Chapter 1.1 CODE ADOPTION

There is adopted the “Independence Municipal Code” as published by the City of Independence, and as compiled and codified by the Independence City Attorney, Richard D. Rodeman. Adoption of this code supersedes and replaces all general ordinances of the City, except those pertaining to the Independence Zoning Ordinance, as amended.

§1.1.1 Title - Citation - Reference.
This code shall be known as the "Independence Municipal Code" and it shall be sufficient to refer to the code as the "Independence Municipal Code" in any prosecution for the violation of any provision thereof or in any proceeding at law or equity. It shall be sufficient to designate any ordinance adding to, amending, correcting or repealing all or any part or portion thereof as an addition to, amendment to, correction or repeal of the code. Further reference may be had to the titles, chapters, sections and subsections of the code, and such references shall apply to that numbered title, chapter, section or subsection as it appears in the code.

§1.1.2 Contents.
This code consists of all the regulatory and penal ordinances and certain of the administrative ordinances of the city of Independence, Oregon. [Ord. 98-1369 §, 1998]

§1.1.3 Ordinances passed prior to adoption of code.
The last ordinance included in the original code is Ordinance No. 98-1363, passed July 28, 1998.

§1.1.4 Reference to amendments.
Whenever a reference is made to this code as the "Independence Municipal Code" or to any portion thereof, or to any ordinance of the city, the reference shall apply to all amendments, corrections and additions heretofore, now or hereafter made.

§1.1.5 Title, chapter and section headings.
Title, chapter and section headings contained in this code shall not govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of any title, chapter or section hereof.

§1.1.6 Reference to specific ordinances.
The provisions of this code shall not in any manner affect matters of record which refer to, or are otherwise connected with ordinances which are therein specifically designated by number or otherwise and which are included within the code, but such reference shall be construed to apply to the corresponding provisions contained within this code.
§1.1.7 Effect of code on past actions and obligations.
Neither the adoption of this code nor the repeal or amendments hereby of any ordinance or part or portion of any ordinance of the city shall in any manner affect the prosecution for violations of ordinances, which violations were committed prior to the effective date hereof, nor be construed as a waiver of any license, fee or penalty at the effective date due and unpaid under such ordinance, nor be construed as affecting any of the provisions of such ordinances relating to the collection of any such license, fee or penalty, or the penal provisions applicable to any violation thereof, nor to affect the validity of any bond or cash deposit in lieu thereof required to be posted, filed or deposited pursuant to any ordinance and all rights and obligations thereunder appertaining shall continue in full force and effect.

§1.1.8 Effective date.
This code shall become effective on the date the ordinance adopting this code as the “Independence Municipal Code” shall become effective.

§1.1.9 Constitutionality.
If any section, subsection, sentence, clause or phrase of this code is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this code. The council declares that it would have passed this code, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases had been declared invalid or unconstitutional, and if for any reason this code should be declared invalid or unconstitutional, then the original ordinance or ordinances shall be in full force and effect.
Chapter 1.2 GENERAL PROVISIONS

§1.2.1 Definitions.
The following words and phrases, whenever used in the ordinances of the city, shall be construed and defined in this section unless from the context a different meaning is intended or unless a different meaning is specifically defined and more particularly directed to the use of such words or phrases:
A. “City” and “town” each mean the City of Independence, Oregon, or the area within the territorial limits of the City of Independence, Oregon, and such territory outside Independence, over which the city has jurisdiction or control by virtue of any constitutional or statutory provision.
B. “Council” means the City Council of the City of Independence. “All its members” or “all council members” means the total number of council members holding office.
C. “County” means the county of Polk.
D. “Law” denotes applicable federal law, the Constitution and statutes of the state of Oregon, the ordinances of the City of Independence, and, when appropriate, any and all rules and regulations which may be promulgated thereunder.
E. “May” is permissive.
F. “Month” means a calendar month.
G. “Must” and “shall” are each mandatory.
H. “Oath” includes an affirmation or declaration in all cases in which, by law, an affirmation may be substituted for an oath, and in such cases the words “swear” and “sworn” shall be equivalent to the words “affirm” and “affirmed”.
I. “Owner”, applied to a building or land, includes any part owner, joint owner, tenant in common, joint tenant, tenant by the entirety, of the whole or a part of such building or land.
J. “Person” includes a natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization or the manager, lessee, agent, servant, officer or employee of any of them.
K. “Personal property” includes money, goods, chattels, things in action and evidences of debt.
L. “Preceding” and “following” means next before and next after, respectively.
M. “Property” includes real and personal property.
N. “Real property” includes lands, tenements and hereditament.
O. “Sidewalk” means that portion of a street between the curbline and the adjacent property line intended for the use of pedestrians.
P. “State” means the State of Oregon.
Q. “Street” includes all streets, highways, avenues, lanes, alleys, courts, places, squares, curbs or other public ways in this city which have been or may hereafter be dedicated and open to public use, or such other public property as designated in any law of this state.
R. “Tenant” and “occupant”, applied to a building or land, includes any person who occupies the whole or a part of such building or land, whether alone or with others.
S. “Written” includes printed, typewritten, mimeographed, multigraphed or otherwise reproduced in permanent visible form.
T. “Year” means a calendar year. [Ord. 1277 § 1, 1993]
§1.2.2 Title of office.
Use of the title of any officer, employee, department, board or commission means that officer, employee, department, board or commission of the City. [Ord. 1277 § 2, 1993]

§1.2.3 Interpretation of language.
All words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning. [Ord. 1277 § 3, 1993]

§1.2.4 Grammatical interpretation.
The following grammatical rules shall apply in the ordinances of the city, unless it is apparent from the context that a different construction is intended:
A. Gender. Each gender includes the masculine, feminine and neuter genders.
B. Singular and Plural. The singular number includes the plural and the plural includes the singular.
C. Tenses. Words used in the present tense include the past and the future tenses and vice versa, unless manifestly inapplicable. [Ord. 1277 § 4, 1993]

§1.2.5 Acts by agents.
When an act is required by an ordinance, the same being such that it may be done as well by an agent as the principal, such requirement shall be construed to include all such acts performed by an authorized agent. [Ord. 1277 § 5, 1993]

§1.2.6 Prohibited acts include causing and permitting.
Whenever in the ordinances of the city, an act or omission is made unlawful, it shall include causing, allowing, permitting, aiding, abetting, suffering or concealing the fact of such act or omission. [Ord. 1277 § 6, 1993]

§1.2.7 Computation of time.
Except when otherwise provided, the time within which an act is required to be done shall be computed by excluding the first day and including the last day, unless the last day is Sunday or a holiday, in which case it shall also be excluded. [Ord. 1277 § 7, 1993]

§1.2.8 Construction.
The provisions of the ordinances of the city, and all proceedings under them are to be construed with a view to effect their objects and to promote justice. [Ord. 1277 § 8, 1993]

§1.2.9 Repeal shall not revive any ordinances.
The repeal of an ordinance shall not repeal the repealing clause of an ordinance or revive any ordinance which has been repealed hereby. [Ord. 1277 § 9, 1993]

§1.2.10 Publication requirements.
All notices and other matters required by the ordinances of the City of Independence to be published in the City official newspaper may be published in any newspaper printed and in general circulation in the City of Independence, Oregon, and it shall be unnecessary that
such notices or other matters shall be published in a newspaper officially designated as the City official newspaper.

§1.2.11 Adoption of parliamentary procedure.
Sturgis Standard Code of Parliamentary Procedure is hereby adopted to govern the proceedings of Council, its committees, and advisory boards and commissions for all procedures not expressly addressed by City Charter, ordinance, or resolution.

§1.2.12 Quorum.
When a quorum is not present at the time set for a meeting or when a quorum has been present and a meeting has commenced but a quorum is no longer present, any member may move for a call of the house. The motion shall be put in the following form: "I move for a call of the house." That motion shall take precedence over all other business. The motion need not be seconded, but it is subject to discussion. At least three Councilors present must concur for the call of the house motion to pass. If the motion is passed, then all unexcused absent Councilors shall be escorted back to the meeting.

§1.2.13 Resolutions.
Resolutions may be proposed by the Mayor, any Councilor, or the City Manager for adoption by Council. Resolutions shall be submitted in writing to all Councilors.

§1.2.14 Ordinance introduction and reading.
A proposed ordinance is introduced by its first reading. The first reading shall be by reading by title and reference to the full text of the ordinance in the Council chambers but, upon request of three Councilors, the first reading of a proposed ordinance shall be a reading of the ordinance in its entirety. A motion for the adoption of the ordinance shall constitute a call for the reading of the ordinance. The ordinance shall not be read in full if a copy of the ordinance is provided to the Mayor and each Councilor prior to the meeting and a copy is available for the public to review in the meeting.

§1.2.15 Ordinance second reading.
According to the Independence Charter, each proposed ordinance shall receive two readings unless a unanimous vote of the Councilors present approves the ordinance after the first reading. If there is a dissenting vote, the second reading shall not take place until the next official Council meeting. Voting on the question of passage of the ordinance may follow immediately after the second reading.

§1.2.16 Ordinance amendment.
A proposed ordinance may be amended after any reading. Amendment of an ordinance does not require the repeating of any reading.

§1.2.17 Ordinance numbering.
The City Recorder shall number each of the ordinances passed in the order of their passage.
§0.0.1 Adopting city seal.
It is ordained and declared that the seal which is on file in the city clerk's office for public inspection, shall be and the same is adopted as the seal of the city and that the same shall be used in all things and matters whatsoever in which the seal of the city is and should be used. [Prior code § 11.110]
Chapter 1.3 GENERAL ENFORCEMENT MATTERS

§1.3.1 General penalty.
A. Any person violating any of the provisions or failing to comply with any of the mandatory requirements of any ordinance of the city is guilty of a violation. Except in cases where a different punishment is prescribed by any ordinance of the city, any person convicted of a violation under the ordinance of the city shall be punished by a fine not to exceed one thousand dollars.

B. Each such person is guilty of a separate offense for each and every day during any portion of which any violation any provision of the ordinances of the city is committed, continued or permitted by any such person, and the person is punishable accordingly. [Ord. 1278 § 1, 1993]

§1.3.2 Right to jury trial.
Every person charged with an offense defined and made punishable by a jail term shall have the right to trial by jury in the Municipal Court. This Section shall not be construed to deny a right or jury trial in those matters that have been deemed as requiring a jury trial by the State or Federal courts.

§1.3.3 Demand for jury trial.
The right to a jury trial shall be exercised by giving notice in writing to the Municipal Judge that a trial by jury is demanded. Such notice shall be signed by the defendant or the defendant's attorney and shall be effective only if given not less than seven days before the date set for trial of the case.

§1.3.4 Contempt for failure to appear for jury service - Penalty.
Any person summoned to jury service as provided in this ordinance who fails to appear as directed in said summons is in contempt of court and shall be punished, upon conviction, by a fine not exceeding $25.00.

§1.3.5 Right to counsel.
If a defendant appears in the Municipal Court for arraignment on a misdemeanor without counsel, the defendant shall be informed by the Court that it is his or her right to have counsel before being arraigned and shall be asked if she or he desires the aid of counsel.

§1.3.6 Appointment of counsel.
If, upon arraignment of a person accused in the Municipal Court of a violation of an ordinance of this City, the person being arraigned appears without counsel, the Court shall appoint suitable counsel to represent the person if:

1) The accused requests aid of counsel.
2) The accused makes a verified financial statement and provides other information in writing under oath showing his or her lack of ability to obtain counsel and provides any other information required by the Court as to his or her inability to obtain counsel.
3) It appears to the Court that the accused is without means and is unable to obtain counsel.
§1.3.7 Payment of counsel.

1) Counsel appointed for representation in the Independence Municipal Court shall, if the Court so orders, be paid necessary disbursements and fee for services as per rule of the Municipal Court Judge.

2) Counsel appointed for representation in the Circuit Court for the State of Oregon shall, if the Court so orders, be paid necessary disbursements and fee for services of $150.00 per case.

3) Upon completion of all services by the attorney or attorneys appointed under this ordinance, the attorney or attorneys shall submit to the Court an affidavit containing an accurate statement of all reasonable expenses of investigation and preparation paid or incurred, supported by appropriate receipts or vouchers.

The Court shall thereupon enter an order directing the City Manager to pay to the attorney or attorneys the amount of those expenses and the appropriate fees provided in this ordinance as may be approved by the Court.
§1.4.1 Authorizing Municipal Judge.

The Municipal Judge is hereby authorized to issue administrative search warrants upon application by the City Attorney, Building Official or Fire Chief, or their duly authorized representatives, acting in the course of their official duties, whenever an inspection or investigation of any place is required or authorized by any municipal ordinance or regulation. The warrant is an order authorizing the inspection or investigation at a designated location.

§1.4.2 Grounds for issuance.

1) A search warrant shall be issued only upon cause, supported by affidavit, particularly describing the applicant's status in applying for the warrant hereunder, the ordinance or regulation requiring or authorizing the inspection or investigation, the location to be inspected or investigated, and the purpose for which the inspection or investigation is to be made, including the basis upon which cause exists to inspect. In addition, the affidavit shall contain either a statement that entry has been sought and refused or facts or circumstances reasonably showing that the purposes of the inspection or investigation might be frustrated if entry were sought without a warrant.

2) Cause shall be deemed to exist if reasonable legislative or administrative standards for conducting a routine, periodic or area inspection are satisfied with respect to the location or there is probable cause to believe that a condition of nonconformity with a health, public protection or safety ordinance, regulation, rule, standard or order exists with respect to the particular location, or an investigation is reasonably believed to be necessary in order to determine or verify the condition of the location.

§1.4.3 Procedure for issuing search warrant.

