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CHAPTER 30: GENERAL PROVISIONS

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IMPROVEMENTS TO WATER SYSTEM AND STREETS; SPECIAL ASSESSMENTS

§ 30.01 INITIATION OF PROCEEDINGS.

(A) Whenever the Council of the city deems it necessary to effect improvements to the city water system or any part thereof, or to city streets and sidewalks, either upon its own motion, or upon a petition of the owners of one-half of the property in the area to benefit especially from such improvements, and for which such improvements are to be paid in whole or in part by special assessment according to the benefits to the property to be assessed, then the City Council shall, by motion, direct the City Manager or the City Engineer to make a written report for such project and present the same to the City Council.

(B) Unless the Council shall direct otherwise, the report shall contain, where applicable, the following matters:

- (1) A map or plat showing the general nature, location and extent of the proposed improvements and the land to be assessed for the payment of any part of the cost thereof;
- (2) Plans, specifications and estimates of the work to be done;
- (3) An estimate of the probable cost of the improvement, including any legal, administrative or engineering costs attributable thereto;
- (4) An estimate of the unit cost of the improvement to the especially benefitted property;
- (5) A recommendation as to the method of assessment to be used to arrive at a fair apportionment of the whole or any portion of the cost of the improvement to the property especially benefitted;
- (6) The description of each lot, parcel of land or portion thereof to be specially benefitted, together with the names of the record owners thereof; and
- (7) A statement of outstanding assessments against the property to be assessed.

(Ord. 82-2, passed 5-22-1982)

§ 30.02 COUNCIL'S ACTION ON REPORT.

After the report has been filed with the City Manager, the Council may approve the report, modify the report and approve it as modified, or require the City Manager or Engineer to supply additional or different information for the improvement, or they shall have the authority to fix the boundaries of the assessment district and to find that properties located within the district are particularly and especially benefitted by the improvement, or they may abandon the improvement in the case of improvements to the water system. All property within the city may be assessed.

(Ord. 82-2, passed 5-22-1982)

§ 30.03 RESOLUTION AND NOTICE OF HEARING.

(A) After the Council has approved the report as submitted or modified, the Council shall, by resolution, declare its intention to make the improvements, provide the manner and method of carrying out the improvements, and shall direct the City Manager to give notice of such improvements by publishing in a newspaper of general circulation in the city notice of its intention to construct the improvement.

(B) The notice shall be published one time and notice shall also be posted in three public places in the city for not less than 14 days prior to the hearing.

(C) A copy of the notice shall be mailed to the record owners of each parcel of real property within the boundaries proposed to be assessed, at the address of such record owner as contained in the assessment records in the office of the Assessor of the county.

(D) In the event there is a purchaser under a land sales contract, the land sales contract purchaser shall be deemed to be the owner.

(E) The notice shall state that:

(1) The report of the City Manager or Engineer is on file in the office of the City Manager and is subject to public examination;

(2) The Council will hold a public hearing on the proposed improvement on a specified date, which shall not be earlier than ten days following the publication of the notice, and at which public hearing objections to the improvement will be heard by the Council;

(3) If, prior to such hearing, there shall be presented to the City Manager written objections by persons owning two-thirds or more of the area within boundaries of the proposed area to be assessed for the improvement, then the improvement shall be abandoned for at least six months; and

(4) This is the description of the property to be especially benefitted by the improvements, the owners of such property, and the estimate of the unit cost of the improvement to the property to be

specially benefitted, together with the total cost of the improvement to be paid for by special assessments to the benefitted properties.

(Ord. 82-2, passed 5-22-1982)

§ 30.04 HEARING.

At the time of the public hearing on the proposed improvement, if the written objections shall represent less than the amount of property required to defeat the proposed improvement, then on the basis of the hearing of written and oral objections if any, the Council may, by motion, at the time of the hearing, or at any time thereafter, order the improvements to be carried out in accordance with the resolution providing therefor, or the Council may, on its own motion, abandon the improvement.

(Ord. 82-2, passed 5-22-1982)

§ 30.05 MANNER OF DOING WORK.

The Council may provide in the improvement ordinance that the construction work may be done in whole, or in part, by the city by contract let at public bid, or by any combination thereof. Where circumstances warrant, the Council may also permit the owner of property to be assessed to perform work upon the project as an offset to the amount of the assessment.

(Ord. 82-2, passed 5-22-1982)

§ 30.06 NOTICE OF PROPOSED ASSESSMENT.

(A) Before levying an assessment, the Council shall cause the City Manager to mail to each property owner affected by the proposed assessment a notice which shall give the descriptions of each lot or other property proposed to be assessed together with the name and address of the owner as shown on the assessment records of the Assessor of the county, together with the amount of the assessment, the notice shall fix a date by which time objections shall be filed with the City Manager. Any such objection shall state the grounds thereof. The Council shall consider such objections and may adopt, correct, modify or revise the proposed assessments.

(B) The Council shall determine the amount of assessment to be charged against each lot within the district, according to the special and peculiar benefits accruing thereto from the improvement, and shall by ordinance spread the assessments.

(Ord. 82-2, passed 5-22-1982)

§ 30.07 ASSESSMENT ORDINANCE.

(A) The passage of the assessment ordinance may be delayed until the contract for the work is let, or until the improvement is completed and the total cost thereof is determined.

(B) Assessments shall become a lien upon the property assessed from and after the passage of the ordinance spreading the same and the entry in the appropriate city lien record.

(C) The city may specify the date on which the assessments are due and payable, and shall have the right to force payment of such assessments as provided by O.R.S. 223.505 to 223.650.
(Ord. 82-2, passed 5-22-1982)

§ 30.08 METHOD OF ASSESSMENT AND ALTERNATIVE METHODS OF FINANCING.

The Council, in adopting a method of assessment of the costs of the improvement, may:

(A) Use any just and reasonable method of determining the extent of any improvement consistent with the benefits derived;

(B) Use any method which is just and reasonable to proportion the sum to be assessed among the properties determined to be specially benefitted; and/or

(C) Authorize payment by the city of all or any part of the cost of any such improvement.
(Ord. 82-2, passed 5-22-1982)

§ 30.09 APPEAL.

Owners of any property against which assessment for local improvements has been imposed may seek review thereof under the provisions of O.R.S. 34.010 to 34.100.
(Ord. 82-2, passed 5-22-1982)

§ 30.10 FINAL NOTICE OF ASSESSMENT.

Within ten days after the ordinance levying assessments has been passed, the City Manager shall send by certified mail a notice of assessment to the record owners of the assessed property. Notice of the assessment shall recite the date of the assessment ordinance and shall state that upon the failure of the property owner to make application to pay the assessment in installments within 14 days from the date of receipt of the notice, or upon the failure of the owner to pay the assessment in full within 30 days from the date of the assessment ordinance, interest shall commence to run on the assessment, and the property assessed will be subject to foreclosure, and the notice will further set forth the description of the property assessed, the name of the owner of the property and the amount of each assessment.
(Ord. 82-2, passed 5-22-1982)

§ 30.11 SENDING OF NOTICES.

(A) Whenever a notice is required to be sent to the owner of a lot affected by a proposed assessment, such notice shall be sent to the owner of record as shown on the records of the County Assessor.

(B) Where a contract purchaser is shown, such purchaser shall be deemed to the owner of record.

(C) Any mistake, error, omission or failure with respect to such mailing shall not be jurisdictional or invalidate the assessment proceedings, but there shall be no foreclosure or legal action to collect until notice has been given by personal service or its equivalent upon the owner of record and the contract purchaser, if any.

(Ord. 82-2, passed 5-22-1982)

§ 30.12 DEFERRED PAYMENTS.

(A) The Council may provide for payment of all or part or the costs of construction from funds available to the city, to be repaid by deferred installment payments; or for deferred payments under the terms of the Bancroft Bonding Act as contained in O.R.S. 223.205 to 223.295.

(B) If the latter, then all provisions of the Bancroft Bonding Act are incorporated herein by reference and made applicable hereto.

(Ord. 82-2, passed 5-22-1982)

§ 30.13 DEFICIT ASSESSMENTS.

(A) If the initial assessment has been made on the basis of the estimated cost, and upon the completion of the work the cost is found to be greater than the estimated cost, the Council may make a deficit assessment for the additional costs.

(B) Proposed assessment on the respective lots within the assessment district for the proportionate share of the deficit shall be made and notices shall be sent.

(C) Opportunity for objections shall be given and such objection shall be considered and determination of the assessment against each particular lot, block or parcel of land shall be made as in the case of the initial assessment and the deficit assessments spread by ordinance.

(D) If assessments have been made on the basis of estimated costs and upon completion the cost is found to be less than the estimated cost, provisions shall be made for refund of excess amounts paid.

(Ord. 82-2, passed 5-22-1982)

§ 30.14 STATUTORY PROVISIONS.

The provisions for reassessment contained in O.R.S. 223.405 to 223.485 are hereby made applicable to any proceedings that are taken by virtue of the provisions of this subchapter.
(Ord. 82-2, passed 5-22-1982)

INSTALLMENT AND DEFERRED PAYMENT FOR ASSESSMENTS; PUBLIC FACILITIES

§ 30.25 PURPOSE.

The purpose of this subchapter is to provide owners of property an opportunity to absorb the charges for public improvements or construction over a period of time, and to provide for deferral of payments under certain circumstances. For the purpose of this subchapter, **OWNER** shall mean the record owner, or where there is a recorded purchase contract, the purchaser named in such contract.
(Ord. 82-3, passed 6-20-1982)

§ 30.26 INSTALLMENT PAYMENTS PERMITTED.

Whenever the City Council has proceeded to cause any improvement to be constructed or made, and to assess the costs of such improvement to the property owners benefitted thereby, the owner of any property so assessed for such improvement in the sum of \$25 or more, may, at any time within 14 days after final notice of such assessment is sent, file with the City Manager a written application to pay:

(A) The whole of the assessment in installments; or

(B) If part of the assessment has been paid, the unpaid balance, of the assessment in installments.
(Ord. 82-3, passed 6-20-1982)

§ 30.27 APPLICATION FOR INSTALLMENT PAYMENTS.

(A) The written application to pay in installments shall state that the applicant waives all irregularities or defects, jurisdictional or otherwise, in the proceedings to cause the improvements to be constructed or made for which the assessment is levied, and in the apportionment of the costs thereof.

(B) The application shall provide that the applicant agrees to pay the assessment in equal semi-annual installments over a period of time and at a rate of interest as set by the City Council in the ordinance spreading the assessment roll for the improvement.

(C) The rate of interest set shall include an amount sufficient to pay a proportionate part of the cost of administering and issuing bonds, if necessary, including, but not limited to, legal, printing and consultant fees, as determined by the City Council.

(D) The application shall also contain a statement, by lots or blocks or other convenient description of the property of the applicant assessed for the improvement.

(Ord. 82-3, passed 6-20-1982)

§ 30.28 WHEN APPLICATIONS NOT RECEIVED.

No applications shall be received and filed if the amount remaining unpaid upon such assessment, together with the unpaid balance of any previous assessments for improvements against the property equals or exceeds double the assessed valuation of the property as shown by the last county tax roll.

(Ord. 82-3, passed 6-20-1982)

§ 30.29 APPLICATIONS TO BE KEPT BY CITY MANAGER.

(A) The City Manager shall keep all applications in convenient form for examination.

(B) Applications received for each improvement shall be separate.

(C) He or she shall enter in a book kept for that purpose, under separate heads for each improvement, the date of filing of each application, the name of the applicant, the description of the property and the amount of the assessment, as shown in the application.

(Ord. 82-3, passed 6-20-1982)

§ 30.30 ASSESSMENT LIEN DOCKET TO BE KEPT.

(A) After expiration of the time for filing an application, the City Manager shall enter in a docket kept for that purpose under separate heads for each type of improvement, by name or number, a description of each lot or parcel of land against which an assessment is made, together with the name of the owner and the amount of the unpaid assessment.

(B) This assessment docket shall stand thereafter as the lien docket for taxes assessed and levied in favor of the city, and for the amounts of unpaid assessments and interest thereon docketed against each lot or parcel of land until the assessments and interest are paid in full. All unpaid assessments and interest are a lien on each lot or parcel of land in favor of the city, and such lien shall take priority over all other liens and encumbrances whatsoever.

(Ord. 82-3, passed 6-20-1982)

§ 30.31 INSTALLMENT PAYMENTS.

(A) After application for installment payments has been made, there shall be due and payable semi-annually for the period of time set by the Council by the owner of each lot or parcel of land assessed, such percentage of the payment on principal sufficient to pay the principal owed by that parcel of property within the time set forth, together with the amount of one-half of one year's interest at the rate per annum determined by the City Council.

(B) The first payment shall be due and payable at the expiration of six months from the date of assessment as shown in the assessment docket, and subsequent payments shall be due at the expiration of each semi-annual period thereafter.

(Ord. 82-3, passed 6-20-1982)

§ 30.32 COLLECTION OF DELINQUENT INSTALLMENTS.

(A) Should the owner neglect or refuse to pay installments as they become due and payable for a period of one year, then the City Council may, by reason of such neglect or refusal, and while the neglect or refusal to pay continues, pass a resolution giving the name of the owner then in default and the amount of the sums due, together with a description of the property from which the sums are owing, and declaring the whole sum, both principal and interest, due and payable at once.

(B) It may then proceed to collect all unpaid amounts as provided by law.

(Ord. 82-3, passed 6-20-1982)

§ 30.33 PAYMENTS TO BE MADE TO THE CITY MANAGER.

(A) All payments shall be made to the City Manager, who shall, when installments and interest on any assessment in the lien docket are due, make the proper extensions of such installments and interest on the lien docket.

(B) The City Manager shall notify the property owner that the installments are due and payable but the failure of any owner to receive such notice shall not prevent the collection of the installment. The City Manager shall issue a receipt to the person paying the installment and interest, and shall make the proper entries on the bond lien docket showing the amount received for each payment, and the date thereof.

(Ord. 82-3, passed 6-20-1982)

§ 30.34 PREPAYMENT ALLOWED.

(A) At any time before payment of the full amount of the assessment, any owner of any property against which an assessment is made and lien docketed may pay to the City Manager the whole amount

of the assessment for which the lien is docketed, together with the full amount of interest and costs accrued thereon to the date of such payment.

(B) Upon such payment, the City Manager shall enter into the lien docket opposite the entry of the lien the fact and the date of such payment and that the lien is discharged.

