

17.46.070 Liability.

A. The distributor of any publication box is liable for any and all damages to any person who is injured or otherwise suffers damages resulting from the placement of a publication box within the right-of-way, or by reason of the distributor's failure to keep the publication box in safe condition and good repair. Distributors are liable to the City for any amounts that may be paid or incurred by the City by reason of all claims, judgments or settlements, and for all reasonable costs of defense, including investigation costs and attorney fees, by reason of the distributors' failure to satisfy the obligations imposed by the Charter and Portland City Code to maintain and repair such publication box.

B. The adjacent property owner is not liable for any damages to any person who is injured or otherwise suffers damages resulting from the placement of a publication box directly adjacent to their property.

17.46.080 Appeal.

Any permittee of a co-located publication box, or the distributor of the publication box aggrieved by the City's determination may appeal that determination to the Code Hearings Officer as provided in Chapter 22.10 of this Code. Notwithstanding any other provisions of this Code, there is a nonrefundable fee of $250 for any appeal pursuant to this Section. Such fee must accompany any such appeal and no such appeal will be considered filed or received until such fee is paid in full.

Chapter 17.48 Moving Buildings

17.48.010 Permit Required.

It is unlawful for any person to move any building or structure through any street or to occupy any portion of any street for the removal of any building or structure, without first obtaining a permit as provided in this Chapter and paying the fees elsewhere prescribed in Section 17.24.020.

17.48.020 Application and Fee Deposit.

Application for a permit for moving a building or structure must be in writing and state the number of the lot and block upon which the building is located, the size of the building, the number of the lot and block to which it is proposed to remove the same, the route proposed to be taken, the length of time required for moving, and the name of the owner of the building or structure. Each application must be accompanied by a fee as prescribed in Section 17.24.020. The application fee is nonrefundable and is in addition to the permit issuance fee, which will be collected prior to the issuance of the permit.

17.48.030 Moving Permit.

A. When a building to be moved does not exceed three stories in height, the City Administrator may issue a moving permit, fixing the route to be used for the move and upon the terms as the City Administrator may deem necessary. The Director of the Bureau of Transportation will keep a copy of the permit so issued.

B. When a building to be moved exceeds three stories in height, any permit for moving must be issued by the Mayor. The permit will set forth any conditions upon the moving that may be deemed necessary and that are not provided for in this Chapter and will set forth the City Administrator's estimate of the cost to the City of issuing the permit, investigating the application, and supervising the moving, to be paid by the applicant for permit as a part of the fee elsewhere prescribed in Section 17.24.020.

C. No moving permit may be issued until the applicant has filed with the Auditor an insurance policy or certificate of insurance and form of policy for public liability insurance naming as additional insured's the City, its officers, agents and employees, in the amounts of at least $1 million, or the maximum limits of the Oregon Tort Claims Act

as subsequently amended, whichever is greater; the insurance must also contain a provision that it is not cancelable during the term of the permit.

D. A moving permit may not be issued until the applicant has deposited with the Treasurer a sum sufficient, in the judgment of the City Administrator, to cover the cost of repairing any and all damage or injury to street or streets or their improvements, including street trees, that may result from the moving operation and also such sums as the Bureau of Transportation and Portland Fire & Rescue, and any other City bureau involved, may require to cover the cost of moving, repairing, restoring or replacing any wires, signals, trees or other properties or installations that may be necessary in preparation for or in consequence of any moving operation. Upon completion of the moving operation, the City Administrator will submit to the Treasurer a statement of the costs of any operations, repairs or replacements occasioned by or as the result of the moving operation, and other information as the Treasurer may request, in order to reimburse the proper account from the money so deposited, and will authorize the Treasurer in writing to refund the remaining portion of such deposit, if any, to the depositor. If the cost exceeds the amount deposited, the depositor must promptly reimburse the affected bureau or bureaus for such additional cost.

17.48.040 Regulations.

The moving of a building or structure under a moving permit must be continuous day-by-day during all the hours specified by the City Administrator until completed, with the least possible obstruction to the streets occupied. It is unlawful for any person moving a building or structure under a moving permit to leave the building or structure or any portion of it stationary in the street, road or highway area for a period in excess of 2 hours during the hours of the day specified by the City Administrator, unless an emergency exists by reason of unforeseen difficulties encountered in cutting wires, trees, or removing obstructions in the course of the route selected. Removal and pruning of trees must be conducted in accordance with the City Forester’s requirements including the need to obtain tree permits. All movement in the street area must be completed within an elapsed time of 36 hours unless application is made for a longer period of time and permission is specifically granted by the City Administrator prior to the commencement of any movement; provided, however, that if any unforeseen difficulties are encountered and an extension of time is requested from the City Administrator prior to the expiration of 36 hours from the commencement of the moving operation, the City Administrator may extend the 36 hour time by specific additional time as deemed necessary.

Red lights or other warning devices sufficient to warn and protect traffic must be displayed in conspicuous places at or on a building or structure being moved during the hours in which streetlights are lighted. The City Administrator may require additional warning devices based on findings that the warning devices displayed by the mover are insufficient.

17.48.050 Cutting Wires in Moving Operation.

When overhead wires in any street designated in a permit for moving a building or structure will interfere with the moving operation, the permittee must give to the owner of the wire, including the City when it is the owner, 48 hours' notice of intent to have the wire temporarily removed. The permittee must pay in advance or tender to the owner, other than the City, the amount estimated to be necessary to remove the wire and replace the same. When the City owns the wire, the cost of temporary removal and replacement will be included in the requirement for deposit prerequisite to permit, as provided in this Chapter. If the permittee disputes the amount demanded by the owner as the advance or tender, the amount will be determined by the City Administrator. The permittee of a moving permit must pay the actual expense of removing and replacing the wire and, as soon as the actual expense can be determined, the permittee must immediately pay any deficit and the owner must refund any surplus to the permittee. Upon receipt or tender of the amount estimated or the amount fixed by the City Administrator in case of dispute, the owner of the wire must remove it in time to permit the passage of the building or structure without unnecessary delay.

Chapter 17.52 Trees

17.52.010 Relationship to Other City Regulations.

Specifications and responsibilities for maintenance of trees with regard to public improvements are found in Chapter 11.60 of Title 11, Trees.

17.52.020 Tree Tubs.

Any person desiring to place a tub or receptacle for a tree or shrub on top of the paved or hard surfaced portion of street area must first apply to the City Administrator for a permit. The permit may be issued by the City Administrator under such safeguards and conditions as the City Administrator and the City Attorney may find necessary or appropriate to protect the public safety and to protect the City against claims of liability. The permit may be revoked by the City Administrator for any violation of conditions or terms of the permit or for neglect of the plantings or abandonment of use. After revocation, it is unlawful for the permittee or permittee's successor in Title to the abutting property to allow the tub or receptacle to remain in street area.

Chapter 17.56 Public Utilities

17.56.005 Definitions.

For the purposes of this Chapter, **public utility** includes any person that installs, constructs, reconstructs, repairs, alters or maintains facilities for the distribution, transmission or collection of sewer, water, gas, petroleum products, steam, electricity, telecommunications, or other services, together with any associated wires, cables, poles, conduits, appliances or apparatus in, on, over, through or in any manner beneath the surface of the streets and that person currently possesses a franchise or privilege granted by the City or is a City bureau charged with providing such service to the public.

17.56.010 General Bond.

In cases where the City has granted or may grant revocable permits to a railway company or other public utility for the use of streets, alleys, or public places, the grantee, instead of filing a bond or bonds for the faithful performance of the conditions and obligations in any permit prescribed, may file with the City Auditor its written undertaking in the penal sum of $5,000, without sureties, duly executed by the company under its corporate seal, in which it will undertake generally and agree to keep and perform the duties, obligations, and conditions of all revocable permits for the use of public streets, alleys, or public places then held or that may be granted to or held by it, and particularly that it will comply with all requirements for paving, repairing, or otherwise improving streets and sidewalks and for the removal of its property and restoration of the portions of the streets, pavements, or sidewalks, according to the terms and conditions of the permits respectively.

17.56.020 Plans for Underground Construction by Franchise Holder.

Any person conducting a business within the City under a City franchise or permit, giving to such person the right to construct underground conduits or to lay pipes underground, must, before entering upon any street for the purpose of cutting into, digging trenches in, or opening any street preparatory to the construction of any conduit or to the laying of any pipes, wires, or cables, file with the Director of the Bureau of Transportation detailed plans and specifications of all the proposed construction work. Such plans must be drawn to a scale prescribed by the City Administrator and such specifications must state the manner of construction and the kind of materials proposed to be used. If the plans and specifications are satisfactory to the City Administrator, the City Administrator may issue a permit to the person filing them to construct the work. If the City Administrator does not approve the plans or specifications or orders changes made to them, the person submitting them must comply with the City Administrator’s requirements and must file new plans and specifications that are satisfactory to the City Administrator. If these are approved by the City Administrator, the person may then obtain a permit and proceed with the construction of the work. If in the performance of the work it becomes necessary to deviate from such plans and specifications, deviation may not be made until first approved by the City Administrator.

Upon completion of the construction for which a permit has been issued, a map showing the location at depths below the surface of the ground of all construction work done under the permit must be filed with the Director of the Bureau of Transportation. If changes have been made after the permit is issued, these changes must be shown in an easily distinguishable manner. The final map must bear a statement to the effect that the work done under the permit is correctly shown and must be signed by an authorized representative of the company doing the work.

The provisions of this Section apply both to dedicated right-of-way and to proposed right-of-way in approved land divisions that will be dedicated to the public upon plat recording. Permits issued for underground construction in proposed right-of-way require acknowledgment that the permittee will hold the City harmless against any liability that

may occur prior to dedication of the right-of-way, and further acknowledgment that the permittee assumes all risk of loss that may arise in the event the City or any other public agency subsequently requires changes in or additions to plans or refuses to approve all or any part of permittee's improvements. Permits may be issued only after street improvement plans have been approved.

17.56.030 Monthly Payments by Utility Companies.

Public utility companies may pay once a month for permits issued under this Title, but such payments must be made on or before the 15th day of each month following the month in which the permits were issued.

17.56.050 Poles or Wires in Public Area.

It is unlawful for any person to erect any pole or to stretch wires or cables in, under or over any street, park, public way or public ground for any purpose whatsoever unless a permit or franchise for it has first been granted by the City.

17.56.060 Relocation and Discontinuation of Facilities.

A. Relocation of facilities.

1. The City Administrator may direct any person owning, operating, or managing any public utility in the City and using facilities located in public right-of-way, to temporarily or permanently remove, relocate, change or alter the position of facilities installed by that person or that person's predecessor within the public rights-of-way whenever required. Except in the case of an emergency or as otherwise agreed to by the City Administrator, the temporary or permanent removal, relocation, change or alteration of the position of facilities must be completed within the timeframe dictated by the written relocation demand letter issued by the City Administrator. A person may request additional time to complete the removal or relocation, which will not be unreasonably denied. The City may issue such notice when the City has determined that such removal, relocation, change, or alteration is reasonably necessary for:

a. The construction, repair, maintenance or installation of any City improvement or other public improvement in or upon the public rights-of-way, whether a public work by the City or its contractor or the construction, repair, maintenance or installation of a public improvement pursuant to the requirements of the City's development code;

b. The operations of the City or any governmental entity in or upon the public rights-of-way for governmental purposes; or

c. When required by the public interest, as determined by the City Administrator.

2. Before commencing removal or relocation, the applicant must obtain a permit as required by Chapter 17.24.

3. The relocation or removal of utility facilities will be at no expense or charge to the City.

4. Should the applicant fail to remove or relocate the facility in accordance with notice from the City Administrator, the City Administrator may declare the facility a nuisance. The City Administrator may enforce the removal or relocation by compliance order, stop work order, abatement proceedings, or civil action as authorized by law. For any removal or relocation enforced by the City, the Director of the Bureau of Transportation will keep a complete account of all related costs and expenses incurred by the City. The City Administrator will provide written notice to the person seeking payment of the City's costs and expenses. If the person fails, neglects, or refuses to pay all of the City's costs and expenses, the City Administrator may have the City Attorney institute legal proceedings in the name of the City to collect any unpaid removal or relocation costs or expenses. In the event that it is necessary for any action or proceeding is commenced or if it becomes necessary for the City to commence an action or proceeding in a court of competent jurisdiction for removal or relocation or to recover removal or relocation costs, the City may be seek to recover all available statutory costs and disbursements.

5. If removal or relocation is necessary due to a public improvement under a contract entered into between the City and an independent contractor and the failure to remove or relocate within the time specified results in payment to the contractor of any claim for extra compensation for any work or delay under said contract, the applicant will be liable for payment of the amount paid to the contractor as a direct result of the failure to comply with the time requirements of the City.

B. Discontinuation of facilities. If a person intends to discontinue using facilities of its system within all or part of a particular portion of the streets and does not intend to use said facilities again, the person must submit to the City Administrator for the City Administrator's approval a completed application describing the structures or other facilities and the date on, and the method by which the person will remove such facilities.

17.56.070 Placement of Overhead Wires.

Any public utility erecting, placing, or maintaining in the City any overhead wire or cable must affix or attach the wire or cable in compliance with State regulations, in conformity with the best engineering practice, and at a height and in a manner to protect the public safety.

17.56.080 Service Shutoff Outside Premises.

When so required by the occupant of premises, or if the premises are unoccupied, whenever requested by the owner, a public utility may shut off or disconnect its service facilities outside and away from the building or structure previously served unless the facilities are an integral part of the building or structure.

17.56.090 Control of Electrical Currents.

It is unlawful for any person using or employing electrical current to fail or neglect to provide and put in use such means, appliances and apparatus as will, so far as practicable, control and effectually contain the current or energy in isolated paths and on their own wires, conductors or structures, so as to prevent damage or injury through discharge to ground to City pipes and structures and the pipes or structures of others. It is unlawful for any person using or employing electrical current to fail to take such measures as are necessary and appropriate to prevent contribution to injury or damage to pipes or structures belonging to the City or others. Conviction for violation of this Section will not take away or abridge the right of the City or any other person to damages for injury to its pipes or other structures resulting from escape of electrical current.

Chapter 17.60 Underground Wiring Districts

17.60.010 Designated.

The following described districts designated as “District A,” “District B,” “District C,” “District D,” “District E” and “District F” mean and include the following streets in the City:

District A: Beginning with the intersection of the south line of SW Madison St with the east line of SW Front Ave, running thence westerly, along said south line of SW Madison St, to its intersection with the west line of SW Broadway; thence northerly along said west line of SW Broadway, to its intersection with the south line of SW Yamhill St; thence westerly along said south line of SW Yamhill St to its intersection with the west line of SW 14th Ave; thence northerly, along said west line of SW 14th Ave to its intersection with the north line of West Burnside St; thence easterly, along said north line of West Burnside St to its intersection with the west line of NW Broadway; thence northerly, along said west line of NW Broadway to its intersection with the north line of NW Glisan St; thence easterly along said north line of NW Glisan St to its intersection with the east line of NW Front Ave; thence southerly, along said east line of NW and SW Front Ave to the place of beginning.

District B: East Burnside St, SE Morrison St and SE Hawthorne Blvd, from the east line of SE and NE 3rd Ave to the west line of SE and NE 6th Ave; and also those portions of other streets parallel to it lying between the south line of NE Couch St and the south line of SE Hawthorne Blvd that are included between a line drawn 100 feet east of and parallel to the east line of SE and NE Grand Ave; and a line drawn 100 feet west of and parallel to the west line of SE and NE Grand Ave; and SE Grand Ave, from the south line of NE Couch St to the south line of SE Hawthorne Blvd; it being provided, however,

that any crossings over streets in this District that were installed before January 1, 1950 will be permitted to remain; and it being further provided that additional machine-turned wooden street light poles and overhead wires for street lighting will be permitted in said District, if approved by the City Administrator.

District C: NE Martin Luther King, Jr. Blvd (NE Union Avenue) from 100 feet north of the north line of NE Davis St to the south line of NE Going St, it being provided however, that any street light poles and traffic signal poles and any crossings over NE Martin Luther King, Jr. Blvd (NE Union Ave) that were installed before January 1, 1950 will be permitted to remain; and it being further provided that additional machine-turned wooden street light poles and overhead wires for street lighting will be permitted in said District, if approved by the City Administrator.

District D: Beginning with the intersection of the center line of SW 4th Ave and the north line of SW Market St, running thence easterly along said north line of SW Market St to its intersection with the center line of SW Harbor Dr; thence southerly along said center line of SW Harbor Dr to its intersection with the south line of SW Arthur St; thence westerly along said south line of SW Arthur St to its intersection with the center line of SW Barbur Blvd; thence northerly along said center line of SW Barbur Blvd and along the center line of SW 4th Ave to the place of beginning.

District E: NE Airport Way lying between the following described Line 1 and Line 2. Line 1: Beginning at the most northerly corner of Tax Lot (2) of Lots 1 and 2, Block 112, Parkrose, thence running northeasterly in a straight line to a point on the westerly line of NE 112th Ave, said point being the most westerly point in a common line between the I-205 Freeway right-of-way and NE 112th Ave, and located southerly of the intersection of NE 112th Ave with NE Marine Dr. Line 2: The common boundary line between Portland and the City of Gresham approximately 826 feet north of the north line of NE Sandy Blvd at its intersection with NE 181st Ave; also public use easements 10 feet in width granted to the City and adjacent to either side of NE Airport Way as described above, it being provided, however that any crossings over NE Airport Way and the said 10 feet wide public use easements that were installed prior to November 1, 1988, will be exempted from this District.