1) Before issuing any search warrant, the Municipal Judge shall examine under oath the applicant and any other witness and shall be satisfied of the existence of grounds for granting such application.

2) If the Municipal Judge is satisfied that cause for the inspection or investigation exists and that the other requirements for granting the warrant are satisfied, she or he may issue the warrant, particularly describing the same and title of the person or persons authorized to execute the warrant, the place to be entered and the purpose of the inspection or investigation. The warrant shall contain a direction that it be executed on any day of the week between the hours of 8:00 a.m. and 6:00 p.m., or where the Municipal Judge has specially determined upon a showing that it cannot be effectively executed between those hours, that it be executed at any additional or other time of the day or night.

§1.4.4 Execution of search warrant.

1) Except as provided in subsection 2) of this Section, in executing a search warrant, the person authorized to execute the warrant shall, before entry, make a reasonable effort to present credentials, authority and purpose to an occupant or person in possession of the location designated in the warrant and show her or him the warrant or a copy thereof upon request.

2) In executing a search warrant, the person authorized to execute the warrant need
not inform anyone of his or her authority and purpose, as prescribed in subsection 1) of this Section, but may promptly enter the designated location if it is at the time unoccupied or not in the possession of any person or at the time reasonably believed to be in such condition.

3) A peace officer may be requested to assist in the execution of the warrant.

4) A warrant must be executed and returned to the Municipal Judge by whom it was issued within 10 days from its date, unless such Municipal Judge before the expiration of such time, by endorsement thereon, extends the time for five days. After the expiration of the time prescribed by this subsection, the warrant unless executed is void.
Chapter 1.5 INITIATIVE AND REFERENDUM

Sections:
1.5.01 Prospective Petition
1.5.02 Ballot Title; Appeal
1.5.03 Petition and Circulation
1.5.04 Filing and Percentage Requirements; Verification
1.5.05 Measures Referred by Council
1.5.06 Adoption or Election
1.5.07 Election Notice and Procedure

§1.5.1 Prospective Petition
A. Before circulating a petition proposing an initiative or referendum for city legislation, the chief petitioners must file a prospective petition with the recorder. The recorder will provide the form showing:
   1. The signatures, printed names and mailing addresses of at least two and not more than three chief petitioners, all of whom must be city electors;
   2. For initiative petitions, the text of the city legislation proposed for adoption, and, where applicable, the title, ordinance number, and charter or code section numbers proposed for amendment, revision or repeal;
   3. For referendum petitions, the text of the city legislation proposed for referral, and where applicable, the title, ordinance number or code section numbers of the city legislation proposed for referral; and
   4. Whether one or more persons will be paid for obtaining signatures on the petition.
B. The recorder must date and time stamp any prospective petition filed.
C. After the recorder determines that the prospective petition complies with this subchapter and state law, the recorder will certify to one of the chief petitioners that petitions may be circulated among city electors in accordance with section 1.05.03.

§1.5.2 Ballot Title; Appeal
A. Prior to the end of the fifth business day after a prospective initiative petition is filed and meets all legal requirements, the recorder will review the text of the proposed initiative to determine if it complies with the single subject requirement and if it proposes city legislation.
B. If the proposed text does not meet the requirements of subsection A, the recorder will notify a chief petitioner by certified mail, return receipt requested, that the prospective petition does not meet the single subject or city legislation requirement.
C. Any city elector dissatisfied with the recorder’s determination may file a petition for review in circuit court. The petition for review must be filed not later than the seventh business day after the written determination by the recorder.
D. If the proposed initiative meets the requirements of subsection A or a referendum petition is certified for circulation, the recorder will send two copies of the prospective petition to the city attorney. The city attorney has five business days after receipt to prepare a ballot title for the proposed measure and an explanatory statement for the voter’s pamphlet. The ballot title must conform to the requirements of state law.
1. The explanatory statement must consist of an impartial, simple and understandable statement of not more than 500 words explaining the measure and its effect.

2. After preparing the ballot title and explanatory statement, the city attorney will return one copy of the prospective petition, ballot title and explanatory statement to the recorder and one copy to one of the chief petitioners.

E. After receiving a ballot title from the city attorney, the recorder must publish in a newspaper of general circulation in the city a notice of receipt of the ballot title. The notice must state that a city elector may file a petition for review of the ballot title not later than the date referred to in subsection F.

F. After receiving the prospective petition, ballot title from the city attorney, the recorder must write the date of receipt on it. Within seven business days after that date, any city elector may petition in circuit court to challenge the ballot title prepared by the city attorney. After the seven-day period, or following the final adjudication of any legal review, the recorder must certify the ballot title as prepared by the city attorney or as prescribed by the court to a chief petitioner.

G. Any city elector filing a petition of review with the circuit court must file a copy of the challenge with the recorder not later than the end of the business day next following the date the petition is filed with the circuit court. This requirement does not invalidate a petition that is timely filed with the circuit court.

H. The procedures in subsections A through G also apply to referendum measures. However, the completion of these procedures is not a prerequisite to the circulation of petitions for referendum measures under section 1.05.03. Ballot titles need not be stated on petitions circulated to propose referendum measures.

§1.5.3 Petition and Circulation Requirements

A. After the requirements of section 1.05.01 (C) are met for referendum petitions and after the requirements of section 1.05.02 (F) are met for initiative petitions, the chief petitioners may circulate a petition for the measure among city electors. The petition (cover sheet and signature sheet) must conform to the requirements of state law.

B. The petition identification number will be assigned by the recorder.

C. Each signature sheet of a referendum petition must contain the title, ordinance number or code section numbers of the city legislation proposed by referral and the date it was adopted by the council.

D. No signature sheet may be circulated by more than one person. Each signature sheet must contain a statement signed by the circulator that each elector who signed the sheet did so in the circulator’s presence, and, to the best of the circulator’s knowledge, each such elector is a legal elector of the city and that the information placed on the sheet by each elector is correct.

§1.5.4 Filing and Percentage Requirements, Verification

A. The recorder will accept for signature verification only petitions that comply with the requirements of this subchapter and other applicable law.

B. No petition may be accepted for filing unless it contains at least the required number of verified signatures to submit the measure to the electors, as prescribed by subsections G, H or I.
C. No initiative petition may be accepted for signature verification more than six months after the date of the recorder’s certification under section 1.05.02F.

D. Any petition to refer legislation adopted by the council must be submitted for signature verification not more than 30 days after the council’s adoption of the legislation.

E. An initiative or referendum petition may not be accepted for signature verification if it contains less than 100 percent of the required number of signatures.

F. Upon the acceptance of a petition, the recorder must verify the signatures. The verification may be performed by random sampling in a manner approved by the Secretary of State. Within 30 days after the recorder’s acceptance of a petition, the recorder must certify to the council whether the petition contains a sufficient number of qualified signatures to require the submission of the proposed measure to city electors. The recorder must state in the certificate the number of qualified signatures prescribed by subsections G, H or I to require the proposed city legislation to be submitted to city electors. The petition is considered filed as of the date of the recorder’s certification.

G. An initiative measure proposing the amendment, revision or repeal of the city charter will be submitted to the electors if the number of qualified signatures on the petition equals or exceeds 15 percent of the total number of registered voters in the city on January 1 of the calendar year the petition is filed.

H. An initiative measure proposing the adoption, amendment or repeal of any other city legislation will be submitted to the electors if the number of qualified signatures on the petition equals or exceeds 15 percent of the total number of registered voters in the city on January 1 of the calendar year the petition is filed.

I. A referendum measure will be submitted to the electors if the number of qualified signatures on the petition equals or exceeds 10 percent of the total number of registered voters in the city on January 1 of the calendar year the petition is filed.

§1.5.5 Measure Referred by Council

A. The council may directly refer to the electors any ordinance or any proposed ordinance, property tax, bond or other proposition or question. It may also directly refer to the electors any proposed amendment, revision or the repeal of the city charter.

B. The city attorney will prepare a ballot title and explanatory statement that conforms to the requirements of state law. The council will certify and file the ballot title and explanatory statement with the recorder.

C. The recorder will publish in a newspaper of general circulation in the city a notice of receipt of the ballot title including notice that an elector may file a petition for review of the ballot title not later than the date set in subsection D.

D. Any city elector may petition the circuit court to challenge the ballot title certified by the council. Such petition must be filed with the circuit court within seven business days of council filing of the ballot title. Any person filing a petition of review with the circuit court must file a copy of the challenge with the recorder not later than the end of the business day next following the date the petition is filed with the circuit court. This requirement does not invalidate a petition that is timely filed with the circuit court.

E. A measure will be considered filed under this section as of the date the council delivers its certified ballot title to the recorder.
§1.5.6 Withdrawal, Adoption or Election
A. The chief petitioners may withdraw a verified petition at any time before council action to adopt the proposed legislation or submit it to the electors. Any withdrawal must be either by written or oral declaration made at a council meeting and entered in the minutes of that meeting.
B. Unless a petition is withdrawn, after receiving a certification from the recorder that a petition has sufficient signatures to require the proposed city legislation to be submitted to the electors under section 1.05.05 (F), the council may either adopt the proposed legislation by ordinance, or call an election to submit the legislation to the electors. The council may also call an election to submit matters to the electors upon referral under section 1.05.05.
C. The council must call the election on the next election date available under state law that is not sooner than the 90th day after the date of the recorder’s certificate of sufficient signatures. For a council referral, the election on the referendum of city legislation may be held on the next election date available under state law.

§1.5.7 Election Notice and Results
A. Notice of elections on measures submitted to city electors on regular or special election dates must be given in accordance with state law.
B. Measures referred by the council will be designated on the ballot: "Referred to the Voters by the City Council."
C. Measures proposed by referendum petition will be designated on the ballot: "Referred by Petition."
D. Measures proposed by initiative petition will be designated on the ballot: "Proposed by Initiative Petition."
E. The recorder must certify the election results to the council at the first council meeting after the results are certified by the county clerk.
F. A measure adopted by the electors takes effect 30 days after the election, unless the measure expressly provides a different effective date. [Ord. 1461]
Chapter 2.1 CITY COUNCIL

§2.1.1 City Council - Meetings.
The time of all regular meetings of the city council of the city is fixed as the second and fourth Tuesday in each month at seven thirty p.m. and seven thirty a.m. (7:30 a.m.) respectively. The place of all regular meetings of the city council is established as the council chamber in the Independence City Hall. [Prior code § 10.110; Ord. 1305 §1 Ord. 1340 §1]

§2.1.2 Special meetings.
Special meetings shall be held at the time and place designated in the call for such special meetings. [Prior code § 10.150]

§2.1.3 Method of Nomination.
Nomination for office shall be by
A. Petition. [Ord. 1294]
§2.2.1 Delegation powers.
That the City Manager of the City of Independence be and that she or he is hereby authorized to delegate to any employee of the City who is under the direct supervision and control of the City Manager any and all administrative duties imposed upon the City Manager by ordinances, resolutions, or policies of the City of Independence.

This ordinance shall be liberally construed to the end that the City Manager shall not be required to personally perform the administrative duties and functions for which she or he is held responsible under the terms of the ordinances, resolutions, and policies of the City.

Any acts done by any employee who is under the direct supervision and control of the City Manager and done pursuant to a delegation of authority given by the City Manager to said employee shall be deemed to be done by the City Manager of the City of Independence as required by the ordinances, resolutions, and policies thereof.

This ordinance shall not be construed to make the City Manager liable for any damage or injury caused by a negligent or willful act or omission of any such employee.
Chapter 2.3  PERSONNEL

§2.3.1 Adoption of personnel system.
In order to establish an equitable and uniform procedure for dealing with personnel matters; to attract to municipal service the best and most competent persons available; to assure that appointments and promotions of employees will be based on merit and fitness; and to provide a reasonable degree of security for qualified employees, the following personnel system is hereby adopted.

§2.3.2 Personnel Director.
The City Manager shall be the Personnel Director. The City Manager may delegate any of the powers and duties to any other officer or employee of the City or may recommend that such powers and duties be performed under contract.

§2.3.3 Adoption and amendment of the rules.
The personnel rules and regulations as prepared and published by the Personnel Director, on January 1, 1999, are approved. The Personnel Director shall review and revise the personnel rules and regulations from time to time and shall report any revisions of these rules to Council.

§2.3.4 Abolition of position.
Whenever in the judgment of Council it becomes necessary, Council may abolish any position or employment in the competitive service. Employees transferred, demoted, or laid off because of the abolishment of positions shall not be subject to written charges, nor shall they have the right of appeal in such cases.

§2.3.5 Improper political activity.
The political activities of City employees shall conform to pertinent provisions of State law.