(Ord. 82-3, passed 6-20-1982)

§ 30.35 BANCROFT BONDING PERMITTED.

The City Council may, at any time, finance improvements to be paid by assessment under the provisions of O.R.S. 223.205 and 223.210 to 223.295, known as the Bancroft Bonding Act. All provisions of that Act are incorporated herein for reference.

(Ord. 82-3, passed 6-20-1982)

§ 30.36 DEFERRAL OF ASSESSMENTS.

It is the intent of the Council to adopt the provisions for providing for deferral of special assessments for local improvements found in O.R.S. 311.702 to 311.735, and all relevant terms used herein will have the meaning given in O.R.S. 311.702.

(Ord. 82-3, passed 6-20-1982)

§ 30.37 ELIGIBILITY FOR DEFERRAL.

In order to qualify for deferral of payment, the individual filing the claim for deferral, and the homestead with respect to which the claim is filed, must meet the following requirements both at the time the claim for deferral is filed and thereafter, so long as payment of the amount of the special assessment is deferred:

(A) The individual filing the claim must be 62 years of age or older;

(B) The individual filing the claim, by himself or herself or together with his or her spouse, must own the fee simple estate, or be purchasing the fee simple estate under a recorded instrument of sale;

(C) The property, with respect to which the claim is filed, must be the homestead of the individual who files the claim for deferral; and

(D) If the individual is delinquent in payment of the special assessment for local improvement, or any installments thereon, the homestead must not yet have been sold at foreclosure sale.

(Ord. 82-3, passed 6-20-1982)

§ 30.38 CLAIM FOR DEFERRAL.

(A) A claim for deferral shall be in writing, and shall recite the facts establishing eligibility for the deferral.

(B) The initial claim shall have attached thereto a copy of the agreement for payment of the special assessment for local improvements in installments.

(C) The initial claim may be filed at any time during the calendar year in which the deferral is first claimed. A claim for a subsequent year must be filed on or before December 15 of the year preceding the year for which the claim is filed.

(D) If the amount of special assessment has become delinquent at the time of initial application for deferral, the terms shall include any delinquent installments and interest, together with penalties or costs imposed as a result of the delinquency, which amounts shall be considered payable in the calendar year for which claim of deferral is made.

(Ord. 82-3, passed 6-20-1982)

§ 30.39 DUTIES OF CITY MANAGER.

(A) If eligibility for special assessment deferral is established, the City Manager shall:

(1) Show by an entry on the assessment lien docket which property specially assessed is accorded deferral; and

(2) Send to the State Department of Revenue a copy of the claim for deferral, and verify to the Department the amounts of special assessment for local improvement subject to deferral for the calendar year the rates of interest and accrual dates, and any other pertinent information relating to payments of the deferred amounts.

(B) The City Manager shall continue to show on the assessment lien docket that the property with respect to which the deferral is allowed continues to be subject to special assessment deferral. The City Manager shall make a separate list of the properties subject to special assessment deferral and shall show the amount of special assessment for local improvements deferred for each property, and shall show the accrued interest added each year, on the amount of special assessments for improvement deferred, and the total accrued interest.

(C) The deferred assessment and interest shall continue to be a lien against the property in the same manner as any other unpaid special assessments, but shall not be subject to procedures provided for collection of delinquent, special assessments, so long as the owner and property remain eligible and have applied for deferral.

(D) Interest shall accrue on the amount of the deferred special assessments at the rate of 6% per annum. No other interest shall accrue on the amount of deferred special assessment for local improvement.

(Ord. 82-3, passed 6-20-1982)

§ 30.40 NOTICE FOR RENEWAL.

(A) On or before September 1 of each year, the City Manager shall send a notice to each individual who has claimed deferral for the current year. He or she shall give notice by mail sent to the residence address of the individual as shown in the claim for deferral filed for the current year. The notice shall be in substantially the following form:

“TO: (Name of individual)

If you want to defer the collection of special assessment installments and interest on your homestead for the calendar year beginning on January 1, _____, you must file a claim for deferral not later than November 15 with the City Reorder.

If you fail to file your claim on or before November 15, you will have to pay the special assessment installments and interest on your homestead, payable during the calendar year beginning January 1, _____.”

(B) If an individual who has claimed deferment for the current year does not file a claim for deferral on or before November 15, the City Manager shall send, not later than December 1, a notice by certified mail to the residence, address of the individual as shown on the claim for deferral filed for the current year. The notice shall be in substantially the following form;

“TO; (Name of individual)

You did not file a claim for deferral of special assessment installments and interest for your homestead for the calendar year beginning January 1, _____. Consequently, you will have to pay the special assessment installments and interest payable during the calendar year beginning January 1, _____.

If you wish to defer collection of the special assessment installments and interest for the calendar year beginning January 1, _____, on your homestead, you must file a claim for deferral with the City Manager not later than December 15, and pay a penalty of \$10.”

(C) If the individual files a claim for deferral after November 15, and on or before December 15, and pays the penalty of \$10, the homestead with respect to which the deferral was claimed shall be subject to deferral for the calendar year, next beginning. The \$10 penalty shall be paid into the General Fund.

(D) Failure to receive the notices provided for in this section is not a defense in any proceeding for the collection of the special assessment for local improvements. The City Manager and other officers of the city are not personally liable for failure to give notices.
(Ord. 82-3, passed 6-20-1982)

§ 30.41 WHEN DEFERRED ASSESSMENTS BECOME PAYABLE.

Except as provided in § 30.42, all deferred assessments, including accrued interest, become payable when:

(A) The individual who claimed deferral on his or her homestead dies;

(B) The homestead is sold, or a contract to sell is entered into, or some person other than the individual who claimed the deferral becomes the owner of the property; or

(C) The homestead is no longer the homestead of the individual who claimed the deferral, except in the case of an individual required to be absent from the homestead by reason of health.
(Ord. 82-3, passed 6-20-1982)

§ 30.42 RIGHTS OF SPOUSE TO CONTINUE DEFERRAL.

(A) Notwithstanding the provisions of § 30.41, the spouse of the individual who claimed the deferral may elect to continue the homestead in its deferred status if:

(1) The spouse is or will be 60 years of age or older not later than six months from the date the circumstances in the proceeding paragraph occur; and

(2) The homestead is the homestead of the individual who meets the other requirements for deferral.

(B) The election under division (A) above shall be filed in the same manner as a claim for deferral is filed, not later than August 15 of the year following the calendar year in which the circumstances listed in § 30.41 occur. Thereupon, the homestead, with respect to which the deferral is claimed, shall continue to be subject to the deferral, and the City Manager shall make any necessary correcting entries into the records. The deferral shall continue until a special assessment for local improvements becomes delinquent or the property no longer qualifies for the deferral.
(Ord. 82-3, passed 6-20-1982)

§ 30.43 PAYMENT OF ASSESSMENTS.

(A) Subject to division (B) below, all or part of the deferred assessment, and accrued interest, may at any time be paid to the appropriate local officer by:

(1) The individual who filed the claim for deferral or his or her spouse; or

(2) The next of kin of the individual who filed the claim for deferral, his or her heir at law, his or her child or, any person having or claiming a legal or equitable interest in the property.

(B) A person referred to in division (A)(2) above may make the payments only if no objection is made by the individual who filed the claim of deferral within 30 days after the local officer deposits in the mail notice to the individual who filed the claim that the payment has been tendered.

(C) Any payments made under this section shall be applied first against accrued interest and any remainder against the deferred assessment. Payment made pursuant to this section does not affect the deferred status of the homestead. Unless otherwise provided by law, the payment does not give the person paying the deferred assessment any interest in the property, or any claim against, the estate in the absence of a valid agreement to the contrary.

(Ord. 82-3, passed 6-20-1982)

§ 30.44 CITY MANAGER TO FORWARD PAYMENTS.

When any deferred assessment, including accrued interest, is collected, the monies shall be credited to a special account, and the appropriate entry shall be made evidencing payment on the assessment lien record. The City Manager shall remit the amount of deferred special assessment and accrued interest to the Department of Revenue. The remittance shall be accompanied by an explanation giving a description of the homestead for which the assessment was collected, and a statement of the special assessment amounts and accrued interest amounts collected.

(Ord. 82-3, passed 6-20-1982)

§ 30.45 DEPARTMENT OF REVENUE RULES TO GOVERN.

All provisions of this subchapter relating to deferred assessments shall be subject to the applicable rules of the State Department of Revenue.

(Ord. 82-3, passed 6-20-1982)

§ 30.46 CITY MANAGER RESPONSIBLE FOR FORMS AND RECORDS.

The City Manager is authorized to draft all necessary forms, and to set up all necessary records to carry out the provisions of this subchapter.

(Ord. 82-3, passed 6-20-1982)

CHAPTER 31: CITY COUNCIL

Section

General Provisions

31.01 Council as Contract Review Board

Meetings and Proceedings

31.15 Authority
31.16 Meetings and workshops
31.17 Mechanics of meetings
31.18 Ethics

GENERAL PROVISIONS

§ 31.01 COUNCIL AS CONTRACT REVIEW BOARD.

The Council appoints itself as the local Contract Review Board for all contracts entered into by the city as provided for in O.R.S. 279A, 279B and 279C, or any subsequent amendments to these chapters establishing rules for public contracting.
(Ord. 2005-01, passed 2-15-2005)

MEETINGS AND PROCEEDINGS

§ 31.15 AUTHORITY.

(A) The authority for this subchapter is the statement in Chapter IV, § 12 of the 2002 Charter of the city which states "The Council shall by ordinance prescribe rules to govern its meetings and proceedings".

(B) These Council rules are to be supplementary and subordinate to the City Charter, the laws of the state and the United States of America.

(C) The Council shall review these rules at least once every two years. Amendments shall be adopted by a majority vote of the full Council excluding the Mayor.
(Ord. 2004-04, passed 6-15-2004)

§ 31.16 MEETINGS AND WORKSHOPS.

(A) *Definition.* O.R.S. 192.610(5) states that a *MEETING* means the convening of the governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. Council meetings and workshops are subject to State Public Meetings Law, O.R.S. 192.610 through 192.990. Written notice shall be posted at City Hall and the post office. Members of the media and the public who have asked to be notified of meetings shall be notified in the usual manner for all the types of meetings described in this section.

(B) *Regular meetings.* The Council shall meet regularly on the third Tuesday of each month at 7:00 p.m. within the city. The meeting calendar shall be set by the Council each December for the following year.

- (1) Mayor's vote: the Mayor has no vote, except in cases of tie (§ 16(3) of 2002 Charter).
- (2) Mayor's functions at City Council meetings:
 - (a) Act as Chairperson of Council meetings and preside over deliberations of the Council;
 - (b) Preserve order;
 - (c) Enforce Council rules; and
 - (d) Determine the order of business before the Council.

(C) *Special meetings.*

(1) The Mayor, or in the Mayor's absence, the President of the Council, may call a meeting at any time, or shall, on written petition of three Councilors, call a meeting at any time for the transaction of the business mentioned in the petition. Twenty-four hours' notice is required (O.R.S. 192.640(3)). Written notice of a special meeting shall be given each member of the Council. The notice shall be served on each member personally or, if a Councilor is not found, left at his or her place of residence.

(2) Except in voting on questions before the Council, the President shall function as Mayor when the Mayor is:

- (a) Absent from a Council meeting; or
- (b) Unable to function as Mayor.

(3) The President shall attempt to contact the Mayor, by the most expeditious means possible, if the President schedules a special meeting or executive session of the Council in the Mayor's absence. The intent would be to provide the Mayor with the opportunity to attend the meeting if possible.

(D) *Emergency meetings.* In the case of an actual emergency, the Mayor, or in the Mayor's absence, the President of the Council, may call an emergency meeting on less than 24 hours' notice. The minutes of the meeting shall describe the emergency justifying less than 24 hours' notice (O.R.S. 192.640(3)). An attempt must be made to contact the media and other interested parties to inform them of the meeting. Such contacts may be by telephone, e-mail or facsimile.

(E) *Public hearings.* The format for public hearings shall be established as a city policy subject to revision as state law requires.

(F) *Executive sessions.* Executive sessions may be held during regular or special meetings, or as stand alone meetings, so long as appropriate statutory limitations are met (O.R.S. 192.660).

(G) *Continuation of a meeting.* Upon majority vote of the Councilors present and eligible to vote, any meeting may be continued to a later date or time, provided that no continuation or adjournment shall be for a period longer than until the next regular scheduled meeting.

(H) *Workshops.* Workshops shall be held as needed to gather information and informally discuss specific issues or questions. The location, date and time shall be determined at regular Council meetings. The public may attend workshops, but may not participate unless expressly asked.

(I) *Attendance by City Manager.* The City Manager shall attend all Council meetings unless excused by the Council or the Mayor (§ 21(6)(a) of 2002 Charter). Staff shall attend when requested by the City Manager.

(Ord. 2004-04, passed 6-15-2004)

§ 31.17 MECHANICS OF MEETINGS.

(A) *Quorum.* The Mayor, or in his or her absence the President of the Council, shall call the meeting to order at the hour designated for the meeting. The City Charter defines a quorum as a majority of the Councilors (§ 14). If a quorum is not present, the City Manager shall immediately inform the absent members, except those known to be unavoidably detained, that their presence is required. If the absent member or members do not appear after the notice, the members present shall adjourn until a specific time or until the next regular meeting.

(B) *Rules of order.*

(1) Unless otherwise provided by law or by these rules, the procedure for Council meetings shall be governed by these rules of order. The Council has an obligation to the citizens to be clear and simple in its procedures and in the consideration of the questions coming before it; therefore, the rules of procedure should be liberally construed to that purpose.

(2) The Presiding Officer shall determine all points of order, subject to the right of any member to appeal to the Council.

(a) Main motion:

1. Only one main pending motion may be considered at any given time;
2. The main motion is debatable, may be amended, may be reconsidered and may be rescinded;
3. The main motion may take the form of a resolution and, if presented to the Council for consideration, it must be handled just like any other main motion; and
4. Council members have the right to know at all times what the motion immediately pending is and to have it re-stated before a vote is taken.

(b) Ordinary motion:

1. To amend;
2. To refer (debatable);
3. To postpone (debatable);
4. To limit (not debatable, shall require four votes to pass);
5. To close debate (not debatable, shall require four votes to pass);
6. To recess (not debatable);
7. To adjourn (not debatable);
8. To table (debatable); and
9. Ordinary motions may be made during the consideration of a main motion.

