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Chapter 17.04

DEFINITIONS

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17.04.035 Director
17.04.037 Responsible Engineer.
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17.04.010 Person.

"Person" as used in this Title means any individual, individuals, copartnership, firm, association, or corporation of any kind or nature, whether of foreign or domestic origin.

17.04.020 Pronoun.

The use of a "pronoun" of any gender includes masculine, feminine or neuter gender.

17.04.025 Responsible Official.

(Added by Ordinance No. 173295; Amended by Ordinance No. 182389, effective January 2, 2009.) "Responsible Official" as used in this title means the Official with the authority 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 shall be the City Engineer as defined in 17.04.030. For the Bureau of Environmental Services, this shall be the Director of the Bureau of Environmental Services as defined in 17.04.035.

17.04.030 City Engineer.

(Amended by Ordinance Nos. 173295 and 177092, effective December 4, 2002.) "City Engineer" means the duly appointed City Engineer, or designee.

17.04.035 Director.

(Added by Ordinance No. 173295, effective April 28, 1999.) "Director" as used in this title means the duly appointed Director of the Bureau of Environmental Services (BES), or the lawfully designated subordinate of the Director acting under the Director's orders.

17.04.037 Responsible Engineer.

(Added by Ordinance No. 173295; amended by Ordinance Nos. 177124 and 182389, effective January 2, 2009.) Responsible Engineer" as used in this title means the Engineer with the authority 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 Bureau of Transportation this shall be the City Engineer, for the Bureau of Environmental Services this shall be the Chief Engineer of the Bureau of Environmental Services, and for the Portland Water Bureau this shall be the Chief Engineer of the Portland Water Bureau.

17.04.040 Sewer.

(Amended by Ordinance No. 182760, effective June 5, 2009.) The term "sewer" as used in this Title means any sewer as defined in Section 9-102 of the City Charter.

17.04.050 Street.

The term "street" as used in this Title, means any street as defined in the City Charter, including all area between property lines, and area dedicated to street use.

17.04.060 Local Improvement

(Amended by Ordinance Nos. 177124 and 182760, effective June 5, 2009.) "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.

17.04.070 Public Improvement.

(Amended by Ordinance Nos. 151100 and 176555, effective July 1, 2002.) "Public improvement" means an improvement of, on, over or under property owned or controlled by the public, or property to be controlled by the public 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.

17.04.080 Engineer's Estimate.

(Added by Ordinance No. 144020; amended by Ordinance Nos. 146587, 151643 and 173295; effective April 28, 1999.) The term "engineer's estimate" as used in this Title refers to the calculation of anticipated total dollar cost of the construction of a public or local improvement project as determined by the Responsible Engineer. The estimate is used in determining the face value of performance bonds where applicable.

Chapter 17.08

LOCAL IMPROVEMENT PROCEDURE

(New Chapter replaced by Ordinance No. 177124, effective January 10, 2003.)

Sections:

17.08.010 Definitions and Scopes of Duties.
17.08.020 City Council Control.
17.08.030 Charter Provisions Applicable.
17.08.040 Initiation of Local Improvement Proceedings.
17.08.050 Petition for a Local Improvement District.
17.08.060 Resolution of Intent.
17.08.070 Local Improvement District Formation and Remonstrances.
17.08.080 Changes to Scope or Cost of Improvements and Notice to Proceed.
17.08.090 Abandonment of Local Improvement District.
17.08.100 Completion of Construction.
17.08.110 Total Cost of Local Improvement
17.08.120 Alternative Financing Methods.
17.08.130 Final Assessment and Objections.

17.08.010 Definitions and Scopes of Duties.

(Amended by Ordinance No. 182389, effective January 2, 2009.)

A. The "Responsible Bureau" for a local improvement is as follows:

1. The 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 Bureau of Water Works is the Responsible Bureau for water improvements; and

4. City Council shall 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 Engineer to administer the City's local improvement district program.

C. The Responsible Engineer as identified in Section 17.04.037 is responsible for:

1. Preparing a preliminary engineer's estimate;

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.

D. 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 or assessment methodologies 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 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.

E. The City Auditor shall 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 an assessment ordinance for a local improvement district;

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

8. Determining the individual financial capacities of property owners, and whether to offer bonding, 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 district, the City Council shall 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 shall be followed by the City except where Charter provisions are not consistent with state statute or the Oregon Constitution. In case of such inconsistency, City Code shall apply.

17.08.040 Initiation of Local Improvement Proceedings.

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

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; and/or

3. Its own initiative.

B. Where a sewer local improvement 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.

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 shall 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 shall 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 represents more than 50 percent of the property in the proposed district as measured by the proposed assessment methodology. Property owned by the City, including property owned through the Portland Development Commission, shall 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 6 months and City Council resolved not to proceed with the substantially similar district.

E. In reviewing the petition, the Local Improvement District Administrator shall also identify delinquencies in taxes or City liens in the proposed district and determine the bonding capacities of the properties within the proposed local improvement district. The Local Improvement District Administrator shall 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.

F. 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 shall prepare and file a resolution of intent for the City Council's consideration if after the review specified in Section 17.08.050 the Local Improvement District Administrator determines a petition is valid; if a Responsible Bureau recommends initiation of a local improvement district; and/or if a member of City Council requests initiation of a local improvement district.

B. The resolution of intent shall include the following: the name or designation of the improvement; the location of the improvement; a map or clear description of the district boundary; the general character and scope of the improvement; a preliminary estimate of the total cost of the local improvement; the proposed assessment methodology; the proportion of funding to be borne by property

owners and other sources, if applicable; the designated Responsible Bureau if the project scope is not addressed by Section 17.08.010; a statement of whether the City Council intends to construct the improvement; and direction to the Local Improvement District Administrator to do one of the following:

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

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

3. 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 shall 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 shall 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.

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 to terminate the process for forming the local improvement district, no further action shall be taken by the Local Improvement District Administrator on the district for a period of 6 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 shall publish 2 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 shall include the following information:

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

b. The name of the proposed district;

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

d. A map or description of the area proposed for inclusion in the 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;

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 shall cause to be posted conspicuously within the proposed assessment district, at least two notices headed "Notice of Proposed Improvement" in letters not less than 1 inch in height, and the notices shall contain in legible characters the information required in Section 17.08.070.A.1. The Local Improvement District Administrator shall 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 City Auditor, at the direction of the Local Improvement District Administrator, shall mail to the owner of each property within the proposed assessment district, a notice containing the following:

a. The information required in Section 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 shall 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 shall 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 City Auditor by 5:00 PM seven (7) 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 City Auditor. The City Auditor is not responsible for remonstrances sent via facsimile or via e-mail. The remonstrance shall state the reasons for the objection. Any person acting as agent or Attorney with power to act in signing the remonstrance shall, 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 City Auditor 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 District.

2. Owners of property covered by waivers of remonstrance may submit an objection; however such an objection shall not be considered for purposes of determining 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 shall 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 shall 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 district boundaries, or a map showing the area 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 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 shall contain at a minimum directives that:

a. Create the district;

b. Include benefited properties in the 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 formula or assessment formulas;

e. Direct the Responsible Engineer to arrange for the preparation of plans and specifications;

f. Direct the Responsible Engineer to arrange for construction of the improvement;

g. Direct the City Auditor 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 shall hold a public hearing on the proposed improvement. As provided by Section 17.08.070 A.3, the hearing shall 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 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 assessment district which 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 modifies the scope of the improvement within the adopted formation ordinance so that an assessment is likely to be significantly increased upon one or more properties, or if the City Council enlarges the assessment district within the adopted formation ordinance, then a new preliminary estimate of assessments will be made and new notices shall be sent to the property owners within the proposed district, and another hearing shall be held. The notice shall advise property owners who still wish to remonstrate that their remonstrance must be resubmitted. However, no new publication or posting shall be required. In the event of modification that meets the objection of any remonstrance, such remonstrance shall not be counted as such unless renewed following such modification.

3. Decision to Form District: Upon completion of the hearing process, the City Council may approve or decline formation of a district by ordinance. As provided in Section 17.08.070 C.1, a decision to approve formation of a district shall be supported by findings supporting a conclusion of special

benefit and addressing the remonstrances, and shall 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 Responsible Engineer shall 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.

5. The City Council shall 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 shall also have final determination of the assessment formula and boundaries of the district that is to be assessed for the costs of the improvement. The possibility or likelihood that some property contained in the property description of the proposed assessment district may not be benefited by the proposed improvement shall not invalidate the district description.

7. Upon City Council's passage of an ordinance forming a local improvement district, the assessment formula may not be changed 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 shall be made by the City Auditor until after final assessment is made.

17.08.080 Changes to Scope or Cost of Improvements and Notice to Proceed.
(Amended by Ordinance No. 182760, effective June 5, 2009.)

A. After formation of a local improvement district, City Council shall hold a public hearing to consider significant and material changes to the proposed scope or to the estimate of the total cost of the local improvement that may arise during the course of final engineering.

B. For such a hearing, notice shall be in the manner provided by Section 17.08.070. In addition to meeting the provisions of Section 17.08.070, the notice shall 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

shall have the opportunity to remonstrate against the significant changes in the manner provided by Section 17.08.070. If the improvement district was initiated by petition, no new petition will be required.

C. The Responsible Engineer may issue a Notice to Proceed to begin construction provided that:

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

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

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

Construction of the local improvement shall be in substantial accordance with the plans and specifications adopted by the Responsible Engineer.

17.08.090 Abandonment of Local Improvement District.

The City Council shall 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.

(Amended by Ordinance No. 182760, effective June 5, 2009.)

A. After the work financed by the local improvement district has been completed satisfactorily, the Responsible Engineer shall prepare a certificate of completion. The Responsible Engineer shall also prepare a final engineer's estimate showing the costs of all engineering and construction work performed. The certificate of completion shall 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 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 Responsible Engineer 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 Section 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 shall 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 shall 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.

C. Engineering and project management performed by the City in connection with local improvements shall be charged at the rate of 100 percent of the direct cost of services performed computed in accordance with the provisions of Section 5.48.030. The Responsible Engineer shall 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, shall be prepared by the Local Improvement District Administrator.

D. The City Auditor shall maintain a fee schedule that shall be used for determining the charge to be made by the City Auditor for City Auditor's Office

administrative services and general City administrative services in connection with local improvements. These charges will include a Superintendency fee; a recording fee which shall 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 shall 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.

(Amended by Ordinance No. 182760, effective June 5, 2009.)

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 thereby, is completed in whole, or in such part that the cost of the whole can be determined, the Local Improvement District Administrator shall file the final estimate of the total cost of the local improvement and prepare a proposed final assessment according to the assessment formula approved by City Council upon the properties in the 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 assessment district fixed by the City Council, the Local Improvement District Administrator shall deduct from the total cost of the local improvement such allocation of costs to public funds provided by the City Council and shall apportion the remainder of such total cost on the properties within the assessment district.

3. When the Local Improvement District Administrator has calculated the assessment for each property, the Local Improvement District Administrator shall file the proposed final assessment roll with the City Council through the Commissioner-in-Charge of the Responsible Bureau.

B. Notice of Proposed Final Assessments

1. At least 21 calendar days before the public hearing on the proposed final assessment, the City Auditor at the direction of the Local Improvement District Administrator shall 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 shall 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 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 shall publish 2 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.

C. Final Assessment Hearing and Objections

1. Any owner of property 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 City Auditor. The objection must be received by the City Auditor no later than 5:00 PM seven (7) calendar days prior to the hearing by City Council on the proposed final assessment. The City Auditor will forward the objection to the Local Improvement District Administrator for a response. The objection shall be filed in the same manner as set forth in Section 17.08.070.B and shall state the reasons for the objection. However, objections received to final assessment shall not affect Council jurisdiction over final assessment proceedings.

2. The City Council shall hold a hearing on any objections on the date set forth in the notice, and at that time shall 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 shall determine and approve the amount to be assessed upon each property within the assessment 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 assessment district do not exceed the total cost of the local improvement. The amount of each assessment as determined by City Council shall be based on the City Council's finding of special benefit to the property.

D. Final Assessment Ordinance

1. The City Council shall pass an assessing ordinance that shall set forth the assessments against the respective properties within the assessment district.

2. The ordinance shall:

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

b. State the total cost and assessment formula 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 Section 17.08.100 E. have been invoked, a copy of the written report from the City Engineer 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 City Auditor shall 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 shall 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 shall be brought to the attention of the Local Improvement District Administrator, who shall determine whether there has been a mistake. If the Local Improvement

District Administrator finds that there has been a mistake, he or she shall recommend to the City Council an amendment to the assessment ordinance to correct the error. On enactment of an amendment, the City Auditor shall cause the necessary correction to be made in the City lien docket. Such correction shall not change assessments against any other property within the 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 district is formed if the properties are again included.

Chapter 17.12

ASSESSMENTS

(New Chapter substituted by Ordinance No. 163420, effective Sept. 29, 1990.)

Sections:

17.12.010 Lien Docket and General Assessment Procedure.
17.12.060 Assessing Ordinance.
17.12.070 Notice of Assessment.
17.12.080 Payment of City's Share.
17.12.100 Surplus.
17.12.120 Correction of Mistake in Assessment - Refund or Overpayment.
17.12.130 Segregation of Assessments
17.12.140 Bonding.
17.12.150 Rebonding.
17.12.170 Collection.

17.12.010 Lien Docket and General Assessment Procedure.

(Replaced by Ordinance No. 177124, effective January 10, 2003.)

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.

17.12.020 Allowance for Engineering and Administration.
(Repealed by Ordinance No. 177124, effective January 10, 2003.)

17.12.030 Estimate of Cost - Apportionment of Assessments.
(Repealed by Ordinance No. 177124, effective January 10, 2003.)

17.12.040 Notices of Proposed Assessments.
(Repealed by Ordinance No. 177124, effective January 10, 2003.)

17.12.050 Remonstrances and Hearings.
(Repealed by Ordinance No. 177124, effective January 10, 2003.)

17.12.060 Assessing Ordinance.
The City Council may pass an assessing ordinance, effective immediately upon passage as prescribed in the City Charter, which shall set forth the assessments against the respective properties within the assessment district. Upon such passage the City Auditor shall 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 Auditor shall 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.

17.12.090 Deficit Assessment.
(Repealed by Ordinance No. 177124, effective January 10, 2003.)

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 shall be apportioned and paid in accordance with Charter provisions.

17.12.110 Reassessment.

(Repealed by Ordinance No. 177124, effective January 10, 2003.)

17.12.120 Correction of Mistake in Assessment - Refund or Overpayment.

(Amended by Ordinance No. 173369, effective May 12, 1999.) 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 his or her legal representative, heirs or assigns, is entitled to repayment of the same by check drawn upon the fund receiving such overpayment.

17.12.125 Mid-County Sewer Financial Assistance Program.

(Repealed by Ordinance No. 182760, effective June 5, 2009.)

17.12.130 Segregation of Assessments.

(Amended by Ordinance Nos. 177124 and 182760, effective June 5, 2009.)

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 Auditor.

B. Applications shall be made to the City Auditor and shall 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 shall 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% or more of the amount of the lien as to each segregated tract concerned.

D. The City Auditor shall compute a segregation of the lien against the real property on the same basis as it was originally computed and apportioned and shall 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 shall be subject to the Council's approval by ordinance.

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

F. The City Auditor shall 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 shall be stated in the Fees & Charges schedule maintained in the Assessments Division of the City Auditor's office.

17.12.140 Bonding.

(Amended by Ordinance Nos. 173369 and 177124, effective January 10, 2003.)

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 shall be in accordance with the terms and provisions of ORS 223.215. The contract shall be received by the Auditor 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 City Auditor.

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 Auditor shall 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 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, shall 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 shall be set using an adjusted rate mechanism. The City Council shall set an interim rate by ordinance, which shall be applied to the unpaid balance until improvement bonds are sold to finance the bonded assessments. Upon sale of bonds, the Auditor shall 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 shall receive the adjusted rate.

G. Bond financing fees shall be charged to each installment contract to defray the costs of financing per a fee schedule on file with the City Auditor. 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 shall 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 shall be created for each bond sale as required by the terms of the sale. This fee shall be in addition to the fees set forth in Chapter 17.08 and in Section 17.12.140 G.

I. The City Auditor shall charge a billing and service charge which shall be added to each statement and shall be in addition to principal, interest, penalties, costs and other fees. This fee shall be per a schedule on file with the City Auditor. This fee shall be in addition to the fees set forth in this Chapter 17.08, Section 17.12.140 G. and Section 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 shall be applicable.

B. As used in this Section the term "property owner" shall mean 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.

17.12.160 Monthly Payments on Assessments.

(Repealed by Ordinance No. 161797, effective May 12, 1989.)

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.

17.12.180 Redemption.

(Repealed by Ordinance No. 161797, effective May 12, 1989.)

17.12.190 Applicability of Charter Provisions.

(Repealed by Ordinance No. 161797, effective May 12, 1989.)

17.12.200 Alternate Procedures.

(Repealed by Ordinance No. 161797, effective May 12, 1989.)

Chapter 17.13

PARKS AND RECREATION SYSTEM DEVELOPMENT CHARGE

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

Sections:

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

17.13.010 Scope and Purposes.

(Amended by Ordinance No. 181669, effective January 1, 2009.)

A. New development within the City of Portland contributes to the need for capacity increases for parks and recreation facilities and, therefore, new development should contribute to the funding for such capacity increasing improvements. This SDC will fund a portion of the needed capacity increases for urban, neighborhood, and community parks, trails, and habitat facilities as identified in the City of Portland Parks and Recreation SDC Capital Improvement Plan (SDC-CIP).

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

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

D. The SDC imposed by this Chapter is not 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 or Section 11g, Article XI of the Oregon Constitution.

E. The funding provided by this Chapter constitutes a mandatory collection method based upon the guidelines set forth in ORS 223.297 through 223.314 to assure the provision of capacity increasing improvements for parks and recreation facilities as contemplated in *Parks 2020 Vision, July 2001; Recreational Trail Strategy, June 2006; Parks Natural Area Acquisition Strategy, November 2006;* and, more specifically, the list of projects, identified in the Parks and Recreation SDC-CIP, to be funded with money collected under this Chapter and incorporated as an Appendix to the most recently adopted Parks SDC Methodology. The Parks and Recreation SDC-CIP is not to be confused with the City of Portland Parks and Recreation Capital Improvement Program.

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 City hereby adopts the report entitled "Park System Development Charges Methodology Update Report" (dated March 5, 2008), and incorporates herein by this reference the assumptions, conclusions and findings in the report which refer to the determination of anticipated costs of capital improvements required to accommodate growth, and the rates for the parks and recreation SDC to finance these capital improvements. This report is hereinafter referred to as "SDC Methodology Report" and is attached to Ordinance No. 181669 passed by Council on March 12, 2008. The City Council may from time to time amend or adopt a new SDC Methodology Report by ordinance.

17.13.020 Definitions.

(Amended by Ordinance Nos. 173386, 173565, 174617, 176511 and 181669, effective January 1, 2009.)

A. "Accessory Dwelling Unit" means a second dwelling unit created on a single lot with a single-family or a manufactured housing dwelling unit. The second unit is created auxiliary to, and is always smaller than the single family or manufactured housing unit.

B. "Administrator" means that person, or designee, appointed by the City Council to manage and implement this Parks and Recreation SDC program.

C. "Alternative System Development Charge" means an SDC established pursuant to Section 17.13.080 of this Chapter.

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

E. "Application" means the Parks SDC Information Form together with other required forms and documents submitted at the time of application for a building permit.

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

G. "Building Permit" means that permit issued by the City Building Official pursuant to the State of Oregon Structural Specialty Code Section 301 or as amended, and the State of Oregon One and Two Family Dwelling Code Section R-109 or as amended. In addition, Building Permit shall mean the Manufactured Home Installation Permit issued by the City Building Official, relating to the placement of manufactured homes in the City.

H. "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. "Comprehensive Plan" means the City's generalized, coordinated land use map and policy statement that interrelated all functional and natural systems and activities relating to the use of lands, including but not limited to sewer, water and transportation systems, educational and recreation facilities and natural resources and air and water quality management programs.

K. "Condition of Development Approval" is any requirement imposed on an Applicant by a City land use or limited land use decision, site plan approval or Building Permit either by operation of law, including but not limited to the City Code or Rule or regulation adopted thereunder, or a condition of approval.

L. "Cost Index" related to construction costs means the Seattle Area Engineering News Record (ENR) Construction Cost Index and related to land acquisition costs means the change in average market value of residential and commercial land in the City, according to the records of the Multnomah County Tax Assessor.

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

N. "Dependent Care Facility" means a facility in which the resident cannot perform any part of activities of daily living; it must be done entirely by someone else.

O. "Development" means a building or other land construction, or making a physical change in the use of a structure or land, in a manner which increases the usage of parks and recreation capital improvements or which may contribute to the need for additional or enlarged parks and recreation capital facilities.

P. "Director" means the Director of the Bureau of Parks and Recreation for the City of Portland.

Q. "Duplex" means two attached single-family dwelling units on a single lot.

R. "Dwelling Unit" means a building or a portion of a building consisting of one or more rooms which include sleeping, cooking, and plumbing facilities and are arranged and designed as living quarters for one family or household.

S. "Employee" means any person who received remuneration for services, and whose services are directed and controlled either by the employee (self-employed) or by another person or organization.

T. "Manufactured Housing" means a Dwelling Unit constructed for movement on the public highways that has sleeping, cooking and plumbing facilities, that is intended for human occupancy, that is being used for residential purposes and that was constructed in accordance with federal Manufactured Housing construction and safety standards and regulations in effect at the time of construction.

U. "Manufactured Housing Park" means any place where four or more Manufactured Housing Dwelling Units are located within 500 feet of one another on a lot, tract or parcel of land under the same ownership, the primary purpose of which is to rent or lease space or keep space for rent or lease to any person for a charge or fee

paid or to be paid for the rental or lease or use of facilities or to offer space free in connection with securing the trade or patronage of such person. "Manufactured Housing Park" does not include a lot or lots located within a subdivision being rented or leased for occupancy by no more than one Manufactured Housing Dwelling Unit per lot.

V. "Minimum standards" for the City's park requirements are described and quantified in *Parks 2020 Vision* and the "SDC Methodology Report".

W. "Multi-family Dwelling Unit" means a portion of a building consisting of one or more rooms including living, sleeping, eating, cooking, and sanitation facilities arranged and designed as permanent living quarters for one family or household; attached to two or more dwelling units by one or more common vertical walls; and with more than one dwelling unit on one lot. This term includes, but is not limited to, triplex, quadraplex, condominium ownership, and apartment structures containing three (3) or more dwelling units.

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

Y. "Non-Residential Development" means development which does not include dwelling units.

Z. "New Development" means Development for which a Building Permit is required.

AA. "Non-profit" means an entity that is certified as tax-exempt under Section 501(c)(3) of the Internal Revenue Code.

BB. "Occupancy Group Codes" means the use codes (A-1, B, H, e.g.) in the *Oregon Structural Specialty Code, "Use and Occupancy Classification."*

CC. "Occupancy Use Types" means the occupancy classifications in the *Oregon Structural Specialty Code, "Use and Occupancy Classification."*

DD. "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" that identifies all of the major parks and recreation system and facilities capacity-increasing improvements projected to be funded with Parks and Recreation SDC revenues.

EE. "Permit" means a Building Permit.

FF. "Previous use" means the most intensive use conducted at a particular property within the past 36 months from the date of completed Application. Where the site was used simultaneously for several different uses (mixed use) then, for the purposes of this Chapter, all of the specific use categories shall be considered. Where one us of the site accounted for 70% or more of the total area used, then that dominant use will be deemed to be the sole Previous Use of the site. Where the Previous Use is composed of a primary use with one or more ancillary uses that support the primary use and are owned and operated in common, that primary use shall be deemed to be the sole Previous Use of the property for purposes of this Chapter.

GG. "Proposed use" means the use proposed by the Applicant for the New Development. Where the Applicant proposes several different uses (mixed use) for the New Development then, for purposes of this Chapter, all of the specific use categories shall be considered. Where the Proposed Use is composed of a primary use with one or more ancillary uses that support the primary Proposed Use and are owned and operated in common, that primary use shall be deemed to be the sole Proposed Use of the property for purposes of this Chapter.

HH. "Qualified Public Improvement" means any parks and recreation system capital facility or conveyance of an interest in real property that:

1. increases the capacity of the City's Parks and Recreation System;

2. pertains to the park categories defined in *Parks 2020* or in the Park SDC/CIP: local access, city-wide access, regional, urban, neighborhood or community parks, botanic and community gardens trails, or habitat. If the proposed donation is a habitat, it must be adjacent to a Portland Parks property, or it must be a minimum of 3 contiguous acres with at least 66% of its area covered by the City's environmental overlay zone. If the proposed donation is a trail, it must be designated as a recreational trail on the City's Comprehensive Plan;

3. is approved by the Director of Parks; and

4. is in any of the following categories:

a. Is a capital improvement listed on the City's Parks and Recreation SDC-CIP or two year funded list of City of Portland Parks and Recreation Capital Improvement Program, regardless of the improvement's proximity to the Applicant's New Development site, and is not a Real Property Interest already committed by contract or other obligation to public recreational use;

b. Is a public recreational trail improvement within the Willamette River Greenway overlay zone as designated on the Official Zoning Maps within the Central City plan boundary, and that exceeds all development standards currently contained in PCC Title 33 (Chapter 33.440, 33.272, and 33.248). Credits will be given for improvements which will result in enhancement for habitat or public recreational use on the landward side of the top of the bank. Credits will be valued at 100% of the value of Real Property Interests that ensures perpetual public access (subject to reasonable temporary closures) and/or improvements that occur on the landward side of the required 25' minimum Greenway setback width, if the increase of width is at least 5'. The credit transfer mechanism described in 17.13.070 E is applicable to Real Property Interests at 25 percent of its appraised value. The use of Greenway credit transfers are valid only for New Development within the Central City, and is not available to Applicants that are using the Willamette River Greenway Bonus Option described in City Code 33.510.210 C. 9.

Reasonable improvements within the required 25' minimum Greenway setback shall also receive full Credit only for improvements that exceed the current basic required standards described in PCC Title 33 (Chapters 33.440, 33.272, and 33.248) or landscaping or mitigation plantings that are required as a Condition of Development Approval. The Credit transfer mechanism described in 17.13.070 E is not applicable to Greenway improvements. Greenway improvement SDC Credits may be used only on the New Development that included the Greenway improvement, including subsequent phases of multi-phase Development.

c. Is a conveyance of Real Property Interests or capital improvements for public recreational use that is required as a condition of development approval. For purposes of this section, the phrase "required as a condition of development approval" means

(1) requirements to construct improvements or convey Real Property Interests for public recreational use that are imposed as specifically listed conditions pursuant to a Code provision authorizing such conditions, or

(2) features of a development that are specifically stated as an element of a proposal that is approved by the review body.

d. An improvement or conveyance of Real Property Interests for parks and recreational use which does not otherwise meet the

requirements of this section, is not already committed by contract or other obligation to public recreational use, and in the opinion of the Director of Parks in his or her reasonable discretion the improvement or conveyance serves the City's public parks and recreation needs as well or better than the improvements or conveyance described above.

5. Conveyances of Real Property Interests or capital improvements for public recreational use specified in a development agreement between the City and a developer entered into after the effective date of this Ordinance are excluded from the definition of "qualified public improvement" unless the development agreement specifically provides otherwise. If the development agreement does include conveyances of Real Property Interests that are intended to be eligible for Parks SDC Credits, the value of the Real Property Interests must be established at the time the development agreement is finalized by the appraisal methods described in 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.

6. In addition to capital improvements described in section 17.13.020 HH.1. through 5., the term "qualified public improvement" also includes agreements for long-term enhanced maintenance of park facilities within the City's Parks and Recreation System, provided the following requirements are met:

a. The Parks and Recreation System facilities for which enhanced maintenance is provided are located within the Central City Plan District as identified in PCC chapter 33.510;

b. The long-term maintenance obligations are specifically described in a binding agreement that contains adequate financial assurances to ensure performance of the maintenance obligations for the duration of the agreement;

c. The Parks Director has determined the net present value of the maintenance obligations in order to establish the amount of SDC credits; and

d. The Parks Director has determined, in each instance where long-term maintenance obligations are accepted, that acceptance of the long-term maintenance obligations will promote the interests of the

City's Parks and Recreation System as well or better than acceptance of capital improvements.

II. "Rate Group" means one of four rates or groups of rates, each of which has its own percentage split between land costs and development costs as follows:

	Central City	Non Central-City
Residential	55% Land Portion 45% Development Portion	55% Land Portion 45% Development Portion
Non-Residential	53% Land Portion 47% Development Portion	57% Land Portion 43% Development Portion

JJ. "Real Property Interests" means fee title, easement, or other permanent interests in real property as documented in a written conveyance.

KK. "Remodel" or "remodeling" means to alter, expand or replace an existing structure.

LL. "Resident Equivalent" means a measure of the impact on parks and recreation facility needs created by non-residential development, as compared to the impact of a resident.

MM. "Row house" means an attached single-family Dwelling Unit on a single lot.

NN. "Single-Family Dwelling Unit" shall mean a building or a portion of a building consisting of one or more rooms including living, sleeping, eating, cooking, and sanitation facilities arranged and designed as permanent living quarters for one family or household; may be attached to one or more than one other dwelling units by one or more vertical walls. In addition to detached single family dwelling units, this definition also includes duplex, zero-lot-line, townhouse, and row house dwelling units designed for one family or household.

OO. "SDC Methodology Report" means the methodology report entitled *Parks System Development Charge Methodology Update Report*, dated March 5, 2008 and adopted as Exhibit B to Ordinance 181669.

PP. "Single Room Occupancy Unit (SRO)" means one dwelling unit that provides a living unit that has a separate sleeping area and some combination of shared bath or toilet facilities. The structure may or may not have separate or shared cooking facilities for the residents. "SRO" includes structures commonly called residential hotels and rooming houses.

QQ. "Temporary use" means a construction trailer or other non-permanent structure.

RR. "Town House" means an attached single-family Dwelling Unit on a shared lot.

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 shall apply:

A. In case of any difference of meaning or implication between the text of this Chapter and any caption, illustration, summary table, or illustrative table, the text shall control.

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

C. Words used in the present tense shall include the future; words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.

D. The phrase "used for" includes "arranged for," "designed for," "maintained for," or "occupied for."

E. Where a regulation involves two or more connected items, conditions, provisions, or events:

1. "And" indicates that all the connected terms, conditions, provisions or events shall apply;

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

F. The word "includes" shall not limit a term to the specific example, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

17.13.040 Application.

(Amended by Ordinance No. 181669, effective January 1, 2009.) This Chapter applies to all New Development throughout the City of Portland. The amount of the Parks and Recreation SDC shall be calculated according to this section, using the rates set forth in the SDC Methodology Report.

A. Except as otherwise provided in this Chapter, a Parks and Recreation SDC shall be imposed upon all New Development for which an Application is filed on or after the effective date of this ordinance.

B. Except as otherwise provided in this Chapter, Manufactured Housing shall be charged at the Manufactured Housing SDC rate.

C. The Applicant shall at the time of Application provide the Administrator with the information requested on an SDC application form regarding the previous and proposed use(s) of the property, including the following:

1. 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 dwelling units and square footage for the entire property under the previous use and for the proposed use(s) of the New Development.

2. For residential uses--the number of residential dwellings, including type (i.e., single family, multi-family, etc.).

3. For non-residential uses--the square footage for each type of occupancy use type (i.e., office, retail, etc.).

D. Except as otherwise provided in this Chapter, the amount of the SDC due shall be calculated by determining the dwelling units and/or square footage for the previous use(s) of the property and the dwelling units and/or square footage for all of the proposed use(s); calculating the total SDC for the previous use(s) and the proposed uses(s); and subtracting the total SDC for the previous use(s) from the total SDC for the proposed use(s) to arrive at the net Park SDC due.

E. Notwithstanding any other provision, the dollar amounts of the SDC set forth in the SDC Methodology Report are based on October 2007 values and shall be adjusted on January 2009 and thereafter annually on January 1st to account for changes in the costs of acquiring and constructing parks facilities. The adjustment factor shall be based on:

1. the percent change in average market value of residential and commercial land in the City, measured from October, 2007, annually, to the quarter prior to the rate change, according to the records of the Multnomah County Tax Assessor,

2. the portion of Rate Group growth costs for land identified in the SDC-CIP,

3. the percent change in average construction costs measured from October, 2007, annually, to the quarter prior to the rate change, according to the Engineering News Record (ENR) Northwest (Seattle, Washington) Construction Cost Index, and

4. the portion of Rate Group growth costs for development identified in the SDC-CIP,

The adjustment factor for each Rate Group shall be determined as follows:

Percent change in Land Value multiplied by the Rate Group's Land Portion (percent)
\+ Percent change in Construction Cost Index multiplied by the Rate Group's Development Portion (percent)
= Park SDC Rate Group Adjustment Factor

The resulting Adjustment Factor shall be multiplied by the adopted SDC rates by Rate Group and added to the base charges.

F. Notwithstanding any other provision, the adjustment shall not exceed a total of 12 percent in any consecutive two-year period. This shall be calculated by dividing the proposed new rate by the rate of two years prior. If the resulting change is greater than 12 percent, the rate shall be set at 12 percent variance from the rate of two years prior.

17.13.050 Application Requirements

(Amended by Ordinance Nos. 176955 and 181669, effective January 1, 2009.) All Applications must meet the application completeness requirements of the Planning Bureau and Bureau of Development Services. Where construction requires a land division, the Applicant must have final plat approval prior to submitting a Building Permit Application.

This Ordinance shall apply to all Building Permits for New Development not yet complete as of the effective date and those which are subsequently submitted or made complete. Fees are assessed based on the rate schedule in use on the date that the permit application is made complete. For purposes of this Section, a complete Application shall be one for which the following documents have been submitted by the Applicant and accepted by the City:

A. For Multi-Family Housing and additions, and for all non-residential development and additions, the following documents must be submitted:

1. A completed Building Permit Application form.

2. Payment of the required plan review and processing fees for the Site Development Permit.

3. Completed System Development Charge information form.

4. Information sufficient to construct building foundations for the proposed structure, including engineering and structural calculations, soils report, 100 percent construction documents for foundation.

B. For Manufactured Housing Park New Development, the following documents must be submitted:

1. A completed Building Permit Application form.

2. Payment of the required plan review and processing fees for the site development permit.

3. Information sufficient to construct the Manufactured Housing Park for the future placement of the manufactured homes, which could include engineering and structural calculations, soils report, 100 percent construction documents for foundations.

C. For residential changes of use and alteration projects resulting in additional residential units, the following documents must be submitted:

1. A completed Building Permit Application form.

2. Payment of the required plan review and processing fees for the site development permit.

3. A floor plan indicating the previous uses.

4. A floor plan indicating the proposed changes in use.

5. 100 percent construction drawings.

D. For new single family, separate manufactured home on an individual lot (as opposed to a manufactured home park), townhouses/row houses, and duplex construction, the following documents must be submitted:

1. A completed Building Permit Application form.

2. Payment of the required plan review and processing fees for the site development permit.

3. 100 percent construction drawings sufficient to construct the building, including any required soils reports, engineering calculations and drawings.

17.13.060 Partial and Full Exemptions.

(Amended by Ordinance Nos. 176511, 179008 and 181669, effective January 1, 2009.) The uses listed and described in this Section shall be exempt, either partially or fully, from payment of the Parks and Recreation SDC. Any Applicant seeking an exemption under this Section shall specifically request that exemption no later than the time of the City's completion of the final inspection. Where New Development consists of only part of one or more of the uses described in this section, only that/those portion(s) of the development which qualify under this section are eligible for an exemption. The balance of the New Development which does not qualify for any exemption under this section shall be subject to the full SDC. Should the Applicant dispute any decision by the City regarding an exemption request, the Applicant must apply for an Alternative Exemption calculation under Section 17.13.080. 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. Low Income Housing which meets the following requirements shall be fully exempt for the Parks and Recreation SDC:

1. If rental housing is developed by a Non-Profit organization or the Housing Authority of Portland, the rental rates are affordable to households earning 60 percent or less of the Area Median Income as annually determined by the U.S. Department of Housing and Urban Development for the Portland Metropolitan Area.

2. If rental housing is developed by a For-Profit organization, the rental rates are affordable to households earning 60 percent or less of the Area Median Income as annually determined by the U.S. Department of Housing and Urban Development for the Portland Metropolitan Area.

3. If owner occupied housing is developed by a Non-Profit organization or the Housing Authority of Portland, the prices are affordable to households earning 100 percent or less of the Area Median Income as annually determined by the U.S. Department of Housing and Urban Development for the Portland Metropolitan Area.

4. If owner occupied housing is developed by a For-Profit organization, the prices are affordable to households earning 100 percent or less of the Area

Median Income as annually determined by the U.S. Department of Housing and Urban Development for the Portland Metropolitan Area.

5. For purposes of this section, affordability shall be defined by the Administrator and be consistent with other City of Portland fee waiver programs.

6. The Applicant has the burden of proving to the Administrator's satisfaction that rents and housing prices, in fact, qualify for this exemption. In the event a qualifying Low Income Housing development fails to maintain qualifying rent or price levels, the exemption shall terminate for that development and the then applicable Parks and Recreation SDC shall be due and owing.

C. Alteration permits for tenant improvements are fully exempt.

D. New construction or remodeling where no additional Dwelling Unit(s) or non-residential square footage are created is fully exempt.

E. For New Development which includes a mix of exempt and non-exempt forms of Development, the applicable exemption(s) shall apply only to that portion of the New Development to which the exemption applies.

17.13.070 SDC Credits and SDC Reimbursements.

(Amended by Ordinance Nos. 172732, 172758, 173386, 174617 and 181669, effective January 1, 2009.) SDC Credits:

A. The City shall grant a Credit against the Parks SDC, which is otherwise assessed for an New Development, for any Qualified Public Improvement(s) constructed or conveyed as part of that New Development. For purposes of this section, a Qualified Public Improvement will be considered part of a New Development when the application for a credit is made and the New Development is identified by a Building Permit Number. 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 improvement(s) for which Credit is sought and explain how the improvement(s) meet the requirements for a Qualified Public Improvement. The Applicant shall also document, with credible evidence, the value of the improvement(s) for which Credit is sought. If, in the Administrator's opinion, the improvement(s) is a Qualified Public Improvement, and the Administrator concurs with the proposed value of the improvement(s), an

SDC Credit shall be granted. The value of the SDC Credits under this section shall be determined by the Administrator based on the cost of the Qualified Public Improvement, or the value of Real Property Interests, as follows:

1. For Real Property Interests, the value shall be based upon a written appraisal of fair market value by a qualified, professional appraiser based upon comparable sales of similar property between unrelated parties in an arms-length transaction;

2. For improvements yet to be constructed, value shall be based upon the anticipated cost of construction. Any such cost estimates shall be certified by a professional architect or engineer or based on a fixed price bid from a contractor ready and able to construct the improvement(s) for which SDC Credit is sought. 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 shall inspect all completed Qualified Public Improvement projects before agreeing to honor any credits previously negotiated. The City shall limit credits to reasonable costs. Credits shall be awarded only in conjunction with an application for development;

3. For improvements already constructed, value shall be based on the actual cost of construction as verified by receipts submitted by the Applicant;

C. The Administrator will respond to the Applicant's request in writing within 21 days of when the request is submitted. The Administrator shall provide a written explanation of 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. The Committee shall be composed of representatives of the following organizations:

a. Metropolitan Home Builders Association

b. Coalition for a Livable Future

c. League of Women Voters

d. Developer-at-Large

e. Parks Board Member or Designee

f. Portland Business Alliance Member or Designee

If a vacancy occurs, the organization will nominate a replacement. Members of the committee will be nominated by their respective organizations and appointed by the Director of Parks and Recreation.

2. The Committee shall review each proposal and forward a recommendation, along with any minority viewpoints. The Director will make a decision within 60 days of the application.

3. Certified copies of the decision and the Committee recommendations will be transmitted to the Auditor of the City of Portland, who will file them in a special record of such decisions. All such decisions of the Director shall be accessible to the public under like terms as ordinances of the City of Portland. Any decision of the Director shall be subject to amendment, repeal, or alteration by the City Council, but any such action must take place within 30 days of the decision.

D. If the Applicant disputes the Administrator's decision with regard to an SDC Credit request, including the amount of the Credit, the Applicant may seek an alternative SDC Credit calculation under Section 17.13.080. Any request for an Alternative SDC Credit calculation must be filed with the Administrator in writing within 10 calendar days of the written decision on the initial Credit request.

E. When the construction or donation of a qualified public improvement gives rise to a credit amount greater than the improvement fee that would otherwise be levied against the project receiving development approval, the excess credit may be applied against improvement fees that accrue in subsequent phases of the original development project. For purposes of this paragraph, "subsequent phases of the original development project" means additional New Development that is approved as part of the same regulatory development approval, (such as elements approved as part of the same conditional use master plan or planned unit development) or other portions of the same "site" (as defined by PCC 33.901.030) that are explicitly defined in the application for SDC credits as subsequent phases of the original development project. For multi-phased developments, the applicant must describe all subsequent phases at the time application is made for SDC credits and must document to the satisfaction of the SDC Administrator that the subsequent phases are integrally connected with the original development rather than independent projects.

F. The Applicant may request that the portion of the Park SDC credit relative to the Non-Local Access portion of the SDC fee be applied to their development

anywhere within the City. The proportional breakdown of Local Access portion to Non-Local Access portion as follows:

	Central City	Non Central-City
Residential	49% Local Access 51% Non-Local Access	34% Local Access 66% Non-Local Access
Non-Residential	46% Local Access 54% Non-Local Access	0% Local Access 100% Non-Local Access

G. 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 10 years of the date of issuance.

H. 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, Credit, or Exemption.
(Amended by Ordinance No. 181669, effective January 1, 2009.)

A. Pursuant to this section, an Applicant may request an alternative Parks and Recreation SDC rate calculation, alternative SDC Credit determination, or alternative SDC exemption, but only under the following circumstances:

1. The Applicant believes that the number of persons per Dwelling Unit for residential development, or resident equivalents per 1,000 square feet for non-residential development, resulting from the New Development is, or will be, less than the number of persons per Dwelling Unit or resident equivalents per 1,000 square feet established in the SDC Methodology 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 17.13.070, 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 under Section 17.13.060 for which the Applicant believes it is eligible.

B. Alternative SDC Rate Request

1. If an Applicant believes that the occupancy assumptions for the class of structures that includes New Development are inaccurate, in that, for residential development, the number of persons per Dwelling Unit is, or will be, less than the number of persons per Dwelling Unit established in the SDC Methodology Report, or for non-residential development, the number of resident equivalents per 1,000 square feet is, or will be, less than the number of resident equivalents per 1,000 square feet established in the SDC Methodology Report, the Applicant must request City consideration of an alternative SDC rate calculation, under this section, no later than the time the City completes the final inspection for the New Development. 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. The City shall not entertain such a 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 shall review the Applicant's calculations and supporting evidence and make a determination within 21 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 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 as a means of supporting the proposed alternative SDC rate. The proposed Alternative SDC Rate calculation shall include an explanation with particularity why the rate established in the SDC Methodology Report does not accurately reflect the New Development's impact on the City's capital improvements.

3. The Administrator shall apply the Alternative SDC Rate if, in the Administrator's opinion, the following are found:

a. The evidence and assumptions underlying the Alternative SDC Rate are reasonable, correct and credible and were gathered and

analyzed in compliance with generally accepted principles and methodologies consistent with this Section, and

b. The calculation of the proposed Alternative SDC rate was by a generally accepted methodology, and

c. 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.

4. If, in the Administrator's opinion, all of the above criteria are not met, the Administrator shall provide to the Applicant (by Certified mail, return receipt requested) a written decision explaining the basis for rejecting the proposed alternative Parks and Recreation SDC Rate.

C. Alternative SDC Credit Request

1. If an Applicant has requested an SDC Credit pursuant to Section 17.13.070, 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, no later than the time the City completes the final inspection for the New Development. The City shall not entertain such a request filed after the City has completed the final inspection for the new Development. Upon the timely request for an Alternative SDC Credit calculation, the Administrator shall review the Applicant's calculations and supporting evidence and make a determination within 21 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 to by an appropriate professional, for the improvements for which the Applicant is seeking Credit. The Applicant's supporting documentation must rely upon generally accepted sources of information, cost analysis, and techniques of analysis as a means of supporting the proposed Alternative SDC Credit.

3. The Administrator shall apply the Alternative SDC Credit if, in the Administrator's opinion, the following are found:

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 realistic, credible valuation analysis.

4. If, in the Administrator's opinion, any one or more of the above criteria is not met, the Administrator shall deny the request and provide to the Applicant (by Certified mail, return receipt requested) a written decision explaining the basis for rejecting the proposed Alternative Parks and Recreation SDC Credit proposal.

D. Alternative SDC Exemption Request:

1. If an Applicant has requested a full or partial exemption under Section 17.13.060 and that request has been denied, the Applicant may request an Alternative SDC Exemption under this Section, no later than the time the City completes the final inspection for the new Development. The City shall not entertain such a request filed after the City has completed the final inspection for the New Development. Upon the timely request for an Alternative SDC Exemption, the Administrator shall review the Applicant's request and supporting evidence and make a determination within 21 days of submittal as to whether the Applicant's request satisfies the requirements of Section 17.13.060 for exemptions.

2. In support of the Alternative SDC Exemption request, the Applicant must provide complete and detailed documentation demonstrating that the Applicant is entitled to one of the exemptions described in Section 17.13.060.

3. The Administrator shall grant the exemption if, in the Administrator's opinion, the Applicant has demonstrated with credible, relevant evidence that it meets the pertinent criteria in Section 17.13.060.

4. Within 21 days of the Applicant's submission of the request, the Administrator shall provide a written decision explaining the basis for rejecting or accepting the request.

17.13.090 Payment.

(Amended by Ordinance Nos. 173565 and 181669, effective January 1, 2009.)

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 Chapter 223.208. If the Applicant elects to pay the SDC in installments, a lien will be placed against the property that is subject to the SDC installment Agreement entered into by the Applicant and the City on a form provided by the City, and which may provide that no payments are due for 180 days after issuance of Building Permits. In any event, the Applicant shall either pay the SDC in full or enter into an SDC Installment Agreement as provided in this Section, before the City will issue any Building Permits.

B. Upon written request of Portland Parks & Recreation, the City Auditor is authorized to cancel assessments of SDCs, without further Council action, where the New Development approved by the Building Permit is not constructed and the Building Permit is cancelled.

C. For property that has been subject to a cancellation of assessment of SDCs, a new installment payment contract shall be subject to the code provisions applicable to SDCs and installment payment contracts on file on the date the new contract is received by the City.

17.13.100 Refunds.

(Amended by Ordinance No. 181669, effective January 1, 2009.) Refunds may be given by the Administrator upon finding that there was a clerical error in the calculation of the SDC. The City shall refund to the Applicant any SDC revenues not expended within ten (10) years of receipt. Refunds will be given, upon request by the Applicant, when a building permit application is canceled.

17.13.110 Dedicated Account and Appropriate Use of Account.

(Amended by Ordinance No. 181669, effective January 1, 2009.)

A. There is created a dedicated account entitled the "Parks and Recreation SDC Account." All monies derived from the Parks and Recreation SDC shall be placed in the Parks and Recreation SDC Account. Funds in the Parks and Recreation SDC Account shall be used solely for the purpose of providing capacity-increasing capital improvements as identified in the adopted Parks and Recreation SDC-CIP as it currently exists or a hereinafter amended, and eligible administrative costs. In this regard, SDC revenues may be used for purposes which include:

1. design and construction plan preparation;

2. permitting;

3. land and materials acquisition, including any costs of acquisition 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 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;

13. direct costs of complying with the provisions of ORS 223.297 to 223.314, including the consulting, legal, and administrative costs required for developing and updating the system development charges methodologies and capital improvement plan; and the costs of collecting and accounting for system development charges expenditures.

B. Money on deposit in the Parks and Recreation SDC Account shall not be used for:

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

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

3. costs associated with acquisition or maintenance of rolling stock

C. The City may prioritize SDC-funded projects and may spend SDC revenues for growth-related projects anywhere in the City. However, during any period of twenty years, the City shall not spend less SDC revenues for local access parks within any City parks planning sub-area than the total amount of SDC revenues collected for local access parks within that sub-area.

17.13.120 Challenges and Appeals.

(Amended by Ordinance No. 174617, effective July 28, 2000.)

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. The fee for filing such a challenge shall be $100.

B. Except where a different time for an Administrator's decision is provided in this Chapter, all Administrator decisions shall be in writing and shall be delivered to the Applicant within 21 days of an Application or other Applicant request for an Administrator determination. Delivery shall be deemed complete upon the earlier of actual delivery to the Applicant or upon deposit by the Administrator in the mail, first class postage prepaid, addressed to the address for notice Applicant has designated in the Application. Any person may appeal any decision of the Administrator made pursuant to this Chapter to the City Hearings Officer by filing a written request with the Administrator within fourteen (14) days after the delivery of the Administrator's written decision to the Applicant. The fee for appealing a decision to the Hearings Officer shall be $250 and shall accompany the request for appeal. An outline of these appeal procedures shall be included in the Administrator's written decision.

C. The decision of the Hearings Officer shall be reviewable solely under ORS 34.010 through 34.100.

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

17.13.130 City Review of SDC.

(Amended by Ordinance No. 181669, effective January 1, 2009.)

A. No later than every five (5) years as measured from initial enactment, the City shall undertake a review to determine that sufficient money will be available to help fund the Parks and Recreation SDC-CIP identified capacity increasing

facilities; to determine whether the adopted SDC rate keeps pace with inflation, whether the Parks and Recreation SDC-CIP should be modified, and to ensure that such facilities will not be over-funded by the SDC receipts.

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 shall expend SDC revenues within ten (10) years of receipt, based on the priorities in the Parks and Recreation SDC-CIP list.

17.13.150 Implementing Regulations.

The Director of the Bureau of Parks and Recreation may adopt regulations to implement the provisions of this chapter.

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

(Amended by Ordinance No. 181669, effective January 1, 2009.) The City Council may, by resolution, amend its Parks and recreation SDC-CIP list as set forth in the SDC Methodology Report, from time to time to add or remove projects the City deems appropriate. The Administrator may, at any time, change the timing and sequence for completion of projects included in the Parks and Recreation SDC-CIP list.

17.13.170 Severability.

The provisions of this Chapter are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any clause, section or provision of this Chapter shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of this Chapter shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein. It is hereby declared to be the legislative intent that this Chapter would have been adopted had such an unconstitutional provision not been included herein.

Chapter 17.14

FINANCING SYSTEMS DEVELOPMENT CHARGES

(Added by Ordinance No. 145785; amended by 166334, effective Mar. 17, 1993.)

Sections:

17.14.010 Purpose.
17.14.020 Definitions.
17.14.030 Application, Consent to Assessment.
17.14.040 Payment Schedule, Interest.
17.14.050 Assessment.
17.14.060 Cancellation.

17.14.010 Purpose.

The purpose of this Chapter is to fulfill the mandate of Chapter 722 Oregon Laws of 1977 (ORS 223.207 and 223.208) by providing that the rights and duties accorded the City and property owners by the laws relating to assessments and financing of local improvement districts shall 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)).

17.14.020 Definitions.

As used in this Chapter the following terms shall be defined as follows:

A. **"System development charge"** means a charge imposed pursuant to Section 17.36.020, 17.36.025, or any ordinance authorizing the imposition of any charge defined as a system development charge by Chapter 722 of Oregon Laws of 1977 as a condition to connection to the water distribution system maintained by the City's Bureau of Water Works.

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 which is responsible for calculating and maintaining records regarding sewer system development charges.

17.14.030 Application, Consent to Assessment.

Any owner of real property subject to a systems development charge may apply 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 shall waive any right to challenge the validity or applicability of the charge and shall consent to the assessment of the property subject to the charge.

17.14.040 Payment Schedule, Interest.

Payment of principal and interest shall be made in installments as set forth in the signed installment payment contract .

17.14.050 Assessment.

The City Auditor shall 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 thereby benefited, it shall approve the contracts by ordinance direct the billing for the charges upon the land benefited plus a financing fee. The financing fee shall be calculated as set forth in PCC 17.12 Assessments. All such assessments may be combined in one assessment roll and shall 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 owner or the responsible City bureau, the City Auditor is authorized to cancel assessments of system development charges where the property is not physically connected to the public improvement. The City Auditor shall establish administrative guidelines and fees or charges relating to the cancellation of assessments. The City Auditor shall maintain on file for public inspection a current copy administrative guidelines and fees or charges.

B. For property which has been subject to a cancellation of assessment of system development charges, a new installment payment contract shall 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.

Chapter 17.15

TRANSPORTATION SYSTEM DEVELOPMENT CHARGE

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

Sections:

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

17.15.010 Scope and Purposes.

(Amended by Ordinance Nos. 181322 and 182652, effective April 8, 2009.)

A. New development within the City of Portland contributes to the need for capacity increases for roads, multi-modal transportation and related transportation improvements, to enable new development to take advantage of transit systems and, therefore, new development should contribute to the funding for such capacity increasing improvements. This SDC will fund a portion of the needed capacity increases for arterial, boulevard and collector roads, multi-modal transportation improvements and associated bus and transit improvements, sidewalks, bicycle and pedestrian facilities, street lighting and stormwater drainage and treatment facilities, and other public facilities specified in the City of Portland Transportation System Plan.

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

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

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

E. The funding provided by this Chapter constitutes a mandatory collection method based upon the guidelines set forth in ORS 223.297 through 223.314 to assure the construction of capacity increasing improvements to arterial, boulevard and collector roads as well as to bicycle, pedestrian and transit facilities as contemplated in the Transportation Element of the City Comprehensive Plan, City of Portland Transportation System Plan and the list of projects, referred to as the SDC-CIP, to be funded with money collected under this Chapter and incorporated as Table 3-2 in the attached Update of Transportation System Development Charges rate study, (dated July 2007), as well as Table 3-2 in the attached North Macadam Transportation System Development Charge TSDC Overlay Rate Study, (dated January 2009). The SDC-CIP is not to be confused with the City of Portland Capital Improvement Program.

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

G. The City hereby adopts the methodology report and rate study entitled Update of Transportation System Development Charges, (dated July 2007), as well as Table 3-2 in the attached North Macadam Transportation System Development Charge TSDC Overlay Rate Study, (dated January 2009), and incorporates herein by this reference the assumptions, conclusions and findings in the report which refer to the determination of anticipated costs of capital improvements required to accommodate growth. These reports are hereinafter referred to as "City Rate Study" and is attached to Ordinance No. 181322 as Exhibit A , and "Overlay Rate Study", attached to Ordinance No. 182652 as Exhibit A. The City Council may from time to time amend or adopt a new City Rate Study by Ordinance.

H. The Transportation SDC provided for in this Chapter is designed to help finance the Transportation System facilities listed in Table 3-2 in the SDC-CIP 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 project list in the SDC-CIP is not complete but that construction of other projects, not included on the SDC-CIP, 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 also seeks to encourage certain types of development by granting a partial or full credit for the Transportation SDC. In particular, the city places a high priority on the development of low-income housing. The City has also recognized a higher public purpose in Transit Oriented Development (TOD) in creating a more dense, mixed-use urban design that promotes and integrates transit ridership with housing. Likewise, the development of low-income housing promotes the public purpose of providing quality housing options for families and individuals earning 60% or less of the Area Median Income. Providing a credit for the Transportation SDC will make it possible to develop more and better low income housing within the metropolitan area where jobs and shopping are available by transit and non-motorized modes. For both the low income housing and TOD credit, the City has made the policy decision that the entire SDC-CIP project list may not be fully funded, but that other policy objectives, equally important as maintaining transportation system capacity, will be advanced.

17.15.020 Definitions.

(Amended by Ordinance Nos. 171698, 172677, 173121, 175717, 176782, 181322, 182389 and 182652, effective April 8, 2009.)

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

B. **"Administrator"** means that person as appointed by the Director of Transportation to manage and implement this SDC program.

C. **"Alternative System Development Charge"** means any SDC established pursuant to Section 17.15.070 of this Chapter.

D. **"Applicant"** means the person who applies for a Building Permit.

E. **"Application"** means the written request by an Applicant for a Building Permit.

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

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

H. **"City"** means City of Portland, Oregon.

I. **"City Rate Study"** means the methodology report entitled *Update of Transportation System Development Charges,* dated July 2007 and adopted as Exhibit A to Ordinance No. 181322.

J. **"Comprehensive Plan"** means the current, adopted Comprehensive Plan of the City of Portland.

K. **"Condition of Development Approval"** is a Bureau of Transportation requirement imposed on an Applicant by a city land use or limited land use decision, site plan approval or building permit either by operation of law, including but not limited to the City Code or Rule or regulation adopted thereunder, or a condition of approval.

L. **"Construction Cost Index"** means the Oregon Composite Construction Cost Index published by the Oregon Highway Division.

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 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 which has the effect of

generating additional weekday or weekend 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 her or his designee who is responsible for managing the Bureau of Transportation.

Q. **"Finance Director"** means that person or his or her designee who is responsible for managing the Finance Department for the City of Portland.

R. **"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.

S. **"ITE Manual"** means that manual entitled "An Institute of Transportation Engineers Informational Report - Trip Generation" Seventh Edition (2003) or as amended. A copy of the ITE Manual shall be kept on file with the Bureau of Transportation.

T. **"Multi-Modal"** means vehicular, transit, bicycle, pedestrian and wheel chair transportation.

U. **"New Development"** means Development on any site which increases overall trip generation from the site according to Table 4-9 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.

V. **"Non-Motorized"** means transportation that is neither vehicular or transit. Non-motorized includes pedestrian and bicycle transportation. Pedestrian transportation includes wheelchair transportation regardless of whether the wheelchair is motorized or hand propelled.

W. **"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.

X. **"Over-capacity"** means that portion of an improvement that is built larger or with greater capacity (over-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.

Y. **"Overlay Rate Study"** means the methodology report entitled North Macadam Transportation System Development Charge TSDC Overlay Rate Study, dated January 2009 and adopted as Exhibit A to Ordinance.

Z. **"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.

AA. **"Permit"** means a Building Permit.

BB. **"Planned light rail station"** means a station included in local and regional transportation plans for which a full funding agreement has been executed by the Federal Transit Administration or other U. S. governmental agency, which agreement contains the terms and conditions applicable to the approval of a light rail project and the grant of federal funds for that project which includes construction of planned stations and other light rail facilities.

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

DD. **"Previous use"** means the most recent permitted use conducted at a particular property. Where the site was used simultaneously for several different uses (mixed use) then, for purposes of this Chapter, all of the specific use categories shall be considered. Where one use of the site accounted for 70% or more of the total area used, then that dominant use will be deemed to be the sole previous use of the site. Where the previous use is composed of a primary use with one or

more ancillary uses that support the primary use and are owned and operated in common, that primary use shall be deemed to be the sole use of the property for purposes of this chapter.

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

FF. **"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 in one of the following categories:

1. Is a capital improvement listed on the City's SDC-CIP regardless of the improvement's proximity to the Applicant's New Development site or

2. Pertains to an arterial or collector street and is required by the Bureau of Transportation as a condition of the development approval and in the opinion of the Administrator is built larger or with greater capacity (over-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 Bureau of Transportation'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. Potentially eligible improvements include, but are not limited to:

a. vehicle travel, turning or refuge lanes and traffic signals and sidewalks

b. bicycle lanes, bicycle parking facilities or bicycle lockers, other than those required by the Bureau of Transportation to serve the Applicant's New Development, or

c. any improvement to traffic or transportation safety that corrects an identified safety problem or defect in the City's transportation system.

GG. **"Remodel" or "Remodeling"** means to alter, expand or replace an existing structure.

HH. **"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.

II. **"Roads"** means streets, roads and highways.

JJ. **"Temporary use"** means a construction trailer or other non-permanent structure.

KK. **"Transit Oriented Development"** means

1. All development located within the following subdistricts of the Central City Plan District as shown on Map 510-8 of PCC Chapter 33.510: DT 1 through DT 6-2; UD 1-1 and UD 1-2; RD 3,4,5-1 and 5-2; GH 1; CE 2 and 3; and LD 1-4.

2. Any development located in any other subdistrict of the Central City Plan District that either

a. includes at least 40 units of housing per net acre, or

b. achieves a floor area ratio of 2 to 1.

3. Any development, except an auto-related use as defined in City Code 33.910, located outside the Central City Plan District that is within 500 feet of a street with fixed-route frequent (every 15 minutes or better during the day) transit service or within 1,000 feet of a light rail station and that either:

a. includes at least 30 units of housing per acre of site, and there are no drive through facilities, or

b. achieves a floor area ratio of 1 to 1, and there are no drive through facilities, or

c. is located in a commercial zone where no parking is required by the Planning and Zoning code of the City if Portland and no on-site parking is provided and there are no drive through facilities.

For purposes of this definition, "site" shall include the building footprint and all associated land required for parking, landscaping and the like. For the purpose of this definition, "fixed-route frequent transit service" shall

include the I-205 light rail corridor and "light rail station" shall include the I-205 light rail stations.

LL. **"Transportation SDC Capital Improvement Plan,"** also called SDC-CIP, 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 as described in the Update of Transportation System Development Charges, (dated July 2007), and within the next 20 years as described in the North Macadam Transportation System Development Charge TSDC Overlay Rate Study, (dated January 2009).