Chapter 2.4  Reserved for Expansion
§2.5.1 Purpose.
The purpose of this chapter is to establish organizational requirements for all commissions, boards and committees, whether permanent or temporary in nature. For purposes of this chapter, the terms “commission”, “board” or “committee” shall all mean the same thing and may be used interchangeably. [Ord. 1248 § 1 (part), 1993: prior code § 19.005]

§2.5.2 Establishment of commissions.
All permanent boards, commissions or committees shall be created by ordinance. Temporary or ad hoc boards shall be created by resolution. The creating legislation shall specify the number of members, the powers and duties of the members, any enabling or regulatory authority required by each particular appointed body and, if temporary, the duration of the Board. [Ord. 1248 § 1 (part), 1993: prior code § 19.010]

§2.5.3 Organization.
A. Each commission shall consist of an odd number of members appointed by the mayor and approved by the council. There shall also be appointed to those boards so specified by ordinance a city council liaison who shall have no vote and who shall not be counted for quorum requirements.
B. Each commission shall elect from the voting members a chair, vice-chair and secretary, all of whom shall serve a term of one year. Officers may be reelected for up to three successive terms. The secretary shall keep accurate written minutes of all proceedings of the commission, copies of which shall be submitted to the city council.
C. Members shall receive no salary or compensation in any form for their work in connection with the activities of a board, committee or commission. [Ord. 1248 § 1 (part), 1993: prior code § 19.020]

§2.5.4 Residency.
All members shall be residents of Independence unless specifically permitted by ordinance. In no case shall nonresident members comprise a majority or more of appointed members. [Ord. 1248 § 1 (part), 1993: prior code § 19.025]

§2.5.5 Number and place of meetings.
Each board shall meet at least once a month, unless specified by ordinance. Each meeting shall be held at a regular day, time and public place. [Ord. 1248 § 1 (part), 1993: prior code § 19.030]

§2.5.6 Term of office.
Each member shall be appointed to a term of office for a period of three years or until their successors are appointed and qualified, and their terms shall be staggered so that the term of office of not more than a majority will expire in the same year. [Ord. 1248 § 1 (part), 1993: prior code § 19.035]

§2.5.7 Vacancy and appointment.
Upon the death, resignation or removal by disqualification or expiration of the term of office
of any member of the commission, his or her successor shall be appointed in the manner of the original appointment by the mayor, subject to ratification by the city council, and such member shall hold his or her membership on the commission for the unexpired term to which he or she is appointed. [Ord. 1248 § 1 (part), 1993: prior code § 19.040]

§2.5.8 Quorum, votes and abstentions.
A. A quorum consists of a majority of the members of the board and a final decision may be made by an affirmative or negative vote of a majority of the members present.
B. Abstentions. The reason for an abstention from voting must be publicly stated and recorded in the minutes. When a member abstains from voting, that vote does not count as either an affirmative or negative vote. [Ord. 1248 § 1 (part), 1993: prior code § 19.045]

§2.5.9 Reporting requirements.
At the request of the city council a board shall file with the council a report of that board's activities for the previous year. [Ord. 1248 § 1 (part), 1993: prior code § 19.050]

§2.5.10 Removal of members.
Any member of any board or commission who shall fail to attend a total of thirty-three percent of the regular meetings of the board or who shall miss three consecutive meetings in any one calendar year shall be disqualified from service on the commission and shall be replaced in the manner prescribed above. [Ord. 1248 § 1 (part), 1993: prior code § 19.055]

Chapter 2.6 Reserved for Expansion
Chapter 2.7 CITY CONTRACTS. Repealed by Ordinance #1496.
See ordinance 1496 for complete copy of Public Contracting, adopted 06-14-2011.

Chapter 2.8 Reserved for Expansion
Chapter 2.9 Reserved for Expansion
Chapter 2.10  LIBRARY AND LIBRARY BOARD

§2.10.1 Library board - Established.

A. The Independence public library continues to be established pursuant to ORS 357.400 through 357.621. The library board shall consist of seven members and a nonvoting council liaison who shall be residents of the city or residents of the county area surrounding the city who have Independence as their post office address. The city librarian shall serve as secretary to the board and keep the record of its actions. The board may establish and alter rules relating to its government and procedure, subject to the approval of the council.

Each member shall be appointed to a term of office for a period of four years or until their successors are appointed and qualified, and their terms shall be staggered so that their term of office of not more than a majority will expire in the same year. [Ord. 1339]

B. Duties. The library board shall:

1. Keep informed about current trends in library administration;
2. Study library growth and needs in Independence and its vicinity;
3. Develop and recommend to the council long-range plans for library services and facilities consistent with city priorities and with state, regional and national goals pertinent to libraries;
4. Recommend sites for library facilities to the council;
5. Participate in the planning for library facilities;
6. Recommend to the council types of library services for the city and its vicinity;
7. Investigate sources of funding for library services and facilities;
8. Recommend to the council policies for the acceptance and use of gifts for library purposes;
9. Participate in the annual budget process of the city as that process pertains to the library;
10. Recommend to the council policies conducive to efficient and effective operation of the library;
11. Review and recommend to the council terms for contracts and working relations with other public agencies regarding library service;
12. Submit reports as requested by the council.

C. Internal Administrative Policies and Procedures. The City Manager shall be the fiscal and internal administrative agent for the library which shall operate in conformance with city administrative procedures including the following:

1. Personnel, including recruitment, selection, classification and pay for department staff;
2. Personnel matters including discipline and grievances;
3. Receipts, disbursements and accounting for moneys;
4. Maintenance of general books, cost accounting records and other financial documents;
5. Purchasing;
6. Budget administration;
§2.11.1 Parks and Recreation Board

A. Established. A City Parks and Recreation Board is hereby established.

B. Dual Purpose. The Parks and Recreation Board (Board) shall serve as the City of Independence Tree Advisory Board.

C. Membership. The Board shall consist of seven members and a non-voting City Council liaison, to be appointed by the Mayor. Members on the Board may live, work, or own property in the City; however, a majority of the Board shall at all times live in the City.

D. Duties.
   1. Parks and Recreation Board Duties. The Board shall make regular inspections of the park facilities of the City and shall make recommendations to the Council with respect to the development, improvement, extension and promotion of all park facilities.
   2. Tree Advisory Board Duties. In addition to those duties established by IMC §12.13, it shall be the responsibility of the Board to study, investigate, counsel, develop and/or update annually a written plan for the care, preservation, pruning, planting, replanting, removal of disposition of trees and shrubs in parks, along streets, and in other public areas. Such plan will be presented annually to the City Council and, upon its acceptance and adoption by Council resolution, shall constitute the official Comprehensive City Tree Plan for the City of Independence. [Ord. 1516 § 3, 2012; Ord. 1284 § 3, 1993: Ord. 1145 § 1, 1986; prior code Ch. 26]
Chapter 2.12  CULTURAL AWARENESS COMMISSION

§2.12.1 Established.
A. The Independence Cultural Awareness Commission is continued.
B. The commission shall consist of nine members and a nonvoting city council liaison. Three members may reside outside the city, although priority for appointment of new members shall be given to those qualified applicants living within the city. The membership of the commission shall be reflective of the ethnic, racial and cultural diversity of the community. Members of the commission shall be persons who have actively demonstrated an interest in promoting the goals of cultural awareness.
C. Duties. The duties of the commission are to foster a community spirit which promotes human dignity, harmony and understanding within and among the various ethnic groups which make up the citizenry of the greater Independence community. The commission shall serve in an advisory capacity to the mayor and city council on matters relating to cultural interface with the community. The commission shall also be responsible for ongoing programs and activities to promote the enhancement of cultural awareness and cross-cultural communication for the community. [Ord. 1284 § 4, 1993]
Chapter 2.13  INDEPENDENCE TRAFFIC SAFETY COMMISSION

§2.13.1 Established.
B. The Commission shall consist of seven members, and a non-voting City Council liaison. Three members shall be residents of the City, one member may be either a resident of the City or employed within the City and one each shall be from the Independence Police Department, the Independence Public Works Department and the Independence Community Development Department. The Commission shall meet as the need arises but not less than twice a year. [Amended by Ord. 1432 § 1, 2004]
C. Duties. It is the duty of the Commission to research, develop and recommend implementation of coordinated traffic safety programs to meet local needs, to act in an advisory capacity to the City Council and the City Manager in the coordination of traffic safety activities in the City and to foster public knowledge in support of traffic law enforcement and traffic engineering problems. [Ord. 1463 § 1, 2008; Ord. 1284 § 5, 1993; Ord. 1149 § 2, 1986; prior code Ch. 22]
Chapter 2.14  MUSEUM COMMISSION

§2.14.1 Established. Pursuant to ORS 358.315 and 358.320 a museum commission is continued. The commission shall consist of seven members and a non-voting city council liaison. Two members may reside outside the city. The commission shall have all the powers granted it by ORS 358.365. [Ord. No. 1390 § 1, 2001; Ord. 1284 § 6, 1993: prior code Ch. 24]
§2.15.1 Established.
A. There is continued a city Planning Commission for the City of Independence.
B. Membership. The commission shall consist of seven members, not more than two of whom may be nonresidents of the city.
C. Qualifications. No more than two voting members of the commission shall be engaged 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 is engaged principally in the buying, selling or developing of real estate for profit. No more than two voting members shall be engaged in the same kind of business, trade, occupation or profession.
D. Conflicts of Interest.
   1. A member of the commission shall not participate in any commission proceeding or action in which any of the following has a direct or substantial financial interest:
      a. the member or the spouse, brother, sister, child, parent, father-in-law, mother-in-law, any business in which the member is then serving or has served within the previous two years, or
      b. any business with which the member is negotiating for as has an arrangement or understanding concerning prospective partnership or employment.
   2. Any actual or potential interest shall be disclosed at the meeting of the commission where the action is being taken.
E. Duties. The commission has all the powers that are now or hereafter granted to it by ordinances of the city or by laws of the state. The commission shall control the subdivision of land and land use actions and may make recommendations to the council, to public officials, and to individuals regarding land use, location of thoroughfares, public buildings, parks and other public facilities and regarding any other matter relating to the planning and development of the city and the surrounding area. The commission may make studies, hold hearings, and prepare reports and recommendations on its own initiative or at the request of the council. All recommendations and suggestions made to the council shall be in writing. [Ord. 1284 § 7, 1993: prior code Ch. 21]
Chapter 2.16  HISTORIC PRESERVATION COMMISSION*

§2.16.1 Established.
A city historic preservation commission is continued. The commission shall consist of seven members and one nonvoting city council liaison. The duties of the commission shall be as set forth in Chapter 15.8 of this Code. [Ord. 1284  8, 1993]

- Editor’s Note: See Ch. 15.8 for additional code provisions regarding historic preservation.

Chapter 2.17  Reserved for Expansion
Chapter 2.18  HOUSING ADVISORY AND APPEALS BOARD

§2.18.1 Housing Advisory and Appeals Board Created.
A. There is hereby created a permanent Housing Advisory and Appeals Board consisting of five members who are qualified by experience and training to pass upon matters pertaining to health, livability, building safety and construction. At least three members shall be qualified by experience and training to pass upon matters pertaining to building construction. The building official shall be an ex officio member and shall act as secretary to said board but shall have no vote upon any matter before the board.
B. One member shall initially be appointed for a period of one year, two members initially appointed for a period of two years and two members initially appointed for three years. Thereafter each member shall be appointed to a term of office for a period of three years. Members may be reappointed for subsequent terms. [Ord. 1326, 02-06-96]

§2.18.2 Residency Requirements.
Three of the five members must be residents of the city. [Ord. 1326, 02-06-96]

§2.18.3 Meeting Requirements.*
There shall be no regular monthly meetings of the Board. The secretary of the Board shall call meetings, send notices and hold hearings pursuant to the applicable uniform code under which the action is being administered. [Ord. 1326, 02-06-96]

§2.18.4 Jurisdiction of the Board.
The Housing Advisory and Appeals Board shall have jurisdiction to hold hearings and hear appeals on all matters arising under the provisions of the State of Oregon Uniform Building Code, Uniform Housing Code, Dangerous Building Abatement Code and all construction codes adopted in Chapter 15.08 of the Independence City Code. [Ord. 1326, 02-06-96]

§2.18.5 Appeals.
Appeals shall be made, heard and decided in accordance with the applicable provisions of the applicable construction codes adopted in Chapter 15.08 of the Independence City Code. [Ord. 1326, 02-06-96]

§2.18.6 Appointment of a Hearings Officer.
The city has the authority to appoint a Hearings Officer to hear any or all contested cases. If a hearings officer is so appointed, he or she shall follow the procedural requirements specified in the pertinent construction code under which the matter was filed. [Ord. 1326, 02-06-96]

Chapter 2.19  Reserved for Expansion
§2.20.1 Tourism and Event Commission Established.

A. There is hereby established a permanent Tourism and Event Commission (“Commission”) for the City of Independence.

B. The Commission’s broad purpose is to assist in the provision of the City’s economic development and community revitalization services through enhanced sustainable tourism and event services.

C. Organization.

1. Membership. The Commission shall consist of, of nine (9) members and a non-voting city council liaison. Membership on the Commission shall consist of one representative each from the Independence Downtown Association, Chamber of Commerce, Independence Days Commission, Hop & Heritage Festival, Mexican Fiesta and other community events as recognized by the City Council, plus four (4) members at large. Members of the Commission may reside outside the city limits of Independence; however, a majority of the Commission shall at all times consist of persons residing within City limits. All Members shall be appointed by the Mayor and all shall have equal voting privileges.

   One (1) member-at-large shall be initially appointed for a period of one year, one (s) member-at-large initially appointed for a period of two years and two (2) members-at-large initially appointed for three years. Thereafter, each member shall be appointed to a term of office for a period of three years. Members-at-large may be reappointed for subsequent terms.

2. Officers. The Commission shall elect from the voting members a chair, vice-chair and secretary, all of whom shall serve a term of one year. Officers may be reelected for up to three successive terms. The secretary shall keep accurate written minutes of all proceedings of the Commission, copies of which shall be submitted to the City Council.

3. Staff Liaisons. The City Manager may also designate up to two staff members to sit as non-voting members of the Commission. Staff support for the Commission shall be provided by the Economic Development Department, until replaced by the City Manager.

D. Powers and Duties. The Commission has all the powers that are now or hereafter granted to it by City ordinance or state law. The primary duty of the Commission is to promote the City of Independence as a tourist destination and to perform strategic planning to meet that goal. The Commission shall also provide support to various city events/Event Commissions.