(c) Special motions:

1. Point of order:
 - a. Not debatable or amendable and requires no vote;
 - b. The Chair decides the point at issue subject to appeal to Council;

- c. Though an appeal, it is not amendable, may not be postponed or referred to committee;
- d. The decision of the majority of the Councilors on the appeal shall be final; and
- e. A point of order may be used to call the attention of the Chair to a violation of the rules, an omission or mistake in the proceedings, a disturbance in the audience or any unusual situation requiring immediate attention.

2. To reconsider. Its purpose shall be to permit a vote taken on a main motion in the same meeting to be set aside and the motion again considered and voted on as if no previous vote had been taken on it.

3. To rescind.

- a. Its purpose shall be to cancel or void, the results of a motion previously passed.
- b. It may be made in a meeting other than that in which the motion to be rescinded was passed.
- c. It is debatable and amendable only as to the portion of the decision to be rescinded.

(3) All motions, other than point of order motions, shall require a second.

(C) *Agenda.* An agenda for each regular Council meeting shall be prepared by the City Manager. Council members may place specific items on the agenda. Agendas for regular Council meetings shall be posted at City Hall and the post office at least four days prior to the meeting time. The Council shall consider at the meeting only matters that appear on the agenda for that meeting, except in the case of an emergency. The Council may discuss items added by a Council member at the meeting. Members of the media and the public who have asked to receive a copy of the agenda shall be supplied an agenda in the usual manner.

(D) *Consent calendar.*

(1) In order to make more efficient use of meeting time, the City Manager shall place minor administrative items, such as the approval of the order of business on the agenda, meeting minutes and financial reports, that are routine in nature and concerning which no debate is expected on a "consent calendar". Any item placed on the consent calendar shall be removed at the request of a Councilor prior to the time a vote is taken on the consent calendar. All remaining items on the consent calendar shall be disposed of by a single motion "to adopt the consent calendar", which shall not be debatable.

(2) Adoption of the consent calendar shall be by the affirmative vote of all Councilors present at the time the vote is taken and shall have the same effect as a separate vote for each item. If there are dissenting votes, each item on the consent calendar shall be voted upon separately in the usual manner.

(E) *Order of business.* The order of business at regular Council meetings shall be as follows, unless amended by the Councilors when adopting the consent calendar:

- (1) Call to order;
- (2) Roll call;
- (3) Oaths of office;
- (4) Consent calendar;
- (5) Presentations, guests and announcements;
- (6) Public comment on non-agenda items;
- (7) City Manager and Public Works Department report;
- (8) Public hearings;
- (9) Old business;
- (10) New business;
- (11) Committee reports;
- (12) Mayor and Councilor comments; and
- (13) Adjournment.

(F) *Record of proceedings.* A written record, commonly called minutes, shall be kept of all meetings, except executive sessions (O.R.S. 192.650). The minutes shall be prepared in a timely fashion, and shall be presented to the Council by the Friday before the regular Council meeting for review, amendment and approval. All motions made, seconded or not, shall be recorded. Whenever results of an election are announced at a meeting, the vote counts shall be recorded in the minutes. Approval of the minutes shall be the authentication required by § 15 of the 2002 Charter. Executive sessions shall be recorded on audiotape only; no written record shall be provided except as required by law (O.R.S. 192.650(2)). Audiotapes of any meetings other than executive sessions shall be retained for seven years.

(G) *Councilor decorum.*

(1) The Presiding Officer shall preserve decorum and decide all points of order, subject to appeal by a member of the Council. The Councilors shall help the Presiding Officer preserve decorum and shall not, by conversation or other action, delay or interrupt the proceedings or refuse to follow the lawful directions of the Presiding Officer or these Council rules. Council members shall at all times conduct themselves in a manner appropriate to the dignity of their office.

(2) Councilors shall confine their remarks to the question under debate, shall avoid all indecorous language and shall refrain from making any derogatory remarks, reflections as to integrity, or statements impugning the motives of any city official, permanent or contracted staff member, or citizen. Councilors shall conduct themselves in a courteous, orderly and respectful manner.

(3) The rules of decorum established for Council meetings in this division (G) shall also apply to, and govern the conduct of, meetings of all standing committees, commissions and boards of the city, as well as any ad hoc or advisory committees that the Council may appoint.

(H) *Audience decorum.* Any person in the audience who makes personal, impertinent, slanderous remarks or who becomes boisterous while addressing the Council or attending a Council meeting or workshop may be removed from the room, after fair warning, if the Presiding Officer so directs. In case the Presiding Officer should fail to act, any Councilor may obtain the floor and move to require enforcement of this rule. Upon affirmative vote of the majority of the Councilors present, the person or persons shall be removed as if the Presiding Officer so directed.

(I) *Permission to videotape meetings.* Requests to videotape a meeting shall be made 24 hours in advance. The videotaping shall be from a fixed location.

(J) *Speaking by Council members and City Manager.*

(1) Councilors, the City Manager and staff shall be recognized by the Presiding Officer before speaking, unless bringing up a point of order. Upon recognition by the Presiding Officer, the Council member or City Manager shall speak and confine his or her remarks to the matter at hand.

(2) A Council member desiring to question a city employee shall address the questions to the City Manager, who shall be entitled to either answer the inquiry or designate a staff member to do so.

(K) *Speaking by members of the audience.*

(1) *Non-agenda items.* A member of the audience desiring to address the Council shall raise a hand and wait to be recognized by the Presiding Officer. After recognition, the person's name and address shall be stated for the record. All remarks and questions shall be addressed to the Presiding Officer and not to any individual Councilor, staff member or other person unless authorized by the Presiding Officer. No person shall enter into discussion without being recognized by the Presiding Officer. A member of the audience addressing the Council shall be limited to five minutes, unless further time is granted by the Presiding Officer.

(2) *Agenda items.* The members of the audience shall have the opportunity to address the Council on an agenda item when that item is reached in the meeting. A member of the audience desiring to address the Council shall raise a hand and wait to be recognized by the Presiding Officer. After recognition, the person's name and address shall be stated for the record, and the remarks shall be limited to the question under discussion. All remarks and questions shall be addressed to the Presiding Officer and not to any individual Councilor, staff member or other person. No member of the audience shall comment or enter into discussion without being recognized by the Presiding Officer. A member of the audience addressing the Council shall be limited to five minutes, unless further time is granted by the Presiding Officer. No member of the audience shall be allowed to speak more than once upon any one subject until every other member of the audience choosing to speak has spoken. After a motion has been made and seconded, no more public comment will be allowed.

(L) *Decisions.* The Council shall not make a decision on any item that affects the public, or any individual member of the public, unless the item is on the posted agenda, except in the case of an emergency.

(M) *Voting generally.*

(1) The vote on every motion shall be taken by roll call. Members eligible to vote may explain their votes during roll call. Names of voters in favor and against shall be entered in full upon the record (§ 15 of 2002 Charter). Any member of the Council may change his or her vote prior to the next order of business.

(2) An affirmative vote of the majority of the full Council eligible to vote shall be required to adopt ordinances, order appropriations, authorize loans or fill vacancies on the Council (§ 18 of 2002 Charter).

(3) An affirmative vote of the majority of the Council present eligible to vote shall be required to adopt the consent calendar, adopt resolutions and pass any motion before the Council other than those referred to above (§ 18 of 2002 Charter).

(4) An affirmative vote of two-thirds of the Councilors present and eligible to vote shall be required in the event of an emergency to declare that a proposed action on a public improvement to be needed at once (§ 33 of 2002 Charter).

(5) Any other question before the Council may be decided by general agreement, unless a motion is requested by any member of the Councilors.

(N) *Duty to vote.* When a vote on a question is taken, every member of the Council eligible to vote shall vote unless a Councilor states a valid reason to abstain or has a direct conflict of interest (O.R.S. 244.120 through 244.130).

(O) *News media.* The provisions of this subchapter shall not be construed to prevent news media representatives from performing their duties, so long as the manner of performance is not unreasonably

disruptive of the meeting, Any member of the news media which would like to receive copies of agendas or minutes of Council meetings shall request such copies in writing. There may be a reasonable charge for such copies.

(P) *Standing committees/commissions/boards.*

(1) The Budget Committee, required by state law, shall be a standing committee. It shall be subject to Local Budget Law, O.R.S. 294.311-294.565.

(2) The Planning Commission, required by state law, shall be a standing commission. It is subject to §§ 33.01 through 33.09, and any other ordinances and resolutions which may amend them.

(3) The Council may appoint and dissolve additional standing committees at its discretion.

(Q) *Ad Hoc and Advisory Committees.*

(1) The Council may establish ad hoc and/or advisory committees as needed. Each such committee shall be established by ordinance or resolution for a specific purpose. It shall have a deadline to accomplish its purpose and shall be considered dissolved when its purpose is accomplished. If such a committee needs additional time to complete its purpose it shall request additional time from the Council. A Councilor may serve as liaison and/or member to a committee, but may not chair or vote.

(2) At the first meeting of such a committee, the members shall select a Chairperson and a Secretary, and set a meeting schedule. Written minutes of meetings shall be delivered to City Hall within two weeks of each meeting or before the next meeting if scheduled for less than two weeks. It shall be the responsibility of each committee secretary to see that notice is posted of each meeting at City Hall and the post office. The Secretary may ask city staff to do a posting. All meetings held by such committees are subject to the State Public Meetings Law, O.R.S. 192.610 through 192.990.

(R) *Council may appoint or dissolve.* The Council may appoint and dissolve committees, commissions or boards as needed at its discretion, except those established by law.
(Ord. 2004-04, passed 6-15-2004; Ord. 2012-02, passed 8-21-2012)

§ 31.18 ETHICS.

Councilors are advised to be familiar with the Ethics Law, O.R.S. Chapter 244. Each Councilor shall be provided a copy of the current publication *A Guide for Public Officials*, published by the State Government Standards and Practices Commission.
(Ord. 2004-04, passed 6-15-2004)



CHAPTER 32: OFFICIALS AND EMPLOYEES

Section

32.01 Adoption of Employee Handbook

§ 32.01 ADOPTION OF EMPLOYEE HANDBOOK.

(A) The City Employee Handbook, attached to the ordinance from which this section is derived, is hereby adopted. This handbook shall comprise the official personnel policies, procedures and rules of the city.

(B) The Employee Handbook may be amended in the future by resolution of the City Council.
(Ord. 2012-07, passed 12-18-2012)

CHAPTER 33: CITY ORGANIZATIONS

Section

Planning Commission

- 33.01 Policy
- 33.02 Membership
- 33.03 Officers
- 33.04 Meetings
- 33.05 Report to Council
- 33.06 Powers and duties
- 33.07 Submissions of plats and requests
- 33.08 Zoning and improvement ordinances
- 33.09 Term lengths

Emergency Preparedness Committee

- 33.20 Creation
- 33.21 Membership
- 33.22 Organization
- 33.23 Removal of members for cause
- 33.24 Officers
- 33.25 Secretary
- 33.26 Quorum, rules, meeting
- 33.27 Powers and duties
- 33.28 Effective date

Parks and Recreation Committee

- 33.40 Creation
- 33.41 Membership
- 33.42 Organization
- 33.43 Removal of members for cause
- 33.44 Officers
- 33.45 Secretary
- 33.46 Quorum, rules, meetings
- 33.47 Powers and duties
- 33.48 Effective date
- 33.49 Parks Master Plan

*PLANNING COMMISSION***§ 33.01 POLICY.**

The city intends by this subchapter to establish and set duties of a Planning Commission to assist the Council in planning the orderly growth and development of the city and to further the legislative policies of the state as shown in O.R.S. Chapter 227.
(Ord. 76-1, passed 12-16-1975)

§ 33.02 MEMBERSHIP.

(A) The Planning Commission shall consist of not less than five nor more than nine members.

(B) Membership shall be limited to residents of the city, residents of the urban growth area and nonresidents who own property or a business that operates within the city and its urban growth area.

(C) No more than two members of the Planning Commission may reside outside the city limits.

(D) No more than two members may be city officers who shall serve as ex officio nonvoting members.

(E) No more than two voting members may engage principally in the buying, selling or developing of real estate for profit as individuals or be members of any partnership or officers or employees of any corporation that engages principally in the buying, selling or developing of real estate for profit.

(F) No more than two members shall be engaged in the same kind of occupation, business, trade or profession.

(Ord. 76-1, passed 12-16-1975)

§ 33.03 OFFICERS.

(A) The Commission shall elect officers at its first meeting held in each calendar year. These shall be a President, Vice President and Secretary. Each shall hold office for one year, or until a successor is elected.

(B) The Commission may, in its discretion, elect a non-member as Secretary for the purpose of keeping and preparing accurate records of all Commission proceedings. This shall not, however, relieve the Commission member who has been elected as Secretary of the primary responsibility for the accuracy and sufficiency of the records.

(Ord. 76-1, passed 12-16-1975)

§ 33.04 MEETINGS.

(A) The Commission shall meet at least once a month.

(B) A majority of the members of the Commission constitute a quorum.

(C) The Commission may make and alter rules and regulations for its government and procedure consistent with laws of the state and with the City Charter and ordinances.

(Ord. 76-1, passed 12-16-1975)

§ 33.05 REPORT TO COUNCIL.

Not later than October 1 of each calendar year, the Commission shall make and file a report of its transactions with the City Council. The Commission shall also be responsible for keeping the City Council advised of pending public hearings or other matters which will require decisions of the Council.

(Ord. 76-1, passed 12-16-1975)

§ 33.06 POWERS AND DUTIES.

The Planning Commission may:

(A) Recommend and make suggestions to the Council concerning the laying out, widening, extending and locating of public thoroughfares, parking of vehicles, relief of traffic congestion, betterment of housing and sanitation conditions and establishment of districts for limiting the use, height and bulk and other characteristics of buildings and structures relating to land development;

(B) Recommend plans for regulating the future growth, development and beautification of the city in respect to its public and private buildings and works, streets, parks, grounds and vacant lots, and plans consistent with future growth and development of the city in order to secure to the city and its inhabitants' sanitation, proper service of public utilities, including appropriate public incentives for overall energy conservation;

(C) Recommend to the Council plans for promotion, development and regulation of industrial and economic needs of the community in respect to industrial pursuits;

(D) Advertise the industrial advantages and opportunities of the city and availability of real estate within the city for development;

(E) Make economic surveys of present and potential industrial needs of the city;

(F) Study needs of local industries with a view to strengthening and developing them and stabilizing employment conditions;

(G) Do and perform all other acts and things necessary or proper to carry out provisions of O.R.S. Chapter 227 and the requests of the City Council as they relate to planning and zoning within the city limits; and

(H) Study and propose such measures as are advisable for the promotion of the public interest, health, morals, safety, comfort, convenience and welfare of the city and the area within six miles thereof, and to this end work with and participate in discussions with the Council and planning commissions of neighboring cities and with the Clatsop-Tillamook Intergovernmental Council.
(Ord. 76-1, passed 12-16-1975)

§ 33.07 SUBMISSIONS OF PLATS AND REQUESTS.