District F: All that portion of the SW Gibbs St right of way between SW Bond St and the east line of SW Barbur Blvd and all that portion of the Pacific Highway (I-5) right of way and S.W. Naito Pkwy (S.W. Front Ave) right of way included in a strip of land 60.00 feet in width, 30 feet on each side of the center line of SW Gibbs St as such streets were platted on CARUTHERS ADDITION TO THE CITY OF PORTLAND, Multnomah County, Oregon. Overhead lines located on SW Corbett St running perpendicular to SW Gibbs St are exempt from this requirement.

17.60.020 Overhead Wires Prohibited.

A. It is unlawful for any person to erect, construct, or maintain on or over the surface of any street or public use easement designated in Section 17.60.010 within an underground wiring district, any wires, poles, cables, appliances, or apparatus of any

kind, on, through or by means of which electrical current or communications are transmitted or used.

B. Whenever all existing utility facilities are located underground within a public right-of-way, a person with permission to occupy the same public right-of-way must also locate its new facilities underground.

17.60.030 Application for Permit.

Any person owning a franchise or privilege to erect, construct, or maintain wires, cables, poles, vaults, manholes and other structures, appliances or apparatus on, over, or by means of which electric current is transmitted or used for any purpose in any portion of an underground wiring district, who desires to install, construct, reconstruct, repair, alter or maintain the same must file with the City Administrator an application for a permit to install or maintain the facilities in trenches, conduits, structures or subways beneath the surface of the streets or parts of them within the underground district as required. The application must be accompanied by the agreement of the applicant promptly to repave and repair any of the streets or portions of them that are disturbed or undermined by the applicant as the result of exercise of the permit, if granted, the repaving and repair to be made in compliance with the provisions of this Title.

17.60.040 Designation of Space.

A. Upon the filing of an application under Section 17.60.030, the City Administrator will designate the portion of space and location within the street area or public use easement designated in Section 17.60.010 to be used by the applicant. No part or parts of street area may be used except as designated by the City Administrator.

B. No facilities may be constructed to prevent the City from constructing sewers, grading, paving, repairing and/or altering any street; laying down, repairing or removing water mains; or constructing or establishing any other public work or improvement. All such work must be done so as not to injure or prevent the unrestricted use and operation of the permittee's system. However, if any portion of the permittee's system interferes with the construction or repair of any street or public improvement, including construction, repair or removal of a sewer or water main, the City may direct the permittee to relocate as provided in Section 17.56.060.

17.60.050 Filing Plans and Specifications.

The applicant for permit must file with the City Administrator plans and specifications for an underground system for conduction of current or energy in trenches, conduits or subways for wires, cables, and appliances including the necessary vaults, manholes and service boxes, and, in addition, must file a map showing the general route and location of the trenches, conduits or subways.

17.60.060 Issuance of Permit.

Subject to payment of the applicable fees prescribed in Portland City Code Chapter 7.12, if the City Administrator finds that the application and the plans, specifications and route map filed are satisfactory, the City Administrator may approve the same and issue to the applicant a permit to enter upon the designated streets, public use easements designated in Section 17.60.010, or parts of them in an underground wiring district, to make such excavation in them as may be necessary to construct conduits or subways, to lay wires, cables and appliances in them, and to build vaults, manholes or service boxes underground within the space designated by the City. It is unlawful to make any excavation in any street or public use easement designated in Section 17.60.010 to install underground facilities, without a permit from the City Administrator and paying the fees set forth in Section 17.24.020. All excavation work and restoration pursuant to the permit must be under the general supervision of the City Administrator and must be made only after notice to the City Administrator.

17.60.080 Restoration of Streets and Public Use Easements.

Upon the installation and completion of any underground system of wires and appliances, the person installing it must restore the surface of all pavements, improvements, landscaping and foundations that were disturbed or undermined, in as good order and condition as they were prior to the installation, in accordance with the plans and specifications and as directed by and to the satisfaction of the City Administrator.

17.60.090 Use of Sidewalk Space and Building Fronts.

Any person owning or operating underground wires, conduits, or subways in compliance with this Chapter may connect the same with the side lines of the street, if approved by the City Administrator, and to that end, may use the space under the streets and sidewalks as may be necessary or convenient, and may also have access to all area-ways under sidewalks, and may place and maintain such wires, cables and appliances in proper conduits in and through such area-ways or spaces. If wires or cables are run up the sides or in front of any building, such wires or cables must be placed in proper enclosures as are required by the relevant state and local regulations governing the placement of such wires or cables to prevent danger to life or property. If there are no relevant regulations, the City Administrator may establish such requirements as the City Administrator determines necessary to prevent danger to life or property. No wire, cable, or the supports for them may cross any window or opening in any building.

17.60.100 Location Maps.

Every person to whom a permit has been granted pursuant to this Chapter must, upon completion of the installation of underground wires, cables, and appliances, file with the Director of the Bureau of Transportation maps, in a scale and format determined by the City Administrator, showing the location of the conduits or subways, wires, cables, vaults, manholes, and service boxes under said streets or within said public use

easements designated in Section 17.60.010 or parts of them. The Director of the Bureau of Transportation will maintain a record of it.

17.60.110 Exemptions.

The provisions of this Chapter with respect to underground construction or installation do not apply to the following:

A. Wires, poles, and appliances for lighting the streets of the City under contract with the City, or under private contract, connected with wires or cables in underground conduits or subways of a public utility; but all wires for street lighting above the surface of the streets must be placed inside or on the outside of poles used in connection with such street lighting as directed by the City and must be connected underground from the foot or base of the respective poles directly with the nearest wires or cables placed in such conduits or subways; provided that wires for street lighting if put on the outside of poles must be placed in proper enclosures so as not to endanger life or property, excepting, however, wires above the ground connecting the poles and their wires with the light fixture on the pole.

B. Traffic signal installations made and maintained by the City. When deemed appropriate by the City Administrator, agreements may be made with private property owners permitting attachment of traffic signal installations to privately owned buildings, and the City Administrator is authorized to enter into or to approve agreements relating to them, such agreements having first been approved as to form by the City Attorney. The agreements made prior to the effective date of this Chapter are ratified and confirmed.

C. Wires, cables, and appliances for electric signs, advertisements, and decorative lighting, connected with wires or cables in underground conduits or subways of a public utility; provided that all such wires for electric signs, advertisements, and decorative lighting must be carried from or connected with the building, and if such wires are placed on the sides or front of any such building, they must be placed in proper enclosures so as not to be dangerous to life or property, and the wires must be connected underground from the foundations or basement of the respective buildings directly with the nearest wires or cables placed in such conduits or subways. No wire for electric signs, advertisements, or decorative lighting may cross any street above ground.

D. Wires, cables, and appliances for telegraph, telephone, district telegraph, and fire alarm systems connected with wires or cables in underground conduits or subways of a public utility or a City system; provided that all wires for telegraph, telephone, district telegraph, and fire alarm systems above the surface of streets must be placed on the sides or front of buildings in proper enclosures as the City Administrator may find necessary to prevent danger to life or property, and these wires must be connected underground from the foundations or basement of the buildings directly with the nearest wires or cables in conduits or subways.

E. Wires, poles and attachment hardware for transit electrification systems; provided that all wires or hardware for transit electrification systems above the surface streets must be placed as the City Administrator may find necessary to prevent danger to life or property within the requirements of the National Electrical Safety Code (ANSI C 2), and that if required, these wires must be connected to underground wires from the foot or base of the respective poles.

F. Appliances or appurtenances on, through, or by means of which telecommunications data is wirelessly collected or transmitted, as defined by the City's Transportation Administrative Rules. Attachments to infrastructure not owned and maintained by the City must adhere to 3rd party attachment rules as laid out in the City's Transportation Administrative Rules.

G. Wires, cables, and appliances for decorative lighting, electric heating devices, and other approved electrical uses associated with permitted outdoor dining installations, being in compliance with the requirements described in Administrative Rule TRN-10.04, provided that all such wires must be carried from or connected with an adjacent building, and if such wires are placed on the sides or front of any such building, they must be placed in proper enclosures so as not to be dangerous to life or property. No wire may cross or impede any travel lane unless approved by the City Administrator.

17.60.120 Joint Use of Conduits.

Nothing in this Chapter may be construed to prevent or impair any agreement between or among persons affected by this Chapter designed to provide for joint ownership, control, or use of conduits or subways.

Chapter 17.64 Protection of City Owned Telecommunications Line and Equipment, Street Lighting and Traffic Signal Systems

17.64.010 Interference With.

It is unlawful for any person to interfere with, obstruct, change, injure, impair, or remove any pole, post, wire, cable, conduit, box, gong, or other City-owned telecommunications lines and equipment, street lighting, or traffic signal systems except as provided by this Chapter.

17.64.020 Permit for Interference.

It is unlawful for any person to remove, temporarily or otherwise, or to change any part of the wire or cable or any pole or post or any facility belonging to or appertaining to City-owned telecommunications lines, equipment, street lighting, or traffic signal systems without first obtaining a written permit to do so. A person finding it necessary in the pursuit of a lawful purpose to remove, interfere with, or disturb any portion of City-owned telecommunications lines and equipment, street lighting, or traffic signal systems

must give, or cause to be given, to the City Administrator a notice in writing, at least two hours before it is necessary to interfere with or disturb any portion of such systems, stating the locality at which, and in the manner in which it will be necessary to remove, interfere with, or disturb the system involved. No notice may be given between the hours of 4 p.m. and 8 a.m. The City may issue a permit for the interference if they find that the interference is necessary, and may restrict the work or the time of the interference. The permit will specify fully the change required and any restrictions. Any person aggrieved by the decision may appeal such decision to the City Administrator. No permit will be required for emergency repairs by a public utility necessitating interference with City system, equipment or apparatus, but the public utility will notify the City as soon as possible and the public utility must make any further changes required by the City.

17.64.030 Supervision and Expense of Work.

All work done by or for a permittee under this Chapter must be performed under the supervision of and completed to the satisfaction of the permitting official. All work done under a permit issued pursuant to this Chapter must be at the sole expense of the permittee, and if the City is requested to do such work the fees applicable will be as prescribed in the finance regulations.

17.64.040 Use of City Poles or Posts.

A. It is unlawful for any person to attach any animal, or to affix or attach any bill, sign, advertisement of any kind, or any contrivance or device of any kind or nature other than City official notices, to any pole, post, wire, cable, fixture or equipment of City-owned telecommunications lines and equipment, street lighting, or traffic signal systems, except as authorized by the City.

B. Public utilities operating in the City under franchise or permit may attach their utility wires or cables to poles or posts of City-owned telecommunications lines and equipment, street lighting, or traffic signal systems, to the extent specifically permitted by the City, in such locations as the City may specifically designate, in consideration of reciprocal privileges extended to the City when necessary or convenient for the City to use the poles of the utility in maintaining the City systems.

Chapter 17.68 Street Lights

17.68.010 Injuring or Destroying.

It is unlawful for any person to cut, break, injure, destroy or deface any pole, post, standard, tower, lamp, wire, cable, conduit, fixture, appliance or appurtenance erected, constructed or used for the public lighting or the City, whether owned by the City or by any public utility contracting with the City for public lighting. Any person injuring or destroying street lighting facilities must repair and/or replace them in accordance with current design standards and the approval of the Bureau of Transportation. All costs must be paid by the person that injures or destroys the street lighting facilities.

17.68.020 Private Street Lighting.

A. It is unlawful for any person to erect or maintain any lamp post, standard, or fixed light in or upon any street or public place except by the authority of written permit issued by the City Administrator and in compliance with the provisions and requirements of this Section and paying the fee as prescribed in Section 17.24.020.

B. Any person desiring a permit to erect and maintain a lamppost, standard or fixed light on any street or public place may make written application to the City Administrator. The application must state the exact location of such post or light, the name of the street and the number of the building, the number or other designation of the lot and block or parcel of land in front of which the post, standard or light is to be erected and maintained, and complete specifications of the lamp post, standard or light the applicant proposes.

C. Private street lights must be separated by not less than 40 feet on the same side of any street unless a lesser distance is approved by the City Administrator because of particular design and environmental requirements. The height above the street grade and the exact location must be approved by the City Administrator before issue of the permit.

D. Private lighting will be in addition to, not in lieu of, publicly owned lighting on the right-of-way. This condition is necessary in order to guarantee that the right-of-way is lit to a level sufficient to maintain public safety, and that there be no interruption in the service due to absence, cutbacks, or other circumstances effecting the permittee.

E. All private lamp posts, standards and lights must at all times be kept in good repair and working order at the expense of the permittee.

F. A private street light permit issued under this Section may be revoked for any of the following grounds:

1. Interference with a projected local or public improvement or

2. Failure to repair or properly maintain the light post or standard or light within 10 days after notice so to do by the City Administrator or by the Bureau of Police.

G. Within 30 days after revocation of a private street light permit, the owner or person responsible for maintaining it must remove the light and all appurtenances. Failure so to do will be a violation of this Title. The City Administrator may authorize the removal of the private street light if not removed within the said 30 days, and the cost of removal may be recovered from the owner or person responsible for maintaining the same in a civil action.

17.68.030 Design Requirements for Special Street Lighting Districts.

A. All street lights within the City must be a standard overhead fixture except in areas where it is determined by the City Administrator that specialty lighting would substantially enhance a unique characteristic of the district.

B. Design, location, plans, and specifications for a special street lighting system to be installed or altered as a local improvement must be first approved by the Bureau of Transportation.

C. Establishing the source of funding necessary for the acquisition and installation of specialty lighting is the responsibility of the person(s) requesting the special lighting district to be established or altered and must be approved by the lighting manager.

D. When a specialty lighting system needs major refurbishing or replacement, the City will pay up to 50 percent of the cost of replacing City owned specialty light fixtures with the same style fixture when:

1. The lights are part of an historical structure that is included on the National Register of Historic Places and designated as an Oregon Historic Landmark and a Local Landmark, and removal or changes in the lighting would jeopardize the structure's historical status, or

2. The light fixtures themselves are included on the National Register of Historic Places and designated as an Oregon Historic Landmark and a Local Landmark.

In other cases the City will pay for replacing the specialty light fixtures with a similar but readily available fixture.

17.68.040 Requirements for Lights on New or Reconstructed Streets.

A. All new or reconstructed streets in the City associated with either privately or publicly funded projects must be provided with street lights corresponding to City lighting standards.

B. Design, plans, and specifications for streetlights to be installed or altered must be first approved by the Bureau of Transportation.

C. The full cost of providing the street lighting improvements must be paid by the permittee or funding source used for the street construction costs.

17.68.050 Street Light Removal and Relocation.

A. All costs associated with the removal of streetlights on a street being vacated must be paid by the person petitioning for the vacation.

B. All costs associated with the removal or relocation of street light facilities to accommodate work in accordance with a public improvement permit must be paid by the permittee.

C. All costs for relocation of streetlights to complete work in local improvement districts will be assessed as part of the project.

Chapter 17.76 Fuel Tanks

17.76.010 Permit Issuance.

Whenever, in the opinion of the City Administrator, the installation of a fuel tank in the street area will not interfere with the present use or with any contemplated plans for the early use of any street, a permit may be granted by the City Administrator. The permit may then be issued to the owner or occupant of the lot or tract adjacent to the street to be occupied by the fuel tank, upon payment of a fee as prescribed in Section 17.24.020.

17.76.020 Conditions.

The applicant for fuel tank installation in the street area must sign an application for permit in which the applicant agrees to accept the revocable permit subject to its terms and limitations, saving the City harmless from damages for themselves and for anyone claiming under them.

17.76.030 Form of Permit.

The permit when issued will be in substantially the following form:

REVOCABLE PERMIT

A revocable permit is hereby granted to . . . . . .(owner or occupant) of Lot. . . . . , Block . . . . . ,. . . . . Addition to install and maintain a tank for the storage of fuel oil in . . . . . Street between . . . . . . Street and. . . . . .Street, being in that particular area lying between the . . . . . curb line closest to the street centerline and the . . . . . line of said street, abutting the above described property.

This permit is for the use of the street area only and does not exempt the grantee from securing a permit from the Fire Marshal and complying with all requirements of the fire regulations, from taking out a permit from the City Administrator to open the street, or from taking out licenses or permits required by any existing ordinances for any operation or construction carried on under this permit.

This permit is revocable at any time at the pleasure of the City Administrator. No expenditure of money, lapse of time, or other act or thing may operate as an estoppel against the City or be held to give the grantee any vested or other right. Upon revocation, the grantee must within 30 days discontinue the use of the tank and must put the portion of the street affected by said tank in a condition as good as the adjacent portion of the street, all of which must be done as directed by and to the satisfaction of the City Administrator.

The grantee assumes full responsibility for all accidents or damage that may occur in connection with the installation of the tank, and agrees to hold the City and each and all the officers and employees of the City free and harmless from any claims for damages to persons or property that may be occasioned by the installation or its maintenance.