MM. **"Transportation System Development Charge," or "SDC,"** refers to the fee to be paid under this Chapter.

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

OO. **"Vehicle"** means motorcycles, automobiles, trucks, boats and recreational vehicles, but does not include transit, bicycles and motorized wheelchairs for the disabled.

PP. **"Vehicular"** means a reference to a vehicle.

QQ. **"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 shall apply:

A. In case of any difference of meaning or implication between the text of this Chapter and any caption, illustration, summary table, or illustrative table, the text shall control.

B. The word "shall" is always mandatory and not discretionary; the word "may" is permissive.

C. Words used in the present tense shall include the future; and words used in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.

D. The phrase "used for" includes "arranged for," "designed for," "maintained for," or "occupied for."

E. Where a regulation involves two or more connected items, conditions, provisions, or events:

1. "And" indicates that all the connected terms, conditions, provisions or events shall apply;

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

F. The word "includes" shall not limit a term to the specific example, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

17.15.040 Application.

(Amended by Ordinance Nos. 181322 and 182652, effective April 8, 2009.) This Chapter applies to all New Development throughout the City of Portland except for those areas where Washington County, Multnomah County or Clackamas County imposes a transportation SDC or Traffic Impact Fee. The amount of the Transportation SDC shall be calculated according to this section. For only New Development within the North Macadam Urban Renewal Area boundaries, the transportation SDC shall be the sum of two calculations, the first based upon the City Rate Study and the second based upon the Overlay Rate Study.

A. New Development.

1. Except as otherwise provided in this Chapter, a Transportation SDC shall be imposed upon all New Development for which an Application is filed after October 18, 1997.

2. The Applicant shall at the time of Application provide the Administrator with the information requested on an SDC application form regarding the previous and proposed use(s) of the property, including the following:

a. A description of each of the previous and proposed uses for the property for which the Permit is being sought--with sufficient detail to enable the City to calculate trip generation for the entire property under the previous use and for the proposed use(s) of the New Development.

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

c. For commercial uses--the square footage for each type of commercial use, e.g., office, retail, etc.

3. Except as otherwise provided in this Chapter, the amount of the SDC due shall be determined by estimating the trip generation of the previous use(s) on the property and the trip generation for all of the proposed use(s) and then calculating the total SDC for the previous use(s) and the proposed uses(s) as provided in Table 4-9 of The City Rate Study, and if applicable, Table 4-9 of the Overlay Rate Study.

a. If the SDC attributable to the proposed use of the New Development is within 15%± of the SDC attributable to the total previous use of the property, the Applicant is not required to pay any SDC and is not eligible for any SDC reimbursement or credit.

b. If the SDC attributable to the proposed use of the New Development is more than 115% of the SDC attributable to the total previous use, the Applicant shall pay the difference between the SDC attributable to the proposed use and the SDC attributable to the total previous use.

c. If the SDC attributable to the proposed New Development is less than 85% of the SDC attributable to the total previous use(s), the Applicant shall be eligible for an SDC Reimbursement under Section 17.15.060.

4. In the event an identified use does not have a basis for trip determination stated in The City Rate Study, the Administrator shall identify the land use or uses that has/have a trip generation rate most similar to the use(s) in question and apply the trip 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 City Rate Study as well as the Overlay Rate Study shall on July 1st of each year be increased or decreased automatically by the difference of the 10-year moving average of the Oregon Composite Construction Cost Index published by the Oregon Highway Division.

B. Institutional Development.

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

2. Within 60 days of election of the alternate assessment under this Subsection, the Applicant Institution shall submit the proposed methodology for counting trips to the Administrator. The Administrator shall determine whether the proposed methodology is acceptable within twenty (20) days from the date of election and submission, and, if the methodology is rejected, the Administrator shall provide an explanation for the decision.

3. Within one year of the date of election of the alternative method of assessment under this Subsection, at the time(s) designated in the accepted methodology to count trips, the applicant Institution shall establish the average weekday trip count. Such data and related analysis shall be based upon a methodology to calculate trips accepted by the Administrator. This average weekday trip count shall be calculated, unless otherwise specified in the accepted methodology, by dividing the total current average weekday trips that occur in each mode during an average week by the number of weekdays.

4. The amount of the SDC shall be determined at the end of each 12 month period by multiplying the applicable dollar amount, as provided in the City Rate Study, by the change in average weekday trip count by mode type during the intervening 12 month period over the highest prior documented average weekday trip count since October 18, 1997. Such SDC, if any, shall be due and payable within 45 days from the close of the 12-month period. A reduction in trips by any mode shall allow the Applicant Institution to reduce future annual assessment against the same mode by the number of such reduced trips.

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

C. Port Development. At the applicant's option, Port Development may be subject to assessment under Subsection A. of this section, or under this Subsection. If the

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

1. A methodology for estimating the amount of the SDC which would be imposed pursuant to Subsection A. or B. above, during a period of not less than either 3 years or until the expiration of the SDC project list, whichever is less, nor more than 10 years as specified by the Applicant. The methodology shall take into account the Port Development anticipated under the Applicant's master plan during the period specified in that plan, the trips that the Port Development is expected to generate, trip levels against which SDC charges have historically been assessed, the anticipated increases or decreases in the dollar amounts of the SDC during the specified period, any applicable credits or exemptions and any other factors which the Administrator deems to be relevant. In no event shall the charge estimated under this Subsection be less than the SDC that would otherwise be due for the Port Development and the Applicant shall indicate its agreement to the methodology in writing; and

2. A payment period shall be imposed by which the Applicant shall pay in full the amount due within 12 months of the Applicant's agreement to the methodology

3. 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. or B. shall apply.

17.15.050 Partial and Full Exemptions.

(Amended by Ordinance Nos. 171698, 173437, 177198, 181322, 182389 and 182652, effective April 8, 2009.) The uses listed and described in this section shall be exempt, either partially or fully, from payment of the Transportation SDC. Any Applicant seeking an exemption under this Section shall specifically request that exemption within 180 days after building permit issuance for the New Development. Where New Development consists of only part of one or more of the uses described in this section, only that/those portion(s) of the development which qualify under this section are eligible for an exemption. The balance of the New Development which does not qualify for any exemption under this section shall be subject to the full SDC. Should the Applicant dispute any decision by the City regarding an exemption 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 which, will not generate more than 15% more vehicle trips than the present use of the property shall be fully exempt.

C. Affordable Housing which meets the following requirements shall be fully exempt from the Transportation SDC:

1. If rental housing, the units receiving an exemption shall be affordable to households earning 60% or less at time of occupancy and shall be leased, rented or made available on a continuous basis to persons or households whose incomes are 60% or less of area median family income, as adjusted by unit size and as determined by the U.S. Department of Housing and Urban Development for the Portland Metropolitan Area. Such units shall remain affordable for a period of 60 years.

2. If owner occupied housing, the units receiving an exemption shall be affordable to households earning at or below 100% of area median income and shall be sold to persons or households whose incomes are at or below 100% of area median family income, as adjusted by family size and as determined by the U.S. Department of Housing and Urban Development for the Portland Metropolitan Area.

3. The Portland Development Commission (PDC) may require that real property covenants be recorded in the deed records for properties receiving exemptions under this section in order to restrict the sales prices and rents to be charged for exempted units, or to provide remedies for failure to restrict units, or both.

4. For purposes of this Section, "affordable" for rental housing means that the rent and expenses associated with occupancy such as utilities or fees, does not exceed 30% of the gross household income at the level of the rent restrictions. "Affordable" for ownership units means a purchase price for which the sum of debt service and housing expenses including an allowance for utilities and other required ownership fees, when compared to the annual gross income for a family at or below 100% of area median family income, adjusted for family size, does not preclude conventional mortgage financing.

5. Per Section 30.01.040, the Bureau of Housing and Community Development and PDC are responsible for certifying exemptions to housing developments that meet the income requirements specified in 17.15.050 C. 1. or 2. and for enforcing the 60 year affordability requirement for rental housing developments. In the event a qualifying rental housing development fails to maintain qualifying rents and/or occupancy requirements or a qualifying ownership project fails to comply

with applicable recapture or retention covenants, the exemption shall terminate for that development and the Transportation SDC, calculated using the rates in effect at the time PDC finds the exemptions have been lost, shall be due and owing.

6. If the exemption terminates within two years of initial building permit issuance, additional charges will be due and owing. These charges include a processing fee of $120.00 and carrying charges of 12% per year (1% per month), added to the system development charge rates in effect at the time, charged back to the date the exemption was granted. 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.

7. To obtain the exemption, the applicant must present to the Bureau of Transportation, at the time of Application, documentation from PDC that the development qualifies for the exemption.

D. The City of Portland is phasing out the exemption for the Transit Oriented Development (TOD) as calculated per Section 17.15.050 D.1. and 3. below. From January 1, 2008 through December 31, 2008, eligible development shal receive 100% of the exemption; from January 1, 2009 through December 1, 2009, eligible development shall receive 67% of the total exemption; and from January 1, 2010 through December 31, 2010, eligible development shall receive 33% of the total exemption. No TOD exemption shall be provided after December 31, 2010, as calculated per Section 17.15.050 D.1. and 3.
Transit Oriented Development (TOD) as calculated per Section 17.15.050 D.2. shall be exempt from the SDC as described below from January 1, 2008 through December 31, 2012. No TOD exemption shall be provided after December 31, 2012.

No exemption for Transit Oriented Development (TOD) shall be provided for any SDC based upon the Overlay Rate Study.

1. Within the Central City Plan District, New Development that meets Transit Oriented Development definition KK.1., KK.2.a. or KK.2.b. shall be liable for only 10% of the vehicle portion of the SDC and 90% of the transit and non-motorized portion of the SDC.

2. For all areas outside of the Central City Plan District, New Development that meets Transit Oriented Development definition KK.3.a., KK.3.b., or KK.3.c. shall be liable for only 50% of the vehicle portion of the SDC and 100% of the transit and non-motorized portion of the SDC.

3. For all areas outside of the Central City Plan District, New Development that meets the density requirements in Transit Oriented Development definition KK.2.a., or KK.2.b. shall be liable for only 10% of the vehicle portion of the SDC and 90% of the transit and non-motorized portion of the SDC.

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

(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% of the rate

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

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

F. Alteration permits for tenant improvements, new construction or remodeling where

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

2. which is not reasonably expected to result in a significant increase in additional trips according to table 4-9 of the City Rate Study, and if applicable, the Overlay Rate Study;

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

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

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

17.15.060 SDC Credits, SDC Credit Transfers and SDC Reimbursements.
(Amended by Ordinance Nos. 172677, 173121, 173437, 174936, 181322 and 182652, April 8, 2009.)

A. SDC Credits:

1. The City shall grant a credit against the Transportation SDC, which is otherwise assessed for a New Development, for any Qualified Public Improvement(s) constructed or dedicated as part of that 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. The Applicant shall also document, with credible evidence, the value of the improvement(s) for which credit is sought. If, in the Administrator's opinion, the improvement(s) are Qualified Public Improvement, and the Administrator concurs with the proposed value of the improvement(s), an SDC Credit shall be granted. The value of SDC Credits under Section 17.15.060 A.1. shall be determined by the Administrator based on the cost of the Qualified Public Improvement, or the value of land dedicated, as follows:

(1) For dedicated lands, value shall be based upon a written appraisal of fair market value by a qualified, professional appraiser based upon comparable sales of similar property between unrelated parties in an arms-length transaction;

(2) For improvements yet to be constructed, value shall be based upon the anticipated cost of construction. Any such cost estimates shall be certified by a professional architect or engineer or based on a fixed price bid from a contractor ready and able to construct the improvement(s) for which SDC Credit is sought;

(3) For improvements already constructed, value shall be based on the actual cost of construction as verified by receipts submitted by the Applicant;

(4) For all improvements for which credit is sought, only the fraction of over-capacity in the improvement as described in the definition of Qualified Public Improvement is 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;

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

b. The Administrator will respond to the Applicant's request in writing within 21 days of when the request is submitted. The Administrator shall provide a written explanation of the decision on the SDC Credit request.

c. If an Applicant disputes the Administrator's decision with regard to an SDC Credit request, including the amount of the credit, 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 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 a Qualified Public Improvement is built by a Developer prior to an Applicant applying for Building Permits for the New Development, the City shall grant a credit for any Qualified Public Improvement(s) to be constructed or dedicated as a Condition of Development Approval of that New Development. Credits issued pursuant to Section 17.15.060 A.3. are in lieu of any other SDC Credits that could otherwise be claimed in connection with the Qualified Public Improvement, and are issued 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 Qualified Public Improvement;

b. For improvements yet to be constructed, the Developer shall provide the City with an enforceable mechanism to guarantee completion of the Qualified Public Improvement, either in the form of a performance bond or other financial guarantee acceptable to the Administrator;

c. The Developer shall submit written confirmation to the Administrator on the form provided acknowledging:

(1) That SDC credits issued pursuant to this Section are in lieu of any other credits that could be claimed by the Developer or other Applicants on account of the Qualified Public Improvement and

(2) That it is the Developer's obligation to advise subsequent Applicants of the New Development that SDC credits associated with the Qualified Public Improvement have already been issued and that no further credits are available.

3. Where the amount of an SDC Credit approved by the Administrator under this section exceeds the amount of the Transportation SDC assessed by the City upon a New Development, the excess may be transferred. SDC Credit Transfers shall be issued by the City for a particular dollar value to the Applicant. The Applicant may convey by any means and for any value an SDC Credit Transfer to any other party. The Applicant or any other party to whom the credits are transferred may use the SDC Credit Transfers to satisfy Transportation SDC requirements for any other New Development within the City, with the following exception: SDC Credit Transfers approved in connection with New Development outside the North Macadam Urban Renewal District, if applied to SDCs payable on New Development inside the North Macadam Urban Renewal District, may only be applied to the portion of that New Development's SDC charges payable under the City Rate Study. Such SDC Credit Transfers may not be applied to SDCs payable under the Overlay Rate Study.

4. The City shall accept at face value any SDC Credit Transfer 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 SDC charges payable under the City Rate Study. Neither the City nor any of its employees or officers shall be liable to any party for accepting a SDC Credit Transfer, approved and issued by the City under this Section, as payment for a Transportation SDC.

5. SDC Credit Transfers 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.

6. It shall be a violation of this title for any person to counterfeit or forge an SDC Credit Transfer or knowingly attempt to negotiate or redeem any counterfeit or forged SDC Credit Transfer.

7. Notwithstanding Subsections 3. and 4. above, transportation SDC credits approved in connection with New Development subject to the Overlay Rate Study may be applied against transportation SDCs that accrue in subsequent phases of the original New Development.

B. SDC Reimbursement.

1. If an Applicant proposes New Development on property on which there is already a use which generates at least 15% more vehicle trips than the proposed use, then the Applicant shall be entitled to an SDC Reimbursement. The SDC Reimbursement shall be in the form of a credit equal to the difference between the SDC Rate of the previous use and that for the proposed use. The Applicant bears the burden of evidence and persuasion in establishing entitlement to an SDC Reimbursement and to a particular amount of such a reimbursement.

2. To obtain an SDC Reimbursement, the Applicant must request the Reimbursement within 180 days after building permit issuance for the New Development and document the basis for the request with traffic reports prepared and certified to by a Professional Traffic Engineer.

3. If, in the Administrator's opinion, the Applicant has sufficiently demonstrated that the new use will generate fewer trips than did the previous use, the Administrator shall refund to the Applicant the difference between the Transportation SDC that was paid on the previous use and the Transportation SDC amount that would be assessed for the proposed use. The Administrator shall notify the Applicant in writing of its decision on the SDC Reimbursement request and shall provide a written explanation of the decision. For all improvements for which Reimbursement is sought within the North Macadam Transportation

System Development Charge Overlay, the Administrator shall apportion the Reimbursement based upon the percent of the total SDC charge attributable to the SDC calculated from the City Rate Study and from the Overlay Rate Study.

4. If an Applicant disputes the Administrator's decision with regard to an SDC Reimbursement decision, including the amount of the Reimbursement, the Applicant may seek an Alternative SDC Reimbursement calculation under Section 17.15.070 in the same manner as for an Alternative SDC Rate request. Any request for an Alternative SDC Reimbursement calculation must be filed with the administrator in writing within 10 calendar days of the written decision on the initial reimbursement request.

17.15.070 Alternative Calculation for SDC Rate, Credit or Exemption.
(Amended by Ordinance Nos. 181322 and 182652, effective April 8, 2009.)

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 vehicle 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 Overlay Rate Study, 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 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 Overlay Rate Study, the Applicant must request an alternative SDC rate calculation, under this section, within 180 days after building permit issuance for the New Development. The City shall not entertain such a request filed after 180 days after building permit

issuance for the New Development. Upon the timely request for an alternative SDC rate calculation, the Administrator shall review the Applicant's calculations and supporting evidence and make a determination within 21 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 trip generation data, analyzed and certified to by a Professional Traffic Engineer. The Applicant's supporting documentation must rely upon generally accepted sampling methods, sources of information, cost analysis, traffic and growth projections and techniques of analysis as a means of supporting the proposed alternative SDC rate. The proposed Alternative SDC Rate calculation shall include an explanation by a registered engineer explaining with particularity why the rate established in The City Rate Study, and if applicable, the Overlay Rate Study, does not accurately reflect the New Development's impact on the City's capital improvements

3. The Administrator shall apply the Alternative SDC Rate if, in the Administrator's opinion, the following are found:

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 calculation of the proposed Alternative SDC rate was by a generally accepted methodology, and

c. The proposed alternative SDC rate better or more realistically reflects the actual traffic impact of the New Development than the rate set forth in The City Rate Study, and if applicable, the Overlay Rate Study.

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

C. Alternative SDC Credit Request:

1. If an Applicant has requested an SDC Credit pursuant to Section 17.15.060, and that request has either been denied by the City or approved

but at a lower value than desired, the Applicant may request an Alternative SDC Credit calculation, under this section. Any request for an Alternative SDC Credit calculation must be filed with the Administrator in writing within 10 calendar days of the written decision on the initial credit request. The City shall not entertain such a request filed after 10 calendar days of the written decision on the initial credit request. Upon the timely request for an Alternative SDC Credit calculation, the Administrator shall review the Applicant's calculations and supporting evidence and make a determination within 21 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 to by an appropriate professional, for the improvements for which the Applicant is seeking credit. The Applicant's supporting documentation must rely upon generally accepted sources of information, cost analysis and techniques of analysis as a means of supporting the proposed Alternative SDC credit.

3. The Administrator shall grant the Alternative SDC Credit if, in the Administrator's opinion, the following are found:

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 realistic, credible valuation or benefit analysis.

4. If, in the Administrator's opinion, any one or more of the above criteria is not met, the Administrator shall deny the request and provide to the Applicant by certified mail, return receipt requested, a written decision explaining the basis for rejecting the Alternative SDC Credit proposal.

D. Alternative SDC Exemption Request:

1. If an Applicant has requested a full or partial exemption under Section 17.15.050, and that request has been denied, the Applicant may request an Alternative SDC Exemption under this section. Any request for an

Alternative SDC Exemption calculation must be filed with the Administrator in writing within 10 calendar days of the written decision on the initial credit request. The City shall not entertain such a request filed after 10 calendar days of the written decision on the initial credit request. Upon the timely request for an Alternative SDC Exemption, the Administrator shall review the Applicant's request and supporting evidence and make a determination within 21 days of submittal as to whether the Applicant's request satisfies the requirements of section 17.15.050 for exemptions.

2. In support of the Alternative SDC Exemption request, the Applicant must provide complete and detailed documentation demonstrating that the Applicant is entitled to one of the exemptions described in section 17.15.050.

3. The Administrator shall grant the exemption if, in the Administrator's opinion, the Applicant has demonstrated with credible, relevant evidence that it meets the pertinent criteria in section 17.15.050.

4. Within 21 days of the Applicant's submission of the request, the Administrator shall provide a written decision explaining the basis for rejecting or accepting the request.

17.15.080 Payment.

(Amended by Ordinance Nos. 173437, 181322 and 182389, effective January 2, 2009.)

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. If the Applicant elects to pay the SDC in installments, a lien will be placed against the property that is subject to the SDC, and that lien will be given first priority as provided by statute. The Applicant's election to pay the SDC by installments shall be memorialized in an SDC Installment Agreement entered into by the Applicant and the City on a form provided by the City, and which may provide that no payments are due for 180 days after issuance of building permits. In any event, the Applicant shall either pay the SDC in full or enter into an SDC Installment Agreement as provided in this section, before the City will issue any building permits.

B. Upon written request of the Bureau of Transportation, the City Auditor is authorized to cancel assessments of SDCs, without further Council action, where the New Development approved by the Building Permit is not constructed and the Building Permit is cancelled.

C. For property that has been subject to a cancellation of assessment of SDCs, a new installment payment contract shall be subject to the code provisions applicable to SDCs and installment payment contracts on file on the date the new contract is received by the City.

D. The City of Portland shall not be responsible for nor have any responsibility to honor or enforce agreements made by private parties regarding the payment or collection of SDC assessments.

17.15.090 Refunds.

(Amended by Ordinance No. 181322, effective January 1, 2008.) Refunds may be given by the Administrator upon finding that there was a clerical error in the calculation of the SDC. Refunds shall not be allowed for failure to timely claim credit or for failure to timely seek an Alternative SDC Rate calculation. The City shall refund to the Applicant any SDC revenues not expended within ten (10) years of receipt.

17.15.100. Dedicated Account and Appropriate Use of Account.

(Amended by Ordinance Nos. 181322 and 182652, effective April 8, 2009.)

A. There is created a dedicated account entitled the "SDC Account." All monies derived from the SDC shall be placed in the SDC Account. Funds in the SDC Account shall be used solely to provide the SDC-CIP listed capacity increasing improvements according to the SDC-CIP as it currently exists or as hereinafter amended, and eligible administrative costs. All monies derived from the Overlay Rate Study shall be placed in a sub-account. The monies in the Overlay sub-account shall only be spent on projects serving the North Macadam urban renewal area. In this regard, SDC revenues may be used for purposes which include:

1. project development, design and construction plan preparation;

2. permitting;

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

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

5. construction of turn lanes;

6. construction of bridges;

7. construction of drainage and stormwater 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, and transit shelters, fixed rail transit systems and appurtenances;

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

17. 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;

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

B. Money on deposit in the SDC Accounts shall not be used for:

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

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

3. costs associated with acquisition or maintenance of rolling stock.

17.15.110 Challenges and Appeals.

(Amended by Ordinance Nos. 173121and 181322, effective January 1, 2008.)

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

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

C. Any Applicant aggrieved by an Administrator's determination may appeal that determination to the Code Hearings Officer as provided in Chapter 22.10 of this Code. Notwithstanding any other provisions of this Code, there shall be a non-refundable fee of $250 for any appeal pursuant to this subsection. Such fee must accompany any such appeal and no such appeal shall be considered filed or received until such fee is paid in full.

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

17.15.120 City Review of SDC.

(Amended by Ordinance Nos. 181322 and 182652, effective April 8, 2009.)

A. No later than every two (2) years as measured from initial enactment, the City shall undertake a review to determine the total SDC's assessed and collected by transportation district and the total SDC's expended and programmed by transportation district and project; to determine that sufficient money will be available to help fund the SDC-CIP identified capacity increasing facilities; to determine whether the adopted SDC rate keeps pace with inflation, whether the SDC-CIP 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 SDC-CIP improvements listed in City Rate Study or Overlay Rate Study or to ensure that such SDC-CIP 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.

D. Beginning January 1, 2009 through December 31, 2012, the City shall undertake an annual review to determine the amount of Transit Oriented Development (TOD) exemptions provided by district.

17.15.130 Time Limit on Expenditure of SDCs.

The City shall expend SDC revenues within ten (10) years of receipt, based on the priorities in the SDC-CIP list.

17.15.140 Implementing Regulations; Amendments.

(Amended by Ordinance Nos. 171698 and 181322, effective January 1, 2008.) The City Council delegates authority to the Director of Transportation to adopt administrative rules and procedures necessary to implement provisions of this Chapter including the appointment of an SDC program Administrator. All rules pursuant to this delegated authority shall be files with the office of City Auditor and be available for public inspection.

17.15.150 Amendment of SDC-CIP List.

(Amended by Ordinance No. 182652, effective April 8, 2009.) The City may, by resolution, amend its SDC-CIP as set forth in the City Rate Study and Overlay Rate Study, from time to time to add projects the City deems appropriate.

17.15.160 Severability.

(Amended by Ordinance No. 181322, effective January 1, 2008.) The provisions of this Chapter are severable, and it is the intention to confer the whole or any part of the powers herein provided for. If any word, definition, clause, section or provision of this Chapter shall be declared unconstitutional or invalid for any reason or cause, the remaining portion of this Chapter shall be in full force and effect and be valid as if such invalid portion thereof had not been incorporated herein. In the event a definition is held to be invalid or is severed, the defined word or term shall be deemed to have the meaning given to that word or term under Oregon law if Oregon law contains such a definition. If there is no established definition of the word or term under Oregon law, the word or term shall have its ordinary dictionary meaning. It is hereby declared to be the Council's express legislative intent that this Chapter would have been adopted had such an unconstitutional or otherwise invalid provision not been included herein**.**

Chapter 17.16

GENERAL PROVISIONS

Sections:

17.16.010 Specifications and Authority to Revise.
17.16.020 Interpretation of Specifications.
17.16.030 Progress Payments.
17.16.040 Interest on Progress Payment and Final Warrants.
17.16.050 Progress Payment not Deemed Final Acceptance.
17.16.060 Division of Warrants.
17.16.065 Purchase of Warrants by the City.
17.16.070 Claims against Contractors.
17.16.080 Statutory Provisions Relating to Labor and Wages.
17.16.090 Bonding City Property.
17.16.100 Facilities in Street Area Affected by Improvement.
17.16.110 Facilities in Street Area Damaged by Contractor.
17.16.120 Engineer's Standards.
17.16.130 Approvals by City Attorney.

17.16.010 Specifications and Authority to Revise.

(Amended by Ordinance Nos. 149769 and 173295, effective April 28, 1999.)

A. All work done and materials used for either a local or public improvement whether it be as a district or by permit shall conform to the provisions of this Title and to the standard specifications as adopted by Ordinance No. 145047 passed by the Council January 18, 1978 and made effective March 1, 1978.

B. Revisions. The City Engineer, in consultation with the Chief Engineers of the Bureau of Environmental Services and the Bureau of Water Works, is authorized to revise the standard specifications of the City of Portland as needed, excluding Division 5 contained therein, which shall be revised by the Chief Engineer of the Bureau of Water Works.

17.16.020 Interpretation of Specifications.

(Amended by Ordinance Nos. 149769 and 173295, effective April 28,1999.) The decision of the City Engineer as to all performances, materials and technical requirements of standard specifications and plans for a local improvement or public improvement shall be final and conclusive excepting work performed in accordance with Division 5 water of the standard construction specifications for which the Chief Engineer, Bureau of Water Works shall have final and conclusive decision. The interpretation of all other provisions of standard construction specifications shall be determined by the City Attorney.

17.16.030 Progress Payments.

(Amended by Ordinance Nos. 138075, 140744 and 173295, effective April 28, 1999.)

A. Subject to applicable provisions of the City Charter and in accordance with the specifications adopted for particular work by the Council, 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 Auditor by the Responsible Engineer.

B. The progress payment certificate shall 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 shall be deemed sufficient without further approval 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 which is in addition to or an extra over the basic contract, then a progress payment shall not be made pursuant to the Responsible Engineer's certificate until such certificate has been presented to the Council and approved by the Council, or the Council has separately authorized the extra work.

C. On any contract for a local improvement which does not contain a specific provision for progress payments, a single progress payment shall be made at the time the final estimate of the Responsible Engineer is filed with the City Auditor if such payment is requested by the contractor. The progress payment shall not exceed 95 percent of Council authorized contract costs included in the final estimate. This paragraph shall be applicable to contracts which 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 shall 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, shall bear interest at the rate of 6 percent per year beginning on the 10th day after the date of the warrant. Total interest on such warrants shall 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 shall 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.

(Amended by Ordinance No. 173295, effective April 28, 1999.) No progress payment shall be deemed a final acceptance or any acceptance of the work or material represented by such progress payment, nor shall 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 shall 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 shall bear interest from the 10th day after the date of the original warrant.

17.16.065 Purchase of Warrants by the City.

(Added by Ordinance No. 138072, amended by Ordinance No. 173295, effective April 28, 1999.) The City of Portland shall 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.

(Amended by Ordinance No. 173295, effective April 28, 1999.) 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 City Auditor 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 shall 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 his or her claim, or if the contractor orders all or a portion of the amount due and owing to be paid to the claimant, then the Auditor shall 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 shall 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 shall comply with all statutory requirements concerning hours of labor and prevailing wage rates. All certifications required by statute to be filed with the City shall be so filed.

17.16.090 Bonding City Property.

The Mayor or a Commissioner to whom particular City property has been assigned, which property is assessed for a local improvement, shall have authority to make application for bonding and to sign the application. For such application said Mayor or Commissioner shall be deemed the owner on behalf of the City.

17.16.100 Facilities in Street Area Affected by Improvement.

(Amended by Ordinance No. 173295, effective April 28, 1999.)

A. If a fire hydrant has been installed at established street grade and in a location approved by the City Engineer, and a local improvement or public improvement requires moving such hydrant, the Bureau of Water Works shall upon request of the City Engineer make the necessary change. The cost thereof shall 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 shall be changed, moved, removed or relocated, as the City Engineer 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 shall 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 Engineer the contractor on the improvement may perform such change or relocation, and upon approval

of the contractor's bill therefor by the City Engineer, if the owner of the facility is the owner of land to be assessed for the local improvement, then the City shall 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 shall 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 shall be chargeable for the cost of moving any City owned facilities.

C. The contractor for a public improvement or local improvement shall 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.
(Amended by Ordinance Nos. 131165 and 173295, effective April 28, 1999.)

A. If in the course of a local or public improvement which does not entail within the plans and specifications the removal or replacement of a surface installation, or an installation extending to the surface of street area, or any utility, sewer or water line, City service facility or appurtenances placed in the street area by or under authority of the City, and if in the course of such work the contractor or his or her subcontractor damages or displaces such installation, including but not limited to curb, sidewalk, water line or meter, manhole or other installation, then the contractor shall repair or replace the facility at the contractor's own expense in a proper manner as approved by the City Engineer except in the case of damage to a water line or meter which shall be repaired by the Bureau of Water Works and billed to the contractor or others, in the manner specified in Title 5, Revenue and Finance, of this 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 which is not located within 2 feet of the street grade established for that location, the contractor shall 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 shall 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 which is located within 2 feet of the established street grade in the area, then such facility shall be repaired, replaced or relocated as directed by the Responsible Bureau, subject to approval by the City Engineer, 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 Engineer's Standards.

(Amended by Ordinance No. 173295, effective April 28, 1999.) The City Engineer 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 shall comply with such standards unless otherwise specifically authorized by the City Engineer 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 shall first be approved as to form by the City Attorney before filing or use.

Chapter 17.18

GENERAL OBLIGATION IMPROVEMENT WARRANTS

(Added by Ordinance No. 139575, effective March 13, 1975.)

Sections:

17.18.010 General Obligation Improvement Warrants Authorized.
17.18.020 Procedure for Issuance and Delivery.
17.18.030 Application of Proceeds.
17.18.040 Repayment.
17.18.050 Payment or Bonding Mandatory.
17.18.060 Provision in Budget.

17.18.010 General Obligation Improvement Warrants Authorized.

(Amended by Ordinance Nos. 140586, 141599, 146747 and 157298, effective May 2, 1985.) Notwithstanding other provisions of this Code, the Council hereby 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 herein. 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.

(Amended by Ordinance Nos. 140586, 141599, 146747 and 173295, April 28, 1999.)

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

E. The City Treasurer shall 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.

(Amended by Ordinance No. 146747, effective Dec. 4, 1978.) The proceeds from each series of general obligation improvement warrants issued for a local improvement district construction contract shall be retained in the Improvement Warrant Sinking Fund until payment shall be authorized.

17.18.040 Repayment.

Upon completion of any local improvement contract and the spreading of assessments upon the property benefited thereby, 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, shall 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 which has been financed by the issuance of general obligation improvement warrants shall fail 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 shall 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 shall provide in its budget for the fiscal year in which general obligation improvement warrants will mature such amount for the payment thereof as shall 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 shall be placed in the Improvement Warrant Sinking Fund to repay outstanding warrants as needed.

Chapter 17.19

NORTHWEST TRANSPORTATION FUND

(Added by Ordinance No. 177993,
effective November 21, 2003.)

Sections:

17.19.010 Purpose.
17.19.020 Applicability.
17.19.030 Payment.
17.19.040 Implementing Regulations.
17.19.050 Dedicated Account and Appropriate Use of Account.

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 non-residential 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 Title 33, Planning and Zoning.

17.19.030 Payment.

(Amended by Ordinance Nos. 182389 and 182760, effective June 5, 2009.) 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 non-residential development up to the amount of floor area allowed by Title 33, Planning and Zoning. Any appeal of the application of the Northwest Transportation Fund fee is to the Director of Transportation. The Director of Transportation 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 $.05 will be rounded to the nearest multiple of $.05.

C. The Bureau of Transportation is authorized to refund the Northwest Transportation Fund fee, without further Council action, where the non-residential 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.

(Amended by Ordinance No. 182389, effective January 2, 2009.) The City Council delegates authority to the Director of the Bureau of Transportation to adopt administrative rules and procedures necessary to implement provisions of this Chapter. All rules relating to this delegated authority shall be filed with the City Auditor and be available for public inspection.

17.19.050 Dedicated Account

All monies derived from the Northwest Transportation Fund shall be placed in the Northwest Transportation Fund Account. Funds in the Northwest Transportation Fund shall be used to provide transportation improvements in the area bounded by NW Pettygrove Street, NW Nicolai Street, the I-405 freeway, and NW 27th Avenue 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 17.20

CONTRACTOR PREQUALIFICATION RULE

(Repealed by Ordinance Nos. 174509 and 174904, effective January 1, 2001.)

Chapter 17.23

SPECIAL TRAFFIC CONTROL DISTRICT

(Added by Ordinance No. 151358, effective May 1, 1981.)

Section:

17.23.010 Application.
17.23.020 Definitions.
17.23.030 Designated Boundary.
17.23.040 Special Jurisdiction.
17.23.050 Permits Required.
17.23.060 Traffic Standards.
17.23.070 Revocation.

17.23.010 Application.

(Amended by Ordinance No. 176408, effective July 1, 2002.) This Chapter shall apply to any use of the street area within the Special Traffic Control District described in 17.23.030.

17.23.020 Definitions.

(Amended by Ordinance Nos. 176408, 176555 and 182760, effective June 5, 2009.) As used in this Chapter, the following terms shall have the following definitions:

A. **"Street"** shall mean any street as defined in the City Charter, including all area between the property lines, and area dedicated to street use.

B. **"Curb"** shall mean the stone or concrete edging along a street.

C. **"City Engineer"** shall mean the duly appointed City Engineer, or any lawfully appointed subordinate of the City Engineer, acting under the orders of the City Engineer.

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

E. **"Emergency"** shall mean any unscheduled repair of existing facilities within the street area which must be accomplished immediately to protect the life, health, and well being of the public, or to protect public or private property. Under this definition, "emergency" work shall encompass only immediately required repairs and shall not include extensive replacement or upgrading of the facility.

F. **"Public improvement"** shall mean an improvement of, on, over or under property owned or controlled by the public, or property to be controlled by the public 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.

G. **"Local improvement"** shall mean an improvement of, on, over or under property 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 and peculiar benefit on certain properties, and such properties are to be charged through assessment all or a portion of the improvement cost.

17.23.030 Designated Boundary.

(Amended by Ordinance No. 176408, effective July 1, 2002.) The following described Special Traffic Control District will mean and include the following streets in the City:
The Special Traffic Control District shall be bounded by Naito Parkway to the east and the I-405 Loop to the west, south, and north. In addition to said boundary, the Special Traffic Control District shall include the following boundaries: beginning with the intersection of the west line of SW 18th and the south line of SW Salmon, running thence easterly along said south line of SW Salmon Street to the west line of SW 14th Avenue, running thence southerly to its intersection with the north line of SW Jefferson, thence easterly to the east line of SW 14th Avenue, thence northerly along the east line of SW 14th Avenue to its intersection with the north line of West Burnside; thence westerly along the north line of West Burnside to its intersection with the west line of SW 18th Avenue; thence southerly along the west line of SW 18th to the place of beginning. And, beginning with Naito Parkway to the west, the Willamette River to the east, SW Clay Street to the north, and SW River Parkway to the south.

17.23.040 Special Jurisdiction.

(Amended by Ordinance Nos. 173369 and 176408, effective July 1, 2002.) Within the Special Traffic Control District, the City Engineer shall have the authority to require temporary street closure permits. Such permits may allow for construction, repair, or maintenance of facilities within the street area and use of the street area to facilitate work on private property. The City Engineer shall have the authority to secure information from and coordinate the activities of all parties requesting use of the street area. The authority of the City Engineer shall not repeal the authority of the Building Bureau as

outlined in Chapters 44 and 45 of the Uniform Building Code or as outlined in Section 17.44.020 of the Code of the City of Portland, Oregon.

17.23.050 Permits Required.

(Amended by Ordinance Nos. 176408 and 182760, effective June 5, 2009.)

A. Within the Special Traffic Control District, any party desiring to perform work in the street or make use of the street area to perform work on private property shall first obtain a temporary street closure permit as prescribed in Section 17.44.020 of the Code of the City of Portland, Oregon, and pay the permit fees set forth in Section 17.24.020. Any party obtaining a permit to perform public improvements in the street as described in Chapter 17.24 or 17.56, shall be exempt from obtaining an additional temporary street closure permit as described in this Section 17.23.050.

B. Any party desiring to perform maintenance work in the street shall notify the City Engineer two days in advance of the planned work and obtain oral approval prior to commencing the work. Maintenance work between the curb lines requiring no more than a single lane closure will be exempt from obtaining a temporary street closure permit. Unless specifically permitted, maintenance work shall be prohibited during peak hours of 7:00 am to 9:00 am and 4:00 p.m. to 6:00 p.m., Monday through Friday.

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

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

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

F. Not withstanding the other provisions of this Section, the City Engineer shall have the authority to implement additional requirements for permits in the Special Traffic Control District when conditions in the downtown require more stringent regulations.

G. Nothing contained herein shall limit the authority of the City Engineer in maintaining public peace and safety and upon request from the City Engineer the party performing any work in the street area shall reopen the street area to its normal use within two hours of notification from the City Engineer.

17.23.060 Traffic Standards.

(Amended by Ordinance Nos. 173627 and 176408, effective July 1, 2002.) 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 Engineer. Within the special control district, the City Engineer and the Traffic Engineer are hereby authorized and directed to enforce the traffic standards or such other traffic control plans as may be required as a condition of the permit. The City Engineer or City Traffic Engineer may require any party requesting to use the street area to submit a traffic control plan for review as a condition of granting a permit

17.23.070 Revocation.

(Added by Ordinance No. 176408, effective July 1, 2002.) The City Engineer in carrying out the provisions set forth herein may enforce conditions set forth in permits issued under Section 17.23.050. The City Engineer may revoke any permit issued under Section 17.23.050 at any time in the event the public's need requires it, the permittee fails to comply with the conditions of the permit, or for any reason which would have been grounds for denial of the initial permit application.

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Chapter 17.24

PERMITS

Sections:

17.24.010 Permits Required.
17.24.020 Fees for Street Use Permits.
17.24.025 Fees for Public Improvement Permits.
17.24.026 Fees for Review of Land Use Applications.
17.24.030 Application for Permit.
17.24.035 Deposit Required.
17.24.040 Refusal of Permit.
17.24.050 Contents of Permit.
17.24.055 Assurance of Performance.
17.24.060 Permit Conditions.
17.24.070 Engineering and Superintendence for Street and Transportation Facility Public Improvements.
17.24.080 Work Done Under Permit.
17.24.085 Original Documents Become the Property of the City.
17.24.090 Certificate by City Engineer.
17.24.100 Street Pavement Preservation.
17.24.110 Record of Permits.
17.24.120 Removal of Improvement.
17.24.200 Structural Driveway Defined.
17.24.205 Structural Driveways in Public Streets.
17.24.210 Permit Applications.
17.24.220 Engineer's Review.
17.24.230 Design Standards.
17.24.240 Permits.
17.24.250 Revocation of Permit.
17.24.260 Removal of Structural Driveways.
17.24.270 Fees.
17.24.280 Inspection of Construction Required.

17.24.010 Permits Required.

(Amended by Ordinance Nos. 140207, 161347, 173295 and 177124, effective January 10, 2003.)

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 Engineer 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 paragraph E. below, no person shall 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 of Portland 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 Engineer, 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 therefor and paying the fee prescribed in Section 17.24.020. The permit shall be obtained from the City Engineer unless specifically provided otherwise in this Title.

D. The failure of any permittee to comply with any and all permit conditions or related Code and Charter provisions while doing work in the street area shall 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 Bureau of Water Works 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 Engineer 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 shall obtain permits from the City Engineer for use of the street area in accordance with the schedule of fees set forth in Section 17.24.020.

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

17.24.020 Fees for Street Use Permits.

(Amended by Ordinance Nos. 140207, 143622, 144020, 144130, 146587, 149428, 150765, 151642, 151907, 154665, 164289, 165519, 166696, 167861, 168944 170200, and 171243, effective July 7, 1997.) The City Engineer may establish street use permit fees. Such fees shall recover full cost including all applicable overhead charges. Overhead rates shall be computed annually by the City Engineer and kept on file with the City Auditor. If a larger fee is required elsewhere in this Title for any class of permit, the larger fee shall apply, otherwise the following fees shall be paid for permits unless the Council, by Ordinance or Resolution, has granted a specific permit for a different fee: (See Figure 2 at the end of Title 17). All fees for recording permits and other documents with the County Recorder shall be paid by the property owner or permittee.

17.24.025 Fees for Public Improvement Permits.

(Added by Ordinance No. 146587; amended by Ordinance Nos. 148388, 151643 and 173295, effective April 28, 1999.)

A. Engineering and superintendence services in connection with public improvement projects shall be charged in accordance with the schedule below, when either the City does design and survey or a consultant does design and survey. Direct cost shall be computed in accordance with the provisions of Chapter 5.48.030. The City Engineer shall review actual costs of engineering to insure that only usual and ordinary costs are included.

Final Engineer's Estimate	Engineering and Superintendence Fee
Under $10,000	75% of direct cost
$10,001 to 25,000	85% of direct cost
Over $25,000	100% of direct cost

B. For public improvement projects for which the City does design and survey, application for a permit requires a deposit of one-half of the estimated total permit fee; the balance of the fee is due prior to issuance of the permit. For projects for which a consultant does design and survey, application for a permit requires a deposit of 20 percent of the estimated total permit fee; the balance of the fee is due prior to issuance of the permit.

C. Prior to the issuance of the certificate of completion by the City Engineer the fees charged to the permittee will be adjusted to agree with the actual costs of services as recorded by the City Engineer. The remaining balance, if any, after payment of all costs shall be returned to the permittee. If additional funds are required from the permittee, they shall be paid prior to the issuance of the certificate of completion.

17.24.026 Fees for Review of Land Use Applications.

(Added by Ordinance No. 173978; Amended by Ordinance No. 182389, effective January 2, 2009.) The Bureau of Transportation shall establish fees which recover the Bureau of Transportation's costs of participating in pre-application conferences and reviewing applications for land use approvals which are required by either Title 33 or Title 34 of the Code of the City of Portland.

A. Policy.

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

2. Fees shall include direct costs and overhead charges.

3. Fee schedules shall be updated regularly and made available in the Permit Center.

B. Required Fees.

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

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

C. Concurrent Applications. When more than one review is requested on the same project, the fee for the most expensive review will be charged, plus one half of the fee for the other reviews.

D. Appeal Fees. The process and charges for appeals shall be as set forth in Chapter 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 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 Engineer.

b. If the applicant meets the Bureau of Planning's requirements under 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 Engineer.

4. No Refunds.

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

b. Pre-application conference fees are non-refundable except as set forth in section F paragraphs 1 and 2.

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

17.24.030 Application for Permit.

(Amended by Ordinance Nos. 144020, 151100, 173295, 176555 and 176955, effective October 9, 2002.)

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

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

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

2. the final plat, is approvable as determined by the Bureau of Development Services,

3. any necessary site permits have been obtained from the Bureau of Development Services,

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

5. the permittee has provided the following:

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

b. Authorization for City personnel to enter upon the particular private property for the purpose of testing, inspection and surveying if 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 and private utilities to be located in public rights of way must be installed prior to final acceptance of the public street improvements, or as directed by the City Engineer.

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

f. Agreement that the permittee will hold the City of Portland harmless against any liability which may occur during construction prior to dedication of the right-of-way or recording of the easement, and further agreement that the permittee assumes all risk

of loss which may arise in the event the City or any other public agency subsequently requires changes in or additions to plans or refuses to approve all or any part of permittee's improvements.

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

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

6. Any other conditions by the City engineer have been met.

17.24.035 Deposit Required.

(Amended by Ordinance Nos. 144020 and 148388, effective Sept. 6, 1979.) Concurrent with making the permit application the party desiring the permit shall deposit a sum equal to one-half of the estimated cost of engineering and superintendence as determined by the City Engineer except that when a consultant does the design and survey the deposit shall be 20 percent of the estimated cost of engineering and superintendence. This deposit shall be determined by using the appropriate schedule of services found in 17.24.070. All deposits must be made prior to any design work being done by the consultant. In the event that no permit is issued for the proposed improvement within 1 year from the time design and plans are reviewed and completed, the City shall retain the amount of the deposit as compensation for the preparation of design and plans or efforts of review. In the event a permit is issued for the proposed improvement within 1 year from the time such design and plans are completed, the amount of the required deposit shall be applied to the cost of the permit fee for such improvements.

17.24.040 Refusal of Permit.

(Amended by Ordinance No. 173295, effective April 28, 1999.)

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

B. The City Engineer may refuse a permit hereunder if in the judgment of the City Engineer the proposed use or improvement is not suitable in the circumstances, will not be uniform with existing or proposed street improvements in the immediate vicinity, or when the improvement contemplates the removal of earth from any street when it may be necessary to secure the deposit of the earth upon any other part of said street.

C. The City Engineer may refuse to issue a permit hereunder unless the application is modified as the City Engineer may deem necessary. The City Engineer may require the addition of curbs if a sidewalk improvement is proposed. The City Engineer may require the addition of curbs or sidewalks or both if the proposed improvement is a street improvement. If the City Engineer finds that water main extensions are likely to be needed within 2 years after the completion of a street improvement, the City Engineer shall refuse issuance of a street improvement permit unless the water main extensions are provided before the completion of a proposed street improvement. If an application is made for a street improvement and the City Engineer 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 Engineer 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.

(Amended by Ordinance Nos. 144020, 173295, and 176555, effective July 1, 2002.)

A. Any permit issued for the construction of a public improvement or use of the street area may contain such conditions as the City Engineer finds appropriate in the public interest. The permit shall specify the kind of work and the time in which the same is to be completed.

B. The permit applications for street improvements will include but are not limited to the following items:

1. Periods within which the permit will be completed and public improvements will be installed.

2. Responsibility for a 24-month quality assurance period following issuance of a certificate of completion.

3. Assurance of performance.

4. Permit fee deposit.

17.24.055 Assurance of Performance.

(Added by Ordinance No. 176555; amended by 177124, effective January 10, 2003.)

A. Assurance of Performance shall be for a sum approved by the City Engineer 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 Engineer, be in the form of separate assurances covering individual stages of a staged development or covering the installation of various individual improvements rather than a single assurance of performance covering 100 percent of the cost of all improvements to the entire land division. Deposits for engineering and superintendence as required by Title 17 or by Title 5 are in addition to the filing of such assurances of performance.

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

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

2. Irrevocable letter of credit.

3. Set-aside account

4. Cash deposit.

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

6. Other forms as approved by the City Attorney.

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

17.24.060 Permit Conditions.

(Amended by Ordinance Nos. 144020 and 173295, effective April 28, 1999.) All work done in streets or other public places shall be done in the location approved by the City Engineer and in accordance with plans and specifications prepared or approved by the City Engineer. The permit may include conditions, and the conditions shall be binding upon the permittee (see 17.24.050). All work done shall be subject to the rejection or correction requirements of the City Engineer and subject to his final approval of the City Engineer. Any person or entity performing work in the street area shall:

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

B. Upon completion of the work, make a written report to the City Engineer 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 Engineer may request. The City Engineer may establish the format of such reports.

C. Lay all pipes, mains, sewers, conduits, lines, when the same are to run lengthwise in any street, at a distance at least 3-1/2 feet from the curb measuring toward the center of the street and at least 2 feet from the curb measuring to the outer edge of the street. All connections to the pipes, mains, sewers, conduits, and lines laying lengthwise in the street or to any lot shall be installed perpendicular to the curb. In cases where compliance with these regulations would cause unnecessary digging up of pavement, disruption of traffic, place a burden on the street system, or otherwise not be in the best interest of the public, the City Engineer may in his or her sole discretion permit and or require the laying of pipes, mains, sewers, conduits, lines, in a different location or manner;

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

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

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

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

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

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

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

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

(Substituted by Ordinance No. 144020, amended by Ordinance No. 173295, effective April 28, 1999.)

A. The City Engineer shall:

1. Make all necessary surveys;

2. Mark all grades;

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

4. Provide engineering provisions and approvals;

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

6. Inspect and approve all work done. At the option of the City Engineer, items 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 shall be charged for engineering and superintendence services in an amount equal to the City Engineer's estimate of the actual costs of such services in accordance with the provisions of Chapter 5.48.050. This fee shall be paid prior to the issuance of permittee's permit for public improvement.

C. (Amended by Ordinance Nos. 146587 and 151643, effective July 1, 1981.) If a permittee, person or agency seeks to have a public improvement constructed under private contract between the permittee and a contractor, or if the permittee desires to do the work personally or have it done under his or her direction, then the permittee shall be charged for engineering and superintendence services in an amount computed as follows below. This fee shall be paid prior to the issuance of permittee's permit for public improvements.

Engineering and superintendence fees:

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

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

3. Consultant does design, City does survey - see 17.24.025 A plus survey actual costs by authority of 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 Engineer shall refuse to accept the work. If the work is refused by the City Engineer, it shall not thereafter be accepted unless corrected to conform to plans and specifications and unless approved by the City Council.

17.24.080 Work Done Under Permit.

(Amended by Ordinance Nos. 150092 and 173295, effective April 28, 1999.)

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

B. The City Engineer shall have the authority to refuse issuance of permits for work within the street right-of-way to any individual, corporation or company 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.

(Added by Ordinance Nos. 144020 and 173295, effective April 28, 1999.) Any and all plans, specifications, survey notes or other original documents as required by the City Engineer that were either prepared for or produced during the design or construction of a public improvement, become the property of the City and shall be delivered to the City Engineer prior to acceptance of the improvement by the City Engineer.

17.24.090 Certificate by City Engineer.

(Amended by Ordinance Nos. 144020, 151100 and 173295, effective April 28, 1999.) During the course of construction and prior to the issuance of a certificate of completion for a public improvement under this Chapter, the City Engineer shall inspect the improvement and determine if the various kinds of work performed are in compliance with the plans, specifications and allowances of the permit as to quality of workmanship. Furthermore, the City Engineer shall check the improvement for alignment, proper computation of quantities and conformance with the established grade. If all of the work required is completed and done to the satisfaction of the City Engineer, the City Engineer shall give a certificate therefor to that effect and that the improvement is accepted, if done within the completion date, as hereinabove set forth, and within recorded public rights of way and easements. Otherwise, the acceptance may be made by the Council on the certification of conformity to Code provisions and proper grades filed by the City Engineer.

17.24.100 Street Pavement Preservation

(Replaced by Ordinance No. 176408, effective July 1, 2002.) After any street has been constructed, reconstructed, or paved by City forces, under City contract, or under permit, the pavement surface shall not thereafter be cut or opened for a period of 5 years.

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

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

If the City Engineer 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 Engineer may grant a delay until proper conditions allow for repaving.

17.24.110 Record of Permits.

The City Engineer shall keep a record of improvements under permit and the issuance of permits under this Chapter, and the date of certificate of approval and acceptance if made.

17.24.120 Removal of Improvement.

(Amended by Ordinance No. 173295, effective April 28, 1999.) In the event the City Engineer or the City Council does not accept an improvement made pursuant to permit under this Chapter within 1 year after completion and tender for approval, then the permittee shall remove the same and restore the public area to its prior condition at the permittee's own expense, whenever and to the extent directed by the City Engineer.

17.24.200 Structural Driveway Defined.

(Added by Ordinance No. 161791, effective Apr. 12, 1989.) 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.

17.24.205 Structural Driveways in Public Streets.

(Added by Ordinance No. 161791, effective Apr. 12, 1989.) The City Engineer 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 Engineer's judgment there is no other available means of obtaining vehicular access to a structure on abutting private property.

17.24.210 Permit Application.

(Added by Ordinance No. 161791, effective Apr. 12, 1989.) The applicant shall submit to the City Engineer 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 non-refundable application fee of $250. The City Engineer may require the applicant to submit a complete geotechnical report and any recommendations made in connection with such report may be required.

17.24.220 Engineer's Review.

(Added by Ordinance No. 161791, effective Apr. 12, 1989.)

A. The City Engineer 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 Engineer determines that modifications to the proposed plan are necessary, the applicant shall make the requested modifications and resubmit the plan to the City Engineer with all required corrections.

B. The decision of the City Engineer as to the suitability of the proposed location, materials used, technical requirements of specifications and plans shall be final and conclusive.

17.24.230 Design Standards.

(Added by Ordinance No. 161791; amended by Ordinance Nos. 173295 and 177028, effective December 14, 2002.)

A. Load ratings and structural design shall 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 Engineer.

B. Structural driveways shall 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 Engineer may allow a structural driveway in conformance with Uniform Building Code standards if, in the opinion of the City Engineer, 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 Engineer may require vehicle barriers, railings, and other appurtenances in excess of AASHTO standards and higher load ratings if in the City Engineer's opinion such appurtenances are necessary to protect the public and users of the structural driveway.

17.24.240 Permit.

(Added by Ordinance No. 161791, effective Apr. 12, 1989.)

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 shall 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 shall automatically transfer to any new owner of the property, except when the permit specifically prohibits such transfer.

B. The abutting property owner shall be liable to any person who is injured or otherwise suffers damage by reason of the property owners use of the street area. Furthermore, said abutting property owner(s) shall be liable to the City of Portland 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 shall be for the use of the street area only, and shall not exempt the permittees from obtaining any license or permit required by the City Code or Ordinances for any act to be performed under this permit, nor shall this permit waive the provisions of any City Code, Ordinance, or the City Charter, except as herein stated.

D. The conditions in a permit for a structural driveway are burdens upon the abutting property which shall run with the land, and the permit shall be recorded with the Multnomah County Records Division, and the cost of recording shall be paid by the applicant.

17.24.250 Revocation of Permit.

(Added by Ordinance No. 161791, effective Apr. 12, 1989.)

A. A structural driveway permit may be revoked by the City Engineer:

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 Engineer's satisfaction;

4. If the permittee allows a dangerous condition, as determined by the City Engineer, 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 shall give the permittee any right to the continued existence of a structure or to any damages or claims against the City arising out of revocation.

17.24.260 Removal of Structural Driveways.

(Added by Ordinance No. 161791, effective Apr. 12, 1989.) Upon revocation of the permit, the permittee or any successor permittee, shall 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 shall 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 Engineer. If the permittee does not remove the structure and/or return the street area to a condition satisfactory to the City Engineer, the City Engineer may do so, and the permittee shall 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 shall become a lien upon the abutting property until paid by the permittee.

17.24.270 Fees.

(Added by Ordinance No. 161791, effective Apr. 12, 1989.) The fee for plan review, permit issuance, and any City Engineer's inspection of structural driveways shall be the full cost incurred by the City for such services. The minimum fee shall be $250. If full cost will exceed $250, the applicant shall pay any additional costs prior to issuance of the permit. Amounts paid by the applicant in excess of full City costs, which exceed the $250 minimum fee, will be refunded to the applicant.

17.24.280 Inspection of Construction Required.

(Added by Ordinance No. 161791, effective Apr. 12, 1989.) The City Engineer may inspect the construction, require the permittee to retain the services of a special inspector who will submit inspection reports directly to the City Engineer, or a combination of the above. It shall be permittee's responsibility to obtain the required inspections and failure to do so is grounds for revocation of the permit.

Chapter 17.25

SIDEWALK CAFES

(Added by Ordinance No. 150637,
and effective October 23, 1980.)

Sections:

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

17.25.010 Permit Required.

(Amended by Ordinance No. 182870, effective June 3, 2009.) Operating a Sidewalk Cafe on City sidewalks is unlawful without a permit. No person shall conduct a business as herein defined without first obtaining a permit from the Bureau of Transportation and paying the fee therefor to the City of Portland. It shall be unlawful for any person to operate a sidewalk cafe on any sidewalk within the City of Portland except as provided by this Chapter.

17.25.020 Definitions.

(Amended by Ordinance Nos. 177028 and 182870, effective June 3, 2009.)

A. Operate a Sidewalk Cafe. Operate a Sidewalk Cafe means serving food or beverage from an adjacent cafe or restaurant to patrons seated at tables located within the Sidewalk area adjacent to the cafe or restaurant.

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.

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

D. Transit Mall. Transit Mall means the entire length of 5th and 6th Avenues bounded by I-405 on the south and NW Irving on the north.

E. Clear Pedestrian Zone. The Clear Pedestrian Zone is the area reserved for travel. No café 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 area of Sidewalk established by the City Engineer and demarcated on the sidewalk according to the specifications of the City Engineer within which the business is allowed to Operate a Sidewalk Café.

G. Responsible Party: Responsible Party means an individual who works on-site at the business and is responsible for overseeing the Operation of the Sidewalk Café, such as the restaurant manager or other person with similar responsibility.

H. Permittee: Permittee means the individual who applied for the sidewalk café permit and to whom the permit is issued. The Permittee bears ultimate responsibility for the operation of the Sidewalk Café.

I. Storage of Materials: Storage of Materials means any arrangement of furniture and materials that precludes operating a sidewalk café.

17.25.030 Application Fee and Permit Fee.

(Amended by Ordinance Nos. 177028 and 182870, effective June 3, 2009.) Fees for operating a sidewalk café are established by the City Engineer. Fees are assessed as prescribed in Section 17.24.010.

Each application for a sidewalk café permit shall be accompanied by an application fee. The application fee is nonrefundable and additional to the permit fee. The permit fee shall be collected prior to issuance of the permit. Permits renewed prior to April 1st do not require an application fee.

17.25.040 Permit Application.

(Amended by Ordinance No. 182870, effective June 3, 2009.) Application for a permit to operate a sidewalk cafe shall be made at the office of the City Engineer in a form deemed appropriate by the City Engineer. Such application shall include, but not be limited to, the following information:

A. Name and address of the applicant.

B. A drawing showing the width of the applicant's cafe or restaurant facing the sidewalk indicating the area requested to be used, location of doorways, and the width of sidewalk (distance from curb to building face), location of tree wells,

parking meters, bus shelters, sidewalk benches, trash receptacles, driveway (curb cut), or any other semi-permanent sidewalk obstruction.

C. A color rendition in perspective for review by the Bureau of Development Services shall be furnished upon request by the City Engineer.

D. A letter signed by the property owner, consenting to a sidewalk cafe adjacent to the property on which the restaurant is located.

E. A signed agreement between the Responsible Party and the City stating the Responsible Party understands all terms and conditions of the permit.

17.25.050 Permit Requirements.

No person shall operate any restaurant or cafe, to provide food or alcoholic liquor, on any public street or sidewalk unless such person has obtained a valid permit, to operate that business in such a manner, pursuant to this Chapter.

17.25.060 Location Rules and Review.

(Amended by Ordinance No. 182870, effective June 3, 2009.)

A. A sidewalk café shall only be allowed where the sidewalk is at least 8 feet wide. Café operations will be allowed only within the Area of Operation, which shall be established by the City Engineer.
The following table shows the minimum width of the Clear Pedestrian Zone for a given sidewalk width.

Sidewalk Width	Clear Pedestrian Zone Minimum Width
Greater than or equal to 8’ 0” and less than or equal to 10’ 0”	5’ 6”
Greater than 10’ 0” and less than 15’ 0”	6’ 0”
Greater than or equal to 15’ 0”	8’ 0”

B. Sidewalk width is determined by City records. Adjustments may be made at the discretion of the City Engineer when field measurements conflict with City records.

C. As a tool to allow compliance in areas with space conflicts a sidewalk café may be allowed pinch points that are less than the required Clear Pedestrian Zone minimum width. At a pinch point, the Clear Pedestrian Zone minimum width may be reduced by 6 inches for a length of no more than 2 feet. Pinch points must be at

least 4 feet from adjacent pinch points. Pinch points are to be used at the discretion of the City Engineer.

D. The Clear Pedestrian Zone shall be free of all obstructions, permanent and temporary. This includes objects such as posts, signs, street lights, fire hydrants, bicycle racks, bicycles utilizing bicycle racks, vegetation, trees, tree-wells, planters, literature and news racks, parking meters, bus shelters, benches, tables, chairs, umbrellas, heaters, and waste receptacles.