(A) All subdivision plats and all plans or plats for vacating or laying out, widening, extending or locating streets and all requests for variances and conditional uses under the city zoning ordinance shall be submitted to the Planning Commission prior to submission to the City Council.

(B) The Commission shall consider all such proposals within 60 days of submission, and shall submit a report thereon in writing to the City Council. This report shall contain a statement of approval or rejection, the reasons therefor, and any recommendations deemed appropriate by the Commission.
(Ord. 76-1, passed 12-16-1975)

§ 33.08 ZONING AND IMPROVEMENT ORDINANCES.

(A) The Commission may prepare on its own motion or at the request of the City Council such ordinances or amendments to ordinances as may be considered necessary to promote the orderly growth and development of the city.

(B) All such ordinances or amendments thereto shall be considered by the Planning Commission, and a public hearing thereon held by the Planning Commission before submission of such ordinance to the City Council.
(Ord. 76-1, passed 12-16-1975)

§ 33.09 TERM LENGTHS.

(A) The term length of each Planning Commission position shall be four years.

(B) The Planning Commission Chairperson shall appropriately stagger the term ending dates of the current Planning Commissioners.

(C) A Commission whose term has expired may reapply for the same position on the Commission.
(Res. 95-3, passed 2-21-1995)

EMERGENCY PREPAREDNESS COMMITTEE**§ 33.20 CREATION.**

Initiate and adopt Ord. 2008-01, providing for the creation of an Emergency Preparedness Committee (hereafter referred to as "Committee") for the city.
(Ord. 2008-01, passed 4-15-2008)

§ 33.21 MEMBERSHIP.

The Committee shall consist of seven members appointed by the City Council. The members shall be residents of the city and shall serve without compensation. Six members shall be selected from the city at large and one member shall be selected from City Council.
(Ord. 2008-01, passed 4-15-2008)

§ 33.22 ORGANIZATION.

At the first meeting of the Committee directly after the enactment of this subchapter, the seven appointed members shall choose their terms of office by lot as follows: the member from the City Council shall be appointed once every three years; two members for a one-year term, two members for a two-year term and two members for a three-year term. Vacancies created by the completion of the above terms shall be filled by City Council and will be for a term of three years for each vacancy. Any vacancy shall be filled by the City Council for any unexpired portion of the any term.
(Ord. 2008-01, passed 4-15-2008)

§ 33.23 REMOVAL OF MEMBERS FOR CAUSE.

The City Council may remove any member of the Committee for cause. *CAUSE* includes, but is not limited to, missing two consecutive meetings of the Committee without being excused by the Committee Chair.
(Ord. 2008-01, passed 4-15-2008)

§ 33.24 OFFICERS.

The Committee shall elect a Chairperson and a Vice Chairperson from the membership who shall hold office at the pleasure of the Committee.
(Ord. 2008-01, passed 4-15-2008)

§ 33.25 SECRETARY.

The Committee shall annually elect a Secretary from the membership, who shall hold office at the pleasure of the Committee. The Secretary shall keep an accurate record of Committee proceedings.
(Ord. 2008-01, passed 4-15-2008)

§ 33.26 QUORUM, RULES, MEETING.

(A) Four members of the Committee shall constitute a quorum.

(B) The Committee may adopt rules governing the conduct of its business.

(C) The Committee shall meet at least two times a year.

(D) Meetings of the Committee shall be open to the public.

(E) Meetings other than at regularly scheduled times may be announced at a prior meeting and thereby be made part of the meeting records.

(F) The Chairperson on his or her motion may, or at the request of three members of the Committee shall, by giving notice to the members of the Committee and those officials designated to sit with it, call a previously unannounced special meeting of the Committee for a time not earlier than 24 hours after the notice is given.

(G) Notice of a previously unannounced meeting shall be delivered to and posted at City Hall and to the extent feasible, provided to interested persons at least 24 hours prior to the meeting.
(Ord. 2008-01, passed 4-15-2008)

§ 33.27 POWERS AND DUTIES.

(A) The Committee shall act as an advisory committee to the City Council.

(B) It is the intent of the city that the Committee shall draft and maintain planning documents, emergency materials inventories, resources lists and training materials for emergency preparedness.

(C) It is the intent of the city that the Committee provides documents regarding emergency preparedness to the citizens at large, after review by the City Manager.

(D) The Committee shall, by the tenth day following any Committee meeting, provide a copy of meeting minutes to the City Council.

(E) Recommendations approved by the Committee shall be documented in the meeting minutes.

(F) Neither the Committee, nor any member thereof shall have the power to obligate the city.
(Ord. 2008-01, passed 4-15-2008)

§ 33.28 EFFECTIVE DATE.

Under the provisions of the City Charter, Chapter VIII, § 36, this subchapter shall become effective on the thirtieth day after its adoption and authentication. The Emergency Preparedness Committee shall hold a meeting within ten days of this subchapter becoming effective.
(Ord. 2008-01, passed 4-15-2008)

PARKS AND RECREATION COMMITTEE

§ 33.40 CREATION.

There is hereby created a Public Parks and Recreation Committee (hereafter referred to as "Committee") for the city.
(Ord. 2009-01, passed 8-18-2009)

§ 33.41 MEMBERSHIP.

The Committee shall consist of seven members appointed by the City Council. The members shall be residents of the city and shall serve without compensation. Six of the members shall be selected from the city at large and one member shall be selected from the City Council.
(Ord. 2009-01, passed 8-18-2009)

§ 33.42 ORGANIZATION.

(A) At the first meeting of the Committee, directly after the enactment of this subchapter, the seven appointed members shall choose their term of office by lot as follows; the member from City Council shall be appointed once a year, three members for a one-year term, and three members for a two-year term.

(B) Any vacancy shall be filled by the City Council for any unexpired or expired term.
(Ord. 2009-01, passed 8-18-2009)

§ 33.43 REMOVAL OF MEMBERS FOR CAUSE.

The City Council may remove any member of the Committee for cause. *CAUSE* includes, but is not limited to, missing two consecutive meetings of the Committee without being excused by the Committee. (Ord. 2009-01, passed 8-18-2009)

§ 33.44 OFFICERS.

The Committee shall annually elect a Chairperson and a Vice Chairperson from the membership who shall hold office at the pleasure of the Committee. (Ord. 2009-01, passed 8-18-2009)

§ 33.45 SECRETARY.

The Committee shall annually elect a Secretary from the membership who shall hold office at the pleasure of the Committee. The Secretary shall keep an accurate record of all Committee proceedings. (Ord. 2009-01, passed 8-18-2009)

§ 33.46 QUORUM, RULES, MEETINGS.

A majority of the appointed Committee members shall constitute a quorum. Vacancies on the Committee shall not be counted for the purpose of determining whether a quorum exists. The Committee may adopt rules governing the conduct of its business. The Committee shall meet at least once every two months. Meetings of the Committee shall be open to the public. Meetings other than at regularly scheduled times may be announced at a prior meeting and thereby be made part of the meeting records. The Chairman on his or her motion may, or at the request of one member of the Committee shall, by giving notice to the members of the Committee and those officials designated to sit with it, call a previously unannounced special meeting of the Committee for a time not earlier than 24 hours after the notice is given. Notice of a previously unannounced meeting shall be delivered to and posted at City Hall and to the extent feasible, provided to interested persons at least 24 hours prior to the meeting. (Ord. 2009-01, passed 8-18-2009; Ord. 2013-01, passed 4-16-2013)

§ 33.47 POWERS AND DUTIES.

(A) The Committee shall act as an advisory committee to the City Council.

(B) It is the intent of the city that the public parks be used to the fullest extent consistent with the general welfare and economic needs of the citizens of the city and users of the parks.

(C) The Committee shall draft and maintain planning documents, rules and regulations and submit a written recommendation of the adoption of planning documents, rules and regulations to the City Council which relate to:

(1) Creating and maintaining a public lands, parks and park equipment inventory;

(2) Development of a "park use" request and permitting process; and

(3) Development of a long-range plan for the use of the City Upper Park, City Waterfront Park and any future city owned public park areas.

(D) The Committee shall, by the tenth day following any Committee meeting, provide a copy of meeting minutes to the City Council.

(E) Recommendations approved by the Committee shall be provided to the City Council one week prior to a regularly scheduled City Council meeting.

(F) Neither the Committee, nor any member thereof shall have the power to obligate the city.

(G) The Committee may organize work parties and other efforts to assist in maintaining, enhancing and/or beautifying the city's parks and other public spaces.

(H) The Committee may make specific maintenance, enhancement and/or beautification requests of Public Works staff, and may make specific requests for park-related expenditures.
(Ord. 2009-01, passed 8-18-2009; Ord. 2013-01, passed 4-16-2013)

§ 33.48 EFFECTIVE DATE.

Under the provisions of the City Charter, Chapter VIII, § 36, this subchapter shall become effective on the thirtieth day after its adoption and authentication. The Park Committee shall hold a meeting within ten days of this subchapter becoming effective.

(Ord. 2009-01, passed 8-18-2009)

§ 33.49 PARKS MASTER PLAN.

The City Parks Master Plan (attached to the ordinance from which this section is derived) prepared by the Public Parks and Recreation Committee in accordance with its powers and duties established in Ord. 2002-05 and reviewed by the city's Planning Commission, is adopted as the official policy governing and guiding future uses and development of the city's public parks.

(Ord. 2005-03, passed 3-15-2005; Ord. 2013-02, passed 5-21-2013)



CHAPTER 34: POLICIES AND PROCEDURES

Section

General Policies/Procedures

- 34.01 Methods of nomination for elective office
- 34.02 Election of City Councilors
- 34.03 Consideration of development agreements

Procedures for Exercising Initiative and Referendum Powers of the People

- 34.15 Intent
- 34.16 Definitions
- 34.17 Prospective petitions
- 34.18 Preparation of ballot title
- 34.19 Form of ballot title
- 34.20 Appeal of title
- 34.21 Cover sheets
- 34.22 Signature sheet
- 34.23 Referrals by City Council
- 34.24 Filing the petition
- 34.25 Verification of signatures
- 34.26 Submission to City Council
- 34.27 Numbering of petitions
- 34.28 Retention of petition material
- 34.29 Contributions and expenditure reporting

GENERAL POLICIES/PROCEDURES

§ 34.01 METHODS OF NOMINATION FOR ELECTIVE OFFICE.

(A) Any person who meets the qualifications for elective office as defined in the City Charter may submit a nominating petition or declaration of candidacy to the City Manager following the procedures defined in the state statutes.

(B) There shall be a fee of \$25 to file by declaration to be paid when the declaration is filed.
(Ord. 2002-03, passed 3-19-2002)

§ 34.02 ELECTION OF CITY COUNCILORS.

(A) If an election needs to be held for the completion of a vacated Councilor position at the general election when three Councilors are to be elected, the three candidates on the ballot receiving the most votes shall be declared the winners of the three four-year term positions, and the candidate(s) receiving the next highest number of votes shall be declared the winner(s) of the vacated position(s).

(B) If an election needs to be held for the completion of a vacated Councilor position at the general election when two Councilors are to be elected, the two candidates on the ballot receiving the most votes shall be declared the winners of the two four-year term positions, and the candidate(s) receiving the next highest number of votes shall be declared the winner(s) of the vacated position(s).

(C) Declared winners described in divisions (A) and (B) above are subject to § 23(4) of the 2002 Charter.

(D) Due to the approaching deadline for filing for the November 2004 general election, the City Council declares that an emergency exists, and that this section shall be effective immediately.
(Ord. 2004-06, passed 7-20-2004)

§ 34.03 CONSIDERATION OF DEVELOPMENT AGREEMENTS.

The following provisions establishing procedures and requirements for the consideration of development agreements shall be added to the city code, but not as provisions of the city zoning ordinance or Comprehensive Plan.

(A) Development agreements shall comply with O.R.S. 94.504 to 94.528, including the provision that approval of a development agreement requires compliance with city land use regulations.

(B) An application for a development agreement shall address the elements that must be specified to comply with O.R.S. 94.504 to 94.528 and explain how the proposed agreement is consistent with city land use regulations, and shall be accompanied by such application fees as may be established by resolution of the City Council.

(C) An application that complies with division (B) above shall be scheduled for a public hearing within 90 days, with notice provided in the manner required for quasi-judicial land use hearings; such notice shall, in addition to any other requirements, state the time and place of the public hearing, and contain a brief statement of the major terms of the proposed development agreement, including a description of the area within the city or county that will be affected by the proposed agreement. The City Council shall conduct at least one public hearing and the City Planning Commission shall conduct an initial public hearing and provide a recommendation to the City Council.

(D) Approval of any development agreement, or of any amendment to a development agreement shall be by ordinance of the City Council, supported by findings of compliance with O.R.S. 94.504 to 94.528 and this section, and may be appealed to the Land Use Board of Appeal, pursuant to O.R.S. 94.508(2).

(E) The city may consider applications for development agreements for real property that is outside the city limits but within the city urban growth boundary, and may approve such development agreements subject to a condition that the property be annexed to the city before the development agreement becomes effective, provided that the city conducts hearings and makes findings as required by this section before conditionally approving such a development agreement.
(Ord. 2007-04, passed 6-19-2007)

***PROCEDURES FOR EXERCISING INITIATIVE AND REFERENDUM
POWERS OF THE PEOPLE***

§ 34.15 INTENT.

It is the intent of this subchapter to set forth a simplified procedure for exercising the rights of initiative and referendum reserved to the people under Article IV, § 1, of the Oregon Constitution.
(Ord. 83-5, passed 6-21-1983)

§ 34.16 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ELECTION DATE. A date designated in O.R.S. 221.230 for holding a city election.

ELECTION OFFICER. The Clerk of Tillamook County.

ELECTOR. An individual qualified under Article II, § 2, Oregon Constitution, to vote in the city.