Chapter 17.80 Plats and Dedications

17.80.010 Approval by the City Administrator.

No new subdivision plat of lands within Portland or of any addition to Portland may be filed for record, nor may any street, alley, or other way be dedicated, until the plat or dedication has been submitted to the City Administrator together with proof that all special assessments on the property included have been paid or bonded under the provisions of this Title relative to local improvement assessments, and until the City Administrator has endorsed the plat or dedication with their certificate that the special assessments appear to have been paid or payment has been provided for by bonding and that the plat or dedication is of a suitable and convenient character. If a portion of property covered by a bonded assessment is sought to be subdivided or dedicated, the owner must first obtain an apportionment of the assessment lien in accordance with procedures set forth in the City Charter. Whenever any plat of any addition or subdivision of land within the corporate limits of the City is submitted to the City Administrator, it is the City Administrator's duty, before approving the plat, to require that all streets and alleys marked on the plat be of adequate width and the City Administrator may require the streets and alleys to be aligned with other streets and alleys or extensions of them, abutting on the land to be platted.

17.80.020 Appeal.

Any person aggrieved by the refusal of the City Administrator to certify to a plat or dedication in accordance with the provisions of Section 17.80.010 may appeal to the Council by filing a written notice of appeal with the City Auditor within 10 days after refusal, and the Council will hear and determine the matter with all convenient speed. If the Council reverses the City Administrator's decision, a certified copy of the resolution declaring the action will be attached to the plat or dedication in lieu of the certificate.

Chapter 17.82 Land Divisions

17.82.010 Administration.

In addition to other regulations in this Title, land divisions must comply with the regulations herein.

17.82.020 Streets and Alleys.

Public streets and public alleys must conform to the requirements of the City Administrator for elements, widths, intersection location, grades, curves, materials and construction. If necessary, construction and slope easements may be required.

Public streets must be laid out to intersect at angles as near to right angles as practical except where topography requires a lesser angle, but in no case may an angle be less than 80 degrees unless the City Administrator has approved a special intersection design.

As far as is practical, public streets other than minor streets must be in alignment with existing streets by continuation of the center lines thereof. Staggered street alignment resulting in "T" intersections must, wherever practical, leave a minimum distance of 200 feet between the center lines of streets having approximately the same direction.

Intersecting public alleys must be avoided, and sharp changes in alley alignment must be avoided but, where necessary, the corners must be widened sufficiently to permit safe vehicular movement. Dead-end public alleys must be avoided but, where unavoidable, turnaround facilities as determined by Portland Fire & Rescue and the City Administrator must be provided. Where a private street or private alley accesses the public right-of-way, the location and width of the access must conform to 17.28.110 Driveways – Permits and Conditions.

Land divisions must provide for the continuation or appropriate projection of existing arterial or collector streets in the surrounding area unless otherwise approved by the City Administrator.

17.82.030 Partial Width Streets.

Partial width streets are public streets where right-of-way dedicated to the public is of insufficient width to accommodate all standard improvements for a full street. Partial width rights-of-way should be considered only when alignment or existing improvements make a full street impractical. Partial street dedications must be approved by the City Administrator to ensure that the partial width called for accommodates access and provides adequate area for construction as needed.

17.82.040 Access Control Strips.

Access control strips, also known as reserve strips, are tracts of land conveyed to the City in fee. The strips are one foot in width and run for the length designated by the City Administrator. Access control strips may be required along public rights-of-way to restrict access until a street is fully developed. When new rights-of-way are being created, the access control strip will be located within the area intended to serve as right-of-way when the street is fully developed. Required access control strips must be shown on the land division plat. The City Administrator may convert access control strips to public right-of-way when there is no longer a need for access control.

17.82.045 Driveway Access Plans.

The City Administrator may require that future driveway locations be identified on plans submitted with the land division. The City Administrator may impose conditions of approval as appropriate and necessary regarding the number, configuration, and use of driveways necessary to ensure the safe and orderly flow of traffic, preserve on-street parking, preserve or establish street trees, maximize opportunities for vegetated stormwater management, reduce pedestrian conflicts, and enhance the pedestrian environment. The City Administrator may require access easements to facilitate joint or shared use of a driveway consistent with Chapter 17.28.

17.82.050 Temporary Turnarounds.

The City Administrator may require temporary turnarounds on public streets that are intended to be extended in the future. An easement for public use must be provided for the turnaround.

17.82.060 Public Utility Easements.

Easements for public utilities may be required by the City Administrator adjacent to public rights-of-way. Where used, public utility easements must be a minimum of 10 feet in width unless otherwise specified by the City Administrator. Public utility easements required by the City Administrator must be shown on the land division final plat.

17.82.070 Improvements in Land Divisions.

The following improvements must be installed at no cost to the public:

A. Streets: Public streets and public alleys within or adjacent to the land division must be improved in accordance with the requirements of the City Administrator. Street inlets must be installed and connected to storm sewers or other approved drainage facilities.

B. Public pedestrian and bicycle connections, within the Land division site and located in public right-of-way or easements dedicated to the City must be improved in accordance with the requirements of the City Administrator.

C. Storm sewers and drainageways: Storm sewers and drainageways must connect the Land division site to an approved drainage system (as defined in 17.38.030) within or outside the Land division site as approved by the City Administrator. Design of these systems must comply with the Bureau of Environmental Services Stormwater Management Manual and the Bureau of Environmental Services Design Manual.

D. Sanitary sewers: Sanitary sewers must be installed to serve the Land division by extension of existing City sewers. In the event that the City Administrator determines that it is impractical to connect the Land division site to the City sewer system, the Land division may be approved with a private disposal system that has been

approved by the State's Department of Environmental Quality and the City Administrator.

E. Electrical and other wires in the public right-of-way: Electrical distribution laterals and other primary and secondary lines and other wires serving the Land division, including but not limited to communication, street lighting and cable television, must be placed underground. The developer must make necessary arrangements with utility companies or other appropriate persons for the installation of underground lines and facilities. This ordinance does not apply to temporary utility service facilities during construction, or to utility transmission lines operating at 50,000 volts or above.

F. Street lighting for public rights-of-way: Street lighting must be provided as approved by the City Administrator and must include conduits, wiring, bases, poles, arms and fixtures as required by the City Administrator to provide a complete system.

17.82.080 Improvement Procedures for Land Divisions.

Improvements installed by a land divider in the public right-of-way must conform to the requirements of this Title and to improvement standards of the City Administrator, and must be installed according to the following procedure:

A. All public and local improvements to be placed in the public right-of-way must meet the design requirements of the City Administrator. In addition, if the improvement also includes storm and sanitary systems, the improvement must also meet the design requirements of the City Administrator.

B. All improvements to be placed in the public right-of-way are subject to approval of the City Administrator through a street improvement permit, street use permit or other revocable permit.

C. Public and local improvement work may not commence until a permit has been issued by the City Administrator and County Engineer if work is to be undertaken that involves an area under county jurisdiction, such as a county road. If such work is discontinued for any reason, it may not be resumed until after the City Administrator is notified.

D. Street improvements that are public or local improvements or public sanitary and storm systems must be constructed under the inspection and to the satisfaction of the City Administrator.

E. Underground utilities, street lighting facilities, sanitary sewers, storm drains and water mains installed in a public roadway must be constructed prior to the surfacing of the roadway. Stubs for service connections for underground utilities must be placed according to the plans and specifications approved by the City Administrator. Stubs for public sewer and storm systems must also be approved by the City Administrator.

17.82.090 Agreement for Construction of Public Improvements.

The land divider must complete all required minor public street improvements (sidewalk and curb work where engineering is not required to establish line or grade) prior to City Administrator approval of the land division final plat unless otherwise allowed by the City Administrator. The land divider must complete permit applications for other public improvements prior to City Administrator approval of the land division final plat.

Chapter 17.84 Street Vacations

17.84.005 Definitions.

A street vacation is the termination of the public interest in a right-of-way; it extinguishes the easement for public travel that is represented by the right-of-way. In the typical case, city and county governments hold an easement for public travel on lands designated or used as roads, streets, and alleys; they do not generally own the fee title to the property underlying the right-of-way.

17.84.010 Plat Must Be Filed.

No vacation of a street, public place or plat will become effective until the ordinance providing for the vacation and a plat, as provided by law, has been filed in the office of the county clerk of the county where the street, public place or plat is located. The cost of the filing and the preparation of the plat must be paid by the person petitioning for the vacation.

17.84.015 Administration.

A. The City Administrator may establish rules and procedures for Street Vacations.

B. The Director of the Bureau of Transportation (the “Director”) will be the City’s recording officer and clerk for purposes of ORS 271.005 to 271.230 pertaining to the vacation of a public right-of-way, plat, public square or place.

17.84.020 Fees.

A. Whenever a request for a petition for the vacation of a street, public place, plat, or any portion of it is presented to the Portland Bureau of Transportation (PBOT), the person making the request must pay to PBOT a fee for preparation of the petition document for vacation. The fee for this service will be established annually by the Council.

B. When a completed petition is presented to PBOT for filing and consideration by the City Council (the “Council”), the person presenting the petition for the vacation must pay to PBOT a fee, established by the Council, to cover the estimated costs of processing the petition. All departments or bureaus involved in processing a vacation will keep records of the costs incurred on each individual vacation proceeding and will submit

such costs to the City Administrator prior to passage of the vacating ordinance. If the actual cost of advertising and expenses, and all processing costs, including employee salaries and applicable overheads, related to the vacation exceed the fee collected, a sum sufficient to cover all such costs will be collected before the vacation is completed, and payment of it will be a condition of the vacating ordinance.

17.84.025 Approval Criteria for Vacating Streets.

A. In considering whether the vacation will prejudice the public interest, the Council will consider the following factors, as relevant:

1. The area proposed to be vacated is not needed presently, and is not identified in any adopted plan, for public services, transportation functions, utility functions, stormwater functions, view corridors and/or viewpoints, tree planting/retention, pedestrian amenities, or community or commercial uses.

2. The vacation does not prevent the extension of, or the retention of public services, transportation functions, utility functions, stormwater functions, view corridors and/or view points.

3. Public services, transportation functions, or utilities can be extended in an orderly and efficient manner in an alternate location;

4. The vacation does not impede the future best use, development of, or access to abutting property;

5. The area of the vacation is not presently, or will not in the future be, needed as part of an interconnected system of public streets that is generally consistent with the street connection and bicycle/pedestrian spacing requirements in Section 17.88.040 Through Streets.

B. When approving, or approving in part, a petition to vacate a street the Council may make reservations or conditions. Reservations or conditions may pertain to:

1. The maintenance and use of underground public utilities or service facilities in the portion vacated;

2. Limitations on use of the area above and adjacent to underground utilities or service facilities;

3. Moving at petitioner’s expense the utility or service facilities either below, on or above the surface;

4. Construction, extension or relocation of sidewalks and curbs, multi-use paths, trails, or other similar pedestrian or bicycle facilities;

5. Grading or pavement extensions;

6. Dedication for street use or other area in lieu of the area to be vacated;

7. Replat; and

8. Any other matter of like or different nature relating to the vacated area and remaining or relocated street area adjacent to petitioner's property, or area dedicated in lieu of the vacation area.

17.84.030 Consideration of Petition.

Pursuant to ORS 271.080 through 271.100, when a petition for the vacation of a street, public place or plat is presented to the Director, it will be reviewed and, if found to be sufficient as provided by the statutes and upon a formal investigation and review by city bureaus, utility companies, and other agencies, a report will be generated by PBOT and submitted to the Planning Commission (PC) for action. Following the PC hearing, PBOT will prepare a report containing the findings from the formal investigation and any recommendations of the PC. The report and petition will be submitted to Council for consideration. Notice of the vacation hearing will be published and posted pursuant to ORS 271.110.

17.84.040 Bond or Cash Deposit.

When the Council is petitioned to vacate any street, public place, plat, or a portion of it in which water mains, fire hydrants, police or fire alarm system, gas mains, steam heating mains, conduits, sewer mains or laterals, manhole structures, poles, wires or other utility or public service facilities are constructed and maintained, and the proposed vacation will require the removal of the utility or public service facilities or any portion of them, or if curbs or sidewalks are required to be extended or relocated, or if grading or additional paving is required, the ordinance vacating the street or a portion of it may provide that the vacation will not be effective unless the petitioner files with the City Administrator the petitioner's acceptance of the terms and provisions of the ordinance together with a surety bond or cash deposit, in such sum as may be fixed by the Council. The surety bond or cash deposit must be to the effect that, in the event the vacation is granted, the petitioner will, within 90 days or such other time as the Council may fix after the vacation ordinance is effective, remove or have removed by the owner all or any part of the utility or public service facilities as required by the vacation ordinance and reconstruct and relay the facilities or have them reconstructed and relaid by the owner in the places as may be required by the City Administrator, and obtain other work as required by the ordinance in the manner directed by PBOT, all at the expense of the petitioner.

17.84.050 Statutory Procedures Applicable.

The provisions of ORS Chapter 271 applicable to a vacation apply to each vacation. The alternative procedures allowed by those statutes may be followed.

17.84.060 Consent to Vacation for City as Owner.

Whenever City-owned property abuts an area of a street or plat sought to be vacated by petition or is located within an “affected area” fixed by statute, the City Administrator may sign consent to the vacation as an owner for the purpose of Council jurisdiction and consideration.

17.84.065 Vacation on Council’s Own Motion; Notification.

Whenever the City Council initiates vacation proceedings on its own motion, the City Administrator will give notice of the proposed action and hearing to all owners of affected real property pursuant to ORS 271.130. Whenever the Council initiates proceedings to vacate a plat or a portion of it, the City Administrator will notify all property owners within such plat or the portion of it proposed to be vacated of the proposed action and hearing.

The notification required by this Section will be given not less than 28 days before the hearings on the proposed action.

Chapter 17.88 Street Access

17.88.001 Purpose.

The purpose of this chapter is to describe the requirements for a transportation impact study, to ensure an adequate level of street connections to serve land uses, and to ensure that improvements to these streets are made in conjunction with development consistent with fire, life safety, and access needs.

17.88.010 Definitions.

As used in this Chapter, the following terms have the following definitions:

A. Exceptional habitat quality for connectivity purposes:

1. Riparian-associated wetlands protected with environmental zones;

2. Locally or regionally rare or sensitive plant communities;

3. Important forest stands contributing multiple functions and values to the adjacent water feature habitats of sensitive, threatened or endangered wildlife species; or

4. Habitats that provide unusually important wildlife functions, such as (but not limited to) a major wildlife crossing/runway or a key migratory pathway.

B. Mixed-Use area is compact development that allows a mix of uses, either within buildings or among buildings, and includes residential development as one of the potential components. Mixed-use areas include all commercial/mixed-use zones (CR, CM1, CM2, CM3, CE, CX), the EX, Central Employment Zone, and the Campus

Institutional Zones (CI1, CI2, and IR). All other employment zones, industrial zones, and the Open Space Zone are not included.

C. Significant alterations are changes to property that are 35 percent or greater than the assessed value of all improvements on the site. Mandatory improvements for fire, life safety and accessibility do not count toward the threshold.

D. Single-family residential zone means any of the Single-Dwelling Zones identified in Title 33 of Portland City Code.

E. Frontage means the length of public right-of-way adjacent to a property, measured in feet, but does not apply to collectors, arterials, or alleyways.

F. Unimproved street means any local street without a curb other than a local street that has been formally accepted by the Bureau of Transportation as having been fully built to an adopted Residential Shared or Residential Separated City street standard that does not require a curb.

G. Local street means any street classified as a Local Service Street in the City's adopted Transportation System Plan.

H. Subdivision means a division of land into four or more lots.

I. Local transportation infrastructure charge is a charge collected to fund improvements to the City's network of unimproved local streets and adjacent or related transportation facilities.

17.88.020 For Buildings and Planning Actions.

All building permits and planning actions are subject to the following:

A. No single family, multiple dwelling, industrial or commercial building may be constructed, or altered so as to increase its number of occupants, or make significant alterations to a building without resulting in increased occupancy, on property that does not have direct access by frontage or recorded easement with not less than 10 feet width of right-of-way to a street used for vehicular traffic.

B. If a street adjacent to a property described in Subsection A. above does not have a standard full-width improvement, including sidewalks, the owner, as a condition of obtaining a building permit, conditional use, zone change, land partition or adjustment, must provide for such an improvement or a portion of it as designated by the City Administrator in accordance with provisions elsewhere in this Title. The payment of a local transportation infrastructure charge will satisfy the requirements of this Subsection.

C. Based on findings that a standard improvement is not feasible, the City Administrator may allow a temporary improvement appropriate for the circumstances, on the condition that the City will not maintain said temporary improvement and the owner will provide the City with a notarized document, approved as to form by the City Attorney, to be filed

with the County in which property is located, stating that the present and future owners will be counted in favor of any proposed standard improvement of said street. Fee for said filing and any other expense of the City incidental to accomplishing the temporary improvement must be paid by the owner.

17.88.030 Location of Multiple Dwellings.

Unless permitted as part of an approved Planned Development the Council permits by ordinance, no multiple dwellings or accessory building may be so located on any lot, block, tract or area within Portland that any portion of the dwelling or building will be more than 250 feet from a dedicated street abutting the lot or block or that portion of a tract or area on which the multiple dwelling or accessory building must have direct access to such street by way of an approved roadway.