The Commission shall:

1. Develop a plan to meet the following goals: Sponsorship, Marketing, Branding and Publicity;

2. Provide coordination of Amphitheater Operations, including the Summer Series;
3. Coordination of Visitor Center operations as needed;
4. Provide oversight in the areas of Sponsorship, Marketing, Branding and Publicity, as relating to tourism;
5. Provide an annual report to City Council relating to tourism & events activities;
6. Develop a long-term financial sustainability plan for City tourism and events;
7. Provide a representative to the city Budget Committee to testify or provide information relating to tourism and city events; and
8. Work with and assist in coordination of efforts with local organizations, including MINET, IDA, M-I Chamber of Commerce, GIBI/Event Center.
9. Develop rules for its own operations consistent with City policy.

E. Meetings and Record Keeping. The Commission shall meet regularly no less than quarterly and may conduct special meetings as needed. Meeting notice shall be as proscribed by State Law and City Charter and Code. All meetings are subject to the Oregon Open Meetings and Public Records laws. [Ord. 1503 § 1, 02-10-12]
Chapter 2.21 ABANDONED, UNCLAIMED, SURPLUS PROPERTY

§2.21.1 Chapter applicability.
This chapter shall apply to abandoned, unclaimed and surplus property now in the possession of the city as well as to abandoned, unclaimed and surplus property hereinafter coming into the custody of the city or any of its officers or employees. [Prior code § 51.180]

§2.21.2 Definitions.
A. “Found property” means money or personal property of any description other than contraband, firearms used in commission of a crime, other property being held as evidence in any civil or criminal proceeding, animals or motor vehicles, the true owner of which cannot be readily ascertained, and which is:
   1. Found by any officer or employee of the city in or about any vehicle, structure, park, lot, street or other place or premises owned by or under control of the city; or
   2. Surrendered to an officer or employee of the city by any person reporting it to have been found at any place.
B. “Surplus property” means any personal property belonging to and owned by the city, which has been determined by the City Manager to be of no further use to the city.
C. “Unclaimed motor vehicle” means any motor vehicle taken into custody of the city for any reason and not claimed after notice under Section 2.21.10.
D. “Unclaimed property” means money or personal property of any description other than contraband, firearms used in the commission of a crime, animals, motor vehicles and which has, for any reason, come into the custody, actual or constructive, of the city and is no longer required to be held by the city for any purpose, and remains unclaimed for thirty days after notice to owner or other interested person under Section 2.21.6. [Prior code § 51.110]

§2.21.3 Surrender of found property to city.
A. Any person who surrenders found property, valued at less than $100.00, to the custody of any officer or employee of the city thereby surrenders and waives any claim of right, title or interest therein which the person might otherwise assert. [Ord. 1403, § 1 2001; Prior code § 51.115]

§2.21.4 Records and reports.
The officer or employee of the city into whose custody found property first comes shall deliver to the custody of the police department the property together with a report. Such report shall set forth such of the following information as is known to the author: the date, time and place of the finding; the date and time the property came into the custody of the city; a description of the property; the location where the property is kept.
A. When found property comes into the custody of the police department, the police department shall cause an identification tag to be attached to the property.
B. Such property shall be held by the city for a minimum period of thirty days after the property comes into the custody of the city, during which time the owner may redeem the property by satisfactorily establishing ownership thereof, and payment of any costs under Section 2.21.7.
C. Found property which remains unclaimed and not redeemed after the redemption
§2.21.5 Surplus property.

A. Determination that personal property is surplus and of no further use to the city is within the exclusive jurisdiction of the City Manager.

B. Disposition of surplus property is within the exclusive jurisdiction of the City Manager and shall be disposed of in the same manner as unclaimed property under Section 2.21.6. [Prior code § 51.125]

§2.21.6 Unclaimed property.

A. Any officer or employee of the city who has, for any reason, the actual or constructive custody of unclaimed property shall deliver such property to be held under the jurisdiction of the department head. The property shall then immediately be delivered to the custody of the police department.

B. Within ten days of the property coming into the custody of the police department, the department shall make diligent inquiry, including, but not limited to, an examination of the property for identifying markings, to discover the name and address of the owner, conditional vendor, mortgagee or any person interested therein.

C. If the owner or other interested person can be readily ascertained, or has been ascertained within ten days of the police department custody, the department shall cause notice to be sent by certified mail to the owner or interested person so that the person may claim such property within thirty days of the date on which such notice is sent.

D. Unclaimed property shall be held for at least 30 days following the notice to the owner or other interested person, during which time the owner may redeem the property by satisfactorily establishing the claimant's ownership thereof and payment of costs under Section 2.21.7.

E. The chief of police, whenever the Chief deems necessary, shall transmit to the City Manager a list of all found and unclaimed property in the Chief's possession. After the Chief's transmittal, such property shall come into the custody and control of the City Manager.

F. Unclaimed property valued at one hundred dollars or more and which remains unclaimed and not redeemed after the redemption period set forth in subsections (C) and (D) of this section shall be disposed of by the City Manager as follows:

1. At a time set by the City Manager, all unclaimed property shall be sold at a public auction to the highest bidder for cash.

2. In default of bids from others, the City Manager may dispose of the property in the Manager's discretion without necessity of taking further bids.

3. Notice of the time and place of such auction shall be given by one publication in a newspaper of general circulation in the city not less than two days nor more than ten days before the date of the sale. Such notice shall contain a general description of the property to be sold.

4. At the time of the payment of the purchase price for property sold under this section, the City Manager shall make, execute and deliver, on behalf of the city, a bill of sale, in duplicate, the original to be delivered to the purchaser and the copy to be kept on file in the city recorder's office. Such bill of sale shall include the name and address of the
purchaser, the date of the sale, the consideration paid, a brief description of the property, and a stipulation that the city does not warrant the condition of title of such property.

5. The sale and conveyance of such unclaimed property shall be without redemption.

6. The city shall reserve the right to reject any or all bids.

7. Property sold pursuant to this section shall be delivered to the purchaser upon presentation of the bill of sale, therefore, issued pursuant to subsection (4) of this section.

G. Found and unclaimed property valued at less than one-hundred dollars and not redeemed may be disposed of by the City Manager in a manner most advantageous to the city.

H. The proceeds of any sale under this section shall be applied as follows: first, to the payment of the cost of such sale and expenses incurred in the preservation and custody of the property; and second, the balance if any, shall be paid to the city recorder of the city and shall be credited to the general fund. [Ord 1403 § 2, 2001; Prior code § 51.130]

§2.21.7 Property to be held at expense of owner.
A. Found property, unclaimed property, which come into the custody, actual or constructive, of the city for any reason, shall be held at the expense of the owner and any costs incurred by the city in finding, transportation, giving of notice, storage, care and custody of such property shall be paid by the owner or other person lawfully entitled to possession thereof before such property may be released.
B. Costs incurred for the impound, transportation, notice, storage and custody of motor vehicles stored by the city shall be as established by resolution of the city council. Costs for found or unclaimed property other than motor vehicles shall be actual costs incurred by the city. [Ord. 1221 § 1, 1990: prior code § 51.135]

§2.21.8 Towing of vehicles.
The city may contract the services of one or more competent towing service firms for the removal and storage of motor vehicles taken into custody of the city for any reason. The contract shall provide for a schedule for towing and storage charges of such motor vehicles. [Prior code § 51.140]

§2.21.9 Appraisal of unclaimed vehicles.
Within ten days of any motor vehicle coming into the custody of the city for any reason, the chief of police shall cause such vehicle to be appraised by a person possessing a valid appraisal permit under state law. [Prior code § 51.160]

§2.21.10 Notice to owner.
A. If a motor vehicle is not claimed within three days after having been taken into custody of the city, the chief of police shall make reasonable efforts to ascertain the names and addresses of the registered owner and legal owner, if any, and the person entitled to possession.
B. If the names and addresses of such owners or persons entitled to possession or either of them can be ascertained, except as to vehicles mentioned in subsection C of this section, the chief of police shall cause notice to be sent forthwith by certified mail addressed to the registered owner of the vehicle and a similar letter addressed to the legal owner, if any. Such notice shall include the following information: the location where the
vehicle may be redeemed by the owner or person entitled to possession upon satisfactory proof of ownership or right to possession; the amount of towing and storage charges accrued to the date of such notice, and the amount of any fines or bail which must be paid or posted and the date after which the vehicle will be subject to public sale.
C. With respect to vehicles which have been taken as evidence, or are recovered after having been stolen, the notice set forth in subsection B of this section shall be given within three days of the date of recovery, or of release by the prosecuting attorney if the vehicle is held for evidence.
D. In any event, notice under this section shall be given at least twenty days before sale under Section 10.32.90. [Prior code § 51.145]

§2.21.11 Owner reclaiming vehicle.
The legal owner, registered owner or person entitled to possession of an unclaimed vehicle may reclaim such vehicle any time after it is taken into custody, and before it is sold upon presentation of satisfactory proof of ownership or right to possession to the chief of police or the City Manager, whoever has custody of the vehicle at the time of the claiming, and payment of towing and storage charges required under this chapter. [Prior code § 51.155]

§2.21.12 Delegation of authority.
The City Manager may delegate any or all of the Manager's powers under this Chapter to the Chief of Police. [Prior code § 51.175]
CHAPTER 3.1 TRANSIENT ROOM TAX

§3.1.1 Definitions.
Except where the context otherwise requires, the definition given in this section governs the construction of the ordinance.

“Hotel” means any structure, or any 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, apartment house, public or private dormitory, public or private club, and also means space in mobile home or trailer parks (including recreational vehicle, tent trailer and tent camping parks), or similar structures or space or portions thereof so occupied, provided such occupancy is for less than a 30-day period.

“City council” means the City Council of the City of Independence, Oregon.

“Occupancy” means 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 or trailer park, or portion thereof.

“Operator” means the person who is the proprietor of the hotel in any capacity. Where the operator performs his functions through a managing agent other than an employee, the managing agent shall also be deemed an operator for the purposes of this ordinance and shall have the same duties and liabilities as its principal. Compliance with the provisions of this ordinance by either the principal or the managing agent shall be considered to be compliance by both.

“Person” means any individual, corporation, partnership, joint venture, association, social club, fraternal organization, public or private dormitory, joint stock company, corporation, estate, orton, trust, receiver, trustee, syndicate or any other group or combination acting as a unit.

“Cash accounting” means the operator does not enter the rent due from a transient on its records when the rent is earned, but rather when it is paid.

“Accrual accounting” means the operator enters the rent due from a transient on his records when the rent is earned, whether or not it is paid.

“Rent” means the consideration charged, whether or not received by the operator, for the occupancy of space in a hotel, valued in money, goods, labor, credits, property or other consideration valued in money, without any deduction, but shall not include charges to a condominium unit owner which are solely for cleaning or maintenance of such unit or
personal use or occupancy by such owner, so long as the charges are made in connection therewith for space occupancy.

“Rent package plan” means 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 the transient room tax under this ordinance shall be the same as the charge made for rent when food consideration is not a part of the package plan. The amount applicable for rent for determination of the transient room tax under this ordinance 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 charge for rent when the space is rented separately and not included in a package plan.

“Tax” means the tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which collections are required to be reported.

“Tax administrator” means the financial administrator of the City of Independence.

“Transient” means any individual who exercised 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 the 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 individual so occupying space in a hotel shall be deemed to be a transient until the period of 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 ordinance may be considered. A person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient. [Ord. 1416 § 1, 12-10-02]

§3.1.2 Tax Imposed.
For the privilege of occupancy in any hotel, on or after the 1st day of August 2002, each transient shall pay a tax in the amount of nine per cent of the rent charged by the operator. For a recreational vehicle, tent trailer and tent camping with self-pay slots, the tax shall be increased and assessed to the closest $.25 interval. 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 when the rent is collected if the operator keeps records on the cash accounting basis and when earned if the operator keeps records on the accrual accounting basis. If rent is paid in installments, the transient shall pay a proportionate share of the tax 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. [Ord. 1416 § 2, 12-10-02]

§3.1.3 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 ordinance, 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.

C. The City Manager shall enforce provisions of this ordinance and shall have the power to adopt rules and regulations not inconsistent with this ordinance as may be necessary to aid in enforcement.

D. For rent collected on portions of a dollar, fractions of a penny of tax shall not be remitted. [Ord. 1416 § 3, 12-10-02]

§3.1.4 Operator’s Duties. Each operator shall collect the tax imposed by this ordinance 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 tax will not be added to the rent, or that, when added, any part will be refunded except in the manner provided by this ordinance. [Ord. 1416 § 4, 12-10-02]

§3.1.5 Exemption. No tax imposed under this ordinance shall be imposed upon:

A. Any occupant for more than 30 successive calendar days with respect to any rent imposed for the period commencing after the first 30 days of such successive occupancy;

B. Any occupant whose rent is of a value less than $2 per day.

C. Any person who rents a private home, vacation cabin, or like facility from any owner who rents such facilities incidental to his own use thereof for periods greater than 30 days.

D. Any occupant whose rent is paid for hospital room or to a medical clinic, convalescent home or home for aged people, or to a public institution owned and operated by a unit of the government and not operating under the veil of private sector competition in the City. [Ord. 1416 § 5, 12-10-02]

§3.1.6 Registration of Operator; Form, Content, Execution and Certification of Authority.

A. Every person engaging 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 the City. Operators engaged in business at the time this ordinance is adopted must register not later than 30 calendar days after passage of this ordinance. Operators starting business after this ordinance is adopted must register within 15 days after commencing business.