INITIATIVE. The power to propose laws and amendments to the City Charter and enact or reject them at an election, independent of action of the City Council.

MEASURE. Any municipal legislation, proposition or question submitted to the electors for their approval or rejection at an election.

PROSPECTIVE PETITION. The information, except signatures and other identification of petition signers, required to be contained in a completed petition.

REFERENDUM. The power to approve or reject at an election any enactment of the City Council which does not become effective until 30 days after its passage.
(Ord. 83-5, passed 6-21-1983)

§ 34.17 PROSPECTIVE PETITIONS.

Before circulating a petition to initiate or refer a measure, the petitioner shall file with the City Manager duplicate copies of a prospective petition. A prospective petition shall consist of:

(A) A form substantially similar to Exhibit A, attached to the ordinance from which this section is derived, designating names, signatures and mailing addresses of not more than three chief petitioners, together with names of any sponsoring organization; and

(B) The full text of the measure to be referred, or the proposed ordinance of City Charter amendment proposed to be initiated.
(Ord. 83-5, passed 6-21-1983)

§ 34.18 PREPARATION OF BALLOT TITLE.

(A) Upon receipt of a prospective initiative petition, the City Manager shall immediately transmit a copy of the proposed petition to the City Attorney for preparation of a ballot title.

(B) Upon receipt of a prospective referendum petition, the City Manager shall authorize the circulation of the petition containing the title of the measure as enacted by the City Council or if there is no title, the title supplied by the petitioner filing the prospective petition. The City Manager shall immediately send a copy of the prospective petition to the City Attorney.

(C) Not later than the fifth business day after receiving the prospective petition, the City Attorney shall provide a ballot title for the measure to be initiated or referred, and return it to the City Manager. Unless the circuit court certifies a different title, this ballot title shall be the title printed on the ballot.

(D) The City Manager shall immediately furnish the chief petitioner with a copy of the ballot title.
(Ord. 83-5, passed 6-21-1983)

§ 34.19 FORM OF BALLOT TITLE.

(A) The ballot title of any measure to be initiated or referred shall consist of:

(1) A caption of not more than ten words by which the measure is commonly referred to;

(2) A question of not more than 20 words which plainly states the purpose of the measure, and is phrased so that an affirmative response to the question corresponds to an affirmative vote on the measure; and

(3) A concise and impartial statement of not more than 75 words of the chief purpose of the measure.

(B) The ballot title shall not resemble, so far as to create confusion, any title previously filed for a measure to be submitted at that election.

(C) The ballot title shall comply with the standard of minimum readability for a ballot title designated by the Oregon Secretary of State to the fullest extent practicable, consistent with the requirements of impartiality, conciseness and accuracy.

(Ord. 83-5, passed 6-21-1983)

§ 34.20 APPEAL OF TITLE.

(A) Any person dissatisfied with a ballot title filed with the City Manager by the City Attorney may petition the circuit court of the 27th Judicial District seeking a different title and stating the reasons the title filed with the court is insufficient or unfair.

(B) The petition must be filed not later than the twentieth day after the title is filed with the City Manager. The court shall review the title and measure to be initiated or referred and certify to the City Manager a title to be used at the election.

(Ord. 83-5, passed 6-21-1983)

§ 34.21 COVER SHEETS.

(A) A full and correct copy of the text of a measure proposed by initiative or referendum petition shall be permanently attached to each signature sheet before circulation. This cover sheet shall not be detached from the sheet at any time after starting to circulate a petition. Signature sheets must be filed attached to the same cover sheet used during circulation.

(B) The cover sheet for an initiative petition shall state the ballot title. A referendum petition may be circulated without a ballot title, but must show on the cover sheet a summary of the act being referred.

(C) The cover sheet shall also include the names and addresses of the chief petitioners and a set of instructions for signers and circulators of the petition in substantially the form shown, on Exhibit A, attached to the ordinance from which this subchapter is derived.

(Ord. 83-5, passed 6-21-1983)

§ 34.22 SIGNATURE SHEET.

(A) Each signature sheet must bear a certificate to be signed by the person circulating the sheet, in substantially the form shown in Exhibit B, attached to the ordinance from which this subchapter is derived. Each person signing a petition must set out the date on which he or she is signing it. No more than 20 signatures may appear on a sheet.

(B) The caption of the ballot title must appear on each signature sheet of an initiative petition. Each signature sheet of a referendum petition shall contain the caption or title of the measure referred. (Ord. 83-5, passed 6-21-1983)

§ 34.23 REFERRALS BY CITY COUNCIL.

The City Council may refer questions to the electors upon a majority vote. No petitions need be circulated, but the measure shall be sent to the City Attorney for preparation of a ballot title before being filed with the City Manager. (Ord. 83-5, passed 6-21-1983)

§ 34.24 FILING THE PETITION.

(A) An initiative petition must be filed not less than four months before the election at which the proposed measure will be placed on the ballot, and shall contain a number of signatures equal to 15% of the qualified electors in the city.

(B) A referendum petition must be filed not later than the thirtieth day after adoption of the measure being referred, and shall contain a number of signatures equal to 10% of the qualified electors in the city. No referendum petition will be accepted for any measure, the passage of which has been declared an emergency.

(C) A petition will not be accepted for filing unless it contains at least 100% of the required number of signatures of qualified electors. (Ord. 83-5, passed 6-21-1983)

§ 34.25 VERIFICATION OF SIGNATURES.

(A) Once a petition is offered for filing, the City Manager shall verify that there are a sufficient number of unverified signatures to qualify the measure for the ballot, and that each signature sheet contains a certificate signed by the circulator. The City Manager will detach the signature sheets from the cover sheets, check for signed certifications and verify the signatures with the voter registration records in the office of the County Clerk.

(B) A final determination as to the petition sufficiency must be made within 15 days after the date on which the petition is filed.
(Ord. 83-5, passed 6-21-1983)

§ 34.26 SUBMISSION TO CITY COUNCIL.

(A) If an initiative petition contains the required number of verified signatures, the City Manager shall file the initiated measure with the City Council at its next regular meeting. The Council, not later than the thirtieth day after the measure is filed with it, shall adopt or reject the measure. If the measure is not adopted, it shall be submitted to the electors on the next available election date, which is more than 90 days after the petition was filed with the Council.

(B) The Council may refer a competing measure to the electors at the same election at which the initiative measure is submitted. Such competing measure must be prepared not later than the thirtieth day after the initiated measure is filed with the Council.
(Ord. 83-5, passed 6-21-1983)

§ 34.27 NUMBERING OF PETITIONS.

All ballot measures shall be numbered consecutively, beginning with number 51 in the order in which the measures are filed with the City Manager.
(Ord. 83-5, passed 6-21-1983)

§ 34.28 RETENTION OF PETITION MATERIAL.

(A) The City Manager shall retain the signature sheets of a filed initiative or referendum petition along with a copy of the measure.

(B) If the measure is approved by the voters, a copy of the measure shall be preserved as a permanent public record and the signature sheets shall be preserved for six years.
(Ord. 83-5, passed 6-21-1983)

§ 34.29 CONTRIBUTIONS AND EXPENDITURE REPORTING.

(A) A statement of contributions and expenditures must be filed by the chief petitioners not later than the thirtieth day after the date of filing an initiative or referendum petition with the City Manager.

(B) (1) All individuals and organizations collecting or expending monies to support or oppose a ballot measure are subject to the campaign finance regulations and the election offenses provisions set forth in O.R.S. Chapter 260.

(2) All statements and reports required by that chapter shall be filed with the City Manager.
(Ord. 83-5, passed 6-21-1983)

CHAPTER 35: TAX, FEES AND FINANCE

Section

General Fees and Finance

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- 35.02 Fee schedule
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Transient Lodging Tax

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*GENERAL FEES AND FINANCE***§ 35.01 FEES FOR APPLICATIONS FOR VARIOUS PERMITS AND MATTERS SUBJECT TO CITY APPROVAL.**

(A) The city sets the following fees for applications for the following permits and matters subject to city approval:

Conditional use permit - commercial	\$300
Conditional use permit - residential	\$200
Planned unit development	\$200
Subdivision	\$200+
	\$25/lot
Variance request	\$200
Zoning change	\$200
Appeal on any of the above	Same as original fee

(B) The above fees cover one hour of the City Manager's time and all of the office assistant's time to process the application, and the cost of necessary mailings and publications, except where the state statutes allow the city to recover those costs.

(C) These fees do not cover the costs of services of an attorney, planner, engineer or any other person the City Manager finds it necessary to consult with regard to an application. All such costs, plus the cost of the City Manager's excess time, will be paid by the applicant, and will be paid before city approval is final.

(D) Before any permits are issued in connection with any of the applications listed in divisions (A) through (C) above, all fees owed the city in connection with that particular application, and any other outstanding application listed in divisions (A) through (C) above, shall be paid in full.
(Ord. 92-4, passed 4-21-1992; Res. 92-21, passed 8-18-1992)

§ 35.02 FEE SCHEDULE.

(A) The fee schedule of the city is hereby adopted by reference, and incorporated into this code as fully as if set out at length herein.

(B) The City Council shall review this list of fees annually before the budget process begins to see if any adjustments are necessary.

(C) The City Council may change any of the listed fees at any time it feels an adjustment is necessary.
(Res. 2004-14, passed 5-18-2004)

§ 35.03 FEES FOR RIGHT-OF-WAY PERMITS.

The City Council hereby establishes the following fees for franchises, licenses and permits which may be issued for permission to use public rights-of-way: \$50, plus a maximum of two hours' billed time for the services of an engineer and or a planning consultant.
(Res. 98-04, passed 3-17-1998)

§ 35.04 INFRASTRUCTURE REVIEW DEPOSIT FEE.

(A) An infrastructure fee is established to act as a deposit towards the costs of the City Engineer to review infrastructure improvements proposed in the process of developing any property within the city limits and the city urban growth boundaries.

(B) For the purpose of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

INFRASTRUCTURE.

(a) The city's water system, including, but not limited to, water storage, treatment, distribution (both public and private) and fire protection system (both public and private);

(b) The city's transportation system, including, but not limited to, street improvements, curbs, sidewalks, bike/pedestrian paths for both public and private transportation modes;

(c) The city's stormwater system, including, but not limited to, distribution, treatment and detention for both public and private drainage; and

(d) Other city required improvements necessary for a functioning project; i.e., parking lots, pedestrian paths and foot bridges, special pavers and/or stamped concrete, special lighting, structural fills and/or pilings and the like.

(C) The methodology of establishing the fee is to assess 7% of the city's estimated costs to install the proposed infrastructure at the time of any development application.

(D) After review of the infrastructure plans, the City Engineer may determine that additional charges that exceed the 7% deposit fee shall be billed to the developer, and shall be due and payable within 30 days of the invoice date.

(E) If it is determined that the City Engineer's estimate is less than what was originally determined at application time, a reimbursement will be submitted to the developer at the time of final approval of the installed infrastructure.

(Ord. 2007-06, passed 10-16-2007)

TRANSIENT LODGING TAX

§ 35.20 DEFINITIONS.

For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ACCRUAL ACCOUNTING. The operator enters the rent due from a transient on his or her records when the rent is earned, whether or not it is paid.

CASH ACCOUNTING. The operator does not enter the rent due from a transient on his or her records until rent is paid.

CITY COUNCIL. The City Council of the City of Wheeler Oregon.

HOTEL. Any structure or portion of any structure which is occupied or intended or designed for transient occupancy for 30 days or less for dwelling, lodging or sleeping purposes, and includes any hotel, motel, inn, condominium, tourist home or house, studio hotel, bachelor hotel, lodging house, rooming house, bed and breakfast establishment, apartment house, public or private dormitory, fraternity, sorority, public or private club, and also means space in a public or private mobile home, trailer or recreational vehicle park or campground, or similar structure, or space or portions thereof so occupied, provided such occupancy is for less than a 30-day period.

OCCUPANCY. The use or possession, or the right to the use or possession for lodging or sleeping purposes of any room or rooms in a hotel, or space in a mobile home, trailer or recreational vehicle park, or portion thereof.

OPERATOR. The person who is the proprietor of the hotel in any capacity. Where the ***OPERATOR*** performs his or her functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an ***OPERATOR*** for the purposes of this subchapter, and shall have the same duties and liabilities as his or her principal. Compliance with the provisions of this subchapter by either the principal or the managing agent shall be considered compliance by both.

PERSON. Any individual, firm, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate or any other group or combination acting as a unit.

RENT. The consideration charged, whether or not received by the operator, for the occupancy of space in a hotel, valued in money, goods, labor, credit, property or other consideration valued in money, but shall not include the price paid to join or annual fees for membership in a trailer or recreational vehicle park or campground.

RENT PACKAGE PLAN. The consideration charged for both food and rent where a single rate is made for the total of both. The amount applicable to rent for determination of transient lodging tax under this subchapter shall be that amount allocated to space rent, taking into consideration a reasonable value of other items in the rent package, and taking into consideration the charge for rent when the space is rented separately, and not included in a **PACKAGE PLAN**.

TAX. Either the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which he or she is required to report his or her collections.

TAX ADMINISTRATOR. The City Manager of the city.

TRANSIENT. Any individual who exercises occupancy or is entitled to occupancy in a hotel for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. The day a **TRANSIENT** checks out of a hotel shall not be included in determining the 30-day period if the transient is not charged rent for that day by the operator. Any such individual so occupying space in a hotel shall be deemed to be a **TRANSIENT** until the 30 days has expired, unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy, or the tenancy actually extends more than 30 consecutive days. In determining whether a person is a **TRANSIENT**, uninterrupted periods of time extending both prior and subsequent to the effective date of this subchapter may be considered. A person who pays for lodging on a monthly basis, irrespective of the number of days in such months, shall not be deemed a **TRANSIENT**. A person who stays at a membership trailer or recreational vehicle park or campground shall not be deemed a **TRANSIENT**. A member, prospective member or person who pays a daily or weekly fee for occupancy of a space in said recreational vehicle park, trailer or campground, shall be deemed a **TRANSIENT**.

TRANSIENT LODGING TAX REVIEW COMMITTEE. A committee composed of an attorney, an operator, a City Councilor and three lay persons, appointed by the Mayor and approved by the City Council.

(Ord. 93-1, passed 6-16-1993; Ord. 98-2, passed 2-17-1998)

§ 35.21 TAX IMPOSED.