E. Obstructions controlled by the café or property owner that extend into the Clear Pedestrian Zone shall be at least 7 feet above the sidewalk surface within the Clear Pedestrian Zone.

F. Curbside seating may be allowed, subject to approval, and must allow a 2 foot buffer from the curb. Loading zones, bus stops, adjacent travel lanes or other conditions may prohibit curbside seating. The 2 foot buffer may be waived at the Bureau of Transportation's discretion when seating is adjacent to bike corrals or no-parking zones.

G. Within the Clear Pedestrian Zone there shall also be a continuous, straight passage at least 2 feet in width, known as the clear visual zone, to provide pedestrians with a clear visual indication of the direction and location of the Clear Pedestrian Zone. The Clear Pedestrian Zone is allowed to meander to navigate obstructions, but its ability to do so is limited by the clear visual zone.

H. To ensure compliance with the Americans with Disabilities Act, there shall be a continuous passage at least 4 feet in width with a maximum 2% pavement cross slope within the Clear Pedestrian Zone.

I. The approved Area of Operation shall be established by the City Engineer.

J. Within the Transit Mall, additional criteria regarding Clear Pedestrian Zone minimum widths may be applied per the City Engineer's discretion.

17.25.070 Liability and Insurance.

(Replaced by Ordinance No. 182870, effective June 3, 2009.) A signed statement that the permittee shall hold harmless the City of Portland, its officers and employees, and shall indemnify the City of Portland, its officers and employees for any claims for damages to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit. Permittee shall furnish and maintain such public liability and property damages insurance as will protect permittee and City from all claims for damage to property or bodily injury, including death, which may arise from operations under the permit or in connection therewith. Such insurance shall provide coverage of not less than $1,000,000 (one million dollars). Such insurance shall be without prejudice to coverage

otherwise existing therein, and shall name as additional insured the City of Portland, its officers and employees, the property owner, and shall further provide that the policy shall not terminate or be canceled prior to the completion of the contract without 30 days written notice to the City of Portland Bureau of Transportation, 1120 SW Fifth Avenue, Room 825.

17.25.080 Form and Conditions of Permit.

(Amended by Ordinance No. 182870, effective June 3, 2009.) The permit issued shall be in a form deemed suitable by the City Engineer. In addition to naming the name of the business and other information deemed appropriate by the City Engineer, the permit shall contain the following conditions:

A. Each permit issued shall terminate December 31st of the year in which issued.

B. The permit issued shall be personal to the Permittee only and is not transferable in any manner.

C. The permit may be suspended by the City Engineer when an ordinance providing for a "community event" shall so provide.

D. The permit is specifically limited to the approved Area of Operation.

E. The Responsible Party shall use positive action to assure that its use of the sidewalk in no way interferes with or embarrasses sidewalk users or limits their free and unobstructed passage.

F. The sidewalk and all things placed thereon shall at all times be maintained in a clean and attractive condition. Trash containers may be provided for use by the cafe patrons.

G. The Permit shall be posted in a conspicuous place near the main entrance visible from the sidewalk at all times.

H. Storage of Materials shall be prohibited. All furniture and materials shall be removed within a period of 10 days from the right-of-way when not in use. Removal of furniture may be required, on a case by case basis, outside of the business' hours of operation if determined necessary for safety or other reasons at the discretion of the City Engineer. The Portland Police Bureau or the Office of Neighborhood Involvement may provide recommendations for the consideration by the City Engineer.

I. Responsible Party shall notify the Bureau of Transportation of any changes to the contact information provided in the City /Responsible Party Agreement.

J. Outdoor cooking shall be prohibited.

17.25.090 Denial, Revocation or Suspension of Permit.

(Amended by Ordinance No. 182870, effective June 3, 2009.)

A. The City Engineer may deny, revoke, or suspend the permit for any sidewalk cafe authorized in the City of Portland if it is found:

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

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

B. Upon denial or revocation, the City Engineer shall give notice of such action to the Responsible Party and Permittee in writing stating the action which has been taken and the reason therefor. The action shall be effective upon giving such notice to the Responsible Party. Any denial or revocation may be appealed to the City Engineer by filing within 10 days.

17.25.100 Appeal.

(Replaced by Ordinance No. 182870, effective June 3, 2009.) Any Applicant aggrieved by an Administrator's determination may appeal that determination to the Code Hearings Officer as provided in Chapter 22.10 of this Code. Notwithstanding any other provisions of this Code, there shall be a non-refundable fee of $250 for any appeal pursuant to this subsection. Such fee must accompany any such appeal and no such appeal shall be considered filed or received until such fee is paid in full.

Chapter 17.26

SIDEWALK VENDORS

(Replaced by Ordinance No. 154042,
effective Jan. 1, 1983.)

Sections:

17.26.010 Conducting a Business on City Sidewalks Unlawful without Permit.
17.26.020 Definitions.
17.26.030 Item for Sale.
17.26.040 Permit Fee.
17.26.050 Application for Permit.
17.26.060 Location Selection.
17.26.070 Location Review.
17.26.080 Payment for Written Consent is Unlawful.
17.26.090 Design Review.
17.26.100 Fire Marshal Inspection.
17.26.110 Application Time Limit.
17.26.120 Form and Condition of Permit.
17.26.125 Renewal of Permits.
17.26.130 Restrictions.
17.26.140 Special Event Designation.
17.26.150 Denial, Suspension or Revocation of Permit.
17.26.160 Appeal.
17.26.170 Penalty for Violation.
17.26.180 Violation a Nuisance, Summary Abatement.

17.26.010 Conducting a Business on City Sidewalks Unlawful without Permit.

No person shall conduct business as herein defined on any City sidewalk without first obtaining a permit from the Office of the City Engineer and paying the required fee. It shall be unlawful for any person to sell any goods or services on any sidewalk within the City of Portland except as provided by this Chapter.

17.26.020 Definitions.

(Amended by Ordinance Nos. 164492 and 177028, effective December 14, 2002.)

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.

C. **"Commercial zone."** Commercial zone means abutting property which is zoned C, Commercial, or E, Employment, pursuant to Title 33, Planning and Zoning, of this Code or any other zone which 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.

(Amended by Ordinance No. 167130, effective Nov. 24, 1993.) The City Engineer shall maintain a list of items and services which 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 shall be submitted in writing to the City Engineer who shall determine whether the item or service conforms to the above criteria. If the item or service conforms to the above criteria, it shall be listed as approved for sale by sidewalk vendors. If the item or service does not conform, it shall be listed as prohibited for sale by sidewalk vendors. The decision of the City Engineer if adverse to the party making the request, may be appealed to the Council.

17.26.040 Permit Fee.

(Amended by Ordinance No. 182760, effective June 5, 2009.) Each application for a permit to conduct business on a sidewalk shall be accompanied by an application fee. The application fee is nonrefundable and additional to the permit fee. The permit fee shall be collected prior to issuance of the permit. The permit fee between September 1st and December 31st shall be 30% of the yearly permit fee. Permits renewed prior to expiration do not require an application fee.

17.26.050 Application for Permit.

(Amended by Ordinance Nos. 165594 and 182760, effective June 5, 2009.) Application for a permit to conduct business on a sidewalk shall be made at the office of the City Engineer on a form deemed appropriate by the City Engineer. Such application shall 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 shall 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. A signed statement that the permittee shall hold harmless the City of Portland, its officers and employees and shall indemnify the City of Portland, its officers and employees for any claims for damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit. Permittee shall furnish and maintain such public liability, food products liability, and property damage insurance as will protect permittee, property owners, and City from all claims for damage to property or bodily injury, including death, which may arise from operations under the permit or in connection therewith. Such insurance shall provide coverage of not less than $1,000,000 (one million dollars) per occurrence. Such insurance shall be without prejudice to coverage otherwise existing therein, and shall name as additional insures the City of Portland, their officers and employees, and shall further provide that the policy shall not terminate or be canceled prior to the completion of the contract without 30 days written notice to the Auditor of the City of Portland.

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 shall be 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 shall hold harmless the adjacent property owner(s) for any claims for damage to property or injury to persons which 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 Engineer. No application shall 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 which 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 Engineer.

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

17.26.060 Location Selection.

A. Permit operating areas which have not been issued a current permit shall be 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 Engineer may establish an additional permit operating area on a block face which exceeds 300 feet in length.

17.26.070 Location Review.

Upon receipt of an application for a permit the City Engineer shall review the proposed permit operating area to determine if the said area is suitable for sidewalk vending. In making this determination, the City Engineer shall 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 Engineer shall 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 Engineer shall inform the applicant whether the proposed permit operating area is suitable or unsuitable. In the event the applicant is dissatisfied with the City Engineer's decision regarding a certain application, he may appeal the decision to the Commissioner In Charge. The decision of the Commissioner, 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 shall 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.

(Amended by Ordinance Nos. 176955, 177028 and 182760, effective June 5, 2009.)

A. The applicant for a sidewalk vendor permit shall 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 which will be incorporated and utilized in the color scheme. The City Engineer shall submit the isometric drawings of the vending device to the Bureau of Development Services for approval prior to issuing a permit. Vending carts shall be measured by the City Engineer 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. The Bureau of Development Services shall furnish the City Engineer standards required by the Portland Design Commission to be incorporated in the sidewalk vendors application packet.

17.26.100 Fire Marshal Inspection.

(Amended by Ordinance No. 182760, effective June 5, 2009.) Prior to the issuance of any permit, the Fire Marshal shall 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.

(Amended by Ordinance No. 182760, effective June 5, 2009.) The applicant must complete all reviews, inspections and present all required documents to the City Engineer within 60 days from date of location approval. Failure to meet this requirement shall result in cancellation of the application and forfeiture of the application fee. The City Engineer 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 shall be in a form deemed suitable by the City Engineer. In addition to naming the permittee and other information deemed appropriate by the City Engineer, the permit shall contain the following conditions:

A. Each permit will expire at midnight, December 31st of the year issued;

B. The permit issued shall 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 Engineer;

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" shall so provide.

17.26.125 Renewal of Permits.

Application for renewal of permits shall be received from November 1st through December 31st. Application shall be on a form deemed suitable to the City Engineer, accompanied by a permit fee. Applications received after December 31st shall be processed as new applications. The City Engineer shall 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 Section 17.26.050 E;

C. All required permits are current;

D. The cart size is in conformance with Section 17.26.130 E. If the City Engineer finds that the application meets all the above requirements, he shall issue a new permit.

17.26.130 Restrictions.

(Amended by Ordinance No. 182760, effective June 5, 2009.)

A. Any person conducting business on the sidewalks of the City 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 shall not exceed 24 square feet of sidewalk which shall include the area of the vending cart, and, when externally located, the operator and trash receptacle.

2. The length of the vending cart shall not exceed 6 feet.

3. The height of the vending cart, excluding canopies, umbrellas, or transparent enclosures, shall not exceed 5 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 Engineer 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 8 feet of the adjacent property line;

3. Within 10 feet of the extension of any building entrance or doorway, to the curbline.

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 Engineer 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 which 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 shall carry a suitable container for placement of such litter by customers or other persons.

E. All person conducting business on a sidewalk shall 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 his vending cart entirely from the sidewalk if necessary to avoid such congestion or obstruction.

F. No person shall conduct business as defined herein at a location other than that designated on his permit.

G. No permittee shall make any loud or unreasonable noise of any kind by vocalization or otherwise for the purpose of advertising or attracting attention to his wares.

H. No permitted vending cart shall be left unattended on a sidewalk nor remain on the sidewalk between midnight and 6 a.m.

I. No permittee shall conduct business in violation of the provisions of any ordinance providing for a special event.

17.26.140 Special Event Designation.

(Amended by Ordinance No. 182760, effective June 5, 2009.) 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 Engineer shall so designate, subject to the following conditions:

A. Application shall be made to the City Engineer on a form deemed appropriate by the City Engineer. Each application shall apply to only one event or parade. Application is open to any vendor who possesses a valid sidewalk vending permit. Each application shall 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 Engineer. 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 5 working days prior to an event to qualify for participation.

C. All temporary locations shall 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 Engineer.

E. All other conditions of this Chapter, except as herein stated, shall remain in effect.

17.26.150 Denial, Suspension or Revocation of Permit.

(Amended by Ordinance No. 182760, effective June 5, 2009.)

A. The City Engineer may revoke or suspend the permit, or deny either the issuance or renewal thereof, of any person to conduct business on the sidewalks of the City 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 Engineer shall give notice of such action to the permit holder or applicant, as the case may be, in writing stating the action the City Engineer has taken and the reasons therefore. If the action of the City Engineer is a revocation based on Subsections A.3. and 4. of this Section, the action shall be effective upon giving such notice to the permittee, otherwise such notice shall contain the further provision that it shall 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 shall place the appeal on the Council calendar at the first convenient opportunity therefor and shall notify the City Engineer thereof. At the hearing upon appeal, the Council shall hear all witnesses including the City Engineer or his representative who shall 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 his own behalf or on behalf of the

City. The Council shall hear and determine the appeal and the decision of the Council shall be final and effective immediately.

17.26.170 Penalty for Violation.

Any person violating any of the provisions of this Chapter shall, upon conviction thereof, be punished by a fine not exceeding $500 or by imprisonment for a period not exceeding 6 months, or by both such fine and imprisonment. In the event that any provisions of this Chapter is violated by a firm or corporation, the officer or officers, or the person or persons responsible for the violation shall be subject to the penalty herein provided.

17.26.180 Violation a Nuisance, Summary Abatement.

(Amended by Ordinance No. 182760, effective June 5, 2009.) 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 Engineer 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 the owner thereof shall redeem it by paying the removal and storage charges therefore to be established by the Commissioner In Charge.

Chapter 17.27

KIOSKS

(Replaced by Ordinance No. 153044,
effective April 1, 1982.)

Sections:

17.27.010 Application.
17.27.020 Definitions.
17.27.025 Kiosks Locations.
17.27.030 Poster Kiosks-Permitted Uses.
17.27.040 Bulletin Board Kiosks-Permitted Uses.
17.27.045 Retail Information Kiosks-Permitted Uses.
17.27.050 Kiosk-Insurance Requirements.
17.27.055 Maintenance and Repairs to Concessions and Display Kiosks by Permit Holder.
17.27.060 Display or Concessions Kiosk-Permit Requirement.
17.27.070 Application for Display or Concessions Permit.
17.27.080 Denial or Revocation of Permit.
17.27.090 Form and Conditions of Display or Concessions Kiosk Permit.
17.27.100 Advertisement for Bids.
17.27.105 Display and Concessions Kiosks Fee Payments.
17.27.106 Retail Information Kiosk Fee Payment.
17.27.110 Restrictions on Display Kiosks.
17.27.120 Restrictions on Concessions Kiosks.
17.27.130 Appeal.
17.27.140 Duties, Responsibilities and Liabilities.

17.27.010 Application.

This Chapter shall apply only to structures and enclosures designated as kiosks and located in the Transit Mall area.

17.27.020 Definitions.

(Amended by Ordinance No. 177028, effective December 14, 2002.) As used in this Chapter, the following terms shall have the following definitions.

A. **"Trip planning kiosks."** Structures used and maintained by the Tri-County Metropolitan Transportation District of Oregon to disseminate information about bus schedules, routes, and related information.

B. **"Poster kiosks."** Structures used to disseminate information about civic, cultural, and educational events.

C. **"Concession kiosks."** Structures designed for the sale of certain merchandise.

D. **"Bulletin board kiosk."** A structure designed for use by the general public for the dissemination of information.

E. **"Display kiosks."** Structures designed for the display of merchandise by commercial enterprises within the City of Portland.

F. **"Retail information kiosks."** Structures designated for use by the Association of Portland Progress in which to place business directories for the convenience of the public.

G. **"Mall area"** means that area bounded by SW Broadway on the west, NW Irving on the north, SW Fourth Avenue on the east, and SW Madison on the south, but not including the street and sidewalk areas on SW Broadway and SW Fourth Avenues.

17.27.025 Kiosks Locations.

A. Trip planning kiosks are located as follows: East side of SW 6th Avenue between SW Main and SW Salmon Streets, SW Morrison and SW Alder Streets, SW Washington and SW Stark Streets and SW Oak and SW Pine Streets, east side of SW 5th Avenue between SW Madison and SW Main Streets, SW Yamhill and SW Morrison Streets, SW Alder and SW Washington Streets and SW Stark and SW Oak Streets.

B. Poster kiosks are located as follows: West side of SW 6th Avenue between SW Salmon and SW Taylor Streets and SW Washington and SW Stark Streets; east side of SW 5th Avenue between SW Madison and SW Main Streets and SW Pine and SW Ankeny Streets.

C. Concessions kiosks are located as follows: West side of SW 6th Avenue between SW Taylor and SW Yamhill Streets; east side of SW 5th Avenue between SW Taylor and SW Yamhill Streets.

D. Bulletin board kiosk is located on the east side of SW 5th Avenue between SW Yamhill and SW Morrison Streets.

E. Display kiosks are located as follows: East side of SW 6th Avenue between SW Alder and SW Washington Streets and SW Washington and SW Stark Streets.

F. Retail information kiosks are located as follows: West side of SW 6th Avenue between SW Alder and SW Morrison Streets; east side of SW 5th Avenue between SW Alder and SW Morrison Streets.

17.27.030 Poster Kiosks -Permitted Uses.

A. Organizations or institutions sponsoring civic, cultural, educational, recreational or athletic events to be held in publicly owned buildings, or in public rights of way pursuant to a permit issued by the City, may post notices of these events in poster kiosks upon filing a request with the City Engineer.

B. Nonprofit organizations soliciting contributions for money or materials to provide assistance to the general public welfare and having the required solicitation permit from the Bureau of Licenses may post notices informing the public that their campaign is taking place with approval of the City Engineer and Commissioner In Charge.

17.27.040 Bulletin Board Kiosks - Permitted Uses.

Any nonprofit organizations or institutions sponsoring civic, cultural, educational, recreational or athletic events anywhere within the City may post notices of those events on bulletin board kiosks upon filing a request with the City Engineer. The City Engineer may restrict the size of such notices to encourage the maximum possible use of the kiosks. The person posting such communications shall include on the message the date upon which it is posted. The City Engineer may, within his discretion, remove from the bulletin board kiosks notices which announce past events, which have become illegible, which have been posted more than 1 month, or which are not dated. In addition, the City Engineer on the first working day of each month may remove everything posted on each bulletin board kiosk.

17.27.045 Retail Information Kiosks - Permitted Uses.

The Association for Portland Progress is restricted to providing that information necessary to enable the public to find a business or enterprise located in downtown Portland.

17.27.050 Kiosk - Insurance Requirements.

No permit to operate a display, concessions, trip planning or retail information kiosk shall be issued until the proposed permittee has signed a statement that it shall hold harmless the City, its officers and employees, and shall indemnify the City, its officers and employees, for any claims for property damage or personal injury which may result from any activity carried on under the terms of the permit. Permittee shall furnish and maintain sufficient public liability, product liability, and property damage insurance to protect the permittee and the City from all claims for property damage or personal injury, including death, which may arise from or in connection with operations under the permit. Such insurance shall provide coverage of not less than $100,000 for bodily injury for each person, $300,000 for each occurrence, and $300,000 for property damage per occurrence. This insurance shall be without prejudice to coverage otherwise existing

therein, and shall name as additional insures the City of Portland, its officers and employees, and shall further provide that the policy shall not terminate or be canceled prior to the completion of the contract without 30 days written notice to the Auditor of the City.

17.27.055 Maintenance and Repairs to Concessions and Display Kiosks by Permit Holder.

Permit holders are responsible for all maintenance of display, concession kiosks and retail information kiosks. No permit holder shall repair a kiosk without the City Engineer's approval. Permit holders are not responsible for repairs necessitated by acts of vandalism, acts of God, acts of third parties over whom the permittees have no control, or any other damage arising other than from the fault of the permittee.

17.27.060 Display or Concessions Kiosk - Permit Requirement.

No person shall conduct business or display merchandise from any kiosk without first obtaining a permit from the City Engineer and paying the fee required to the City Treasurer. It shall be unlawful to sell goods or services for present or future delivery from any kiosk except as provided by this Chapter.

17.27.070 Application for Display or Concessions Permit.

Application for a permit to conduct business or display merchandise from a kiosk shall be made at the office of the City Engineer in a form deemed appropriate by the City Engineer. This application shall include but not be limited to the following information:

A. The name and address of applicant;

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

C. A valid copy of all necessary permits required by State or local authorities.

17.27.080 Denial or Revocation of Permit.

A. The City Engineer may deny, revoke or suspend the permit of any person to operate a concessions or display kiosk in the City upon finding:

1. That such person has violated any of the provisions of this Chapter;

2. That any necessary State or local authority permit has been suspended, revoked, or canceled;

3. That the permittee does not have a currently effective insurance policy in the minimum amount required by Section 17.27.050; or

4. That the permittee does not have a valid City business license.

B. The City Engineer shall at least once each quarter review the operations of each concession and display kiosk for compliance with the requirements of this Chapter and notify the permittee of any discrepancies observed. Failure to correct noted discrepancies is cause for revocation or suspension of the permit to operate for 30 days.

C. The City Engineer shall give written notice of a denial, revocation or suspension to the affected permittee or applicant. If the action is a revocation based upon Subsection A 2 or 3 of this Section, it shall be effective upon giving such notice to the permittee. Otherwise, the notice shall provide that it shall become effective within 10 days unless appealed to the City Council by filing a written notice of appeal with the City Auditor. Any revocation effective immediately may also be appealed to the Council by such filing within 10 days.

17.27.090 Form and Conditions of Display or Concessions Kiosk Permit.

The permit issued shall be in a form deemed suitable by the City Engineer. In addition to naming the permittee and other information deemed appropriate by the City Engineer, the permit shall contain the following conditions:

A. Permits for display and concessions kiosks shall be issued for a term of 2 years and may be extended an additional year upon written request by the permittee and approval of the City Engineer. The request for extension to be in writing and to be received by the City Engineer not less than 45 days prior to the permit expiration date. The provision of this Chapter relating to extension of a permit by the City Engineer shall become effective July 1, 1983;

B. The permit issued shall be personal and not transferable in any manner;

C. The permit is valid only when used at location(s) designated on the permit;

D. The permit is subject to the further restrictions of this Chapter.

17.27.100 Advertisement for Bids.

Prior to licensing any display or concessions kiosk user, the City Engineer shall advertise in a newspaper having general circulation within the City of Portland not less than once a week for 2 consecutive weeks. All bids shall be in cash, sealed, and placed with the City Engineer within 14 days of the date of the second advertisement for bids. Within 15 working days of the bid closing date, the City Engineer shall announce the highest bidder. If two or more highest bids for a kiosk are identical amounts, the party whose bid is received first shall be deemed the highest bidder. If a tie still exists, the City Engineer shall require the tied parties to rebid. The highest bidder who has met all requirements of this Chapter shall be granted a permit to operate the kiosk at the specified location upon

providing evidence of having a current business license. If only one bid is received and the bidder meets the requirements of this Chapter, that bidder shall pay either $150 for the 2-year permit period or the amount of the bid, whichever is greater.

17.27.105 Display and Concessions Kiosk Fee Payments.

Permittees who have applied for and have received approval for a 1-year extension to their display or concessions kiosk permit shall pay within 10 days of the day upon which the City Engineer sends notice a fee equal to one-half their bid or $75, whichever is greater.

17.27.106 Retail Information Kiosk Fee Payment.

The Association for Portland Progress shall pay an annual fee of $150.

17.27.110 Restrictions on Display Kiosks.

Any commercial enterprise having its place of business within the City of Portland may place a bid with the City Engineer for a permit to operate a display kiosk.

Displayed merchandise shall be changed at least 10 times each 12-month period for which the permit is issued, commencing with the date of issue.

17.27.120 Restrictions on Concessions Kiosks.

All persons conducting business from a kiosk must display in a prominent manner the permit issued by the City Engineer under the provisions of this Chapter.

Concessions kiosks shall be used only for the sale of flowers, plants, and those items associated with such sales. Flowers, plants, and associated items will not be stored or placed outside a concessions kiosk. Regulations for delivery to businesses located adjacent to the SW 5th Avenue transit mall apply to these kiosks.

All persons conducting business from a kiosk must pick up any paper, cardboard, wood, or plastic containers, wrappers, or any letter in any form which 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 shall carry a suitable container for the placement of such litter by customers or other persons.

No permittee shall make any loud or unreasonable noise by any method to advertise or attract attention to his or her goods.

17.27.130 Appeal.

The Auditor shall place the appeal on the Council Calendar at the first convenient opportunity and shall notify the City Engineer or representative, who shall state the grounds for his action. The party appealing may supply oral or written testimony. The Council shall hear and determine the appeal, and its decision shall be final and effective immediately.

17.27.140 Duties, Responsibilities and Liabilities.

(Amended by Ordinance No. 176585, effective July 5, 2002.) Nothing in this Chapter shall be construed to alter or affect in anyway the duties, responsibilities and liabilities created by or referred to in Sections 14B.100, 17.28.010, 17.28.020 and 17.28.025 of the City Code and Sections 1-105 and 9-507 of the Portland City Charter.

Chapter 17.28

SIDEWALKS, CURBS AND DRIVEWAYS

(New Chapter substituted by Ordinance No. 167684, effective May 18, 1994.)

Sections:

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

17.28.010 Sidewalk Defined.

(Amended by Ordinance No. 177028, effective December 14, 2002.) 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.

17.28.015 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.

(Amended by Ordinance No. 182760, effective June 5, 2009.)

A. The owner(s) of land abutting any street in the City shall be 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 Subsection B. Said property owner(s) shall be 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 owner's failure to keep such sidewalk, curb, driveway or parking strip in safe condition and good repair. Said property owner(s) shall be liable to the City of Portland for any amounts which 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 said property owners' failure to satisfy the obligations imposed by the Charter and Code of the City of Portland to maintain, construct, and repair such sidewalks, curbs, driveways and/or parking strips.

B. Curbs shall be 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 thereto may be installed by the City when sidewalks and curbs are constructed up to the intersection on the same side of the street.

C. The City Engineer shall maintain general construction and maintenance specifications for sidewalks, curbs, driveways and/or parking strips. The City Engineer shall use the specifications to determine compliance with this Chapter of Code. The City Engineer shall 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.

(Added by Ordinance No. 176585, effective July 5, 2002.)

A. The owner(s) and/or occupant(s) of land adjacent to any street in the City shall be responsible for snow and ice removal from sidewalks abutting or immediately adjacent to such land, notwithstanding any time limitations.

B. Property owner(s) and/or occupant(s) shall be 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 owner(s) and/or occupant(s) shall be liable to the City of Portland 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.

(Amended by Ordinance No. 182760, effective June 5, 2009.) 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 Engineer, to require a new sidewalk or curb to be constructed, or where no sidewalk or curb exists and, in the opinion of the City Engineer, a sidewalk or curb or both are needed, it shall be the duty of the City Engineer to post a notice on the adjacent property headed "Notice to Construct Sidewalk" (or curb, or both). The notice shall 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 therefore which will be furnished by the City Engineer upon application. The City Engineer shall file with the Auditor an affidavit of the posting of the notice, stating when and where the same was posted, and shall furnish upon request proper specifications, standards and information for the construction thereof. The City Engineer shall 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 Engineer. If the post office address is unknown to the City Engineer, the notice shall be directed to the owner or agent at Portland, Oregon. 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, shall not render void the notice, but in such case the posted notice shall be sufficient.

17.28.035 Curb and Intersection Corner Ramps.

A. All newly constructed or reconstructed sidewalk intersection corners where determined feasible by the City Engineer shall have included, either within the corner or within the curb area immediately adjacent thereto, ramps allowing access to the sidewalk and street by elderly and physically disabled persons.

B. The ramps referred to in Subsection (a) shall be constructed in a good and substantial manner and in accordance with the plans and specifications established by the City Engineer. The particular plan to be used at a given intersection corner shall be appropriate to the location as determined by the City Engineer.

17.28.040 Construction Alternatives.

(Amended by Ordinance No. 182760, effective June 5, 2009.) In case three or more adjacent properties are posted with notice to construct sidewalk or curb, or both, as set forth in Section 17.28.030, they may petition for such construction as a local improvement. Otherwise it shall be the duty of the owners of properties posted with such notice to construct the same. Before constructing the sidewalk or curb, or both, the owner, designated agent or the occupant of the property intending to construct the same, shall obtain from the City Engineer a permit therefore, which permit shall prescribe the kind of sidewalk or curb, or both, to be constructed, the material to be used and the width thereof. After notice to construct sidewalk or curb, or both, has been posted, the owner, agent or occupant shall construct the same within 30 days from the date of posting, or within said time shall show cause, if any there be, by a written remonstrance addressed to the City Council stating why the same 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 thereupon determine whether or not such sidewalk or curb, or both, shall be constructed. If the remonstrator is not present at the time of such determination by the Council, the City Auditor shall forthwith notify such person of such determination of the Council by mail sent to the address given upon the written remonstrance. Failure of the City Auditor to send the notice, or failure of the remonstrator to receive the same, or any other mistake therein, shall not render void or ineffective the lien to be imposed upon the property in the event of City construction. In the event that the Council determines that the sidewalk or curb, or both, shall be constructed, the owner or designated agent or the occupant shall within 10 days thereafter begin the construction thereof and diligently prosecute the same to final completion.

17.28.050 City Construction if Owner Fails to Construct.

(Amended by Ordinance No. 182760, effective June 5, 2009.) 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, shall fail, neglect or refuse 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 shall construct the same as soon thereafter as such work can be conveniently scheduled. The cost for the City to have the repairs made shall be assessed upon the property.

17.28.060 Location, Size and Materials of Sidewalks and Curbs.

(Amended by Ordinance No. 182760, effective June 5, 2009.) The City Engineer shall determine the distance between the improved sidewalk and the property line, which, in residential areas shall generally be 2 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, shall be designated by the City Engineer. The class and kind of any fill materials and requirement thereof shall be designated by the City Engineer. Based on a finding of necessity, the City Engineer may permit installation of a temporary sidewalk for a specified period, and designate specifications for the temporary improvement.

17.28.065 Bicycle Parking.

(Added by Ordinance No. 177028; amended by Ordinance Nos. 178173, 182389 and 182760, effective June 5, 2009.) 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 Engineer may, where determined appropriate and practicable, require one or more bicycle racks.

B. The location and type of rack shall be determined by the City Engineer 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 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 Council delegates authority to the Director of the Bureau of Transportation to adopt administrative rules and procedures necessary to implement provisions of this section. All rules pursuant to this authority shall be filed with the Office of City Auditor and be available for public inspection.

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 Engineer.

3. Payment. The Bicycle Parking Fund fee is due to be paid upon issuance of a building permit. The Director of the Bureau of Transportation is authorized to 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 shall be responsible for maintaining such sidewalk and curb in good repair. If the City Engineer finds that any such sidewalk or curb needs repair, he shall post a notice on the adjacent property headed "Notice to Repair Sidewalk" (or curb) which shall 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 Engineer shall file with the Auditor an affidavit of the posting of the notice, stating the date when and the place where the same was posted. After filing, the Auditor shall 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 to the Auditor, or if the post office address is unknown to the Auditor, the notice shall be directed to the owner or agent at Portland, Oregon. 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 shall not invalidate said notice, but in such case the posted notice shall 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 shall make the repairs within 20 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, shall first obtain a permit for which no fee will be charged. The permit shall prescribe the kind of repair to be made, the material to be used, and specifications therefor, including the location and size. Any person desiring to construct or reconstruct sidewalk or curb, or both, shall first obtain a permit therefor and pay the fees elsewhere prescribed in Chapter 17.24.

17.28.090 Repair by City.

If the owner, agent or occupant of any lot, part thereof or parcel of land which has been posted with notice to repair a sidewalk or curb, or both, shall fail, neglect or refuse to make repairs within the period of 20 days after posting, the City Engineer may as soon as the work can be conveniently scheduled, make the repairs, and the cost shall be determined and assessment made as provided in this Chapter.

17.28.100 Driveways Defined.

As used in this Chapter, the following terms shall have the meaning as set forth below.

A. **"Driveway"** means a concrete way for vehicular traffic extending from the roadway to the property line across a sidewalk, whether or not such sidewalk is

improved, for the purpose of providing access to parking or maneuvering space on abutting property.

B. **"Residential driveway"** means a driveway serving a one or two family residence.

C. **"Commercial driveway"** means a driveway serving any property except a one or two family residence.

17.28.110 Driveways - Permits and Conditions.

(Amended by Ordinance Nos. 177028, 179845 and 182760, effective June 5, 2009.) Upon appropriate application and payment or fees, as provided in Chapter 17.24, the City Engineer may issue a permit to construct a driveway in the street area subject to the following conditions:

A. All driveways shall be constructed according to plans, specifications, and any special conditions fixed by the City Engineer.

B. Location. No portion of a driveway, excluding ramps if required, shall be located closer than 25 feet from the corner of a lot where two streets intersect.

C. Width of driveways. A permit to construct a driveway in the street area is subject to the following width provisions:

1. Residential driveway:

Private Property Frontage	Minimum Width	Maximum Width
25 ft. or less	9 ft	12 ft.
26 ft. to 50 ft.	9 ft.	20 ft.
51 ft. to 75 ft.	9 ft.	25 ft.
76 ft. to 100 ft.	9 ft.	30 ft.

More than one driveway may be allowed for frontage up to 100 feet with the approval from the City Engineer or City Traffic Engineer. No less than 5 feet of straight curb must separate service driveways regardless of ownership. Each 100 feet of frontage, or fraction thereof, under single ownership shall, for purposes of this Chapter, be considered a separate frontage.

2. Commercial driveway:

Private Property Frontage	Minimum Width	Maximum Width
50 ft. or less	10 ft.	20 ft.
51 ft. to 100 ft.	20 ft.*	30 ft.

*A commercial driveway for a residential use that provides access for 10 parking spaces or less can be a minimum width of 10 feet, provided the access is on a local service street and will be designed to allow forward motion of all vehicles. However, the City Engineer or City Traffic Engineer may establish conditions regarding width that are deemed necessary to ensure the safe and orderly flow of pedestrians, bicycles and vehicular traffic. These conditions are based on evaluation of speeds, volumes, sight distance, and any other transportation factors that are relevant.

More than one driveway may be allowed for frontage up to 100 feet with the approval from the City Engineer or City Traffic Engineer. No less than 5 feet of straight curb must separate service driveways regardless of ownership. Each 100 feet of frontage or fraction thereof under single ownership shall for purposes of this Chapter be considered a separate frontage.

3. Driveways shall be measured lengthwise with the sidewalk on the property line side, and such measurement shall not include the width of ramps extending to the regular sidewalk grade. Ramps, if required, do not constitute part of required minimum or allowed maximum width. Determination of the need or appropriateness of ramps shall be within the sole discretion of the City Engineer.

4. Any driveway at variance with these width limitations shall not be permitted unless the City Engineer specifically approves or requires the same. Any applicant requesting a driveway at variance with these standards shall provide such information as the City Engineer may require in support of the application. The City Engineer may establish conditions deemed necessary to insure the safe and orderly flow of pedestrian and vehicular traffic and the decision of the City Engineer as to the widths and location of driveways shall be final and conclusive.

5. The City Engineer may require joint or shared use of a driveway by two properties in separate ownership. The City Engineer may recommend such conditions regarding the number, configuration, and use of driveways necessary to ensure 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.

D. The City Engineer may refer any driveway permit application to the City Traffic Engineer and/or the Oregon Department of Transportation as appropriate, for a review of the location and width. The City Traffic Engineer shall recommend such conditions and limitations regarding the location and operation of driveways as are found necessary to insure the safe and orderly flow of pedestrian, bicycles and vehicular traffic and preserve on-street parking.

E. The City Engineer may require any applicant for a driveway permit to provide evidence that the proposed driveway will access legal parking and maneuvering space on property as set forth in Title 33, Planning and Zoning regulations. The City Engineer may refuse to issue a permit if the applicant cannot show evidence that on-property parking and maneuvering space is in compliance with Title 33, Planning and Zoning regulations.

1. If the City Engineer finds that a property owner is permitting access where a properly constructed driveway does not exist, the City Engineer may post notice and require termination of access or construction of a driveway in accordance with the requirements of this Chapter.

F. Revocability of driveway permits.

1. The City Engineer may revoke any driveway permit or require the modification of any driveway if:

a. The area occupied by the driveway is needed for the public convenience;

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 legal parking and maneuvering space on abutting property.

2. The Council may revoke any driveway permit if they deem such action will be in the public interest.

G. Enforcement powers. Within 20 days of written notice from the City Engineer to close or modify a driveway, the abutting property owner shall obtain any required permits and make the required corrections. If the abutting owner fails to make the required corrections within 20 days, the City may perform the required work at the expense of the abutting property owner and the cost shall be determined and assessment made as provided in this Chapter.

17.28.120 After Construction Driveways Deemed Part of Sidewalk.

After a driveway has been constructed, it shall 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, shall be applicable to reconstruction of a driveway, except that the property owner shall have no option to petition for a local improvement solely for such purpose.

17.28.130 Reconstruction of Existing Driveways.

If the City Engineer 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 Engineer may post notice and require the reconstruction or removal of the driveway. If the abutting property owner fails to make the required corrections within 20 days the City may perform the required work at the expense of the abutting property owner, and the cost shall be determined and assessment made as provided in this Chapter.

17.28.140 City Charges for Construction or Repair of Sidewalks, Curbs and Driveways.

(Amended by Ordinance No. 182760, effective June 5, 2009.) The property owner shall 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 upon the property.

A. Special structural, excavation and fill jobs and jobs in areas of traffic and pedestrian congestion shall be charged at the discretion of the City Engineer. Determination of whether a job is of special type shall be made by the City Engineer.

B. Cost basis charges for work may be made at the discretion of the City Engineer if the actual cost can be conveniently and accurately determined.

17.28.150 Billing for Charges.

A. When work is completed on any construction, reconstruction or repair of a sidewalk, curb or driveway, the amount of the charge shall be determined by the City Engineer or responsible bureau and reported to the City Auditor. The City Auditor shall calculate a proposed assessment that includes the amount of the

improvement charge plus 10% of the charge to defray the administrative costs of notice, assessment and recording.

B. The City Auditor shall prepare a proposed assessment notice consisting of the following information:

1. The legal description and site address of the property;

2. The proposed assessment amount;

3. The manner and deadline for filing written objections to the proposed assessment amount and a statement that the specific reasons for the objection must be stated in writing;

4. The date, time and location of the public hearing for Council consideration of the proposed assessment;

5. A statement that the final assessment will be recorded in the Docket of City Liens, and will be a lien which has first priority against the property as provided by state statute;

6. A statement that the final assessment may be paid in full or paid in installments if authorized by Code;

7. A statement that the assessment shall be paid or financed, or an objection filed, within 20 days of the date of the notice. The statement must state that the objection must be in writing, must state the particular reasons for the objection, and must be filed with the City Auditor;

8. A statement that if an objection is filed, the assessment shall be paid or financed within 20 days of the date of the notice of the final decision in response to the appeal and the amount of assessment and interest shall date back to the date of the notice of the final decision; and

9. A statement that a delinquent final assessments may be collected by foreclosure and property sale.

C. The City Auditor shall mail the proposed assessment notice by first class mail to the owners of the affected property. The notice shall be deemed given upon deposit in the U.S. mail.

17.28.160 Report of Past Due Bills - Assessment of Charges.
(Amended by Ordinance No. 182760, effective June 5, 2009.)

A. The City Auditor shall refer to the City Engineer or responsible bureau all remonstrances and remove from further assessment action the proposed assessments which are associated with the remonstrances. The City Engineer or responsible bureau shall 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 which 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 City Auditor. The findings shall include a statement that the property owner may appeal the determination to the Council.

B. The Council shall conduct a public hearing on the proposed assessments, however is should be held no sooner than 20 days following the date of the proposed assessment notice as provided in this Chapter. The Council shall consider and make its determinations based on the requirements of this Code and the City specifications maintained by the City Engineer. The Council shall affirm or modify the proposed assessments based on its findings. The Council's decisions shall be implemented by ordinance which sets forth its findings and decision. The decision of the Council may be appealed to the court by writ of review.

C. Following adoption of the assessing ordinance, the City Auditor shall 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 shall be deemed given upon deposit in the U.S. mail. The notice shall 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 which 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 which shall 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.

D. The City Auditor shall maintain a Docket of City Liens containing final assessments on property. Any unpaid final assessment shall be recorded in the City lien docket, and it shall be binding upon the property owner and all subsequent property owners of the property or any segregated part of it. The docket shall 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 which are not paid when due.

E. 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 shall have first priority over all other liens and encumbrances whatsoever.

F. The City shall enforce assessment liens and installment payment contracts under this Chapter in the same manner as other City assessments as set forth in Title 5.

Chapter 17.30

STREET IMPROVEMENTS

(Repealed by Ordinance No. 177124,
effective January 10, 2003.)

Chapter 17.32

SEWER REGULATIONS

Sections:

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17.32.010 Permit Required.
17.32.015 Fees for Sewer Permits.
17.32.020 Application for Connection Work Permit.
17.32.021 Connection from Properties Outside the City.
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17.32.055 Maintenance of Sewer Systems.
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17.32.190 Certificate by Chief Engineer of the Bureau of Environmental Services.
17.32.200 Record of Permits.
17.32.220 Removal of Sewer Improvement.
17.32.500 Administrative Rules, Procedures and Forms.

17.32.005 Definitions.

(Added by Ordinance No. 173295, effective April 28, 1999.) As used in this Chapter, the following definitions apply:

A. "Sewer Service Lateral" means a conduit extending from the plumbing system of a building or buildings to and connecting with a public or private sewer.

B. "Commercial or industrial occupancy" means any structure or facility wherein 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 wherein 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;

C. "Industrial wastes" are wastes or waste waters which include wastes from a commercial or industrial occupancy.

D. "Chief Engineer" is the Chief Engineer of the Bureau of Environmental Services or the lawfully designated subordinate of the Chief Engineer.

E. "Connection" means connecting a private sanitary sewage or drainage facility to the public sanitary sewer or drainage system.

17.32.010 Permit Required.

(Amended by Ordinance Nos. 143098, 173295 and 182389, effective January 2, 2009.)

A. It is unlawful for any person, without first obtaining the appropriate permit therefor and paying the fees as prescribed in Chapters 17.24 and 17.32:

1. To dig up, break into, excavate, disturb, dig under, or undermine any street or sewer easement for the purpose of laying or working upon any sewer, pipe, culvert, or sewer or drain appurtenance or facility of any kind;

2. To make connection with, obstruct or interfere with any public sewer, drain pipe, culvert, stormwater treatment facility, or other sewer or drainage facility or appurtenance;

3. To cut or break into any public sewer, drain pipe, culvert, stormwater treatment facility, or other sewer or drainage facility or appurtenance, whether or not at sewer service laterals of facilities provided for connection;

4. To connect the blowoff or exhaust pipe or any boiler, steam engine or other pressurized facility with any public sewer or drain.

5. To allow water, from any source, on private property to run onto any public sidewalk or street.

B. In case of leakage or breakage in any sewer pipe, drain or conduit requiring emergency action, any otherwise authorized person may commence repairs on the same without first obtaining a permit, provided that:

1. he or she shall, immediately notify the Chief Engineer and the City Engineer and comply with the City Engineer's requirements for traffic control and protection of the public, and as soon as practicable,

2. file application for permit with the Chief Engineer, comply with any conditions thereon, and pay the fees elsewhere prescribed in Chapters 17.24 and 17.32

C. The Bureau of Transportation, without permit but with the approval of the Chief Engineer, may construct and attach to the public sewer system stormwater inlets, leads, and other such facilities as are needed to provide stormwater drainage for public streets.

17.32.015 Fees for Sewer Permits.

(Added by Ordinance No. 173295, effective April 28, 1999.) Sewer permit fees shall recover full cost including all applicable overhead charges. Overhead rates shall be computed annually by the Director and kept on file with the City Auditor. If a larger fee is required elsewhere in this Title for any class of permit, the larger fee shall apply, otherwise the fees established in Figure 5 of this title shall be paid for permits unless the Council, by Ordinance or Resolution, has granted a specific permit for a different fee. (See Figure 5 at the end of Title 17.)

17.32.020 Application for Connection Work Permit.

(Amended by Ordinance No. 173295, effective April 28, 1999.)

A. Any person who desires a connection permit as required by Section 17.32.010 shall apply therefor in writing to the Bureau of Environmental Services and shall state in the application the name of the street in which work is to be done, or if not working in a named street, a description of the proposed or existing easement or right-of-way, the purpose of the work, the location of the pipe, main, sewer or conduit to be laid, examined, repaired or worked upon, as well as the location of the building or lot, if any, to be connected with such sewer pipe. Each applicant for a permit hereunder shall pay the permit fee provided for in Chapter 17.32.

1. If the application is for a permit to connect any occupancy other than a commercial or industrial occupancy with any public sewer, drainpipe or conduit, it shall specify the location, and the area to be drained, together with such other information as the Chief Engineer may require.

2. If the application is for a permit to connect a commercial or industrial occupancy with any public sewer, drain pipe or conduit, it shall contain a description of the business, a plat of the property, plans and specifications for any special installations and a description and time schedule of the character and quantity of waters and wastes to be discharged through the connection, together with any further information required by the Chief Engineer. No permit shall be issued for connection from a commercial or industrial occupancy until the Chief Engineer approves the application therefor and determines that compliance will be had with other provisions of this Title.

B. The Chief Engineer shall have the authority to refuse issuance of connection permits to any individual, corporation or company until the requirements of permits previously issued are complied with. This authority shall include, but not be 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.

17.32.021 Connection from Properties Outside the City.

(Added by Ordinance No. 143476, amended by Ordinance No. 173295, effective April 28, 1999.)

A. Connection with a City sewer from properties outside the City shall be allowed at the sole discretion of the City, and at the location and on such conditions as the Chief Engineer shall find appropriate for proper functioning and maintenance of City sewer service. No connection from property outside the City limits shall be permitted which, in the opinion of the Chief Engineer, may overload any public trunk or interceptor sewer, pumping station or treatment plant, or which shall require any capital investment or expenditure by the City.

B. Any person desiring to connect an outside City property with a City sewer under the provisions of this Title shall enter into such agreement as may be required by the Bureau of Environmental Services.

C. Application for a permit to connect shall be made in writing by the owner or other person having a recorded equitable interest in the property for which sewer service is desired. Before a permit can be issued, all fees and special charges as required in Chapter 17.36 shall be paid. Also, the applicant shall first obtain any permits that may be required by road authorities for street or highway opening and use.

17.32.022 Easements for Public Sanitary and Storm Sewers.

(Added by Ordinance No. 176561, effective July 1, 2002.) Public storm or sanitary sewers built to provide service to a development shall be located within public easements. The width of public easements shall be adequate to allow reasonable access for inspection, maintenance, repair and replacement, using standard construction methods. The minimum width for public storm and sanitary sewer easements shall be 15 feet. If topographic conditions, the design of a facility or other relevant factors necessitate an easement of greater width, the Director has authority to require enlargement of the easement as is reasonably necessary.

17.32.030 Definitions.

(Repealed by Ordinance No. 173295, effective April 28, 1999.)

17.32.040 Bond for Connection Work Permit.

(Amended by Ordinance No. 173295, effective April 28, 1999.)

A. The applicant for connection work permit shall file with the application an approved corporate surety bond, conditioned that the applicant will immediately replace, in a condition satisfactory to the Chief Engineer, the portion of street so disturbed, dug up or undermined, and that the applicant will keep such portion of said street in good repair at the applicant's own expense for the period of two years from the date of the completion of such work. The amount of the bond shall not be less than $100 and shall be at the rate $100 for every 100 square feet dug up or disturbed. However, the applicant may, at the applicant's option, file yearly a bond in the penal sum of $2,000 in place of giving a separate bond for each part of street disturbed.

B. No bond, however, shall be required under this Section of any abutting owner or resident obtaining a permit under Section 17.32.030 if the excavation or other work to be performed shall be conducted entirely between the property line and curb line of the street area in front of and immediately adjoining the property of the owner or resident; nor shall any bond be required under this Section of any applicant for a permit who has on file with the City an effective master plumber’s or sewerman’s bond furnished in compliance with the provisions of the plumbing regulations.

17.32.050 Issuance of Connection Work Permit.

(Amended by Ordinance No. 173295, effective April 28, 1999.) Upon receipt of the application and a proper and satisfactory bond, the Chief Engineer may, unless there are reasons of public interest to the contrary, issue to such applicant the permit requested, upon such restrictions and conditions as the Chief Engineer may deem necessary for the public benefit, and upon payment of the fee applicable under this Title.

17.32.055 Maintenance of Sewer Systems.

(Added by Ordinance No. 176922, effective October 25, 2002.)

A. Definitions. As used in this Section, the following definitions apply (see Figure 13 at end of this title):

1. "Building Sewer" means a private conduit extending from the plumbing system of a building to a sewer service lateral or public sewer.

2. "Common Private Sewer System" means that portion of a building sewer that:

a. is not owned by the City of Portland

b. is used for draining more than one building under different ownership; and

c. conveys the discharge to a sewer service lateral, public sewer, private sewage disposal system, or other point of disposal.

3. "Private Sewer Service Lateral" means a sewer service lateral that:

a. is designated by the City Engineer as "private" when it is permitted by the City, constructed by the property owner, and approved by the City,

b. is not accepted by the City as a public facility, and

c. remains the responsibility of the property owner it serves.

4. "Projected Future Curbline" means:

a. the designated location of the curbline on city plans for street construction; or

b. the location of the future curbline based on an assumed future street width of 28 feet centered in the public right-of way; or

c. the edge of the right-of-way if it is less than 28 feet wide.

5. "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 utility facilities.

6. "Public Sewer" means all pipes, manholes, and other appurtenances constructed by the City's Bureau of Environmental Services, or permitted under a public works permit and accepted by the City's Bureau of Environmental Services, for collecting and transporting sewage received from sewer service laterals and common private sewer systems.

7. "Public Sewer Easement" means a grant of the right by a property owner to the City to use a strip of land for placement and maintenance of public sewer facilities.

8. "Sewer Service Lateral" means the portion of a conduit that:

a. is located in a public right-of-way;

b. extends from a public sewer to the curbline, or projected future curbline if no curb exists;

c. receives the discharge from a building sewer or common private sewer system; and

d. is not a common private sewer system.

9. "Wye-Head" means the connection between a public sewer and a sewer service lateral, a building sewer, or a common private sewer system.

B. Maintenance of Sewer Systems

1. Commencing on October 25, 2002, the City assumes responsibility for inspection, maintenance, and repair of:

a. Sewer service laterals, unless the BES Chief Engineer finds there is evidence that the lateral:

(1) was not constructed legally, or

(2) was constructed as a private sewer service lateral.

b. Wye-heads that are located within easements.

2. City's assumption of responsibility for inspection, maintenance, and repair of public sewers, sewer service laterals and wye-heads is subject to the City's annual budget appropriation and shall 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 inspection, maintenance, or repair in excess of the level for which funds have been appropriated.

3. Property owners remain responsible for inspection, maintenance, and repair of building sewers. In addition to complying with requirements imposed elsewhere in the City Code or state law, property owners shall meet the following requirements:

a. If any portion of a building sewer extends into a public right-of-way, the property owner shall obtain a permit pursuant to PCC Section 17.24.010 before performing work within the right-of-way.

b. Except while making minor repairs to existing non-conductive, unlocatable facilities, a property owner burying non-conductive, unlocatable facilities within a public right-of-way or utility easement shall place a tracer wire or other similar conductive marking tape or device with the facility to allow for later location and marking. Marking materials shall be installed in accordance with standards contained in the permit authorizing work within the public right-of-way.

4. Responsibility for inspection, maintenance, and repair of common private sewer systems is defined in Chapter 25.08, "Repair of Private Sewer Systems Involving More Than One Property."

17.32.060 Failure to Restore and Maintain Street Area.

(Amended by Ordinance No. 173295, effective April 28, 1999.) It is unlawful for any owner or resident obtaining a sewer construction or connection permit who is exempt from furnishing the bond required by this Chapter, to fail or refuse to immediately remove all surplus sand, earth, rubbish, and other material and immediately replace in a condition satisfactory to the City Engineer the portion of the street so disturbed, dug up or undermined, or to fail or refuse to keep such portion of the street in good repair at the permitee's own expense for the period of two years from the date of the completion of the work.

17.32.070 Work Requirements under Connection Work Permit.

(Repealed by Ordinance No. 173295, effective April 28, 1999.)

17.32.080 Separation of Storm and Sanitary Sewer Lines on Private Property.

(Amended by Ordinance No. 173295, effective April 28, 1999.) Sanitary sewage from private property shall be separately conveyed to the property line for discharge into a public sewer. Storm drainage from private property, whether from the roof of a building, from the surface of a structure, from footings of a structure or from any other surface or

subsurface drainage which is to be discharged under City regulation into a public sewer, shall be conveyed separately from sanitary sewage from the private property to the public sewer. If separate public storm and sanitary sewers are available, the Chief Engineer shall require separate connections for the separate storm and sanitary lines from the private property. If separate storm and sanitary sewers are not available, but a combination sewer is available, then the Chief Engineer may require separate connections for the separate sewage line from the property to the same combination sewer, otherwise the Chief Engineer may permit joining of the separate lines at the curb line for single discharge into the combination public sewer if the Chief Engineer finds that such joining is more feasible from an engineering standpoint or from the general circumstances.

17.32.090 Use of Restricted Sewers.

(Amended by Ordinance No. 173295, effective April 28, 1999.) It is unlawful for any person to discharge, permit the discharge, or permit or allow a connection which will result in the discharge of sanitary sewage into a public sewer under City control which has been designated by the Chief Engineer to be used solely for storm drainage. It is unlawful for any person to discharge or permit the discharge or cause or permit a connection which will result in the discharge of storm drainage or uncontaminated water used for refrigerating or cooling purposes or steam condensation into a public sewer under City control designated by the Chief Engineer to be used solely for sanitary sewage.

17.32.095 Sewer Extension Reimbursement.

(Added by Ordinance No. 151991; amended by Ordinance Nos. 162109 and 173295, effective April 28, 1999.)

A. When a public sewer, built under permit procedures, is extended past or to properties not contributing toward the cost of the sewer, and those properties have not paid a direct assessment or its equivalent for another sewer than can provide gravity service, the property owner or developer paying for the sewer extension shall be reimbursed for part of the cost of such extension.

B. The amount of reimbursement for a sewer extension shall be limited to the amount of revenue that would be received from the line charge (required in Section 17.36.020) if, upon acceptance of the sewer by the City, all properties adjacent to and capable of receiving gravity service were to connect. Also the reimbursement shall not exceed the cost of an equal length of 8-inch diameter sewer line, as determined by the Chief Engineer.

C. The reimbursement for any project shall not exceed 50 percent of the amount budgeted in any fiscal year. The total reimbursement in any fiscal year shall not exceed the amount budgeted for that purpose in that year, however funds may be committed against the next year's budgeted amount.

17.32.100 Reimbursement for Installation of Sewer Backflow Devices in Existing Buildings on Combination Sewer Lines.

(Added by Ordinance No. 150285, amended by Ordinance Nos. 151860, 153801, 156035, 170776, 173295 and 176955; effective October 9, 2002.)

A. A building owner may submit an application to the Bureau of Environmental Services for partial reimbursement of the cost to the building owner for installation of a sewer backwater device on the sewer line, or in floor drains, sinks, laundry trays, basins, automatic washers, or other fixtures in the basement with exposed traps.

B. To be eligible, the building, dwelling or structure must be connected to the City of Portland Combination Sewerage System and have experienced sewer backups or be in an area vulnerable to sewer backups as determined by the Bureau of Environmental Services.

C. Installation of said device or devices shall be pursuant to Title 25, Plumbing Regulations, or the Code of the City of Portland, including, but not limited to, Chapter 25.05, Permits.

D. Payment to the property owner of the City's share of the expense shall be made upon the Bureau of Development Services' final inspection and the owner's submittal of the plumber's billing for the work.

E. By participation in the cost of installation, the City does not guarantee or in any manner warrant the device or devices, nor does the City give any warranty that the device will prevent future flooding and the City will not assume any responsibility for damages incurred as a result of the flooding subsequent to installation of any device or devices. The owner shall be required to look only to such warranty or guarantee as may be secured from the manufacturer of the device or devices and/or the contractor.

F. As of July 1, 1996, the building owner shall pay the first $100 of the cost of such installation, the City shall pay the next $1,500 of such costs, and the building owner shall pay any amount in excess of $1,600.

G. All devices installed pursuant to this Section shall be owned by the building owner who shall assume all duties and costs of maintenance, repair and replacement.

17.32.110 Application for Permit to Construct a Public Sewer.
(Added by Ordinance Nos. 173295 and 176955, effective October 9, 2002.)

A. All persons wishing to construct a public sewer improvement shall make an application to the Bureau of Environmental Services for a permit. The application for the permit shall contain the following information:

1. Nature of the proposed improvement.

2. Locations and names of proposed streets in which improvements will be made, location of any off-street improvements, and the name of proposed plat.

3. Acknowledgement that the construction is on private property which is to become easement for public sewer improvements or public right-of-way and to come under public control upon plat and easement recording with the county.

4. 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 sewer improvements.

5. Acknowledgement 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.

6. Acknowledgement that the plat and easements must be recorded with the County prior to final acceptance of the public sewer improvements.

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

8. Acknowledgement that the permittee shall, at the permittee's own expense, maintain the public sewer improvements for a period of 24 months following issuance of a certificate of completion by the Chief Engineer, as assurance against defective workmanship or materials employed in such improvement.

9. Acknowledgement that the issuance of this permit in no way waives any requirements by the City or any other public agency which may be associated with the development of this plat or Planned Unit Development.

10. Any such additional information that the Chief Engineer may deem appropriate.

B. All persons wishing to construct a public sewer improvement in advance of plat recording of a subdivision or planned unit development may be issued a permit by the Chief Engineer only after:

1. the sewer improvement plans have been approved by the Chief Engineer,

2. the final plat, with or without required signatures affixed, has been submitted to the Bureau of Planning,

3. the Bureau of Planning and Bureau of Development Services have given written assurances that subdivision or planned unit development approval conditions have been or will be met,

4. all easements outside the subdivision or planned unit development have been obtained, and,

5. The applicant has complied with Section 17.32.160 C. of this Title.

17.32.120 Deposit Required.

(Added by Ordinance No. 173295; amended by 179274 effective June 24, 2005.)

A. Concurrent with making the permit application, the person desiring the permit shall pay a deposit in an amount to be determined by the Bureau of Environmental Services based on rules adopted by the Director. All deposits must be made prior to any design work being done by the consultant.

B. In the event that no permit is issued for the proposed improvement within 1 year from the time design and plans are reviewed and completed, the City shall retain the amount of the deposit as compensation for the preparation of design and plans or efforts of review. In the event a permit is issued for the proposed improvement within 1 year from the time such design and plans are completed, the amount of the required deposit shall be applied to the cost of the permit fee for such improvements.

17.32.130 Refusal of Public Sewer Improvement Permit.

(Added by Ordinance No. 173295, effective April 28, 1999.)

A. The Chief Engineer may refuse a permit if:

1. In the judgment of the Chief Engineer, the improvement proposed to be made is not suitable in the circumstances or will not be uniform with existing or proposed sewer improvements in the immediate vicinity.

2. An application is not modified as the Chief Engineer may deem necessary.

3. The City Engineer has not issued a street opening permit if the sewer is or will be located within a public right-of-way or area to be designated as a public right-of-way.

B. The Chief Engineer shall have the authority to refuse issuance of public sewer improvement permits to any individual, corporation or company until the requirements of permits previously issued are complied with. This authority shall include, but not be 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.

17.32.140 Contents of Permit.

(Added by Ordinance No. 173295, effective April 28, 1999.) Any permit issued for the construction of a public sewer improvement may contain conditions which shall be binding upon the permittee. Such conditions may include prior filing of a performance bond, cash, or other financial guarantee in lieu thereof in an amount not to exceed the engineer's estimate for construction and engineering, insurance, and may include such other requirements as the Chief Engineer finds appropriate in the public interest. The permit shall specify the kind of work and the time in which the same is to be completed.

17.32.150 Fees for Public Sewer Improvement Permits.

(Added by Ordinance No. 173295; amended by Ordinance Nos. 179274 and 181846, effective July 1, 2008.) The City shall recover the costs of engineering and superintendence services in connection with public sewer improvement projects in accordance with hourly labor rates established by general ordinance and rules adopted by the Director of the Bureau of Environmental Services. The Bureau shall recover the costs of engineering and superintendence for all public sewer improvements, whether performed by contract in the name of the City, by private contract between a permittee and a contractor, or directly by the permittee.

17.32.160 Engineering and Superintendence for Public Sewer Improvements.
(Repealed by Ordinance No. 179274, effective June 24, 2005.)

17.32.170 Work Done Under Permit.
(Added by Ordinance No. 173295; amended by 179274 effective June 24, 2005.)

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

B. The Chief Engineer 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 shall comply with such standards unless otherwise specifically authorized by the Chief Engineer to deviate from those standards.

C. If the specifications or other contract documents are not strictly complied with, the Chief Engineer shall refuse to accept the work. If the work is refused by the Chief Engineer, it shall not thereafter be accepted unless corrected to conform to plans and specifications.