17.88.040 Through Streets.

Street connectivity provides access to adjacent properties and reduces out-of-direction travel. New or expanding development must include the following:

A. Through streets as required by the City Administrator connecting existing dedicated streets, or at such locations as designated by the City Administrator, must be provided for any development or redevelopment.

B. Partial-width streets as required by the City Administrator where full-width streets could reasonably be provided in the future with the development or redevelopment of abutting property.

C. New residential development or development in existing or future mixed-use areas that will require construction of new street(s) must:

> **1.** Respond to and expand on the adopted street plans, applicable to the site or area, or in the absence of such plan, as directed by the City Administrator;
>
> **2.** Provide for street connections no further apart than 530 feet, except where prevented by barriers such as topography, railroads, freeways, pre-existing development, or natural features where regulations do not allow construction of or prescribe different standards for streets;
>
> **3.** Provide bicycle and/or pedestrian connections when full street connections are not possible, no further apart than 330 feet except where prevented by barriers as noted above;
>
> **4.** Limit the use of cul-de-sac or closed street systems; and
>
> **5.** Include street cross section(s), as directed by the City Administrator.

D. Street and pedestrian/bicycle spacing standards may be modified in areas of exceptional habitat quality to the following standards:

1. Where streets must cross over protected water features, provide crossings at an average spacing of 800 to 1,200 feet, unless exceptional habitat quality or length of crossing prevents a full street connection.

2. Pedestrian and bicycle connections that cross protected water features should have an average spacing of no more than 530 feet, unless exceptional habitat quality or length of crossing prevents a connection.

17.88.050 Transportation Impact Study.

The traffic impacts of dividing or developing land may warrant a transportation impact study. The purpose of a transportation impact study is to assess the effects of development in the vicinity of a site on traffic conditions and operations; transit, pedestrians, and bicycle movement; and neighborhood livability. A transportation impact study may be required under the following situations:

A. Where approval criteria for a land use review include a requirement of adequacy of transportation services and the development proposed through the review meets or exceeds the following thresholds:

1. Trip generation threshold. More than 100 new vehicle trips will be generated in the peak direction (inbound or outbound) during the site's peak traffic hour; or

2. Neighborhood traffic threshold. More than 250 new trips will be generated per day that are likely to use predominately residential Local Service Traffic Streets.

B. Safety or operational impacts. Where the City Administrator has identified potential safety or operational concerns that may be impacted by the layout of a site or the location or size of driveways for a proposed development.

17.88.060 Dedication Prior to Permit Approval.

No permit may be issued for the construction of any dwellings or buildings upon any lot, block, tract or area within the City until required dedications, as outlined in this Chapter, are complete.

17.88.070 Routes of Travel in Park Areas.

The Bureau of Transportation, may, upon the request of the City Administrator, take over and perform the construction, reconstruction, maintenance and repair of any boulevards, roadways, drives, paths, trails, walks or other routes of travel in park areas of the City. The transfer of such responsibility to the Bureau of Transportation will not operate to remove the routes of travel from the jurisdiction and control of the Bureau of Parks and Recreation, and the planning and location of new routes will remain the responsibility of, and in the jurisdiction of, the Bureau of Parks and Recreation.

17.88.090 Local Transportation Infrastructure Charge Required.

A. Project applicability. Applicants for the following projects within a single-family residential zone must pay the Local Transportation Infrastructure Charge, except as exempted by Portland City Code or associated administrative rule:

1. Building permit. An applicant for a building permit to construct a new, single family building; a new building with up to six units; or another type of construction project that will increase the number of units to six on the site.

2. Land division. An applicant for approval to create multiple lots other than as part of a subdivision on real property.

B. The City Administrator will assess a Local Transportation Infrastructure Charge according to the total number of linear feet of unimproved street frontage. The charge will be based on the average, location-specific, actual cost to the City to build local street improvements to City standards at the time of application. The City may establish zone-specific, per-lot maximum numbers of linear feet of unimproved street frontage subject to the Local Transportation Infrastructure Charge.

C. Payment of a Local Transportation Infrastructure Charge will exempt the property subject to the application from future Local Transportation Infrastructure Charges.

D. Local Transportation Infrastructure Charges will be collected and administered by the City Administrator. The City Administrator may establish rules and procedures for the Local Transportation Infrastructure Charge.

E. An applicant may not appeal under Chapter 17.06 of Portland City Code the City's assessment of a Local Transportation Infrastructure Charge except as provided by administrative rule.

F. Affordable housing is exempt from Local Transportation Infrastructure Charges to the same extent and in the same manner that it is exempt from system development charges under Portland City Code.

Chapter 17.92 Street Designation

17.92.010 Administration.

For public streets and private street tracts, the City Administrator will designate street prefixes, names, and numbers, keep records of such designations and exercise such other powers as are necessary to carry out the provisions of this Chapter.

17.92.020 Prefixes for Street Designations.

A. Burnside St east of the Willamette River is designated as East and the prefix "E" is added to the street name.

B. Burnside St west of the Willamette River is designated as West and the prefix "W" is added to the street name.

C. All streets east of the Willamette River, north of the centerline of Oregon St and west of the centerline of Williams Ave are designated as North and the prefix "N" is added to the street name. Williams Ave and the portion of Oregon St west of the centerline of Williams Ave are designated as North and the prefix "N" is added to the street name.

D. All streets east of the Willamette River between the centerline of Burnside St and centerline of Oregon St are designated as Northeast and the prefix "NE" is added to the street name excluding Burnside St and excluding the portion of Oregon St west of Williams Ave. Oregon St east of the centerline of Williams Ave is designated as Northeast and the prefix “NE” is added to the street name.

E. All streets east of the Willamette River north of the centerline of Oregon St and east of the centerline of Williams Ave are designated as Northeast and the prefix "NE" is added to the street name excluding Williams Ave. Oregon St east of the centerline of Williams Ave is designated as Northeast and the prefix “NE” is added to the street name.

F. All streets east of the Willamette River south of the centerline of Burnside St are designated as Southeast and the prefix "SE" is added to the street name excluding Burnside St.

G. All streets west of the Willamette River and south of the centerline of Clay St and east of the centerlines of Naito Pkwy and View Point Ter, and east of Tryon Creek State Natural Area are designated as South and the prefix "S" is added to the street name excluding Naito Pkwy and View Point Ter. Terwilliger Blvd south of Palater Rd and north of the Clackamas County line is designated as South and the prefix "S" is added to the street name. The portions of Edgecliff Road, Iron Mountain Boulevard and Riverside Dr north of the Clackamas County line are designated as South and the prefix "S" is added to the street name. Ridge Dr east of 46 feet east of the southerly extension of the centerline of View Point Ter is designated as South and the prefix "S" is added to the street name.

H. All streets west of the Willamette River between the centerline of Burnside St and centerline of Clay St are designated as Southwest and the prefix "SW" is added to the street name excluding Burnside St.

I. All streets west of the Willamette River south of the centerline of Clay Street and west of Naito Parkway, View Point Terrace and Tryon Creek State Natural Area are designated as Southwest and the prefix "SW" is added to the street name. Naito Parkway and View Point Terrace, all streets within Tryon Creek State Natural Area and Terwilliger Boulevard north of Palater Road are designated as Southwest and the prefix "SW" is added to the street name. Ridge Drive west of 46 feet east of the southerly extension of the centerline of View Point Ter is designated as Southwest and the prefix "SW" is added to the street name.

17.92.030 Designation of Streets, Avenues, Boulevards and Drives.

A. All streets within the corporate limits of the City running in an easterly and westerly direction are designated with a "street" street suffix and all streets running in a northerly and southerly direction are designated with an "avenue" street suffix.

B. Streets in Northeast, Northwest, Southeast, or Southwest Portland lying between two consecutively numbered north-south streets area designated with a "place" street suffix and take the underlying name of the street closest to the Willamette River.

C. Streets in North Portland lying between two consecutively named north-south streets are designated with a "place" street suffix and take the underlying name of the street closest to Williams Ave.

D. Streets in South Portland lying between two consecutively named north-south streets are designated with a "place" street suffix and take the name of the underlying street closest to Naito Pkwy or to View Point Ter.

E. Streets lying between two consecutively named east-west streets are designated with a "court" street suffix and take the underlying name of the street closest to Burnside Street.

F. The street suffix "drive," "lane," "terrace" or "way" may be used to designate winding or circuitous streets.

G. Scenic, arterial or greenscape streets may be designated with a "boulevard" street suffix or with a "drive" street suffix in lieu of a "street" or "avenue" street suffix.

H. All streets are designated by one name for the entire length.

Chapter 17.93 Renaming City Streets

17.93.010 Criteria For Renaming a City Street.

A. Any individual or organization may apply to the City to rename a City street. City streets may only be renamed after a prominent person. Such prominent person must be:

> **1.** a person who has achieved prominence as a result of the person’s significant, positive contribution to the United States of America and/or the local community;
>
> **2.** a real person; and
>
> **3.** a person who has been deceased for at least five years.

B. Only one street renaming application may be processed at a time, and only one street name change may be implemented per year for a major traffic or district collector

street. Additional applications will be placed on a waiting list and processed in order of submission when this criteria can be met.

17.93.020 Selection of Street to be Renamed.

A. The name of the street proposed for renaming may not be changed if the existing name is of historic significance or the street is significant in its own right.

B. The street proposed for renaming must start and terminate entirely within City boundaries.

C. The name of any street must be the same for its entire length. Renaming only portions of a street is not permitted.

17.93.030 Application Procedure and Fees.

The applicant must conform to the following procedure in applying to rename a City street:

A. The applicant must submit evidence to the City Engineer that the street renaming proposal complies with Subsections 17.93.010 A.2. and A.3. and Subsections 17.93.020 B. and C. If the City Engineer determines the submittal does not comply with these sections, the applicant will be so advised and the City will take no further action. If the submittal complies with the above-referenced sections, the City Engineer will issue the application materials described in Subsection B.

B. The applicant must obtain from the City Engineer:

1. official petition forms;

2. instructions as to fees and required procedures; and

3. the application form.

C. The applicant must, after filing a completed City Engineer's application form and paying any applicable fees:

1. Obtain a minimum of 2,500 signatures in support of the proposal from legal residents of the City at large or signatures of at least 75 percent of the abutting property owners along the street proposed for renaming on the petition forms supplied by the City Engineer.

2. Make a good faith effort to obtain a letter of concurrence to the proposed street renaming from the honoree's surviving spouse, children, or parents, in that order. The City Engineer may accept registered mail receipts and copies of all letters as evidence of compliance with this provision.

3. Provide to the City Engineer supporting information including a complete biography of the proposed honoree with references of substantiation, honors received, contributions to the national and/or local community, et cetera, which will be reviewed by a historian panel appointed pursuant to Subsection 17.93.040 A. This submission must contain sufficient information to allow the historian panel to accurately assess the appropriateness of renaming a street after the proposed honoree.

D. The applicant will have 180 calendar days to complete and submit the information required by Subsection C. to the City Engineer's office. If the completed application has not been submitted to the City Engineer within 180 calendar days after the application has been received by the applicant, the application will be invalid. No time extension may be granted. At the time of submission, the City Engineer may check the applicant's application and accept it only if it is complete and appears to comply with the requirements of Sections 17.93.010 through 17.93.030.

1. If the City Engineer accepts the submission, the applicant must make a fee deposit to cover the full cost of printing and mailing postcards and public notices as determined by the City Administrator. The minimum fee deposit will be as established in the Transportation Fee Schedule if the street proposed for renaming is ten City blocks (one-half mile) or less in length. If the street proposed for renaming is more than ten City blocks (one-half mile), the minimum deposit will be as established in the Transportation Fee Schedule. The City Administrator will refund any unused portion of the deposit to the applicant or the applicant may be required to pay for any cost of printing, mailings, and public notices in excess of the fee deposit.

17.93.040 Review of Application and Public Hearings.

Upon receipt of the applicant's packet, the City will process the application as follows:

A. The City Engineer will, within 14 calendar days after submission of the completed application, refer the street renaming application to a panel of three historians or persons with appropriate expertise appointed by the City Administrator for review and determination as to appropriateness of the proposed name and its compliance with criteria for selecting a new street name, and determination as to historic significance of the street.

B. The City Engineer will notify all neighborhood and business associations recognized by the City that encompass or represent owners of property or businesses located on property abutting the street proposed for renaming of the proposed renaming and request that they submit in writing to the City Engineer their support or opposition to the proposed name change within 45 days.

C. The Historian Panel will have 45 calendar days from the date of receipt to review the application and advise the City Planning Commission as to its recommendations. If the panel does not provide a recommendation within the 45-

day period, the Planning Commission must review the application with no recommendation unless the Planning Commission grants a time extension to the Historian Panel, which may not exceed 14 calendar days.

D. Concurrent with the Historian Panel review under Subsection C. of this Section, the City Administrator will conduct a postcard mailing survey of each legal owner and each legal address abutting the street in question, notifying them that there will be public hearings by the Planning and Sustainability Commission regarding the proposed street renaming and requesting the occupant and owner's input within 30 calendar days, as to the proposed name change. The City Administrator will also receive and tabulate all responses to the postcard survey and forward the results to the Planning Commission.

E. The City Engineer will prepare and submit to the Planning Commission a budget impact statement as to the direct cost of production and installation of new street name signs and related City costs.

F. The Planning Commission will conduct a public hearing on the matter and make a recommendation to the City Administrator as to the best interest of the City and the area within six miles of the City limits in accordance with ORS 227.120.

G. The City Administrator may approve or deny application for a street name change upon determination of the best interests of the City and the area within six miles of the City limits. If the City Administrator denies the application, it will be filed with no further consideration and the subject name and street may not be considered again under this Chapter for a period of at least two years. If the City Administrator approves the application, certified copies of the approval will be filed with the County Recorder, County Assessor, and County Surveyor.

17.93.050 City-Initiated Action to Rename a City Street.

The City Administrator may rename a street in order to correct errors in street names, or to eliminate confusion. Such action may be taken if it is determined that insignificant impact will result and it is desirable for the convenience of the general public. Renaming of a street by the City under provisions of this paragraph may not be undertaken to rename a street after a person as provided for in other sections of this Chapter. Therefore, City-initiated actions to rename a street under this paragraph are exempt from compliance with Sections 17.93.010 through 17.93.030 and Subsections 17.93.040 A. through D. Subsections 17.93.040 E. through G. remain applicable.

17.93.060 Implementation.

A. After the City's approval of the name change, the Bureau of Transportation will install the new name signs adjacent to the existing street name sign. Both signs will be in place for a period of five years, unless a petition is submitted to the City Administrator from a majority of abutting property occupants requesting that the dual signage period be shortened. Both street name signs will be maintained for the five-year period at the

same level of maintenance approved for street name sign maintenance citywide, after which time the old name will be removed.

B. The City Administrator will also notify the following organizations and individuals of the street name change through public notice, inter-office correspondence, or other appropriate means within 30 days after approval of the enabling ordinance:

1. The applicant;

2. Affected City, county, state, and federal agencies;

3. General public;

4. Emergency service organizations;

5. Owners and occupants of all property abutting the street being renamed; and

6. United States Postal Service.

Chapter 17.96 Surveys, Elevations and Monuments

17.96.005 Preservation of Record Monuments.

Any person or public agency removing, disturbing or destroying any survey monument of record in the office of the County surveyor or County clerk must cause a registered professional land surveyor to reference and replace the monument as prescribed by the applicable Oregon Revised Statues. The cost of referencing and replacing the survey monument must be paid by the person or public agency causing the removal, disturbance or destruction.

17.96.050 Datum Plane Established (City of Portland Vertical Datum).

All grade elevations in Portland are referred to a fixed datum established in this Section. The datum plane for grades was originally established 56.743 feet below the initial bench mark set by the City in the southerly quadrant of the top step of the Soldiers' Monument located in Lownsdale Square in Portland, said bench mark being marked "CITY OF PORTLAND, INITIAL CLASS A BENCH MARK NO. 00, $50 FINE FOR DISTURBING." A datum plane above described is established as the official datum of the City. The United States geological survey bench mark set in the granite base of the north pillar of the porte cochere at the SW 5th Avenue central entrance to the City Hall in Portland has an elevation 78.835 feet above the datum plane of Portland as established in this Chapter.

17.96.062 City Benchmarks.

The City Surveyor will establish and maintain a network of benchmarks throughout the City. Benchmarks are survey markers that have a specific elevations determined for

them and these elevations are referenced to the City of Portland Vertical Datum. Benchmark information can be found on the Portland Transportation Survey Section website.

17.96.065 Preservation of City Benchmarks.

Any person or public agency removing, disturbing or destroying a City benchmark must contact the Portland Transportation Survey Section as soon as it is apparent that a benchmark will be or has been removed, disturbed or destroyed. Survey may set a new benchmark in the vicinity of the old one and establish an elevation for it.

17.96.070 Grade Elevations To Be Referred to Datum Plane.

All proposed establishment of grades or changes of grades in Portland submitted to the Council will be referred to the datum plane.

17.96.080 Prior Grades Not Affected.

The establishment of a fixed base to which all grade elevations are referred as outlined in this Chapter will in no way affect the validity of grades or any improvements carried out prior to such establishment.