B. 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 the tax regardless of registration. Registration sets forth the name under which the operator transacts or intends to transact business, the location of place or places of business and such other information to facilitate collection of the tax as the City Manager may require. The operator shall sign the registration. The City Recorder shall, within 10 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.
C. Certificates shall be non-assignable and non-transferable and shall be surrendered immediately to the City Recorder 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 therein so as to be seen and recognized by all occupants and persons seeking occupancy. Said certificate shall, among other things, illustrate the following:
   1. The name of the operator;
   2. The address of the hotel;
   3. The date upon which 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 Lodging Tax Ordinance of the City of Independence by registration with the City Recorder for the purpose of collecting transient the lodging taxes imposed by said City and remitting said tax to the City Recorder. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful 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 Independence. This certificate does not constitute a permit. [Ord. 1416 § 6, 12-10-02]

§3.1.7 Due Date; Returns and Payments.
A. The tax imposed by this ordinance shall be paid by the transient to the operator at the time rent is paid. All amounts of such taxes collected by any operator are due and payable to the City Recorder on a monthly basis on the 15th day of the following month for the preceding month; and are delinquent on the last day of the month in which they are due. The City Recorder has authority to classify and/or district the operators (by zones) for determination of applicable tax periods, and shall notify each operator of the due and delinquent dates for the operator’s returns.
B. On or before the 15th day of the month following each month of collection, a return for the preceding month’s tax collections shall be filed by each operator with the City Recorder. The return shall be filed in such form as the City Recorder 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 City Recorder may require returns to show the total rentals upon which tax was collected or otherwise due, gross receipts of such amounts, and the amount of the rents exempt, if any.
D. The person required to file the return shall deliver the return, together with the remittance of the amount of the tax due, to the City Recorder, either by personal delivery or by mail. If the return is mailed, the postmark shall be considered the date of receipt for determining delinquencies.
E. For good cause, the City Manager 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 Independence City Council. Any operator to whom an extension is granted by the City Council shall pay interest at a rate determined by the City Council at that time. 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 a part of the tax for computation of penalties described elsewhere in this ordinance. [Ord. 1416 § 7, 12-10-02]
§3.1.8 Penalties and Interest.
A. Original delinquency. Any operator who has not been granted an extension of time for remittance of tax due and fails to remit any tax imposed by this ordinance prior to delinquency, shall pay a penalty equal to 10 percent of the amount 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 fails 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 percent of the amount of the tax due plus the amount of the tax and the ten percent penalty first imposed.
C. Fraud. If the City Manager determines that the non non-payment of any remittance due under this ordinance is due to fraud or intent to evade the provisions thereof, a penalty of 25 percent of the amount of the tax shall be added thereto in addition to the penalties stated in paragraphs (A) and (B) of this section.
D. Interest. In addition to penalties imposed, any operator who fails to remit any tax imposed by this ordinance shall pay interest on delinquent taxes at the rate of one percent per month or fraction thereof without prorating for portions of a month on the amount of the 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 accrued under the provisions of this section shall be merged with and become a part of the tax herein required to be paid.
F. Petition for waiver. Any operator who fails to remit the tax herein levied within the time stated shall pay the penalties herein stated, provided, however, that the operator may petition the City Manager for waiver and refund of the penalty or any portion thereof and the City Manager may, if a good and sufficient reason is shown, waive and direct a refund of the penalty or any portion thereof. [Ord. 1416 § 8, 12-10-02]

§3.1.9 Deficiency Determination, Evasion, Operator Delay.
Deficiency Determination. If the City Recorder determines that the returns are incorrect, he/she shall 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 submitted to the City or additional information provided for City Recorder review. 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 Section 8. [Ord. 1416 § 9, 12-10-02]

§3.1.10 Overpayment and Deficiency.
A. In making a determination the City Recorder may offset tax overpayments, if any, which may have been previously made for a period or periods or against penalties and interest on underpayments. Interest on underpayments shall be computed in the manner set forth in Section 8.
B. The City Recorder shall give to the operator or occupant a written notice of deficiency determination. The notice may be served personally or by mail. If by mail, the
notice shall be addressed to the operator at the address as it appears on the records of the City. In case of service by mail of any notice required by this ordinance, it shall be served by mailing such notice by certified mail, postage prepaid, return receipt requested.

C. Except in the case of fraud or intent to evade this ordinance 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 monthly period for which the amount is proposed to be determined or within three years after the return is filed, whichever period expires later.

D. Any deficiency determination shall become due and payable immediately upon receipt of notice and shall become final within 20 days after the City Recorder has given notice thereof, provided, however, the operator may petition for redemption and refund if the petition is filed before the determination becomes final as herein provided.

E. 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 ordinance, any report or remittance of said tax or any portion thereof required by this ordinance, or makes a fraudulent return or otherwise willfully attempt to evade this ordinance, the City Manager shall proceed in such manner as may be deemed best to obtain the facts and information on which to base an estimate of the tax due. As soon as the City Manager has determined the tax due that is imposed by this ordinance from any operator who has failed or refused to collect the same and to report and remit said tax, the City Manager shall proceed to determine and assess against such operator the tax, interest and penalties provided for by this ordinance. In case such determination is made, the City Manager 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 City Recorder 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 City Recorder has given notice thereof; provided, however, the operator may petition the City Manager for redemption or refund if the petition is filed before the determination becomes final as herein provided.

F. Operator Delay. If the City Recorder 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, or if any determination will be jeopardized by delay, he/she shall thereupon make a determination of the tax or amount of tax required to be collected, noting the fact upon the determination. The amount so determined as herein provided shall be immediately due and payable, and the operator shall immediately pay such determination to the City Recorder after service of notice thereof; provided, however, the operator may petition, after payment has been made, for redemption and refund of such determination, if the petition is filed within 20 days from the date of service of notice by the City Recorder. [Ord. 1416 § 10, 12-10-02]

§3.1.11 Redeterminations.

A. Any person against whom a determination is made may petition for a redetermination and redemption and refund within the time required in Section 9. If a petition for redetermination and refund is not filed within the time required in Section 9, 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 City Recorder shall reconsider the determination, and if the person has so requested by petition, the City Manager shall grant the person an oral hearing and the City Recorder shall give 20 days notice of the time and place of the hearing. The City Manager may continue the hearing from time to time as may be necessary.

C. The City Manager 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 City Manager upon a petition for redetermination or redemption 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 Independence City Council within the 20 days after the service of such notice. No petition for determination or redemption and refund or appeal therefrom shall be effective for any purpose unless the operator has first complied with the payment provisions hereof. [Ord. 1416 § 11, 12-10-02]

§3.1.12 Security for Collection of Tax.
A. The City Recorder, when he/she deems it necessary to insure compliance with this ordinance, may require the operator to deposit with the City such security in the form of cash, bond or other security as the City Recorder may determine. The amount of the security shall be fixed by the City Recorder but shall not be greater than twice the operator’s estimated average monthly liability for the period of which the operator files returns, determined in such a manner as the City Recorder deems proper, or five thousand dollars ($5,000.00), whichever amount is less. The amount of security may be increased or decreased by the City Recorder subject to limitations herein provided. The operator has a right to appeal to the City Manager any decision of the City Recorder made pursuant to this section. The operator’s right to appeal is pursuant to Section 17 herein.

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 any determination becomes final, the City Attorney 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. 1416 § 12, 12-10-02]

§3.1.13 Lien.
A. The tax imposed by this ordinance together with the interest and penalties herein provided and the filing fees paid to the City Recorder, and advertising costs which may be incurred when same becomes delinquent as set forth in this ordinance, shall be and, until paid, remain a lien from the date of its recording with the Department of Records, Polk County, Oregon, and superior to all subsequent recorded liens on all tangible personal property used in the hotel of an operation within Independence and may be foreclosed on and sold as may be necessary to discharge said lien. If the lien has been recorded with the Department of Records in Polk County, Oregon, notice of the lien may be issued by the City Recorder whenever the operator is in default in the payment of said tax; interest and penalty shall be recorded with the Department of Records of Polk County, Oregon, and a copy sent to the delinquent operator.

B. The personal property subject to such lien seized by any deputy or employee of the City may be sold by the department seizing it at public auction after 10 days notice, which
means one publication in a newspaper of general circulation in the City of Independence, Oregon. 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 City 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. 1416 § 13, 12-10-02]

§3.1.14 Refunds.
A. Refunds by the City to the Operator. Whenever the amount of any tax, penalty or interest has been paid more than once or has been erroneously collected or received by the City Recorder under this ordinance, 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 City Recorder within three years from the date of payment. The claim shall be made on forms provided by the City Recorder. If the claim is approved by the City Recorder, 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, or the operator's administrator, executor, or assignee.
B. Refunds by City to Transient. Whenever the tax required by this ordinance has been collected by an operator, and deposited by the operator with the City Recorder, and later is determined to have been erroneously collected or received by the City Recorder, it may be refunded by the City Recorder to the transient, provided a verified claim in writing therefor, stating the specific reason on which the claim is founded, is filed with the City Recorder within three years from the date of payment.
C. Refunds by Operator to Tenant. Whenever the tax required by this ordinance has been collected by the operator and it is later determined that the tenant occupied the hotel for a period exceeding 30 days without interruption, the operator shall refund to such tenant the tax previously collected by the operator. The operator shall account for such collection and refund to the City Recorder. If the operator has remitted the tax prior to the refund or credit to the tenant, operator shall be entitled to a corresponding refund under this section. [Ord. 1416 § 14, 12-10-02]

§3.1.15 Administration.
A. Disposition and Use of Transient Room Tax Funds. All proceeds derived by the City of Independence from the transient room tax funds shall be deposited in the General Fund of the City of Independence.
B. Records Required from Operators, Etc., Form. Every operator shall keep guest records of room sales and accounting books and records of the room sales. The operator shall retain all records for a period of three years and six months after they come into being.
C. Examination of Records; Investigations. The City Manager, or any person authorized in writing by City Manager, may examine or, during normal business hours, the books, papers and accounting records relating to room sales of any 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.

D. Confidential Character of Information Obtained. It shall be unlawful for the City Manager, City Recorder or any person having an administrative or clerical duty under the provisions of this ordinance 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 occupancy tax, or 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 book containing any abstract or particulars thereof to be seen or examined by any person; provided that nothing in this section shall be so construed to prevent:

(1) The disclosure to, or the examination of records and equipment by another City of Independence official, employee or agent for collection of taxes for the sole purpose of administering or enforcing any provisions of this ordinance, 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, receivers, trustees, executors, administrators, assignees and 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; provided, however, that the City Attorney approves each such disclosure and that the City Manager may refuse to make any disclosure referred to in this paragraph when in his opinion the public interest would suffer thereby; (3) the disclosure of the names and addresses of any person to whom Transient Occupancy Registration certificates have been issued; and (4) the disclosure of general statistics regarding taxes collected in the City. [Ord. 1416 § 15, 12-10-02]

§3.1.16 Use of Transient Room Tax.
A. The City shall use forty five percent (45%) of the transient room tax collections each year to promote business development or tourism in Independence.
B. The City finds and declares that expenditure of a portion of the transient room tax collections for business development and tourism will serve a public purpose. The City will derive economic benefits through attraction of both new industry and visitors to the community. It is in the public interest to promote quality, integrity, and reliability in all “commerce” related services and in information offered to visitors and new business development interests. There is a need to encourage communication and cooperation between the public and private sectors to promote the orderly growth and implementation of commercial and industrial development related objectives. In addition, it is important that visitors to the area be informed of the scenic and historic attractions, entertainment attractions, recreation opportunities, restaurant facilities, lodging facilities and other matters of special interest providing further benefits to business. It is also growing in importance that with strategic planning, those businesses, which best benefit the City, be afforded development information for locating or expanding in Independence, thus resulting in greater private capital investment and community growth.
C. The City shall use forty-five percent (45%) of the transient room tax collections each year in support of parks and recreation facilities, programs and services in Independence.
in line with the City’s Parks and Recreation Master Plan as approved by City Council for purposes of improving community livability.

D. Ten percent (10%) of all collections shall be recognized as a general administrative fee and may be applied to any budgeted purpose. [Ord. 1416 § 16, 12-10-02]

§3.1.17 Appeals to the City Council. Any person aggrieved by any decision of the City Manager may appeal to the City Council by filing notice of appeal with the City Recorder within 20 days of the serving or the mailing of the notice of the decision. 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 Council on appeals shall be decided by a majority of the members of the Council present at the meeting where such appeal is considered. [Ord. 1416 § 17, 12-10-02]

§3.1.18 Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, is for any reason held to be unconstitutional or otherwise invalid, such decision shall not affect the validity of the remaining portions of this ordinance. [Ord. 1416 § 18, 12-10-02]

§3.1.19 Violations. It is unlawful for any operator or other person so required to fail or refuse to register as required herein, to furnish any return required to be made, to furnish a supplemental return or other date required by the City Recorder 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 or required by this ordinance. Violation of this section shall constitute a violation under the Independence Code punishable by a fine not to exceed two hundred fifty dollars ($250) for each violation. [Ord. 1416 § 19, 12-10-02]

§3.1.20 Misdemeanor. Any person willfully violating any of the provisions of this ordinance shall be guilty of a misdemeanor and may be punishable therefor by a fine of not more than five hundred dollars ($500.00) or by imprisonment in the county jail for a period of not more than six months or by both such fine and imprisonment. [Ord. 1416 § 20, 12-10-02]
BUSINESS LICENSES AND REGULATIONS

Chapter 5.7  ALCOHOLIC LIQUOR SALES

§5.7.1  Open containers of alcoholic liquors in public places prohibited.
A. No person shall drink or consume any alcoholic liquor in or upon any street, sidewalk, alley, public grounds or other public place unless such place has been licensed for that purpose by the Oregon Liquor Control Commission.
B. No person shall possess any open container of alcoholic liquor in or upon any street, sidewalk, alley, public grounds or other public place unless such place has been licensed for that purpose by the Oregon Liquor Control Commission.
C. “Public place” for the purpose of this section includes schools, places of amusement, parks, playgrounds, parking lots and premises used in connection with public passenger transportation. [Ord. 1274 § 1, 1993: prior code § 44.525]

§5.7.2  Open container of alcoholic liquors in public park prohibited.
A. No person shall have in the person’s possession, while in any public park within the city, any bottle, can or other receptacle containing any alcoholic liquor, which has been opened, or the seal broken, or the contents of which have been partially removed.
B. For the purposes of this section, the following definition shall apply unless the context clearly indicates or requires a different meaning.