17.32.180 Original Documents Become the Property of the City.
(Added by Ordinance No. 173295, effective April 28, 1999.) Any and all plans, specifications, survey notes or other original documents as required by the Chief Engineer that were either prepared for or produced during the design or construction of a public sewer improvement, become the property of the City and shall be delivered to the Chief Engineer prior to acceptance of the improvement by the Chief Engineer.

17.32.190 Certificate by Chief Engineer.
(Added by Ordinance No. 173295, effective April 28, 1999.) During the course of construction and prior to the issuance of a certificate of completion for a public sewer improvement under this Chapter, the Chief Engineer shall inspect the improvement and determine if the various kinds of work performed are in compliance with the plans, specifications and allowances of the permit as to quality of workmanship. Furthermore, the Chief Engineer shall check the improvement for alignment, proper computation of quantities and conformance with the established grade. If all of the work required is completed and done to the satisfaction of the Chief Engineer, the Chief Engineer shall give a certificate therefor to that effect and that the improvement is accepted, as herein above set forth, and within recorded public rights of way and easements. Otherwise, the acceptance may be made by the Council on the certification of conformity to Code provisions and proper grades filed by the Chief Engineer.

17.32.200 Record of Permits.

(Added by Ordinance No. 173295, effective April 28, 1999.) The Bureau of Environmental Services shall keep a record of improvements under permit and the issuance of permits under this Chapter, and the date of certificate of approval and acceptance if made.

17.32.210 Removal of Sewer Improvement.

(Added by Ordinance No. 173295, effective April 28, 1999.) In the event the Chief Engineer or the City Council does not accept an improvement made pursuant to permit under this Chapter within 1 year after completion and tender for approval, then the permittee shall remove the same and restore the public area to its prior condition at the permittee's own expense, whenever and to the extent directed by the Chief Engineer and the City Engineer.

17.32.500 Administrative Rules and Procedures.

(Added by Ordinance No. 179274, effective June 24, 2005.)

A. The Director of the Bureau of Environmental Services may adopt, amend and repeal rules, procedures, and forms pertaining to matters within the scope of this Chapter.

B. Any adoption, amendment or repeal of a rule pursuant to this section shall require a public review process. Not less than thirty, nor more than forty-five, days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include the place, time and purpose of the public review process and the location at which copies of the full text of the proposed rules may be obtained.

C. During the public review, a designee of the Director of Environmental Services shall hear testimony or receive written comment concerning the proposed rules. The Director shall review the recommendation of his or her designee; taking into consideration the comments received during the public review process and shall either adopt the proposal, modify or reject it. If a substantial modification is made, additional public review shall be conducted, but no additional notice shall be required if such additional review is announced at the meeting at which the modification is made. Unless otherwise stated, all rules shall be effective upon adoption by the Director of the Bureau of Environmental Services and shall be filed in the office of the Director of Environmental Services and in the Portland Policy Documents repository described in Chapter 1.07.

D. Notwithstanding 17.32.500 B. and C., an interim rule may be adopted without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the

specific reasons for such prejudice. Any rule adopted pursuant to this paragraph shall be effective for a period of not longer than 180 days.

Chapter 17.33

MANDATORY SEWER CONNECTION

(New Chapter Substituted by Ordinance No. 161643, effective March 24, 1989.)

Sections:

17.33.005 Definitions.
17.33.010 Sewer Connection Required.
17.33.020 Sewer Availability Notices.
17.33.030 Service Connection Charges; Incentives.
17.33.035 Sewer Connection Assistance.
17.33.040 Declaration of Nuisance.
17.33.050 Abatement by Owner; Administrative Review and Appeal.
17.33.060 Connection Enforcement.
17.33.070 Enforcement Charges.
17.33.080 Withholding Bureau Services.
17.33.090 Interference with Sewer Connection Activities Unlawful.
17.33.100 Liability.
17.33.105 Replacing Non-Conforming Sanitary Sewer Connections.
17.33.110 Administrative Rules, Procedures and Forms.
17.33.120 Civil Remedies.
17.33.130 Notice of Sufficiency.
17.33.140 Bureau Actions.
17.33.150 Severability.

17.33.005 Definitions.

(Added by Ordinance No. 167504, effective Mar. 30, 1994.) For the purpose of this Chapter, the following definitions shall apply:

A. **"Connection"**. The connection of all sanitary waste disposal lines from all non-dry development on a property to the public sanitary sewer system, and the disconnection and/or removal of all other waste disposal systems such as cesspools or septic systems.

B. **"Dry development"**. Any structure which does not require sanitary waste disposal by State Plumbing code or the Code or policies of the City of Portland. Storage buildings which have no plumbing, and other structures which have had all plumbing removed by permit, are examples of dry development.

C. **"Director"**. The Director of the Bureau of Environmental Services; the organizational head of the Bureau or his/her designate.

17.33.010 Sewer Connection Required.

(Amended by Ordinance Nos. 162019, 164789, 167504; 168724, 176955 and 178009, effective November 28, 2003.)

A. Except as provided elsewhere in this Title, properties that meet all of the following criteria are required to connect to a public sewer within 3 years of its availability:

1. The property has development that has or requires sewage disposal facilities;

2. The development is not completely connected to a public sewer system;

3. The property is adjacent or has easement access to an available public sewer system; and

4. The property owner or legal title holder has been notified by the Director of the Bureau of Environmental Service (Director) of the availability of the public sewer system, the requirement to connect, and the time limit for connection. For purposes of this section, notice shall be deemed to have been received upon the mailing of said notice by first class mail or upon delivery of the notice in person.

B. A public sewer system shall be considered available when connection can be made by the intended route of service, and the system parallel to the right-of-way does not have to be extended to provide service.

C. Three (3) years from notification of the requirement to connect, a property becomes connection delinquent, and is subject to proceedings to compel connection to the public sewer system.

D. When property subject to the requirement imposed by this section has less than 180 days remaining in the three-year connection period referred to above is sold, the new owner may enter into an agreement with the City extending the time to connect to the public sewer system for 180 days from the date of the sale of the property. In the event a new owner elected to enter into an agreement, said election shall constitute a waiver of the right to the administrative review provided for in Section 17.33.050.

All connection charges due under the provisions of this title shall become payable to the City at the time of completion or closing of the sale of the property. Only one agreement per property may be entered into under the terms of this

subsection. As used herein, the term "sale" includes every disposition or transfer including the transfer of equitable title or legal title to real property.

E. Proof of the sewer connection shall be by documents of the City, by proof provided by the property owner, or development of physical evidence or inspection. The sufficiency or adequacy of any proof presented shall be left to the sole discretion of the Director.

F. Any construction for which a building permit is required under the terms of Title 24 of this Code and which meets the requirements of subsection A. above, shall connect to the public sewer system prior to the issuance of a final inspection report or Certificate of Occupancy by the authorized City agency.

17.33.020 Sewer Availability Notices.

(Amended by Ordinance Nos. 167504 and 178009, effective November 28, 2003.) Following the notice set out in paragraph 17.33.010 A.5. the property owner or legal title holder shall receive three additional notices of the connection requirement, at least 180, 90 and 30 days prior to the date of the connection deadline.

17.33.030 Service Connection Charges; Incentives.

(Amended by Ordinance Nos. 165188 and 178009, effective November 28, 2003.)

A. A property owner can elect to pay the sewer connection charge prior to the availability of a public sewer system. Provided the property is connected to the public sewer system within the time specified in Section 17.33.0l0 the rate shall be the one applicable as of the date of payment; otherwise the rate shall be that in force at the time of connection.

17.33.035 Sewer Connection Assistance.

(Added by Ordinance No. 178009, effective November 28, 2003.) The City shall provide sewer connection assistance to eligible property owners based on administrative rules and procedures adopted by the Director. Sewer connection assistance shall consist of the following:

A. Connection Deferrals. Connection deferrals shall be limited to 5 years, may be renewed based on a re-evaluation of eligibility, and shall not transfer with the sale or transfer of property. Eligibility criteria shall include financial, medical or other hardship criteria related to the property owner and hardship conditions related to the property and the work required to complete the sewer connection. Deferred property shall be subject to the requirements of this Chapter following the termination of the connection deferral.

B. Private Plumbing Loans. The City shall grant loans to finance the costs of sewer connection work performed on private property. The loans shall be limited to

eligible owner-occupants of single family and duplex residences. Loan terms shall not exceed 10 years. Eligibility property must be free of delinquent property taxes, special assessments, assessment loans and City utility charges.

C. Sewer Connection Loans. The City shall grant loans to property owners to finance City sewer connection fees and system development charges, as provided in Chapter 17.14.

17.33.040 Declaration of Nuisance.

(Amended by Ordinance Nos. 167504, 178009 and 181506, effective January 2, 2008.)

A. Any property not connected to a public sewer system as required by Section 17.33.010 or Section 17.33.105 is hereby declared a nuisance and subject to abatement or correction as provided for in Section 17.33.060. The Director shall establish the procedures and forms to be used to notify property owners about sewer system availability and connection delinquencies.

17.33.050 Abatement by Owner; Administrative Review and Appeal.

(Amended by Ordinance Nos. 167504 and 178009, effective November 28, 2003.)

A. The owner of a connection delinquent property shall have at least 30 days from the date of the Notice to Remove Nuisance to file documentation of the removal or abatement of the nuisance, or to file a written request for an administrative review of the nuisance abatement requirement. Following notification of the administrative review and determination by the Director, the property owner shall have 10 days to file a written request for an appeals hearing by the Code Hearings Officer as set forth by Title 22 of this Code.

B. The administrative review, Director's determination, appeals hearing and Code Hearing Officer's order shall be limited findings of fact regarding the following criteria:

1. The subject property has one or more on-site structures with plumbing facilities that require sanitary waste disposal pursuant to State Plumbing Code or related City Code.

2. The subject property is not fully connected to the City sewer system.

3. The subject property has direct access via an intended route of service to a sewer branch, lateral or other component of the City sewer system abutting a property line or a permanent easement acquired for the benefit of the property.

4. The deadlines described in the sewer availability notice, notice of connection deferral and/or the Notice to Remove Nuisance have expired without full compliance with the sewer connection requirement.

5. The property owner does not have a current sewer connection deferral.

17.33.060 Connection Enforcement.

(Amended by Ordinance Nos. 167504, 170216 and 178009, effective November 28, 2003.)

A. If the nuisance described in the notice has not been removed or cause shown why such nuisance does not exist, the City may apply for an order authorizing the City to remove or correct the nuisance, consistent with the terms and requirements of the Code Hearings Officer. The Director shall set forth the procedures and forms to be used to obtain an Order of the Code Hearings Officer to remove or correct the nuisance.

17.33.070 Enforcement Charges.

(Amended by Ordinance Nos. 167504 and 178009, effective November 28, 2003.) In the event that the City needs to enforce the terms of the Code Hearings Officer's order referred to in Section 17.33.060, an accurate record of all expenses incurred, including an overhead charge of 26 percent, an administration fee of $500 for each occurrence, connection charges including any revoked benefits of the Mid-County Financial Assistance Program, sewer user charges and permit fees shall be kept, and be made a lien on the property in accordance with the provisions of Chapter 22.06.

17.33.080 Withholding Services provided by the Bureau of Environmental Services.

(Added by Ordinance No. 167504, effective Mar. 30, 1994.) 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 connection delinquent property as defined in Section 17.33.010, any service that is provided by the Bureau. This may include but is not limited to refusal to accept application for permits relating to development on property of the said owner(s) other than the connection delinquent property.

This withholding may continue until the connection delinquency no longer exists.

17.33.090 Interference with Sewer Connection Activities Unlawful.

(Amended by Ordinance No. 167504, effective Mar. 30, 1994.) It shall be 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 connecting a property to the public sewer, or removing or abandoning an existing sewage disposal system under the authority of an order of the Code Hearings Officer issued pursuant to subsection 17.33.060 C. above.

17.33.100 Liability.

(Amended by Ordinance No. 167504, effective Mar. 30, 1994.) Neither the City nor any of its officers, employees, contractors, agents, or authorized representatives shall 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.

17.33.105 Replacing Non-Conforming Sanitary Sewer Connections.

(Added by Ordinance No. 181506, effective January 2, 2008.)

A. Purpose. The purpose of this Section is to facilitate the replacement of non-conforming sanitary sewer connections with connections that are in conformance with applicable plumbing codes. This Section sets forth requirements for the timely connection of individual properties to the public sewer system when a public sanitary sewer is available, and provides for financial assistance to affected property owners.

B. Administration. Unless otherwise established, the Bureau of Environmental Services is responsible for administering the provisions of this Section.

C. Applicability. This Section applies to properties that are served by a non-conforming sanitary sewer connection, such as individual or shared connections that that extend through neighboring property or in a public-right-of-way without recorded easements and operation and maintenance agreements.

D. Public Sewer Improvements. The Bureau shall identify the most appropriate means to construct public sewer improvements to facilitate the conversion of non-conforming sanitary sewer connections based on factors that protect public health and safety, and minimize the financial impacts on the City's sanitary sewer utility and utility ratepayers. The Bureau will establish the criteria used to make system improvement decisions in administrative rules. In the event that the Council organizes a local improvement district for the purposes of this Section, the Bureau shall employ procedures set forth in this Title and administrative rule.

E. Mandatory Conversions. The City requires the abandonment of a non-conforming sanitary sewer connection within 180 days of providing notice to affected property owners of the availability of individual and direct sanitary sewer connections. The City will provide a reminder to all affected property owners at least 30 days prior to the connection deadline.

F. Sanitary Sewer Conversion Charges.

1. Obligation. Property owners shall pay or finance sanitary sewer conversion charges for the costs of constructing public sanitary sewers to

facilitate the replacement of non-conforming sewer connections. The conversion charge is paid in lieu of line, branch and system development charges set forth in Chapter 17.36, and in lieu of special assessments for local improvement districts as further described in this Section.

2. Financing. The City shall provide financial arrangements for conversion charges in the same manner as provided in this Title for local improvement special assessments and sanitary system development charges.

3. Calculation of Rates. Council shall establish rates for sanitary sewer conversion charges by general ordinance adopted annually for the purposes provided in Chapter 17.36 of this Title.

4. Timing. Property owners must pay or finance the conversion charges prior to the issuance of permits to replace the non-conforming sanitary sewer connection with an individual and direct connection to a public sanitary sewer. The Bureau shall calculate sanitary sewer connection charges for subject properties based on rates in effect on the earliest of the following dates:

a. the date the property owner pays the sanitary sewer conversion charges or finances the charges by means of the City's assessment loan or safety net program; or

b. the date the property owner files a signed waiver of remonstrance for the formation of a future local improvement district to construct public sanitary sewers; or

c. where the property is served by a local improvement district, the date the City calculates estimated special assessments for the district formation notice; or

d. where a property is served by a sewer extension project, the date the property owner seeks sewer connection and/or plumbing permits to make an individual and direct connection to the public sewer system.

5. Relationship to Special Assessments for Local Improvement Districts. The Bureau shall apply the following conditions to the calculation of special assessments for local improvements districts organized for the purposes of this Section:

a. The estimated special assessment roll shall be limited to the amount of the sanitary sewer conversion charges as determined by Subsection 17.33.105 F.4.

b. In the event that a benefited property owner paid or financed sanitary sewer conversion charges prior to the preparation of the estimated special assessment roll as provided in this Section, the Bureau shall establish a zero assessment for the benefited property.

c. The Bureau shall pay to the LID Construction Fund the difference between the final total costs of each local improvement district organized for the purposes of this Section, and the sum of estimated assessments that were established at the formation of the district.

d. The Bureau shall take the following actions in the event that the total actual costs of the local improvement district are less than the sum of sanitary sewer conversion charges calculated for the benefited properties:

(1) the Bureau shall apportion the difference to each affected property in proportion to the property's share of the sum of sanitary sewer conversion charges paid, financed or incorporated into the local improvement district special assessment roll.

(2) The final assessment roll shall reflect the apportionment based on the actual project costs.

(3) Where a property owner paid or financed the sanitary sewer conversion charge prior to the notice of estimated assessment, the Bureau shall determine the most administratively efficient method to refund or credit the apportioned difference allocated to the property. The refund or credit shall be provided to the current owner of the property at the time the Council adopts the final assessment roll for the local improvement district.

G. Relationship to Mandatory Sewer Connections. This section is exempt from the provisions and requirements of Sections 17.33.010 through 17.33.030, and 17.33.035 A.

17.33.110 Administrative Rules, Procedures and Forms.

(Replaced by Ordinance No. 178009, effective November 28, 2003.)

A. The Director of the Bureau of Environmental Services may adopt, amend and repeal rules, procedures, and forms pertaining to matters within the scope of this Chapter.

B. Any adoption, amendment or repeal of a rule pursuant to this section shall require a public review process. Not less than thirty, nor more than forty-five, days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include the place, time and purpose of the public review process and the location at which copies of the full text of the proposed rules may be obtained.

C. During the public review, a designee of the Director of Environmental Services shall hear testimony or receive written comment concerning the proposed rules. The Director shall review the recommendation of his or her designee; taking into consideration the comments received during the public review process and shall either adopt the proposal, modify or reject it. If a substantial modification is made, additional public review shall be conducted, but no additional notice shall be required if such additional review is announced at the meeting at which the modification is made. Unless otherwise stated, all rules shall be effective upon adoption by the Director of the Bureau of Environmental Services and shall be filed in the office of the Director of Environmental Services and in the Portland Policy Documents repository described in Chapter 1.07.

D. Notwithstanding paragraphs B. and C. of this section, an interim rule may be adopted without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this paragraph shall be effective for a period of not longer than 180 days.

17.33.120 Civil Remedies.

(Amended by Ordinance No. 167504, effective Mar. 30, 1994.)

A. In addition to the remedies provided by any other provision of this Chapter, the City shall have the right to obtain, in any court of competent jurisdiction, a judgment against the person or property failing to connect to a sewer in accordance with the provisions of Section 17.33.010. In any such action, the measure of damages shall be the costs for abatement by the City, administrative costs, permit fees, overhead costs, penalties, and connection charges as determined by the Director.

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 in junction the violation of any provision of this Chapter.

17.33.130 Notice Sufficiency.

(Amended by Ordinance No. 167504, effective Mar. 30, 1994.) For the purposes of any noticing procedure as set forth by this Chapter 17.33, notice shall 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 shall not render the notice void.

17.33.140 Bureau Actions.

(Amended by Ordinance No. 167504, effective Mar. 30, 1994.) All City bureaus shall, 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 shall cooperate to the fullest extent in enforcing the provisions of this Chapter.

17.33.150 Severability.

(Amended by Ordinance No. 167504, effective Mar. 30, 1994.) If any provision 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, shall not be affected.

Chapter 17.34

SANITARY DISCHARGES

(Added by Ordinance No. 153801; amended by
Ordinance Nos. 163816 and 180037, effective April 28, 2006.)

Sections:

17.34.005 Intent of Chapter.
17.34.010 Declaration of Policy.
17.34.020 Definitions.
17.34.025 Authority of Director to Adopt Rules.
17.34.030 General Discharge Prohibitions.
17.34.040 Discharge Limitations.
17.34.050 Pretreatment Facilities.
17.34.060 Reporting Requirements.
17.34.070 Industrial Wastewater Discharge Permits.
17.34.075 Other Sanitary Discharge Permits or Authorizations.
17.34.080 Inspection and Sampling.
17.34.090 Accidental Spill Prevention and Control.
17.34.110 Enforcement.
17.34.120 Records Retention.
17.34.130 Conflict.
17.34.140 Severability.
17.34.150 Fees.
17.34.160 Requests for Reconsideration.

17.34.005 Intent of Chapter.

(Added by Ordinance No. 180037, effective April 28, 2006.) 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.

(Amended by Ordinance Nos. 172879 and 180037, effective April 28, 2006.) It is the policy of the City of Portland to provide the planning, engineering and administration

necessary to develop and manage sewer facilities that are adequate for the transportation, treatment and disposal of waste water from within the City and to operate the sewer system in such a manner which 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 which will interfere with its normal operation or contaminate the resulting sludge;

B. to prevent the introduction of pollutants into the sewer system which will 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 insure protection of worker safety and health;

E. to insure that all industrial users 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.

(Amended by Ordinance Nos. 172879 and 180037, effective April 28, 2006.) For purposes of Chapter 17.34, and rules adopted thereunder, the following terms shall have the following definitions:

A. **Branch sewer.** The term branch sewer shall mean a conduit extending from the plumbing system of a building or buildings to and connecting with a public or private sewer.

B. **Categorical pretreatment standards.** Categorical pretreatment standards are limitations on pollutant discharges to Publicly Owned Treatment Works (POTWs) promulgated by the U.S. Environmental Protection Agency in accordance with Section 307 of the Clean Water Act, that apply to specified process wastewater of particular industrial categories [40 CFR Chapter I, Subchapter N, Parts 405-471 and amendments thereto]. A current listing of industries subject to National Categorical Pretreatment Standards is available from the Director of Environmental Services.

C. **City Engineer.** The term City Engineer shall mean the City Engineer of the City of Portland, Oregon, or his or her duly authorized representative or agent.

D. **City or City of Portland.** "City" or "City of Portland" shall mean the municipality of Portland, Oregon, a municipal corporation of the State of Oregon, acting through the City Council or any Board, Committee, body, official or person

to whom the Council shall have lawfully delegated the power to act for or on behalf of the City. Unless a particular Board, Committee, body, official or person is specifically designated in this Chapter or rules adopted hereunder, wherever action by the City is explicitly required or implied herein, it shall be understood to mean action by the Director of Environmental Services of Portland, Oregon, or his or her duly authorized representative or agent.

E. **Clean Water Act.** The Clean Water Act is the Federal Water Pollution Control Act, as amended (33 U.S.C. §1251 et seq.).

F. **Director of Environmental Services.** The Director of Environmental Services (Director) is the Director of The Bureau of Environmental Services of the City of Portland, Oregon, or his or her duly authorized representative or agent.

G. **Discharge.** A discharge is any disposal, injection, dumping, spilling, pumping, emitting, emptying, leaching, leaking, or placing of any material so that such material enters the sewer system.

H. **Discharger.** A discharger is any person or entity that allows materials to be released into the City's sewer system.

I. **Domestic waste.** Domestic waste is 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.** Domestic wastewater is any water that contains only domestic waste.

K. **Hazardous or toxic substances.** Hazardous or toxic substances are those substances referred to 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, and any other substances so designated by the Director of Environmental Services and contained in rules adopted pursuant to this Chapter.

L. **Industrial Discharger.** An Industrial Discharger is any Industrial User that discharges industrial wastewater to the City sewer system.

M. **Industrial User.** An Industrial User is any person that discharges nondomestic wastewater.

N. **Industrial waste.** Industrial waste shall mean any liquid, solid, or gaseous substance, or combination thereof, resulting from or used in connection with any process of industry, manufacturing, commercial food processing, business,

agriculture, trade or research, including but not limited to the development, recovering or processing of natural resources and leachate from landfills or other disposal sites.

O. **Industrial wastewater.** Industrial wastewater is any water that contains industrial waste.

P. **Industrial wastewater discharge permit**. An industrial wastewater discharge permit is a permit to discharge industrial wastewater into the City sewer system issued under the authority of this Chapter and which prescribes certain discharge requirements and limitations.

Q. **Interference.** Interference means a discharge which, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the normal operation of the City sewer system, or which causes a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) or any increase in the cost of treatment of sewage or in the cost of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued thereunder (or more stringent State or local regulations); Section 405 of the Clean Water Act, the Solid Waste Disposal Act (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA)), and including State regulations contained in any State sludge management plan prepared pursuant to Subtitle D of RCRA, the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection, Research and Sanctuaries Act.

R. **Pollutant.** A pollutant is any substance discharged into the City sewer system which is prohibited or limited by the requirements of this Chapter or rules adopted hereunder.

S. **Person.** The term "person" shall mean any individual, company, enterprise, partnership, corporation, association, government agency, society, or group, and the singular term shall include the plural.

T. **POTW.** 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.

U. **Pretreatment.** 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.

V. **Sewer system.** The sewer system is the entire sewage collection and treatment system, including but not limited to, all conduits, pumps, treatment equipment, physical and biological processes, and any other components involved in the collection, transportation, treatment, reuse, and disposal of wastewater and sludge.

W. **Significant Industrial User.** Except as provided in subparagraph (c), the term Significant Industrial User means:

1. All industrial users subject to Categorical Pretreatment standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N; and

2. Any other industrial user that discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding domestic, noncontact cooling and boiler blowdown wastewater); contributes a process wastestream which makes up 5 percent or more of the average dry weather hydraulic or organic capacity of the POTW treatment plant; or is designated as such by the Director of Environmental Services 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. Upon a finding that an industrial user meeting the criteria in paragraph (b), above, has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the Director of Environmental Services may at any time, on his or her own initiative or in response to a petition received from an industrial user, and in accordance with 40 CFR 403.8(f)(6), determine that such industrial user is not a significant industrial user.

X. **Significant Noncompliance.** Significant noncompliance with applicable pretreatment requirements exists when a violation of an industrial user meets one or more of the following criteria:

1. Chronic violations of wastewater discharge limits, defined as those in which sixty-six percent or more of all the measurements taken during a six-month period exceed (by any magnitude) the daily maximum limit or the monthly average limit for the same pollutant parameter.

2. Technical Review Criteria (TRC) violations, defined as those in which thirty-three percent or more of all of the measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the monthly average limit 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 pretreatment effluent limit (daily maximum or longer-term average) that the Director of Environmental Services 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 endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge;

5. 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;

6. 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;

7. Failure to accurately report noncompliance;

8. Any other violation or group of violations that the Director of Environmental Services determines will adversely affect the operation or implementation of the local pretreatment program.

17.34.025 Authority of Director of Environmental Services to Adopt Rules.

A. For purposes of the functions described in Charter section 11-303, the City Engineer may delegate his or her authority to perform those functions to the Director of Environmental Services. This delegation can be made by filing a written notice of delegation with the City Auditor and approval of the delegation by resolution of the City Council. Upon approval of the delegation by the City Council, the Director of Environmental Services shall be responsible for performing the delegated functions, and the City Engineer shall not be responsible for supervising or approving actions of the Director of Environmental Services pursuant to the delegated authority. This delegation shall remain in effect until modified by resolution of the City Council.

B. The Director of Environmental Services is hereby authorized to adopt rules, procedures and forms to implement the provisions of this chapter.

C. Adoption of Rules.

1. Upon the recommendation of the Director of Environmental Services, the Bureau of Environmental Services may adopt rules pertaining to matters within the scope of this Chapter.

2. Any rule adopted pursuant to this section shall require a public review process. Not less than ten nor more than thirty days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include the place, time, and purpose of the public review process and the location at which copies of the full text of the proposed rules may be obtained.

3. During the public review, a designee of the Director of Environmental Services shall hear testimony or receive written comment concerning the proposed rules. The Director shall review the recommendation of his or her designee, taking into consideration the comments received during the public review process and shall either adopt the proposal, modify or reject it. If a substantial modification is made, additional public review shall be conducted, but no additional notice shall be required if such additional review is announced at the meeting at which the modification is made. Unless otherwise stated, all rules shall be effective upon adoption by the Director of Environmental Services and shall be filed in the office of the Director of Environmental Services.

4. Notwithstanding paragraphs (2) and (3) of this section, an interim rule may be adopted without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this paragraph shall be effective for a period of not longer than 180 days.

17.34.030 General Discharge Prohibitions.

(Amended by Ordinance Nos. 172879 and 180037, effective April 28, 2006.)

A. It is unlawful to discharge industrial wastewater into the City sewer system except in compliance with this Chapter and rules adopted hereunder.

B. Prohibited discharges. It is unlawful to discharge, cause to discharge or allow to discharge directly or indirectly into the City sewer system any of the following:

1. Wastewater containing substances in such concentrations that they inhibit or interfere with the operation or performance of the sewer system, or that are not amenable to treatment or reduction by the sewage treatment process employed, or are only partially amenable to treatment such that the sewage treatment plant effluent cannot meet the requirements of any agency having jurisdiction over its discharge to the receiving waters, or that exceed concentrations in excess of limitations in any permit issued by the City or other regulatory agency or in this Chapter or rules adopted hereunder, or that prevent or impair the use or disposal of sewage treatment plant sludge and sludge products in accordance with applicable State and federal regulations;

2. Any liquids, solids, or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction to cause fire or explosion or be injurious in any other way to the operation of the sewer system, or wastestreams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Celsius (using test methods prescribed at 40 CFR 261.21), or discharges which cause the atmosphere in any portion of the sewer system to reach a concentration of 10% or more of the Lower Explosive Limit (LEL).

3. Any solid or viscous substances capable of obstructing wastewater which will or may cause obstruction to the flow of wastewater or other interference with the operation of the sewer system;

4. Any noxious, malodorous or toxic liquids gases, vapors or fumes, solids, or other substances which, either singly or by interaction with other wastes, may cause acute or chronic worker health and safety problems, a public nuisance, a hazard or interference with any part of the sewer system;

5. Any industrial wastewater containing a hazardous or toxic substance which, either singly or by interaction with other substances, injures or interferes with the sewer system or constitutes a hazard to humans or animals, or creates a hazard in, or adversely affects the receiving waters, or results in such substances being discharged in combined sewer overflows or sewage treatment plant effluent in any concentrations in excess of limitations imposed by any permit, law or regulation;

6. Any wastes, wastewaters or substances having a pH less than 5.0 or more than 11.5, or capable of causing damage or hazard to structures, equipment, processes or personnel of the sewer system, unless these limits are modified by permit. Such wastes include, but are not limited to, battery or plating acids and wastes, copper sulfate, chromium salts and compounds, or salt brine;

7. Any liquid or vapor having a temperature higher than 65 degrees Celsius (149 degrees Fahrenheit) or containing heat in amounts which will inhibit biological activity, or result in interference at the treatment plant. In no case shall a discharge to the sewer system contain heat in such quantities that the temperature of the treatment plant influent exceeds 27 degrees Celsius (80 degrees Fahrenheit);

8. Any 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 in accordance with any other applicable requirements of the City Code or rules adopted thereunder;

9. Any substance which may solidify or become discernibly viscous at temperatures above 0 degrees Celsius or 32 degrees Fahrenheit;

10. Any material that has not been properly comminuted to 0.65 centimeters (1/4 inch) or less in any dimension;

11. Any slugload, as defined in this Chapter or rules adopted hereunder;

12. Any substances with excessive color, as determined by the Director of Environmental Services, which are not removed in the treatment process;

13. Any batch discharges without written permission from the Director of Environmental Services. Batch discharges shall comply with all other requirements of this Chapter and rules adopted hereunder;

14. Any concentrations of inert suspended or settleable solids which may interfere with the operation of the sewer system;

15. Any concentrations of dissolved solids which may interfere with the operation of the sewer system;

16. Any radioactive material, except in compliance with a current permit issued by the Oregon State Health Division or other state or federal agency having jurisdiction;

17. Any substance which may cause sewer system effluent or treatment residues, sludges, or scums, to be unsuitable for reclamation and reuse or which interferes with the reclamation process. (In no case, shall a substance discharged to the sewer system cause the City to be in noncompliance with sludge use or disposal criteria, guidelines or regulations developed under the Clean Water Act; any criteria, guidelines or regulations affecting sludge use or disposal developed pursuant to the Solid Waste Disposal Act (42 USC 6901), the Clean Air Act (42 USC 1857), the Toxic Substances Control Act (15 USC 2601), or any other federal or State statutes, regulations or standards applicable to the sludge management method being used, or any amendments thereto.)

18. Petroleum oil, nonbiodegradeable cutting oil, or products of mineral oil origin in amounts that will cause interference or pass through.

19. Noncontact cooling water (except that noncontact cooling water may be discharged to the separate storm sewer system upon approval by the Director of Environmental Services);

20. Any substance that causes the City to violate the terms of its NPDES permit;

21. Any discharge limits in rules adopted in rules pursuant to this Chapter.

C. A discharge or flow resulting from and emergency situation such as a water line break or fire fighting by the Fire Department shall 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 this 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 Director of Environmental Services shall 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 or rules adopted hereunder or in an industrial waste discharge permit issued pursuant to the Chapter. The Director may impose mass limitations on dischargers who are using dilution to meet the applicable pretreatment standards or requirements of this Chapter or rules adopted hereunder, or in other

cases where the Director determines that the imposition of mass limitations is deemed appropriate.

C. Termination or limitation. Notwithstanding prior acceptance into the City sewer system of industrial wastewater under this Chapter, if the Director of Environmental Services finds that industrial wastes from a particular commercial or industrial occupancy or a class of industrial wastewater from similar commercial or industrial occupancies cause or may cause damage to the City sewer system, interference with the operation of the City sewer system, or a nuisance or hazard to the City sewer system, City personnel or the receiving waters, the Director may limit the characteristics or volume of the industrial wastewater accepted under this Chapter, or may terminate the acceptance. Notice of the limitation or termination shall be given in writing to the occupant of the property involved or by posting such notice on the property involved and shall 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 Facilities.

A. If, as determined by the Director of Environmental Services, treatment facilities, operation changes or process modifications at an industrial discharger's facility are needed to comply with any requirements under this Chapter or are necessary to meet any applicable state or federal requirements, the Director of Environmental Services may require that such facilities be constructed or modifications or changes be made to the pretreatment facilities within the shortest reasonable time, taking into consideration construction time, impact of the untreated industrial wastewater on the City sewer system, impact of the industrial wastewater on the marketability of the City treatment plant sludge or sludge products, and any other appropriate factor.

B. Any requirement provided for or authorized pursuant to 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 made a condition of the acceptance of the industrial wastewater from such facility.

C. Plans, specifications and other information relating to the construction or installation of preliminary pretreatment facilities required by the Director of Environmental polices under this Chapter shall be submitted to the Director. No construction or installation thereof shall commence until written approval of plans and specifications by the Director is obtained. No person, by virtue of such approval, shall be relieved of compliance with other local, State or federal laws relating to construction and permits. Every facility for the preliminary

pretreatment or handling of industrial wastewater shall be constructed in accordance with the approved plans and specifications and shall be installed and maintained at the expense of the occupant of the property discharging the industrial wastewater.

D. Any person constructing a pretreatment facility, as required by the Director of Environmental Services, shall also install and maintain at his or her own expense a sampling manhole or other suitable monitoring access for checking and investigating the discharge from the pretreatment facility to the public sewer. The sampling manhole or monitoring access shall be placed in a location designated by the Director and in accordance with specifications approved by the Director.

17.34.060 Reporting Requirements.

A. Periodic compliance reports.

1. Any discharger that is required to have an industrial wastewater discharge permit pursuant to Section 17.34.070 shall submit to the Director of Environmental Services during the months of June and December, unless required on other dates or more frequently by the Director a report indicating the nature of the effluent over the previous reporting period. The report shall include a record of the concentrations (and mass if limited in the permit) of the limited pollutants that were measured and a record of all flow measurements taken at designated sampling locations, and shall also include any additional information required by this Chapter or rules adopted pursuant to this Chapter.

2. Flows shall be reported on the basis of actual measurement; provided, however, that the Director of Environmental Services may accept reports of average and maximum flows estimated by verifiable techniques if the Director determines that actual measurement is not feasible.

3. The Director of Environmental Services 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 which is related to the operation and maintenance of the sewer system.

4. The Director of Environmental Services may require self-monitoring by the discharger or, if requested by the discharger, may agree to perform the periodic compliance monitoring needed to prepare the periodic compliance report required under this Section.

a. If the Director agrees to perform such periodic compliance monitoring, he or she may charge the discharger for such monitoring, based upon the costs incurred by the City for sampling and analyses. Any such charges shall be added to the normal sewer charge and shall be payable as part of the sewer bills.

b. The Director is under no obligation to perform periodic compliance monitoring for a discharger.

c. Periodic compliance monitoring is that monitoring which is necessary to provide information on discharge quantity and quality required for periodic compliance reports.

B. Final Compliance Report. Within 90 days following the date for final compliance by the discharger with applicable pretreatment standards and requirements set forth in this Chapter or rules adopted hereunder or an industrial wastewater discharge permit, or within 30 days following commencement of the introduction of wastewater into the City sewer system by a new source discharger, any discharger subject to this Chapter shall submit to the Director of Environmental Services 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 shall 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.

C. All applications, reports, and reporting information shall be certified and signed in accordance with 40 CFR 403.12;

D. Confidential information.

1. Any records, reports or information obtained under this Chapter or rules adopted hereunder shall be available to the public or any governmental agency without restriction, unless classified by the Director of Environmental Services as confidential. In order to obtain a confidential classification on all or part of any records, reports or information submitted, the discharger shall:

a. Submit a written request to the Director identifying the material that is desired to be classified as confidential and;

b. Demonstrate to the satisfaction of the Director that records, reports or information or particular parts thereof, 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 shall not be classified as confidential.

3. Records, reports or information or parts thereof classified as confidential by the Director of Environmental Services shall 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 shall, 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.

E. Fraud and False Statements. Any reports required by this Chapter or rules adopted thereunder and any other documents required by the City to be submitted or maintained by the discharger shall be subject to the enforcement provisions of this Chapter and other applicable local and State laws and regulations relating to fraud and false statements. Additionally, a discharger shall be subject to the provisions of 18 U.S. Code Section 1001 relating to fraud and false statements, and the provisions of Section 309 of the Clean Water Act, as amended, governing false statements and responsible corporate officers.

F. Notification of Hazardous Waste Discharge. An industrial discharger shall notify the Director of Environmental Services in writing of any discharge into the sewer system of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification shall be in accordance with the requirements of rules adopted pursuant to this Chapter.

G. Notification of Violation. An industrial discharger shall report noncompliance with permit limits within 24 hours of becoming aware of the noncompliance. The industrial discharger shall repeat the sampling and analysis and submit results to the Director of Environmental Services within 30 days of becoming aware of the violation.

H. Notification of Changed Discharge. All industrial dischargers shall promptly notify the Director of Environmental Services in advance of any substantial change in the volume or character of pollutants in their discharge.

17.34.070 Industrial Wastewater Discharge Permits.

(Amended by Ordinance Nos. 165068 and 172879, effective November 18, 1998.)

A. Requirement for a permit. Except as provided in Section 17.34.070 B an industrial wastewater discharger shall have an industrial wastewater discharge permit prior to discharging into the City sewer system if:

1. The discharger is a Significant Industrial User, as defined in this Chapter; or

2. The discharge is required to be permitted under procedures contained in the City's approved pretreatment program.

B. Existing discharges.

1. If discharges are in existence prior to the date that an industrial wastewater discharge permit is required, the discharger shall be notified in writing by the Director of Environmental Services that such a permit is required. Such existing dischargers shall 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 Section 17.34.070 B 1 shall comply with the requirements of this Chapter and rules adopted hereunder.

C. Application for industrial wastewater discharge permit.

1. Existing Significant Industrial Users, as defined in this Chapter, shall submit application for a permit on a form provided by the Director 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 Director of Environmental Services that such a standard has been issued, whichever is sooner.

2. New Source Dischargers. Any new source discharger determined by the Director of Environmental Services to be a Significant Industrial User shall submit an application for a permit on a form provided by the Director within 90 days of notification by the Director, provided that a new source discharger shall not discharge to the sewer system without a permit.

3. Submission of the application for permit required by this section shall satisfy the requirements of 40 CFR 403.12(b).

4. The application for permit shall not be considered complete until all information required by the application form, by this Chapter, and by rules adopted hereunder is provided, until all fees are paid, and until the certification statement required by 40 CFR 403.12(b)(6) is signed by the authorized representative, unless specific exemptions are granted by the Director of Environmental Services.

D. Issuance of industrial wastewater discharge permits.

1. Industrial wastewater discharge permits shall be issued or denied by the Director of Environmental Services within 90 days after a completed application is received, unless that period is extended in writing by the Director of Environmental Services for good and valid cause.

2. Industrial wastewater discharge permits shall contain conditions which meet the requirements of this Chapter and rules adopted hereunder as well as those of 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 shall require the installation of such facilities in 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 shall be included which establishes the date for completion 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 shall expire no later than 5 years after the effective date of the permit and shall not be transferable.

6. The Director of Environmental Services may deny the issuance of an industrial wastewater discharge permit if he or she determines that the discharge 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.

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 Director of Environmental Services.

2. Permittee modification requests shall be submitted to the Director of Environmental Services and shall contain a detailed description of all proposed changes in the discharge. The Director may request any additional information needed to adequately review the application or assess its impact.

3. The Director of Environmental Services may deny a request for modification if he or she determines 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 Director of Environmental Services, the permittee shall 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. Any request for reconsideration shall be made before the effective date of the changes.

F. Change in a permitted discharge. A modification to the permittee's discharge permit must be issued by the Director of Environmental Services 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 waste stream(s) not previously included in the industrial waste discharge permit application or involving the addition of new pollutants shall be considered new discharges, requiring application under Section 17.34.070.

G. Renewal of Permits. A permittee shall apply for renewal of its industrial wastewater discharge permit within 90 days of the expiration date of the existing permit. Upon timely application for renewal, an existing permit will remain effective until the renewal application is acted upon.

H. Appeal of permit. Upon receipt of a final industrial wastewater discharge permit, a permittee may appeal any of its terms or conditions to the Code Hearings Officer in accordance with procedures set out at Chapter 22.10 of the Portland City Code; provided that such an appeal shall include a copy of the permit that is

the subject of the appeal, shall state the basis for he appeal, and shall be filed with the Code Hearings Officer and the Bureau of Environmental Services.

17.34.075 Other Sanitary Discharge Permits or Authorizations

(Added by Ordinance No. 180037, effective April 28, 2006.) 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. Non-compliance 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. Authorized City representatives may inspect the monitoring facilities of any industrial wastewater discharger to determine compliance with the requirements of this Chapter. The discharger shall allow the City or its authorized representatives to enter upon the premises of the discharger at all reasonable hours for the purpose of inspection, sampling, photographic documentation or records examination and copying. The City shall also have the right to install on the discharger's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and metering operations.

2. Conditions for entry.

a. The authorized City representative shall present appropriate credentials at the time of entry;

b. The purpose of the entry shall be for inspection, observation, measurement, sampling, testing, photographic documentation, or records examination and copying in accordance with the provisions of this Chapter;

c. The entry shall be made at reasonable times during normal operating or business hours unless an emergency situation exists as determined by the Director of Environmental Services.

d. All regular safety and sanitary requirements of the facility to be inspected shall be complied with by the City representative(s) entering the premises.

B. Sampling.

1. Samples of wastewater being discharged into the sewer system shall be representative of the discharge. Other sampling locations may be required by permit. The sampling method shall be one approved by the Director of Environmental Services and one in accordance with 40 CFR Part 136.

2. Samples taken by City personnel for the purpose of determining compliance with the requirements of this Chapter or rules adopted hereunder may be split with the discharger (or a duplicate sample provided in the instance of fats, oils and greases) if requested before or at the time of sampling.

3. All sampling and analyses shall be performed in accordance with the procedures set forth in 40 CFR Part 136 and any amendments thereto or with any other test procedures approved by the Administrator of the Environmental Protection Agency. If there are no approved test procedures the Director of Environmental Services may approve other analytical procedures. The results of all samples taken shall be reported.

C. Sampling manhole or access. The Director of Environmental Services may require an industrial wastewater discharger to install and maintain at the discharger's expense a suitable manhole in the discharger's branch sewer or other suitable monitoring access to allow observation, sampling and measurement of all industrial wastes being discharged into the City sewer system. The manhole shall be constructed in accordance with plans approved by the Director Services and

shall be designed so that flow measuring and sampling equipment can be conveniently installed. Access to the manhole or monitoring access shall be available to City representatives at all times.

17.34.090 Accidental Spill Prevention and Control.

A. Notification. Any person becoming aware of spills or uncontrolled discharges of hazardous or toxic substances or substances prohibited under Section 17.34.030 directly or indirectly into the City sewer system or into a tributary to the City sewer system, shall immediately report such discharge by telephone to the Director of Environmental Services and to any other authorities required under other local, state, or federal laws or regulations.

B. Written notice. Within 5 days following an accidental discharge as described in paragraph (a), above, the discharger shall 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 shall not relieve the discharger from any fines, civil penalties, or other liability which may be imposed under the authority of this Chapter or rules adopted hereunder or other applicable law.

C. Posted notice. A notice informing employees of an industrial wastewater discharger of the notification requirement above which contains information regarding reporting in the event of such a discharge shall be posted in a conspicuous place and shall 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 which could allow spills or uncontrolled discharges of hazardous or toxic substances or substances prohibited under Section 17.34.030 to enter the City sewer system shall be eliminated or labeled and controlled so as to prevent the entry of wastes in violation of this Chapter. The Director of Environmental Services may require the industrial user 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 continued discharge into the City sewer system. A schedule of compliance shall be established by the Director which requires completion of the required actions within the shortest reasonable period of time. Violation of the schedule without an extension of time by the Director is a violation of this Chapter.

E. Accidental Spill Prevention Plans.

1. Industrial users that handle, store or use hazardous or toxic substances or substances prohibited under Section 17.34.030 on their sites shall prepare

and submit to the Director of Environmental Services an Accidental Spill Prevention Plan, according to the requirements set out in rules adopted pursuant to this Chapter, within 60 days after notification by the Director or as required by an industrial wastewater discharge permit.

17.34.110 Enforcement.

(Amended by Ordinance Nos. 165068 and 180037, effective April 28, 2006.) Dischargers that fail to comply with the requirements of this Chapter and rules adopted hereunder may be subject to enforcement actions by the Director of Environmental Services.

A. Violations.

1. A violation shall have occurred when any requirement of this Chapter or rules adopted hereunder has not been met, or when any condition of a permit or agreement issued under the authority of this Chapter or rules adopted hereunder is not met.

2. Each day a violation occurs or continues shall be considered a separate violation.

3. For violations of discharge limits, each parameter that exceeds a discharge limit shall be considered a separate violation except as provided elsewhere in this Chapter or rules adopted hereunder.

4. Where a discharge causes interference or pass through, the discharger shall have an affirmative defense where it is demonstrated that:

a. It did not know or have reason to know that its 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 discharger's discharge directly prior to and during the pass through or interference did not change substantially in nature or constituents from prior discharge activity which was regularly in compliance with the requirements of this Chapter and rules adopted hereunder.

B. Enforcement Mechanisms. In enforcing any of the requirements of this Chapter or rules adopted hereunder, the Director of Environmental Services, or a duly authorized representative, may:

1. Take civil administrative actions, as set out in rules adopted under the authority of this Chapter;

2. Issue compliance orders;

3. Institute an action before the Code Hearings Officer;

4. Cause an appropriate action to be instituted in a court of competent jurisdiction; or

5. Take such other action as the Director of Environmental Services, in the exercise of his or her discretion, deems appropriate.

C. Civil Penalties. Violations of this Chapter or rules adopted hereunder may result in assessment of civil penalties in an amount up to $5000 per day per violation. All civil penalties shall be deposited with the City Treasurer. 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 shall accrue interest and other charges until the penalty is paid in full.

D. Termination or prevention of a discharge/permit revocation.

1. Notwithstanding any other provisions of this Chapter, the Director of Environmental Services 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 an endangerment to the health or welfare of persons or the environment, or threatens to interfere with the operation of the City sewer system; or

b. The permit to discharge into the City sewer system was obtained by misrepresentation of any material fact or by lack of full disclosure; or

c. The discharger violates any requirement of this Chapter or of an industrial wastewater discharge permit; or,

d. Such action is directed by a court of competent jurisdiction.

2. Notice of termination or prevention of discharge or permit revocation shall be provided to the industrial wastewater discharger or posted on the subject property prior to terminating or preventing the discharge or revoking a permit.

a. In situations that do not represent an imminent endangerment to health or the environment or an imminent threat of interference with the sewer system, the notice shall be in writing, shall contain the reasons for the termination or prevention of the discharge or permit revocation, the effective date, the duration, and the name, address and telephone number of a City contact, shall be signed by the Director of Environmental Services, and shall be received at the business address of the discharger no less than 30 days prior to the effective date.

b. In situations where there is an imminent endangerment to the health or welfare of persons or the environment or an imminent threat of interference with the operation of the sewer system, the Director of Environmental Services may immediately terminate an existing discharge or prevent a new discharge from commencing 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 shall include the effective date and time and a brief description of the reason. Within 3 working days following the informal notice, a written formal notice as described in 17.34.110(d)(2)(A) shall be provided to the discharger.

3. The Director of Environmental Services shall reinstate an industrial wastewater discharge permit which has been revoked under the terms of this Chapter or shall reinstate industrial wastewater treatment service upon clear and convincing proof by the discharger of the elimination of the noncomplying discharge or conditions creating the threat of endangerment or interference as set forth in this Chapter.

E. Annual Publication. A list of Significant Industrial Users that are subject to the definition of significant noncompliance shall be published annually in the newspaper of general circulation published in Portland, summarizing the enforcement actions taken against industrial users during a prior twelve month period.

F. Cost recovery.

1. The Director of Environmental Services may recover all reasonable costs incurred by the City which are attributable to or associated with violations

of this Chapter, including but not limited to the costs of administration, investigation, sampling and monitoring, legal or enforcement activities, damage to or contamination of the sanitary or combined sewer systems. BES may recover costs associated with remediation of a violation, contracts and health studies, and any fines and civil penalties assessed to the City that result from activities not in compliance with this Chapter or rules adopted hereunder. Liens may be imposed on the property or properties in accordance with the provisions of Chapter 22.06.

2. All such costs shall be documented by the City and shall be served upon the discharger by certified or registered mail, return receipt requested. Such documentation shall itemize the costs the Director of Environmental Services has determined are attributable to the violations.

3. The costs are due and payable by the discharger upon receipt of the letter documenting such costs. All such costs shall be paid to the City Treasurer and credited to the Sewage Disposal Fund. Nonpayment or disputes regarding the amount shall be referred for appropriate action to the City Attorney. The City Attorney may initiate appropriate action against the discharger to recover costs under this Section.

4. The Director of Environmental Services may terminate a discharge for nonpayment of costs after 30 days notice to the discharger.

G. Appeal of enforcement action.

1. Upon receipt of a final determination of an enforcement action, discharger may appeal any of the following items to the Code Hearings Officer in accordance with procedures set out at Chapter 22.10 of the Portland City Code:

a. The final determination of violation;

b. The amount of civil penalty;

c. The required remediation action

d. The time frame for corrective action;

e. Termination of service or permit.

2. The following are not appealable to the Code Hearings Office;

a. Costs related to nuisance abatement, appeal processing or assessed environmental damage;

3. All appeals shall include a copy of all relevant documentation, including the Bureau's final determination letter, that is the subject of the appeal. Documentation shall state the basis for the appeal, and shall be filed with the Bureau of Environmental Services which shall initiate the Code Hearings Officer review.

H. City not liable. Nothing in this Chapter shall be construed to confer liability on the City for any injury or damage resulting from the failure of responsible parties to comply with the provisions of this Chapter.

17.34.120 Records Retention.

(Amended by Ordinance No. 172879, effective November 18, 1998.) All dischargers subject to this Chapter shall retain and preserve for no less than 3 years, any records, books, documents, memoranda, reports, correspondence and any and all summaries thereof, relating to monitoring, sampling and chemical analyses made by or in 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 Director, the Oregon Department of Environmental Quality, or the Regional Administrator of the Environmental Protection Agency during the course of any unresolved litigation regarding the industrial user. All records which pertain to matters which are the subject of any enforcement or litigation activities brought by the City pursuant hereto shall 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.

17.34.130 Conflict.

All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this Chapter are hereby repealed to the extent of such inconsistency or conflict.

17.34.140 Severability.

If any provision, paragraph, word, or Section of this Chapter or rules adopted hereunder is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, Sections and Chapters shall not be affected and shall continue in full force and effect.

17.34.150 Fees.

(Amended by Ordinance Nos. 173138, 173414 and 181846, effective July 1, 2008.)

A. The Director of Environmental Services shall set annual fees for all industrial waste discharge permits. In determining these fees, the Director shall consider at least the following factors: process wastewater discharge flow; industrial user classification; permit status (new or renewed); self monitoring frequency; city

monitoring frequency; regulatory history and the regulatory permits and special requirements.

B. Permit fees. Industrial waste discharge permit fees are established, annually, by general ordinance. The fees for each fiscal year are effective July 1, but will be billed as soon after January 1 as is practical. The Director of the Bureau of Environmental Services shall establish by July 1, a cost accounting system to determine the fees based on the actual costs. This accounting system shall be developed with the involvement of the industries charged these permit fees, and these fees will not be charged until the accounting system is in place. The Bureau will review proposed changes to industrial waste permit fees with Council and the Portland Development Commission prior to submitting subsequent sewer rate ordinances.

C. The Director shall also have authority to 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 shall be calculated at a rate per occurrence, in addition to other applicable charges. The rate shall be established, annually, by general ordinance.

17.34.160 Requests for Reconsideration.

A discharger may request the Director of Environmental Services to reconsider any determination made under this Chapter if there is reason to believe that sufficient data or information is available to support a different determination. Any request for reconsideration shall be accompanied by the data and information the discharger used as a basis for the request. The Director of Environmental Services may then revise the initial determination or retain the original determination based upon the submitted request.

Chapter 17.35

SEPTAGE DISCHARGE

(Added by Ordinance No. 143978,
effective July 1, 1977.)

Sections:

17.35.010 Definitions.
17.35.020 Permit Required.
17.35.030 Septage Discharge Limitations.
17.35.040 Reserved.
17.35.050 Reserved.
17.35.060 Performance Guaranty.
17.35.070 Fee Schedule.
17.35.080 Collection and Billing.
17.35.090 Revocation/Amendment of Permit.
17.35.100 Protection of the Public Interest.
17.35.110 Enforcement.

17.35.010 Definitions.

(Amended by Ordinance Nos. 156500 and 166674, effective June 23, 1993.) As used in this Chapter the following definitions apply:

A. **Septage.** Septage includes domestic wastes and chemical toilets.

B. **Operator in charge.** The operator in charge, hereafter referred to as "operator," shall be a designated operator on duty at the Columbia Boulevard Wastewater Treatment Plant or other designated location and shall supervise and direct any discharge of septage.

C. **Columbia Boulevard Wastewater Treatment Plant (CBWTP).** The City of Portland's wastewater treatment plant located at 5001 N. Columbia Boulevard, Portland, Oregon.

D. **Tri-County Area.** Within Multnomah, Clackamas and Washington Counties.

E. **Oregon Department of Environmental Quality (DEQ).** The State of Oregon's Department of Environmental Quality.

F. **Holding tank.** Tanks with no drain field which are required to be pumped out on a regular basis.

G. Director. The Director of the Bureau of Environmental Services at the City.

17.35.020 Permits Required.

(Amended by Ordinance Nos. 166674 and 182760, effective June 5, 2009.) Only those persons possessing a valid septage discharge permit issued from the City of Portland will be allowed to discharge septage at the Columbia Boulevard Wastewater Treatment Plant (CBWTP).

A. All permits shall be issued on an annual basis.

B. The City shall 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 of Portland's "Septage Hauler Training Class." Personnel of an approved septage hauler shall 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 shall be required upon request of the Director or when permittee personnel changes occur.

7. The City shall impose appropriate conditions in permits to ensure compliance with requirements of this Chapter.

17.35.030 Septage Discharge Limitations.

(Amended by Ordinance No. 166674, effective June 23, 1993.) 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.

In the event that septage is rejected by the City, the DEQ shall be immediately notified of such rejection.

17.35.040 Reserved.

17.35.050 Reserved.

17.35.060 Performance Guaranty.

(Amended by Ordinance No. 166674, effective June 23, 1993.) Each applicant, except governmental agencies shall 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 which shall 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 shall be $10,000. All changes in personnel and equipment shall be reported to the City within 30 days. The value of the performance guaranty shall be forfeited to the City under any of the following conditions:

A. The discharge of septage in violation of 17.35.030;

B. The discharge of septage at unauthorized locations in the Tri-County area (or the City of Portland);

C. Effective July 1, 1994, failure to make timely payment, pursuant to 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.

(Amended by Ordinance Nos. 156500, 160886, 162109, 165136, 166674, 167692, 168857, 170190, 171224, 172288, 173414, 175620, 176524, 177530, 178449, 179274, 180189, 181006 and 181846, effective July 1, 2008.)

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 Director.

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.

(Amended by Ordinance Nos. 166674 and 181483, effective January 18, 2008.) 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 shall mail a monthly statement of account to each permittee. Failure to pay the amount shown within 30 days of the date of billing shall result in imposition of interest fees, as named in Title 5, Section 5.48.040, on the amount past due.

17.35.090 Revocation/Amendment of Permit.

(Amended by Ordinance No. 166674, effective June 23, 1993.) 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.

Septage permits shall be amended for the following reasons:

1. A change occurs in a permittee's operations that affect the conditions of this Chapter.

2. As required by the applicable State or Federal laws or regulations.

17.35.100 Protection of the Public Interest.

(Amended by Ordinance Nos. 166674 and 182760, effective June 5, 2009.) No provision of this Code Section shall be construed to create a right in any individual to a permit, which in the opinion of the City would be inconsistent with the public interest.

No provision of this Code Section shall be construed to create any right in the Tri-County Area to the disposition of septage at a City facility inconsistent with the public interest of the City.

17.35.110 Enforcement.

(Added by Ordinance No. 166674, effective June 23, 1993.)

A. Violation of any of the requirements of this Chapter may result in enforcement by the Director.

B. Enforcement mechanisms. In enforcing the requirements of this Chapter, the Director may:

1. Issue compliance orders.

2. Institute an action before the Code Hearings Officer.

3. Cause an appropriate action to be instituted in a court of competent jurisdiction.

4. Take such other action as the Director deems appropriate.

5. Appeal of final determination. Upon receipt of a final determination, a permittee may appeal the determination to the code Hearings Officer in accordance with the procedures set out in Chapter 22.10 of the Portland City Code; provided that such an appeal shall include a copy of the final determination that is the subject of the appeal, shall state the basis for the appeal, and shall be filed with the Code Hearings Officer and the Bureau of Environmental Services.

Chapter 17.36

SEWER USER CHARGES

(Replaced by Ordinance No. 182053,
effective August 15, 2008.)

Sections:

17.36.010 Definitions.
17.36.020 Administrative Rules, Procedures and Forms.
17.36.030 Appeal.
17.36.040 Sewer System Connection Charges.
17.36.050 Partial and Full Exemptions of Sanitary and Stormwater System Development Charges for Affordable Housing Developments.
17.36.060 Agreements with Governmental Agencies for Sanitary Sewer and Stormwater Management Services.
17.36.070 User Charges.
17.36.080 Special Provisions.
17.36.090 Meters.
17.36.100 Clean River Rewards.
17.36.110 Extra-Strength Wastewater Charges.
17.36.120 Other Charges.
17.36.130 Computing and Billing.
17.36.140 Certain Installations Unlawful.
17.36.150 Identification of Inspectors.
17.36.160 Collection.
17.36.170 Deposit and Application.
17.36.180 Adjustment of Bills.

17.36.010 Definitions.

For the purpose of this Chapter, the following definitions shall apply:

A. "Available Sewer" is a collector, trunk, or other major public sanitary sewer located in a dedicated street or easement adjacent to, or within a property, and designed or intended to provide direct service to the property. For the purposes of this Chapter, a sewer shall not be considered available to a property if an extension of the public sewer is required before a branch can be constructed to the property.

B. "Biochemical Oxygen Demand (BOD)" is the quantity of oxygen utilized in the biochemical oxidation of organic matter over a period of five days at a temperature of 20 Celsius (as approved in Guidelines Establishing Test Procedures for the Analysis of Pollutants, contained in 40 CFR 136 and amendments thereto, as published in the Federal Register). This definition applies to the phrase and its abbreviation.

C. "Branch" is a public sewer service lateral as defined in Chapter 17.32 of this Code.

D. "Branch Charge" is a connection charge that reimburses the City for the costs of designing and constructing public sewer service laterals.

E. "Brownfield" is 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.

F. "Bureau" is the Bureau of Environmental Services unless otherwise stated in this Chapter.

G. "Composite sample" is a series of individual discrete samples taken at selected intervals based on either an increment of flow or time. The samples are mixed together to approximate the average composition of discharge to the public sewer system. A composite for one day must consist of a pool of samples, collected over the period of expected discharge during the production day. Where special conditions warrant, the Director may designate an alternative procedure that is acceptable.

H. "Connection Charge" is a charge that the City collects at/or prior to the time a property connects to the public sewer system. Connection charges may include a line charge, branch charge, sanitary sewer system development charge and stormwater system development charge. A property may be subject to one or more of these charges depending on the connections made and the means used to provide public sewer and stormwater management services to the property.

I. "Director" is the Director of the Bureau of Environmental Services or the Director's designated representative.

J. "Dwelling unit" is any housing unit with sanitary and kitchen facilities either designed or used to accommodate one or more residents, including detached residences, multiple housing units, floating homes, mobile homes and mobile home spaces. This does not include commercial (transient) housing units such as hotel and motel units; overnight trailer or recreational vehicle spaces; or housing units in institutional care facilities. A single dwelling unit shall be any dwelling

unit, as defined above, in a building containing no other dwelling units. This includes units in planned developments, and care facilities classed as a single-family unit by the City.

K. "Extra Strength Charge" is the additional charge to wastewater dischargers who have constituent discharges at concentrations above levels normally expected in domestic wastewater, as determined by this Title and general ordinance.