Chapter 17.100 Remedies and Penalties

17.100.010 Enforcement Independent of Other Officials.

The authority of Responsible Officials and Responsible Engineers to enforce the provisions of this Title is independent of and in addition to the authority of other City officials to enforce the provisions of any Title of the City Code.

17.100.020 Responsible Official and Responsible Engineer Designated Representative.

“Responsible officials” and “responsible engineers” as used in this Chapter include their representatives.

17.100.030 Liability.

The responsible officials and responsible engineers, or authorized representatives of the responsible officials and responsible engineers charged with the enforcement of this Title, acting in good faith and without malice in the discharge of their duties, will not render themselves personally liable for any damage that may accrue to persons or property as a result of any act or by reason of any act or omission in the discharge of their duties. Any suit brought against the responsible officials and responsible engineers or employee because of such act or omission performed by them in the enforcement of

any provision of this Title will be defended by legal counsel provided by this jurisdiction until final termination of such proceedings.

17.100.040 Remedies.

A. In addition to any other remedies or penalties provided by this Title or by any other law, the responsible officials and responsible engineers may enforce the provisions of this Title by:

1. Instituting an action before the Code Hearings Officer as set out in Title 22 of this Code, or

2. Causing appropriate action to be instituted in a court of competent jurisdiction, or

3. Taking such other actions as the responsible officials and responsible engineers in the exercise of their discretion deem appropriate.

B. Nothing in this Section may be construed to afford a person the right of appeal, pursuant to Portland City Code Chapter 22.10, to the Code Hearings Officer from a decision or determination of the responsible officials and responsible engineers, or any bureau designated under Chapter 3.12 of this Code.

17.100.050 Penalty for Violation.

Any person who violates any provision of this title is subject to a civil penalty as specified in the adopted Transportation Fee Schedule. In the event that any provision of this Title is violated by a firm or corporation, the officer or officers or person or persons responsible for the violation are subject to the penalty provided in this Section.

Chapter 17.101 Leaf Blowers

17.101.010 Purpose.

The purpose of this Chapter is to reduce the health impacts of using gasoline leaf blowers.

17.101.020 Definitions.

A. Electric leaf blower means any leaf blower powered by only electric means, including but not limited to battery-powered leaf blowers, cordless rechargeable leaf blowers and corded leaf blowers.

B. Gasoline leaf blower means any leaf blower powered by an internal combustion engine using gasoline, alcohol or other liquid or gaseous fluid.

C. Inclement weather means extreme weather conditions resulting from rain, snow, ice, flood, or other storm that pose a significant risk of injury to persons or property.

D. Leaf blower means any hand-held or backpack device designed or intended to blow, vacuum, or move leaves or any other type of debris or material by generating a concentrated stream of air. Leaf blower includes any device or machine that accepts vacuum attachments.

E. Owner means any of the following:

1. One or more individuals or entities, jointly or severally, in whom is vested: all or part of the legal title to real property; or all or part of the beneficial ownership and right to present use and enjoyment of real property.

2. A mortgagee of real property who is in possession of that property.

3. In the case of a condominium, the board of the association of condominium unit owners responsible for overall management.

17.101.030 Authority.

A. The City Administrator is authorized to administer the provisions of this Chapter.

B. The City Administrator may, upon request, issue written interpretations of how this Chapter applies in general or to specific circumstances.

C. The City Administrator is authorized to adopt, amend, and repeal rules, procedures, and forms to implement the provisions of this Chapter.

17.101.040 Requirements.

A. Effective January 1, 2026, no owner may allow the operation of a gasoline leaf blower on the owner’s property from January 1 to September 30, except in cases of inclement weather as determined by the City Administrator.

B. Effective January 1, 2028, no owner may allow the operation of a gasoline leaf blower on the owner’s property.

C. No leaf blower may be operated in a manner that deposits dust and debris onto any neighboring parcel, storm drain, public property, or public street except for the purpose of scheduled debris collection by the City.

17.101.050 Extensions.

The City Administrator may grant an extension of time to comply with Section 17.101.040 to an owner who submits documentation that compliance will require the owner to upgrade electric infrastructure. The owner must provide the City Administrator any documentation requested to substantiate the extension or otherwise assist the City

Administrator in the extension determination. If the City Administrator learns that an extension was granted based on materially inaccurate submissions, the City Administrator may revoke or modify the extension.

17.101.060 Penalties for Violations.

It is a violation for any owner to fail to comply with this Chapter or to misrepresent any material fact.

A. Violations may result in a written notice of violation. The notice will state the date, address and violation and specify any corrective action required to comply with this Chapter.

B. A first violation will result in a warning. A second violation may result in a civil penalty of $250. A third violation may result in a civil penalty of $500. A fourth or subsequent violation may result in a civil penalty of $1,000. Each day an owner is in violation is deemed a separate violation.

C. Education and outreach on the requirements of Section 17.101.040 will begin in July 2024.

17.101.070 Right of Appeal.

An owner who receives a civil penalty may, within ten business days of the date of the decision or determination, either pay the penalty amount or request an appeal hearing before the Code Hearings Officer in accordance with procedures set forth in Chapter 22.10 of the Portland City Code. The filing of an appeal request will stay the effective date of the penalty until the appeal is determined by the Code Hearings Officer. If payment of the penalty is ordered, the payment must be received by the City Administrator or postmarked within 15 calendar days after the order becomes final.

Chapter 17.102 Solid Waste & Recycling Collection

17.102.010 Declaration of Policy.

It is the policy of the City to reduce the amount of solid waste, both generated and disposed of, by promoting aggressive waste prevention and recycling activities. The City promotes 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 City regulates 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 that 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.

For purposes of Chapter 17.102 and rules adopted under it, the following terms are understood to have the meanings specified in this Section. Terms, words, phrases, and their derivatives used but not specifically defined in this Chapter have the 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 City Administrator. 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 Portland 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 that 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 gCO2e/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 municipal government of the City of Portland, Oregon, and such territory outside of Portland over which the City has jurisdiction or control by virtue of any Intergovernmental Agreement or law.

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 nonresidential 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 nonresidential 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 does 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.

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 will 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 that 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.

X. Franchise territory means an area within Portland 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 nonresidential sources and does not collect solid waste.

Z. Infraction means a failure to comply with City Code Chapter 17.102, the franchise, or the administrative rules promulgated under it, 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 designated by BPS as retaining useful physical, chemical, or biological properties after serving its original purpose or function, and that can be collected by franchisees or permittees as mixed recyclables in a blue cart, cage, or dumpster, glass recyclables in a separate bin, or used motor oil in an empty milk jug.

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 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 will 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 Administrative Rules.

The City Administrator may adopt administrative rules as authorized by Charter.

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 under them.

17.102.050 Clean and Efficient Fleet Practices.

A. All collection vehicles with a diesel engine must use a blend of biodiesel fuel as specified by the City Administrator, 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 must 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 must have engines 13 years old or newer.
> >
> > **b.** As of January 1, 2024, all collection vehicles using diesel fuel must have engines 14 years old or newer.
> >
> > **c.** As of January 1, 2025, all collection vehicles using diesel fuel must 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 January1, 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.

A. All fees, assessments and interest received by the Bureau of Planning and Sustainability with respect to solid waste collection or disposal will be deposited with the City Treasurer and credited to the Solid Waste Management Fund.

B. Monies deposited into the Solid Waste Management Fund will 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 will be deposited with the City Treasurer and credited to the Solid Waste Management Fund. Such proceeds will 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 will be a debt due and owing to the City and may be collected by civil action in the name of the City. Any fees and assessments remaining unpaid after the due date will accrue interest at one percent per month, compounded daily from the due date. In addition, the City Administrator 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 will be enforced and collected by the City Administrator. The City Administrator may waive or reduce any assessments for good cause, according to and consistent with written policies.

17.102.080 Daytime Prohibition of Downtown Garbage Collection.

No person, whether acting as private citizen, principal, employee, agent, franchisee or permittee may transport any refuse through streets in the district bounded by SW Oak St, SW First Ave, SW Yamhill St and SW Tenth Ave, except between the hours of 10 p.m. and 10 a.m. or when otherwise authorized by the City Administrator or a City police officer.

17.102.090 Assessments for Infractions.

A. The City Administrator may impose assessments as follows:

1. A first violation of this Chapter may be subject to an assessment of up to $500.

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 City Administrator may determine as appropriate based upon the nature of the infraction.

B. The City Administrator will 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.

A. Any person receiving a Notice of Assessment must, 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 Portland City Code. The filing of an appeal request will 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 City Administrator 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 Portland City Code if the person receives:

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 Portland 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.

A. Except as otherwise required by law, it is 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 may 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 that would prevent the identification of financial information regarding any individual permittee.

17.102.120 Franchise Administration.

The City Administrator is responsible for administration of residential collection franchises.

17.102.130 Franchise Size Limit.

A. No franchisee may 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 will keep this calculation on file for public reference.

B. No franchisee may be a subsidiary corporation of another franchisee.

17.102.140 Residential Collection Franchise Required.

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 may 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 may 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 prohibits 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 may 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.

A. A franchise is not required for the collection or transportation of residential solid waste, recyclable or compostable materials by the following persons:

> **1.** Persons transporting solid waste, recyclable materials, or compostables, collected outside the City;
>
> **2.** Organizations that have been granted nonprofit tax status by the federal government or who are organized as nonprofit 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 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 collecting deposit containers as defined in ORS 459A.700-744;

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;

9. Persons exclusively collecting recyclable materials or compostables, from nonresidential sources.

10. An organization accepting, storing or transporting recyclable or compostable materials, if those materials are accepted and stored at a depot or depots that accept recyclable or compostable materials without a charge to the generator of that recyclable or compostable material.

11. Persons collecting or transporting solid waste that is separated by the customer and that BPS determines is reusable or difficult to recycle but that still maintains some usefulness, including but not limited to plastic bags, textiles, and household batteries and light bulbs. This exception does not include recyclable materials collected by franchisees. Franchisees may provide this service, but any related costs the franchisee incurs is not an allowable expense in the residential rate-setting calculations; and,

12. Persons collecting or transporting clean-out materials as part of a one-time removal service provided to a residential or multifamily property. For purposes of this exception, “clean-out materials” are solid waste that is removed by a contracted person. Examples include, without limitation, used couches or the contents of a deceased person’s home and garage. Clean-out materials do not include solid waste that is generated through the daily consumption of food and goods.

B. Persons whose collection or transportation activity falls exclusively within the exceptions listed in Subsection A. must comply with all applicable federal, state, regional and local laws, rules and regulations.

17.102.160 Forfeiture and Replacement.

A. In the event that the City Administrator 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 City Administrator will make a recommendation for Council action on the matter, following procedures specified in the City's adopted rules.

B. In preparing for the transfer of a forfeited franchise, the City Administrator will solicit applications following a public notification. The City Administrator will 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 City Administrator 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.

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 City Administrator 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.

A. No person may provide residential recycling collection without first applying for and receiving approval as an approved residential recycler.

B. To have status as an approved residential recyclers 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 must submit a recycling collection and processing plans on forms provided by the City Administrator and must 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

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 City Administrator.

E. The City Administrator will 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 that are capable of meeting administrative rule standards for residential recycling service delivery. The City Administrator will 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 must use recycling containers that meet the City Administrator's specifications.

F. An applicant's failure to receive the City Administrator's approval of a plan will 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 City Administrator to provide recycling collection service to those residential customers.

17.102.180 Franchise System Evaluation.

A. Periodically, the City Administrator will prepare and submit a report to the City Council on the status and performance of the franchise collection system. The report will 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 will evaluate the franchise system to determine if the system is achieving waste reduction, increased recycling, and cost-effective collection service. Such evaluation will 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, rate schedules will be established via a rate ordinance adopted by the City Council.

17.102.200 Large Size Container Service to Residential Customers.

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

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 that 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.

A. No person may 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 will 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, will give the permittee any vested rights or other property rights.

B. The City Administrator may impose conditions upon the issuance of a permit that are necessary to implement the provisions of this Chapter or administrative rules promulgated under Section 17.102.030. Conditions may include but are not 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 must 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 is 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 must use containers that comply with the City's administrative rules.

3. If the City Administrator determines that a permittee is delivering as waste, loads containing significant amounts of recyclable materials to a transfer station, reload, or landfill, the City Administrator will 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 will 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 may 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.

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 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);

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.

A. Applications for commercial collection permits required by Chapter 17.102 must be submitted to the City Administrator. The City Administrator will prepare application forms and make them available upon request.

B. Each application for a commercial collection permit must be accompanied by a nonrefundable fee of $350.

C. An applicant for a commercial collection permit must 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 business license number.

4. A signed statement that the permittee will hold the City and its officers and employees harmless and will indemnify the City and its officers and employees from and against any claims for damage to property or injury to persons that may be occasioned by any activity carried on under the terms of the commercial collection permit. Permittee must 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, that may arise from operations under the permit or in connection therewith. Such insurance must 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 must be without prejudice to coverage otherwise existing therein, and must name as additional insured entities the City and its officers and employees with respect to the permittee's activities carried on under the terms of the commercial collection permit, and must further provide that the policy may 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 City Administrator may reasonably feel is necessary to accomplish the goals of this Chapter.

D. Applications must contain a written declaration, verified by the applicant, to the effect that the statements made therein are true.

E. Applications must 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 City Administrator may investigate and verify data reported in the permit application.

G. The permittee must provide written notice to the City Administrator within 10 days of any changes in the information provided in the application that occurs after the application is submitted.

H. The City Administrator will 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 City Administrator 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,

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 is no right to renewal of a commercial collection permit; each application will 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 Portland City Code.

17.102.240 Revocation or Suspension of Commercial Collection Permits.

A. The City Administrator 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 City Administrator will 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;

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 Portland City Code.

17.102.250 Commercial Tonnage Fee.

Commercial permittees will, when invoiced quarterly by the City Administrator, pay a tonnage fee to the City. Fees will be assessed on a per ton basis of commercial solid waste collected within the City and deposited in disposal facilities authorized by Metro. The per ton fee will be established via a rate ordinance adopted by the City Council. Payments must be made within 30 days of the date of the invoice. Interest will accrue at one percent per month on balances that 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.

A. No person may 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 business license, with their business license number, or with a copy of their current annual business license exemption application or request submitted to the revenue service and program of the City Administrator.

B. All independent commercial recyclers who collect at least 25 tons of recyclables and/or yard debris in the City per year must 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.

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 must comply with waste prevention, recycling and composting requirements as set forth in the

administrative rules established by the City Administrator. The following recycling requirements are in effect:

a. All businesses and multifamily complexes must recycle 75 percent of the solid waste they produce;

b. All businesses must 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 must 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 must ensure that 75 percent of the solid waste produced on the job site is recycled. In addition, certain materials generated on the job site must be recycled in compliance with administrative rules established by the City Administrator. 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 must provide recycling and, where appropriate, compostable collection systems that will enable the business tenants to recycle in compliance with administrative rules established by the City Administrator.

3. All multifamily complexes within the City must establish recycling systems for their tenants' use, in compliance with administrative rules established by the City Administrator.

B. The City Administrator 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 that are source-separated for reuse or recycling. This Chapter and any administrative rules promulgated under them are not intended to limit the ability of any person to compete openly to provide recycling collection service to businesses within Portland.

17.102.280 Inspections to Determine Compliance with Business Recycling Requirements.

A. The City Administrator is 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 City Administrator may inspect sites, buildings and other structures and equipment for compliance with Section 17.102.270. The City Administrator will establish a program for the periodic inspection of businesses and multifamily complexes for compliance with these requirements. The program will identify the frequency, priority and types of inspections, subject to the availability of staff and budgeted funds.

B. Right of entry. The City Administrator 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 City Administrator will first present proper credentials and request entry. If entry is refused, the City Administrator 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 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 City Administrator has been refused entry, the City Administrator 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 may 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 must contain either a statement that entry has been sought and refused.
>
> **2.** Cause. Cause will 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,

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 will 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 may 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 must 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 must, 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 must 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 will be void unless it has been timely executed.

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

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 Administrator. For the purposes of this Section, storage means leaving containers in the right of way for more than two 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 City Administrator may provide exemptions from Subsection A. for extreme economic hardship. Criteria for eligibility are 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 is subject to the requirements of this Section following the termination of the hardship exemption. Exemptions may 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 City Administrator. Exemptions are personal to the property or business owner and are not assignable, transferable or otherwise conveyable. Exempted property is subject to the requirements of Subsection A. following expiration of any hardship exemption granted by the City Administrator.

C. The City Administrator will develop administrative rules and procedures for determining extreme economic hardships under Subsection B., using the process under Section 17.102.030. The City Administrator will 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.

17.102.295 Separation of Recyclables, Compost and Solid Waste.

It is 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.

Chapter 17.103 Prohibition and Restrictions on Single-Use Plastic

17.103.100 Definitions for Prohibition on Polystyrene Foam Food Containers (PSF).

As used in Sections 17.103.100 through 17.103.120, the following terms have the following meanings:

A. Food vendor means any restaurant or retail food vendor.

B. Food packager means any person located within the city of Portland who places meat, eggs, bakery products, or other food in packaging materials for the purpose of retail sale of those products.

C. Nonprofit food provider means a recognized tax-exempt organization which provides food as a part of its services.

D. Prepared food means food or beverages that are served on the vendor's premises without preparation or are prepared on the vendor's premises by cooking, chopping, slicing, mixing, brewing, freezing, or squeezing. Prepared food does not include any raw uncooked meat or eggs. Prepared food may be eaten either on or off the premises.