For the privilege of occupancy in any hotel, on or after July 1, 1993, each transient shall pay a tax in the amount of 7% of the rent charged by the operator. The tax constitutes a debt owed by the transient to the city, which is extinguished only by payment by the operator to the city. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. The operator shall enter the tax on his or her records when rent is collected if the operator keeps his or her records on the cash accounting basis, and when earned if the operator keeps his or her records of the accrual accounting basis. If the rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with

each installment. In all cases, the rent paid or charged for occupancy shall exclude the sale of any goods, services and commodities, other than the furnishing of rooms, accommodations and space occupancy in mobile home, trailer or recreational vehicle parks.

(Ord. 93-1, passed 6-16-1993)

§ 35.22 COLLECTION OF TAX BY OPERATOR; RULES FOR COLLECTION.

(A) Every operator renting rooms or space for lodging or sleeping purposes in this city, the occupancy of which is not exempted under the terms of this subchapter, shall collect a tax from the occupant. The tax collected or accrued by the operator constitutes a debt owed by the operator to the city.

(B) In all cases of credit or deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid, and the operator shall not be liable for the tax until credits are paid or deferred payments are made. Adjustments may be made for uncollectibles.

(C) The Tax Administrator shall enforce provisions of this subchapter, and shall have the power to adopt rules and regulations not inconsistent with this subchapter as may be necessary to aid in the enforcement.

(D) For rent collected on portions of a dollar, fractions of a penny shall not be remitted.
(Ord. 93-1, passed 6-16-1993)

§ 35.23 OPERATOR'S DUTIES.

Each operator shall collect the tax imposed by this subchapter at the same time as the rent is collected from every transient. The amount of tax shall be separately stated upon the operator's records, and any receipt rendered by the operator. No operator of a hotel shall advertise that the tax or any part of the tax will be assumed or absorbed by the operator, or that it will not be added to the rent, or that, when added, any part will be refunded, except in the manner provided by this subchapter.

(Ord. 93-1, passed 6-16-1993)

§ 35.24 EXEMPTIONS.

No tax imposed under this subchapter shall be imposed upon:

(A) Any occupant for more than 30 successive calendar days. A person who pays for lodging on a monthly basis, irrespective of the number of days in such months, shall not be deemed a transient;

(B) Any occupant whose rent is of value less than \$5 per day; or

(C) Any occupant whose rent is paid for a hospital room or to a medical clinic, convalescent or home for aged people, or to a public institution owned and operated by a unit of government. (Ord. 93-1, passed 6-16-1993)

§ 35.25 REGISTRATION OF OPERATOR; FORM AND CONTENTS; EXECUTION; CERTIFICATE OF AUTHORITY.

(A) Every person engaging in or about to engage in business as an operator of a hotel in this city shall register with the Tax Administrator on a form provided by him or her.

(B) Operators engaged in business at the time this subchapter is adopted must register not later than 30 calendar days after passage of this subchapter.

(C) Operators starting business after this subchapter is adopted must register within 15 calendar days after commencing business.

(D) The privilege of registration after the date of imposition of such tax shall not relieve any person from the obligation of payment or collection of tax, regardless of registration.

(E) Registration sets forth the name under which the operator transacts or intends to transact business, the location of his or her place or places of business and such other information to facilitate the collection of the tax as the Tax Administrator may require.

(F) The registration shall be signed by the operator.

(G) The Tax Administrator shall, within ten days after registration, issue without charge a certificate of authority to each registrant to collect the tax from the occupant, together with a duplicate thereof for each additional place of business of each registrant.

(H) Certificates shall be non-assignable and non-transferable and shall be surrendered immediately to the Tax Administrator upon the cessation of business at the location named, or upon its sale or transfer. Each certificate and duplicate shall state the place of business to which it is applicable and shall be prominently displayed so as to be seen and come to the notice readily of all occupants and persons seeking occupancy.

(I) Said certificate shall, among other things, state the following:

- (1) The name of the operator;
- (2) The address of the hotel;
- (3) The date the certificate was issued; and

(4) "This Transient Occupancy Registration Certificate signifies that the person named on the face hereof has fulfilled the requirements of the Transient Tax Lodging Ordinance of the City of Wheeler by registration with the Tax Administrator for the purpose of collecting from transients the lodging tax imposed by said City and remitting said tax to the Tax Administrator. This certificate does not authorize any person to conduct an unlawful business in an unlawful manner, or to operate a hotel without strictly complying with all local applicable laws, including, but not limited to, those requiring a permit from any board, commission, department or office of the City of Wheeler. This certificate does not constitute a permit."

(Ord. 93-1, passed 6-16-1993)

§ 35.26 DUE DATE; RETURNS AND PAYMENTS.

(A) The tax imposed by this subchapter shall be paid by the transient to the operator at the time that rent is paid. All amounts of such taxes collected by any operator are due and payable to the Tax Administrator on a quarterly basis on the fifteenth day of the following month for the preceding three months, and are delinquent on the last day of the month in which they are due. The Tax Administrator has authority to classify and/or district the operators for determination of applicable tax period, and shall notify each operator of the due and delinquent dates for the operator's returns. The initial return under this subchapter may be for less than the three months preceding the due date; thereafter, returns shall be made for the applicable quarterly period.

(B) On or before the fifteenth day of the month following each quarter of collection a return for the preceding quarter's tax collections shall be filed with the Tax Administrator. The return shall be filed in such form as the Tax Administrator may prescribe by every operator liable for payment of tax.

(C) Returns shall show the amount of tax collected or otherwise due for the related period. The Tax Administrator may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of operator for such period and an explanation in detail of any discrepancy between such amounts, and the amount of rents exempt, if any.

(D) The person required to file the return shall deliver the return, together with the remittance of the amount of tax due, to the Tax Administrator at his or her office, either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of delivery for determining delinquencies.

(E) For good cause, the Tax Administrator may extend, for not to exceed one month, the time for making any return or payment of tax. No further extension shall be granted, except by the Transient Lodging Tax Review Committee. Any operator to whom an extension is granted shall pay interest at the rate of 0.5% per month on the amount of tax due without proration for a fraction of a month. If a return is not filed, and the tax and interest due is not paid by the end of the extension granted, then the interest shall become part the tax for computation of penalties described elsewhere in this subchapter.

(F) The Tax Administrator, if he or she deems it necessary, in order to ensure payment or facilitate collection by the city of the amount of taxes in any individual case, may require returns and payment of the amount of taxes for other than quarterly periods.
(Ord. 93-1, passed 6-16-1993)

§ 35.27 PENALTIES AND INTEREST.

(A) *Original delinquency.* Any operator who has not been granted an extension of time for remittance of tax due and who fails to remit any tax imposed by this subchapter prior to delinquency shall pay 10% of the tax due in addition to the amount of the tax.

(B) *Continued delinquency.* Any operator who has not been granted an extension of time for remittance of tax due, and who failed to pay any delinquent remittance on or before a period of 30 days following the date on which the remittance first became delinquent, shall pay a second delinquency penalty of 15% of the amount of the tax due, plus the amount of the tax and the 10% penalty first imposed.

(C) *Fraud.* If the Tax Administrator determines that the non-payment of any remittance due under this subchapter is due to fraud or intent to evade the provisions thereof, a penalty of 25% of the amount of tax shall be added thereto in addition to the penalties stated in divisions (A) and (B) above.

(D) *Interest.* In addition to the penalties imposed, any operator who fails to remit any tax imposed by this subchapter shall pay interest at the rate of 1% per month, or fraction thereof without proration for a fraction of a month, on the amount of tax due, exclusive of penalties, from the date on which the remittance first became delinquent until paid.

(E) *Penalties merged with tax.* Every penalty imposed and such interest as accrues under the provisions of this section shall be merged with and become part of the tax required to be paid.

(F) *Petition for waiver.* Any operator who fails to remit the tax herein levied within the time herein stated shall pay the penalties herein stated; provided, however, the operator may petition the Transient Lodging Tax Review Committee for waiver and refund of the penalty or any portion thereof, and the Transient Lodging Tax Review Committee may, if a good and sufficient reason is shown, waive and direct a refund of the penalty, or any portion thereof.
(Ord. 93-1, passed 6-16-1993)

§ 35.28 DEFICIENCY DETERMINATION; EVASION, OPERATOR DELAY.

(A) *Deficiency determination.* If the Tax Administrator determines that the returns are incorrect, he or she may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns, or upon the basis of any information within his or her possession or that may come into his or her possession. One or more deficiency determinations may be made of the amount due for one, or more than one, period, and the amount so determined shall be due and payable

immediately upon service of notice as herein provided after which the amount determined is delinquent. Penalties on deficiencies shall be applied as set forth in § 35.27.

(1) In making a determination, the Tax Administrator may offset overpayments, if any, which may have been previously made for a period or periods, against any underpayment for a subsequent period or periods, or against penalties and interest on the underpayments. The interest on underpayments shall be computed in the manner set forth by § 35.27.

(2) The Tax Administrator shall give to the operator or occupant a written notice of his or her determination. The notice may be served personally or by mail. If by mail, the notice shall be addressed to the operator at his or her address as it appears on the records of the Tax Administrator. In case of service by mail of any notice required by this subchapter, it shall be served by mailing such notice by registered mail, postage prepaid, return receipt requested.

(3) Except in the case of fraud or intent to evade this subchapter or authorized rules and regulations, every deficiency determination shall be made and notice thereof mailed within three years after the last day of the month following the close of the quarterly period for which the amount is proposed to be determined, or within three years after the return is filed, whichever period expires the later.

(4) Any determination shall become due and payable immediately upon receipt of notice and shall become final within 20 days after the Tax Administrator has given notice thereof; provided, however, the operator may petition for redetermination and refund if the petition is filed before the determination becomes final as herein provided.

(B) *Fraud; refusal to collect; evasion.* If any operator shall fail or refuse to collect said tax or to make within the time provided in this subchapter any report or remittance of said tax or any portion thereof required by this subchapter, or makes a fraudulent return or otherwise wilfully attempts to evade this subchapter, the Tax Administrator shall proceed in such manner as he or she may determine best to obtain the facts and information on which to base an estimate of the tax due. As soon as the Tax Administrator has determined the tax due that is imposed by this subchapter from any operator who has failed or refused to collect the same and to report and remit said tax, he or she shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this subchapter. In case such determination is made, the Tax Administrator shall give a notice in the manner aforesaid of the amount so assessed. Such determination and notice shall be made and mailed within three years of the discovery by the Tax Administrator of any fraud, intent to evade or failure or refusal to collect said tax, or failure to file return. Any determination shall become due and payable upon receipt of notice and shall become final within 20 days after the Tax Administrator has given notice thereof, provided, however, the operator may petition for redetermination and refund if the petition is filed before the determination becomes final as herein provided.

(C) *Operator delay.* If the Tax Administrator believes that the collection of any tax or any amount of tax required to be collected and paid to the city will be jeopardized by delay, he or she may determine the amount in jeopardy, and that amount shall be due and payable upon service of notice thereof;

provided, however, the operator may petition, after payment has been made, for redetermination and refund, if the petition is filed within 20 days from the date of service of notice by the Tax Administrator. (Ord. 93-1, passed 6-16-1993)

§ 35.29 REDETERMINATION.

(A) Any person against whom a determination is made under § 35.28, or any person directly interested may petition for a redetermination and refund within the time required in § 35.28. If a petition for redetermination and refund is not filed within the time required in § 35.28, the determination becomes final at the expiration of the allowable time.

(B) If a petition for redetermination and refund is filed within the allowable period, the Tax Administrator shall reconsider the determination, and if the person has so requested in his or her petition, shall grant the person an oral hearing and give him or her 20 days' notice of the time and place of the hearing. The Tax Administrator may continue the hearing from time to time as may be necessary.

(C) The Tax Administrator may decrease or increase the amount of the determination as a result of the hearing, and if an increase is determined, such increase shall be payable immediately after the hearing.

(D) The order or decision of the Tax Administrator upon a petition for redetermination and refund becomes final 20 days after service upon the petitioner of notice thereof, unless appeal of such order or decision is filed with the Transient Lodging Tax Review Committee within 20 days after the service of such notice.

(E) No petition for redetermination and refund or appeal therefrom shall be effective for any purpose unless the operator has first complied with the payment provisions hereof. (Ord. 93-1, passed 6-16-1993)

§ 35.30 SECURITY FOR COLLECTION OF TAX.

(A) The Tax Administrator, whenever he or she deems it necessary to ensure the compliance with this subchapter, may require the operator subject thereto to deposit with him or her such security in the form of cash, bond or other security as the Tax Administrator may determine. The amount of the security shall be fixed by the Tax Administrator, but shall not be greater than twice the operator's estimated average quarterly. Liability for the period for which he or she files returns, determined in such a manner as the Tax Administrator deems proper, or \$5,000, whichever amount is the lesser. The amount of security may be increased or decreased by the Tax Administrator subject to limitations herein provided. The operator has a right to appeal to the Transient Lodging Tax Review Committee any decision of the Tax Administrator made pursuant to this section. The operator's right to appeal is pursuant to § 35.36.

(B) At any time within three years after any tax or any amount of tax required to be collected becomes due and payable, or at any time within three years after determination becomes final, the Tax Administrator may bring any action in the courts of this state, or any other state, or of the United States in the name of the city to collect the amount delinquent together with penalties and interest.

(Ord. 93-1, passed 6-16-1993)

§ 35.31 LIEN.

(A) The tax imposed by this subchapter, together with the interest and penalties herein provided and the filing fees paid to the County Clerk of the county, and advertising costs which may be incurred when same becomes delinquent as set forth in this subchapter shall be and until paid, remain a lien from the date of its recording with the County Clerk of the county, and superior to all subsequent recorded liens on all tangible personal property used in the hotel of an operator within the city, and may be foreclosed on and sold as may be necessary to discharge said lien if the lien has been recorded with the County Clerk.

(B) Notice of the lien may be issued by the Tax Administrator or his or her deputy whenever the operator is in default in the payment of said tax, interest and penalty and shall be recorded with the County Clerk, and a copy sent to the delinquent operator.

(C) The personal property subject to such lien seized by any deputy employee of the Tax Administrator may be sold by the department seizing same at public auction after ten days' notice, which means one publication in a newspaper published in the county.

(D) Any lien for taxes shown on the records of the proper county official shall, upon payment of all taxes, penalties and interest thereon, be released by the Tax Administrator when the full amount determined to be due has been paid to the city and the operator or person making such payment shall have a receipt therefor stating that the full amount of taxes, penalties and interest thereon have been paid, and that the lien is hereby released and the record of lien is satisfied.