   PUBLIC PARK. Any area open to the public designated by a sign as a park, or commonly recognized as a park, including but not limited to Riverview Park, Pioneer Park, Pfaff Park, Mountain Fir Park, Wildfang Park, and Henry Hill Park. [Amended Ord. 1492 § 1, Aug 2010] [Prior code § 44.570] Penalty, see § 1.3.1

Chapter 5.8  Reserved for Expansion
Chapter 5.9  Reserved for Expansion
Chapter 5.10  Reserved for Expansion
Chapter 5.11  AUCTIONS AND AUCTIONEERS

§5.11.1 Definitions.
A. As used in this chapter:
   “Auctions” means every person who shall at public outcry offer for sale, either as principal or agent and whether full time or for relief of another, to the highest bidder on the spot, any article of merchandise or property, shall be deemed an auctioneer, and every such sale shall be deemed an auction.
B. Nothing in this chapter shall apply to judicial sales or to sales by executors, administrators or trustees under court order, or to the state, any political subdivision thereof, municipal corporation or quasi-municipal corporation auctioning its own property. [Ord. 1111 § 1 (part), 09-27-83: prior code § 60.110]

§5.11.2 Auction license required.
It is unlawful for any person to conduct or carry on a public auction within the corporate limits of the city for the sale of any goods or merchandise without having first procured a license from the city to do so, and without complying with all of the provisions of this chapter concerning auctions and auctioneers, and each and every day during any part of which any such public auction shall be carried on or conducted without the license or without complying with each and all of the provisions of this chapter shall constitute a separate violation of this Chapter. [Ord. 1111 § 1 (part), 09-27-83: prior code § 60.120]

§5.11.3 Classifications.
For the purpose of this chapter, the following classifications of auctions and auctioneers shall apply:
A. Class 1. “Regular auctions” are those conducted in a fixed place of business which shall be known and advertised as an auction house. It is unlawful for regular auction houses to conduct temporary auction sales, whether the same shall be their own property or whether they sell the same as agents or employees of others.
B. Class 2. “Temporary auctions” are auctions temporarily conducted for the sale of bankrupt or damaged goods sold by pawnbrokers under the provisions of the state law, goods sold for storage or transportation, capital goods and equipment or livestock. Notwithstanding the provisions of this subsection, persons conducting auctions for the sale of goods sold for storage or transportation charges may, at their option, be classified under subsection D of this section; provided, that an auction of the owner's household furnishings, goods and effects of such owner's residence by a licensed auctioneer shall also deemed and considered a temporary auction.
C. Class 3. “Closing out auctions” are auctions of stock on hand conducted by persons retiring from business. No license shall be issued for a closing out auction unless the persons applying for such license shall have been continuously in business in the city as a retail or wholesale merchant for the three-year period proceeding such sale.
D. Class 4. “Storage or transportation auctions" are auctions conducted for the sale of goods sold for storage or transportation charges at regular or irregular intervals. This classification shall not be applicable to such auctions unless application for an annual license to conduct such auctions is made.
E. Class 5. “Temporary benefit auctions” are those conducted by private nonprofit organizations having tax-exempt status under state and federal law, for the sale of objects donated to the organization to be sold at auction, it being understood that the proceeds of the auction shall go to defray the expenses of the tax-exempt organization or for another tax-exempt purpose.

F. Class 6. “Regular auctioneers” are those who are regularly engaged in the business of auctioneering in the city.

G. Class 7. “Special auctioneers” are those not classified in subsection F of this section. [Ord. 1111 § 1 (part), 09-27-83: prior code § 60.140]

§5.11.4 License-Application.
A. Any person desiring to engage in business as an auction house, shall make application for license to the city recorder at least thirty days prior to the opening of such place of business. Any person desiring to conduct a temporary auction or closing out auction, shall make application for license to the city recorder at least ten days prior to such temporary auction or closing out auction; provided, however, that the council may waive such requirement as to a temporary auction or closing out auction.

B. Applications for licenses to conduct Class 1, 2, 3 or Class 4 auctions in addition to general requirements, shall contain a certified itemized inventory of the stock of goods or property to be sold at auction with description and identifying marks, if any. [Ord. 1111 § 1 (part), 09-27-83: prior code § 60.150]

§5.11.5 License-Fees.
A. License fees for auctions and auctioneers shall be as follows:

<table>
<thead>
<tr>
<th>Class</th>
<th>Type of Auction</th>
<th>Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class 1,</td>
<td>Regular auction</td>
<td>Annually $200.00</td>
</tr>
<tr>
<td>Class 2,</td>
<td>Temporary auction</td>
<td>Per day 25.00</td>
</tr>
<tr>
<td>Class 3,</td>
<td>Closing out auction</td>
<td>Per day 25.00</td>
</tr>
<tr>
<td>Class 4,</td>
<td>Storage or transportation auction</td>
<td>Annually 200.00</td>
</tr>
<tr>
<td>Class 5,</td>
<td>Temporary benefit auctions</td>
<td>Per day 5.00</td>
</tr>
</tbody>
</table>

B. No licenses shall be issued for less than full rate applicable to its classification. [Ord. 1111 § 1 (part), 09-27-83: prior code § 60.130]

§5.11.6 Revocation of license.
The Chief of Police or the Chief's agent may at any time, during the continuance of the auction, stop the same upon being satisfied that the auction is being conducted in violation of any of the provisions of the ordinances of the city. The auction shall not continue unless permitted to do so by the council. The council upon hearing may revoke the license of any person found guilty of violating this chapter, and no new license shall be issued to such licensee or to any co-partnership or association of which the person is a member or to any corporation of which the person is an officer within three years hereafter. [Ord. 1111 § 1 (part), 09-27-83: prior code § 60.160]
§5.11.7 Violation-Penalty.
In addition to such other remedies as are provided under this code, violation of any of the provisions of this chapter shall be punishable upon conviction by a fine not exceeding two hundred dollars or imprisonment for a period not exceeding thirty days, or both such fine and imprisonment. [Ord. 1111 § 1 (part), 09-27-83: prior code § 60.170]

Chapter 5.12 Reserved for Expansion
Chapter 5.13 Reserved for Expansion
Chapter 5.14 Reserved for Expansion
Chapter 5.15  ENTERTAINMENT BUSINESSES AND AMUSEMENT DEVICES

§ 5.15.1 AMUSEMENT BUSINESS LICENSES REQUIRED.
It is unlawful for any person or persons within the limits of the city to conduct or engage in any of the businesses or to operate or conduct any of the amusement devices or forms of entertainment enumerated in this chapter without having first obtained a license therefore, as hereinafter set forth. [Ord. 1476 § 1, May, 2009; (Prior Code, § 63.110)] Penalty, see § 1.3.1

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

AMUSEMENT DEVICE. Includes, but is not limited to, pool table, billiard table, pinball machine, video game (shall include machines which are part of the operation of the State Lottery), jukebox, card room, card table, shuffleboard, digger/crane machine, and any game of skill or chance.

DANCE FLOOR. Any area designated for dancing in connection with a business that sells for consumption on the premises liquor, wine, malt beverages, other alcoholic beverages or food.

REGULAR CLOSING TIME. The latest time occurring at regular intervals at which the subject business will permit a patron to remain upon the premises.

VENDING MACHINE. Any device whose primary intended function is to automatically exchange goods for coins or tokens inserted in the machine. [Ord. 1476 § 1, May, 2009; (Ord. 1191, passed 10-25-1988) (Prior Code, § 63.120(a)] Penalty, see § 1.3.1

§ 5.15.3 LICENSE FEES.
Except as otherwise provided, annual fees set by resolution of the City Council shall be charged for licenses required pursuant to this chapter as defined in § 5.15.2. [Ord. 1476 § 1, May, 2009; Ord. 1191, passed 10-25-1988; (Prior Code, § 63.120(b)]

§ 5.15.4 LICENSE FEES; EXCEPTIONS.
Fraternal organizations and other nonprofit organizations maintaining any of the amusement devices or forms of entertainment described in this chapter exclusively for the use of their members shall not be required to pay the license fees hereby provided. [Ord. 1476 § 1, May, 2009; (Prior Code, § 63.160)]

§ 5.15.5 LICENSE DURATION; FALSE STATEMENTS IN APPLICATION.
Licenses required by this chapter shall be issued annually for the fiscal year beginning on July 1 of each year at the rates set forth by council resolution. All licenses shall be for 1 year and no reduction shall be made for a license for less than 1 year. It is unlawful for any person or persons to make any false statement in an application for a license under this chapter regardless of the materiality thereof. [Ord. 1476 § 1, May, 2009; (Prior Code, § 63.130)] Penalty, see § 1.3.1

§ 5.15.6 PUBLIC DANCES.
All public dances other than licensed dance floors shall continue to be licensed at the
rates provided in this chapter and all other parts of this chapter shall continue in full force, except that §§ 5.15.5, 5.15.7 and 5.15.8 and the part of § 5.27.8 thereof prohibiting the sale or consumption of alcoholic liquor on the dance premises shall not apply to dance floors licensed under this chapter. [Ord. 1476 § 1, May, 2009; (Prior Code, § 63.150)]

§ 5.15.7 TRANSFER OF LICENSES.
The licenses may be transferred by the licensee in the event of a sale of the business for which or in connection with which the license is issued, provided that no license shall be transferred without application in writing and approval by the City Manager. [Ord. 1476 § 1, May, 2009; (Prior Code, § 63.170)]

§ 5.15.8 REQUIREMENTS FOR APPROVAL OF TRANSFER.
Before approving the transfer of any license, the City Manager shall satisfy him or herself that the proposed new licensee is a responsible and qualified person. In connection with this transfer the City Manager shall have the right to demand and receive of the licensee information as may be reasonably required to establish the financial responsibility and other qualifications of the proposed licensee. [Ord. 1476 § 1, May, 2009; (Prior Code, § 63.180)]

§ 5.15.9 REVOCATION OF LICENSE.
Any license granted under this chapter may be revoked by resolution of the City Council for good cause shown and after notice to the licensee and reasonable opportunity for the licensee to be heard upon the proposed resolution for revocation; provided, however, that if a license is revoked without the licensee having been convicted of any violation of this chapter, the person shall be entitled to a proportionate refund of the person's license fee. Upon revocation, the Police Chief shall hand to the licensee a written notice of revocation or if the licensee is not found, the Police Chief shall post the notice of revocation on the premises where the business was located or conducted. [Ord. 1476 § 1, May, 2009; (Prior Code, § 63.140)]
§5.16.01 Intent, purpose and findings.
The city council intends by the adoption of this chapter to ameliorate adverse impacts on schools and school children caused by the location of adult entertainment businesses, as defined herein, in close proximity to school aged children, by means of reasonable regulation of the time, place and manner of such businesses, without suppression of legitimate forms of communications offered, or the right of adult entertainment businesses to have access to such legitimate forms of communication.

§5.16.02 Definitions.
As used in this chapter:

“Adult entertainment business” is a term intended to cover a broad range of activities characterized by exhibitions of live, closed circuit, or reproduced material which has an emphasis on nudity and/or sexual activity. The term “adult business” also includes the full range of adult theaters and related businesses defined below. Adult businesses generally limit their patrons to persons at least eighteen (18) years of age. Adult businesses include the following types of establishments: adult bookstores, adult theaters, adult arcades, adult cabarets, adult paraphernalia shops, and other establishments which feature a combination of activities or merchandise described above which collectively make up a substantial or significant portion of the establishment’s activities or merchandise. The term “adult entertainment business” also includes other uses similar to the uses listed above, presenting material for patrons to view (live, closed circuit or reproductions), and/or purchase or rent, a substantial portion of which is characterized by an emphasis on nudity and/or specific sexual activity; and limiting entrance to patrons who are over eighteen (18) years of age.

“Adult bookstore” means an establishment having, as substantial or significant portion of its merchandise, such items as books, magazines, other publications, films, video tapes, or video discs, which are for sale, rent, or viewing on premises and which are distinguished by their emphasis on matters depicting specified sexual activities.

“Adult theater” is an establishment used primarily for presenting material (either live, closed circuit, or pre-recorded) for observation by patrons therein, having as a dominant theme an emphasis on nudity and/or specified sexual activities.

“Adult arcade” is an establishment offering viewing booths or rooms for one or more persons in which a substantial portion of the material presented (either live, closed circuit, or reproduced) is characterized by an emphasis on nudity and/or specified sexual activities.

“Adult cabaret” is an establishment having as its primary attraction live exhibition (either for direct viewing, closed circuit viewing, or viewing through a transparent partition) for patrons, either individually or in groups, where a substantial portion of the material presented is characterized by an emphasis on nudity and/or specified sexual activities.

“Adult paraphernalia shop” is an establishment offering as a substantial or significant portion of its merchandise, objects which simulate human genitalia and/or objects designed to be used to substitute for or be used with human genitalia while engaged in specified sexual activities.
“Nudity” or “nude” means being devoid of a covering for the male or female genitalia consisting of an opaque material which does not simulate the organ covered and in the case of a female exposing to view one or both breasts without a circular covering, centered on the nipple that is at least three inches in diameter and does not simulate the organ covered.

“Specified sexual activities” means real or simulated acts of human sexual intercourse, human/animal sexual intercourse, masturbation, sadomasochistic abuse, sodomy or the exhibition of human sexual organs in a stimulated state or the characterization thereof in printed form.