E. Person means any natural person, firm, corporation, partnership, or other organization or group, however organized.

F. PSF means any material composed of polystyrene and having a closed cell air capacity of 25 percent or greater, or a density of less than 0.787 grams per cubic centimeter based on an average polystyrene density of 1.05 grams per cubic centimeter, as determined by an analytical testing laboratory.

G. Restaurant means any establishment, including sidewalk food vendors, located within the city of Portland and that sells prepared food to be eaten by customers.

H. Retail food vendor or **vendor** means any store, shop, sales outlet, or other establishment, including a grocery store or a delicatessen, located within the city of Portland and that provides prepared food.

17.103.110 Prohibition on Certain PSF Uses.

On and after January 1990, no restaurant or retail food vendor may serve prepared food in any PSF products.

17.103.120 Exemptions for PSF Use.

The City Administrator may exempt a food vendor, food packager, or nonprofit food provider from the requirements of Portland City Code for a one-year period, upon a showing by the applicant that the conditions of this Chapter would cause undue hardship. The phrase “undue hardship” includes but is not limited to:

A. Situations where there are no acceptable alternatives to PSF packaging for reasons that are unique to the vendor or provider;

B. Situations where compliance with the requirements of Portland City Code would deprive a person of a legally protected right. If a request for exemption is based upon a claim that a legally protected right would be denied if compliance were required and such request for exemption is denied, review of the denial may only be by writ of review as provided for in ORS 34.010 to 34.102.

17.103.200 Purpose for Prohibition on Single-Use Plastic Checkout Bags.

The purpose for the prohibition on single-use plastic checkout bags is to regulate the distribution of plastic bags at retail and food establishments. The distribution of plastic bags has significant, on-going harmful impacts upon the environment, including;

A. Plastic bags are a major source of litter.

B. When littered, the material is detrimental to wildlife that ingests it.

C. The materials used in plastic bags are persistent in the environment.

17.103.210 Definitions for Prohibition on Single-Use Plastic Checkout Bags.

A. Garment bag means a large bag that incorporates a hanger on which garments may be hung to prevent wrinkling during travel or storage.

B. Recycled paper checkout bag means a paper bag that contains at least 40 percent post-consumer recycled fiber.

C. Restaurant means an establishment where the primary business is the preparation of food or drink:

1. For consumption by the public;

2. In a form or quantity that is consumable then and there, whether or not it is consumed within the confines of the place where prepared; or

3. In consumable form for consumption outside the place where prepared.

D. Retail establishment means a store that sells or offers for sale goods at retail and that is not a restaurant.

E. Reusable fabric checkout bag means a bag with handles that is specifically designed and manufactured for multiple reuse and is made of cloth or other machine-washable fabric.

F. Reusable plastic checkout bag means a bag with handles that is specifically designed and manufactured for multiple reuse and is made of durable plastic that is at least four mils thick.

G. Single-use checkout bag:

1. means a bag made of paper, plastic or any other material that is provided by a retail establishment to a customer at the time of checkout, and that is not a recycled paper checkout bag, a reusable fabric checkout bag or a reusable plastic checkout bag.

2. does not mean:

a. A bag that is provided by a retail establishment to a customer at a time other than the time of checkout, including but not limited to bags provided to:

(1) Package bulk items such as fruit, vegetables, nuts, grains, greeting cards or small hardware items, including nails, bolts or screws;

(2) Contain or wrap frozen food, meat, fish, flowers, a potted plant or another item for the purpose of addressing dampness or sanitation;

(3) Contain unwrapped prepared food or a bakery good; or

(4) Contain a prescription drug;

b. A newspaper bag, door hanger bag, garment bag, laundry bag or dry cleaning bag; or

c. A bag sold in a package containing multiple bags for uses such as food storage, garbage containment or pet waste collection.

17.103.220 Prohibition on Single-Use Plastic Checkout Bag Regulation.

A. Except as provided in Subsection 17.103.220 B., a retail establishment may not provide:

1. Single-use checkout bags to customers.

2. Recycled paper checkout bags, reusable fabric checkout bags or reusable plastic checkout bags to customers unless the retail establishment charges not less than five cents for each recycled paper checkout bag, reusable fabric checkout bag or reusable plastic checkout bag.

B. A retail establishment may provide:

1. Reusable fabric checkout bags at no cost to customers as a promotion on 12 or fewer days in a calendar year.

2. Recycled paper checkout bags or reusable plastic checkout bags at no cost to customers who:

a. Use a voucher issued under the Women, Infants and Children Program established under ORS 413.500.

b. Use an electronic benefits transfer card issued by the Department of Human Services.

C. Except as provided in Subsection 17.103.220 D., a restaurant may not provide:

1. Single-use checkout bags to customers.

2. Reusable plastic checkout bags to customers unless the restaurant charges not less than five cents for each reusable plastic checkout bag.

D. A restaurant may provide:

1. Recycled paper checkout bags at no cost to customers.

2. Reusable plastic checkout bags at no cost to customers who use an electronic benefits transfer card issued by the Department of Human Services.

17.103.300 Definitions for Restrictions on Single-Use Plastic Serviceware.

As used in Sections 17.103.300 through 17.103.320, the following terms have the following meanings:

A. Condiment packaging means plastic packaging used to deliver single-serving condiments to customers. This includes but is not limited to single-serving plastic packaging for ketchup, mustard, relish, mayonnaise, hot sauce, coffee creamer, salad dressing, jelly and jam and soy sauce.

B. Counter service is when food with ordered by the customer at a counter and is either picked up at the counter by the customer or delivered to the table by restaurant staff.

C. Customer means every person who purchases food or beverage that is intended to be consumed using single-use plastic serviceware.

D. Dine-in means food and beverage that are intended to be consumed inside the place of business where the food and beverage were purchased, including without limitation cafeterias and food halls.

E. Electronic orders are food purchases conducted by smart phone, email or the website of a retail food and beverage establishment. This includes electronic ordering services that are independent of the retail food and beverage establishment.

F. Fast food is food that can be prepared quickly and easily and is sold in retail food and beverage establishments as a quick meal or to be taken out for consumption. Fast food includes drive through, take-out and delivery orders and applies to orders transacted in person, by phone or electronically.

G. Cafeterias are dine-in areas within corporations, government, education and medical institutions. Cafeterias include ones managed by the institution or contracted food services.

H. Plastic serviceware means single-use plastic straws, stirrers, utensils and condiment packaging. This includes compostable and biodegradable plastic (petroleum or biologically based polymer) serviceware, but does not include serviceware that are made from non-plastic materials, such as paper, sugar cane, bamboo, etc.

I. Retail food and beverage establishments means any retail business that provides single-use plastic serviceware as a component of the product delivery. This includes but is not limited to full service and limited service (or fast food) restaurants, food carts, bars, coffee and tea shops, grocery stores, convenience stores, hotels, motels, caterers and food service contractors.

J. Utensils are single-use plastic utensils intended for consumption of food, including but not limited to spoons, forks, knives, sporks, and chopsticks.

17.103.310 Restrictions on Single-Use Plastic Serviceware.

A. As of October 1, 2019, all retail food and beverage establishments and cafeterias where beverages may be consumed at dine-in areas must provide plastic serviceware only after customer request.

B. As of October 1, 2019, all retail food and beverage establishments and cafeterias where customers order fast food, take-out, or delivery must provide plastic serviceware to customers only after asking if the customer needs plastic serviceware and the customer responds affirmatively. For electronic ordering, the retail food and beverage establishments are responsible for coordinating with any outside ordering service to prompt the customer to select plastic serviceware.

C. Exemptions. The following situations are considered exempt from the restriction on single-use plastic serviceware:

1. Cafeterias and retail food and beverage establishments designed for counter service may allow customers to access a self-service station for plastic utensils.

2. When the plastic serviceware is attached to or packaged by the manufacturer with a beverage container before the beverage container is offered for retail sale. For example, juice boxes.

3. When the product includes an ingredient packaged with single-use plastic serviceware. For example, a separate plastic container of dressing included within a larger salad container.

4. When free or reduced-price meals are provided as part of a social service to vulnerable populations, including without limitation, free or reduced-price meals provided by school systems, homeless shelters and programs that deliver meals to the elderly.

17.103.400 Authority of the City Administrator to Adopt Rules.

A. The City Administrator administers and enforces the provisions of this Chapter.

B. The City Administrator may adopt administrative rules as authorized by Charter.

17.103.410 Enforcement and Penalties.

A. Violations of this Chapter are subject to the following:

1. Upon the first violation, the City Administrator may issue a written warning notice to the violator that a violation has occurred.

2. Upon subsequent violations, the following penalties will apply:

a. $100 for the first violation after the written warning in a calendar year;

b. $200 for the second violation in the same calendar year; and

c. $500 for any subsequent violation within the same calendar year.

3. No more than one penalty may be imposed upon any single location within a seven-day period.

B. Upon making a determination that a violation of Portland City Code or regulations duly adopted pursuant to this Chapter 17.103 has occurred, the City Administrator will send a written notice of the violation by mail to the violator specifying the violation and the applicable penalty as set forth in Subsection A.

C. Any violator receiving a notice of violation must pay to the City the stated penalty or appeal the finding of a violation to the Code Hearings Officer in accordance with the procedures set forth in Section 22.10.030.

17.103.420 Severability.

If any Section, Subsection, sentence, clause, or phrase of this Chapter is for any reason held to be invalid or unconstitutional, such decision will not affect the validity of the remaining portions of this Chapter. The Council declares that it would have passed this Chapter and each Section, Subsection, sentence, clause, and phrase thereof irrespective of the fact that any one or more Sections, Subsections, sentences, clauses, or phrases may be declared invalid or unconstitutional.

Chapter 17.104 Commercial Building Energy Performance Reporting

17.104.010 Purpose.

The purpose of this Chapter is to provide information about building energy performance and motivate investment in efficiency improvements that save energy and reduce carbon emissions. This Chapter is known as the Commercial Building Energy Performance Program.

17.104.020 Definitions.

For purposes of this Chapter, and administrative rules adopted under this Chapter, the following words and phrases must be construed as defined in this Section.

A. Covered building means any commercial building containing a gross floor area of at least 20,000 square feet and predominantly used for office, retail, grocery, health care, higher education and hotel purposes. Covered building does not include buildings predominantly used for housing, industrial, nursing home, parking, primary and secondary education, residential, warehouse and worship purposes.

B. Director means the Director of the Bureau of Planning and Sustainability or their authorized representative, designee or agent.

C. Energy means electricity, natural gas, steam, heating oil, or other product sold for use in a building, or renewable on-site electricity generation, for purposes of providing heating, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities.

D. ENERGY STAR score means the 1 to 100 numeric rating generated by the ENERGY STAR Portfolio Manager tool that compares the relative energy usage of the building to that of similar buildings, where available.

E. Energy performance information means information related to a building's energy consumption as generated by the ENERGY STAR Portfolio Manager tool, and descriptive information about the physical building and its operational characteristics.

F. ENERGY STAR Portfolio Manager means a software program developed for evaluating and managing building energy data, used for creating an ENERGY STAR score.

G. Energy use intensity (EUI) means a numerical value calculated by the ENERGY STAR Portfolio Manager that represents the annual site energy consumed by a building relative to its gross floor area, reported as thousand British thermal units per square foot (kBtu/sf).

H. Gross floor area means the total number of enclosed square feet measured between the principal exterior surfaces of the fixed walls of a building.

I. Owner means any of the following:

1. Any individual or entity possessing title to a property with one or more covered buildings;

2. The net lessee in the case of a building or property subject to a triple net lease;

3. The association of unit owners responsible for overall management in the case of a condominium; or

4. Any agent designated to act on behalf of a building or property owner.

J. Shared utility services means energy-related services such as electricity, natural gas, chilled water, heated water or steam serving two or more buildings from a centralized system or a single utility billing meter.

K. Tenant means a person or entity occupying or holding possession of any part of a building or premises pursuant to a rental or condominium agreement.

L. Utility means an entity that distributes and sells natural gas, electric, or thermal energy services to covered buildings.

17.104.030 Administrative Rules.

The City Administrator may adopt administrative rules as authorized by Charter.

17.104.040 Energy Performance Tracking and Reporting for Covered Buildings.

A. No later than April 22 of each year, the owner of a covered building must accurately report energy performance information of such building to the City Administrator for the

previous calendar year using ENERGY STAR Portfolio Manager. At a minimum, the energy performance information must include:

1. Building address;

2. Year of construction;

3. Primary use type and additional use types;

4. Gross floor area as defined by ENERGY STAR Portfolio Manager's glossary;

5. ENERGY STAR score, where available;

6. Site energy use intensity (Site EUI);

7. Source energy use intensity (Source EUI);

8. Weather-normalized Site EUI;

9. Weather-normalized Source EUI; and

10. Total annual greenhouse gas emissions.

B. Optional energy performance information may be reported annually by the owner of a covered building to the City Administrator, including but not limited to:

1. Contextual information related to energy use in the building; and

2. Verification of energy performance information in this Section by a professional engineer or a registered architect licensed in the State of Oregon, or another trained energy professional as prescribed by rule.

C. The owner of a covered building must retain all information tracked and entered into the ENERGY STAR Portfolio Manager for at least three years beyond the date on which reporting was required, and make all energy performance information available for inspection and audit by the City Administrator during normal business hours, following reasonable notice by the City Administrator.

D. For campus portfolios where two or more covered buildings are served by shared utility services and predominantly used for health care, research or higher education purposes, the owner may opt to report a campus-wide gross floor area, Site EUI and total annual greenhouse gas emissions using the ENERGY STAR Portfolio Manager.

17.104.050 Energy Performance Reporting Schedule.

A. The reports required by Section 17.104.040 must be submitted according to the following schedule:

1. For every covered building containing a gross floor area of at least 50,000 square feet, the report must be submitted no later than April 22, 2016, and no later than every April 22 thereafter.

2. For every covered building containing a gross floor area of at least 20,000 square feet but less than 50,000 square feet, the first report must be submitted no later than April 22, 2017, and not later than every April 22 thereafter.

B. The City Administrator may extend the reporting submission date.

17.104.060 Transparency of Energy Performance Information.

A. The City Administrator will make city-wide summary statistics available to the public for the previous calendar year no later than October 1, 2016, and each October 1 thereafter.

B. For every covered building containing a gross floor area of at least 50,000 square feet, the City Administrator will make the compliance status and energy performance information of such covered buildings available to the public for the previous calendar year no later than October 1, 2017, and each October 1 thereafter.

C. For every covered building containing a gross floor area of at least 20,000 square feet but less than 50,000 square feet, the City Administrator will make the compliance status and energy performance information of such covered buildings available to the public for the previous calendar year no later than October 1, 2018, and each October 1 thereafter.

17.104.070 Notification and Posting.

A. Between September 1 and December 31 of each year, the City Administrator will notify owners of their obligation to report energy performance information for that calendar year, provided that the failure of the City Administrator to notify any such owner will not affect the obligation of such owner to report.

B. The City Administrator may exempt a building owner from the requirements of Sections 17.104.040 and 17.104.050 if the building owner submits documentation establishing any of the following:

1. The covered building or areas of the building subject to the requirements of this Section have been fully unoccupied during the entire calendar year for which reporting is required;

2. The building is a new construction and the building’s certificate of occupancy was issued during the calendar year for which reporting is required;

3. A demolition permit has been issued for the building during the calendar year for which reporting is required;

4. Due to a special circumstance unique to the building, compliance would cause undue hardship.

17.104.080 Utility Data Access.

A. The owner of a covered building must obtain data from each utility providing energy service to such building, subject to the governing state and/or federal data privacy laws to which the utility is subject at the time of the owner's request.

B. On and after January 1, 2016, and every year thereafter, upon the written or electronic request of an owner, each utility must provide the building owner with access to the monthly energy consumption data for all utility meters identified by the owner. The data provided by the utility to the building owner will be aggregated by the utility and may not contain personally identifying information or any customer-specific billing data. The utility must provide access to such aggregated utility data within 45 days of the building owner's request. Utilities providing energy service to a covered building must maintain energy consumption data for meters serving each building for at least the most recent calendar year.

1. Where a unit or other space is occupied by a tenant and separately metered by a utility, the utility may require the owner to submit a written or electronic request identifying such meters and follow the consent requirements of such utility.

17.104.090 Building Data Access.

A. Where a unit or other space is occupied by a tenant and separately metered by a utility, the owner may request tenant data relating to energy use, use of space, operating hours, and other information required for ENERGY STAR Portfolio Manager reporting.

1. Within 30 days of a request by the owner, each tenant located in a covered building must provide all data that cannot otherwise be acquired by the owner and that is needed by the owner to comply with the requirements of this Section including consent to access utility data as described in Section 17.104.080. If such tenant is not in compliance, the building owner may provide a written or electronic request to the City Administrator for an extension to the reporting schedule in Section 17.104.050.

2. When the owner of a covered building receives notice that a tenant intends to vacate a space in such building, the owner must request information relating to such tenant's energy use for any period of occupancy relevant to the owner's obligation to meet the reporting requirements in Sections 17.104.040 and 17.104.050.