(Ord. 93-1, passed 6-16-1993)

§ 35.32 REFUNDS.

(A) *Refunds by the city to an operator.* Whenever the amount of any tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the Tax Administrator under this subchapter, it may be refunded, provided a verified claim in writing therefor, stating the specific reason upon which the claim is founded, is filed with the Tax Administrator within three years from the date of payment. The claim shall be made on forms provided by the Tax Administrator. If the claim is approved by the Tax Administrator, the excess amount collected or paid may be refunded or may be credited on any amount then due and payable from the operator from whom it was collected or by whom paid, and the balance may be refunded to such operator, his or her administrators, executors or assignees.

(B) *Refunds by the city to a transient.* Whenever the tax required by this subchapter has been collected by an operator, and deposited by operator with the Tax Administrator, and it is later determined that the tax was erroneously or illegally collected or received by the Tax Administrator, it may be refunded by the Tax Administrator to the transient, provided a verified claim in writing therefor, stating the specific reason on which the claim is founded, is filed with the Tax Administrator within three years from the date of payment.

(C) *Refunds by an operator to a tenant.* Whenever the tax required by this subchapter has been collected by the operator and it is later determined that the tenant occupies the hotel for a period exceeding 30 without interruption, the operator shall refund to such tenant the tax previously collected by the operator from that tenant as a transient. The operator shall account for such collection and refund to the Tax Administrator. If the operator has remitted the tax prior to the refund or credit to the tenant, he or she shall be entitled to a corresponding refund under this section.

(Ord. 93-1, passed 6-16-1993)

§ 35.33 COLLECTION FEE.

Every operator liable for collection and remittance of the tax imposed by this subchapter may withhold 5% of the net tax herein collected, to cover the operator's expense in collection and remittance of said tax.

(Ord. 93-1, passed 6-16-1993)

§ 35.34 ADMINISTRATION.

(A) *Special account.* The Tax Administrator shall deposit all money collected pursuant to this subchapter to the credit of a transient rook tax account.

(B) *Allocation of funds.* All monies collected pursuant to this subchapter shall be allocated by the City Council to any city fund.

(C) *Records required from operators and the like.* Every operator shall keep guest records of room sales, and accounting books and records of the room sales. All records shall be retained by the operator for a period of three years and six months after they come into being.

(D) *Examination of records; investigations.* The Tax Administrator, or any person authorized in writing by him or her, may examine during normal business hours the books, papers and accounting records relating to room sales of any operator, after notification to the operator liable for the tax, and may investigate the business of the operator in order to verify the accuracy of any return made, or, if no return is made by the operator, to ascertain and determine the amount required to be paid.

(E) *Confidential character of information obtained; disclosure unlawful.* It shall be unlawful for the Tax Administrator or any person having an administrative or clerical duty under the provisions of this subchapter to make known in any manner whatever the business affairs, operations or information

obtained by an investigation of records and equipment of any person required to obtain a transient occupancy registration certificate, or pay a transient lodging tax, or any other person visited or examined in the discharge of official duty, or the amount or source of income, profits, losses, expenditures or any particular thereof, set forth in any statement or application, or to permit any statement or application, or copy of either, or any books containing any abstract or particulars thereof to be seen or examined by any person, provided that nothing in this division (E) shall be construed to prevent:

(1) The disclosure to, or examination of records and equipment by another city official, employee or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this subchapter, or collecting taxes imposed hereunder, or collecting city business license fees;

(2) The disclosure, after the filing of a written request to that effect, to the taxpayer himself or herself, receivers, trustees, executors, administrators, assignees, find guarantors, if directly interested, or information as to any paid tax, any unpaid tax or amount of tax required to be collected, or interest, and penalties; further provided, however, that the City Attorney approves each such disclosure and that the Tax Administrator may refuse any disclosure referred to in this division (E)(2) when in his or her opinion the public interest would not be served thereby;

(3) The disclosure of the names and addresses of any persons to whom transient occupancy registration certificates have been issued; or

(4) The disclosure of general statistics regarding taxes collected or business done in the city. (Ord. 93-1, passed 6-16-1993) Penalty, see § 35.99

§ 35.35 TRANSIENT LODGING TAX REVIEW COMMITTEE; APPEAL RULES; PROCEDURE.

(A) A Transient Lodging Tax Review Committee is hereby created to be composed of an attorney, who may be a city employee, an operator, as herein defined, a City Councilor, and three lay members. The Committee shall select from its members a Chairperson who shall serve at its pleasure.

(B) Three members of the Committee shall constitute a quorum.

(C) The Committee shall keep a record of its transactions.

(D) The Committee shall be deemed to be in the office of the Tax Administrator and shall meet and keep its files in his or her office.

(E) The members of the Committee shall not, at any time, receive any compensation as such members or acting members for their services on the Committee.

(F) The Committee shall be appointed by the Mayor and shall serve four-year terms.

(G) The Committee shall have the power and it shall be its duty:

(1) To hear and determine appeals of orders or decisions of the Tax Administrator made upon petitions for re-determinations of tax. The Committee may affirm, modify or reverse such orders or decisions or dismiss the appeals therefrom, as may be just, and shall prescribe such forms, rules and regulations relating to appeals as it may deem necessary. It shall give notice of its determinations in the manner prescribed for service of notice of a Tax Administrator's decision, and shall file a copy of each such determination with the Tax Administrator with certification thereon of the date of service thereof. Such determination shall become final 20 days thereafter, and shall become due and payable subject to interest penalties, and enforceable by the Tax Administrator in like manner as an order or decision by the Tax Administrator;

(2) To approve, modify or disapprove all forms, rules and regulations prescribed by the Tax Administrator in the administration and enforcement of this subchapter, and such forms, rules and regulations adopted or promulgated after July 1, 1993, shall be subject to and become effective only on such approval;

(3) To hear and determine in such manner as shall be just, any protest which may be made by any person who may be interested, to any form, rule or regulation approved or prescribed by the Committee;

(4) To grant for good cause, applications for extension of time in excess of one month for making any return or payment of tax, and to prescribe rules thereon; and

(5) To make such investigations as it deems advisable regarding the imposition and administration of the transient lodging tax, and report its findings to the City Council; to act in an advisory capacity to the City Council on matters pertaining to the transient lodging tax and enforcement problems; and to recommend to the City Council the adoption, amendment or repeal of legislation pertaining thereto.

(Ord. 93-1, passed 6-16-1993)

§ 35.36 APPEAL TO THE TRANSIENT LODGING TAX REVIEW COMMITTEE.

Any person aggrieved by any decision of the Tax Administrator may appeal to the Transient Lodging Tax Review Committee by filing notice of appeal with the Tax Administrator within 20 days of the serving or mailing of the notice of a decision given by the Tax Administrator. The Tax Administrator shall fix a time and place for hearing such appeal as prescribed by the Transient Lodging Tax Review Committee in its rules and regulations, and shall give the appellant 20 days' written notice of the time and place of the hearing.

(Ord. 93-1, passed 6-16-1993)

§ 35.37 APPEALS TO THE CITY COUNCIL.

(A) Any person aggrieved by any decision of the Transient Lodging Tax Review Committee may appeal to the City Council by filing notice of appeal with the Tax Administrator within 20 days of the serving or mailing of the notice of the decision given by the Transient Lodging Tax Review Committee.

(B) The Tax Administrator shall transmit said notice of appeal together with the file of said appealed matter to the City Council, who shall fix a time and place for hearing such appeal from the decision of the Transient Lodging Tax Review Committee.

(C) The Council shall give the appellant not less than 20 days' written notice of the time and place of the hearing of said appealed matter. Action by the City Council on appeals shall be decided by a majority of the members of the City Council present at the meeting where such appeal is considered. A quorum of the City Council shall be present at the meeting.

(Ord. 93-1, passed 6-16-1993)

§ 35.38 VIOLATIONS.

It is unlawful for any operator or other person so required to fail or refuse to register as required herein, or to furnish any return required to be made, or fail or refuse to furnish supplemental or other data required by the Tax Administrator or to render a false or fraudulent return. No person required to make, render, sign or verify any report shall make any false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this subchapter.

(Ord. 93-1, passed 6-16-1993) Penalty, see § 35.99

§ 35.39 STARTING DATE.

The starting date for the collection of taxes shall be 12:01 a.m. on July 1, 1993.
(Ord. 93-1, passed 6-16-1993)

§ 35.99 PENALTY.

(A) Any person violating any provision of this chapter for which no specific penalty is provided shall be subject to § 10.99.

(B) Any person wilfully violating any of the provisions of §§ 35.20 through 35.39 shall be guilty of a misdemeanor, and may be punished therefor by a fine of not more than \$500, or by imprisonment in the county jail for a period of not more than six months, or by both such fine and imprisonment.

(Ord. 93-1, passed 6-16-1993)

CHAPTER 36: CODE ENFORCEMENT

Section

- 36.01 Establishment and purpose
- 36.02 Definitions
- 36.03 Infraction procedure
- 36.04 Code services personnel to prosecute violations
- 36.05 Attorney barred from appearing; exception
- 36.06 Enforcement
- 36.07 Lien filing and docketing
- 36.08 Code Enforcement Officer authorized to promulgate rules
- 36.09 Schedule of forfeitures
- 36.10 Effect of new ordinance

§ 36.01 ESTABLISHMENT AND PURPOSE.

(A) Procedures to handle violations of city ordinances as civil infractions, subject to the provisions set forth below, the procedures are hereby established; pursuant to the home rule, powers granted the city by Article IV, § 1, and Article XI, § 2 of the Oregon Constitution and the City Charter.

(B) The city hereby establishes a civil infraction procedure for decriminalizing penalties for infractions of certain civil ordinances and for providing a convenient and practical forum for the civil hearing and determination of cases arising out of said violations.

(C) Acts or omissions to act, processed pursuant to the provisions of this chapter or are designated an infraction by any city ordinance, do not require a culpable mental state as an element of the infraction.

(D) This chapter shall be known and referred to as the "Civil Infractions Ordinance" and may be referred to herein as "this chapter".
(Ord. 2011-01, passed - -2011)

§ 36.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

CITY ENFORCEMENT RESPONSE GUIDE. The *Enforcement Response Guide* is a tool developed for city personnel to utilize when determining the appropriate response to specific violations of city ordinances. This document intends to serve four main purposes:

(1) Cover enforcement responses that may be appropriate in relation to the nature and severity of the violation and overall degree of violation;

(2) Provide a guide to encourage the uniform application of enforcement responses to comparable levels and types of violations as well as a mechanism to review the appropriateness of the response by city staff;

(3) The *Enforcement Response Guide* uses a time and material cost recovery system to finance its use; and

(4) The Code Enforcement Officer will use the *Enforcement Response Guide* primarily as a prior contact and due process tool.

CIVIL INFRACTION. Constitutes the commission of an act or omission to act in a manner prescribed by this code, or other city ordinance, constituting breach or infringement of a section of a city ordinance or of this code. The city will handle such **CIVIL INFRACTIONS** in accordance with the procedures established by this chapter. When an infraction is of a continuing nature, except where otherwise specifically provided, a separate infraction is deemed to occur on each calendar day the infraction continues to exist, and a separate citation may be filed for each such infraction.

CODE ENFORCEMENT OFFICER. The Wheeler City Manager or any designee whom the Mayor appoints by executive order or rule to enforce this chapter.

FORFEITURE, FORFEITURE SCHEDULE.

(1) The only penalty imposed for an infraction is a monetary penalty called **FORFEITURE**.

(2) The Code Enforcement Officer assesses forfeiture for a specific infraction determined pursuant to specific provisions within the ordinance defining the infraction or the **FORFEITURE SCHEDULE** found in § 36.09.

(3) The procedure prescribed by this chapter shall be the exclusive procedure for imposing **FORFEITURE**; however, this section shall not be read to prohibit any alternative remedies such as the city's *Enforcement Response Guide*.

(4) The Code Enforcement Officer may use any enforcement method as set out in city ordinances and resolutions, which are intended to abate or alleviate ordinance violations, nor shall the city be prohibited from recovering, in a manner prescribed by law, any expense incurred by the city in abating or removing ordinance violations pursuant to any ordinance.

PRIOR CONTACT.

(1) In order to be effective the Code Enforcement Officer must make any prior contact between the responsible parties regarding an alleged infraction within 180 days preceding the issuance of the uniform infraction citation. ***PRIOR CONTACT*** may include, but not limited to, phone calls, personal oral communication at any location, letters or other forms of written communication, agreements or a prior citation issued for the same or similar infraction.

(2) The city shall deem ***PRIOR CONTACT*** to occur without actual contact between the Code Enforcement Officer and a responsible party if the alleged infraction is related to regulated activity for which the city has issued any permit, license, agreement or written directive required by law or policy of the city in conjunction with the regulated activity. No time limit shall restrict ***PRIOR CONTACT***, which is deemed to have occurred under the terms of this section.

RESPONSIBLE PARTY. The person responsible for curing or remedying an infraction includes:

(1) The owner of the property or the owner's manager or agent or other person in control of the property on behalf of the owner;

(2) The person occupying the property including bailee, lessee, tenant or other person having possession; and

(3) The person alleged to have committed or authorized the commission of the infraction.
(Ord. 2011-01, passed - -2011)

§ 36.03 INFRACTION PROCEDURE.***(A) General procedures.***

(1) The City Manager and City Council process civil infractions of city ordinances.

(2) Defendants may admit responsibility and pay the fine; admit responsibility with an explanation in writing to the City Manager; or may deny responsibility and request a hearing before the City Council.

(3) The defendant may request an informal hearing with the City Council with no attorneys present or a formal hearing before a Judge where the City Manager will represent the city, and the defendant may have an attorney.

(4) If the defendant elects to pay the forfeiture, payment must be made with a money order, check or cash, within ten days of the issuance of the violation from the City Manager.

(5) Upon payment of the forfeiture, the City Manager will close the case file.

(6) Admitting responsibility with an explanation must be presented in writing to the City Manager.

(7) Upon receipt of the explanation, the City Manager will make a determination of the appropriate disposition or set the matter for an informal hearing.

(8) The City Council may adjust the fine depending on the appropriateness of the explanation.

(B) *Reporting.* The Code Enforcement Officer shall receive all reports or complaints of infractions covered by this chapter.