L. "Frontage" is the length of public right-of-way adjacent to a property, measured in feet.

M. "Groundwater" is subsurface water that occurs in soils and geological formations that are fully saturated. Groundwater fluctuates seasonally and includes perched groundwater. 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, rainwater infiltration into excavations and subsurface water associated with construction or property management dewatering activities.

N. "Impervious Area" is the area of a property which does not allow rainwater to percolate naturally into the ground. Examples include a roof and paved area, such as a driveway, parking area or walkway. The City classifies as impervious areas for billing purposes set forth in this Chapter areas of property that are covered by porous pavement, eco-roofs, rain gardens or other types of impervious area replacement techniques used for stormwater management. Impervious areas for billing purposes do not include public rights-of-way, outdoor recreation areas that are available to the general public without condition or restriction, and areas covered by compacted soils and compacted gravels.

O. "ITE Manual" is the manual entitled "An Institute of Transportation Engineers Informational Report – Trip Generation", used by the City to determine transportation system development charges.

P. "Line Charge" is a connection charge that reimburses the City for the costs of designing and constructing sanitary sewer lines that serve connecting properties.

Q. "Multiple dwelling unit" is any dwelling unit, as defined above, in a building containing more than one dwelling unit. This includes the dwelling units in commercial buildings containing more than one dwelling unit, houseboats, mobile homes and mobile home spaces where more than one unit exists.

R. "Net New Impervious Area" is the greater of zero and the difference between existing impervious area on a property, and any increase in impervious area that results from a proposed use(s) of the property.

S. "Net New Vehicular Trips" is the greater of zero and the difference between the vehicular trips generated by the existing use of a property, and any increased number of the vehicular trips generated from a proposed use(s) of the property.

T. "Perched Groundwater" is a zone of saturation in a formation that is discontinuous from the water table and the unsaturated zones surrounding this formation. The formation exists as a discrete saturated zone that may be ephemeral (in direct response to precipitation in the immediate vicinity) or recharged by percolation from nearby surface water or other perched water zones.

U. "Public Sewer System" is defined as provided in Chapter 17.32 of this Code.

V. "Ratepayer" is a person who has the right to possession of a property, and who causes or permits the discharge of sanitary sewage from property in their possession into the public sewer system, or whose use of property directly or indirectly benefits from stormwater management services provided by the City.

W. "Reimbursable City Stormwater Facilities" are stormwater management facilities that are financed by the City.

X. "Rolling Average" is the average of the 10 most recent monthly averages of valid city- and/or self-monitoring events for the purpose of calculating an extra-strength sewage charge rate unless another period is approved by the Director.

Y. "Sanitary Sewage" includes, but is not limited to, domestic wastewater, industrial/commercial process wastewater or contaminated stormwater which is discharged to the public sewer system by permit or approval of the Director.

Z. "Sanitary System Development Charge" is a connection charge for new or increased demand of the public sewer system. The charge reimburses the City for an equitable portion of the costs of major sewer facilities, such as wastewater treatment facilities, pump stations and interceptor sewers.

AA. "Slugload" is any discharge that is non-routine or episodic in nature, such as accidental spills, non-customary batch discharges or other non-standard discharges.

BB. "Stormwater Management Facilities" include, but are not limited to, facilities that collect, convey, detain, retain, treat or dispose of stormwater runoff.

CC. "Stormwater Management Services Rate" is the rate used for calculating user charges for stormwater management services. The rate may also be referred to as

the “impervious area” rate or “drainage service charge” or the "drainage/stormwater management user service charge".

DD. “Stormwater Management Services” are services and actions required to collect, convey, detain, retain, treat or dispose of stormwater runoff, such as services that manage stormwater runoff from public streets, mitigate flooding, prevent erosion, improve water quality of stormwater runoff, collect and convey stormwater runoff from private properties when runoff exceeds the capacity of private facilities to manage stormwater onsite, mitigate impacts to natural habitats caused by stormwater runoff, and protect properties and natural habitats from hazardous soils and materials that are discharged from private properties and public rights-of-way.

EE. “Stormwater System Development Charge” is a connection charge that reimburses the City for the design and construction of stormwater management facilities. The charge ensures that new and expanded uses of property pay an equitable portion of the costs of public stormwater management facilities such as collection and conveyance facilities, detention and disposal facilities, and water pollution reduction facilities.

FF. "Temporary Connection". A connection to the sanitary sewer system is deemed temporary if the duration of the connection is less than three years and connection and disconnection occur only once. However, for purposes of this definition and determining the applicability of sewer system connection charges, connections to the sanitary sewer system made for the purpose of servicing an environmental remediation activity of less than three years will not be considered a temporary connection unless approved by the Director. In granting a temporary connection the Director shall, at a minimum, consider the nature of the remediation site and type of City sewer(s) available for connection.

GG. "Temporary Structure". A structure is deemed temporary if it is a separate and distinct entity from all other structures and it is created and removed in its entirety, including impervious area associated with the structure, within a continuous period of three years or less.

HH. "Total Suspended Solids (TSS)" is the total suspended matter that either floats on the surface or is in suspension in water or wastewater and that is removable by laboratory filtering (as approved in Guidelines Establishing Test Procedures for the Analysis of Pollutants, contained in 40 CFR 136 and amendments thereto, as published in the Federal Register). This definition applies to the phrase and its abbreviation.

II. "Transportation SDC Study" is the methodology report entitled "Update of Transportation System Development Charges Rate Study", most recently adopted by Council.

JJ. "User Charge" is a charge paid by a ratepayer for sanitary or stormwater management services.

KK. "Willamette River/Portland Harbor Superfund" is a program to remove pesticides and petroleum from sediments along a nine-mile segment of the Lower Willamette River. The City's portion of the program costs are paid from dedicated user charges that bear the name of the program.

17.36.020 Administrative Rules, Procedures and Forms.

A. Upon the recommendation of the Director, the Bureau may adopt rules, procedures, and forms pertaining to matters within the scope of this Chapter.

B. Any rule adopted pursuant to this section shall require a public review process. Not less than thirty, nor more than forty-five, days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include the place, time, and purpose of the public review process and the location at which copies of the full text of the proposed rules may be obtained.

C. During the public review, the Director hears testimony or receives written comment concerning the proposed rules. The Director reviews the Bureau recommendation; taking into consideration the comments received during the public review process and either adopts, modifies or rejects the proposal. If a substantial modification is made, additional public review will be conducted, but no additional notice is required if such additional review is announced at the meeting at which the modification is made. Unless otherwise stated, all rules are effective upon adoption by the Director and are filed in the office of the Director.

D. Notwithstanding paragraphs B. and C. of this Section, an interim rule may be adopted without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this paragraph is effective for a period of not longer than 180 days.

17.36.030 Appeal.

If a property owner or owner's agent does not agree that the calculation of charges was administered as set forth in this Section, he or she may appeal to the Director for an administrative review. The owner or owner's agent must file a written appeal to the Director prior to payment or within 10 days of payment of the charge. Upon receipt of the

statement, the Bureau schedules the matter for review by the Director. The owner or owner's agent has an opportunity to present evidence in the course of the review. The Bureau provides the owner or owner's agent a decision in writing within 10 days of the receipt of appeal request. A person aggrieved by any decision or determination of the administrative review process may appeal the decision to the Code Hearings Officer as provided in Chapter 22.10 of the Code of the City. A request for an appeal hearing must be filed within 10 days after the date of the written decision of the Director. The Code Hearings Officer may waive this requirement for good cause shown. The request for an appeal hearing must be in writing and must contain a copy the decision appealed from and a statement of grounds upon which it is contended that the decision is invalid, unauthorized, or otherwise improper, together with such other information as the Code Hearings Officer may by rule require. The Code Hearings Officer may specify and provide hearing request forms to be used by persons requesting hearings.

17.36.040 Sewer System Connection Charges.

(Amended by Ordinance No. 182389, effective January 2, 2009.) The following charges are for connection and use of the public sewer and stormwater management services under City control, from properties either inside or outside the City. These are calculated based on rates established, annually, by general ordinance, and are collected upon issuance of a building permit, or where a building permit is not required, upon issuance of a sewer connection permit.

A. Sewer System Connection Charges.

1. Sanitary System Development Charge

a. The methodology for calculating the charge is set forth in the document Sanitary and Stormwater System Development Charge Methodology, adopted annually by general ordinance.

b. A person desiring to connect a building property to a sanitary or combined sewer, or to increase the sewer usage by alteration, expansion, improvement, or conversion of a building already connected to the sewer, or to increase flow to a sanitary or combined sewer by causing contaminated stormwater or groundwater to enter the sewer, must pay sanitary system development charges.

c. The charge is calculated based on the number of Equivalent Dwelling Units (EDUs). EDUs for nonresidential uses will be calculated from Plumbing Fixture Units (PFUs), taken from the Oregon Plumbing Specialty Code in effect at the time of the permit application. EDUs for groundwater or other permitted discharges to sanitary or combined sewer are calculated based on estimated

discharge volume, and are subject to review as described in this Chapter.

d. Industrial wastewater. Persons with industrial wastewater discharges are subject to review of sewer usage within two years of occupancy. EDUs are calculated from the highest six-month average of metered usage over that period. The user of record is responsible for EDUs in excess of those paid at the issuance of the permit.

e. Credit for prior sewer connection. For buildings on sites that were previously connected to the sewer system or that had buildings previously connected to a sanitary sewer, full credit for sanitary system development charges is allowed for each equivalent dwelling unit purchased under this Subsection that existed prior to demolition or disconnection.

f. Credit for prior sewer user charge payments. When a person desires to connect a building to a sanitary sewer, where sanitary sewer user charges have been paid for the building for several years, a credit of $21 per equivalent dwelling unit for each year of such prior user charge payments from 1949 to 1991 is applied toward the sanitary system development charge. No credit is allowed for buildings that were demolished or disconnected prior to July 1, 1971.

g. Temporary structures and temporary connections are not subject to the sanitary system development charge. However sanitary system development charges, including penalties and interest charges, become due and payable from structures or users that originally were exempted from sanitary system development charges as a temporary structures or temporary connections, but are not removed within three years as provided in the definition of temporary structures and temporary connections. Temporary structures and temporary connections are not exempt from paying sewer user fees, including extra strength charges.

h. Prepayment. A person may elect to pre-pay sanitary system development charges by providing a letter of intent to the Bureau of Environmental Services, which includes the parcel description and address if applicable, and the estimated number of EDUs (equivalent dwelling units) to be paid. The Bureau may grant a refund at any time for excess EDU's paid (refunds will be based on rates in effect at the time of prepayment and without interest), and

charge for any outstanding EDU's (calculated by the Bureau of Environmental Services) at the time of the building permit, at the rate in effect at that time. After September 15, 1988, the Bureau will not accept prepayment for a connection to be performed more than five years from the date of prepayment.

2. Line Charge.

a. The Bureau collects a line charge prior to the issuance of a permit to connect a property to the public sewer system.

b. The Bureau collects the charge when the property to be connected has not been assessed for direct service or its equivalent.

c. The Bureau calculates the line charge as follows:

(1) Residential Property. The charge is based on the square footage of the property. For properties zoned residential and used predominately for residential purposes, the square footage used for calculating the line charge is limited to the lot area within 100 feet of rights of way or easement where sewer has been constructed or is planned for sewer construction. Such street or easement line is considered as continuing 100 feet beyond the end of the main line sewer or beyond where the sewer turns away from the property. The minimum line charge is based on a minimum assumed lot size of 1,200 square feet. When an adjacent, developed lot, as defined in Title 33 of this Code, is under same ownership and used in conjunction with a neighboring, developed lot that is connecting to the sewer, the adjacent lot is charged a line charge for its frontage as described above. This condition includes but is not limited to improved parking lots, and lots with garages or landscaping.

(2) Non-Residential Property. For non-residential property, the square footage used for calculating the line charge is limited to the lot area within 300 feet of rights of way or easement where sewer has been constructed or is planned for sewer construction. Such street or easement line is considered as continuing 300 feet beyond the end of the main line sewer or beyond where the sewer turns away from the property. The minimum line charge is based on a minimum lot size of 3,600 square feet.

d. When a sewer is constructed that can not provide gravity service, the line charge is reduced by 50% if the property has gravity service to the first floor only and must install a pump for the basement and 75% of the line charge is reduced if no gravity service is available for the first floor and the property must install a pump. The adjustment may not exceed the costs associated with the installation of a pump system. The ratepayer may appeal this determination to the Director if the pump costs exceed the line charge adjustment.

3. Branch charge.

a. The Bureau collects a branch charge prior to the issuance of a permit to connect a property to the public sewer system.

b. The Bureau collects the charge for branches that the City has extended from the public sewer during or after its construction, and the property has not been assessed for the branch or its equivalent.

c. The Bureau collects additional charges for additional branches that have been requested by the user representative at the time of sewer design or construction but not used at the time of initial connection. The charges are collected prior to subsequent connection to the public sewer system.

4. Bond in lieu of payment. When the equivalent dwelling units for a proposed connection (or change) cannot be determined in advance, or when the user or applicant does not agree with the Director's determination, but only when the occupancy is not adequately defined by the City, the Director may accept a cash or surety bond in an amount determined by him or her, and posted by the owner in lieu of immediate payment of the charge. A reasonable time after the connection (or change) is made, but not more than 2-1/2 years, the Director, using water consumption records or other evidence, determines the number of equivalent dwelling units and the amount of the system development charges payable. Upon notice, the user must pay the system development charges required. If the user does not pay the charges within 60 days, the bond is forfeited upon certificate by the Director, and approval by the Commissioner-in-Charge.

5. Sampling manhole charge. When a property is subject to an extra strength charge, as described in this Chapter of the Code and as determined by the Director, at the user's request the City may install a sampling manhole on

the branch, providing the user agrees to pay all direct and indirect costs of installing the manhole.

6. Deferral of connection charges. Users who qualify to defer sewer assessment charges but who want to connect to the system can defer payment of connection charges until such date as the Director 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 as set forth in this Chapter. Users may convert the deferral to an installment payment loan. The Director may establish rules, procedures and forms to govern the administration of the deferral program.

B. Stormwater System Development Charge.

1. The stormwater system development charge consists of two parts: an on-site charge, reflecting use of public facilities handling stormwater flows from individual properties; and an off-site charge, reflecting use of system facilities handling stormwater flows from rights of way. The following charges are calculated based on rates established, annually, by general ordinance:

a. The on-site charge is calculated by multiplying the net new impervious area by a rate per thousand square feet of impervious area. In the case of groundwater flows directed into stormwater facilities, the charge is calculated based on the amount of impervious area necessary to produce an equivalent flow given average rainfall.

b. The off-site charge is calculated in two parts: local access, and use of arterial streets.

(1) The local access portion of the off-site charge is calculated by multiplying the length of the property's frontage by a frontage rate per foot. For properties on which there is existing development, and for which a stormwater system development charge has previously been paid, the local access portion is assumed to have been paid.

(2) The arterials portion of the off-site charge is calculated by multiplying net new vehicular trips by a rate per vehicular trip. Vehicular trips for a particular development are determined by the Transportation SDC Study, the ITE Manual, or an alternative study acceptable to the Bureau of

Transportation for purposes of the transportation system development charge.

2. Credits. Credits are granted against the on-site portion of the stormwater system development charge in one of the following two cases:

a. Credits of up to 100% of the on-site portion of the stormwater system development charge are granted for areas draining, either in whole or in part, directly to the Willamette or Columbia Rivers, or to the Columbia Slough, provided that the discharge for which the credit is sought does not pass through reimbursable City stormwater facilities, and that the discharge meets all applicable water quality standards. Those applying for this credit must provide adequate documentation to demonstrate that the stormwater for which the credit is being sought flows from the site to those receiving bodies without passing through reimbursable City stormwater facilities. Development using stormwater facilities built under a public works permit, which convey stormwater runoff directly to one of the receiving bodies listed above without passing through other City stormwater facilities, are eligible for the up to 100% credit against the onsite charge.

b. A 100% credit is granted for areas draining to facilities providing effective on-site retention for a 100 year storm event with a safety factor of two, defined as a rainfall intensity of 8.28" per hour per square foot of impervious area. Those applying for this credit must provide adequate documentation to demonstrate this additional retention capacity, including testing of infiltration facilities, and that on-site flows are directed to these facilities.

c. No credits are granted against the off-site portion of the stormwater system development charge.

3. The stormwater system development charge is collected upon issuance of a building or connection permit. If desired, the applicant may pay these charges directly to the Bureau of Environmental Services after applying for, but before receiving a building permit. When the new building takes the place of a structure or impervious area that has existed in the last seven years, or does not add more than 500 square feet, or is a temporary structure, no development charge will apply. However, development charges, including penalties and interest charges, become due and payable from structures that originally were exempted from development charges as a temporary structure but are not removed within three years as

provided in the definition of temporary structures. Temporary structures are not exempt from paying draining service charges.

17.36.050 Partial and Full Exemptions of Sanitary and Stormwater System Development Charges for Affordable Housing Developments.

A. The purpose of this section is to reduce the costs of developing permanent affordable housing by waiving sanitary and stormwater system development charges for qualified affordable housing developments. This section advances a Council-recognized public policy goal to provide for a diversity of housing types to meet the needs of the citizens of the City.

B. The City will exempt qualified affordable housing developments from paying all or part of sanitary and stormwater system development charges required by this Chapter. The Applicant must apply for exemptions under this Section prior to the date the City issues the first occupancy permit on the new development. The City may reject applications received after the date of the first occupancy permit. 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 are eligible for an exemption. The balance of the new development that does not qualify for any exemption under this Section is subject to the full sanitary and stormwater system development charges. The Applicant has the burden to prove entitlement to exemptions so requested.

C. To obtain the exemption, the applicant must present to the Bureau of Environmental Services, at the time of Application, documentation from Portland Development Commission that the development qualifies for the exemption per Chapter 30.01 of this Code.

D. The City shall calculate exemptions in the same manner as other rented and owner-occupied properties. Non-residential properties or the non-residential portion of mixed-use developments are not eligible for exemptions provided by this Section.

E. The City shall require the recording of real property covenants in the deed records for properties receiving exemptions under this Section in order to ensure compliance, or to provide remedies for failure to restrict units, or both. Deed restrictions may be used by the Portland Development Commission in order to restrict sale prices and rents charged for exempt units, or to provide remedies for failure to restrict units, or both.

F. Applicants shall meet the following affordable housing qualifications to be exempt from paying all or a portion of sanitary and stormwater system development charges:

1. For purposes of this Section, "affordable" for rental housing means that the rent and expenses associated with occupancy such as utilities or fees, does not exceed 30% of the gross household income at the level of the rent restrictions. "Affordable" for ownership units means a purchase price for which the sum of debt service and housing expenses including an allowance for utilities and other required ownership fees, when compared to the annual gross income for a family at or below 100% of area median family income, adjusted for family size, does not preclude conventional mortgage financing.

2. Rental Units: The units receiving an exemption shall be affordable to households earning 60% or less of area median family income at time of occupancy and shall be leased, rented or made available on a continuous basis to persons or households whose incomes are 60% or less of area median family income, as adjusted by household size and as determined by the U.S. Department of Housing and Urban Development for the Portland Metropolitan Area. Such units shall remain affordable for a period of 60 years.

3. Owner-Occupied Units. The units receiving an exemption shall be affordable to households earning at or below 100% of area median income and shall be sold to persons or households whose incomes are at or below 100% of area median family income, as adjusted by family size and as determined by the U.S. Department of Housing and Urban Development for the Portland Metropolitan Area.

4. Per Section 30.01.040, the Bureau of Housing and Community Development and Portland Development Commission are responsible for enforcing property covenants and other agreements with applicants that are conditions of receiving exemptions provided by this Section.

a. In addition specific covenants and agreements required by the City as a condition of approval of an exemption application, qualified rental developments must adhere to the 60-year affordability requirements for rental housing developments, including qualifying requirements related to rents and occupancy.

b. In addition to specific covenants and agreements required by the City as a condition of approval of an exemption application, a qualifying ownership project must comply with applicable recapture or retention covenants.

c. In the event that an applicant violates the covenants, agreements or other requirements that were established by the City as a condition of approval of an exemption application, the City shall terminate the exemption and make due and payable all previously exempt portions of sanitary and stormwater system development charges at rates in effect at the time the City determines the violation.

d. If the exemption terminates within two years of initial building permit issuance, additional charges will be due and owing. These charges include a processing fee of $120 and carrying charges of 12% per year (1% per month), added to the sanitary and stormwater system development charges based on rates in effect at the time, and charged back to the date the exemption was granted. The City may collect reinstated sanitary and stormwater system development charges, processing fees, carrying charges and the actual costs of collections by recording a property lien pursuant to Title 22.

17.36.060 Agreements with Governmental Agencies for Sanitary Sewer and Stormwater Management Services.

The Director is authorized to enter into agreements for and on behalf of the City with any special service district or governmental agency authorized to contract on behalf of property outside the City but within the district or agency. The agreements may provide for payments to the City by the districts or agency, in lieu of payments by individual property owners or occupants. Bonds or other securities may be waived by the Director in agreements provided for in this Section. All other provisions of this Title applicable to sewer system connection charges, user charges or to agreements with individual property owners remain in full force and effect.

17.36.070 User Charges.

Sewer user service charges, as authorized by the Charter, are established and made effective as follows:

A. Sanitary Sewer Services. Except as otherwise provided by this Title, the City calculates and collects user charges for sanitary sewer services from ratepayers who cause or permit the discharge of sanitary sewage from a property in their possession into the public sewer system. The charges begin upon connection to the public sewer system. Charges for sanitary sewer services may include sanitary sewer volume charges, account service charges and penalties for non-payment or late-payment of sewer charges and other charges as provided for in this Chapter. The City calculates the following charges based on rates established, annually, by general ordinance:

1. Dwelling units. Charges for dwelling units are based on the volume of sewage discharge to the sanitary sewer system. The Bureau may elect to use the water meter consumption as the calculation for the sanitary sewage discharge. To avoid including irrigation water usage in this calculation, the Bureau will establish a procedure that allows for irrigation credit. When a water meter reading is not available, a sanitary sewer discharge estimate shall be made based on the ratepayer class of characteristics as determined by the Director.

2. Commercial, industrial and all occupancies other than residential. The City calculates charges for commercial, industrial and all occupancies other than residential based on the amount of incoming water volume as measured by the City water meter or information from the water district serving the property or by a Bureau approved meter that measures actual discharge volume. Discharge meters must meet the current standards for such meters as described by the Director. To establish reduced charges or credit for water not subject to sewer charges, ratepayers must comply with the requirements of this Chapter. If a sewer customer does not have a City meter or water district meter measuring the supply of water to the property, the private water supply must be metered in accordance with this Chapter. 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 based upon the impervious area producing the contaminated stormwater and the average rainfall or a discharge meter. The discharge will be charged based on sanitary sewer volume rates.

3. Combined dwelling units and other. Where dwelling units and other occupancies are combined on the same water supply, the City calculates charges for sanitary sewer service in the same manner as those for commercial, industrial and all occupancies other than residential.

B. Stormwater Management Services. Except as otherwise provided by this Title, the City calculates and collects user charges for stormwater management services based on rates established, annually by general ordinance. Ratepayers who receive a direct or indirect benefit from City stormwater management services are subject to the user charge. 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 Director will determine the ratepayer responsible for the user charge.

1. Billing Components. The user charge consists of the following components:

a. Stormwater On-Site. The user charge rate for the on-site component is 35% of the stormwater management services rate.

b. Stormwater Off-Site. The user charge rate for the off-site component is 65% of the stormwater management services rate.

2. Basis for charge. User charges are calculated based on the user's proportionate share of stormwater management services. For administrative purposes, the user's proportionate share is assumed to be perfectly correlated with the amount of impervious area on the user's site. Unless the Bureau measures actual site characteristics, impervious area is assumed to be the average impervious area for the user's class as shown in the most recent rate study.

3. Dwelling units. The City uses the following class averages of impervious areas for calculating user charges for dwelling units located on a single property or tax lot:

a. One and Two Dwelling Units - 2,400 square feet

b. Three Dwelling Units - 3,000 square feet

c. Four Dwelling Units - 4,000 square feet

d. Five or More Dwelling Units – Measured impervious area

4. Properties other than dwelling units. The City calculates the ratepayer's proportionate share of stormwater drainage system services based on the amount of impervious area on the site.

5. Drainage Districts. The City calculates and collects payments for stormwater management services from Multnomah Drainage District No. 1, Peninsula Drainage District No. 1, and Peninsula Drainage District No. 2 under an Intergovernmental Agreement. The district charges are made in lieu of user charges for properties located within the boundaries of the districts.

C. Willamette River/Portland Harbor Superfund. The City calculates and collects user charges for the Willamette River/Portland Harbor Superfund Program based on rates established, annually, by general ordinance. Ratepayers who receive a direct or indirect benefit from the public sewer system and City stormwater management services are subject to the user charge. The ratepayer identified on the City utility billing account is assumed to be the beneficiary of the program and

responsible for the user charge. If the property is not subject to other City utility charges, the Director determines the ratepayer responsible for the user charge.

1. Billing Components. The user charge appears as a single item on the City utility bill, and is the sum of two rate calculations:

a. Sanitary Volume. This portion of the user charge is calculated in the same manner as the user charge for sanitary sewer services, based on a Willamette River/Portland Harbor Superfund Sanitary Volume rate.

b. Impervious Area. This portion of the user charge is calculated in the same manner as the user charge for stormwater management services, based a Willamette River/Portland Harbor Superfund Impervious Area rate.

D. Service outside the City:

1. The City charges for the use of sanitary sewer and stormwater management services from properties outside the City based on rates established, annually, by general ordinance.

2. Business, industrial, commercial, and all other non-residential services outside the City:

a. The Director may require, and is authorized to enter into agreements for and on behalf of the City, permitting connection and providing sanitary sewer or stormwater management services to commercial and industrial properties outside the City when he/she finds such service feasible and appropriate. The Director may conduct such investigations as deemed necessary in connection with the application of any non-residential occupancy to connect with the public sewer system or stormwater management facility. The Director must approve the design and location of all sewers or stormwater management facilities prior to their connection. The City requires street opening permits from the appropriate authority in the jurisdiction wherein the sanitary sewer or stormwater management facility is located.

b. The Director may require the owner, tenant or lease holder to post a cash or surety bond in the sum of not over $4,000, as one of the conditions for entering into an agreement allowing connection from commercial or industrial property outside the City. The bond shall be deposited with the City Treasurer and shall be declared

forfeited upon certificate by the Director, approved by the Commissioner-in-Charge, in case of delinquency of more than 30 days in the payment of the sewer user service charge.

3. Determination of which property is outside the City. The Director determines whether any residential or business, industrial, commercial, institutional or other 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.

17.36.080 Special Provisions.

A. Establishing reduced charges or credit for water not subject to sewer user charges. Prior to any use of water that may be subject to reduced or special charges, and prior to installation of any meter for the purpose of obtaining reduced sewer charges, the owner must submit a written credit request for approval by the Director. A request for such credit must include a mechanical plan showing the proposed meter location, access route to the meter, the water supply or source, the cooling or other water using equipment, and the discharge point. At no time may a reduced charge or credit be given retroactively (prior to the date of approval); no reduced sewer rate or charge may be given until the Director has approved the request and the meter location plans and installation. Any meter or method, used for calculation of a reduced rate or credit, is subject to the administrative or special meter charge for each such meter or method as established, annually, by general ordinance. All meters used to obtain a reduced sewer user charge must conform to the provisions of this Chapter.

1. Clean water to sanitary or combined sewer charges. The Bureau calculates these charges based on the commercial sewer volume rate when uncontaminated groundwater or other uncontaminated water, such as that used for refrigerating or cooling purposes or condensed from steam and put to no other use, is discharged to a public sanitary or combined sewer under City control.

2. Clean water to storm only charges. The Bureau calculates these charges based on the commercial clean water to storm sewer volume rate when uncontaminated groundwater or other uncontaminated water, such as that used for refrigerating or cooling purposes or condensed from steam and put to no other use, is discharged to a public separated storm sewer and not connected to a combined sanitary system under City control.

3. Discharges from publicly owned drinking fountains. The Bureau calculates these charges based on the drinking fountain volume rate and

the volume of water that is discharged from publicly owned drinking fountains to a sanitary or combined sewer. Discharges from publicly owned drinking fountains to a public separated storm sewer are charged a volume rate for commercial clean water discharged to a storm sewer.

4. Water not subject to sewer charges. The Bureau may exempt from user charges water that is used in a manufactured product such as ice, canned goods or beverages; or for water lost by evaporation or used in irrigation on a written request for such credit. After approval by the Director, the owner or other person in control of the premises, must install meters or provide other means of determining the quantity of water so used to the satisfaction of the Bureau.

5. When clean water discharged to a public sewer system is not from a separate metered supply, the owner or other person in control of the premises, after approval by the Director, must install meters or provide other means of determining the quantity of water so used to the satisfaction of the Bureau.

B. Conditions for revoking reduced charges or credits.

1. Failure to repair a defective meter within 30 days after notice by the City that the meter is defective revokes the applicability of Paragraphs 1. and 2. of Subsection A. above. In such cases, user charges, at the regular rate, must be paid on the full amount of water passing through the supply meter during these 30 days. The regular sewer rate continues in effect until such time as the owner or person in charge of the premises formally notifies the Director that the meter has been repaired. At no time may a reduced charge or credit be allowed retroactively, or for a period in which the meter is defective.

2. Failure to report quantities of water subject to reduced charge or credit for two consecutive months revokes the applicability of Paragraphs 1. and 2. of Subsection A above. In such cases, user charges, at the regular rate, must be paid on the full amount of water passing through the supply meter during these 60 days. The regular sewer rate continues in effect until such time as the owner or person in charge of the premises formally notifies the Director that the reports will continue. At no time may a reduced charge or credit be allowed retroactively, or for a period in which no reports were submitted.

C. Meters required. Where private meters are used to determine the amount of water reaching the sewer, the owner or person in charge of the premises must give City employees the right of access at all reasonable times for the purpose of reading,

inspecting or testing the meter. The owner is responsible for purchasing, installing, maintaining, and calibrating the private meter and must comply with all provisions in this Title. Failure of the owner, his lessee, or others acting under him to maintain the meter in good working order constitutes a violation of this Chapter and during the period of the meter's non-operation and pending the proper repair and reinstallation of the meter, the account may be billed on the basis of three times the normal water usage or in such an amount as deemed proper by the Director.

1. In cases where water is supplied solely from a private source or sources such as wells, springs, rivers or creeks, or forms a partial supply in addition to that furnished by the water system of the City, the private supply must be metered and any meters so used must conform to the provisions of this Chapter. Residential properties may elect to be billed based on the characteristics of this class of user as determined by the Director.

2. Discharge meters. Where there are several water supplies or various uses of water that would be eligible for credit or charges under the various Sections of this Chapter, upon approval of the Director, a discharge meter may be installed in lieu of several submeters or other measurement methodology.

D. Estimating wastewater discharges. User charges as provided in this Chapter are applicable to all wastewater discharges to the City sewer system regardless of the source. In unusual circumstances where the wastewater is not from a fixed location, such as ships, barges, houseboats and other movable facilities or dwelling units, a method of determining the volume provided by the user may be used if approved by the Director. Otherwise, the Director estimates the volume of water to which user charges apply and this determination is final. The rate of charge is the same as though the water originated from a local, public or private source.

E. Where the user charges established by Code or general ordinance, are inappropriate for the service provided, the Director may establish the appropriate charges based on the unit costs developed in the most recent rate study. The new charge so established must be filed with the Council Clerk and may be reviewed by the Council on the motion of any member of the Council.

17.36.090 Meters.

Meters that are used under the provisions of this Chapter must conform to the conditions set forth in this Section, and must be approved by the Director as to type, maintenance, calibration schedule, size and location before installation.

A. All meters must register in cubic feet.

B. Meters installed on water systems supplied from private or public sources and used to measure cooling, irrigation, evaporation or product water for the purpose of obtaining reduced sewer charges must be connected in such a manner as to register only that portion of the water supply used for that purpose, and not used for sanitary purposes.

C. Meters placed below the ground or pavement surface must have the top of the meter not more than 8 inches below the surface and must be enclosed in a standard water meter box and cover as used by the Portland Water Bureau. Meters located above the ground or floor level must not be more than 3-1/2 feet above the ground or floor level.

D. All meters must be located in an area that is accessible at all times; the meter must be so located that no locked door or gate shall be encountered by a City employee when inspecting the meter. Meters must not be located adjacent to dangerous machinery or structural hazard; the extent of such hazards shall be determined by the Director.

E. For purposes of calculating user charges, owners of meters must implement a program to ensure meter accuracy. The program should consider the manufacturer's periodic maintenance and calibration requirements. All maintenance and calibration records must be retained and available for review by City personnel.

17.36.100 Clean River Rewards.

A. Objectives. The objectives of the Clean River Rewards are to increase ratepayer control over stormwater management charges and to advance City environmental goals. The City achieves these objectives by providing economic incentives, technical assistance, and environmental education to ratepayers who control and manage the quality and quantity of stormwater runoff on their private property.

B. Authority. The Director is authorized to establish and administer Clean River Rewards, and promulgate administrative rules to implement the program. The rule must contain the following elements:

1. definitions for all terms and concepts that are unique to Clean River Rewards, unless otherwise referenced in City Code;

2. criteria to be used by the City to determine eligibility for Clean River Rewards;

3. methods for calculating the amount of incentives and discounts to be awarded to eligible registrants;

4. procedures for verifying the validity and accuracy of incentives and discounts, and enforcing administrative rules; and

5. procedures for review and reconsideration of Bureau decisions upon request of ratepayers.

17.36.110 Extra-Strength Wastewater Charges.

A. Wastewater discharged to a City sewer, either directly or indirectly, is subject to the extra-strength sewage charge if the discharge has a biochemical oxygen demand or a total suspended solids concentration in excess of concentrations determined by the Director. The Director may establish concentrations of other pollutants which are to be subject to extra-strength sewage charges, and for the period until the next rate study, the rates to be charged for exceeding those levels, as established, annually, by general ordinance. Payment of the extra-strength sewage charge does not relieve the discharger of responsibility for all other applicable provisions of Chapter 17.34 Sanitary Wastewater Discharges.

B. Basis of extra-strength sewage charge rates.

1. Monitoring. The average concentration of daily representative samples taken over a representative period of 5 days is used to begin an extra-strength sewage charge rate for a rolling average, except when another period is specified by the Director. Samples are taken at an approved sampling manhole or other appropriate location, as determined by the Director, so that samples will be representative.

a. Self-monitoring. The Director may authorize reporting by users for the purposes of calculating extra-strength sewage charge rates.

b. Self-monitoring data. The Director may allow a user to submit monitoring data in support of extra-strength sewage charge rate calculations. Samples of wastewater being discharged into the sewer system must be representative of the discharge.

c. Split samples. The Director may allow samples collected by the City for the purpose of determining an extra-strength sewage charge rate be split with the user, as provided for in procedures issued by the Director.

d. Analytical procedures. All analytical data submitted for calculating extra-strength sewage charge rates must be in accordance with procedures approved in Guidelines Establishing Test Procedures for the Analysis of Pollutants, contained in 40 CFR 136 and amendments thereto as published in the Federal Register.

e. Monitoring reports. Self-monitoring reports must include sufficient information, for purposes of calculating the rolling average for Extra Strength Sewer Charges. At no time shall the number of Extra Strength Sewer Charges slugloads exceed two per calendar year.

f. Other charge computations. If unusual effluent conditions make calculation by the composite method difficult or impossible, the Bureau may implement another method of sampling and computation acceptable to the Director, and based on the rates established, annually, by general ordinance.

g. Additional sample requests; fees. Any user subject to rolling average monitoring may request the City to collect samples in excess of the prescribed criteria. Requests for the City to collect additional samples must be submitted in writing and accompanied by full payment, in accordance with the resampling fees established, annually, by general ordinance.

h. Slugloads. The Director may allow the slugload provision as defined in Chapter 17.34 of this Code for purposes of Extra Strength Sewer Charges if the following conditions are met:

(1) The discharge is non-representative of the industrial discharge;

(2) The slugload was reported to the City within 24 hours of the incident;

(3) The sample result from the slugload exceeds 3 times the established standard deviation. Once the Director allows the slugload provision, the City will follow the standard procedure for slugload as defined in Chapter 17.34 of this Code. The sample results will be used for calculating a single Extra Strength Sewer Charge based on the duration of the slugload and the concentrations of the results. The results will not be used for purposes of calculating the rolling average for Extra Strength Charges. The number of

Extra Strength Sewer Charges slugloads may not exceed two per calendar year.

2. Concentration. Pollutants in excess of the allowable concentrations, specified in this Title, and by general ordinance, are subject to the extra-strength sewage charge rate (in dollars per 100 cubic feet) for the period throughout the time interval between sample periods or as defined by the Director.

3. Volume. The volume used to bill the extra-strength charge must be the total metered water supply to the premises. However, where the industrial wastewater is discharged separately from domestic sanitary wastes or cooling waters, and the industrial user provides a meter or other acceptable method of determining the quantity of water not subject to the extra-strength sewage charge, then an appropriate allowance for such other uses must be made.

C. Billing. Extra-strength sewage charges are either included with the City utility bill or are billed separately by the City Auditor. Extra-strength sewage charges are enforceable and collectable in the same manner as water and sewer user charges. If such charges are not paid pursuant to Title 21 of this Code, such nonpayment is cause for termination of water and/or sewer services.

D. Minimal charges; suspension. The Director may establish a minimum limit for periodic extra-strength charges. The billing for all accounts whose periodic extra-strength sewage charges are below this minimum limit will be suspended until such time as they are found to be higher.

E. Adjustments. The Director may sample sewage strength as outlined in this Section and adjust charges where applicable at any time in accordance with the most recent analysis.

17.36.120 Other Charges.

Building plan review fees. The Bureau collects fees for the review of building plans and land use proposals to ensure compliance with requirements for sewage disposal, stormwater management, and for determining routes of service. Fees are established annually, by general ordinance, and paid at the time the plans or proposals are submitted for review to the City.

17.36.130 Computing and Billing.

In cases where City utility bills apply, the user charges, provided in this Chapter, are computed monthly, bimonthly, or quarterly, and billed to the responsible party described in Code Section 21.16.030 Billing Responsibility at the same time as the user charges for water service and added thereto; or otherwise, as may be authorized by the Council.

When billed with the utility bill, user charges are due and payable on the dates and at the places provided for the payment of user charges for water service. 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.

17.36.140 Certain Installations Unlawful.

It is unlawful to so install, change, bypass, adjust, or alter any metering device or any piping arrangement connected therewith as to show the quantity of water reaching the public sewer under City control to be less than actual quantity.

17.36.0150 Identification of Inspectors.

Each City employee going upon private premises for the purpose of reading, inspecting or testing any metering device installed under the provisions of this Title, must wear, in a conspicuous place, upon the exterior of his or her clothing a readily discernible badge identifying the employee as a sewer user service inspector. Each City employee, when acting as a sewer user service inspector, must also carry credentials from the Bureau of his or her employment, which he or she must show upon demand of any owner or person in charge of the premises entered.

17.36.160 Collection.

A. Use service charges are a personal obligation of the ratepayer and shall become due, and be collected monthly, bimonthly, or quarterly, coincident with user charges for water service. For ratepayers who do not receive water service from the City, the Bureau will cause the user charges to be computed and billed monthly, bimonthly, or quarterly. Any bill for a user charge, whether included with user charges for water service or otherwise, is delinquent and subject to collection charges if not paid in accordance with the collection schedule published in the annual rate ordinances. Nonpayment of delinquent user charges will result in water shutoff when the premises are furnished water service by the City; pursuant to Title 21 of this Code.

B. All charges for services provided directly by the City are chargeable to the user of said service at that premises (or any former premises where services were supplied). If the premises are not in use, all charges (not including charges incurred by a prior tenant other than the owner) are the responsibility of the owner as the person with the right to possession of the premises. A property owner or his agent may become obligated for charges for furnishing such services to the user by accepting responsibility for payment, or by agreement with the City. Where a user or property owner has a delinquent bill for one premises, this delinquency is a charge against the user or property owner (for sewer service obtained) at any of his or her other premises serviced by the City.

C. The Director, with approval of the Commissioner-in-Charge, may discontinue sanitary sewer service by disconnecting and plugging the sewer service line to properties whose delinquent user charges exceeds $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 disconnect the sewer not less than 30 days prior to disconnection. Payment of the delinquent amount, including outstanding user charges, accrued interest and collection costs, and all costs associated with disconnecting and reconnecting the sewer line, must be received by the City before the property may be reconnected to the sewer. The delinquent amount remains the responsibility of the ratepayer. In the event a ratepayer who is not the owner terminates their lease and moves from a disconnected property before reconnection has occurred, the City will reconnect the property and collect the cost as well as all delinquent amounts from the ratepayer who originally incurred the charges.

17.36.170 Deposit and Application.

An application, deposit, or both, for sanitary sewer or stormwater management services may be required from all new ratepayers, ratepayers whose service has been shut off for nonpayment, or persons with unsatisfactory credit who are requesting services. Unsatisfactory credit is defined as shut off for nonpayment of water or sewer charges within the past year. Failure to provide either the application, deposit, or both within the due date specified by the City may result in discontinuance of service.

17.36.180 Adjustment of Bills.

A. When the Bureau determines that a billing error has occurred, the Bureau 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.

B. 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 Director make authorize an adjustment to the ratepayer of a closed utility account, more than six months after the issuance of the account's final bill, based on the following criteria:

1. The Bureau finds that the ratepayer was billed for sanitary sewer services for a property that was not connected to the City's sewer system; and

2. The error is discovered after the six month deadline for adjustments to a final bill; and

3. The request is made in writing by the ratepayer of record at the time the billing error occurred; and

4. The adjustment is limited to the sanitary sewer user charge; and

5. The Director finds that the adjustment is necessary to protect the financial condition of the sanitary sewer utility.

C. Adjustments will be in the form of credits or additional charges to active utility accounts. The City may not issue refunds for billing adjustments unless approved by the Director. Refunds are chargeable to the Sewer System Operating Fund.

D. Ratepayers who receive a back billing or a delayed billing will be offered the opportunity to pay the balance due over a set period based on current City collection policies.

Chapter 17.37

DOWNSPOUT DISCONNECTION

(Replaced by Ordinance No. 182467,
effective February 6, 2009.)

Sections:

17.37.010 Purpose.
17.37.015 Rule Making.
17.37.020 Definitions.
17.37.030 Establishment of Downspout Disconnection Program.
17.37.040 Disconnection Procedures.
17.37.050 Disconnection Reimbursement.
17.37.080 Program Enforcement.
17.37.110 Interference with Disconnection Activities Unlawful.
17.37.120 Liability.
17.37.130 Civil Remedies.
17.37.150 Bureau Actions.
17.37.140 Notice Sufficiency.
17.37.160 Severability.

17.37.010 Purpose.

The purpose of downspout disconnection is to remove stormwater from the combined sewer system in order to reduce the amount of combined sewer overflows which enter the Columbia Slough and Willamette River. Removing stormwater from the combined sewer can reduce the cost of large conveyance, storage, and treatment facilities needed to capture and treat stormwater or combined sewage in order to meet the goals of the Amended Stipulation and Final Order with the Department of Environmental Quality. Flow removal goals, policies and options for disconnection will be determined by the Director depending on the location of the property within the Combined Sewer Overflow area.

17.37.015 Rule Making.

A. Public Review. Any rule adopted pursuant to this section shall require a public review process. Not less than thirty days before such public review process, notice shall be given by publication in a newspaper of general circulation. The Office of Neighborhood Involvement shall be notified at least 30 days in advance of the public review process. Such notice shall include the place, time, and purpose of the public review process and location at which copies of the full set of the proposed rules may be obtained.

B. Adoption of Rules.

1. During the public review, a designee of the Director shall hear testimony and receive written comments concerning the proposed rules. The Director shall review the recommendation of his or her designee, taking into consideration the comments received during the public review process and shall either adopt the proposal, modify or reject it.

2. If a substantial modification is made to the rules submitted for public review, the Director may adopt the modification as Interim Rules or shall provide an additional public review prior to adoption.

3. Unless otherwise stated, all rules shall be effective upon adoption by the Director and shall be filed in the Office of the Director.

C. Interim Rules.

1. Notwithstanding Subsections 17.37.015 A. and B., an interim rule may be adopted without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties. The rule should include the specific reasons for such prejudice.

2. Any rule adopted pursuant to this paragraph shall be effective for a period of not longer than 180 days.

3. After adoption, public notice of interim rules shall be given by publication in a newspaper of general circulation and notice sent to the Office of Neighborhood Involvement. Such notice shall include the location at which copies of the full set of the interim rules may be obtained.

17.37.020 Definitions.

For the purpose of this Chapter, the following definitions shall apply:

A. **Downspout.** The conductor that conveys storm water from the gutter on the exterior of a building or other structure to another place of disposal.

B. **Director.** The Director of Environmental Services or his or her designated representative.

C. **Owner.** Each property's owner of record according to County assessment and taxation records.

D. **Program area.** Properties located within the boundaries of the eastside combined sewer overflow area. The program area is shown on the map attached as Figure 7.

E. **Eligible property.** Property located within the disconnection area that is either:

1. developed for uses covered by the "residential use" category in PCC Chapter 33.920; or

2. is developed for uses covered by the "commercial use" category in PCC Chapter 33.920, and has site conditions that would allow for safe and effective disconnection as identified in Section 17.32.040.

F. **Disconnection.** Physically plugging or capping the direct stormwater connection to the combined sewer and redirecting the stormwater onto the property either on the surface of the property or under the 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 storm connection through a private 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 which 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 subsurface stormwater facilities are required to meet the requirements of the Stormwater Management Manual.

G. **Combined Sewer.** A sewer which carries both sanitary sewage and stormwater.

H. **Workers Authorized By the Director.** Includes, but is not limited to, City employees, neighborhood volunteers including members of community organizations, members of federal community service programs, and contractors hired by the City.

17.37.030 Establishment of Downspout Disconnection Program.

A program is established to remove stormwater from the combined sewer at properties with direct stormwater connections to the property's external sanitary sewer lateral. The existence of a direct connection will be determined by the City using methods including

researching City Plumbing or Building Records and verifying the information with site surveys of eligible properties.

A. **Deadlines.** The Downspout Disconnection Program shall 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.

B. **Program Phases.** The Director will determine appropriate phases and methods for implementing the Program in the program area in order to meet the deadlines.

1. Within the program area, the Director may establish voluntary target areas and encourage property owners in these areas to disconnect their downspouts. The Director will periodically compare program results to the flow removal goals and deadlines in the CSO Management Plan, Amended Stipulation and Final Order, and design memoranda for basin projects. If the Director concludes that a goal will not be met on schedule, the Director will establish a mandatory program in the appropriate area.

2. Within the program area, the Director may establish mandatory target areas and require property owners in such areas to disconnect their downspouts. The decision to establish mandatory disconnection areas shall be based on consideration of the following factors:

a. amount of stormwater flow which must be diverted according to the CSO Management Plan, Amended Stipulation and Final Order and project design memoranda,

b. amount of time available to achieve necessary stormwater flow removal,

c. feasibility of implementing programs which represent a significant dollar savings over other alternate plans to reduce CSOs,

d. ability to reduce costs of conveyance to other parts of the sewer system for treatment where sewer basins are in remote areas at the end of interceptors making capture and conveyance of CSOs costly,

e. differing soil and geographic conditions affecting water percolation into the soil and groundwater,

f. importance of severely reducing or eliminating CSOs in sensitive areas such as City parks or natural areas,

g. the sizes of major conveyance and storage facilities which are designed dependent upon a certain rate of stormwater removed from the combined sewer system.

The Director will prepare written findings describing the reasons for establishing each mandatory program area. The findings will be filed with the Council Clerk and shall be reviewed by the Council upon the request of any member of the Council.

3. Disconnection procedures and policies in mandatory program areas will be described in the Downspout Disconnection Program Administrative Rules.

C. **Exceptions.** The Director may decline to disconnect a connected downspout, and may exempt downspouts from disconnection requirements, upon his or her determination that the disconnection would not meet the standards for safe disconnection, is not prudent or is not feasible. This includes situations where disconnection could result in possible damage to the property or adjoining properties, risk to health and safety of occupant, create a possible nuisance to the property, or involve excessive cost.

D. **Access to Eligible Property.** For the purpose of administering this code chapter, the Director or other workers authorized by the Director 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 which have been disconnected.

E. **Partnerships With Community Organizations.** The Director is authorized to establish partnerships with equitable, charitable, neighborhood based groups. Such groups may include, but are not limited to, neighborhood associations and other association organizations such as neighborhood watch groups, neighborhood emergency response teams, community development corporations (CDCs), church groups, youth groups. Such partnerships will provide downspout disconnection services for owners who desire assistance with the disconnection work.

F. **Ownership of private stormwater systems.** The property owner shall own the new private stormwater management system and be responsible for ensuring that the new private system is properly maintained and operated.

17.37.040 Disconnection Procedures.

All downspouts that are disconnected from the combined sewer through this program shall conform to the disconnection methods or systems approved by the Director. Downspouts may be disconnected with roof water redirected onto the surface of the property, underground the surface of the property, through a curb cut (roof discharge to curbed streets), through a private lateral which directly connects the property to a public storm sewer, or other onsite stormwater management system.

A. Disconnection procedures in mandatory program areas will be described in the Downspout Disconnection Program Administrative Rules.

B. Standards for safe disconnection to the surface of the property shall be included in the BES Stormwater Management Manual or in the Bureau of Development Services Program Guide for Combined Sewer Area Downspout Disconnection at Existing Properties.

C. Standards for safe disconnection to an underground disposal system or other private stormwater management systems shall be included in the Oregon Plumbing Specialty Code, the Stormwater Management Manual, or in the Bureau of Development Services Program Guide for Combined Sewer Area Downspout Disconnection at Existing Properties.

D. Standards for safe disconnection to a curb cut (roof discharge via rain drain to curbed streets) or private lateral shall be included in the Stormwater Management Manual, or the Sewer and Drainage Facilities Design Manual.

E. Technical assistance at participating properties.

1. In voluntary program areas, the Director will, on request from an owner, provide technical assistance to determine the appropriate method of disconnection for any downspout.

2. In mandatory program areas, the Director will provide technical assistance to determine the appropriate plan for each downspout at each property.

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).

17.37.050 Disconnection Reimbursement.

Disconnection reimbursement will be paid in the following manner:

A. Disconnection reimbursement will be made for the least expensive method of disconnection that will be effective, as determined by workers authorized by the Director. Reimbursements will not be processed until the new stormwater system has been inspected and approved. Owners will not be reimbursed for downspouts disconnected prior to receiving official notification from the Downspout Disconnection Program that they are eligible for downspout disconnection reimbursement. Reimbursement will only be provided within the target areas identified in Subsections 17.37.030 B.1. and 2.

B. Downspout disconnection to surface systems will be reimbursed as follows:

1. Owners who complete the disconnection work themselves or use their own contractor and receive a satisfactory inspection will be compensated according to the Downspout Disconnection Program Administrative Rules.

2. Owners who receive supplies at no charge from the City for their disconnection work will be compensated according to the Downspout Disconnection Program Administrative Rules.

3. When the Director believes that a surface system will provide safe and effective disconnection, owners who wish to install an underground system , curb cut, or other private stormwater management system which is more costly must pay for their preferred system and will be compensated according to the Downspout Disconnection Administrative Rules. Property owners are responsible for obtaining city permits and any necessary review and inspection for private stormwater management systems.

4. Community organizations authorized by the Director to do disconnection work for owners who request assistance will be reimbursed according to the Downspout Disconnection Program Administrative Rules.

5. Owners whose downspouts are satisfactorily disconnected by other workers authorized by the Director and at no charge to the owner will receive no reimbursement.

C. The Director is authorized to make reimbursement payments to property owners from funds within the Sewer System Operating Fund.

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 hereby declared a nuisance and subject to abatement or correction. Whenever the Director believes such a nuisance exists, a notice shall 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 shall attempt to bill the property owner for the costs of disconnection from the combined sewer.

B. **Civil Remedy.** The City shall have the right to 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 shall be the costs for abatement by the City, administrative costs, permit fees, overhead costs, penalties, and other charges as determined by the Director.

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. Appeal. Property owners or their agents may request an administrative review as described in the Downspout Disconnection Administrative Rules to contest the

city's declaration of a nuisance or to request an extension in the abatement time frame. If the appellant is unsatisfied with the BES staff response they may appeal the request to the City Code Hearings Officer as specified in Title 22 and in the Downspout Disconnection Program Administrative Rules.

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 shall be billed to the property owner of the property in accordance with the provisions of Chapter 22.06. If the administrative fee remains unpaid after 90 days, the administrative fee shall 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 shall be 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 shall 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 shall have the right to 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 shall be the costs for abatement by the City, administrative costs, permit fees, overhead costs, penalties, and other charges as determined by the Director.

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 shall 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 shall not render the notice void.

17.37.150 Bureau Actions.

All City Bureaus shall, 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 shall 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, shall not be affected.

Chapter 17.38

DRAINAGE AND WATER QUALITY

(Chapter replaced by Ordinance No. 173330, effective June 4, 1999.)

Sections:

17.38.010 Authority.
17.38.015 Intent.
17.38.020 Definitions.
17.38.025 Rule Making.
17.38.030 Protection of Drainageway Areas.
17.38.035 Drainage Management Policies and Standards.
17.38.040 Stormwater Management Facilities Required.
17.38.041 Parking Lot Stormwater Requirements.
17.38.045 Enforcement.
17.38.050 Erosion Control Required.

17.38.010 Authority.

(Amended by Ordinance No. 174745, effective August 25, 2000.) The Director of Environmental Services is responsible for administering the requirements of this Chapter. The Director has the authority and responsibility to adopt rules, procedures, and forms to implement the provisions of this chapter and to maintain a Stormwater Management Manual.

17.38.015 Intent.

(Amended by Ordinance No. 182144, effective September 26, 2008.) The intent of this Chapter is to provide for the effective management of stormwater, groundwater, and drainage, and to maintain and improve water quality in the Watercourses and Water Bodies within the City of Portland as described in Section 17.38.035.

17.38.020 Definitions.

(Amended by Ordinance Nos. 174745, 176561, 176783, 180037 and 182144, effective September 26, 2008.)

A. "Approved Drainage System." A system approved by BES which, in general, shall adequately collect, convey, treat and or dispose of stormwater runoff or other site discharge. Approved systems shall meet all requirements and specification laid out in this code or in any BES design guidance document plus any applicable plumbing code provisions relating to the piped portions of any system.

B. “Building Permit”. A permit required by state administrative rule or the City Code for the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal or demolition of a building or structure or any appurtenances connected or attached to such buildings or structures.

C. "Capacity." The flow volume or rate that a facility (e.g., pipe, pond, vault, swale, ditch, drywell, etc.) is designed to safely contain, receive, convey, reduce pollutants from or infiltrate to meet a specific performance standard. Performance standards for pollution reduction, flow control, conveyance, and infiltration/discharge, vary by facility depending on location.

D. "Combination Facilities." Systems that are designed to meet two or more of the multiple objectives of stormwater management as detailed in the Stormwater Management Manual.

E. “Conveyance.” The transport of stormwater or wastewater from one point to another point.

F. "Director." The Director of the Bureau of Environmental Services, or the Director's designee.

G. “Discharge.” A discharge is any disposal, injection, dumping, spilling, pumping, emitting, emptying, leaching or placing of any material so that such material enters or is likely to enter a waterbody, groundwater, or drainage conveyance structure such as a pipe or ditch.

H. “Discharge Point.” The ultimate destination for the stormwater leaving a particular site, also known as the stormwater disposal point. Discharge can be through:

1. Onsite infiltration (surface infiltration facilities, drywells, sumps and soakage trenches, or

2. Offsite flow to ditches, drainageways, rivers, streams, public or private separate stormwater piped systems, or combination sewers.

I. “Discharge Rate.” The rate of flow expressed in cubic feet per second (cfs).

J. "Disposal." See definition of Discharge Point.

K. "Drainageway." An open linear depression, whether constructed or natural, which functions for the collection and drainage of surface water. It may be permanently or temporarily inundated.

L. "Groundwater." Subsurface water that occurs in soils and geological formations that are fully saturated. Groundwater fluctuates seasonally and includes perched groundwater. 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, rainwater infiltration into excavations and subsurface water associated with construction or property management dewatering activities.

M. "Impervious Surface / Area." Any surface that has a runoff coefficient greater than 0.8 (as defined in the City's Sewer and Drainage Facilities Design Manual). Types of impervious surfaces include rooftops, traditional asphalt and concrete parking lots, driveways, roads, sidewalks and pedestrian plazas. Note: Slatted decks are considered pervious. Gravel surfaces are considered pervious unless they cover impervious surfaces or are compacted to a degree that causes their runoff coefficient to exceed 0.8.

N. "Infiltration." The percolation of water into the ground. Infiltration is often expressed as a rate (inches per hour) which is determined through an infiltration test.

O. "Offsite Stormwater Facility." Any stormwater management facility located outside the property boundaries of a specific development, but designed to provide stormwater management benefits for that development.

P. "Onsite Stormwater Facility." Any stormwater management facility located within the property boundaries of a specific development, and designed to provide stormwater management benefits for that development..

Q. "Pollutants of Concern." Watershed-specific parameters identified by the Oregon Department of Environmental Quality (DEQ) as having a negative impact on the receiving water body. Pollutants of concern can include suspended solids, heavy metals, nutrients, bacteria and viruses, organics, volatiles, semi-volatiles, floatable debris and increased temperature.

R. "Practicable." Available and capable of being done as determined by the Director, after taking into consideration cost, resources, existing technology, and logistics in light of overall project purpose.

S. "Public Works Project." Public Works Project means any development conducted or financed by a local, state, or federal governmental body and includes Local

Improvements and Public Improvements as defined in Title 17, PUBLIC IMPROVEMENTS.

T. "Redevelopment." Any development that requires demolition or complete removal of existing structures or impervious surfaces at a site and replacement with new impervious surfaces. Maintenance activities such as top-layer grinding, re-paving (where the entire pavement is not removed) and re-roofing are not considered redevelopment. Interior remodeling projects and tenant improvements are also not considered to be redevelopment. Utility trenches in streets are not considered to be redevelopment unless more than 50 percent of the street width is removed and re-paved.

U. "Site Map." For purposes of this code section, a site map shall show the stormwater management facility location in relation to building structures or other permanent monuments on the site. The Site map shall depict location of sources of runoff entering the facility and the discharge point and type of receiving system for runoff leaving the facility.

V. “Stormwater.” Water that originates as precipitation on a particular site, basin, or watershed. Also referred to as runoff.

W. Stormwater Management." The overall culmination of techniques used to reduce pollutants from, detain, retain, or provide a discharge point for stormwater to best preserve or mimic the natural hydrologic cycle, to accomplish goals of reducing combined sewer overflows or basement sewer backups, or to fit within the capacity of the existing infrastructure.

X. "Stormwater Management Facility." A technique used to reduce pollutants from, detain, retain, or provide a discharge point for stormwater to best preserve or mimic the natural hydrologic cycle, to accomplish goals of reducing combined sewer overflows or basement sewer backups or to fit within or improve the capacity of existing infrastructure.

Y. “Temporary Structure.” A structure shall be deemed temporary if it is a separate and distinct entity from all other structures and it is created and removed in its entirety, including impervious area associated with the structure, within a continuous period of three years or less.

Z. "Tract." A tract is a section of land set aside from development during the Land Division phase of development. Tract as used in this code section shall be the definition of tract as described in Title 33 of the City Code.

AA. "Water Body." Water bodies include coastal waters, rivers, sloughs, continuous and intermittent streams and seeps, ponds, lakes, aquifers, and wetlands.

BB. "Watercourse." A channel in which a flow of water occurs, either continuously or intermittently, with some degree of regularity. Watercourses may be either natural of artificial.

CC. "Wetland." 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. Specific wetland designations shall be made by the U.S. Army Corps of Engineers and the Oregon Department of State Lands.

17.38.025 Rule Making

(Amended by Ordinance No. 182144, effective September 26, 2008.)

A. Public Review. Any rule adopted pursuant to this section shall require a public review process. Not less than thirty days before such public review process, notice shall be given by publication in a newspaper of general circulation. The Office of Neighborhood Involvement shall be notified at least 30 days in advance of the public review process. Such notice shall include the place, time, and purpose of the public review process and location at which copies of the full set of the proposed rules may be obtained.

B. Adoption of Rules.

1. During the public review, a designee of the Director shall hear testimony and receive written comments concerning the proposed rules. The Director shall review the recommendation of his or her designee, taking into consideration the comments received during the public review process and shall either adopt the proposal, modify or reject it.

2. If a substantial modification is made to the rules submitted for public review, the Director may adopt the modification as Interim Rules or shall provide an additional public review prior to adoption.

3. Unless otherwise stated, all rules shall be effective upon adoption by the Director and shall be filed in the Office of the Director.

4. The Stormwater Management Manual shall be the main administrative rule used to implement this Title.

C. Interim Rules.

1. Notwithstanding paragraphs 17.38.015 A. and B., an interim rule may be adopted without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties. The rule should include the specific reasons for such prejudice.

2. Any rule adopted pursuant to this paragraph shall be effective for a period of not longer than 180 days.

3. After adoption, public notice of interim rules shall be given by publication in a newspaper of general circulation and notice sent to the Office of Neighborhood Involvement. Such notice shall include the location at which copies of the full set of the interim rules may be obtained.