3. When a covered building changes ownership, the previous owner must provide the new owner all information for the months of the calendar year during the time the previous owner was still in possession of the property.

17.104.100 Enforcement and Penalties.

It is a violation of this Chapter for any entity or person to fail to comply with the requirements of this Section or to misrepresent any material fact in a document required to be prepared or disclosed by this Chapter.

A. Any building owner, tenant, utility or person who fails, omits, neglects, or refuses to comply with the provisions of this Chapter is subject to the following:

1. Upon the first violation, the City Administrator may issue a written warning notice to the entity or person, describing the violation.

2. Upon any subsequent violation, the City Administrator may assess a civil penalty of up to $500 for every 90-day period during which the violation continues.

17.104.110 Right of Appeal and Payment of Assessments.

After being issued a written warning notice of a first violation, any person receiving a subsequent notice of violation must, within 10 days of issuance of the notice, either pay to the City the stated amount of the assessment or request an appeal hearing by the Code Hearings Officer in accordance with procedures set forth in Chapter 22.10 of Portland City Code. The filing of an appeal request will 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 City Administrator or postmarked within 15 calendar days after the order becomes final.

17.104.120 Annual Review of Reported Information.

The City Administrator may arrange for annual reviews of verifying the energy performance information submitted to the City. The City Administrator or a duly authorized agent may examine the records of the building owner regarding the energy performance data to verify the accuracy of the information submitted to the City. The City Administrator will provide prior written notice to the building owner at least 30 days prior to examining the energy performance data. The building owner must provide the City Administrator with access to the requested records within the Portland metropolitan region, during normal business hours. Any failure by the building owner to comply with the City’s efforts to verifying the energy performance information constitutes a violation of this Chapter.

Chapter 17.105 Motor Vehicle Fuel Tax

17.105.010 Tax Imposed.

A Motor Vehicle Fuel Tax is imposed on every dealer, seller, or user. The tax imposed must 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.

17.105.015 Temporary Tax of Four Years.

This Chapter will be in full force and effect upon enactment. The Motor Vehicle Fuel Tax established in Section 17.105.045 will be imposed beginning on the tax implementation date established by the Tax Administrator and will sunset four years after the tax implementation date. The tax implementation date will not be earlier than January 1, 2025. 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 may 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, Maintenance and Traffic Safety Program, and will include but not be limited to projects in the following categories:

1. Paving busy streets and neighborhood greenways.

2. Paving local streets.

3. Safer street projects on busy streets.

4. Safer street projects on neighborhood streets.

5. Safe routes to school projects.

6. Community street services.

17.105.025 Definitions.

As used in this Chapter, unless the context requires otherwise, the following definitions apply:

A. City means the City of Portland.

B. Dealer means any person who:

1. Imports or causes to be imported motor vehicle fuel or use fuel for sale, use or distribution in Portland, but dealer does not include any person who imports into Portland motor vehicle fuel or use fuel in quantities of 500 gallons or less purchased from a supplier who is licensed as a dealer under this Chapter 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;

2. Produces, refines, manufactures or compounds motor vehicle fuel or use fuel in Portland for use, distribution or sale in Portland; or

3. Acquires in Portland for sale, use or distribution in Portland 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

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, Maintenance and Traffic Safety Program means the City program in the Transportation Operating Fund in which Motor Vehicle Fuel Tax net revenue pursuant to this Chapter is deposited and street repair, maintenance 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 Administrator or any person or entity with whom the City Administrator contracts to implement the Motor Vehicle Fuel Tax program or a portion of it.

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.

No dealer, seller or user may 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 by this Chapter.

17.105.035 License Applications and Issuance.

A. Every person who is a dealer or seller of motor vehicle fuel in Portland must make application to the Tax Administrator for a license authorizing such person to engage in business as a dealer or seller in Portland. Every person who is required to have the user's license pursuant to ORS 319.550 must make application to the Tax Administrator for a license authorizing such person to use fuel in Portland.

B. Applications for the license must be made on forms prescribed by the Tax Administrator.

C. Applications must 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 Portland.

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 may issue to the dealer, seller or user a license in such form as the Tax Administrator may prescribe to transact business in Portland. A license issued under this Section is not assignable, and is valid only for the dealer, seller or user in whose name it is issued.

E. The Tax Administrator will retain all completed applications together with a record of all licensed dealers, sellers and users.

17.105.040 Failure to Secure License.

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 will be immediately due and payable.

B. The Tax Administrator will determine, from as many available sources as the Tax Administrator determines reasonable, the amount of tax due and will 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 will be prima facie evidence that the dealer, seller or user 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.

D. In the event any suit or action is instituted to enforce this Section, if the City is the prevailing party, the City will 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.

In addition to any fees or taxes otherwise provided for by law, every dealer, seller or user engaging in Portland in the sale, use or distribution of Motor Vehicle Fuel or Use Fuel must:

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 Portland as well as all such fuel sold, used or distributed in Portland 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 Portland as well as all such fuel sold, used or distributed in Portland 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 Portland City Code or Administrative Rules promulgated in accordance with this Chapter.

17.105.050 Revocation of License.

A. The City Administrator may revoke the license of any dealer, seller, or user who fails to comply with any provision of this Chapter. The Tax Administrator will 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 will 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 City 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 City Administrator in writing within 14 days. The Tax Administrator will forward the appeal, including the reasons for the determination, to the Business License Appeals Board within 30 days. The City Administrator may prescribe by Administrative Rule procedures for the protest and appeal of license revocations. The license revocation will 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.

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 will, 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 will 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 will relieve any person from the penalty provisions of Portland City Code.

17.105.065 Billing Purchasers.

Dealers in motor vehicle fuel or use fuel must render bills to all purchasers of motor vehicle fuel or use fuel. The bills must separately state and describe the different products sold or shipped under them and must 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.

No person may 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.

Every person operating any conveyance for the purpose of hauling, transporting or delivering motor vehicle fuel or use fuel in bulk must, before entering upon the public highways of Portland 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 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 must, 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.

Use fuel sold to holders of a weight receipt may not be charged the Use Fuel Tax.

17.105.085 Exemption of Export Fuel.

A. The Motor Vehicle Fuel Tax imposed by Section 17.105.010 will not be imposed on motor vehicle fuel or use fuel:

1. Exported from Portland by a dealer; or

2. Sold by a dealer for export by the purchaser to an area or areas outside Portland in containers other than the fuel tank of a motor vehicle, but every dealer must report such exports and sales to Portland 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 may 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 Portland, 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 Portland in the fuel tank of a motor vehicle will not be considered as exported from Portland.

C. No person may, 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 Portland and fail to notify the Tax Administrator and the dealer from whom the motor vehicle fuel was originally purchased of their act.

D. No dealer, seller, user, or other person may conspire with any person to withhold from export, or divert from export or to return motor vehicle fuel or use fuel to Portland for sale or use so as to avoid any of the fees imposed by this Chapter.

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 must retain in their files for at least three years an export certificate executed by the purchaser in such form and containing such information as is prescribed by the Tax Administrator. This certificate will 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.

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 by this Chapter. When the purchasing or receiving dealer first sells, uses, or distributes the fuel, that dealer must 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 must 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 must 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 Subsection 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 must collect the Motor Vehicle Fuels Tax as provided in ORS 319.510 through ORS 319.880.

D. A dealer who renders monthly statements to the Tax Administrator as required by this Chapter must 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 must show separately the number of gallons of use fuel sold or delivered.

17.105.095 Payment of Tax and Delinquency.

A. The Motor Vehicle Fuel Tax imposed by this Chapter must 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 one percent of such tax will 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 will 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 will be assessed. Said penalty will be in addition to the penalty provided for in Subsection 17.105.095 B. and will 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 will 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 will 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 will 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 will 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.

Every dealer, seller or user in motor vehicle fuel or use fuel must 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 must 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.

If a dealer, seller or user fails to file any statement required by Section, the Tax Administrator will 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

will in any proceeding be prima facie evidence of the amount of fuel sold, distributed or used. The Tax Administrator will 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 will be cumulative to other penalties provided in Portland City 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.

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 Portland, 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 of this Chapter, 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 must 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 will be subject to interest at the rate of .0329 percent per day from the date the original tax payment was due.

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

A. Except as otherwise provided in Portland City 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 three 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 Portland City Code will be served on dealers, sellers and users within three years from the date upon which such additional

taxes become due or were paid, whichever is later, and will 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.

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 Portland for the purpose of enforcing the provisions of Portland City Code.

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

Every dealer, seller and user of motor vehicle fuel or use fuel must 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 must include copies of all invoices or bills of all such sales and must 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 Three Years.

Every dealer, seller and user must maintain and keep, for a period of three years and six months, all records of motor vehicle fuel or use fuel used, sold and distributed within Portland 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 must 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 will be assessed in addition to the tax imposed by Section 17.105.010.

17.105.135 Citizen Oversight Committee; Annual Audits.

A. The City will appoint a citizen oversight committee that is representative of Portland’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 eight and a maximum of 20 members.

B. The use of Motor Vehicle Fuel Tax net revenues will be audited annually.

17.105.145 Administrative Rules.

The City Administrator may adopt administrative rules as authorized by Charter.

Chapter 17.106 Deconstruction of Buildings Law

17.106.005 Short Title.

This Chapter is known as the Deconstruction of Buildings Law.

17.106.010 Purpose.

This Chapter provides deconstruction requirements for the removal of Portland's older and more historic primary dwelling structures. The Deconstruction of Buildings Law seeks to:

A. Maximize the salvage of valuable building materials for reuse;

B. Reduce carbon emissions associated with demolition;

C. Reduce the amount of demolition waste disposed of in landfills; and

D. Minimize the adverse impacts associated with building removal.

17.106.020 Definitions.

The terms used in Chapter 17.106 are defined as provided in this Section:

A. Certified Deconstruction Contractor means a contractor licensed with the Oregon Construction Contractors Board (CCB) that has successfully completed a deconstruction certification program recognized by the Bureau of Planning and Sustainability. A firm will be considered certified if at least one person currently employed by the firm is certified.

B. Deconstruction means the systematic dismantling of a structure, typically in the opposite order it was constructed, in order to maximize the salvage of materials for reuse, in preference over salvaging materials for recycling, energy recovery, or sending the materials to the landfill.

C. Director means the Director of the Bureau of Planning and Sustainability or their authorized designee.

D. Primary dwelling structure means one and two-family structures (detached and attached) based on current permitted occupancy at the time of demolition permit application. Primary dwelling structures do not include accessory structures such as garages or accessory dwelling units.

E. Recycling means the processing of waste materials into new products or material feed stock for products. Materials that can be recycled include but are not limited to concrete, metal piping, and asphalt roofing shingles.

F. Responsible party means any owner or person in control of a primary dwelling structure, or their authorized agent.

G. Reuse means the utilization of a product or material that was previously installed for the same or similar function to extend its life cycle. Materials salvageable for reuse include but are not limited to cabinets, doors, hardware, fixtures, flooring, siding, and framing lumber.

17.106.030 Administrative Rules.

The City Administrator may adopt administrative rules as authorized by Charter.

17.106.040 Regulations.

A. Scope. The deconstruction requirements of this Chapter apply to demolition permit applications under Chapter 24.55 of Portland City Code for:

1. Primary dwelling structures that were built in 1940 or earlier according to building permit records on file with the Portland Permitting & Development, or if no such permit records exist, then County tax assessor information; or

2. Primary dwelling structures that have been designated as a historic resource subject to the demolition review or 120-day delay provisions of Portland City Code Title 33.

B. Requirements. Primary dwelling structures must be deconstructed in accordance with the provisions of this Chapter and associated administrative rules. Salvaged material may be sold, donated, or reused on site.

1. Demolition permit application. An application for a demolition permit under Portland City Code Chapter 24.55 for any primary dwelling structure will not be considered complete unless it is accompanied by a completed Pre-Deconstruction Form provided by the City Administrator.

2. Certified Deconstruction Contractor. Deconstruction work must be performed by a Certified Deconstruction Contractor. A Certified Deconstruction Contractor must be assigned to the project throughout the course of deconstruction. Certified Deconstruction Contractors must comply with the requirements of this Chapter and the administrative rules. The Bureau of Planning and Sustainability will maintain on file and available to the public a list of current Certified Deconstruction Contractors.

3. Site posting. On the first day of active deconstruction a yard sign provided by the City Administrator when the permit is issued must be posted at the site. The sign must indicate that the structure is being deconstructed and must provide City contact information for questions or concerns.

a. The sign must remain in place throughout the course of deconstruction.

b. The sign must be placed on each street frontage of the site.

c. Signs must be posted within five feet of a street lot line and must be visible to pedestrians and motorists. Signs may not be posted in a public right-of-way. Signs are not required along street frontages that are not improved and allow no motor vehicle access.

4. Heavy machinery. Heavy machinery may be used in deconstruction to assist in the salvage of materials for reuse or to remove material not required to be salvaged for reuse. Heavy machinery may not be used in deconstruction to remove or dismantle components of buildings in ways that render building components unsuitable for salvage. For purposes of this Chapter 17.106, heavy machinery includes, but is not limited to, track hoes, excavators, skid steer loaders, or forklifts.

5. Documentation. Certified Deconstruction Contractors must maintain receipts for donation, sale, recycling, and disposal of all materials for any deconstruction project. Materials intended for reuse on site must be documented with photographs. The City Administrator may ask that a Certified Deconstruction Contractor produce the receipts or photographs for inspection any time until the demolition permit is approved to be finaled.

6. Demolition permit final. A completed Post-Deconstruction Form and all documentation required in Subsection 5. above must be submitted to the Bureau of Planning and Sustainability before the Portland Permitting & Development may approve a demolition permit as finaled.

C. Additional regulations. Compliance with Chapter 17.106 does not exempt the demolition of buildings from any other requirements of Portland City Code, such as in Title 11 Trees, Title 24 Building Regulations, or Title 33 Planning and Zoning.

D. Exemptions. The following are exempt from the requirements of Chapter 17.106:

1. A building permit to move a structure as provided under Portland City Code Chapter 24.25.

2. Any primary dwelling structure that has been determined by the Portland Permitting & Development to be dangerous and is required to be abated by demolition as provided in Portland City Code Section 29.40.030.

3. Any primary dwelling structure that the City Administrator has determined is unsuitable for deconstruction because:

a. The structure is structurally unsafe or is otherwise hazardous to human life; or

b. Most of the material in the structure is not suitable for reuse.

E. Request for an exemption. An applicant may request an exemption from the requirements of this Chapter under Subsection 17.106.040 D.3. above by submitting a written request for exemption, together with supporting evidence, when submitting a demolition permit application.

F. Determination of an exemption. The City Administrator 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.

A. The City Administrator 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 City Administrator may determine as appropriate based upon criteria in Subsection E. below.

5. Any person receiving a notice of violation must, 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 must, 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 City Administrator may impose the following additional remedies for Certified Deconstruction Contractors.

1. A first violation of this Chapter may result in removal from the list of approved Certified Deconstruction Contractors for up to six 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, after which 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 City Administrator.

D. Stop work orders. When necessary to obtain compliance with this Chapter, the City Administrator 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 City Administrator issues a stop work order, activity subject to the order may not be resumed until such time as the City Administrator 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 City Administrator's administrative determination as provided in Subsection 17.106.060 B.

E. The City Administrator 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.

F. If the City Administrator assesses an enforcement penalty as described in this Section against a property owner, the revenue service and program of the City Administrator may file a statement that identifies the property, the amount of the penalty, and the date from which the charges are to begin. The revenue service and program of the City Administrator will then:

1. Notify the property owner of the assessment of enforcement penalties;

2. Record a property lien in the docket of City liens;

3. Bill the property owner monthly for the full amount of enforcement penalties owing, plus additional charges to cover the City's administrative costs; and

4. Maintain lien records until the lien and all associated interest, penalties, and costs are paid in full; and the City Administrator certifies that all violations listed in the original or any subsequent notice of violation have been corrected.

G. Inspections. The City Administrator may conduct inspections whenever necessary to enforce any provisions of this Chapter, to determine compliance with this Chapter or whenever the City Administrator has reasonable cause to believe there exists any violation of this Chapter. If the responsible party is at the site when the inspection is occurring, the City Administrator will first present proper credentials to the responsible party and request entry.

17.106.060 Right of Appeal.

A. Whenever the responsible party has been given a written notice or order pursuant to this Chapter or has been directed to make any correction, pay a penalty or to perform any act and the responsible party believes the finding of the notice or order was in error, the responsible party may have the notice or order reviewed by the City Administrator. If a review is sought, the responsible party must submit a written request to the City Administrator within 10 days of the date of the notice or order. Such review will be conducted by the City Administrator. The responsible party requesting such review will be given the opportunity to present evidence to the City Administrator. Following a review, the City Administrator will issue a written determination. Nothing in this Section limits the authority of the City Administrator to initiate a code enforcement proceeding under Portland City Code Title 22.

B. A responsible party may appeal the City Administrator's written determination to the Code Hearings Officer in accordance with Portland City Code Chapter 22.10. The filing of an appeal request will remain the effective date of a penalty until the appeal is determined by the Code Hearings Officer. If, pursuant to said appeal hearing, payment of a penalty is ordered, such payment must be received by the City Administrator or postmarked within 15 calendar days after the order becomes final.