§5.16.03 Spatial separation requirements.
A. No adult entertainment business shall be located within a distance closer than one thousand five hundred (1,500) feet from a public or private kindergarten, elementary, junior high, high school, college, university or municipal library. An adult entertainment license shall first be issued by the city for the business.
B. The distance referred to herein shall be measured in a straight line, without regard to intervening streets, structures, or obstructions, from the closest point of the structure or portion of the structure housing the adult business establishment, or the closest point of the parking lot or portion of the parking lot principally used by the patrons of the business containing the adult entertainment business, to the closest point of the school property or school use.

§5.16.04 Adult entertainment business license.
Before an adult entertainment business license is issued, the city council shall hold a public hearing on the application. The application will be issued, unless the city council determines that it is highly likely that one or more of the deleterious effects of adult business establishments set forth in Section 5.45.01 would occur if the proposed adult business is located at the proposed site described in the application. The city council in making this determination may base its finding on historical data from other municipalities or from the past business activities of the applicant at other locations. The public hearing will be conducted within thirty (30) days of the date of the application for adult entertainment business license is filed with the city.’ [Ord. 1437, 07-27-04.]

Chapter 5.17 Reserved for Expansion
Chapter 5.18 Reserved for Expansion
\textbf{§5.19.1 Gambling prohibited.}

A. No person shall participate in, operate or assist in operating a gambling game or activity, excluding those activities authorized by state law as set forth in \textit{ORS 167.117} through \textit{ORS 167.153}. No person shall have in the person's or her possession any property, instrument or device designed or adapted for use in any type of gambling activity. Any such property, instrument or device is a nuisance and may be summarily seized by any police officer. Property so seized shall be placed in the custody of the chief of police of the city. Upon conviction of the person owning or controlling such property for a violation of this section, the municipal judge shall order such property confiscated and destroyed.

B. Any coins or moneys taken along with a gambling device shall be delivered to the City Manager, who shall deposit them in the general fund of the city. [Ord. 1158 § 1, 1986: prior code § 67.110]

\textbf{§5.19.2 Social games - License requirement.}

A nonprofit society, club, religious, fraternal or charitable organization shall obtain a license for social games at an annual fee of fifty dollars per organization. The license may be granted only if the primary reason for the existence of the nonprofit organization is not the playing of social games. A failure to apply for a license is a violation of this chapter. [Prior code § 67.120]

Chapter 5.20 Reserved for Expansion
Chapter 5.21 Reserved for Expansion
Chapter 5.22 Reserved for Expansion
Chapter 5.23  PEDDLERS AND SOLICITORS

§5.23.1 Definitions.
As used in this chapter:

“Peddler” means any person who, as a business or vocation or both, travels from place to place, house to house, or street to street, carrying, conveying or transporting goods, wares, merchandise, meats, fish, vegetables, fruits, garden truck, farm products or provisions, offering and exposing the same for sale, or making sales and delivering articles to purchasers, or who without traveling from place to place sells or offers the same for sale from a wagon, automobile, truck, railroad car, airplane, boat or other vehicle or conveyance. Such definition shall not apply to any person selling products actually harvested from the person's own farm or orchard; nor shall such definition apply to vendors of newspapers upon the street.

“Solicitor” means any individual who, as or in connection with a business or vocation or both, travels from place to place, house to house, or street to street, taking or attempting to take orders for the sale of goods, wares, merchandise or other personal property of any nature whatsoever for future delivery or for services to be furnished or performed in the future, whether or not the person is collecting advance payments on such sales. Such definition shall include any person who, for theirself or for another, hires, leases, uses or occupies any place or premises or any railroad car, boat, automobile, truck, airplane or portion of any of them on a temporary basis for the sole purpose of exhibiting samples and taking orders for future delivery. [Prior code § 62.125]

§5.23.2 Peddling established as nuisance.
The practice of persons going in and upon private residences in the city by solicitors, peddlers, hawkers, itinerant merchants, transient vendors of merchandise and transient photograph solicitors, not having been requested or invited so to do by the owner or owners, occupant or occupants of such private residences, for the purpose of soliciting orders for the sale of goods, wares and merchandise, and/or for the purpose of disposing of and/or peddling or hawking the same, or soliciting orders for photographs, is prohibited and declared to be a nuisance and punishable as such nuisance as a misdemeanor. [Prior code § 62.110]

§5.23.3 Abatement of nuisance.
The chief of police and police officers of the city are required and directed to suppress the same and to abate any such nuisance as is described in Section 5.23.2. [Prior code § 62.115]

§5.23.4 Unlawful to engage unlicensed persons.
A. It is unlawful for any person to engage whether by employment, offer of commission, participation in proceeds or otherwise, any person as a solicitor or peddler as defined in this chapter unless and until such person so engaged has obtained a license therefor as provided in this chapter.
B. It is unlawful for any person to cause or permit any other person who has been engaged as described in subsection A of this section to conduct the business, trade or occupation of a solicitor or peddler after the person knows or has good reason to know
that such person's license therefor has expired, or has been suspended or revoked. [Prior code § 62.120]

§5.23.5 License required - Application.
Applications for solicitors and peddlers licenses required by this chapter shall contain:
A. The date and place of birth of the applicant;
B. The physical description of the applicant, including height, weight, color of hair and eyes and identifying scars and marks;
C. Every alias, assumed name and any previous legal name which has ever been used by the applicant or by which the person has been known;
D. Every residence address of the applicant for the five years immediately preceding such application;
E. A list of all criminal offenses other than Class B, C or D traffic infractions but including Class A traffic infractions and traffic crimes of which the applicant has ever been convicted, together with the dates and places of such convictions;
F. Every vocation, and the name and address of each employer, at which the applicant has worked for the five years immediately preceding the application;
G. If the vocation for which the license is sought is to be carried on an employee, the name and address of the employer;
H. Whether or not the applicant has ever been discharged from a position of trust, or has ever been bonded in connection with a business or vocation and such bond has been revoked, forfeited or executed upon by reason of such applicant's conduct, together with an explanation of the dates and circumstances surrounding such discharge or action on such bond, and the name and address of the surety on such bond;
I. The names of at least three persons residing within the state of Oregon who can give informed account of the business and moral character of the applicant;
J. Any other information specifically required by any provisions of this chapter in connection with an application for a license to engage in particular vocation. [Prior code § 62.130]

§5.23.6 Crew license – Application – Fees.
A. In lieu of an application being filed by each solicitor, the employer of any solicitors may file separate application for each solicitor employed by the solicitor; and upon approval of any such application, a crew license shall be issued to the employer, which license shall designate the names of the employers and the solicitors whose applications have been so approved. Separate vocation licenses shall be issued to each such solicitor at no additional cost. The employer may make substitutions of solicitors or add additional solicitors or canvassers from time to time within the limits of such crew license, and may have the City Manager transfer such licenses from one solicitor employed by the solicitor to another so employed without paying any additional license fee upon filing the appropriate applications.
B. The employer shall pay the application fee set forth below for each solicitor named in the application for such license or the application for substitutes or additional solicitors not previously licensed. The City Manager may, in the Manager's sole discretion, in lieu of an investigation and the payment of an investigation fee, accept a corporate surety bond, approved as to form by the city attorney, in the sum of two thousand dollars, conditioned
upon the observance by the employer and each solicitor covered by the crew license of all ordinances of the city and all laws of the state of Oregon, and upon the truth of all the representations made in connection with the application for a license, and as a guarantee that the purchase price or any portion thereof of any thing, service or subscription purchased or ordered will be returned to any purchaser or person ordering the same upon return of the article purchased or relinquishment of the order where proof is furnished that any false or misleading statement or representation has been made concerning any thing, service or subscription sold or offered for sale to the purchaser by the employer or any solicitor covered by the crew license.

C. License Fees:
   1. Individual solicitor/peddler license: twenty-five dollars;
   2. Crew license: fifty dollars plus five dollars each solicitor/peddler. [Prior code §62.135]

§5.23.7 Investigation of applicant.
Upon receipt of an application for any license required by this chapter, the chief of police may conduct an investigation of the applicant’s business and moral character and of the statements contained in the application as may be necessary for the protection of the public health, safety and welfare, and to determine whether any cause exists for denial of the license. Such investigation may include the finger-printing of any natural person whose name is required to be furnished in the application. [Prior code § 62.140]

§5.23.8 Investigation of applicant - Report.
The chief of police shall, upon concluding any investigation pursuant to the provisions of this chapter, prepare a report of the Chief's findings and submit the same to the City Manager, recommending either issuance or denial of the license. Such recommendation shall be considered by, but shall not be binding upon the City Manager. [Prior code § 62.145]

§5.23.9 Denial of license or renewal.
A. The following shall be grounds for denial of any license or renewal:
   1. Any untrue or incomplete statement made by the applicant on the person’s application form; provided, however, that in the event that such untrue or incomplete application is the result of excusable neglect, the applicant may, without prejudice, resubmit an application in which such defect is corrected;
   2. Conviction within the ten years immediately preceding the date of application of any felony;
   3. Conviction within the ten years immediately preceding the date of application of any offense, including violations of any local law or ordinance, involving fraud, theft, misrepresentation or moral turpitude;
   4. Commission, within the ten years immediately preceding the date of application, of any act involving misconduct in connection with any business or vocation engaged in by the applicant, and which would be punishable as a criminal offense under the provisions of any federal, state or local law or ordinance in effect at the time and place of the commission of such act;
   5. Any history of conduct by the applicant in connection with any business or vocation which, if continued by the applicant in connection with the business or vocation subject of
the license being sought, would constitute grounds for suspension of a license to engage in or conduct such business or vocation.

B. The City Manager may, if the Manager is satisfied that the public interest would be best served thereby, waive any of the grounds set forth in subsection A of this section. [Prior code § 62.150]

§5.23.10 Appeal - Stay of suspension.
A. Any person aggrieved by the decision of the City Manager in regard to the denial of the application for license pursuant to the provisions of this chapter shall have the right of appeal to the council. Such appeal shall be taken by filing with the city recorder within fourteen days after notice of the action complained of, a written notice describing with certainty the action of the City Manager from which the appeal is taken and a declaration that such person takes appeal to the council from such action. The council shall set a time and place for a hearing on such appeal, causing notice thereof to be given to the appellant. The decision and order of the council on such appeal shall be final and conclusive.
B. Upon proper filing of notice of appeal as provided in this section, the order of the City Manager suspending a license is stayed automatically, provided that the council may, upon application of the City Manager and for cause shown, order that the suspension be reinstated pending determination on the appeal. [Prior code § 62.165]

§5.23.11 Term of license.
All licenses issued under the provisions of this chapter shall be for an annual term unless otherwise specified, and shall be valid and effective from the date of issuance set forth upon such license until the expiration of the specified term. License for terms of less than one year shall take effect on the date of issuance set forth thereon. [Prior code § 62.170]

§5.23.12 Use of streets by licensee.
No peddler or solicitor licensed under this chapter shall have any exclusive right to any location in the public streets, nor shall the licensee be permitted a stationary location, nor shall the licensee be permitted to operate in any congested area where the person's operation might impede or inconvenience the public. For the purpose of this section, the judgment of a police officer exercised in good faith, shall be deemed conclusive as to whether the area is congested or the public impeded or inconvenienced. [Prior code § 62.155]

§5.23.13 Evening solicitation.
It is unlawful for any person to peddle or solicit as defined in this chapter between the hours of nine p.m. of any day and eight a.m. of the following day. [Prior code § 62.160]

§5.23.14 Violation - Penalty.
Violation of any of the provisions of Sections 5.23.11, 5.23.3 through 5.23.13 shall be punishable by a fine not to exceed five hundred dollars or imprisonment in the municipal jail for six months, or both. [Prior code §§ 62.195, 62.196]
Chapter 5.25 GARAGE AND ESTATE SALES

§5.25.1 Definition

"Garage and Estate Sale" shall mean the public offering for sale of used goods within the City of Independence, by any individual or group of individuals from any private or public property located within a residential zone, including but not limited to garages, porches, carports or yards. [Ord. 1412 §1, 10-10-02]

§5.25.2 Permitted When

Garage and estate sales are permitted in residential zones, upon the following conditions:
   (1) No more than a total of three sales per year may be conducted at each property.
   (2) Each sale may last no longer than three days in duration.
   (3) The hours of the sale shall be only between the hours of 7:00 a.m. to 9:00 p.m.
   (4) One temporary sign no larger than six square feet may be placed on the property. Additional signs no larger than two square feet advertising the sale may be placed off-site, so long as they are located on private property with the consent of the owner and are removed on the last day of the sale. [Ord. 1412 §1, 10-10-02]

§5.25.3 Violations

Violations are punishable under the provisions of Chapter 1.3 of the Independence Municipal Code. [Ord. 1412 §1, 10-10-02]

Chapter 5.26 Reserved for Expansion
§5.27.1 Public dance license required.
From and after the effective date of the ordinance codified in this chapter no person shall conduct or operate a public dance or public dance hall within the corporate limits of the city without first having obtained a license as provided for under this chapter. [Prior code § 61.110]

§5.27.2 Definitions.
For the purposes of this chapter the term “public dance” means any dance open to the public for an admission charge and the term “public dance hall” means any building or premises in or on which a public dance is conducted. [Prior code § 61.120]

§5.27.3 License - Application.
The licenses required by the chapter shall be issued only upon a written application on a form supplied by the city recorder. The application shall contain such information about the applicant as may be necessary to determine the character and responsibility of the applicant and the character of the premises on which the applicant proposes to conduct a public dance. If the premises on which the dance is to be held comply with the zoning, safety and other applicable regulations of the city and the applicant is found to be eligible, a license shall be issued to the applicant upon payment of the fees as herein provided. [Prior code § 61.130]