D. Initial Rules. Notwithstanding sections 17.38.015 A.-C. above, the rules contained in the Stormwater Management Manual filed with the Council in conjunction with Ordinance No. 173330 may be adopted by the Director without further public review.

17.38.030 Protection of Drainageway Areas.
(Added by Ordinance No. 176561; amended by Ordinance Nos. 176783 and 182144, effective September 26, 2008.)

A. Authority. The Director may require drainage reserves or tracts over seeps, springs and drainageways as necessary to preserve the functioning of these areas and to limit flooding impacts from natural and man made channels, ditches, seeps, spring, intermittent flow channels and other open linear depressions. Standards and criteria for imposing drainage reserves or tract requirements shall be adopted by administrative rule. Placement and/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. Drainage reserve or tract requirements may be imposed during land use reviews, building permit review or other development process that require Bureau of Environmental Services review.

B. Required Management of the Drainage Reserve. Storm drainage reserves or tracts shall remain in natural topographic condition. No private structures, culverts, excavations, or fills shall be constructed within drainage reserves or tracts unless authorized by the BES Chief Engineer by administrative rules found in the Stormwater Management Manual. All changes must also comply with other zoning regulations as described in Title 33. Encroachment agreements can be made between the property owner and the City.

C. Implementation. BES has authority to identify and implement protections for drainageways during multiple development review processes, including land use reviews and building permit reviews. The early identification efforts will consider the ability of developers to design around drainage reserve areas.

17.38.035 Drainage Management Policies and Standards.
(Amended by Ordinance Nos. 174745, 176561, 176783, 176955, 180037 and 182144, effective September 26, 2008.)

A. Stormwater shall be managed in as close proximity to the development site as is practicable, and stormwater management shall avoid 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. Surface water discharges from onsite facilities shall be discharged to an approved drainage facility.

1. The City may initiate individual agreements with property owners to manage stormwater flows through alternative methods to onsite controls:

a. In joint facilities where public and private property flows co-mingle.

b. In offsite areas that are "traded" for required onsite management areas related to new and redevelopment. The City may require more than a 1:1 exchange on the amount of required management area.

B. The quality of stormwater leaving the site after development shall be equal to or better than the quality of stormwater leaving the site before development, as much as is practicable, based on the following criteria:

1. Stormwater management facilities required for development shall be designed, installed and maintained in accordance with the Stormwater Management Manual, which is based on achieving at least 70% removal of the Total Suspended Solids (TSS) from the flow entering the facility for the design storm specified in the Stormwater Management Manual.

2. Land use activities of particular concern as pollution sources shall be required to implement additional pollution controls including but not limited to, those management practices specified in the Stormwater Management Manual.

3. Development in a watershed that drains to streams with established Total Maximum Daily Load limitations, as provided under the Federal Clean Water Act, Oregon Law, Administrative Rules and other legal mechanisms shall assure that stormwater management facilities meet the requirements for pollutants of concern, as stated in the Stormwater Management Manual.

4. Stormwater discharge which is not practicable to fully treat to the standards of this Section and the Stormwater Management Manual, shall be either:

a. Managed in an offsite facility or

b. Given the option of paying a stormwater offsite management fee. The Bureau will employ a methodology for calculating the fee that is based upon an average unit cost of onsite facilities where such facilities would be effective and establish the calculation method and fee by rule. The stormwater offsite management fee collected shall be placed in a mitigation account to be used to mitigate the impacts that arise from offsite discharge of stormwater runoff.

5. Not withstanding Subsection 17.38.035 B.4., for any parcel created after the effective date of this Chapter, the development shall fully treat all stormwater:

a. Onsite, or

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 Bureau.

6. The Director is authorized to exempt land uses, discharge locations or other areas of the city 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.

C. The quantity and flow rate of stormwater leaving the site after development shall be equal to or less than the quantity and flow rate of stormwater leaving the site before development, as much as is practicable, based on the following criteria:

1. Development shall mitigate all project impervious surfaces through retention and on-site infiltration to the maximum extent practicable. Where on-site retention is not possible, development shall detain stormwater through a combination of provisions that prevent an increased rate of flow leaving a site during a range of storm frequencies as specified in the Stormwater Management Manual.

2. The Director is authorized to exempt areas of the city from the quantity 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 shall be specified in the Stormwater Management Manual.

3. Any development that discharges to a tributary of the Willamette River, other than the Columbia Slough, shall design stormwater management facilities such that the rate of flow discharging from such facilities for up to a two-year design storm event does not lengthen the period of time the tributary channel receiving the discharge sustains erosion causing flows, as determined by the Bureau.

4. Site drainage facilities shall be designed to safely convey the less frequent, higher flows through or around stormwater management facilities and to an approved drainage system with adequate capacity without damage to the receiving drainage system, whether natural or manmade.

5. Stormwater discharge which cannot be practicably managed for quantity or flow rate control as defined in this Subsection and the Stormwater Management Manual shall either be:

a. Managed in an offsite facility designed for the pollutant load, volume and rate of flows from subject property and managed by the site developer/site owner or another legal agent, or

b. Managed in an offsite stormwater management facility operated by the City subject to paying a stormwater offsite management fee. The Bureau will employ a methodology for calculating the fee that is based upon an average unit cost of onsite facilities where such facilities would be effective and establish the calculation method and fee by rule. The stormwater offsite management fee collected will be placed in a mitigation account to be used to mitigate the impacts that arise from offsite discharge of stormwater runoff.

6. Not withstanding Subsection 17.38.035 C.5., for any parcel created after the effective date of this Chapter, stormwater shall be fully managed:

a. Onsite, or

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 Bureau.

D. The Director is authorized to establish requirements for the pumping and discharge of groundwater as a waste (discharge to waste). The Stormwater Management Manual regulations govern both quality and quantity impacts of pumping and discharging groundwater to City receiving systems. The regulations may exempt, establish discharges as deminimus, or provide for and limit the permanent or temporary discharge of groundwater. Temporary groundwater discharges may be authorized through the batch discharge processes described in Title 17.34 and 17.39. In establishing rules to regulate the pumping and discharge of groundwater as a waste, the Director shall, at a minimum, incorporate and implement the following standards.

1. Authorizations for discharge. Unless the Director's rules establish exceptions or determines discharges are deminimus, any pumping and discharge to waste of groundwater may proceed only after a groundwater specific discharge authorization by the Director. This authorization shall establish volume, flow rate and pollutant load limits for the discharge.

2. Limiting flow volume and flow rate. Pumping and discharge of groundwater as a waste will only be allowed where the proposed discharger has first reduced the rate and volume of groundwater requiring discharge to a City system to the greatest extent practical. Examples include:

a. Limiting the pumping and discharge of groundwater to rates not exceeding those rates that would be required for a building designed and engineered to minimize ground water intrusion and necessary ground water pumping; and

b. Requiring management techniques implemented by the property developer and operator to assure continued effective use of structures in the presence of groundwater infiltration; and

c. When there is sufficient capacity in the City receiving system. Capacity shall be defined by rule and will consider providing

capacity for other and future anticipated and primary uses of the systems.

3. Onsite management a priority. Disposal of pumped ground water shall be accomplished first by onsite disposal methods, such as infiltration, to the greatest extent practical. Thereafter, the water shall be disposed of, to the greatest extent practical, through the use of private conveyance facilities and discharge through infiltration offsite or to surface water bodies. Offsite discharge to City systems shall be approved only after onsite alternatives are evaluated.

4. Prohibited discharges. Offsite discharges meeting the following criteria are prohibited:

a. Discharge to City-owned underground injection controls (UICs).

b. Discharges meeting the tests for prohibited discharges in Chapters 17.34 and 17.39. Notwithstanding this limitation, the City may allow discharge of contaminated ground water that has been treated to meet standards set by the Director to insure that any groundwater discharges do not cause or threaten to cause a public nuisance, groundwater or surface water pollution, cause or threaten to cause the City to violate its own discharge permits granted by the Department of Environmental Quality.

(1) The Director may establish rules to limit or prevent the pumping and discharge of contaminated groundwater and may require one-time or on-going testing or monitoring of water quality by the applicant for discharge authorization approval.

E. All conveyance systems shall be analyzed, designed and constructed for existing tributary offsite runoff and developed onsite runoff 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 that minimizes environmental impacts in the downstream receiving system. The Director reserves the right to determine the appropriateness of combination facilities in meeting these standards.

F. All discharge and disposal systems shall comply with the standards set forth in the Stormwater Management Manual. Public systems shall be reviewed and approved by BES in compliance with the sizing and location

standards in the Stormwater Management Manual. Private onsite disposal systems shall comply with the stormwater hierarchy and other guidance specified in the Stormwater Management Manual, and shall be reviewed by Bureau of Development Services for compliance with the plumbing code regulations in Section 25.01.020.

17.38.040 Stormwater Mangement Facilities Required.

(Amended by Ordinance Nos. 174745, 176783, 180037 and 182144, effective September 26, 2008.) No plat, site plan, building permit or public works project shall be approved unless the conditions of the plat, permit or plan approval requires installation of permanent stormwater management facilities designed according to standards or guidelines established by the Director and as specified in the Stormwater Management Manual.

A. Applicability. All development and redevelopment sites with the following triggers must comply with the standards of the Stormwater Management Manual:

1. Creation of any new impervious area. Sites with 500 square feet or more of impervious area must be managed for pollution reduction, quantity or flow control requirements as spelled out in this Section; or

2. Modification to or construction of new areas with pollution generating activities of concern as identified in the Stormwater Management Manual. These areas must be constructed with applicable onsite controls; or

3. New connections or new drainage areas routed into the City's sewer or drainage system under a City permit. These connections most often are generated from decommissioning of private, onsite drainage or groundwater related systems.

4. Temporary structures are exempt from pollution reduction and flow control requirements, except for specific instances called out in the Stormwater Management Manual.

B. Exemptions. The requirements of this Chapter for stormwater management do not apply to:

1. Development for which an application for development approval is accepted by the permitting agency prior July 1, 1999 shall be subject to the requirements in place at the time of application.

2. Public or private development that does not result in impervious surface coverage or results in coverage that is de minimus in relation to discharge,

such as fences, environmental enhancement projects, buried pipelines or cables, and utility lines.

3. Impervious surface created by a stormwater management facility such as but not limited to headwalls, manhole or vault covers. Paved or compacted gravel facility access and maintenance roads that extend beyond the facility itself, are not exempted from the management requirements of this Title.

C. Appeals. Any applicant for a permit or authorization aggrieved by a decision, interpretation, or determination made pursuant to this Chapter or rules adopted thereunder, including the Storwater Management Manual, may appeal such action in accordance with appeals processes specified in the Stormwater Management Manual.

1. Provision for reasonable interpretation of the Stormwater Management Manual. The Director shall establish an internal BES Administrative Review Committee and a BES Appeals Board. The Chief Engineer of the Bureau of Environmental Services shall appoint outside members to the BES Appeals Board.

2. Applicants shall file appeals in accordance with the appeals process procedures specified in the Stormwater Management Manual.

D. Maintenance of Stormwater and Groundwater Management Facilities.

1. All new development, redevelopment, plats, site plans, building permits or public works projects, as a condition of approval, shall be required to submit an operation and maintenance plan for the required stormwater management facilities for review and approval by the Bureau of Environmental Services, unless otherwise exempted in the Stormwater Management Manual. A stormwater management facility that receives stormwater runoff from a public right-of-way shall be a public facility, and maintained by the City, unless the right-of-way is not part of the City road maintenance system.

a. The information required in an operation and maintenance plan shall satisfy the requirements in the Stormwater Management Manual. Applicants are encouraged to use the O & M Plan template provided in the Stormwater Management Manual. The Plan shall include and not be limited to:

(1) Design plans of the specific facility and related parts, including design assumptions; and

(2) A schedule for routine inspection, including post storm related inspections; and

(3) A description of the various facility components, the observable trigger for maintenance, and the method of maintenance, including appropriate method of disposal of materials; and

(4) The intended method of providing financing to cover future operations and maintenance; and

(5) The party or parties responsible for maintenance of the facility including means of effecting contact, including contact means for emergency situations. The party may be an individual or an organization.

b. A maintenance log is required. The log shall provide a record of all site maintenance related activities. The log shall include the time and dates of facility inspections and specific maintenance activities. This log shall be available to City inspection staff upon request.

2. Failure to properly operate or maintain the water quality or quantity control facility according to the operation and maintenance plan may result in an enforcement action, including a civil penalty, as specified in 17.38.045, Enforcement.

3. A copy of the operation and maintenance plan shall be filed with the Bureau of Environmental Services. Staff may require a site map to be recorded and filed with the appropriate county Department of Assessment and Taxation.

E. The Director 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.

17.38.041 Parking Lot Stormwater Requirements.

(Added by Ordinance No. 174745; amended by Ordinance No. 180037, effective April 28, 2006.) Stormwater runoff from parking lots must be managed in parking lot interior or perimeter landscaping to the extent required by the Stormwater Management Manual. The Director is authorized to exempt activities, land uses, or identified sites from these requirements if use of parking landscape areas is not needed or desirable because of non-

conforming or existing landscape areas. All exemptions are described in the Stormwater Management Manual.

17.38.045 Enforcement.

(Amended by Ordinance Nos. 180037 and 182144, effective September 26, 2008.)

A. Enforcement. Persons who fail to comply with the provisions of this chapter and the BES Stormwater Discharge Enforcement Rules adopted hereunder may be subject to enforcement actions by the Director.

B. Site Inspection. Authorized City representatives may inspect stormwater or groundwater management facilities to determine compliance with this Chapter. The facility owner shall allow and provide for free access for representatives of the Bureau of Environmental Services to enter upon the premises where the facility is located for the purpose of inspection or assuring compliance with this Chapter and the Stormwater Management Manual.

C. Conditions for entry.

1. The authorized City representative shall present appropriate credentials at the time of entry.

2. The purpose of the entry shall be for inspection to ensure compliance with this Chapter and the Stormwater Management Manual of the onsite stormwater management facilities.

3. Entry shall be made at reasonable times during normal operating or business hours unless an emergency situation exists as determined by the Director.

D. Violations. A violation shall have occurred when:

1. Any requirement of this Chapter or rules adopted hereunder has not been met; or

2. When a written request of the Director, made under authority of this Chapter, is not met within the specified time; or

3. When any condition of an operations and maintenance plan or agreement issued under the authority of this chapter or rules is not met within a specified time; or

4. When the facility through maintenance neglect or facility failure no longer operates as designed, or

5. When the facility fails to have a properly recorded or inaccurate O & M plan on file with BES.

E. Remedies. Enforcement Mechanisms. If BES determines that a violation has occurred or is likely to occur, BES may offer technical assistance and education to the responsible party to prevent or correct the violation. In enforcing any of the requirements of this Chapter or rules adopted hereunder, the Director, or a duly authorized representative, may employ any of the following enforcement methods:

1. Take civil administrative actions, as set out in rules adopted under the authority of this chapter;

2. Issue compliance orders;

3. Institute an action before the Code Hearings Officer

4. Cause an appropriate action to be instituted in a court of competent jurisdiction; or

5. Take such other action as the Director, in the exercise of his or her discretion, deems appropriate.

F. Penalties. Violations of this chapter or rules adopted hereunder may result in assessment of civil penalties in an amount up to $500 per day per violation.

1. Collection of penalties and costs. All civil penalties shall be deposited with the City Treasurer and credited to the Sewage Disposal Fund. Penalties and costs are payable upon receipt of the final order imposing penalties and costs. Penalties and costs under this chapter are a debt owing to the City and may be collected in the same manner as any other debt. Penalties shall accrue interest and any other applicable charges until the penalty is paid in full. The City may initiate appropriate legal action in any court of competent jurisdiction to enforce the provisions of any written settlement or final order of the Hearings Officer.

G. Appeals. Appeal of an enforcement action. Upon receipt of a final determination of an enforcement action, a person may appeal the determination to the Code Hearings Officer in accordance with the procedures set out at Chapter 22.10 of the Portland City Code provided that such appeal shall include a copy of the final determination that is the subject of the appeal, shall state the basis for the appeal, and shall be filed with the Code Hearings Officer and the Bureau of Environmental Services.

H. Nuisance. A violation of this Chapter shall constitute a nuisance. Summary abatement of such nuisances is authorized.

I. Cost recovery. The Director may recover all reasonable costs incurred by the City which are attributable to or associated with the violations of this Chapter, including but not limited to the costs of administration, investigations, legal or enforcement activities, damages to or contamination of the sewer and stormwater systems; and any civil penalties assessed on the City which result from activities not in compliance with this chapter or rules adopted hereunder. The Director may also make a lien on the property or properties in accordance with the provisions of Chapter 22.06.

J. Conflict. All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this Ordinance are hereby repealed to extent of such inconsistency or conflict.

K. Severability. If any provision, paragraph, word, Section or Chapter of this Ordinance is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, Sections and Chapters shall not be affected and shall continue in full force and effect.

17.38.050 Erosion Control Required.

(Amended by Ordinance No. 173979, effective March 1, 2000.) All public works projects constructed within the City of Portland must comply with Title 10, Erosion and Sediment Control Regulations.

17.38.060 Fill Mitigation In-lieu of Balanced Cut and Fill – the Johnson Creek Fill Mitigation Bank.

(Repealed by Ordinance No. 1282144, effective September 26, 2008.)

Chapter 17.39

STORM AND DRAINAGE SYSTEM DISCHARGES

(Chapter added by Ordinance No. 167404;
amended by Ordinance No. 182144,
effective September 26, 2008.)

Sections:

17.39.005 Intent of Chapter.
17.39.010 Declaration of Policy.
17.39.020 Definitions.
17.39.025 Authority of the Director of Environmental Services to Adopt Rules.
17.39.030 General Discharge Prohibitions.
17.39.040 Discharge Limitations.
17.39.045 Control of Illicit Discharges.
17.39.050 Discharge Permits.
17.39.060 Inspection and Sampling.
17.39.070 Reporting Requirements.
17.39.080 Stormwater Pollution Control Plan (SWPCP).
17.39.090 Accidental Spill Prevention and Control.
17.39.100 Records Retention.
17.39.110 Enforcement.
17.39.120 Conflict.
17.39.130 Severability.
17.39.140 Requests for Reconsideration.

17.39.005 Intent of Chapter

(Added by Ordinance No. 180037, effective April 28, 2006.) It is the intent of the City to provide needed sewer service to all dischargers who are meeting the outlined objectives of this Chapter. This Chapter provides the structure under which the service will be provided for discharges so that the City's conveyance, management and disposal systems and local receiving streams are protected. Provisions within this chapter will apply to the legally defined municipal separate storm sewer systems as well as all other public drainage systems (not including those sanitary systems as defined in 17.34) that convey, manage or dispose of stormwater flows or are a part of the BES stormwater utility.

17.39.010 Declaration of Policy.

(Amended by Ordinance No. 180037, effective April 28, 2006.) It is the policy of the City of Portland to provide the planning, engineering and administration necessary to develop and manage stormwater sewer system facilities that are adequate for the transportation and discharge to receiving streams of stormwater runoff from within the

City and to operate the storm sewer system in a manner which protects public health and the environment. In carrying out this policy, the objectives of this Chapter are:

A. To prevent pollutants from entering the separate storm sewer system which may reduce the water quality of the receiving stream or which may violate applicable water quality standards;

B. To locate and eliminate illegal connections to the storm sewer system and storm drains;

C. To improve the quality of the City's stormwater discharge to the receiving stream;

D. To ensure worker health and safety;

E. To ensure that all dischargers to the City's municipal separate storm sewer systems as well as all other public drainage systems that convey, manage or dispose of stormwater flows comply with local, state and federal laws and regulations and that sanctions for failure to comply are imposed.

F. To provide for an promote the health safety and welfare of the general public.

17.39.020 Definitions.

(Amended by Ordinance Nos. 180037 and 182144, effective September 26, 2008.) For purposes of Chapter 17.39, and adopted rules thereunder, the following terms shall have the following definitions:

A. **"Batch Discharge"**: Batch discharge shall mean the controlled discharge of a discrete, intermittent, and contained volume of discharge.

B. **"Capacity"**: The flow volume or rate that a drainage facility (e.g., pipe, pond, vault, swale, ditch, etc.) is designed to safely contain, receive, convey, reduce pollutants from or infiltrate.

C. **"City of Portland"**: City or City of Portland shall mean the municipality of Portland, Oregon, a municipal corporation of the State of Oregon, acting through the City Council or any Board, Committee, body, official or person to whom the Council shall have lawfully delegated the power to act for or on behalf of the City. Unless specifically designated in this Chapter or the rules adopted hereunder, whereon action by the City is explicitly required or implied herein, it shall be understood to mean action by the Director of Environmental Services of Portland, Oregon or his or her duly authorized representative or agent.

D. **"Clean Water Act (CWA)"**: The Clean Water Act is the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et. seq.).

E. **"Director of Environmental Services"**: The Director of Environmental Services is the Director of the Bureau of Environmental Services of the City of Portland, Oregon or his or her duly authorized representative.

F. **"Discharge"**: A discharge is any disposal, injection, dumping, spilling, pumping, emitting, emptying, leaching or placing of any material so that such material enters or is likely to enter a waterbody, groundwater, or drainage conveyance structure such as a pipe or ditch.

G. **"Discharger"**: A discharger is any person or business entity that discharges to the City's separate storm sewer systems as well as all other public drainage systems that convey, manage or dispose of stormwater flows..

H. **"Ground Water"**: Groundwater is subsurface water that occurs in soils and geological formations that are fully saturated. Groundwater fluctuates seasonally and includes perched groundwater. 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, rainwater infiltration into excavations and subsurface water associated with construction or property management dewatering activities.

I. **"Illicit Connection"**: Any piped or other connection to a City facility made not in compliance with a valid City permit.

J. **"Illicit Discharge"**: An illicit discharge is any discharge to the City's separate storm sewer system that is not composed entirely of stormwater or the non-stormwater discharges identified in 17.39.030.C.

K. **"Interference"**: Interference means a discharge which, alone or in conjunction with a discharge or discharges from other sources, inhibits or disrupts the normal operation of the City's separate storm sewer system or causes a violation of any requirement of the City's NPDES Stormwater Discharge Permit (including an increase in the magnitude or duration of a violation) or any increase in cost due to damage to the system or requirements for specialized treatment of stormwater caused by such a discharge.

L. **"NPDES Industrial Stormwater Discharge General Permit (1200 series)"**: An NPDES General Stormwater Discharge Permit is a permit issued by the Oregon Department of Environmental Quality authorizing a permittee to discharge stormwater to the public waters in accordance with limitations.

M. **"Person"**: Person shall mean any individual company, enterprise, partnership, corporation, association, government agency, society or group; and the singular term shall include the plural.

N. **"Pollutant"**: A pollutant is any substance discharged into the sewer system which is prohibited or limited by the provisions of Chapter 17.39 of the City Code or by the provisions of any rules adopted thereunder.

O. **"Process Wastewater"**: Process wastewater is any water used in an industrial or commercial process that, as a result of that process, contains or mobilizes pollutants. Such pollutants may be liquid, solid or gaseous substances or combinations thereof, resulting from or used in connection with any process of industrial manufacturing, commercial food processing, business, agriculture, trade or research including but not limited to the development, recovery or processing of natural resources and leachates from landfills and other disposal sites. Process wastewater shall also include discharges, spills or leaks from all coupling areas where connections are made between holding tanks and transport vehicles for dischargers with tank farms.

P. **"Representative Sample"**: A sample collected by grab, composite or other agreed on means that reflects the quality of discharge runoff for a specific area or entire site. This sample is collected to assure compliance with permit or authorization pollution control limits.

Q. **"Separate Storm Sewer System"**: A storm sewer system comprised of conveyance or system of conveyances (including roads with drainage ditches, human made channels, groundwater related disposal systems, stormwater management facilities or storm drains) which is;

1. Owned or operated by a city, county, district or other public body (created pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater or other wastes, including special districts under state law, such as a sewer district, flood control district or drainage district or similar entity that discharges to waters of the United States;

2. Designed or used for collecting and conveying stormwater;

3. Not a combined sewer; and

4. Not part of a Publicly Owned Treatment Works (POTW) as defined in 40 CFR 122.2.

R. **"Significant Materials"**: The term significant materials includes but is not limited to: raw materials, fuels, materials such as solvents, detergents and plastic

pellets; finished materials such as metallic products, raw materials used in food processing or production; hazardous substances designated under ORS 465.200 (16); any chemical the facility is required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges.

S. **"Stormwater"**: The term stormwater shall mean rainwater runoff, snowmelt runoff and surface runoff and drainage.

T. **"Stormwater Management Facility"**: A technique used to reduce pollutants from, detain, and/or retain, and dispose of (provide a destination for) stormwater to best preserve or mimic the natural hydrologic cycle, to accomplish goals of reducing combined sewer overflows or basement sewer backups, or to fit within the capacity of the existing infrastructure.

U. **"Toxic Chemical"**: A toxic chemical is any chemical listed as toxic under Section 307(a)(1) of the Clean Water Act or Section 313 of Title III of SARA.

V. **"Toxic Concentration"**: A toxic concentration is a concentration for a known chemical or mix of chemicals published on a state or federal pollutant database or registry that is lethal to aquatic life as measured by a significant difference in the lethal concentration between the control and 100 percent effluent in an acute bioassay. BES may require additional testing to establish toxic concentrations for chemicals and mixtures without peer reviewed toxicology standards.

17.39.025 Authority of the Director of Environmental Services to Adopt Rules.
(Amended by Ordinance No. 182144, effective September 26, 2008.)

A. For purposes of the functions described in Charter section 11-303, the City Engineer may delegate his or her authority to perform those functions to the Director of Environmental Services (Director). This delegation may be accomplished by filing a written notice of delegation with the City Auditor and approval of the delegation by resolution of the City Council. Upon approval of the delegation by the City Council, the Director shall be responsible for performing the delegated functions, and the City Engineer shall not be responsible for supervising or approving actions of the Director of Environmental Services pursuant to the delegated authority. This delegation shall remain in effect until modified by resolution of the City Council.

B. The Director is hereby authorized to adopt rules, procedures and forms to implement the provisions of this Chapter.

C. Adoption of Rules.

1. Upon the recommendation of the Director of Environmental Services, the Bureau of Environmental Services may adopt rules pertaining to matters within the scope of this Chapter.

2. Any rules adopted pursuant to this Section shall require a public review process. Not less than ten or more than thirty days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include place, time and purpose of the public review process and the location at which copies of the full text of the proposed rules may be obtained.

3. During the public review process, a designee of the Director shall hear testimony or receive written comment concerning the proposed rules. The Director shall review the recommendation of his or her designee, taking into consideration the comments received during the public review process and shall either adopt the proposal, modify or reject it. If substantial modification is made, additional public review shall be conducted, but no additional notice shall be required if such additional review is announced at the meeting at which the modification is made. Unless otherwise stated, all rules shall be effective upon adoption by the Director and shall be filed in the office of the Director of Environmental Services .

4. Notwithstanding paragraphs 2 and 3 of this Section, an interim rule may be adopted without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this paragraph shall be effective for a period not to exceed 180 days.

D. City decisions to grant or deny discharges to a City stormwater or drainage system, may be appealed under procedures detailed in the associated administrative rules packages.

17.39.030 General Discharge Prohibitions.
(Amended by Ordinance Nos. 180037 and 182144, effective September 26, 2008.)

A. It is unlawful to discharge into the City's municipal separated storm sewer systems as well as all other public drainage systems that convey, manage or dispose or stormwater flows except in compliance with this Chapter and the rules adopted hereunder.

B. Prohibited discharges. It is unlawful to discharge or cause to be discharged directly or indirectly into the City storm sewer system any of the following:

1. Any discharge having a visible sheen;

2. Any discharge having a pH of less than 6.0 Standard Units (S.U.) or greater than 9.0 S.U., unless the divergence from these limits can be proven to occur from source rainfall pH fluctuations;

3. Any discharge that contains toxic chemicals in toxic concentrations;

4. Any refuse, rubbish, garbage, discarded or abandoned objects, articles, or accumulations or discharge that contains visible floating solids;

5. Any discharge that causes or may cause visible discoloration (including, but not limited to, dyes and inks) of the receiving waters;

6. Any heat discharge that causes damage to any element of the City's municipal separate storm sewer systems other public drainage systems that convey, manage or dispose or stormwater flows;

7. Any discharge that causes or may cause interference or damage to the City's municipal separate storm sewer systems or other public drainage systems that convey, manage or dispose of stormwater flows. Any new discharge which, when taken in combination with other existing or proposed discharges, exceeds the capacity of the public storm sewer systems or public drainage systems, as established by the Director, shall be deemed to interfere or damage such systems;

8. Any discharge that causes or may cause a nuisance or a hazard to the City's stormwater system, City personnel or the receiving waters.

9. Any batch discharges without written permission from the Director of Environmental Services. Batch discharges shall comply with all other requirements of this Chapter and rules adopted hereunder;

10. Any liquids, solids, or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction to cause fire or explosion or be injurious in any other way to the operation of the sewer system, or waste streams with a closed cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Celsius (using test methods prescribed at 40 CFR 261.21), or discharges which cause the atmosphere in any portion of the sewer system to reach a concentration of 10% or more of the Lower Explosive Lime (LEL);

11. Any process wastewater, unless it meets at least one of the provisions of section 17.39.030.C.;

12. Any substance that causes the City to violate the terms of its Municipal Stormwater National Pollutant Discharge Elimination System (NPDES) or Municipal Underground Injections Control (UIC) permits or instream water quality standard set by the State of Oregon.

C. The following discharges are allowed unless they violate the standards, policies, and associated administrative rules used to implement this Title. In some cases the Director has set policies to redirect some of these discharges to the sanitary sewer at the time of new and redevelopment:

1. A discharge authorized by, and in full compliance with, an NPDES or other state water related discharge permit;

2. A discharge or flow resulting from and emergency situation such as a water line break or fire fighting activities by a government fire department. Any repairs made after the period of emergency has ceased must comply with all regulations of this code;

3. A discharge or flow from personal residential based activities such as car washing, lawn watering, or landscape irrigation;

4. A discharge from a building related system such as footing / foundation drains, crawl space pumps, or air conditioning condensation that is unmixed with water from a cooling tower, emissions scrubber, emissions filter, or any other source of pollutant;

5. A discharge or flow from naturalized areas such as diverted stream flows, natural springs, riparian habitat areas, wetlands, or other uncontaminated pumped or infiltrating storm water;

6. A discharge from rising groundwater flows, infiltration, inflow or other uncontaminated pumped or infiltrating groundwater;

7. Other discharge that is deemed by the Director to be de minimus or otherwise adequately controlled through other pollution control measures or agreements, such as water line flushing, reservoir and tank draining.

17.39.040 Discharge Limitations.

(Amended by Ordinance No. 180037, effective April 28, 2006.)

A. It is unlawful for a discharger to discharge to the City's municipal separate storm sewer systems or other public drainage systems that convey, manage or dispose or stormwater flows in excess of the limitations established in the discharger's

NPDES discharge permit, a discharge authorization or in violation of the prohibited discharges in Section 17.39.030. The Director may establish specific discharge limitations under separate rules to meet the objectives of this Chapter.

B. Notwithstanding prior acceptance to the City's municipal separate storm sewer systems or other public drainage systems that convey, manage or dispose or stormwater flows under this Chapter, if the Director finds that a discharge from a particular industrial occupancy or class of occupancies is in violation of 17.39.030, the Director may limit the characteristics or volume of the discharge accepted under this Chapter or may terminate acceptance. Notice of termination or limitation shall be given in writing to the occupant of the property involved or by posting such notice on the property involved and shall specify the date when the limitation or termination is to become effective. It is unlawful for any person to discharge or permit the discharge of stormwater in violation of this notice.

17.39.045 Control of Illicit Discharges

(Added by Ordinance No. 180037; amended by Ordinance No. 182144, effective September 26, 2008.)

A. Notifications. Property owners are responsible for notifying the appropriate regulatory agencies under the following conditions:

1. Illicit Connections. Within seventy-two hours after discovering an illicit connection, owners shall notify the Bureau of Environmental Services of the illicit connection. The applicant will negotiate an appropriate time frame with BES for submittal of a permit application with the City's Plumbing Division to correct the illicit connection.

2. Spills. Any person becoming aware of spills or uncontrolled discharge substances prohibited under Section 17.39.030 directly or indirectly into the City's municipal separate storm sewer systems or other public drainage systems that convey, manage or dispose or stormwater flows, or any component thereof, or onto driveways, sidewalks, parking lots or other areas draining to public stormwater management facilities or right's-of-way; shall:

a. Immediately upon discovery report such discharge by phone to BES and DEQ and to any other authorities required under other local, state or federal laws or regulations. Reports shall include:

(1) A description of the material discharged; and

(2) The estimated amount of material discharged; and

(3) The estimated discharge point into the City sewer; and

(4) Steps being taken to immediately cease and control the spill as well as eliminate and prevent recurrence of the discharge; and

(5) Contact information, including phone number, of a responsible party who owns or has control over any spilled or released material who may be contacted for additional information.

b. The City reserves the right to require a follow up written report about the incident. Such a written report shall describe the elements covered in subsection a. above.

3. Non-stormwater discharges allowed under 17.39.030.C need not be reported.

B. Impact Assessment, Control and Clean Up. The discharger shall take all necessary steps to ensure the discovery, containment and clean up of any materials release to the City systems described in A.2. above as soon as possible after discovery. The discharger shall take all reasonable steps to minimize any adverse impact to the City sewer system, treatment facilities or any waters of the state, including such activities as accelerated or additional monitoring as necessary to determine the nature and impact of the discharge. If the discharger is absent, the property owner shall be responsible for compliance with this section.

17.39.050 Discharge Permits.

(Amended by Ordinance Nos. 180037 and 182144, effective September 26, 2008.)

A. The City may require the following permits prior to allowing discharges to the City's separate storm sewer system:

1. An NPDES storm water discharge permit for facilities listed under OAR 340-041-0007 and the federal Standard Industrial Class codes associated with the Clean Water Act.

2. Other discharge permits administered by the Oregon Department of Environmental Quality that may be discharged to a City storm sewer or drainage system.

3. Other facilities with discharges that trigger the prohibitions of 17.39.030 on their sites may be required to obtain a City of Portland Discharge Permit or Authorization for their discharge.

B. Existing and New Source Dischargers.

1. Industrial NPDES Stormwater Discharge Permits

a. Any discharger with a discharge to the separate storm sewer system may be required to submit an application for an NPDES stormwater permit to DEQ. The City may act as a DEQ authorized representative in accepting permit applications for submittal to DEQ.

b. Dischargers who are required to obtain an NPDES stormwater permit and who continue to discharge without a permit during the permit application process, shall comply with the requirements of this Chapter and the rules adopted hereunder.

c. A new source discharge facility shall obtain an NPDES stormwater permit before discharging to the separate storm sewer system, if required. At his or her discretion, the Director may require dischargers who are not required to obtain an NPDES stormwater permit to obtain a stormwater discharge permit from the City, if a discharge presents a threat to the system or the receiving waters.

2. Discharge Authorizations

a. Any new source identified or constructed within the City of Portland shall undergo a Source Control review and may be required to implement certain site controls as required by administrative rule. Education and technical assistance materials may be provided to assist dischargers.

b. Sites under an authorization will be required to track compliance efforts and make those records available to City inspectors.

17.39.060 Inspection and Sampling

(Amended by Ordinance Nos. 180037 and 182144, effective September 26, 2008.)

A. Inspection

1. Authorized City representatives may inspect the facilities of any discharger to any City sewer or drainage system to determine compliance with the requirements of this Chapter. The discharger shall allow the City or an authorized representative to enter upon the premises of the discharger for the purposes of inspection, sampling, photographic

documentation or record examination and copying. The City shall also have the right to install on the discharger's property such devices as are necessary to conduct sampling, inspection, compliance monitoring and metering operations.

2. Conditions for entry.

a. The authorized City representative shall present appropriate credentials at the time of entry.

b. The purpose of the entry shall be for inspection, observation, measurement, sampling, testing, photographic documentation, or record examination and copying in accordance with the provisions of this Chapter.

c. Any entry shall be made at reasonable times during normal operating hours unless an emergency situation exists as determined by the Director.

d. The City shall comply with all regular safety and sanitary requirements of the facility or site to be inspected. The discharger shall provide the City with any facility or site-specific safety requirements.

B. Sampling.

1. The City may require the discharger to sample any proposed or existing discharge to ascertain whether such discharge is approvable given the prohibited discharges criteria listed in Section 17.39.030 above.

2. Samples collected for compliance monitoring shall be representative of the discharge and shall comply with the requirements specified in the individual site permit or authorization. Sampling locations for each point of discharge are required by the NPDES permit or may be required by a Discharge Authorization. The sampling and testing shall be in accordance with 40 CFR Part 136.

3. Samples taken by City personnel for the purpose of determining compliance with the requirements of this Chapter or rules adopted hereunder may be split with the discharger if requested before the time of sampling.

4. Sampling manhole or access. The Director may require a discharger to install and maintain at the discharger's expense a suitable manhole or

sampling facility at the discharger's facility or other suitable monitoring access to allow observation, sampling and measurement of all discharges into City separate storm sewer systems or other public drainage systems that convey, manage or dispose or stormwater flows. The manhole shall be constructed in accordance with plans approved by the Director and shall be designed so that flow measurement and sampling equipment can be installed. Access to the manhole or monitoring access shall be available to City representatives at all times.

17.39.070 Reporting Requirements.

(Amended by Ordinance Nos. 180037 and 182144, effective September 26, 2008.)

A. Periodic Compliance Reports.

1. Any facility that discharges to the City's stormwater system may be required to submit reports to the City. Monitoring reports may include evaluations of site conditions, visual observations of discharges, discharge sampling results, summary of operational and maintenance activities, or other information as requested by the Director. The City may accept monitoring reports required by state mandated NPDES permits to meet City reporting requirements.

2. The Director may require reporting by dischargers to City municipal separate stormwater systems or other public drainage systems that convey, manage or dispose or stormwater flows, where an NPDES permit is not required, to provide information to the City. This information may include any data necessary to characterize the discharge.

B. Fraud and False Statements. Any reports required by this Chapter or rules adopted hereunder and any other documents required by the City to be submitted or maintained by the Discharger shall be subject to the enforcement provisions of this Chapter and any other applicable local and State laws and regulations pertaining to fraud and false statements. Additionally, the discharger shall be subject to the provisions of 18 U.S. Code Section 1001 relating to fraud and false statements and the provisions of Section 309 of the Clean Water Act, as amended, governing false statements and responsible corporate officials.

C. Notification of Violation. A discharger shall report noncompliance with permit conditions to the City within 24 hours of becoming aware of noncompliance.

17.39.080 Stormwater Pollution Control Plan (SWPCP).
(Amended by Ordinance No. 180037, effective April 28, 2006.)

A. A discharger to the City of Portland's system may be required to prepare a Storm Water Pollution Control Plan (SWPCP). If a SWPCP is developed for other purposes, for example an NPDES permit, it may be submitted to fulfill these requirements. Minimum requirements for the content of the SWPCP are contained in the appropriate permit and/or in the Stormwater Discharge Administrative Rules.

B. Dischargers are required to eliminate or control direct or indirect connections or entry points that could allow spills or uncontrolled discharges of hazardous or toxic substances or substances prohibited under Section 17.39.030 to enter the City's system. As a condition of continued authorization to discharge to the City storm sewer system, the Director may require a discharger to:

1. Install or modify equipment or make other necessary changes to prevent such discharges, and

2. Submit a schedule of compliance to the Director for approval to achieve timely completion of the required actions and specifying a method for assessment and adaptive management of the Plan. Violation of the schedule without an extension of time by the Director is a violation of this Chapter.

C. All permittees shall be required to comply with the terms and maintenance conditions specified in their SWPCP and the appropriate permit or authorization.

17.39.090 Accidental Spill Prevention and Control.
(Amended by Ordinance No. 180037, effective April 28, 2006.) Accidental Spill Prevention Plans. Dischargers who are not required to obtain an NPDES stormwater permit but who handle, store or use hazardous or toxic substances or substances prohibited under 17.39.030 on their sites may be required to prepare and submit to the Director an Accidental Spill Prevention Plan, according to the requirements set out in rules adopted pursuant to this Chapter, within 60 days of notification by the Director. If an Accidental Spill Prevention and Control or similar plan is required by other law or regulation, that plan will satisfy this requirement. The Accidental Spill Prevention and Control Plan may be combined with or stand as part of the SWPCP required by 17.39.080.

17.39.100 Records Retention.
(Amended by Ordinance No. 180037, effective April 28, 2006.) All dischargers subject to this Chapter shall maintain and preserve for no fewer than 5 years any records, books, documents, memoranda, reports, correspondence and any and all summaries thereof,

relating to monitoring, sampling and chemical analysis made by or in behalf of the discharger in connection with its discharge. All records which pertain to matters which are the subject of any enforcement or litigation activities brought by the City pursuant hereto shall 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.

(Amended by Ordinance Nos. 180037 and 182144, effective September 26, 2008.) Dischargers that fail to comply with the requirements of this Chapter and the rules adopted hereunder may be subject to enforcement actions by the Director of Environmental Services.

A. Violations. BES may use escalating enforcement to obtain compliance with a rule promulgated pursuant to this Chapter, or Discharge Authorization. Notice of violation may be given orally or in writing to a responsible party.

1. A violation shall have occurred when any requirement of this Chapter or rules adopted hereunder has not been met, or when any condition of a permit or agreement issued under the authority of this Chapter or the rules adopted hereunder is not met.

2. Each day a violation occurs or continues shall be considered a separate violation.

3. For violations of discharge limits, each parameter that exceeds a discharge limit shall be considered a separate violation except as provided elsewhere in this Chapter or the rules adopted hereunder.

4. Oral notice may be provided to alleged violators to clearly state the provisions of this Chapter or associated administrative rules that have been violated and discuss potential remedies for the violations. Continued non-compliance, shall result in escalating enforcement as described in section 17.39.110.B.

B. Enforcement Mechanisms. If BES determines that a violation has occurred or is imminent, BES may offer technical assistance and education to the responsible party to correct or prevent the violation. In enforcing any of the requirements of this Chapter of the rules adopted hereunder, the Director of Environmental Services, or a duly authorized representative, may:

1. Provide written notice of violation and correction notice.

2. Post a Stop Work order,

3. Require Permit, Authorization and/or new system connection to control a discharge

4. Require Administrative BES Review

5. Institute civil actions or notify appropriate authorities of possible criminal violations as set out in rules adopted under this Chapter;

6. Take other action as the Director of Environmental Services in the exercise of his or her discretion, deems appropriate.

C. Voluntary Compliance Agreement. In lieu of escalating enforcement, BES and the discharger may enter into a voluntary compliance agreement to correct the violation. Such agreements will include specific action to be taken by the responsible party to correct the noncompliance on a schedule specified by the agreement.

D. Civil Penalties. Violations of this Chapter or rules adopted hereunder may result in the assessment of civil penalties in amount up to $5000 per day per violation. All civil penalties shall be deposited with the City Treasurer. Failure to pay a civil penalty within 30 days following a final determination regarding the penalty is grounds for termination of the permittee's discharge. Civil penalties may be appealed to the City's Code Hearings Officer. Penalties shall accrue interest and other charges until the penalty is paid in full.

E. Permit or Authorization Termination or Prevention of a Discharge.

1. Notwithstanding any other provision of this Chapter, the Director of Environmental Services may terminate a City-issued discharge permit or authorization or otherwise prevent a discharge into the City's municipal separate storm sewer systems or other public drainage systems that convey, manage or dispose or stormwater flows if:

a. The discharge or threatened discharge presents or may present an endangerment to human health or the environment, or threatens to interfere with the operation of the City's municipal separate storm sewer systems or other public drainage systems that convey, manage or dispose or stormwater flows; or

b. The NPDES permit City stormwater discharge permit or authorization was obtained by misrepresentation of any material fact or lack of full disclosure; or

c. The discharger violates any requirement of this Chapter or its discharge permit or authorization; or

d. Such action is directed by a court of competent jurisdiction.

2. Notice of termination or prevention of discharge or permit revocation shall be provided to the discharger or posted on the subject property prior to terminating or preventing discharge.

a. In situations that do not represent an imminent danger to human health or the environment or an imminent threat of interference to the municipal separate storm sewer systems or other public drainage systems that convey, manage or dispose or stormwater flows, the notice shall be in writing, shall contain the reasons for the termination or prevention of discharge, the effective date, duration and the name, address and telephone number of a City contact, shall be signed by the Director, and shall be received at the business address of the discharger no fewer than 30 days prior to the effective date.

b. In situations where there is an imminent endangerment to human health, the environment or imminent threat of interference with the operations of the separate storm sewer system, the Director may immediately terminate an existing discharge or prevent a new discharge from commencing after providing informal notice to the discharger or after posting such notice on the subject property. Informal notice may be verbal or written and shall include the effective date and time and a brief description of the reason. Within 3 working days following the informal notice, a written formal notice as described in 17.39.100 D.2.a. shall be provided to the discharger.

3. The Director shall reinstate discharge privileges upon clear and convincing proof by the discharger of the elimination of the noncomplying discharge or conditions creating the threat of endangerment or interference as set forth in this Chapter.

F. Cost Recovery.

1. The Director may recover all reasonable costs incurred by the City which are attributable to or associated with violations of this Chapter, including but not limited to the costs of administration, investigation, sampling and monitoring, legal and enforcement activities, damage to or contamination of the separate storm sewer systems or other public drainage systems that

convey, manage or dispose of stormwater flows or are part of the BES stormwater utility. BES may recover costs associated with remediation of a violation, contracts and health studies, and any fines and civil penalties assessed to the City that result from activities not in compliance with this Chapter or rules adopted hereunder. Liens may be imposed on the property or properties in accordance with the provisions of Chapter 22.06

2. All such costs shall be documented by the City and shall be served upon the discharger by certified or registered mail, return receipt requested. Such documentation shall itemize the costs the Director has determined are attributable to the violations.

3. Such costs are due and payable to the City of Portland Sewage Disposal Fund upon the receipt of the letter documenting such costs. All such costs shall be paid to the City Treasurer. Nonpayment or dispute regarding the amount shall be referred for appropriate action to the City Attorney. The City Attorney may initiate appropriate action against the discharger to recover costs under this Section.

4. The Director of Environmental Services may terminate a discharge for nonpayment of costs after 30 days notice to the discharger.

G. Nuisance Abatement. In cases of imminent danger to human health, property or the environment and continued non-compliance with City Code, BES may take corrective action on the site to remedy the imminent danger. BES may take whatever actions are necessary to remedy the violation and remove the threat to public health and safety. Any person responsible for pollutant discharge into any natural waters or stormwater systems, who fails to correct any prohibited condition or discontinue any prohibited activity, must pay the expenses incurred by the City in carrying out the nuisance abatement, including any expenses incurred in testing, measuring, sampling, collecting, removing, containing, treating, and disposing of the pollutant materials. All costs for such work shall be the sole responsibility of the violator and may be recovered in conformance with the BES cost recovery policy.

H. City not liable. Nothing in this Chapter shall be construed to confer liability on the City for any injury or damage resulting from the failure of responsible parties to comply with the provisions of this Chapter.

17.39.120 Conflict.

All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this Chapter are hereby repealed to the extent of such inconsistency or conflict.

17.39.130 Severability.

If any provision, paragraph, word or Section of this Chapter or adopted hereunder is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, and sections shall not be affected and shall continue in full force and effect.

17.39.140 Requests for Reconsideration.

A discharger may request from the Director of Environmental Services to reconsider any determination made under this Chapter if there is reason to believe that sufficient data or information is available to support a different determination. Any request for reconsideration shall be accompanied by the data and the information that the discharger used as a basis for the request. The Director of Environmental Services may then revise the initial determination based upon the submitted request.

Chapter 17.40

PROTECTION OF PAVEMENT
ROADWAY REPAIRS

Sections:

17.40.010 Injuries to Pavement.
17.40.020 Endangering Pavement.
17.40.030 Charges for City Patching of Roadway Areas.

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 which may tend to disintegrate or injure such pavement. This shall 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 shall 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 Engineer may issue a permit for such activity if he 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 Council permit or a permit issued by the City Engineer, 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 which would tend to endanger the direct or lateral support of the pavement.

17.40.030 Charges for City Patching of Roadway Areas.

(Amended by Ordinance Nos. 145974 and 173369, effective May 12, 1999.) 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 shall not apply to local improvements, public improvements under permit, or general maintenance of roadway areas by the City. The applicant shall 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 shall 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.

Chapter 17.41

LANDSLIDE ABATEMENT

(Added by Ordinance No. 165864,
effective Sept. 30, 1992.)

Sections:

17.41.010 Purpose.
17.41.020 Definitions.
17.41.030 Applicability.
17.41.040 Landslide As a Nuisance; Costs.
17.41.050 Abatement.
17.41.060 Administrative Review.

17.41.010 Purpose.

(Amended by Ordinance No. 173369, effective May 12, 1999.) 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.

(Amended by Ordinance Nos. 173369 and 182760, effective June 5, 2009.) 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 5.48.030, and City Auditor's charges established in 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 which has caused the instability of the public right-of-way.

17.41.030 Applicability.

(Amended by Ordinance Nos. 173369 and 182760, effective June 5, 2009.) 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 this 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.

(Amended by Ordinance No. 173369, effective May 12, 1999.)

A. A landslide is a public nuisance. The nuisance is subject to abatement as provided by Title 29, except as provided in this Chapter. Abatement by the City shall be conducted at the direction of the City Engineer. The City Engineer 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 shall be as provided in Title 29, and such costs shall be assessed to the responsible property.

17.41.050 Abatement.

(Amended by Ordinance No. 176955, effective October 9, 2002.)

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 shall be prepared by a professional engineer registered in the State of Oregon and shall be approved by the City Engineer.

C. If summary abatement is not directed, the City Engineer 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 shall 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 Engineer may cause the landslide to be abated and the costs assessed against the responsible property.

D. Where necessary, the City Engineer may also post and mail notice regarding the requirement for permanent stabilization of the slope. Such notice shall include the date by which plans for such permanent stabilization shall be submitted to the City Engineer. If such plans are not submitted by the stated date, the City Engineer 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 shall obtain the permits required by Chapter 17.24 of this Code.

F. A building permit shall be required for permanent stabilization work performed on private property. Such permits shall be approved by the Bureau of Development Services and the City Engineer.

G. If at any stage of the abatement, the owner of the responsible property fails to comply with the requirements imposed by the City Engineer, the City Engineer 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 Engineer shall 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 this Code shall be deemed to prevent a party required by this Chapter to pay for abatement of a landslide from exercising any rights her or she may have against the party or parties who may have caused the landslide.

17.41.060 Administrative Review.

(Amended by Ordinance No. 173369, effective May 12, 1999.) Administrative review shall be conducted as provided in Title 29, except that the review shall be conducted by the City Engineer. Appeal shall be to the Code Hearings Officer as provided in Chapter 22.10 of this Code.

Chapter 17.42

PROPERTY OWNER RESPONSIBILITY FOR STREETS

(New Chapter added by
Ordinance No. 172051,
effective March 11, 1998.)

Sections:

17.42.010 Policy.
17.42.020 Maintenance and Construction Responsibility.
17.42.025 Maintenance Restrictions.
17.42.030 Liability.
17.42.040 Definition.

17.42.010 Policy.

(Amended by Ordinance No. 177124, effective January 10, 2003.)

A. It has been and remains the policy of the City of Portland 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 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 unimproved 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 this Code and the City Charter.

B. Disputes regarding the condition of the unimproved street are private actions among affected property owners.

17.42.020 Maintenance and Construction Responsibility.

(Amended by Ordinance No. 177124, effective January 10, 2003.) 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.

17.42.025 Maintenance Restrictions.

(Added by Ordinance No. 177124; amended by 177750, effective August 6, 2003.)

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 width of the unimproved portion 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 except as provided in Section 20.40.090; and

8. Speed bumps or other types of devices intended to slow traffic are not constructed.

B. The City Engineer 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 Traffic Engineer retains exclusive authority to establish traffic control devices as provided in Section 16.10.080 and in Section 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(s) of land abutting any street that has not been improved to City standards and accepted for maintenance shall be liable for any and 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. Said property owner(s) shall be liable to the City of Portland for any amounts which 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 said property owners' failure to satisfy the obligations imposed by the Charter and Code of the City of Portland to maintain, construct and repair such streets.

17.42.040 Definition.

(Amended by Ordinance No. 173369, effective May 12, 1999.) As used in this chapter, the term "street" is defined as provided in Section 17.04.050 of the City Code and includes any drainage facilities associated with the street, and any structures in the dedicated street area. It also includes the run-off from any street where no drainage facilities have been constructed.

Chapter 17.44

STREET OBSTRUCTIONS, ADVERTISING BENCHES

Sections:

17.44.010 Unlawful Acts Enumerated.
17.44.015 Revocable Permits to Construct and Maintain Structures in the Street Area.
17.44.016 Obligation of Property Owner for Structures in the Street Area.
17.44.017 Permit Revocation.
17.44.020 Temporary Street Closure.
17.44.030 Advertising Bench Allowed.
17.44.040 Fee.
17.44.050 Revocation.
17.44.060 Authority

17.44.010 Unlawful Acts Enumerated.

(Amended by Ordinance Nos. 140190, 151081, 175205, 178290 and 182760, effective June 5, 2009.)

A. It is unlawful for any person to obstruct or cause to be obstructed any roadway, curb or sidewalk by leaving or placing, to remain longer than 2 hours any object, material or article which 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 Engineer 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 Engineer 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 Engineer, 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 shall be defined as provided in Title 32.

D. This section shall not apply to:

1. Any use, sign, or structure for which a permit has been issued or which 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 Engineer or the Traffic Engineer; nor

4. Temporary closures and occupancies pursuant to this Chapter.

17.44.015 Revocable Permits to Construct and Maintain Structures in the Street Area.
(Added by Ordinance Nos. 160849 and 178290, effective July 1, 2004.)

A. Except as otherwise provided in this Code, permits to construct, install and/or maintain privately-owned structures in dedicated street area may be issued by the City Engineer only to the owner of the property abutting the half of the street area in which the structure is proposed to be built. Such permits shall be revocable at any time as provided in Section 17.44.017. The burdens and benefits of any such permit shall run with the property abutting the half of the street area in which the structure is proposed to be built and all such permits shall be recorded against the title of the benefitting property except as otherwise specified below. All cost of such recordings shall be borne by the permittee. Upon sale or other disposition of the property, the permit shall automatically transfer to any new property owner, unless the permit specifically states that it is nontransferable.

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

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

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

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

C. The benefits and burdens of permits issued to parties other than the owner of the abutting property shall run with the party or property specified in the permit, other portions of this code notwithstanding

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

(Added by Ordinance No. 160849, effective June 2, 1988.) The owner of any real property shall be responsible for maintaining any structures in the half of the street area abutting the owner's property, whether such structures are under City permit or not, except that the abutting owner shall not be responsible for the maintenance of structures which have been installed by other than the abutting owner under a permit or other authority granted by the City of Portland.

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

17.44.017 Permit Revocation.

(Added by Ordinance No. 160849; amended by 178290, effective July 1, 2004.) Permits for structures in City streets may be revoked by the City Engineer at any time and for any reason the City Engineer deems to be in the interest of the City, and no grant of any permit, expenditure or money in reliance thereon, or lapse of time shall give the permittee any right to the continued existence of a structure or to any damages or claims against the City arising out of revocation.

Upon revocation the permittee, or any successor permittee, shall at permittee's own cost remove such structure within 90 days after written notice to the permittee by the City of such revocation, unless the City Engineer specifies a shorter period, and shall 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 Engineer. If the permittee does not remove the structure and/or return the street area to a condition satisfactory to the City Engineer, the City Engineer may do so, and the permittee shall 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 shall become a lien upon the abutting property until paid by the permittee. The City may sell or otherwise dispose of structures or parts thereof removed from the public right-of-way under authority of this Section, and the owner of same shall not be entitled to any compensation for said items from the City.

17.44.020 Temporary Street Closure.

(Amended by Ordinance Nos. 138811 and 143846, effective June 16, 1977.) City Engineer may close or 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 special events, such as block parties or neighborhood fairs.

Such closures shall include the requirements of the Traffic Engineer and provide for appropriate insurance as required by the City Engineer, protecting the public and the City.

17.44.030 Advertising Bench Allowed.

(Replaced by Ordinance No. 171312, effective June 25, 1997.) 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 curb in the public right of way of the City, and such benches may bear advertising messages. Permits for benches bearing advertisements shall be granted only to the Tri-County Metropolitan Transit District (Tri-Met). For purposes of this chapter, the term bench shall also apply to transit shelters owned, operated and maintained by Tri-Met.

17.44.040 Fee.

(Replaced by Ordinance No. 171312, effective June 25, 1997.) An annual fee as prescribed in Section 17.24.010 shall be collected for every permit issued to install an advertising bench. This fee is due July 1 and shall 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.

17.44.050 Revocation.

(Replaced by Ordinance No. 171312, effective June 25, 1997.) The City Engineer may revoke any permit issued under Section 17.44.030 - 17.44.040 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 which would have been grounds for denial of the initial application.

17.44.060 Authority.

(Replaced by Ordinance No. 171312, effective June 25, 1997.) The City Engineer is authorized to enter into an intergovernmental agreement with Tri-Met to govern procedures in the issuance of permits under this section.

17.44.070 Advertising Bench Location.

(Repealed by Ordinance No. 171312, effective June 25, 1997.)

17.44.080 Advertising.

(Repealed by Ordinance No. 171312, effective June 25, 1997.)

17.44.090 Permit Issuance or Denial.
(Repealed by Ordinance No. 171312, effective June 25, 1997.)

17.44.100 Appeal.
(Repealed by Ordinance No. 171312, effective June 25, 1997.)

17.44.110 Term.
(Repealed by Ordinance No. 171312, effective June 25, 1997.)

17.44.120 Renewal.
(Repealed by Ordinance No. 171312, effective June 25, 1997.)

17.44.130 Insurance.
(Repealed by Ordinance No. 171312, effective June 25, 1997.)

17.44.140 Maintenance.
(Repealed by Ordinance No. 171312, effective June 25, 1997.)

17.44.150 Revocation.
(Repealed by Ordinance No. 171312, effective June 25, 1997.)

17.44.160 Remonstrance.
(Repealed by Ordinance No. 171312, effective June 25, 1997.)

17.44.170 Removal.
(Repealed by Ordinance No. 171312, effective June 25, 1997.)

Chapter 17.45

BANNER STANDARDS

(Added by Ordinance No. 145589,
effective April 20, 1978.)

Sections:

17.45.010 Definitions.
17.45.020 Banner Standards - Permitted Uses.
17.45.030 Dimensions.
17.45.040 Insurance Requirements.
17.45.050 Application for Banner Permit.
17.45.060 Design Review.
17.45.080 Maintenance.
17.45.090 Appeal.

17.45.010 Definitions.

(Amended by Ordinance No. 177028, effective December 14, 2002.) As used in this Section,

A. **"Banner standards"** are structures in the Mall area of downtown Portland, located on SW Fifth and SW Sixth Avenues between SW Taylor and NW Irving Streets, designed for the display of hanging pennants or banners.

B. **"Mall area"** means that area bounded by SW Broadway on the west, NW Irving on the north, SW Fourth Avenue on the east, and SW Madison on the south, but not including the street and sidewalk areas of SW Broadway and SW Fourth Avenues.

17.45.020 Banner Standards - Permitted Uses.

(Amended by Ordinance No. 182760, effective June 5, 2009.)

A. Banner standards may be used:

1. By nonprofit organizations and institutions, to announce noncommercial and nonpolitical events of direct and substantial civic benefit; and

2. For banners commemorating the four seasons of the year and holidays.

B. The City Engineer may regulate the composition of and size of banners, and impose other regulations necessary in the interest of the Mall area's appearance and the public's safety.

17.45.030 Dimensions.

No banners shall exceed 8 feet in length or 3 feet 6 inches in width.

17.45.040 Insurance Requirements.

(Amended by Ordinance No. 182760, effective June 5, 2009.) No permit to use the banner standards shall be issued until the proposed permittee has signed a statement that it shall hold harmless the City, its officers and employees, and shall indemnify the City, its officers and employees for any claims for property damage or personal injury which may result from any activity carried on under the terms of the permit. Permittee shall furnish and maintain sufficient public liability, product liability, and property damage insurance to protect the permittee and the City from all claims for property damage or personal injury, including death, which may arise from or in connection with operations under the permit. Such insurance shall provide coverage of not less than $1,000,000 (one million dollars). This insurance shall be without prejudice to coverage otherwise existing therein, and shall name as additional insures the City of Portland, its officers and employees, and shall further provide that the policy shall not terminate or be canceled prior to the completion of the contract without 30 days written notice to the Auditor of the City.

17.45.050 Application for Banner Permit.

The applicant shall file with the City Engineer an application for use of the banner standards. The application shall include a sketch of the banner or banners, indicating their size, design, and proposed location. The application also shall include the written and signed approval of the owner and the lessee or tenant of the property immediately abutting the location of the standard or standards. Such approval shall apply only during the life of the ownership, lease or tenancy. Upon transfer of ownership or change of lessee or tenant, new written, signed approval shall be obtained and filed with the City. The application shall indicate whether any words or messages will be displayed on the banner.