Chapter 17.107 Transportation and Parking Demand Management

17.107.010 Purpose.

The purpose of this Chapter is to describe the required elements of a Transportation and Parking Demand Management (TDM) Plan, and the circumstances under which a pre-approved TDM plan may be submitted. Requiring TDM is intended to prevent, reduce, and mitigate the impacts of development on the transportation system, neighborhood livability, safety, and the environment while reducing transportation system costs.

TDM plans provide residents, employees, and visitors with information and incentives to use transportation methods other than single occupancy vehicles in order to achieve the City's transportation goals, including reduced reliance on single occupancy vehicles, and reduced vehicle miles travelled.

17.107.020 Required Elements of a Transportation and Parking Demand Management Plan.

A TDM Plan must include, at a minimum, the following elements:

A. Description of proposed development, including trip generation estimates and proposed auto and bicycle parking. The description may include development anticipated to occur for a period of up to 10 years;

B. Description of existing land uses, traffic conditions, and multimodal facilities in the area within ¼ mile of the site, including (if applicable) any current employee mode split data from the most recent Employee Commute Options (ECO) report submitted to the Oregon Department of Environmental Quality;

C. Performance targets:

1. Mode split goals must be based on the performance targets from Policy 9.49.3 in the Transportation System Plan;

2. An ECO survey submitted in Subsection B. must serve as the baseline mode split, when available. If an ECO survey is not available, census data may be used, or the applicant may submit an independent survey from a professional traffic engineer;

3. Interim performance targets may be determined as a straight line projection from the base year to 2035;

4. Alternate performance targets may be proposed based on the following factors:

a. The relative availability of bicycle, transit, bike share, and car share infrastructure and services;

b. Current TDM strategies that have been implemented by the applicant;

c. Travel characteristics, including schedules, of employees, residents, and visitors;

d. Best practices and performance of comparable sites in Portland and comparable cities;

D. If a site has a TDM Plan approved through a previous land use review, and the applicant is in compliance with the provisions of that Plan, then the TDM Plan may serve as the basis of any subsequent updates. The submittal for a TDM Plan update should include:

1. Demonstration of compliance with neighborhood engagement obligations;

2. Demonstration of compliance with mode split reporting obligations;

3. Evaluation of mode split trends based relative to the performance target;

E. Strategies likely to achieve the identified mode split and parking management performance targets. Strategies may include but are not limited to:

1. Supply, management, and pricing of on-site employee, resident, and student parking;

2. Dissemination of information about alternatives to single-occupant vehicle commuting;

3. Identification of a site or campus TDM coordinator;

4. Financial incentives offered to employees for carpool, car-sharing, transit, bicycling, and walking;

5. For nonresidential uses, strategies to reduce total trips such as telework and/or compressed work week scheduling or on-site housing;

6. For nonresidential uses, the availability of end-of-trip facilities, such as bicycle lockers, showers, and secured bicycle parking.

F. For colleges and hospitals in the Campus Institutional Zone, a neighborhood engagement plan;

G. Reporting as required by Section 17.107.045, including any Performance Monitoring plans proposed by the applicant that exceed the ECO reporting requirements detailed in Section 17.107.045;

H. Ongoing Participation and Adaptive Management plan, specifying what additional actions not detailed in Subsection 17.107.020 D. may be utilized to achieve the 2035 performance targets specified in Subsection 17.107.020 C.

17.107.030 Transportation and Parking Demand Management Requirements and Procedures.

A. Requirement for colleges and medical Centers. Portland City Code Title 33 requires college and medical center uses in the campus institutional zones to conform to an approved Transportation Impact review. The application requirements for the Transportation Impact review require the applicant to provide a Transportation and Parking Demand Management Plan that has all the elements required by this Chapter. Approval of the TDM plan is subject to the criteria described in Chapter 33.852.

B. Requirement for residential uses. Title 33 requires development in a commercial/mixed use or multi-dwelling zone that includes more than 10 new dwelling units to have a TDM Plan at the time of development permit issuance. Development subject to this requirement may utilize the pre-approved multimodal incentive described in Section 17.107.035, or develop a custom plan approved through Transportation Impact Review, as described in Chapter 33.852.

17.107.035 Pre-Approved Multimodal Incentives for Development.

As an alternative to preparing a custom TDM plan subject to Portland City Code Sections 17.107.020 through 17.107.030, and Chapter 33.852, an applicant may agree to provide a multimodal incentive plan, preapproved by the City, including, but not limited to, the following:

A. Distribution of transportation options information approved or provided by the Portland Bureau of Transportation for the first four years of building occupancy, offered to residents, employees, and visitors;

B. Multimodal financial incentives equal to the value of a one-year adult TriMet pass per residential unit, for the first year of building occupancy. This obligation will pay for a menu of incentives that will be offered to residents of the site to increase the use of transit, bicycling, walking, and other alternatives to driving alone. Specific rates for affordable dwelling units and market-rate dwelling units are found in the annual fee schedule;

C. Participation in an annual travel survey of residents and employees for the first four years of building occupancy;

D. A written acknowledgment by the applicant of the enforcement provisions in Code Section 17.107.050.

17.107.045 Required Reporting.

Employers on sites subject to an approved TDM Plan must submit Employee Commute Options surveys to the Portland Bureau of Transportation a minimum of every two years after initial approval. On residential properties subject to a pre-approved TDM Plan under Section 17.107.035, the building owner or manager is required to actively participate in an annual City travel survey of residents and employees for the first four years of building occupancy.

17.107.050 Enforcement and Penalties.

It is a violation of this Chapter for any entity or person to fail to comply with the requirements of this Chapter or to misrepresent any material fact in a document required to be prepared or disclosed by this Chapter. Any building owner, employer, tenant, property manager, or person who fails, omits, neglects, or refuses to comply with the provisions of this Chapter is subject to a civil penalty of up to $1,000 for every seven-day period during which the violation continues. If an entity or person is fully implementing all other elements of this Chapter, failing to meet performance targets alone will not be an enforcement violation. The City Administrator will seek voluntary compliance for a period of at least one month before resorting to penalties.

17.107.060 Administrative Rule Authority.

The City Administrator may adopt administrative rules as authorized by Charter.

17.107.070 Fees.

The City may charge fees for Transportation and Parking Demand Management goods and services provided, including but not limited to application review, incentives and education, performance monitoring, adaptive management, and compliance and enforcement.

Chapter 17.108 Residential Energy Performance Rating and Disclosure

17.108.010 Purpose.

The purpose of this Chapter is to provide information to homebuyers about residential building energy performance. This information is designed to enable more knowledgeable decisions about the full costs of operating homes and to motivate investments in home improvements that lower utility bills, reduce carbon emissions, and increase comfort, safety and health for homeowners. This Chapter is known as the Home Energy Score Program.

17.108.020 Definitions.

For purposes of this Chapter, the following terms are understood to have the meanings specified in this Section. Terms, words, phrases, and their derivatives used but not specifically defined in this Chapter have their commonly understood meanings.

A. Accessory dwelling unit means a second dwelling unit created on a lot with a house, attached house, or manufactured home. The second unit is created auxiliary to, and is always smaller than, the house, attached house, or manufactured home. The unit includes its own independent living facilities including provision for sleeping, cooking, and sanitation, and is designed for residential occupancy by one or more people, independent of the primary dwelling unit.

B. Administrative rule means the rules promulgated under Section 17.108.030.

C. Asset rating means a numerical value calculated by a home energy performance score system. The asset rating is an easy-to-produce rating designed to help homeowners and homebuyers gain useful information about a house's energy performance and recommendations on cost-effective energy efficiency improvements. For existing houses, the asset rating is produced based on an in-house assessment that can be completed in less than an hour. For new houses, the asset rating may be produced based on design documents for the house.

D. Covered building means any residential structure containing a single dwelling unit or house, regardless of size, on its own lot. Covered building also includes attached single dwelling unit, regardless of whether it is located on its own lot, where each unit extends from foundation to roof, such as a row house, attached house, common-wall house, duplex, or townhouse. Covered building does not include detached accessory dwelling units or manufactured dwellings. Covered building also does not include single dwelling units used solely for commercial purposes.

E. Director means the Director of the Bureau of Planning and Sustainability or their authorized representative, designee or agent.

F. Energy means electricity, natural gas, propane, steam, heating oil, wood or other product sold for use in a building, or renewable on-site electricity generation, for purposes of providing heating, cooling, lighting, water heating, or for powering or fueling other end-uses in the building and related facilities.

G. Homebuilder means an individual or business entity building new construction single dwelling unit housing within the City to be listed for sale.

H. Home energy assessor means a person who is certified as a home energy assessor by the Oregon Construction Contractors Board to determine home energy performance scores for residential dwelling units.

I. Home Energy Performance Report means the report prepared by a home energy assessor in compliance with Oregon Administrative Rules adopted by Oregon Department of Energy for Oregon Home Energy Score Standard. The report must include the following information:

1. The home energy performance score and an explanation of the score;

2. An estimate of the total annual energy used in the home in retail units of energy, by fuel type;

3. An estimate of the total annual energy generated by on-site solar electric, wind electric, hydroelectric, and solar water heating systems in retail units of energy, by type of fuel displaced by the generation;

4. An estimate of the total monthly or annual cost of energy purchased for use in the covered building in dollars, by fuel type, based on the current average annual retail residential energy price of the utility serving the covered building at the time of the report and the average annual energy prices of non-regulated fuels, by fuel type, as provided by the Oregon Department of Energy;

5. The current average annual utility retail residential energy price in dollars, by fuel type, and the average annual energy prices of non-regulated fuels, by fuel type, provided by the Oregon Department of Energy and used to determine the costs described in Subsection 17.108.020 I.4. of this Section;

6. At least one comparison home energy performance score that provides context for the range of possible scores. Examples of comparison homes include, but are not limited to, a similar home with Oregon's average energy consumption, the same home built to Oregon energy code, and the same home with certain energy efficiency upgrades;

7. The name of the entity that assigned the home energy performance score and that entity's Construction Contractors Board license number if such a license is required by law;

8. The date the building energy assessment was performed; and

9. For reports that meet all requirements of Oregon Administrative Rules adopted by Oregon Department of Energy for Oregon's Home Energy Performance Score Standard, the statement "This report meets Oregon's Home Energy Performance Score standard" must be included on home energy performance reports.

J. Home Energy Performance Score means an asset rating that is based on physical inspection of the home or design documents used for the home's construction.

K. Home Energy Performance Score System means a system that incorporates building energy assessment software to generate a home energy performance score and home energy performance report. Examples of home energy performance score systems include, but may not be limited to, the U.S. Department of Energy Home Energy Score, the Energy Performance Score (EPS) or the Home Energy Rating System (HERS).

L. House means a detached dwelling unit located on its own lot.

M. Listed publicly for sale means listing the covered building for sale by printed advertisement, internet posting, or publicly displayed sign.

N. Manufactured dwelling means a dwelling unit constructed off of the site which can be moved on the public roadways. Manufactured dwellings include residential trailers, mobile homes, and manufactured homes.

O. Manufactured home means a manufactured dwelling constructed after June 15, 1976 in accordance with federal manufactured housing construction and safety standards (HUD code) in effect at the time of construction.

P. Mobile home means a manufactured dwelling constructed between January 1, 1962, and June 15, 1976, in accordance with the construction requirements of Oregon mobile home law in effect at the time of construction.

Q. Real estate listings means any public real estate listing of homes for sale in the City of Portland. Real estate listings include listing a home for sale by a property owner or by a licensed real estate agent. Real estate listings include any printed advertisement, internet posting, or publicly displayed sign, including but not limited to Regional Multiple Listing Service, Redfin, Zillow, Trulia and other third party listing services. Real estate listings are required to include the Home Energy Performance Score and the Home Energy Performance Report.

R. Residential trailer means a manufactured dwelling constructed before January 1, 1962, which was not constructed in accordance with federal manufactured housing construction and safety standards (HUD code), or the construction requirements of Oregon mobile home law.

S. Sale means the conveyance of title to real property as a result of the execution of a real property sales contract. Sale does not include transfer of title pursuant to inheritance, involuntary transfer of title resulting from default on an obligation secured by real property, change of title pursuant to marriage or divorce, condemnation, or any other involuntary change of title affected by operation of law.

T. Seller means any of the following:

> **1.** Any individual or entity possessing title to a property that includes a covered building, or
>
> **2.** The association of unit owners responsible for overall management in the case of a condominium or other representative body of the jointly-owned building with authority to make decisions about building assessments and alterations, or

17.108.030 Administrative Rules.

The City Administrator may adopt administrative rules as authorized by Charter.

17.108.040 Energy Performance Rating and Disclosure for Covered Buildings.

Prior to publicly listing any covered building for sale, the seller of a covered building, or the seller's designated representative, must:

A. Obtain a home energy performance report of such building from a state licensed home energy assessor, and;

B. Provide a copy of the home energy performance report:

1. To all licensed real estate agents working on the seller's behalf; and

2. To prospective buyers who visit the home while it is listed publicly for sale; and

3. To the City Administrator for quality assurance and evaluation of policy compliance.

C. Include the Home Energy Performance Score in all real estate listings, including the Home Energy Performance Report if attachments are accepted by the listing service.

17.108.050 Exemptions and Waivers.

A. The City Administrator may exempt a seller from the requirements of this Chapter if the seller submits documentation that the covered building will be sold through of any of the following:

1. A foreclosure sale,

2. A trustee's sale,

3. A deed-in-lieu of foreclosure sale, or

4. Any pre-foreclosure sale in which seller has reached an agreement with the mortgage holder to sell the property for an amount less than the amount owed on the mortgage.

B. The City Administrator may exempt a seller from the requirements of this Chapter after confirming that compliance would cause undue hardship for the seller under the following circumstances:

1. The covered building qualifies for sale at public auction or acquisition by a public agency due to arrears for property taxes,

2. A court appointed receiver is in control of the covered building due to financial distress,

3. The senior mortgage on the covered building is subject to a notice of default,

4. The covered building has been approved for participation in Oregon Property Tax Deferral for Disabled and Senior Citizens, or equivalent program as determined by the City Administrator, or

5. The responsible party is otherwise unable to meet the obligations of this Chapter as determined by the City Administrator.

C. The City Administrator may exempt a seller from the requirements of this Chapter where the City Administrator determines that compliance with the requirements of Section 17.108.040 would cause undue hardship under any of the following circumstances:

1. The low-income qualified seller demonstrates household income is at or below 60 percent of median household income for the Portland-Vancouver-Hillsboro, OR-WA Metropolitan Statistical Area,

2. The low-income qualified seller has been approved for participation in Oregon Low-Income Home Energy Assistance Program,

3. The low-income qualified seller has been approved for participation in Free and Reduced Price Meals through Oregon Department of Education, or

4. The low-income qualified seller is otherwise unable to meet the obligations of this Chapter as determined by the City Administrator.

D. The City Administrator may provide a waiver from the requirements of this Chapter for homebuilders or sellers using scoring products that are not compliant with Oregon Administrative Rules adopted by Oregon Department of Energy for Oregon's Home Energy Performance Score Standard. The waiver will allow homebuilders or sellers currently using Energy Performance Scores (EPS) or Home Energy Rating System (HERS) to temporarily continue the use of these asset rating tools.

17.108.060 Enforcement and Penalties.

A. It is a violation of this Chapter for any person to fail to comply with the requirements of this section or to misrepresent any material fact in a document required to be prepared or disclosed by this Chapter.

B. Any building owner or person who fails, omits, neglects, or refuses to comply with the provisions of this Chapter is subject to the following:

1. Upon the first violation, the City Administrator may issue a written warning notice to the entity or person, describing the violation and steps required to comply.

2. If the violation is not remedied within 90 days after issue of written warning notice, the City Administrator may assess a civil penalty of up to $500. For every subsequent 180-day period during which the violation continues, the City Administrator may assess additional civil penalties of up to $500.

17.108.070 Right of Appeal and Payment of Assessments.

After being issued a written warning notice of a first violation, any person receiving a subsequent notice of violation must, within 10 days of issuance of the notice, either pay to the City the stated amount of the assessment or request an appeal hearing by the Code Hearings Officer in accordance with procedures set forth in Chapter 22.10 of Portland City Code. The filing of an appeal request will 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 City Administrator or postmarked within 15 calendar days after the order becomes final.

Chapter 17.109 Relocation Benefits Appeals

17.109.010 Purpose.

The purpose of this Chapter is to provide an appeal process for any displacee who is dissatisfied with any ruling on their eligibility or claim for any relocation benefit payment when the City acquires private property for public use.

17.109.020 Reconsideration Conference.

A displacee wanting to appeal must first request a reconsideration conference to afford the displacee an opportunity to present additional information that may not have been considered by the City or to correct factual errors, and for the City to reconsider the claim with the new or corrected information. The request must be submitted to the City Administrator on an “Appeal of Relocation Assistance” form that is available from the Right of Way Agent assigned to the file.

17.109.030 Appeal to Code Hearings Officer.

A determination issued pursuant to Section 17.109.020 may be appealed to the Code Hearings Officer, as provided for in Chapter 22.10 of Portland City Code.

17.109.040 Further Appeals.

All appeals from the Code Hearings Officer’s determination in accordance with Section 17.109.030 will be by writ of review as authorized by Section 22.04.010 of the City Code and ORS 34.010 - 34.100.