(C) *Review of facts.* When an infraction covered by this procedure is reported to the Code Enforcement Officer, the Code Enforcement Officer may refuse to proceed further with the matter after a review of the facts and circumstances surrounding the alleged infraction. Upon making a determination that, sufficient evidence does not exist to support the allegation that an infraction has occurred or if the Code Enforcement Officer deems it in the best interest of the city, the Code Enforcement Officer may close the case file.

(D) *Prior contact.* Before the Code Enforcement Officer issues a uniform infraction citation and complaint for a Class 1 civil infraction, the Code Enforcement Officer may make prior contact with the responsible party. Whether a prior contact is made prior to issuance of a uniform infraction citation and complaint for a Class 1 civil infraction is solely within the sound discretion of the Code Enforcement Officer while enforcing the best interests of the city. Before a uniform infraction citation and complaint is issued for Class 2 and 3 civil infractions, the Code Enforcement Officer shall make a prior contact with the responsible party and give the responsible party a reasonable opportunity to cure or remedy the alleged infraction. In making the prior contact, the following information shall be communicated to the responsible party:

(1) Description or identification of the activity constituting the alleged infraction and identification of the recipient as being the responsible party for the infraction;

(2) A statement that the Code Enforcement Officer has determined the activity to be an infraction;

(3) A statement of the action required to remedy or cure the infraction and the time and/or date by which the remedy must be completed or begun; and

(4) A statement advising that, if the required abatement is not completed or commenced within the time specified, the Code Enforcement Officer will issue a uniform infraction citation and complaint and that the city impose the maximum amount of forfeiture provided by § 36.09 for that particular infraction.

(E) *Written agreement.* When the Code Enforcement Officer considers it advisable, he or she may enter into a written agreement resolving the problems, which gave rise to the complaint. The agreement known as a voluntary compliance agreement shall be binding on the responsible party. The fact that a

person alleged to have committed a civil infraction enters into such an agreement shall not be considered an admission of having committed an infraction for any purpose.

(F) *No further action.* During the time allowed in the voluntary compliance agreement for the completion of necessary correction action, the city shall hold further processing of the alleged violation in abeyance. If all terms of the voluntary compliance agreement are satisfied, the city shall take no further action concerning the alleged violation other than those steps necessary to terminate the matter.

(G) *Failure to comply.* Failure to comply with any terms of the voluntary compliance agreement constitutes a separate Class 1 civil infraction. The Code Enforcement Officer will handle any failure to comply in accordance with the procedures established by this chapter. The Code Enforcement Officer needs no additional prior contact, after signing the voluntary compliance agreement, before issuing the uniform infraction citation. The city may also proceed with processing the alleged infraction giving rise to the voluntary compliance agreement.

(H) *Issuance of uniform infraction and complaint.*

(1) If the responsible party with whom the Code Enforcement Officer made prior contact fails to cure or remedy the alleged infraction, the Code Enforcement Officer or any citizen may sign and file a uniform infraction citation and complaint with the City Council. The uniform infraction citation and complaint will charge the responsible party with the civil infraction and set a date for the responsible party to appear before the City Council to answer said complaint.

(2) The Code Enforcement Officer shall prescribe the form of the uniform infraction citation and complaint.

(3) The complaint and summons shall contain the following information:

(a) The city's file number;

(b) The name of the person cited;

(c) The infraction with which the person is charged;

(d) The date, time and place the infraction occurred, or if the infraction is of a continuing nature, the date, time and place the infraction was observed by the Code Enforcement Officer, or the citizen signing the complaint;

(e) The date on which the citation was issued;

(f) The scheduled forfeiture for the alleged infraction; and

(g) The time and place at which the person cited is to appear before the City Council to answer the complaint.

(4) The complaint shall contain a form of verification that the person signing the complaint swears that the person has reasonable grounds to believe, and does so believe, that the person cited committed the infraction.

(5) The summons shall also contain notice to the person cited that a civil complaint will be filed in the City Hall.

(I) *Service; service by mail and failure to receive notice; default.*

(1) Service on individuals may be made by the Code Enforcement Officer or any authorized agent of the city by any of the following means

(a) Service by mailing the summons and complaint by restricted or unrestricted certified or registered mail, return receipt requested. For purposes of computing any time period prescribed by this chapter, service by mail shall be complete three days after such mailing if the mailing address is within the state, and seven days after mailing if the mailing address is outside the state;

(b) The Code Enforcement Officer shall enter no default against any responsible party served by mail under this section that has not either received or rejected the registered or certified letter containing a copy of the summons and complaint, unless otherwise authorized by the City Council based upon service procedures of the State Rules of Civil Procedure;

(c) The Code Enforcement Officer may make service by delivering the summons and complaint directly to the person served;

(d) The Code Enforcement Officer may make substituted service by delivering a copy of the summons and complaint at the dwelling house or usual place of abode of the person served, to any person over 14 years of age residing in the dwelling house or usual place of abode of the person served. Where substituted service is used, the Code Enforcement Officer, as soon as reasonably possible, shall cause to be mailed a true copy of the summons and complaint to the responsible party at the responsible party's dwelling house or usual place of abode, together with a statement of the date, time and place at which substituted service was made. For computing, any time period prescribed or allowed by this chapter, substituted service shall be complete upon mailing; or

(e) If the person served maintains an office for the conduct of business, the Code Enforcement Officer may make office service by leaving a true copy of the summons and complaint at such office during normal working hours with the person who is apparently in charge. Where office service is used, the Code Enforcement Officer, as soon as reasonably possible, shall mail a true copy of the summons and complaint to the responsible party. The true copy of the summons shall be mailed to the responsible party's dwelling house or usual place of abode or the responsible party's place of business or such other place under the circumstances that is most reasonably calculated to apprise the responsible party of the existence and pendency of the action. The summons shall include a statement of the date, time and place at which office service was made. For computing any time period prescribed or allowed by this chapter, office service shall be complete upon such mailing.

(2) Service on particular responsible parties, minors, incapacitated persons, corporations, limited partnerships, the state, other public bodies, general partnerships and other entities, shall be on the persons named in the State Rules of Civil Procedure.

(J) *Answer.*

(1) A person who receives a summons and complaint alleging an infraction shall answer such complaint by personally appearing to answer at the time and place specified therein. A person may make an answer by mail or personal delivery if received by the city within ten days of the date of the receipt of the summons as provided in divisions (J)(2) and (J)(3) below.

(2) If the person alleged to have committed an infraction admits the infraction, the person may complete the appropriate answer on the back of each summons and forward the summons to the City Hall. A person may submit cash, check or money order for forfeiture for the infraction alleged as shown on the face of the summons along with the answer. Upon receipt of the forfeiture, the Code Enforcement Officer shall enter an appropriate order in the City Hall records.

(3) If the person alleged to have committed the infraction denies part or all of the infraction, the person may request a hearing by completing the appropriate answer on the back of the summons and forwarding the summons, together with security for city fees.

(a) Upon receipt, the answer shall be entered and a hearing date established by the City Council.

(b) The City Council shall notify the person alleged to have committed the infraction by return mail of the date of the hearing.

(c) The security deposit received, to ensure appearing at the hearing, shall be returned upon appearance by the person alleged to have committed the infraction, except as otherwise provided by this chapter.

(d) At its sole discretion, the City Council may waive the security deposit completely or in part for good cause shown and upon written application of the person alleged to have committed the infraction.

(e) The person alleged to have committed the infraction shall set forth the reason for requesting the waiver and certifying that the person alleged to have committed the infraction will attend the hearing when scheduled.

(K) *Hearing.*

(1) The City Council will determine if an infraction has occurred using the hearing process. The City Council hearing will determine whether an infraction has been committed without using a jury.

(2) Legal counsel may represent the defendant, but legal counsel shall not be provided at public expense. If legal counsel is to appear, written notice shall be provided to the City Council five days prior to the hearing date.

(3) The defendant shall have the right to present evidence and witnesses in the defendant's favor, to cross-examine witnesses who testify against the defendant and to submit rebuttal evidence.

(4) If the defendant alleged to have committed the infraction desires that witnesses be ordered to appear by subpoena, the defendant must so request in writing from the City Council at the time the answer is returned, or subsequently by mail at any time at least five days prior to the scheduled hearing. A deposit for each witness shall accompany the request, such deposit refunded if no forfeiture is assessed by the final order. The deposit shall be in the amount equal to the witness fee allowed by statute for witnesses in Circuit Court. Subject to the same five day limitation, the Code Enforcement Officer, the citizen who signed the complaint or the city attorney, as appropriate, may also request in writing that the court order certain witnesses to appear by subpoena. If forfeiture is declared in the final order, the order shall also provide that the defendant shall pay any witness fees payable in connection with the hearing.

(5) The hearing shall be limited to production of evidence only on the infraction alleged in the complaint.

(a) *Oral evidence.* The city shall take oral evidence only on oath or affirmation.

(b) *Hearsay evidence.* Hearsay evidence may be used for the purpose of supplementing, or explaining any direct evidence, but shall not be itself sufficient to support a finding unless it would be admissible over objection in civil actions in courts of competent jurisdiction in this state.

(c) *Admissibility of evidence.* Any relevant evidence shall be admitted if it is the type of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state.

(d) *Exclusion of evidence.* Irrelevant and unduly repetitious evidence shall be excluded.

(6) The complainant or, if the city is the complainant, the Code Enforcement Officer shall have the burden of proving the alleged ordinance infraction by a preponderance of the evidence.

(7) After due consideration of the evidence and arguments presented at the hearing, the City Council shall determine whether the infraction as alleged in the complaint was committed. When the Code Enforcement Officer does not prove the infraction, the city shall enter an order dismissing the complaint in the City Hall records. A copy of the order shall be delivered to the person named in the order personally or by mail. When the City Council finds that the infraction was committed, and upon written request by a party to the hearing, the order shall include a brief statement of the necessary findings of fact to establish the infraction alleged.

(8) Upon a finding that an infraction has occurred, the City Council shall assess forfeiture pursuant to the schedule established in accordance with this chapter, plus court costs and witness fees. The City Council may set reasonable hearing costs including security for council fees by Council order.

(9) The City Council shall order and maintain a record of its proceedings. A mechanical recording of the hearing accompanied by any written documents, correspondence or physical evidence associated with the matter shall be sufficient to meet the requirement of this division (K)(9).

(10) The determination of the City Council shall be final. Review of Council determination shall be to the Manzanita Municipal Court by writ of review pursuant to O.R.S. Chapter 34.
(Ord. 2011-01, passed - -2011)

§ 36.04 CODE SERVICES PERSONNEL TO PROSECUTE VIOLATIONS.

Notwithstanding O.R.S. 9.160 and 9.320, in any trial of a violation, and in any administrative enforcement proceeding in which a city attorney or district attorney is barred from appearing by statute or ordinance, the Code Enforcement Officer who issued the citation for the offense may present evidence, examine and cross-examine witnesses and make arguments relating to:

- (A) The application of statutes and rules to the facts in the case;
- (B) The literal meaning of the statutes or rules at issue in the case;
- (C) The admissibility of evidence; and
- (D) Proper procedures to be used in the hearing.

(Ord. 2011-01, passed - -2011)

§ 36.05 ATTORNEY BARRED FROM APPEARING; EXCEPTION.

The City Attorney may aid in preparing evidence and obtaining witnesses, but except for good cause shown to the appropriate tribunal, shall not appear in a violation proceeding or administrative enforcement proceeding brought under this chapter unless counsel for the defendant appears. The tribunal with jurisdiction over the proceeding shall ensure that the city attorney is given timely notice if defense counsel is to appear.

(Ord. 2011-01, passed - -2011)

§ 36.06 ENFORCEMENT.

(A) If a cited person fails to answer the summons or appear at a scheduled hearing as provided herein, a default judgment shall be entered for the scheduled forfeiture applicable to the charged infraction. In addition, when a person fails to appear for a hearing, the security posted, or an amount

equal to the security waived, shall be ordered forfeited. Nothing in this division (A) shall be construed to limit in any way the contempt powers of a municipal judge granted by the Charter or state law, and the judge may exercise those powers, as the judge considers necessary and advisable in conjunction with any matter arising under the procedures set forth in this chapter.

(B) A cited person shall pay any assessed forfeiture no later than ten days after the receipt of the final order declaring that forfeiture. The City Council may extend the period for paying the forfeiture.

(C) Delinquent forfeitures and those brought to default judgment, which were assessed for infractions may in addition to any other method be collected or enforced pursuant to O.R.S. 30.310 or 30.315.

(Ord. 2011-01, passed - -2011)

§ 36.07 LIEN FILING AND DOCKETING.

(A) When the City Council gives a judgment in favor of the city for the sum of \$10 or more, exclusive of costs or disbursements, the Code Enforcement Officer may, at any time thereafter while the judgment is enforceable, file with the city a certified transcript. The certified transcript will include all those entries made in the docket of the City Council with respect to the action in which the judgment was entered.

(B) Thereupon, the city shall enter the judgment of the City Council on the city lien docket.

(C) From the time of the entry of the City Council judgment in the city lien docket, the judgment shall be a lien upon the real property of the person against whom judgment was entered by the City Council. Except as provided in division (D) below, entry of the City Council judgment in the city lien docket shall not thereby extend the lien of the judgment more than ten years from the original entry of the judgment in the circuit court.

(D) Whenever a judgment of the City Council, which has been entered pursuant to this section, is renewed by the City Council, the lien established by division (C) above is automatically extended ten years from the date of the renewal order.

(E) The City Manager may file the transcript of the judgment with the County Clerk for entry in the judgment docket of the circuit court.

(Ord. 2011-01, passed - -2011)

§ 36.08 CODE ENFORCEMENT OFFICER AUTHORIZED TO PROMULGATE RULES.

The Code Enforcement Officer is authorized to promulgate any rules, procedures or guidelines the he or she considers advisable to enforce this chapter; however, final approval of any rules, procedures, or guidelines must be by the City Council after city attorney review.

(Ord. 2011-01, passed - -2011)

§ 36.09 SCHEDULE OF FORFEITURES.

An assessment of forfeiture for each infraction shall be an assessment to pay an amount not exceeding \$250 for each day for each violation.
(Ord. 2011-01, passed - -2011)

§ 36.10 EFFECT OF NEW ORDINANCE.

(A) Citations or complaints issued and filed with the City Council for infractions committed prior to the effective date of this chapter shall be processed in accordance with the ordinance then in effect.

(B) Nothing in this chapter shall be construed as a waiver of any forfeiture amount ordered and not paid.
(Ord. 2011-01, passed - -2011)