17.45.060 Design Review.

Upon receiving the application, the City Engineer shall submit the application to the Design Review Committee for their recommendation with respect to an appropriate banner design.

17.45.070 Applicability of Other Code Provisions.

(Repealed by Ordinance No. 173669, effective May 12, 1999.)

17.45.080 Maintenance.

Banners covered by this Chapter shall be maintained in good condition at all times. The City shall not be liable for any damage caused by the failure of any authorized institution or organization holing a banner permit to keep the banners in good condition.

The City Engineer shall notify the permit holder for any banner to make whatever improvement is necessary to comply with this Chapter, including the removal of the banner.

17.45.090 Appeal.

The Auditor shall place appeal to decisions under this Chapter on the Council Calendar at the first convenient opportunity and shall notify the City Engineer. At the appeal hearing, the Council shall hear the City Engineer or representative, who shall state the grounds for his action. The party appealing may supply oral or written testimony. The Council shall hear and determine the appeal, and its decision shall be final and effective immediately.

Chapter 17.46

NEWSRACKS

(Added by Ordinance No. 144772,
effective Dec. 4, 1979.)

Sections:

17.46.010 Definitions.
17.46.020 Newsracks On or Near Mass Transit Avenues.
17.46.030 Violations of Ordinance.
17.46.040 Appeals.
17.46.050 City Engineer Designated Representative.
17.46.060 Abandonment.
17.46.070 Penalty.

17.46.010 Definitions.

(Amended by Ordinance Nos. 165594 and 176585, effective July 5, 2002.)

A. **"Distributor"** shall mean the person responsible for placing and maintaining a newsrack in a public right of way.

B. **"Newsrack"** means any self-service or coin-operated box, container, storage unit or other dispenser installed, used or maintained for the display and sale of newspapers or other news periodicals.

C. **"Mass Transit Avenue"** means those portions of SW/NW Fifth Avenue and SW/NW Sixth Avenue from SW Madison Street to NW Irving Street, and those portions of SW Yamhill Street and SW Morrison Street from SW 1st Avenue to SW 11th Avenue.

D. **"Mall blue"** means the shade of blue used to paint street furniture on Mass Transit Avenues and includes any hue substantially similar to Dark Blue No. 7-0-07873 Endura Shield manufactured by Tnemec Company, Inc.

E. **"Sidewalk"** means any surface provided for the use of pedestrians exclusive of motor vehicles.

F. **"Street"** means all that area dedicated to public use for public street purposes and shall include, but not be limited to, roadways, parkways, alleys and sidewalks.

17.46.020 Newsracks On or Near Mass Transit Avenues.

A. All newsracks placed on any Mass Transit Avenue shall be installed upon and securely fastened to the City-owned newsrack pedestals located on such avenues.

B. Any newsrack placed on a sidewalk within 20 feet of a Mass Transit Avenue shall be painted "Mall blue."

C. No newsrack shall be installed upon a Mass Transit Avenue unless it is painted "Mall blue" and is substantially similar in design and appearance to the K600 Model manufactured by Berkley-Small Incorporated.

D. No newsrack shall be used for advertising signs or publicity purposes other than that dealing with the display, sale or purchase of the newspaper or news periodical sold therein.

E. Each newsrack shall be equipped with a coin return mechanism to permit a person using the machine to secure an immediate refund in the event he is unable to receive the publication paid for. The coin return mechanisms shall be maintained in good working order. This Subsection shall not be applicable to newsracks used for distributing newspapers for free.

F. Each newsrack shall have affixed to it in a readily visible place so as to be seen by anyone using the newsrack 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 malfunction, or to secure a refund in the event of a malfunction of the coin return mechanism, or to give the notices provided for in this Chapter.

G. Each newsrack shall be maintained in a neat and clean condition and in good repair at all times. Specifically, but without limiting the generality of the foregoing, each newsrack shall 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 in the visible painted areas thereof;

3. it is reasonably free of rust and corrosion in the visible unpainted metal areas thereon;

4. the clear plastic or glass parts thereof, if any, through which the publications therein are viewed are unbroken and reasonably free of cracks, dents, blemishes and discoloration;

5. the paper or cardboard parts or inserts thereof are reasonably free of tears, peeling or fading; and

6. the structural parts thereof are not broken or unduly misshapen.

H. The City Engineer, upon the request of the majority of distributors maintaining newsracks on any one City-owned newsrack pedestal, shall consider the movement of the newsrack pedestal to another location within the Mass Transit Avenues. In determining the location the City Engineer shall consider the need to prevent the obstruction of pedestrian traffic as balanced against the need of distributors to have locations conducive to high volume sales.

17.46.030 Violations of Ordinance.

A. Upon determination by the City Engineer that a newsrack has been installed, used or maintained in violation of Section 17.46.020 A - G a of this Chapter, an order to correct the offending condition shall be issued to the distributor of the newsrack, if known, and if not, to the publication distributed therein. Such order shall be telephoned and confirmed by mailing a copy of the order by certified mail, return receipt requested. The order shall specifically describe the offending condition and suggest actions necessary to correct the condition. Failure to properly correct the offending condition within 3 days (excluding Saturdays and legal holidays) after the mailing date of the order shall result in the offending newsrack being summarily removed by the City Engineer from the Mass Transit Avenues and placed in the nearest sidewalk area where the newsrack would not be in violation of this Chapter. Upon removing any newsrack from a Mass Transit Avenue the City Engineer shall provide immediate notification by telephone of the location to which the newsrack has been removed. A copy of such notice shall also be immediately mailed. Any order issued under this Subsection (a) may be appealed pursuant to Section 17.46.040, but the filing of an appeal shall not stay the effectiveness of the order.

B. Upon determination by the City Engineer that a newsrack has been used, maintained or installed in violation of Section 17.46.020 D, E or G, or 17.46.060 an order to correct the offending condition shall be issued to the distributor of the newsrack, if known, and if not, to the publication distributed therein. Such order shall be telephoned and confirmed by mailing a copy of the order, return receipt requested. The order shall specifically describe the offending condition and suggest actions to correct the condition. Failure to properly correct the offending condition within 10 days after the mailing date of the order shall result in the offending newsrack being summarily removed by the City Engineer from the Mass Transit Avenues and placed in the nearest sidewalk area where the newsrack would not be in violation of this Chapter. Upon removing any newsrack form a Mass Transit Avenue, the City Engineer shall provide immediate notification of

the location to which the newsrack has been removed, by telephone, and copy of such notification shall also be immediately mailed. Any order issued under this Subsection B may be appealed pursuant to Section 17.46.040 and the filing of an appeal shall stay the effectiveness of the order until the Council shall have decided the appeal.

17.46.040 Appeals.

Any person or entity aggrieved by a finding, determination, notice or action taken under the provisions of this Chapter may appeal and shall be appraised of his right to appeal to the Council. An appeal must be perfected within 10 days after receipt of notice of any protested decision or action by filing with the Office of the Auditor a letter of appeal briefly stating therein the basis for such appeal. A hearing shall be held on a date no more than 15 days after receipt of the letter of appeal. Appellant shall be given at least 5 days notice of the time and place of the hearing. The Council shall give the appellant, and any other interested party, a reasonable opportunity to be heard in order to show cause why the determination of the City Engineer should not be upheld. In all such cases, the burden of proof shall be upon the appellant to show that there was no substantial evidence to support the action taken by the City Engineer. At the conclusion of the hearing, the Council shall make a final and conclusive determination.

17.46.050 City Engineer Designated Representative.

City Engineer as used in this Ordinance shall include his designated representative.

17.46.060 Abandonment.

In the event a newsrack remains empty for a period of 30 continuous days, the same shall be deemed abandoned, and may be treated in the manner as provided in Section 17.46.030 B for newsracks in violation of the provisions of this Ordinance.

17.46.070 Penalty.

Any person convicted of intentionally, knowingly or recklessly violating any lawfully issued order of the City Engineer by returning a removed newsrack to the area regulated by this Chapter prior to correcting all defects, or of violating Section 17.46.020 F shall be punished upon conviction by a fine of not more than $500.

Chapter 17.48

MOVING BUILDINGS

Sections:

17.48.010 Permit Required.
17.48.020 Application and Fee Deposit.
17.48.030 Moving Permit.
17.48.040 Regulations.
17.48.050 Cutting Wires in Moving Operation.

17.48.010 Permit Required.

(Amended by Ordinance No. 140207, effective Aug. 1, 1975.) 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.

(Amended by Ordinance No. 140207, effective Aug. 1, 1975.) Application for a permit for moving a building or structure shall be in writing, shall 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 shall 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 shall be collected prior to the issuance of the permit.

17.48.030 Moving Permit.

(Amended by Ordinance Nos. 140207, 173627, 180917, 182389 and 182760, effective June 5, 2009.)

A. When a building to be moved does not exceed three stories in height, the City Engineer may issue a moving permit, fixing the route to be used for the move, with the prior approval of the Traffic Engineer of the route, and upon the terms as he may deem necessary. The City Engineer shall keep a copy of the permit so issued.

B. When a building to be moved exceeds three stories in height, any permit for moving shall be issued by the Council by ordinance. The Ordinance shall set forth any conditions upon the moving which may be deemed necessary and which are not provided for in this Chapter, and shall set forth the City Engineer'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 shall be issued until the applicant shall have filed with the Auditor an insurance policy or certificate of insurance and form of policy for public liability insurance naming as additional insures of City, its officers, agents and employees, in the amounts of at least $1,000,000 (one million dollars); the insurance shall also contain a provision that it shall not be cancelable during the term of the permit.

D. A moving permit shall not be issued until the applicant has deposited with the Treasurer a sum sufficient, in the judgment of the City Engineer, to cover the cost of repairing any and all damage or injury to street or streets, or the improvements therein, which 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 or other properties or installations which may be necessary in preparation for or in consequence of any moving operation. Upon completion of the moving operation, the bureau or bureaus which may have required such deposit and the City Engineer shall 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 shall 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 shall promptly reimburse the affected bureau or bureaus for such additional cost.

17.48.040 Regulations.

(Amended by Ordinance No. 182760, effective June 5, 2009.) The moving of a building or structure under a moving permit shall be continuous day-by-day during all the hours specified by the City Engineer 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 said building or structure or any portion thereof 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 Engineer, unless an emergency exists by reason of unforeseen difficulties encountered in cutting wires, trees, or removing obstructions in the course of the route selected. 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 specifically granted therefore by the City Engineer prior to the commencement of any movement; provided, however, that if any unforeseen difficulties are encountered and an extension of time necessitated thereby is requested from the City Engineer prior to the expiration of 36 hours from the commencement of the moving operation, the City Engineer 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 shall be displayed in conspicuous places at or on a building or structure being moved during the hours in which streetlights are lighted. The City Engineer 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.

(Amended by Ordinance No. 182760, effective June 5, 2009.) When overhead wires in any street designated in a permit for moving a building or structure will interfere with the moving operation, the permittee shall 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 shall 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 shall 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 shall be determined by the City Engineer. The permittee of a moving permit shall pay the actual expense of removing and replacing the wire, and as soon as the actual expense can be determined the permittee shall immediately pay any deficit and the owner shall refund any surplus to him. Upon receipt or tender of the amount estimated or the amount fixed by the City Engineer in case of dispute, the owner of the wire shall remove it in time to permit the passage of the building or structure without unnecessary delay.

Chapter 17.52

TREES

(New Chapter substituted by Ordinance No. 134329, effective May 8, 1972.)

Sections:

17.52.010 Clearances.
17.52.020 Sidewalks to be Kept Cleaned of Leaves and Organic Matter.
17.52.030 Interference with Sewer by Tree Roots.
17.52.040 Curb or Sidewalk Damage from Ornamental Trees.
17.52.050 Tree Tubs.
17.52.060 Trimming For or By City.

17.52.010 Clearances.

(Amended by Ordinance Nos. 138415, 173369 and 177028, effective December 14, 2002.) It is unlawful for owners or occupants to permit any tree upon or in front of their premises, to interfere with or come in contact with wires belonging to the City, or to permit the branches of such trees to be less than 7-1/2 feet above the sidewalk, or 11 feet above the roadway; provided, however, that on any street which is designated as a Regional Trafficway, Major City Traffic Street, or a District Collector, or a one-way street, and where parking has been prohibited, limbs of trees shall be trimmed to a height of 14 feet above the crown of the street. Whenever the City Engineer finds that a condition prohibited by this Section exists, the condition is a public nuisance. In addition to the penal enforcement of this Title, the Commissioner of the department under whom the Office of the City Engineer is administered may take steps in accordance with the procedures set forth in Title 29 concerning abatement of nuisances, including assessment of cost of abatement against the property on which or in front of which the tree is located.

17.52.020 Sidewalks to be Kept Cleaned of Leaves and Organic Matter.

It is the duty of the occupants of the premises or the owner of such premises, if the same is unoccupied, to keep the sidewalk clean from branches, leaves, flowers, fruit or other organic matter fallen thereon.

17.52.030 Interference with Sewer by Tree Roots.

(Amended by Ordinance Nos. 173369 and 182760, effective June 5, 2009.) Roots of any tree in dedicated street area which have entered any sewer, drain or house connection in the street area, or roots of any tree which have entered any sewer, drain or connection in a City-owned sewer easement, and which are stopping, restricting or retarding the flow of sewage or drainage, are hereby declared to be a public nuisance. Whenever the City Engineer finds that such condition appears to exist, the Commissioner of the department

under whom the Office of the City Engineer is administered shall take steps in accordance with the procedure set forth in Title 29 concerning abatement of nuisances, including assessment of costs of abatement against the property abutting the street area and owning the tree. As a part of the abatement, reasonable steps shall be taken to prevent future root entry and interference with the flow of sewage or drainage. If the City Engineer believes that only removal of the tree will reasonably prevent future root entry into the sewage or drainage facility, the City Engineer shall so notify the owner and the Director of the Bureau of Parks and Recreation. Thereupon if the Director of the Bureau of Parks and Recreation concurs with the determination that the removal is necessary, and the owner has not removed the tree, the City Engineer shall require the tree to be removed as a part of the nuisance abatement and the notice to abate shall so state. A permit for removal shall be obtained, by the owner removing the tree, from the Bureau of Nuisance Abatement, as provided in this Chapter.

17.52.040 Curb or Sidewalk Damage from Ornamental Trees.

When the curb or sidewalk, or both, abutting any land becomes damaged or in a state of disrepair because of an ornamental tree maintained by the property owner, the repair of the curb or sidewalk, or both, shall be treated as other curb or sidewalk repairs in accordance with the provisions of this Title. The removal of any tree or portion thereof as the City Engineer may determine necessary, shall be deemed a part of the curb or sidewalk repair.

17.52.050 Tree Tubs.

(Amended by Ordinance No. 182760, effective June 5, 2009.) 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 shall first apply to the City Engineer for a permit. The permit may be issued by the City Engineer upon approval of the Traffic Engineer under such safeguards and conditions as the City Engineer 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 canceled by the City Engineer 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.

17.52.060 Trimming For or By City.

(Added by Ordinance No. 156125; effective June 13, 1984.) In maintaining its utility system, the City may trim or cause to be trimmed any tree which interferes with any light, pole, wire, cable, appliance or apparatus used in connection with or as a part of the utility system. The person remedying the condition shall be authorized to enter the premises for that purpose.

Chapter 17.56

PUBLIC UTILITIES

Sections:

17.56.010 General Bond.
17.56.020 Plans for Underground Construction by Franchise Holder.
17.56.030 Monthly Payments by Utility Companies.
17.56.040 Permits in Certain Areas.
17.56.050 Poles or Wires in Public Area.
17.56.060 Relocation of Facilities.
17.56.070 Placement of Overhead Wires.
17.56.080 Service Shutoff Outside Premises.
17.56.090 Control of Electrical Currents.
17.56.100 Preservation of Cobblestones.

17.56.010 General Bond.

(Amended by Ordinance No. 173369, effective May 12, 1999.) In cases where the City has granted or may hereafter 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, whereby it shall 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 thereafter be granted to or held by it, and particularly that it will comply with all requirements thereof 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.

(Amended by Ordinance Nos. 151100 and 176555, effective July 1, 2002.) 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, shall, 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 City Engineer detailed plans and specifications of all the proposed construction work. Such plans shall be drawn to a scale prescribed by the City Engineer and such specifications shall state the manner of construction and the kind of materials proposed to be used. If the plans and specifications are satisfactory to the City Engineer, he shall approve them and issue a permit to the person filing them to

construct the work. If the City Engineer does not approve the plans or specifications or orders changes made therein, the person submitting them shall comply with the City Engineer's requirements and shall file new plans and specifications which are satisfactory to the City Engineer. If these are approved by him, the person may 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 shall not be made until first approved by the City Engineer.

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 shall be filed with the City Engineer. If changes have been made after the permit is issued, these changes shall be shown in an easily distinguishable manner. The final map shall bear a statement to the effect that the work done under the permit is correctly shown, and shall be signed by an authorized representative of the company doing the work.

The provisions of this Section shall apply both to dedicated rights of way and to proposed rights of way in approved land divisions which will be dedicated to the public upon plat recording. Permits issued for underground construction in proposed rights of way shall require acknowledgment that the permittee will hold the City of Portland harmless against any liability which may occur prior to dedication of the rights of way, and further acknowledgment that the permittee assumes all risk of loss which may arise in the event the City or any other public agency subsequently requires changes in or additions to plans or refuses to approve all or any part of permittee's improvements. Permits shall 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 shall be made on or before the 15th day of each month following the month in which the permits were issued.

17.56.040 Permits in Certain Areas.

(Amended by Ordinance No. 159491, effective Mar. 12, 1987.) A permit to a public utility company for installation of any underground structure or structures in the congested district hereinafter defined, may be granted on the following conditions:

A. A written application shall be made to the City Engineer accompanied by five prints showing the proposed size and location of the proposed installation;

B. When the plans have been approved by the City Engineer, two copies shall be retained by the City Engineer and one copy shall be returned to the utility.

C. The congested district for the purpose of this Section is divided into two areas designated as West Congested Area and East Congested Area, and bounded as follows:

1. West Congested Area: The area bounded on the south by the north line of the Stadium Freeway, on the north by the north line of NW Hoyt Street, on the west by the west line of SW and NW 14th Avenue, and on the east by the western harbor line of the Willamette River,

2. East Congested Area: The area bounded on the south by the south line of SE Clay Street, on the north by the north line of NE Everett Street, on the west by the west line of NE and SE Union Avenue, and on the east by the east line of NE and SE 7th Avenue, and in addition those portions of East Burnside Street, SE Morrison Street, and SE Hawthorne Boulevard lying between the east harbor line of the Willamette River and the west line of NE and SE Union Avenue.

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 City permit or franchise therefor has first been granted by the Council.

17.56.060 Relocation of Facilities.

Every person owning, operating, or managing any public utility in the City and using poles located in public area for utility purposes, shall relocate any pole at the expense of the utility whenever required by the City Engineer. When other facilities used for public utility purposes are located in public area such facilities shall be relocated at utility expense whenever required by the City Engineer for a public improvement or for the public safety.

17.56.070 Placement of Overhead Wires.

Any public utility erecting, placing, or maintaining in the City any overhead wire or cable shall 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 shall 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 shall 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.

17.56.100 Preservation of Cobblestones.

(Added by Ordinance Nos. 139670; Amended by Ordinance Nos. 141548, 173627 and 182389, effective January 2, 2009.)

A. As used in this Section, "permit" means a valid permit issued under Section 17.56.020 or 17.56.040 and "permittee" means a person to whom a permit is issued.

B. Cobblestones, known as Belgian building blocks, located in street areas 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 furnish a permittee a copy of the regulations authorized by this Section.

D. A permittee shall preserve for delivery to the City quantities of 150 or more cobblestones displaced by excavations of City streets. A report of the number and location of the cobblestones shall be sent to the Bureau of Parks, Operations Division, and permittee shall deliver the cobblestones to a site as directed by the Bureau.

The Commissioner of the Bureau of Parks hereby is delegated authority to issue additional regulations providing for the preservation of cobblestones excavated from City street areas.

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

Chapter 17.60

UNDERGROUND WIRING DISTRICTS

Sections:

17.60.010 Designated.
17.60.020 Overhead Wires Prohibited.
17.60.030 Application for Permit.
17.60.040 Designation of Space.
17.60.050 Filing Plans and Specifications.
17.60.060 Issuance of Permit.
17.60.070 Emergency Repair.
17.60.080 Restoration of Streets and Public Use Easements.
17.60.090 Use of Sidewalk Space and Building Fronts.
17.60.100 Location Maps.
17.60.110 Exemptions.
17.60.120 Joint Use of Conduits.
17.60.130 Special Control Districts.
17.60.140 Conversion to Underground Wiring Within Control Districts.
17.60.150 Service Entrance Requirements in Control Districts.

17.60.010 Designated.

(Amended by Ordinance No. 162574, effective Dec. 7, 1989.) The following described districts designated as "District A," "District B," "District C," "District D" and "District E," mean and include the following streets in the City:

District A: Beginning with the intersection of the south line of SW Madison Street with the east line of SW Front Avenue, running thence westerly, along said south line of SW Madison Street, 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 Street; thence westerly along said south line of SW Yamhill Street to its intersection with the west line of SW 14th Avenue; thence northerly, along said west line of SW 14th Avenue to its intersection with the north line of West Burnside Street; thence easterly, along said north line of West Burnside Street 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 Street; thence easterly along said north line of NW Glisan Street to its intersection with the east line of NW Front Avenue; thence southerly, along said east line of NW and SW Front Avenue to the place of beginning.

District B: East Burnside Street, SE Morrison Street and SE Hawthorne Boulevard, from the east line of SE and NE 3rd Avenue to the west line of SE and NE 6th Avenue; and also those portions of other streets parallel thereto lying between the south line of NE Couch Street and the south line of SE Hawthorne Boulevard which are included between a line drawn 100 feet east of and parallel to the east line of SE and NE Grand Avenue;

and a line drawn 100 feet west of and parallel to the west line of SE and NE Grand Avenue; and SE Grand Avenue, from the south line of NE Couch Street to the south line of SE Hawthorne Boulevard; it being provided, however, that any crossings over streets in this District which were installed before January 1, 1950 shall be permitted to remain; and it being further provided that additional machine-turned wooden street light poles and overhead wires for street lighting shall be permitted in said District, if approved by the City Engineer.

District C: NE Martin Luther King, Jr. Boulevard (NE Union Avenue) from 100 feet north of the north line of NE Davis Street to the south line of NE Going Street, it being provided however, that any street light poles and traffic signal poles and any crossings over NE Martin Luther King, Jr. Boulevard (NE Union Avenue) which were installed before January 1, 1950 shall be permitted to remain; and it being further provided that additional machine-turned wooden street light poles and overhead wires for street lighting shall be permitted in said District, if approved by the City Engineer.

District D: Beginning with the intersection of the center line of SW 4th Avenue and the north line of SW Market Street, running thence easterly along said north line of SW Market Street to its intersection with the center line of SW Harbor Drive; thence southerly along said center line of SW Harbor Drive to its intersection with the south line of SW Arthur Street; thence westerly along said south line of SW Arthur Street to its intersection with the center line of SW Barbur Boulevard; thence northerly along said center line of SW Barbur Boulevard and along the center line of SW 4th Avenue to the place of beginning.

However, a minimum overhead cable-type system along the northerly line of SW Market Street and guy poles and anchors along the easterly line of SW 4th Avenue shall be permitted in said District if approved by the Portland Development Commission and the City Engineer.

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 Avenue, said point being the most westerly point in a common line between the I-205 Freeway right-of-way and NE 112th Avenue, and located southerly of the intersection of NE 112th Avenue with NE Marine Drive. Line 2: The common boundary line between the City of Portland and the City of Gresham approximately 826.0 feet north of the north line of NE Sandy Boulevard at its intersection with NE 181st Avenue; also public use easements 10.0 feet in width granted to the City of Portland 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 10.0 foot wide public use easements which were installed prior to November 1, 1988 shall be exempted from this District.

17.60.020 Overhead Wires Prohibited.

(Amended by Ordinance No. 162574, effective Dec. 7, 1989.) 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 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.

17.60.030 Application for Permit.

(Amended by Ordinance No. 159491, effective Mar. 12, 1987.) 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 shall file with the City Engineer 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 thereof within the underground district as required. The application shall be accompanied by the agreement of the applicant promptly to repave and repair any of the streets or portions thereof which 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.

(Amended by Ordinance Nos. 159491 and 162574, effective Dec. 7, 1989.) Upon the filing of an application under Section 17.60.030 the City Engineer 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 shall be used except as designated by the City Engineer.

17.60.050 Filing Plans and Specifications.

(Amended by Ordinance No. 159491, effective Mar. 12, 1987.) The applicant for permit shall file with the City Engineer 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 thereto shall file a map showing the general route and location of the trenches, conduits or subways.

17.60.060 Issuance of Permit.

(Amended by Ordinance Nos. 159491 and 162574, effective Dec. 7, 1989.) Subject to payment of the applicable fees prescribed in Chapter 7.12, if the City Engineer finds that the application and the plans, specifications and route map filed are satisfactory, the City Engineer 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 thereof in an underground wiring district, to make such excavation therein, as may be necessary to construct conduits or subways, to lay wires, cables and appliances therein, and to build

vaults, manholes or service boxes underground within the space theretofore designated. 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 Engineer and paying the fees set forth in 17.24.020. All excavation work and restoration pursuant to the permit shall be under the general supervision of the City Engineer and shall be made only after notice to the City Engineer.

17.60.070 Emergency Repair.

When immediate repairs to an existing underground installation in an underground wiring district become necessary as the result of an emergency or accident involving public hazard, or interruption of service to subscribers or customers, the repairs may be started or made without permit after notice to the City Engineer and under his supervision, but in such case a report of the circumstances showing the emergency shall be made promptly to the City Engineer.

17.60.080 Restoration of Streets and Public Use Easements.

(Amended by Ordinance No. 162574, effective Dec. 7, 1989.) Upon the installation and completion of any underground system of wires and appliances, the person installing the same shall restore the surface of all pavements, improvements, landscaping and foundations thereof which 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 Engineer.

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 Engineer, 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 shall be placed in proper enclosures as the City Engineer may find necessary to prevent danger to life or property. No wire, cable or the supports therefor shall cross any window or opening in any building.

17.60.100 Location Maps.

(Amended by Ordinance No. 162574, effective Dec. 7, 1989.) Every person to whom a permit has been granted pursuant to this Chapter shall, upon completion of the installation of underground wires, cables, and appliances, file with the City Engineer duplicate maps 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 thereof. The City Engineer shall maintain a record thereof.

17.60.110 Exemptions.

(Amended by Ordinance Nos. 155775, 173627 and 182389, effective January 2, 2009.) The provisions of this Chapter with respect to underground construction or installation shall 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 shall be placed inside or on the outside of poles used in connection with such street lighting as directed by the City and shall 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 shall be placed in proper enclosures so as not to be dangerous to life or property, excepting, however, wires above the ground connecting the poles and the wires thereof with the light fixture on the pole.

B. Traffic signal installations made and maintained by the City. When deemed appropriate by the City Traffic Engineer agreements may be made with private property owners permitting attachment of traffic signal installations to privately owned buildings, and the Commissioner In Charge of the Bureau of Transportation is authorized to enter into or to approve agreements relating thereto, such agreements having first been approved as to form by the City Attorney. The agreements made prior to passage hereof are hereby 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 shall be carried from or connected with the building, and if such wires are placed on the sides or front of any such building, they shall be placed in proper enclosures so as not to be dangerous to life or property, and the wires shall 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 shall 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 shall be placed on the sides or front of buildings in proper enclosures as the City

Engineer may find necessary to prevent danger to life or property, and these wires shall 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 shall be placed as the City Engineer 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 shall be connected to underground wires from the foot or base of the respective poles.

17.60.120 Joint Use of Conduits.

Nothing in this Chapter shall 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.

17.60.130 Special Control Districts.

A. The following described district designated as Control District "A" means and includes the streets within the following described perimeter:
Control District "A" - Beginning at the south line of SW Madison Street and the west line of SW Harbor Drive; thence westerly along SW Madison Street to the west line of SW 7th Avenue (Broadway); thence northerly along said west line to the south line of SW Yamhill Street; thence westerly along said south line to the east line of the Oregon State Highway Commission right of way designated for the Stadium Freeway; thence southerly and southeasterly along said easterly line of said Stadium Freeway right of way to the center line of SW 4th Avenue (Underground District "D"); thence northerly along said center line of SW 4th Avenue to the northerly line of SW Market Street; thence easterly along said north line to the west line of SW Harbor Drive; thence northerly along the west line of SW Harbor Drive to the point of beginning.

B. The following described district designated as Control District "B" means and includes the streets within the following described perimeter:
Control District "B" - Beginning at the intersection of the south line of SW Madison Street extended to the west bank of the Willamette River; thence running in a northerly direction along said west bank of the Willamette River to its intersection with the south line of NW Broadway Avenue; thence westerly along the south line of NW Broadway Avenue to its intersection with the north line of NW Lovejoy Street; thence west along the north line of NW Lovejoy Street to a point where the east line of NW Park Avenue would intersect with NW Lovejoy Street if the said NW Park Avenue were to be extended to the north from its present termination point at NW Hoyt Street; thence southerly along a line one block east and parallel to NW 9th Avenue to the north line of NW Hoyt Street at

the point where the east line of NW Park Avenue intersects with the said NW Hoyt Street; thence west along the north line of NW Hoyt Street to its intersection with the east line of the Oregon State Highway Commission right-of-way designated for the Stadium Freeway; thence south along the said east line of said Stadium Freeway right-of-way to its intersection with the north line of West Burnside Street; thence east along the north line of West Burnside Street to its intersection with the west line of NW Broadway Avenue; thence north along the west line of NW Broadway Avenue to its intersection with the north line of NW Glisan Street; thence east along the north line of said NW Glisan Street to its intersection with the east line of NW Front Avenue; thence southerly along the east line of NW Front Avenue to its intersection with the south line of SW Madison Street; thence east along the south line of SW Madison Street extended to its intersection with the west bank of the Willamette River, the point of beginning.

17.60.140 Conversion to Underground Wiring Within Control Districts.
(Amended by Ordinance No. 162754, effective Dec. 7, 1989.)

A. On or before December 1, of each calendar year until conversion is completed in accordance with this Section, each utility providing electric or telephone service within a control district shall file with the City Council a listing of streets, public use easements designated in Section 17.60.010, blocks, or parts thereof, within the control district, scheduled to be converted during the following calendar year to underground facilities. The schedule shall be placed on the Council Calendar and a public hearing by the City Council upon the schedule shall be given. The schedule shall be considered by the City Council and approved or amended as the City Council may find reasonable. However, the utilities may at any time file with the City Council amendments to said schedules, and if the City Council finds that a proposed amendment does not affect the public generally, the proposed amendment shall be allowed without notice of hearing; but if the City Council finds that the proposed amendment will affect the public generally, the same procedure shall be followed for notice and hearing as in the case of the original schedule filed with the City Council.

B. After such a determination of a conversion program, customers receiving service from streets scheduled for conversion shall be notified by the affected utility of its plan to proceed with such program during the particular calendar year. It is unlawful for any person to fail or neglect within 60 days after notification by the affected utility of the completion of the conversion work on an approved street, public use easements designated in Section 17.60.010, block or part thereof, to provide for receiving such service from the completed underground facility within the area approved for conversion, unless he discontinues such service. The property owners or occupants shall provide all necessary wiring changes to their

premises so as to receive service from the underground facilities in accordance with applicable utility tariffs, or other applicable schedule of charges on file with the State Public Utility Commissioner.

C. After the applicable calendar year of a scheduled Council approved conversion, it is unlawful for any electric or telephone utility to provide any permanent service in the area determined except from an underground facility, or to continue service from an overhead installation except with special Council permission.

D. (Amended by Ordinance No. 137561; passed and effective Dec. 6, 1973.) On or before June 30, 1974, all of Control District "A" and on or before December 31, 1974, all of Control District "B" shall be converted to underground utility facilities, and thereafter each of the control districts shall be respectively treated as underground wiring districts under this Chapter.

E. No utility shall, within any control districts described in this Chapter, impose any charge for conversion of its main facilities from overhead to underground, but the utilities shall not by this Subsection be required to provide any equipment or facilities or perform any installation or other work in connection therewith required of property owners and customers for receiving the utility service on their premises from an underground facility. The affected utility may make such charges for equipment, facilities or installation on private premises as are specifically authorized by its effective tariffs.

17.60.150 Service Entrance Requirements in Control Districts.

It is unlawful for any person to install a new electric or telephone service entrance or to make a major alteration of an existing electric or telephone service entrance within a control district as set forth in this Chapter without provision for the receiving of electric or telephone utility service through the service entrance from an underground facility to be maintained in the street area by the affected utility. The affected utility may elect to connect the underground service to feed from the existing overhead pole line until such time as the street, block, or part thereof, is converted to underground.

Chapter 17.64

PROTECTION OF CITY OWNED TELECOMMUNICATIONS LINE AND EQUIPMENT, STREET LIGHTING AND TRAFFIC SIGNAL SYSTEMS.

(Amended by Ordinance No. 173369, effective May 12, 1999.)

Sections:

17.64.010 Interference With.
17.64.020 Permit for Interference.
17.64.030 Supervision and Expense of Work.
17.64.040 Use of City Poles or Posts.

17.64.010 Interference With.

(Amended by Ordinance No. 173369, effective May 12, 1999.) 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 of Portland owned telecommunications lines and equipment, street lighting, or traffic signal systems, except as hereinafter provided.

17.64.020 Permit for Interference.

(Amended by Ordinance Nos. 173369, 173627, 181483 and 182389, effective January 2, 2009.) 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 of Portland owned telecommunications lines and equipment, street lighting, or traffic signal systems of the City without first obtaining a written permit therefor. A person finding it necessary in the pursuit of a lawful purpose to remove, interfere with, or disturb any portion of City of Portland owned telecommunications lines and equipment, street lighting, or traffic signal systems shall give, or cause to be given, to the Director of Communications and Networks, OMF Business Operations Division or, for street lighting issues, to the Bureau of Transportation, a notice in writing, at least 2 hours before it shall be necessary to interfere with or disturb any portion of such systems, stating the locality at which, and in the manner in which it shall be necessary to remove, interfere with, or disturb the system involved. No notice shall 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 shall specify fully the change required and any restrictions thereon. Any person aggrieved by the decision may appeal such decision to the City Council by filing notice thereof in writing with the City Auditor. No permit shall be required for emergency repairs by a public utility necessitating interference with City

system, equipment or apparatus, but the City as its respective jurisdictions may appear, shall be notified as soon as possible and the public utility shall make any further changes required.

17.64.030 Supervision and Expense of Work.

All work done by or for a permittee under this Chapter shall 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 shall be at the sole expense of the permittee, and if the City is requested to do such work the fees applicable shall be as prescribed in the finance regulations.

17.64.040 Use of City Poles or Posts.

(Amended by Ordinance No. 173369, effective May 12, 1999.)

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 of Portland 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 of Portland 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

Sections:

17.68.010 Injuring or Destroying.
17.68.020 Private Street Lighting.
17.68.030 Design Requirements for Special Street Lighting Districts.
17.68.040 Requirements for Lights on New or Reconstructed Streets.
17.68.050 Street Light Removal and Relocation.

17.68.010 Injuring or Destroying.

(Amended by Ordinance Nos. 153667 and 182760, effective June 5, 2009.) 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 shall repair and/or replace them in accordance with current design standards and the approval of the Bureau of Transportation. All costs shall be paid by the person that injures or destroys the street lighting facilities.

17.68.020 Private Street Lighting.

(Amended by Ordinance Nos. 140207, 153667, 173627 and 182389, effective January 2, 2009.)

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 Commissioner In Charge of the Bureau of Transportation 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 Commissioner In Charge of the Bureau of Transportation. The application shall 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 shall be separated by not less than 40 feet on the same side of any street unless a lesser distance is approved by the Bureau of Transportation

and by the City Engineer because of particular design and environmental requirements. The height above the street grade and the exact location must be approved by the Bureau of Transportation and by the City Engineer 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 shall 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 shall be revocable 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 Commissioner In Charge of the Bureau of Transportation 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 shall remove the light and all appurtenances. Failure so to do shall be a violation of this Title. The City Engineer or Director of the Bureau of Transportation may authorize the removal of the private street light if not removed within the said 30 days, and the cost of removal shall be recoverable from the owner or person responsible for maintaining the same in a civil action.

17.68.030 Design Requirements for Special Street Lighting Districts.
(Amended by Ordinance Nos. 153667, 155955, 173627 and 182389, effective January 2, 2009.)

A. All street lights within the City of Portland shall be a standard overhead fixture except in areas where it is determined by the Commissioner In Charge of the Bureau of Transportation 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, shall 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.
(Added by Ordinance No. 153667; amended by Ordinance No. 182760, effective June 5, 2009.)

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 shall be first approved by the Bureau of Transportation.

C. The full cost of providing the street lighting improvements shall be paid by the permittee or funding source used for the street construction costs.

17.68.050 Street Light Removal and Relocation.
(Added by Ordinance No. 153667, effective Sept. 12, 1982.)

A. All costs associated with the removal of streetlights on street being vacated shall 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 shall be paid by the permittee.

C. All costs for relocation of streetlights to complete work in local improvement districts shall be assessed as part of the project.

Chapter 17.72

PARKING LOTS

(Repealed by Ordinance No. 177028,
effective December 14, 2002.)

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Chapter 17.76

FUEL TANKS

Sections:

17.76.010 Permit Issuance.
17.76.020 Conditions.
17.76.030 Form of Permit.

17.76.010 Permit Issuance.

(Amended by Ordinance No. 140207, effective Aug. 1, 1975.) Whenever, in the opinion of the Commissioner In Charge of Public Works, and the City Engineer, the installation of a fuel tank in the street area with 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 Engineer if approved by the Commissioner of Public Works. The permit shall 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 shall sign an application for permit in which he agrees to accept the revocable permit subject to its terms and limitations, saving the City harmless from damages both to himself and to all persons claiming or to claim therefor.

17.76.030 Form of Permit.

The permit when issued shall 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 and the . . . . . line of said street, abutting the above described property.

This permit is for the use of the street area only and shall 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 Engineer to open the street, or from taking out licenses or permits required by any existing ordinances for any operation or construction carried on under the permit hereby granted.

The permit granted hereunder is revocable at any time at the pleasure of the Council. No expenditure of money thereunder, lapse of time, or other act or thing shall operate as an

estoppel against the City or be held to give the grantee any vested or other right. Upon revocation, the grantee shall within 30 days discontinue the use of the tank and shall 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 shall be done as directed by and to the satisfaction of the City Engineer.

The grantee herein assumes full responsibility for all accidents or damage which may occur in connection with the installation of the tank, and agrees to hold the City, the City Engineer, and each and all the officers and employees of the City free and harmless from any claims for damages to persons or property which may be occasioned by the installation or its maintenance.

Chapter 17.80

PLATS AND DEDICATIONS

Sections:

17.80.010 Approval by City Engineer.
17.80.020 Appeal.

17.80.010 Approval by City Engineer.

No new Subdivision plat of lands within the City nor of any addition to the same shall be filed for record, nor shall any street, alley, or other way be dedicated, until the plat or dedication has been submitted to the City Engineer 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 Engineer has endorsed thereon his certificate that the special assessments appear to have been paid, or payment has been provided for by bonding, and that the plat of the lands or addition, or dedication of street or way 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 Engineer by the Planning Commission, it is his duty, before approving plat, to require that all streets and alleys marked on said plats be of adequate width and he may require the streets and alleys to be aligned with other streets and alleys or extensions thereof, abutting on the land to be platted.

17.80.020 Appeal.

Any person aggrieved by the refusal of the City Engineer 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 shall hear and determine the matter with all convenient speed. If it reverses his decision, a certified copy of the resolution declaring the action shall be attached to the plat or dedication in lieu of the certificate.

Chapter 17.82

LAND DIVISIONS

(New Chapter added by Ordinance No. 176555, effective July 1, 2002).

Sections:

17.82.010 Administration.
17.82.020 Streets and Alleys.
17.82.030 Partial Width Streets.
17.82.040 Access Control Strips.
17.82.045 Driveway Access Plans.
17.82.050 Temporary Turnarounds.
17.82.060 Public Utility Easements.
17.82.070 Improvements in Land Divisions.
17.82.080 Improvement Procedures for Land Divisions.
17.82.090 Agreement for Construction of Public Improvements.

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.

(Amended by Ordinance No. 180917, effective May 26, 2007.) Public streets and public alleys shall conform to the requirements of the City Engineer for elements, widths, intersection location, grades, curves, materials and construction. If necessary, construction and slope easements may be required.

Public Streets shall 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 shall be less than 80 degrees unless the City Engineer has approved a special intersection design.

As far as is practical, public streets other than minor streets shall be in alignment with existing streets by continuation of the center lines thereof. Staggered street alignment resulting in "T" intersections shall, wherever practical, leave a minimum distance of 200 feet between the center lines of streets having approximately the same direction.

Intersecting public alleys shall be avoided, and sharp changes in alley alignment shall be avoided, but where necessary, the corners shall be widened sufficiently to permit safe vehicular movement. Dead-end public alleys shall be avoided, but where unavoidable, turnaround facilities as determined by Portland Fire & Rescue and the City Engineer shall be provided.

Where a private street or private alley accesses the public right-of-way, the location and width of the access shall conform to 17.28.110 Driveways – Permits and Conditions.
Land divisions shall provide for the continuation or appropriate projection of existing arterial or collector streets in the surrounding area unless otherwise approved by the City Engineer.

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 Engineer 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 Engineer. 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 Engineer 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.

(Added by Ordinance No. 182760, effective June 5, 2009.) The City Engineer may require that future driveway locations be identified on plans submitted with the land division. The City Engineer 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 Engineer 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 Engineer 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 Engineer adjacent to public rights-of-way. Where used, public utility easements shall be a minimum of 10 feet in

width unless otherwise specified by the City Engineer. Public utility easements required by the City Engineer shall be shown on the land division final plat.

17.82.070 Improvements in Land Divisions.

(Amended by Ordinance Nos. 176955 and 182760, effective June 5, 2009.) The following improvements shall be installed at no cost to the public:

A. Streets: Public streets and public alleys within or adjacent to the land division shall be improved in accordance with the requirements of the City Engineer. Street inlets shall 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 shall be improved in accordance with the requirements of the City Engineer.

C. Storm sewers and drainageways: Storm sewers and drainageways shall 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 Chief Engineer of the Bureau of Environmental Services or the Bureau of Development Services. Design of these systems shall comply with the Bureau of Environmental Services Stormwater Management Manual and the Bureau of Environmental Services Design Manual.

D. Sanitary sewers: Sanitary sewers shall be installed to serve the Land division by extension of existing City sewers. In the event that the Chief Engineer of the Bureau of Environmental Services 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 which has been approved by the State's Department of Environmental Quality and the Bureau of Development Services.

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, shall be placed underground. The developer shall make necessary arrangements with utility companies or other appropriate persons for the installation of underground lines and facilities. This ordinance shall 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 shall be provided as approved by the City Engineer and shall include conduits, wiring, bases, poles, arms and fixtures as required by the City Engineer 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 shall conform to the requirements of this Title and to improvement standards of the City Engineer, and shall be installed according to the following procedure:

A. All public and local improvements to be placed in the public right-of-way shall meet the design requirements of the City Engineer. In addition, if the improvement also includes storm and sanitary systems, the improvement shall also meet the design requirements of the Chief Engineer of the Bureau of Environmental Services.

B. All improvements to be placed in the public right-of-way are subject to approval of the City Engineer through a street improvement permit, street use permit or other revocable permit from the City Engineer.

C. Public and local improvement work shall not commence until a permit has been issued by the City Engineer, 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 shall not be resumed until after the City Engineer is notified.

D. Street improvements, that are public or local improvements, shall be constructed under the inspection and to the satisfaction of the City Engineer. Public sanitary and storm systems shall be constructed under the inspection and to the satisfaction of the Chief Engineer of the Bureau of Environmental Services.

E. Underground utilities, street lighting facilities, sanitary sewers, storm drains and water mains installed in a public roadway shall be constructed prior to the surfacing of the roadway. Stubs for service connections for underground utilities shall be placed according to the plans and specifications approved by the City Engineer. Stubs for public sewer and storm systems shall also be approved by the Chief Engineer of the Bureau of Environmental Services

17.82.090 Agreement for Construction of Public Improvements.

The land divider shall complete all required minor public street improvements (Sidewalk and curb work where engineering is not required to establish line or grade) prior to City Engineer approval of the land division final plat unless otherwise allowed by the City Engineer. The land divider shall complete permit applications for other public improvements prior to City Engineer approval of the land division final plat.

Chapter 17.84

VACATIONS

Sections:

17.84.010 Plat Must Be Filed.
17.84.020 Fees.
17.84.030 Preliminary Consideration of Petition.
17.84.040 Bond or Cash Deposit.
17.84.050 Statutory Procedures Applicable.
17.84.060 Consent to Vacation for City as Owner.
17.84.065 Vacation on Council's Own Motion; Notification.

17.84.010 Plat Must Be Filed.

No vacation of a street, public place or plat shall 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 shall be paid by the person petitioning for the vacation.

17.84.020 Fees.

(Replaced by Ordinance No. 172859, effective December 12, 1998.)

A. Whenever a request for a petition for the vacation of a street, public place or plat, or any part thereof is presented to the City Engineer, the person making the request shall pay to the City Engineer a fee for preparation of the petition for vacation. The fee for this service shall be established annually by the City Engineer and shall recover full costs including all applicable overhead charges.

B. When a completed petition is presented to the City Auditor for filing and consideration by the Council, the person presenting the petition for the vacation shall pay to the City Auditor a fee, established by the City Engineer, to cover the estimated costs of processing the petition. All departments or bureaus involved in processing a vacation shall keep records of the costs incurred on each individual vacation proceeding and shall submit such costs to the City Engineer 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 shall be collected before the vacation is completed, and payment thereof shall be a condition of the vacating ordinance.

C. The Council, upon hearing the petition, may grant the same in whole or in part or deny it in whole or in part, and may make reservations or conditions as appear to be in the public interest. The 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 of utility or service facilities either below, on or above the surface;

4. Construction, extension or relocation of sidewalks and curbs;

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 Preliminary Consideration of Petition.

(Replaced by Ordinance No. 182760, effective June 5, 2009.) 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 City, the Auditor shall review the petition as provided by the statues, and shall submit the petition to the Commissioner-in-Charge of the Bureau of Transportation, City Engineer and Bureau of Planning and Sustainability for review. The Commissioner in charge of the Bureau of Planning and Sustainability shall refer the petition to the Planning Commission for action. The Commissioner in charge of the Bureau of Planning and Sustainability shall prepare a report to Auditor containing the findings and recommendations of the Planning Commission and City Engineer, and shall submit the report and petition to Council for consideration. The report may include recommended conditions of approval. Upon receiving the report of the Commission, the Auditor shall file the petition and forward the petition and Commissioner's report to the Council for it's preliminary consideration as provided by ORS 271.100. This review process shall be completed before the City publishes or posts public notices of the contemplated vacation.

17.84.040 Bond or Cash Deposit.

When the Council is petitioned to vacate any street, public place or plat or part thereof, 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 part thereof may provide that the vacation shall not be effective unless the petitioner shall file with the Auditor of the City his acceptance of the terms and provisions of the ordinance together with a surety bond or cash deposit, in such sum as shall be fixed by the Council. The surety bond or cash deposit shall 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 Engineer, and obtain other work as required by the ordinance in the manner directed by the City Engineer, all at the expense of the petitioner.

17.84.050 Statutory Procedures Applicable.

The provisions applicable to a vacation, set forth in ORS 271, shall apply to each vacation. Alternative procedures therein allowed may be followed.

17.84.060 Consent to Vacation for City as Owner.

Whenever City owned property abuts area of a street or plat sought to be vacated by petition, or is located within "affected area" fixed by statute, the Mayor, City Commissioner or City Commission under whose jurisdiction the property has been placed 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.

(Added by Ordinance No. 136419, effective May 28, 1973.) Whenever the City Council shall initiate vacation proceedings on its own motion, the City Auditor shall give notice of the proposed action and hearing to all owners of real property affected thereby. The real property affected thereby shall be deemed to be the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, but in any case, not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part proposed to be vacated. When a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted. Whenever the Council shall initiate proceedings to vacate a plat or portion thereof, the City Auditor shall notify all property owners within such plat or part thereof proposed to be vacated of the proposed action and hearing.

The notification required by this Section shall be given not less than 28 days before the hearings on the proposed action.

Chapter 17.88

STREET ACCESS

Sections:

17.88.001 Purpose.
17.88.010 Definitions.
17.88.020 For Building and Planning Actions.
17.88.030 Location of Multiple Dwellings.
17.88.040 Through Streets.
17.88.050 Transportation Impact Study.
17.88.060 Dedication Prior to Permit Approval.
17.88.070 Routes of Travel in Park Areas.
17.88.080 Special Requirements for East Corridor Plan District.

17.88.001 Purpose.

(Added by Ordinance No. 177028; amended by Ordinance No. 182760, effective June 5, 2009.) 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.

(Replaced by Ordinance No. 177028, effective December 14, 2002.) As used in this Chapter, the following terms shall 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 zones (CN1

and 2, CO1 and 2, CM, CS, CG, and CX), the EX, Central Employment Zone, and the IR, Institutional Residential Zone, 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.

17.88.020 For Buildings and Planning Actions.

(Replaced by Ordinance No. 177028; amended by Ordinance No. 182760, effective June 5, 2009.) All building permits and planning actions are subject to the following:

A. No single family, multiple dwelling, industrial or commercial building shall 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 such street or any other street adjacent to the property used for vehicular access for said property 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, shall provide for such an improvement or a portion thereof as designated by the City Engineer, in accordance with provisions elsewhere in this Title.

C. Based on findings that a standard improvement is not feasible, the City Engineer 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 shall be paid by the owner.

17.88.030 Location of Multiple Dwellings.

(Replaced by Ordinance No. 177028; amended by Ordinance No. 182760, effective June 5, 2009.) Unless permitted as part of an approved Planned Development the Council permits by ordinance, no multiple dwellings or accessory building shall be so located on any lot, block, tract or area within the City 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 shall have direct access to such street by way of an approved roadway.

17.88.040 Through Streets.

(Replaced by Ordinance No. 177028, effective December 14, 2002.) 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 Engineer connecting existing dedicated streets, or at such locations as designated by the City Engineer, shall be provided for any development or redevelopment.

B. Partial-width streets as required by the City Engineer 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 Engineer;

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 Engineer.

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.

(Replaced by Ordinance No. 177028, effective December 14, 2002.) 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 Engineer 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.

(Added by Ordinance No. 177028; amended by Ordinance No. 182760, effective June 5, 2009.) No permit shall 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.

(Added by Ordinance No. 177028; amended by Ordinance No. 182760, effective June 5, 2009.) The Bureau of Transportation, may, upon the request of the Commissioner In Charge of the Bureau of Parks and Recreation, 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 shall 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 shall remain the responsibility of, and in the jurisdiction of the Bureau of Parks and Recreation.

17.88.080 Special Requirements for East Corridor Plan District.

(Added by Ordinance No. 178424; amended by Ordinance No. 182760, effective June 5, 2009.) East Corridor Plan District. Until a master street plan is adopted in the Transportation Element of the Comprehensive Plan for the East Corridor Plan District, as shown in Title 33, Map 526-1, street connectivity for the area should generally be based on a block size of 400 by 200 feet and connect to the surrounding street grid consistent with the prevailing block pattern.

Chapter 17.92

STREET DESIGNATION

Sections:

17.92.010 Administration.
17.92.020 Prefixes for Street Designations in the City.
17.92.030 Designation of Streets, Avenues, Boulevards and Drives.

17.92.010 Administration.

(Added by Ordinance No. 161984; amended by Ordinance No. 176555, effective July 1, 2002.) For public streets and private street tracts, the City Engineer shall 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 in the City.

(Amended by Ordinance No. 161984, effective July 1, 1989.) All streets in that section of the City north of the Willamette River and west of the center line of Williams Avenue shall be designated as North and the prefix "N" shall be added to the street name. All streets in that section of the City north of the center line of East Burnside Street and east of the center line of Williams Avenue shall be designated as Northeast, and the prefix "NE" shall be added to the street name, except Williams Avenue, which shall have the prefix "N" added to the street name and except Burnside Street which shall have the prefix "E" added to the street name. All streets in that section of the City south of the center line of East Burnside Street and east of the Willamette River shall be designated as Southeast and the prefix "SE" shall be added to the street name, except Burnside Street which shall have the prefix "E" added to the street name. All streets in that section north of the center line of Burnside Street and west of the Willamette River shall be designated as Northwest, and the prefix "NW" shall be added to the street name, except Burnside Street which shall have the prefix "W" added to the street name. All streets in that section of the City south of the center line of Burnside Street and west of the Willamette River shall be designated as Southwest and the prefix "SW" shall be added to the street name, except Burnside Street which shall have the prefix "W" added to the street name.

17.92.030 Designation of Streets, Avenues, Boulevards and Drives.

(Amended by Ordinance Nos. 161984 and177028, effective December 14, 2002.)

A. All streets within the corporate limits of the City running in an easterly and westerly direction shall hereafter be designated as “streets,” and all streets running in a northerly and southerly direction shall be designated as “avenues." Streets lying between two consecutively numbered streets shall be designated as "place" and shall take the lesser number of said two numbered streets. The terms "drive," "court," "lane," "terrace" or "way" may be used to designate winding or circuitous streets. Scenic, arterial or greenscape streets may be designated as "boulevards" or "drives" in lieu of the term "streets" or "avenues."

B. All streets shall be designated by one name for the entire length.

Chapter 17.93

RENAMING CITY STREETS

(Added by Ordinance No. 161897,
effective June 4, 1989.)

Sections:

17.93.010 Criteria for Renaming a City Street.
17.93.020 Selection of Street to be Renamed.
17.93.030 Application Procedures and Fees.
17.93.040 Review of Application and Public Hearings.
17.93.050 City-Initiated Action to Rename a City Street.
17.93.060 Implementation.

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 his or her 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 shall be processed at a time, and only one street name change shall be implemented per year for a major traffic or district collector street. Additional applications shall 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 shall 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 shall be the same for its entire length. Renaming only portions of a street shall not be 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 shall submit evidence to the City Engineer that the street renaming proposal is in compliance with Section 17.93.010 A. 2. and A. 3., and Section 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 shall take no further action. If the submittal is in compliance with the above referenced sections, the City Engineer shall issue the application materials described in Subsection B.

B. The applicant shall 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 shall, after filing a completed City Engineer's application form and paying any applicable fees:

1. Obtain a minimum of 2500 signatures in support of the proposal from legal residents of the City at large or signatures of at least 75% 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 shall 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 Section 17.93.040 A. This submission shall contain sufficient information to allow the historian panel to accurately assess the appropriateness of renaming a street after the proposed honoree.

D. The applicant shall 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 shall be invalid. No time extension shall be granted. At the time of submission, the City Engineer shall 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 shall make a fee deposit to cover the full cost of printing and mailing postcards and public notices as determined by the City Auditor. The minimum fee deposit shall be $500 if the street proposed for renaming is ten City blocks (½ mile) or less in length. If the street proposed for renaming is more than ten City blocks (½ mile), the minimum deposit shall be $1,000. The Auditor shall refund any unused portion of the deposit to the applicant, or the applicant shall 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.

(Amended by Ordinance No. 182389, effective January 2, 2009.) Upon receipt of the applicant's packet, the City shall process the application as follows:

A. The City Engineer shall, 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 Commissioner in charge of the Bureau of Transportation 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 shall notify all neighborhood and business associations recognized by the City which 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 shall 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 shall review the application with no recommendation unless the Planning Commission grants a time extension to the Historian Panel, which shall not exceed 14 calendar days.

D. Concurrent with the Historian Panel review under Subsection C. of this Section, the Auditor shall 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 Commission and City Council regarding the proposed street renaming and requesting the occupant and owner's input within 30 calendar days, as to the proposed name change. The Auditor shall also receive and tabulate all responses to the postcard survey and forward the results to the City Planning Commission.

E. The City Engineer shall 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 City Planning Commission shall conduct a public hearing on the matter and make a recommendation to the City Council 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 Auditor shall schedule a public hearing before City Council on the matter. Notice of the hearing shall be published in a newspaper of general circulation not less than once within the week prior to the week within which the hearing is to be held.

H. A public hearing shall be held before City Council on the proposed street name change.

I. The Council 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 Council denies the application, it is filed with no further consideration, and the subject name and street shall not be considered again under this Policy for a period of at least two years. If Council approves the application, certified copies of the enabling Ordinance shall be filed with the County Recorder, County Assessor, and County Surveyor.

17.93.050 Council-Initiated Action to Rename a City Street.

The Council 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 shall not be undertaken to rename a street after a person as provided for in other sections of the Chapter. Therefore, City-initiated actions to rename a street under provisions of this paragraph shall be exempt from compliance with Sections 17.93.010 through 17.93.030 and Section 17.93.040 A. through D. Section 17.93.040 E. through I. shall continue to be applicable.

17.93.060 Implementation.

A. After Council approval of the name change, the Bureau of Maintenance shall install the new name signs adjacent to the existing street name sign. Both signs shall be in place for a period of five years, unless a petition is submitted to City Council from a majority of abutting property occupants requesting that the dual signage period be shortened. Both street name signs shall 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 shall be removed.

B. The Auditor shall 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

(Amended by Ordinance No. 182760, effective June 5, 2009.)

Sections:

17.96.005 Preservation of Record Monuments.
17.96.050 Datum Plane Established (City of Portland Vertical Datum).
17.96.062 City Benchmarks.
17.96.065 Preservation of City Benchmarks.
17.96.070 Grade Elevations To Be Referred to Datum Plane.
17.96.080 Prior Grades Not Affected.

17.96.005 Preservation of Record Monuments.

(Added by Ordinance No. 182760, effective June 5, 2009.) Any person or public agency removing, disturbing or destroying any survey monument of record in the office of the County surveyor or County clerk shall 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 shall be paid by the person or public agency causing the removal, disturbance or destruction.

17.96.010 Base Line Established.

(Repealed by Ordinance No. 182760, effective June 5, 2009.)

17.96.020 Monuments Established.

(Repealed by Ordinance No. 182760, effective June 5, 2009.)

17.96.030 Base Line for Couch's Addition Established.

(Repealed by Ordinance No. 182760, effective June 5, 2009.)

17.96.040 Monuments Established in Couch's Addition.

(Repealed by Ordinance No. 182760, effective June 5, 2009.)

17.96.050 Datum Plane Established (City of Portland Vertical Datum).

(Amended by Ordinance No. 182760, effective June 5, 2009.) All grade elevations in the City shall be referred to a fixed datum established herein. 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 the City, 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 hereby 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 the City as herein established.

17.96.060 Grade Elevations To Be Recorded.

(Repealed by Ordinance No. 182760, effective June 5, 2009.)

17.96.062 City Benchmarks.

(Added by Ordinance No. 182760, effective June 5, 2009.) The City Surveyor shall 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.

(Added by Ordinance No. 182760, effective June 5, 2009.) Any person or public agency removing, disturbing or destroying a City Benchmark shall 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 the City submitted to the Council shall 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 shall in no way affect the validity of grades or any improvements carried out prior to such establishment.

Chapter 17.100

REMEDIES & PENALTIES

(New Chapter substituted by Ordinance No. 155257, effective October 27, 1983.)

Sections:

17.100.010 Enforcement Independent of Other Officials.
17.100.020 Responsible Official and Responsible Engineer Designated Representative.
17.100.030 Liability.
17.100.040 Remedies.
17.100.050 Penalty for Violation.

17.100.010 Enforcement Independent of Other Officials.

(Amended by Ordinance No. 173295, effective April 28, 1999.) The authority of Responsible Officials and Responsible Engineers to enforce the provisions of this Title is independent of and in addition to the authority of other City officials to enforce the provisions of any Title of the City Code.

17.100.020 Responsible Official and Responsible Engineer Designated Representative.

(Amended by Ordinance No. 173295, effective April 28, 1999.) Responsible Officials and Responsible Engineers as used in this Chapter shall include their representatives.

17.100.030 Liability.

(Amended by Ordinance No. 173295, effective April 28, 1999.) The Responsible Officials and Responsible Engineers, or authorized representatives of the Responsible Officials and Responsible Engineers charged with the enforcement of this Title, acting in good faith and without malice in the discharge of their duties, shall not thereby render themselves personally liable for any damage that may accrue to persons or property as a result of any act or by reason of any act or omission in the discharge of their duties. Any suit brought against the Responsible Officials and Responsible Engineers or employee because of such act or omission performed by them in the enforcement of any provision of this Title shall be defended by legal counsel provided by this jurisdiction until final termination of such proceedings.

17.100.040 Remedies.

(Amended by Ordinance No. 173295, effective April 28, 1999.)

A. In addition to any other remedies or penalties provided by this Title or by any other law, the Responsible Officials and Responsible Engineers may enforce the provisions of this Title by:

1. Instituting an action before the Code Hearings Officer as set out in Title 22 of this Code, or

2. Causing appropriate action to be instituted in a court of competent jurisdiction, or

3. Taking such other actions as the Responsible Officials and Responsible Engineers in the exercise of their discretion deem appropriate.

B. Nothing in this Section shall be construed to afford a person the right of appeal, pursuant to Chapter 22.10, to the Code Hearings Officer from a decision or determination of the Responsible Officials and Responsible Engineers, or any bureau designated under Chapter 3.12 of this Code.

17.100.050 Penalty for Violation.

(Amended by Ordinance No. 173295, effective April 28, 1999.) Any person who violates any provision of this title shall be subject to a civil penalty of not more than $500 for each violation. In the event that any provision of this Title is violated by a firm or corporation, the officer or officers or person or persons responsible for the violation shall be subject to the penalty herein provided.

Chapter 17.102

SOLID WASTE & RECYCLING COLLECTION

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

Sections:

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

17.102.010 Declaration of Policy.

It is the policy of the City of Portland to reduce the amount of solid waste, both generated and disposed of, by promoting aggressive waste prevention and recycling activities. The City shall promote the development of environmentally and economically sound practices regarding the collection, processing and end use of solid waste, recyclable material and compostable material. In order to attain these goals and protect public health and the environment, the City shall regulate collection of solid waste, recyclable and compostable materials within the City. In carrying out this policy, the goals of this Chapter are:

A. To promote sustainability of the system of solid waste and recycling collection, by seeking to maximize efficiency, equity and economic vitality, improve worker safety and reduce environmental and human health impacts over the entire life cycle of the materials.

B. To set and achieve recycling goals for Portland that are among the highest in the nation.

C. To achieve a recycling goal of 75 percent by 2015 and promote highest value use of recovered materials.

D. To reduce per capita waste generation below 2005 levels by the year 2015.

E. To target reductions in toxic waste, to minimize its harmful effects and to reduce greenhouse gas emissions.

F. To ensure the safe and sanitary collection, transportation and recovery of solid waste, recyclable and compostable materials.

G. 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.

H. 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.

I. To establish rates for residential waste collection which are fair to the public, encourage waste reduction, and promote safe, efficient collection.

J. To promote community awareness in order to achieve the highest participation possible in the solid waste and recycling collection system.

K. 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.

L. To undertake research, studies and demonstration projects on developing more efficient, economical and effective methods of solid waste reduction, recycling and collection.

17.102.020 Definitions.

(Amended by Ordinance No. 182671, effective May 15, 2009.) For purposes of Chapter 17.102, and rules adopted thereunder, the following terms shall be understood to have the meanings specified in this Section. Terms, words, phrases, and their derivatives used but not specifically defined in this Chapter shall have meanings commonly accepted in the community.

A. **"Administrative Rule"** means all rules promulgated under Section 17.102.030 of this Chapter.

B. **"Approved Residential Recycler"** means a person that has been granted approved residential recycler status by the Director. Approved residential recycler includes any employees or other persons authorized to act on behalf of the approved residential recycler.

C. **"Assessment"** means a civil penalty assessed for an infraction as provided in Chapter 17.102 or the franchise.

D. **"Assigned Territory"** means an area within the City in which only a franchisee designated by the City may collect solid waste and recyclable material from residential customers.

E. **"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.

F. **"City"** means the City of Portland, Oregon, and such territory outside of this City over which the City has jurisdiction or control by virtue of any Intergovernmental Agreement or law.

G. **"Collect"** or **"Collection"** means to accept, accumulate, store, process, transport, market or dispose of.

H. **"Commercial"** means relating to an entity that is non-residential in nature or, if residential, consists of five or more dwelling units on a single tax lot.

I. **"Commercial Collection"** means the collection of solid waste, recyclable and compostable materials in exchange for compensation from:

1. A non-residential source; or

2. A multifamily residence of five or more dwelling units located on a single tax lot.;

J. **"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.

K. **"Compostable Material"** and **"Compostable"** means yard debris, food scraps and food soiled paper when source separated for controlled biological decomposition. Compostable material shall not include food soiled paper containing plastic or other materials that inhibit controlled biological decomposition.

L. **"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.

M. **"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.

N. **"Customer"** when used to refer to residential collection service means any person who receives solid waste, recycling or yard debris collection service at a residence (four-plex or smaller) in a franchise territory or any non-residential customer who qualifies for collection services as provided in the franchise granted by Ordinance No. 181666. The customer need not be the person billed for such service. For rental properties where the owner of the property is required to subscribe for service, the owner shall be considered the customer.

O. **"Director"** means the Director of the City's Bureau of Planning and Sustainability or his or her authorized representative, designee or agent.

P. **"Food Soiled Paper"** means paper products that cannot be recycled into paper products or that 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 paper table covers, used napkins, and waxy corrugated cardboard. Food soiled paper includes otherwise recyclable paper that has been in contact with food to the degree that it is not recyclable into paper products, but does not include unsoiled cardboard boxes, newspaper or office paper.

Q. **"Food Scraps"** means all waste from meats, fish, and vegetables, which attends or results from the storage, preparation, cooking, handling, selling or serving of food for human consumption. Food scraps includes, but are not limited to, excess, spoiled or usable food or dairy products, meats, vegetable and meat trimmings, grains, breads and dough, incidental amounts of edible oils, and organic waste from food processing. Food scraps does not include large amounts of oils and meats which may be collected for rendering, fuel production or other reuse applications.

R. **"Food Waste Generating Business"** means businesses and institutions whose waste is composed of a large amount of food scraps and food soiled paper. It includes but is not limited to restaurants, grocery stores, or food markets, hotels with catering operations, institutions with cafeterias, caterers, central kitchens or commissaries, bakeries, produce wholesalers and food processors. It does not include businesses that produce only incidental amounts of food waste in the course of doing business, such as from employee lunches.

S. **"Franchise"** means a franchise for the collection of residential solid waste, recyclable materials and yard debris, granted by Ordinance No. 181666, and as amended by subsequent ordinances.

T. **"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.

U. **"Franchise Territory"** means an area within the City in which only a person granted a franchise by the City may collect residential solid waste, recyclable materials or yard debris, from residential customers. A single franchisee may serve more than one franchise territory.

V. **"Independent Commercial Recycler"** means a person who collects only recyclable and/or compostable materials from non-residential sources for the sole purpose of recycling or composting, and who does not collect solid waste.

W. **"Infraction"** means a failure to comply with Portland City Code Chapter 17.102, the franchise, or the administrative rules promulgated thereunder, as applicable.

X. **"Metro"** means the metropolitan service district responsible for regional solid waste management and planning within Clackamas, Multnomah and Washington Counties.

Y. **"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.

Z. **"BPS"** means the City's Bureau of Planning and Sustainability.

AA. **"Permittee"** means any person granted a commercial collection permit under Section 17.102.210 of this Chapter.

BB. **"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.

CC. **"Recyclable Material"** and **"Recyclable"** includes, but is not limited to, newspaper, scrap paper, ferrous scrap metal, non-ferrous scrap metal, used motor oil, corrugated cardboard and kraft paper, container glass, aluminum, tin cans, magazines, aseptic packaging, coated paper milk cartons, steel aerosol cans, plastic bottles, office paper, cooking grease, wood, rubble and other materials as may be designated by the City.

DD. **"Recycling"** means the series of activities including collection, separation, and processing, by which products or other materials are recovered from or otherwise diverted from the solid waste stream for use in the following:

1. In the form of raw materials in the manufacture of new products other than fuel.

2. As fuel in the case of source separated wood waste which has no other material use.

EE. **"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 shall not alter the status of each dwelling unit as a residence.

FF. **"Resident"** means any person living in a residence.

GG. **"Residential"** means of or pertaining to a residence.

HH. **"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.

II. **"Solid Waste"** has the meaning given in ORS 459.005(24) (2007), but does not include the following materials:

1. Sewage sludge, septic tank and cesspool pumpings or other sludge;

2. Discarded or abandoned vehicles;

JJ. **"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.

KK. **"Yard Debris"** means leaves, grass clippings, sod, weeds, vines, vegetative material from the yard, pumpkins, and prunings of no greater than four inches in diameter or 36 inches in length. Large branches (greater than four inches in diameter or more than 36 inches in length), dirt, stumps, metal, rocks, ashes, animal waste, food and household solid waste are not considered yard debris.

17.102.030 Authority of Director to Adopt Rules.

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

A. The Director is hereby authorized to administer and enforce the provisions of this Chapter.

B. The Director is authorized to adopt rules, procedures, and forms to implement the provisions of this Chapter.

1. Any rule adopted pursuant to this section shall require a public review process. Not less than ten nor more than thirty days before such public review process, notice shall be given by publication in a newspaper of general circulation. Such notice shall include the place, time, and purpose of the public review process and the location at which copies of the full set of the proposed rules may be obtained.

2. During the public review, the Director hall hear testimony or receive written comment concerning the proposed rules. The Director shall review the recommendations; taking into consideration the comments received during the public review process, and shall either adopt the proposed rules, modify or reject them. If a substantial modification is made, additional public review shall be conducted, but no additional notice shall be required if such additional review is announced at the meeting at which the modification is made. Unless otherwise stated, all rules shall be effective upon adoption by the Director and shall be filed in the Office of the Director.

3. Notwithstanding paragraphs 2 and 3 of this Section, an interim rule may be adopted by the Director without prior notice upon a finding that failure to act promptly will result in serious prejudice to the public interest or the interest of the affected parties, including the specific reasons for such prejudice. Any rule adopted pursuant to this paragraph shall be effective for a period of not longer than one year (365 days). Within five business days of the adoption of an interim rule, the Director shall send notice of

the rule to all the following, giving the language of the rule change, describing the purpose of the rule, and inviting the submission of comments.

a. Neighborhood associations recognized by the City Office of Neighborhood Involvement,

b. District Coalitions recognized by the City Office of Neighborhood Involvement,

c. Business District Associations identified by the City Office of Neighborhood Involvement,

d. Persons on the BPS list of parties interested in administrative rules, and

e. Franchisees and permittees,

17.102.040 General Requirements for Franchisees and Permittees.

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

17.102.050 Clean and Efficient Fleet Practices for Franchisees and Permittees.

The Director is authorized to protect the public health and the environment by promulgating regulations to require the use of a blend of biodiesel fuel and emission control devices in any collection vehicle with a diesel engine used by franchisees or permittees within the City.

A. As of March 1, 2009, franchisees and permittees shall use a blend of biodiesel fuel as specified by the Director, consistent with the requirements set forth in Chapter 16.60.

B. Franchisees and permittees with collection vehicles, model year 2006 and older, shall participate in a diesel retrofit program approved by the Director. The goal of the program is to retrofit the collection fleet with the best available technology to reduce emissions in the City from collection vehicles. The retrofit program shall specify the following:

1. By January 1, 2011, franchisees shall retrofit all collection vehicles serving residential customers from model year 2006 and older.

2. By January 1, 2014, permittees shall retrofit all collection vehicles serving commercial customers from model year 2006 and older.

C. As of January 1, 2014, no franchisee shall operate a collection vehicle that serves residential customers with an engine more than 12 years old. The franchisee shall prepare a five year Fleet Replacement Plan that directs vehicle replacement from January 2009- January 2014 according to the following schedule:
By December 31, 2009: replacement of 15 percent of the collection vehicles that will be 12 years or older in 2014;
By December 31, 2010: replacement of an additional 15 percent of the collection vehicles that will be 12 years or older in 2014;
By December 31, 2011: replacement of an additional 20 percent of the collection vehicles that will be 12 years or older in 2014;
By December 31, 2012: replacement of an additional 20 percent of the collection vehicles that will be 12 years or older in 2014;
By December 31, 2013: replacement of the remaining collection vehicles that will be 12 years or older in 2014.

D. As of January 1, 2018, no permittee shall operate a collection vehicle that serves commercial customers with an engine more than 12 years old. The franchisee shall prepare a five year Fleet Replacement Plan that directs vehicle replacement from January 2013- January 2018 according to the following schedule:
By December 31, 2013: replacement of 15 percent of the collection vehicles that will be 12 years or older in 2018;
By December 31, 2014: replacement of an additional 15 percent of the collection vehicles that will be 12 years or older in 2018;
By December 31, 2015: replacement of an additional 20 percent of the collection vehicles that will be 12 years or older in 2018;
By December 31, 2016: replacement of an additional 20 percent of the collection vehicles that will be 12 years or older in 2018;
By December 31, 2017: replacement of the remaining collection vehicles that will be 12 years or older in 2018.

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

A. All fees, assessments and interest received by the Bureau of Planning and Sustainability with respect to solid waste collection or disposal shall be deposited with the City Treasurer and credited to the Solid Waste Management Fund.

B. Monies deposited into the Solid Waste Management Fund shall be used for administration, implementation and operation of solid waste, recycling, composting and sustainable development programs, consistent with all applicable constraints on use of funds. BPS may spend or apply such fees and charges to implement and administer solid waste, recycling, composting and sustainable development policies approved by the Council.

C. The proceeds from the City's sale of a forfeited franchise shall be deposited with the City Treasurer and credited to the Solid Waste Management Fund. Such proceeds shall be used to offset the City's costs of the process of replacing a franchisee, including its costs for providing any necessary temporary collection services, and to offset program costs to the public.

17.102.070 Fees As a Debt, Enforcement and Collection.

A. All fees, assessments and interest imposed by this Chapter shall be a debt due and owing to the City of Portland and may be collected by civil action in the name of the City of Portland. Any fees and assessments remaining unpaid after the due date shall accrue interest at 1 percent per month, compounded daily from the due date. In addition, the Director may revoke, suspend or deny issuance of any commercial collection permit to permittees who have not paid commercial permit or tonnage fees or infraction assessments by the deadlines provided in this Chapter or in administrative rules adopted pursuant to this Chapter.

B. Fees, assessments and interest shall be enforced and collected by the Director. The Director may waive or reduce any assessments for good cause, according to and consistent with written policies. The Director may refer collection and enforcement to another agency of the City.

17.102.080 Daytime Prohibition of Downtown Garbage Collection.

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

17.102.090 Assessments for Infractions.

A. The Director may impose assessments as follows:

1. A first violation of this Chapter may be subject to an assessment of up to $500.

2. A second violation of this Chapter by the same person may be subject to n assessment of up to $1,000.

3. Third and subsequent violations of this Chapter by the same person may be subject to an assessment of up to $1,500.

4. Assessments may be imposed on a per month, per day, per incident, per class or such other basis as the Director may determine as appropriate based upon the nature of the infraction.

B. The Director shall consider the following criteria in determining the amount of assessments to be imposed under this Section:

1. The nature and extent of the person's involvement in the violation;

2. Whether the person was seeking any benefits, economic or otherwise, through the violation;

3. Whether the violation was isolated and temporary, or repeated and continuous;

4. The length of time from any prior violations;

5. The magnitude and seriousness of the violation;

6. The costs of investigation and remedying the violation;

7. Whether any criminal prosecutions have occurred in regard to the violations; and

8. Other relevant, applicable evidence bearing on the nature and seriousness of the violation.

17.102.100 Right of Appeal and Payment of Assessments.

A. Any person receiving a Notice of Assessment shall, within ten days of issuance of the notice either pay to the City the stated amount of the assessment or request an appeal hearing by the Code Hearings Officer in accordance with procedures set forth in Chapter 22.10 of the City Code. The filing of an appeal request shall stay the effective date of the assessment until the appeal is determined by the Code Hearings Officer. If, pursuant to said appeal hearing, payment of the assessment is ordered, such payment must be received by the Director or postmarked within 15 calendar days after the order becomes final.

B. A person may appeal to the Code Hearings Office in accordance with Title 22 of the City Code if the person receives:

1. A written denial of an application for a commercial collection permit;

2. Any written suspension or revocation of a commercial collection permit.

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

A. Except as otherwise required by law, it shall be unlawful for the Bureau of Planning and Sustainability or any officer, employee, or agent of the City, to divulge, release or make known in any manner:

1. Any information submitted or disclosed to the City under Section 17.102.250; or,

2. Any information submitted or disclosed to the City by solid waste collectors regarding past hazardous waste remedial action surcharges.

B. Nothing in this Section shall be construed to prohibit:

1. The disclosure of the names and addresses of any persons to whom permits have been issued; or

2. The disclosure of general statistics in a form which would prevent the identification of financial information regarding any individual permittee.

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

17.102.130 Franchise Size Limit.

A. No franchisee shall serve more than 50,000 residential customers.

B. No franchisee shall be a subsidiary corporation of another franchisee.

17.102.140 Residential Collection Franchise Required.

A. No person may collect residential solid waste, recyclable material or yard debris, 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 yard debris collection from the City, no person shall provide or offer to provide such collection in an area within the City other than the assigned territory for which the franchise was issued.

C. No person shall accumulate, store collect, transport, dispose of or resource recover solid waste, recyclable materials or yard debris, except in compliance with this Chapter, other city ordinances and regulations, and state laws dealing with solid waste management.

D. Nothing in this section shall prohibit the City from withdrawing certain solid waste, recyclable materials or yard debris 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 yard debris that are in or next to a residential recycling or yard debris container set out at a residence.

F. As provided in Section 29.30.140, owners of rental housing shall not collect solid waste generated by their tenants. Owners of rental residences must arrange for collection by a franchisee.

17.102.150 Exceptions to Residential Franchise Requirement.

A. A franchise is not required for the collection or transportation of residential solid waste, recyclable materials or yard debris by the following persons:

1. Persons transporting solid waste, recyclable materials, or yard debris, collected outside the City;

2. Organizations which have been granted non-profit tax status by the federal government or who are organized as non-profit corporations in accordance with ORS Chapter 61 (2007) and who collect residential recyclable materials or yard debris without charge to the person who generates those recyclable materials or yard debris;

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 transporting only reusable beverage containers as defined in ORS 459A.725 (2007);

8. Federal or state agencies that collect, store, transport and dispose of solid waste or those who contract with such agencies to perform the service, but only insofar as the service is performed by or for such agencies; and,

9. Persons exclusively collecting recyclable materials or yard debris, from non-residential sources.

B. An organization is not required to have a franchise for the acceptance, storage or transportation of recyclable materials or yard debris if those materials are accepted and stored at a depot or depots which accept recyclable material or yard debris without a charge to the generator of that recyclable material or yard debris.

17.102.160 Forfeiture and Replacement.
(Amended by Ordinance No. 182671, effective May 15, 2009.)

A. In the event that the Director finds grounds for declaring a forfeiture, according to the terms of the franchise awarded by Ordinance No. 181666 and as amended by subsequent ordinances, the Director shall make a recommendation for Council action on the matter, following procedures specified in the BPS's adopted rules.

B. In preparing for the transfer of a forfeited franchise to another party, the Director shall solicit applications from current franchisees and from other parties who have given a written notice of their interest following a public notification. The Director shall determine the applicants' qualifications to assume the franchise responsibilities. The Director is authorized to then use a lottery in selecting among qualified applicants. In addition, the Director may conduct an appraisal of the value of the forfeited franchise. The lottery winner(s) shall then be offered the opportunity to purchase the franchise from the City within a specified time period at the appraised value.

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

City's supplementing revenues received by the temporary service provider from its temporary customers.

17.102.170 Residential Recycling Services.

A. No person shall provide residential recycling collection without first applying for and receiving approval as an approved residential recycler.

B. To have status as an approved residential 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 an approved residential recycler, an applicant shall submit a recycling collection and processing plans on forms provided by the Director and shall include, at a minimum, the following information:

1. Number of residential households to be served;

2. Description of recycling collection equipment;

3. Address and City zoning classification of all processing/storage sites that relate to collection services provided in the City;

4. Description of all processing and storage activities that relate to collection services provided in the City;

5. List of markets where each recyclable material will be sold;

6. List of the number of staff, their positions and full-time equivalent (FTE) for each;

7. Address and phone number of office;

8. Cost of recycling collection and processing equipment, the financial institution used and type of financing obtained; and

9. Any subcontracted collection services, including the names of the providers, description of the services provided and the number of customers served.

10. Written consent of the franchisee in whose territory the applicant seeks to provide collection service.

11. Other information as deemed relevant and necessary by the Director.

D. The Director shall review the recycling collection and processing plans submitted by an applicant to determine if the plan sets out reasonable means and methods to deliver high quality recycling to City residents, and which are capable of meeting administrative rule standards for residential recycling service delivery. The Director shall notify the applicant of the decision on his/her status as an approved residential and any recommended modifications if approval is not given. Approved residential recyclers shall use recycling containers that meet the Director's specifications.

E. An applicant's failure to receive the Director's approval of a plan shall result in denial of the City's permission for that applicant to provide recycling collection service and the appointment of another approved residential recycler by the Director to provide recycling collection service to those residential customers.

17.102.180 Franchise System Evaluation.

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

A. Periodically the Director shall prepare and submit a report to the City Council on the status and performance of the franchise collection system. The report shall comment on progress toward achievement of the relevant goals identified in Section 17.102.010 and as otherwise described in BPS's budget documents.

B. Commencing at least five years prior to the expiration of the franchise term, the City Council shall evaluate the franchise system to determine if the system is achieving waste reduction, increased recycling, and cost-effective collection service. Such evaluation shall include an opportunity for public discussion and comment.

17.102.190 Residential Solid Waste and Recycling Rates and Charges.

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

17.102.200 Large Size Container Service to Residential Customers.

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

B. Commercial permittees are prohibited from providing collection of any putrescible waste more than four times in a 365-day period to residential customers without the express written permission of the franchisee in whose territory the collection would be occurring.

C. Within the City, franchisees are prohibited from providing containers larger than two cubic yards which are emptied more than four times in a 365-day period to residential customers outside their franchise territory.

17.102.210 Commercial Collection Permit Required.

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

A. No person shall provide commercial collection of solid waste, compostables and recyclable material within the City without having a currently valid commercial collection permit from the Bureau of Planning and Sustainability, except as provided in Section 17.102.220. Permits shall be issued annually, with the permit being valid for the period beginning July 1 and ending June 30. No expenditure of money, lapse of time or other act or thing, shall give the permittee any vested rights or other property rights.

B. The Director may impose conditions upon the issuance of a permit which are necessary to implement the provisions of this Chapter or administrative rules promulgated under Section 17.102.030. Conditions shall include but not be limited to:

1. Permittees must comply with the provisions of this Chapter and administrative rules promulgated under Section 17.102.030.

2. If a permittee provides solid waste collection services to a customer, the permittee must offer recycling collection services to the customer. The permittee shall also offer compostable material collection services to a customer that is a food scrap generating business subject to the requirements of Subsection 17.102.270 A.1.c.

a. Permittees may provide recycling and compostable material collection services either directly or through third-party providers. Where a permittee provides such services through a third party provider, the permittee shall be responsible for reporting to the City the quantities of all materials collected by that provider on its behalf within the City.

b. In providing recycling and compostable material collection services, permittees shall use containers that comply with the City's administrative rules.

3. If the Director determines that a permittee is delivering as waste, loads containing significant amounts of recyclable materials to a transfer station, reload, or landfill, the Director shall work with the permittee to identify

customers on the routes serviced in those loads for the purpose of providing customer outreach, assistance and education.

4. Permittees may charge a person who source separates recyclable material - and makes it available for reuse or recycling - less, but not more, for collection and disposal of solid waste and collection of recyclable material than the collection service charges a person who does not source separate recyclable material. This subsection does not affect charges for the collection of food scraps and food soiled paper.

C. Any person who provides commercial collection of solid waste within the City without a current commercial collection permit from the City shall be subject to an assessment as provided by Section 17.102.090.

D. No person who is not authorized by the customer may remove recyclable material that is set out by the customer for recycling.

E. As provided in Section 29.30.140, owners of rental housing shall not collect solid waste generated by their tenants. Owners of multifamily complexes must arrange for collection by a permittee.

17.102.220 Exceptions to Commercial Collection Permit Requirement.

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;

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.

17.102.230 Applications for Commercial Collection Permits, Issuance, Denial.

A. Applications for commercial collection permits required by Chapter 17.102 shall be submitted to the Director. The Director shall prepare application forms and make them available upon request.

B. Each application for a commercial collection permit shall be accompanied by a nonrefundable fee of $350.

C. An applicant for a commercial collection permit shall submit an application that sets forth the following information:

1. The name, address and telephone number of the business or proposed business;

2. Whether the applicant is organized as a sole proprietorship, partnership, limited partnership, family limited partnership, joint venture, association, cooperative, trust, estate, corporation, personal holding company, limited liability company, limited liability partnership or any other form of organization for doing business;

a. If a partnership, the application must set forth the names, addresses and telephone numbers of each general or managing partner.

b. If a corporation, or limited liability company, the application must set forth the corporate or company name and the names, addresses and telephone numbers of every person owning more than twenty percent of the business;

c. If the business is organized in some other form, the application must set forth the name, address and telephone number of the designated contact person for the business.

4. A City of Portland business license number.

5. A signed statement that the permittee shall hold harmless the City of Portland, its officers and employees and shall indemnify the City of

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

6. Any other information that the Director may reasonably feel is necessary to accomplish the goals of this Chapter.

D. Applications shall contain a written declaration, verified by the applicant, to the effect that the statements made therein are true.

E. Applications shall contain written demonstration of adequate staff, equipment and collection vehicles necessary to provide services as required under Subsection 17.102.210 B.2.

F. The Director may investigate and verify data reported in the permit application.

G. The permittee shall provide written notice to the Director within 10 days of any changes in the information provided in the application that occurs after the application is submitted.

H. The Director shall approve issuance of a commercial collection permit to the applicant after payment of the required fee, completion of the application form and following an evaluation of the information provided with the application. The Director may deny the issuance of a commercial collection permit to an applicant under the following conditions:

1. The permit application contains falsehoods or facts that cannot be verified;

2. The applicant has failed to pay fees, assessments and interest as provided in Chapter 17.102;

3. The applicant has been found by a court of competent jurisdiction to have practiced fraud or deceit upon the City; or,

4. The applicant has had their permit revoked during the two years prior to the application. For purposes of this section, "applicant" includes any individual who was a managing partner, or who owned or controlled more than 20 percent of the voting interests in the permittee whose permit was revoked.

I. There shall be no right to renewal of a commercial collection permit; each application shall be considered as it would be for a new permit notwithstanding that the applicant has previously been issued a permit.

J. Denial of an application may be appealed to the Code Hearings Officer as provided in accordance with procedures set forth in Chapter 22.10 of the City Code.

17.102.240 Revocation or Suspension of Commercial Collection Permits.

A. The Director may suspend or revoke a commercial collection permit under the following conditions:

1. One or more of the permit conditions is being violated;

2. The permittee is in violation of any of the provisions of this Chapter or the commercial administrative rules for solid waste and recycling.

3. The permitee has failed to pay fees and assessments as provided in Chapter 17.102.

4. The permittee has been found by a court of competent jurisdiction to have practiced fraud or deceit upon the City.

B. The Director shall consider the following criteria in determining whether to revoke or suspend the commercial collection permit due to violations of the provisions of this Chapter or the commercial administrative rules for solid waste and recycling:

1. The nature and extent of the permittee’s involvement in the violation;

2. Whether the permittee was seeking any benefits, economic or otherwise, through the violation;

3. Whether the violation was isolated and temporary, or repeated and continuous;

4. The magnitude and seriousness of the violation;

5. The relative harms of continued collection service from the permittee and the potential for service disruption;

6. Whether any criminal prosecutions have occurred in regard to the violations; and

7. Other relevant, applicable evidence bearing on the nature and seriousness of the violation.

C. Revocation or suspension of a permit may be appealed to the Code Hearings Officer as provided in accordance with procedures set forth in Chapter 22.10 of the City Code.

17.102.250 Commercial Tonnage Fee.

Commercial permittees shall, when invoiced quarterly by the Director, pay a tonnage fee to the City. Fees shall be assessed up to $5.80 per ton of commercial solid waste collected within the City and deposited in disposal facilities authorized by Metro. Payments shall be made within 30 days of the date of the invoice. Interest shall accrue at 1 percent per month on balances which remain unpaid as of 30 days after the date of invoice, compounded daily from the due date.

17.102.260 Registration Required for Independent Commercial Recyclers.

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

A. No person shall provide collection service as an independent commercial recycler within the City without having registered with the Bureau of Planning and Sustainability, by providing BPS with a copy of their City of Portland Business License, with their Business License number, or with a copy of their current annual Business License exemption application or request submitted to the City's Revenue Bureau.

B. All independent commercial recyclers which collect in the City at least 25 tons of recyclables and/or compostables per year shall report quarterly to BPS on the amounts of recyclables collected in the City, on forms provided by BPS.

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 shall comply with waste prevention, recycling and composting requirements as set forth in the administrative rules established by the Director. The following recycling requirements shall be in effect:

a. All businesses and multifamily complexes shall recycle 75 percent of the solid waste they produce;

b. All businesses shall recycle all of their paper and containers. For the purposes of this Section, containers means all recyclable metal, plastic and glass containers;

c. Food scraps generating businesses shall separate their food scraps for composting.

d. For all building projects within the City where the total job cost (including both demolition and construction phases) exceeds $50,000, the general contractor shall ensure that 75 percent of the solid waste produced on the job site is recycled. In addition, certain materials generated on the job site shall be recycled in compliance with administrative rules established by the Director. For an affected building project where there is no general contractor, this requirement applies to the property owner is the person responsible for ensuring compliance with the recycling requirements.

2. Commercial customers that provide garbage collection service to business tenants as part of their rental/lease, shall provide recycling and, where appropriate, compostable collection systems that will enable the business tenants to recycle in compliance with administrative rules established by the Director.

3. All multifamily complexes within the City shall establish recycling systems for their tenants' use, in compliance with administrative rules established by the Director.

B. The Director may monitor compliance with the requirements of Subsection A by reviewing available information including, but not limited to, information reported by the customers on their recycling activities, as well as onsite inspections.

C. Any business or any other person may sell or exchange at fair market value its own recyclable materials which are source separated for reuse or recycling. This Chapter and any administrative rules promulgated hereunder are not intended to

limit the ability of any person to compete openly to provide recycling collection service to businesses within the City of Portland.

17.102.280 Inspections to Determine Compliance with Business Recycling Requirements.

A. The Director shall be responsible for the administration and enforcement of Section 17.102.270 relating to recycling goals for businesses and multifamily complexes. In furtherance of these responsibilities, the Director shall have the authority to inspect sites, buildings and other structures and equipment for compliance with Section 17.102.270. The Director shall establish a program for the periodic inspection of businesses and multifamily complexes for compliance with these requirements. The program shall identify the frequency, priority and types of inspections, subject to the availability of staff and budgeted funds.

B. Right of Entry. The Director may enter the premises of any business or multifamily complex, except private residences, between the hours of 9:00 am and 5:00 pm on any business day to conduct inspections for the purpose of determining compliance with recycling requirements established pursuant to Section 17.102.270. The Director shall first present proper credentials and request entry. If entry is refused, the Director may attempt to gain entry by obtaining an inspection warrant. Failure to respond to repeated requests may constitute refusal for entry. For the purposes of Section 17.102.280, the premises shall include the common areas of the business or multifamily complex used to store solid waste, recycling or compostable materials.

C. Warrants. Whenever an inspection is necessary to determine compliance with Section 17.102.270 and the Director has been refused entry, the Director may apply to any Circuit Court judge to obtain an inspection warrant for the inspection of the premises of a business or multifamily complex. The inspection warrant is a court order authorizing entry onto the premises of a business or multifamily complex for the purposes of conducting an inspection to determine compliance with the requirements of Section 17.102.270.

D. Grounds for Issuance of Inspection Warrants; Affidavit.

1. Affidavit. An inspection warrant shall be issued only upon cause, supported by affidavit, particularly describing the applicant's status in applying for the inspection warrant, the applicable code sections or regulation requiring or authorizing the inspection, the property to be inspected and the purpose for which the inspection is to be made including the basis upon which cause exists to inspect. In addition, the affidavit shall contain either a statement that entry has been sought and refused.

2. Cause. Cause shall be deemed to exist if the affidavit demonstrates that:

a. The inspection is authorized pursuant to reasonable legislative or administrative standards for conducting a routine, periodic or area inspection are satisfied with respect to the premises of a business or multifamily complex;

b. There is a reasonable basis for believing that a condition of nonconformity with Section 17.102.270 exists with respect to the designated property; or,

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

E. Procedure for Issuance of Inspection Warrant.

1. Examination. Before issuing an inspection warrant, the judge may examine under oath the applicant and any other witness and shall be satisfied of the existence of grounds for granting such application.

2. Issuance. If the judge is satisfied that cause for the inspection exists and that the other requirements for granting the application are satisfied, the judge shall issue an inspection warrant, particularly describing the person or persons authorized to execute the inspection warrant, the property to be entered and the purpose of the inspection. The inspection warrant shall contain a direction that it be executed on any business day between the hours of 9:00 a.m. and 5:00 p.m., or where the judge has specially determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night.

3. Police Assistance. In issuing an inspection warrant, the judge may authorize any peace officer, as defined in Oregon Revised Statutes, to enter the described property to assist the person authorized to execute the inspection warrant in any way necessary to complete the inspection.

F. Execution of Inspection Warrants

1. In executing an inspection warrant, the person authorized to execute the warrant shall, before entry into any occupied premises of a business or multifamily complex, make a reasonable effort to present the person's credentials, authority and purpose to an occupant or person in possession of the premises of the business or the multifamily complex designated in

the inspection warrant and show the occupant or person in possession of the property the warrant or a copy thereof upon request. The person authorized to execute the warrant shall leave a copy of the inspection warrant at the premises.

2. Return. The inspection warrant must be executed within 10 working days of its issue. The return of warrant must be submitted to the judge by whom it was issued within 10 working days from its date of execution. After the expiration of the time prescribed by this subsection, the inspection warrant shall be void unless it has been timely executed.

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

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

A. No person may store, or cause to be stored, containers of solid waste, recycling or compostables in public right-of-way without a permit from the City Engineer, the City Traffic Engineer, or the Bureau of Planning and Sustainability. For the purposes of this Section, storage means leaving containers in the right of way for more than 2 hours either before or after collection during normal business hours. If collection occurs after normal business hours, containers may be placed in the right of way at the close of business but must be removed from the right of way by the start of the following business day or within 24 hours of set out, whichever occurs first.

B. The Director may provide exemptions from Subsection A. for extreme economic hardship. Criteria for eligibility shall be based upon such factors as financial hardship for the property or business owner, conditions related to the property and resources necessary to provide adequate on-site, interior storage space for garbage and recycling containers. Exempted property shall be subject to the requirements of this Section following the termination of the hardship exemption. Exemptions shall be for no more than two years. Exemptions may be renewed upon reapplication by the property owner or business owner, after a re-evaluation of eligibility by the Director. Exemptions shall be personal to the property or business owner, and shall not be assignable, transferable or otherwise be conveyable. Exempted property shall be subject to the requirements of Subsection A. following expiration of any hardship exemption granted by the Director.

C. The Director shall develop administrative rules and procedures for determining extreme economic hardships under Subsection B., using the process under Section 17.102.030. The Director shall also adopt standards for space requirements for storage of containers of solid waste, recycling or compostables in new construction and when major alterations are made to existing buildings.

D. 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.

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

As used in Sections 17.102.300 through 17.102.340, the following terms have the following meanings:

A. **"Biodegradable"** means material capable of being broken down by micro-organisms into simple substances or basic elements.

B. **"Chlorofluorocarbons"** are the family of substances containing carbon, fluorine and chlorine.

C. **"Customer"** means any person obtaining food or beverages from a restaurant or retail food vendor.

D. **"Food vendor"** means any restaurant or retail food vendor.

E. **"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.

F. **"Non-profit food provider"** means a recognized tax exempt organization which provides food as a part of its services.

G. **"Prepared food"** means food or beverages which 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.

H. **"Person"** means any natural person, firm, corporation, partnership, or other organization or group however organized.

I. **"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.

J. **"Recycled"** describes a type of material that is separated from the solid waste stream and utilized as a raw material in the manufacture of a new product or new economic use.

K. **"Restaurant"** means any establishment located within the City of Portland, selling prepared food to be eaten by customers. Restaurant includes a sidewalk food vendor.

L. **"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, which provides prepared food.

M. **"Reuse"** means the process by which a product is reclaimed or reprocessed into another useful product.

17.102.310 Prohibition on Certain PSF Uses.

A. On and after March 1, 1989, no restaurant, retail food vendor or non-profit food provider shall serve food and after June 30, 1989 no packager shall package meat, eggs, bakery products or other food in polystyrene foam (PSF) containers, manufactured with chlorofluorocarbons (CFCs) which do not reduce the potential for ozone depletion by more than 95 percent, compared to the ozone depletion potential of CFC-12 (dychlorodifluorothane). Compounds banned include: CFC-11, CFC- 12, CFC-113, CFC-114, CFC-115, Halon-1211, Halon-13-1 and Halon2402. Food vendors may be required to furnish a written statement from the manufacturer or supplier of polystyrene foam products used by that food vendor, indicating that the chemical compounds used in the manufacture of the vendor's polystyrene foam products meet the provisions of this code.

B. On and after January, 1990, no restaurant or retail food vendor shall serve prepared food in any polystyrene foam (PSF) products.

17.102.320 Exemptions for PSF Use.

The City Council, or its appointee, may exempt a food vendor, food packager or non-profit food provider from the requirements of this Code for a one year period, upon showing by the applicant that the conditions of this Code would cause undue hardship. The phrase undue hardship, shall be construed to include, but not be limited to:

A. Situations where there are no acceptable alternatives to PSF packaging for reasons which are unique to the vendor or provider;

B. Situations where compliance with the requirements of this 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 shall only be by writ of review as provided for in ORS 34.010 to 34.102 and not otherwise.

17.102.330 Enforcement and Notice of Violations for PSF Ban.

A. The Director upon determination that a violation of this code or regulations duly adopted pursuant to this code has occurred, shall issue a written notice of the violation by certified mail to the food vendor or food packager which will specify the violation and appropriate penalty.

B. The food vendor or food packager shall, upon receipt of a notice of violation, pay to the City the stated penalty or appeal the finding of a violation to the Code Hearings Officer for a hearing within 15 days of receipt of the notice.

17.102.340 Fines for PSF Ban.

Violations of this ordinance shall be punishable by fines as follows:

A. A fine not exceeding $250 for the first violation in a one year period;

B. A fine not exceeding $500 for the second and each subsequent violation in a one year period.

FIGURE 1 - (Section 17.12.020)

(Deleted by Ordinance No. 163420,
effective Sept. 29, 1990.)

FIGURE 2 - (Section 17.24.020)

(Amended by Ordinance Nos. 160042, 166696, 167861, 168944, 170200, 171243, 172288 , 175205, 180189, 181006, 181846, 182870 and 182760, effective June 5, 2009.)

Permit For		Unit Fee	Minimum Each Permit
(1)	Placement of bus shelter or rest station with no advertising use		No charge
(2)	Community, parade or block party street closures		No charge
(3)	Seasonal or parade decorations		No charge
(4)	Placement of public litter receptacle		No charge
(5)	Street uses established by the City Engineer and City Council to be of civic benefit and non-commercial in nature		No charge
(6)	Construction or reconstruction of sidewalks and driveways	$.52/sq. ft.	$50.00
(7)	Construction or reconstruction of curb	$.66/lin. ft.	$50.00
(8)	Excavation for the construction, reconstruction, repair or abandonment of:		
	(a) a main line, duct, conduit, subway, property service, lateral, etc. (Sewer connection more than 100 feet in length shall be deemed a public improvement under permit.)	$1.92/lin. ft.	$192.00
	(b) property service or lateral if not constructed in conjunction with (a) above and plan review not required.	$107.00	$107.00

FIGURE 2 CONTINUED - (Section 17.24.020)

Permit For			Unit Fee	Minimum Each Permit
(9)	Excavation for construction, reconstruction, repair or abandonment of:			
	(a)	utility vault or manhole chamber,		$769.00
	(b)	underground storage tank		$1,020.00/tank
	(c)	miscellaneous utility excavations	$1.92/sq. ft.	$ 192.00
(10)	Placement, replacement, relocation or removal of a pole or private street light		$64.00	$ 64.00
(11)	Drilling a test hole		$192.00	$ 192.00
(12)	Temporary closure of any street or portion of a street		$198.00	$198.00
(13)	Material blasting			$346.00
(14)	House and building moving:			
	(a)	Non-refundable permit application, investigation fee and issuance fee		$355.00
	(b)	Inspection fee Full Cost incurred by the City for inspection and oversight of moving operations.		
(15)	Advertising benches:			
	(a)	Permit		$ 20.00
	(b)	Annual Permit Renewal Fee		$ 20.00
	(c)	Fee for bench removed by City for non-compliance with City Code -- Full cost incurred by the City for removal and storage of Bench.		

FIGURE 2 CONTINUED - (Section 17.24.020)

Permit For			Unit Fee	Minimum Each Permit
(16)	Bike Racks			
	(a)	Permit	$50.00	$ 50.00
	(b)	Fee for bike rack removed by City for non-compliance with City Code -- Full cost incurred by the city for removal and storage of the rack.		
(17)	Mail Boxes (private, fore 1 and 2 family residence)		$50.00	$ 50.00
(18)	Sewer connection fee (effective 7-1-06) connection to an existing lateral, or extension of lateral from sewer main to property line; sewer or lateral extension more than 100 feet in length shall be deemed a public improvement under permit		$150.00	$ 150.00
(19)	Building Plan Review			
	(a)	One or two family residential structure. Fee comprised of: $73.00 review fee $44.00 surcharge for turn around	$189.00	$189.00
	(b)	Structures auxiliary to a one or two family residential dwelling unit submitted on a separate application. Fee comprised of: $73.00 review fee $44.00 surcharge for turn around	$189.00	$189.00
	(c)	Commercial buildings (any structure other than those listed in a and b above). Fee comprised of: $117.00 review fee $79.00 surcharge for turn around	$304.00	$304.00
(20)	Any other excavation, construction, reconstruction, repair, removal, abandonment, placement or use of the street area (For portable signs, see Title 32 Signs and Related Regulations.)		$346.00	$346.00

FIGURE 2 CONTINUED (Section 17.24.020)

Permit For	Unit Fee	Minimum Each Permit
(21) Penalty fee. If work in the street area is commenced without first securing the proper permit, the fee shall be double that prescribed above, unless he City Engineer determines that it is not reasonably possible to obtain the permit before commencing such work. Payment of the permit fee, however, shall in no way relieve or excuse any permittee from any other penalties imposed on such violations.		
(22) Sewer tap fees.		
Sewer tap fees are adopted, annually, by general ordinance to establish sewer and drainage rates and charges.		
		Deposit*
(23) Application fee deposit for streets proposed for rename 10 and under City blocks:		$ 500.00
Application fee deposit for streets proposed for rename over 10 City blocks:		$1,000.00
*Auditor shall return any unused portion of deposit to applicant.		
(24) Sidewalk Café Permit Fees		
1. Application Fee Base	$150	per café
2. Application Fee Area Usage	$4.50	per linear foot
3. Annual Permit Fee Base	$75	per café
4. Annual Permit Fee Area Usage	$1.50	per linear foot
5. Permit Reinstatement	$350	per incident

SEWER USER SERVICE CHARGES AND RATES

FIGURE 3 - (Section 17.36.010)

(Repealed by Ordinance No. 181846,
effective July 1, 2008.)

FIGURE 4 - (Section 17.36.020)

(Repealed by Ordinance No. 178449, effective May 26, 2004.)

FIGURE 5 - (Section 17.36.020)

(Repealed by Ordinance No. 181846,
effective July 1, 2008.)

FIGURE 6 - Chapter 17.102

(Replaced by Ordinance No. 182833,
effective July 1, 2009.)

As used in Figure 6 the following terms have the meanings described below:

"Excess distance" is applicable to any collection beyond seventy-five (75) feet from the curb. This charge is in addition to the "non-curb surcharge".

"Clean up containers" include hauler-provided containers which are provided as requested by the customer for occasional or temporary use.

"Multifamily" means any multidwelling building or a combination of buildings on a single tax lot in the residential franchise territory that contains 2-4 dwelling units.

"Non-curb surcharge" is the charge for collection service provided at a location more distant than curbside.

"Terrain differential" is applicable to services within the territory designated on Figure 6-1.

Residential Solid Waste and Recycling Rates				
Single Family Residential Service Level	**Monthly Rate, Curbside Pickup**	**Per Unit or Per Pickup**	**Non-Curb Surcharge**	**Excess Distance**
Weekly Collection of Garbage & Recycling, Every Other Week Yard Debris				
20-gallon Can	22.20		3.35	1.05
32-gallon Can	25.30		3.35	1.05
32-gallon Rollcart	26.75			
60-gallon Rollcart	31.85			
90-gallon Rollcart	37.15			
1.0 Cubic Yard Container	79.60			
1.5 Cubic Yard Container	109.00			
2.0 Cubic Yard Container	138.20			
Once a Month Collection of Garbage, Weekly Collection of Recycling and Every Other Week Yard Debris				
32-gallon Can	16.45		.80	.25
32-gallon Rollcart	17.65			
Special Services				
Recycling Only, Weekly Collection	8.05			
On Call Yard Debris Only (32-gallon Can, Bag, or Bundle)	4.80			
On Call Garbage Only (32-gallon Can)		7.05	.80	.25
Extra Yard Debris Roll Cart	4.95			
Extra Recycling Roll Cart	3.05			
Clean Up Containers				
One 1.0 Cubic Yard		74.75		
One 1.5 Cubic Yard		82.65		
One 2.0 Cubic Yard		90.50		

Miscellaneous Rates				
Yard Debris, Extra Can, Bag or Bundle		2.50		
Garbage, Extra Can or Bag		5.00	.80	.25
Special Pickup or Call Back for Garbage or Yard Debris		7.75		
Rollcart Delivery		11.00		
Terrain Surcharge (see figure 6-1)				
Weekly Solid Waste (single can)	3.75			
Weekly Solid Waste (multiple cans/ rollcarts)	3.90			
Monthly Solid Waste	2.25			
Recycling Only	1.30			
On Call Service	.50			
On Call Yard Debris Only	.50			
Weekly Collection of Garbage & Recycling, Every Other Week Yard Debris (Multiple Cans/Rollcarts)				
32-gallon Cans, Two	31.65		6.70	2.10
32-gallon Cans, Three	37.95		10.05	3.15
32-gallon Cans, Four	44.20		13.40	4.20
32-gallon Rollcarts, Two	34.60			
32-gallon Rollcarts, Three	42.45			
32-gallon Rollcarts, Four	50.50			
60-gallon Rollcarts, Two	44.35			
60-gallon Rollcarts, Three	56.60			
60-gallon Rollcarts, Four	69.95			
90-gallon Rollcarts, Two	54.40			
90-gallon Rollcarts, Three	71.65			
90-gallon Rollcarts, Four	88.90			

Residential Solid Waste and Recycling rates and charges include recycling services as outlined in City Administrative Rules. If the need for a type of service arises that is not now foreseen or specifically covered by this rate schedule, then the charge for such service shall be:

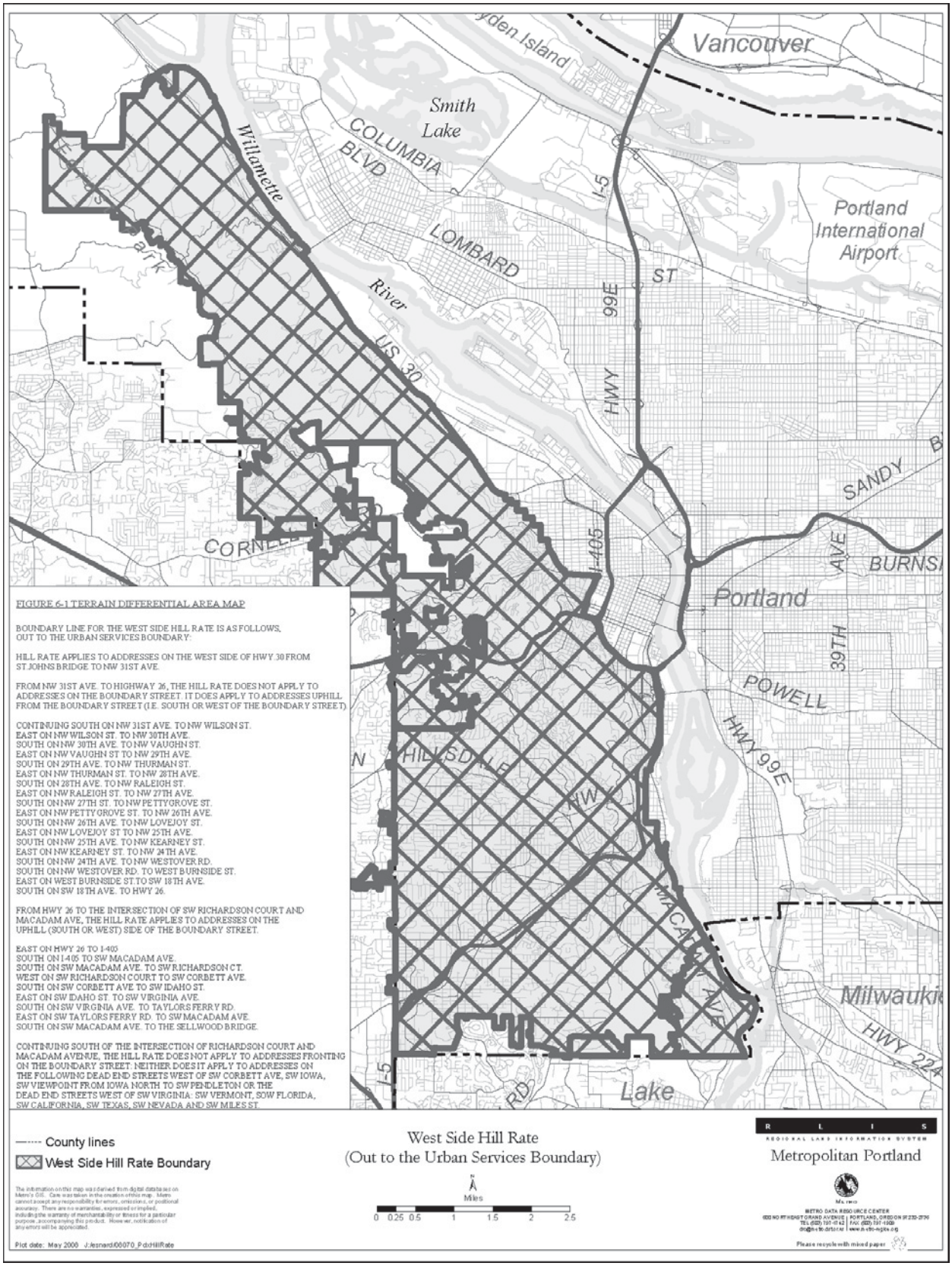
1. Uniform and nondiscriminatory between customers of a collector;
2. Commensurate with the rates generally charged in the Portland Metropolitan Area;
3. Subject to approval by the City of Portland, Bureau of Planning and Sustainability Director.

Residential Curbside Monthly Rates -- Small Multiplexes			
Weekly Collection for:	**Duplex**	**Tri-plex**	**Four-plex**
Single container service, where can/cart/container is shared by residents of 2, 3 or 4 units.			
One shared 32 gallon rollcart	34.75	N/A	N/A
One shared 60 gallon rollcart	36.70	44.35	N/A
One shared 90 gallon rollcart	42.00	46.85	54.15
One shared 1 cu.yd. container	84.45	89.30	94.15
One shared 1.5 cu.yd. container	113.85	118.70	123.55
One shared 2 cu.yd. container	143.05	147.90	152.75
Multiple containers. These rates apply where all cans/carts are placed together in a single location. Where unshared cans/carts are located separately, then each is considered a separate account, charged at single-family rate.			
Two 32 gallon cans	36.50	42.65	N/A
Three 32 gallon cans	42.80	47.65	52.85
Four 32 gallon cans	49.05	53.90	58.75
Two 32 gallon carts	39.45	44.95	52.10
Three 32 gallon carts	47.30	52.15	57.00
Four 32 gallon carts	55.35	60.20	65.05
Two 60 gallon carts	49.20	54.05	58.90
Three 60 gallon carts	61.45	66.30	71.15
Four 60 gallon carts	73.80	78.65	83.50
Two 90 gallon carts	59.25	64.10	68.95
Three 90 gallon carts	76.50	81.35	86.20
Four 90 gallon carts	93.75	98.60	103.45

Monthly Non-curbside Service: $3.35 per can $6.75 per rollcart
Monthly Excess Distance Charge: $1.05 per can $2.25 per rollcart
Recycling Labor Charge: $2.85 per unit
(after the first unit)

Terrain Surcharge: $3.90 per multiplex account
(for services within the territory designated on Figure 6-1)

Yard Debris:
Extra Can, Bag, or Bundle $2.50 each
(accrued on a per account, rather than per unit, basis)


Vancouver
Smith Lake
COLUMBIA BLVD
Willamette River
LOMBARD
I-5
Portland International Airport
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99E
HWY
US 30
SANDY
I-405
Portland
39TH AVE
POWELL
HWY 99E
HILLSDALE
MACADAM AVE
Milwaukie
HWY 224
Lake
FIGURE 6-1 TERRAIN DIFFERENTIAL AREA MAP
BOUNDARY LINE FOR THE WEST SIDE HILL RATE IS AS FOLLOWS, OUT TO THE URBAN SERVICES BOUNDARY:
HILL RATE APPLIES TO ADDRESSES ON THE WEST SIDE OF HWY 30 FROM ST JOHNS BRIDGE TO NW 31ST AVE.
FROM NW 31ST AVE. TO HIGHWAY 26, THE HILL RATE DOES NOT APPLY TO ADDRESSES ON THE BOUNDARY STREET. IT DOES APPLY TO ADDRESSES UPHILL FROM THE BOUNDARY STREET (I.E. SOUTH OR WEST OF THE BOUNDARY STREET)
CONTINUING SOUTH ON NW 31ST AVE. TO NW WILSON ST.
EAST ON NW WILSON ST. TO NW 30TH AVE.
SOUTH ON NW 30TH AVE. TO NW VAUGHN ST.
EAST ON NW VAUGHN ST TO NW 29TH AVE.
SOUTH ON 29TH AVE. TO NW THURMAN ST.
EAST ON NW THURMAN ST. TO NW 28TH AVE.
SOUTH ON 28TH AVE. TO NW RALEIGH ST.
EAST ON NW RALEIGH ST. TO NW 27TH AVE.
SOUTH ON NW 27TH ST. TO NW PETTYGROVE ST.
EAST ON NW PETTY GROVE ST. TO NW 26TH AVE.
SOUTH ON NW 26TH AVE. TO NW LOVEJOY ST.
EAST ON NW LOVEJOY ST TO NW 25TH AVE.
SOUTH ON NW 25TH AVE. TO NW KEARNEY ST.
EAST ON NW KEARNEY ST. TO NW 24TH AVE.
SOUTH ON NW 24TH AVE. TO NW WESTOVER RD.
SOUTH ON NW WESTOVER RD. TO WEST BURNSIDE ST.
EAST ON WEST BURNSIDE ST.TO SW 18TH AVE.
SOUTH ON SW 18TH AVE. TO HWY 26.
FROM HWY 26 TO THE INTERSECTION OF SW RICHARDSON COURT AND MACADAM AVE, THE HILL RATE APPLIES TO ADDRESSES ON THE UPHILL (SOUTH OR WEST) SIDE OF THE BOUNDARY STREET.
EAST ON HWY 26 TO I-405
SOUTH ON I-405 TO SW MACADAM AVE.
SOUTH ON SW MACADAM AVE. TO SW RICHARDSON CT.
WEST ON SW RICHARDSON COURT TO SW CORBETT AVE.
SOUTH ON SW CORBETT AVE TO SW IDAHO ST.
EAST ON SW IDAHO ST. TO SW VIRGINIA AVE.
SOUTH ON SW VIRGINIA AVE. TO TAYLORS FERRY RD.
EAST ON SW TAYLORS FERRY RD. TO SW MACADAM AVE.
SOUTH ON SW MACADAM AVE. TO THE SELLWOOD BRIDGE.
CONTINUING SOUTH OF THE INTERSECTION OF RICHARDSON COURT AND MACADAM AVENUE, THE HILL RATE DOES NOT APPLY TO ADDRESSES FRONTING ON THE BOUNDARY STREET. NEITHER DOES IT APPLY TO ADDRESSES ON THE FOLLOWING DEAD END STREETS WEST OF SW CORBETT AVE, SW IOWA, SW VIEWPOINT FROM IOWA NORTH TO SW PENDLETON OR THE DEAD END STREETS WEST OF SW VIRGINIA: SW VERMONT, SOW FLORIDA, SW CALIFORNIA, SW TEXAS, SW NEVADA AND SW MILES ST.
County lines
West Side Hill Rate Boundary
West Side Hill Rate
(Out to the Urban Services Boundary)
Miles
0 0.25 0.5 1 1.5 2 2.5
RLIS
Metropolitan Portland

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Figure 7 (Section 17.37.020)
Downspout Disconnection Program Area Map

(Replaced by Ordinance No. 182467,
effective February 6, 2009.)

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FIGURE 8 (Section 17.36.065)

(Repealed by Ordinance No. 181846,
effective July 1, 2008.)

Figure 9 (Section 17.38.060)
(Repealed by Ordinance No. 182144,
effective September 26, 2008.)

Figure 10 (Section 17.38.060)

(Repealed by Ordinance No. 182144,
effective September 26, 2008.)

Figure 11 (Section 17.13.070)

(Repealed by Ordinance No. 174617,
effective July 28, 2000.)

Figure 12 (Section 17.15.060)

(Repealed by Ordinance No. 181322,
effective January 1, 2008.)

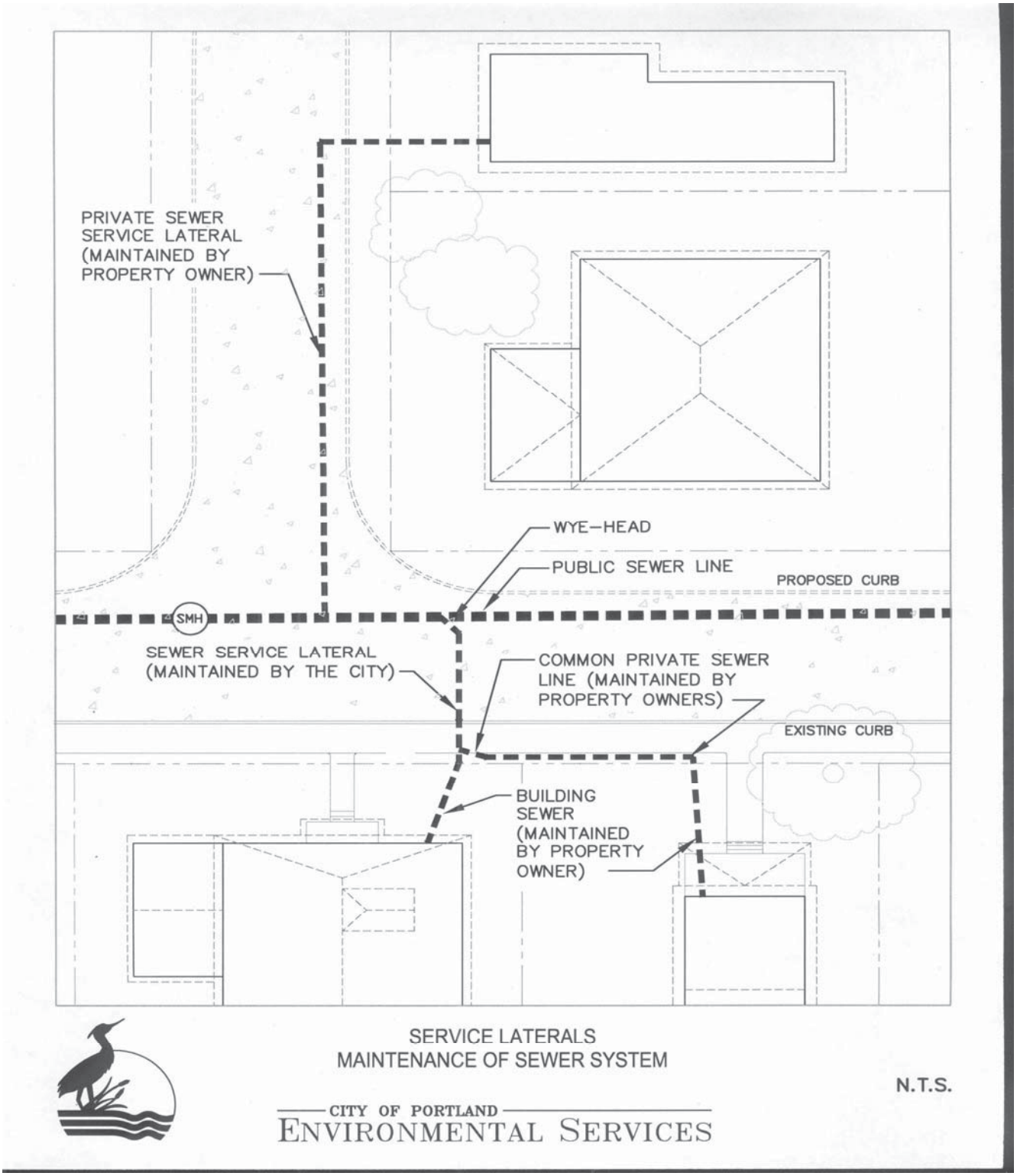

Figure 13 (Section 17.32.055)

(Added by Ordinance No. 176922, effective October 25, 2002.)

Figure 14 – Hourly Labor Rates for Engineering and Superintendence Services for Public Sewer Improvements (Section 17.32.150)

(Repealed by Ordinance No. 181846, effective July 1, 2008.)