§5.27.4 License - Fee.
The license fee for conducting a public dance shall be fifty dollars as a minimum payable in advance, which shall permit the licensee to conduct ten dances. Thereafter, so long as the licensee continues to conduct regular dances at the same location, the license shall continue subject to the payment of five dollars in advance for each additional dance conducted. [Prior code § 61.140]

§5.27.5 Closing time.
All public dances shall be discontinued and all dance halls closed by twelve-thirty a.m. [Prior code § 61.150]

§5.27.6 Inspection.
All public dances shall be open for inspection at any time by any police officer. [Prior code § 61.160]

§5.27.7 Temporary police officer required.
The licensee of each public dance shall furnish a man acceptable to the chief of police at no expense to the city to be appointed a temporary police officer and to be on duty at all times the public dance is in progress. [Prior code § 61.170]

§5.27.8 Liquor not allowed.
Every licensee shall comply with the terms of the ordinances of the city and the laws of the state of Oregon and shall not permit the keeping, sale, giving away or consumption of
alcoholic liquor on the dance premises. [Prior code § 61.180]

§5.27.9 Revocation of license.
In the event that any licensee shall permit any fighting, brawling or disorderly conduct of any kind upon the dancehall premises or, if the licensee violates any of the terms or provisions of this chapter, the license granted under the terms of this chapter shall be subject to revocation immediately by the city council and, upon such revocation, all rights to conduct a public dance shall cease and the licensee shall have no right to a refund for any fees paid. [Prior code § 61.190]

Chapter 5.28 Reserved for Expansion
Chapter 5.29 Reserved for Expansion
Chapter 5.30 Reserved for Expansion
Chapter 5.31  SECONDHAND DEALERS AND JUNK DEALERS

§5.31.1 Definitions.
As used in this chapter:
A. Junk Dealer. Any person who, within the city, shall, as a business, engage in the purchase, sale, trade, barter or exchange of old metals, ropes, rags, glass or paper, or other discarded materials or junk or shall keep any store, shop, room, lot or place where such materials are bought, sold, traded, bartered or exchanged is defined to be a junk dealer, within the meaning of this chapter.
B. Secondhand Dealer. Any person who, within the city, shall, as a business, engage in the purchase, sale, trade, barter or exchange of secondhand goods, other than “junk” as defined in this chapter or any person who shall keep any store, shop, room or place where secondhand goods of any kind or description, other than “junk” as defined in this chapter, are bought, sold, traded, bartered or exchanged is defined to be a secondhand dealer, within the meaning of this chapter. [Prior code §§ 62.210, 62.215]

§5.31.2 Exception.
Any person within the city engaged in the business of selling new goods or merchandise, either by retail or wholesale, and who accepts on trade or exchange used goods or merchandise toward the purchase price of new goods or merchandise sold, shall not be considered a secondhand dealer within the meaning and terms of Section 5.31.10 and any such person may accept trade-in goods and merchandise of any and all kinds and may sell or otherwise dispose of such merchandise without being deemed a secondhand dealer as defined in Section 5.31.1. [Prior code § 62.255]

§5.31.3 License required.
It is unlawful for any person within the city to engage in the business of secondhand dealer or junk dealer without first having obtained a license as hereinafter set forth. [Prior code § 62.220]

§5.31.4 License application.
Licenses shall be issued only upon the signed, written application of the owner of the business and shall contain such information respecting the owner of the business as the city recorder shall determine. Upon receipt of the application and the fee, the city recorder shall make such investigation as shall seem adequate to determine the financial responsibility of the applicant. The city recorder shall issue a license to the applicant within ten days from receipt of the application unless the investigation shows that the applicant is ineligible. [Prior code § 62.230]

§5.31.5 License application - False statements.
It is unlawful for any person to make any false statement in any application for any license under this ordinance regardless of the materiality thereof. [Prior code § 62.235]

§5.31.6 License - Fees and duration.
Licenses required by this chapter shall be issued by the city recorder annually for the fiscal year beginning on the first day of July of each year, upon payment of an annual fee of ten
dollars. All licenses shall be for one year, and no reduction shall be made for a license for less than one year. [Prior code § 62.225]

§5.31.7 Record of purchases and sales required.
Every secondhand dealer and junk dealer doing business within the city shall keep a complete record of all purchases and sales showing the date of transaction, the purchase or sale price, the description of the article and the name and address of the person from whom purchased or to whom sold. [Prior code § 62.240]

§5.31.8 Purchase of goods from minors - Stolen property.
It is unlawful for any secondhand dealer or junk dealer doing business within the city to purchase any goods or materials from any child under the age of twenty-one years or to purchase stolen property. [Prior code § 62.245]

§5.31.9 Revocation of license.
Upon the conviction of any person licensed under this chapter for the violation of any of the terms of this chapter, the license granted under this chapter may be permanently revoked or temporarily suspended for such period as the court shall see fit in addition to such fine or imprisonment as the court may impose. [Prior code § 62.250]

Chapter 5.32 Reserved for Expansion
Chapter 5.33 Reserved for Expansion
Chapter 5.34 Reserved for Expansion
Chapter 5.35 Reserved for Expansion
Chapter 5.36 Reserved for Expansion
Chapter 5.37 Reserved for Expansion
Chapter 5.38 TAXICABS

§5.38.01 Definitions. As used in this chapter, except where the context otherwise requires:
A. City. City of Independence, Oregon.
B. Person. Any natural person, firm, corporation, partnership or association.
C. Street. As used herein, every road, highway, thoroughfare, alley and place, including bridges, viaducts and other structures within the boundaries of the City, used or intended for use of the general public for vehicles, except the terms do not include any road or thoroughfare or property in private ownership.
D. Taxicab. Every motor vehicle, except cars for rent without drivers, used for the transportation of passengers for hire within the corporate limits of the City and a 3-mile radius beyond the limits, not operated exclusively over a fixed and defined route, but used for transportation of passengers where the destination and route are controlled by the passengers, for which a charge is made, and not regulated by the State of Oregon.
E. Taxicab Driver. A person who carries on the vocation of driving a taxicab.
F. Taxicab Operator. Any person engaged in the business of providing the services of a taxicab.
G. Taxicab Stand. As used herein, any place upon the curb or street or elsewhere which is exclusively reserved by the City for the use of taxicabs. [Ord. 1473, §1, 01-13-09]

§5.38.02 License required.
A. No person shall operate the business of a taxicab within this city without first being licensed as provided in this chapter. [Amended Ord. 1473,§1, 01-13-09]
B. This chapter shall apply to those who operate taxicabs from another city and who regularly solicit and do business within this city, but shall not apply to those who operate taxicabs from another city and who only occasionally solicit and do business within this city. [Prior code § 66.110]

§5.38.03 License application.
An applicant for taxicab license shall make application and shall provide the following information:
A. Name, business address and residence of the owner or owners of the business;
B. Make, year, type and passenger seating capacity of each taxicab for which application is made;
C. A statement whether the owner or owners of the business have ever been convicted of any crime, misdemeanor or violation of municipal ordinance, other than minor traffic and parking offenses;
D. Such other information as the city council or City Manager may deem necessary for the proper protection of the public. [Amended Ord. 1473,§1, 01-13-09; Prior code § 66.115]
E. The application shall be signed by the applicant; such signature shall constitute the applicant’s consent to an investigation conducted by the City. [Ord. 1473, §1, 01-13-09]
F. Fees for application of taxicab license shall be as established by resolution of the City Council. [Ord. 1473, §1, 01-13-09]
§5.38.10 Rates established. [Deleted Ord. 1473, §1, 01-13-09]

§5.38.04 Grounds for denial of application.
The city council, upon receiving the report, shall approve or disapprove the request for license, by roll call vote, which vote shall be recorded in the minutes of the council. The council may deny any application for license if it finds that:
A. The applicant's financial responsibility and experience would be such that the person's operation of a taxicab business would pose a reasonable hazard to public health, safety and welfare;
B. The applicant or officers thereof having prior criminal convictions;
C. There is insufficient demand for additional taxicab service. [Prior code § 66.125]]

§5.38.05 Duration of license - Investigation.
A. Such license shall be for a period of not more than two years.
B. Before any license is granted, the City Manager shall direct the chief of police to conduct an investigation of the applicant, and in connection therewith may require the applicant to be fingerprinted. The chief of police shall, within thirty days of the receipt by the city council of the request for license, make the Chief's report as to the applicant's financial ability and whether applicant has prior convictions for violation of the laws of this or any other state or municipal ordinances. [Prior code § 66.120]

§5.38.06 Transfer of license.
No license to operate the business of a taxicab may be sold, assigned, mortgaged or otherwise transferred without prior approval of the city council. [Prior code § 66.130]

§5.38.07 Proper repair and maintenance of vehicles.
A. No person shall operate the business of a taxicab in this city unless each vehicle so used is in proper repair and equipped in accordance with the Motor Vehicle Code of this state. [Prior code § 66.140]
B. Vehicles must be kept free from debris and in a sanitary condition. [Ord. 1473, §1, 01-13-09]
C. No smoking allowed in taxicabs. [Ord. 1473, §1, 01-13-09]

§5.38.08 Insurance required.
A. No person shall drive or operate any taxicab unless there first is filed with the city recorder a certificate of insurance to a policy issued by an insurance company licensed to conduct business in this state attesting that such insurance company will assume responsibility for injuries to persons and property caused by the operation of the taxicab in the following amounts:
   1. For death or injury to any one person in any one accident, not less than $100,000 (one hundred thousand dollars);
   2. For death or injury to two or more persons in any one accident, not less than $300,000 (three hundred thousand dollars);
   3. For damage to or destruction of property of others resulting from any one accident, not less than $50,000 (fifty thousand dollars). [Amended Ord. 1473,§1, 01-13-09]
B. Such policy of insurance shall contain a provision against cancellation except upon thirty days’ prior written notice to the city council. [Prior code § 66.145]

§5.38.09 Operators of taxicabs - Deliveries.
No person driving or operating a taxicab licensed under this chapter shall make delivery of any package, bottle or other container containing any alcoholic beverage, drug or other thing whose sale is forbidden by statute, ordinance or charter within the corporate limits of this city. This section shall not forbid the carrying of such beverage, drug or thing as an incident to the carrying of a passenger in whose lawful possession such thing is held. [Prior code § 66.150]

§5.38.10 Driver's permit required - posted.
A. No person shall be regularly employed, either full-time or part-time, as a taxicab driver by any person or firm licensed under this chapter unless such person has first been issued a permit as such taxicab driver by the chief of police. [Prior code § 66.155]
B. The driver's permit shall be posted in a conspicuous place in the taxicab which the driver is operating. [Ord. 1473, §1, 01-13-09]

§5.38.11 Permits denied when.
No driver’s permit shall be issued to:
A. A person who does not have a valid chauffeur's license issued by the state of Oregon, Motor Vehicles Division;
B. A person who has been convicted of aggravated murder or murder as those crimes are defined in ORS Chapter 163;
C. A person who has been convicted of:
   1. A crime or offense against a person included in ORS Chapter 163 or its counterpart in another jurisdiction, or
   2. A crime of offense involving theft and related offenses, burglary and criminal trespass, criminal mischief, or robbery as those crimes are defined in ORS Chapter 164 or their counterpart in another jurisdiction, within the time periods specified, as follows:

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<thead>
<tr>
<th>Years Immediately Preceding Application for Permits:</th>
<th>Crime(s):</th>
</tr>
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<tbody>
<tr>
<td>10</td>
<td>Class A or B felony</td>
</tr>
<tr>
<td>5</td>
<td>Class C felony or Class A misdemeanor, excluding major traffic offenses</td>
</tr>
<tr>
<td>2</td>
<td>Class B or C misdemeanor;</td>
</tr>
</tbody>
</table>
D. A person who has been convicted of a major traffic offense as defined in ORS 153.500 or its counterpart in another jurisdiction within one year immediately preceding application for a permit;
E. A person who has been convicted of four Class A, B or C traffic infractions within one year immediately preceding application for a permit;
F. An applicant who fails to supply information so required or who submits false or misleading information. [Ord. 1139 § 1, 1985: prior code § 66.160]
§5.38.12 Denial of driver's permit - Appeal.
A. An applicant whose application for a driver's permit has been refused by the chief of police may appeal that decision to the city council.
B. Such appeal shall be taken by filing with the city recorder, within fourteen days after notice of the action complained of, a written notice describing with certainty the action of the chief of police from which the appeal is taken and a declaration that such person takes an appeal to the council from such action.
C. The City Manager shall fix the time for the appeal to be heard by the city council, place the hearing of the appeal upon the calendar of the council and notify the appellant and the chief of police of the time fixed, no less than five days prior to that time.
D. The council shall take such action upon the appeal and such action by the council shall be final. [Ord. 1139 § 2, 1985: prior code § 66.165]

§5.38.13 Suspension and revocation of driver's permit.
The city council, upon recommendation of the chief of police, may suspend or revoke a driver's permit upon occurrence of any condition which would make such person ineligible to obtain such a license. [Prior code § 66.170]

§5.38.14 Suspension and revocation of taxicab license - Notice.
A. The city council may, after notice of hearing, suspend or revoke the taxicab license of any holder upon finding that such holder has knowingly and willfully violated any provision of this chapter.
B. Written notice of the suspension or revocation hearing shall be mailed by certified mail to the licensee not more than thirty or less than ten days prior to the date of the hearing. [Prior code § 66.175]

§5.38.15 Rates established.
The city council shall establish, by resolution, rates which shall be charged for transport of persons and packages by taxicab. Such rates shall be posted in plain view of occupants of the passenger compartment, and no other rate than that so established shall be charged. [Amended Ord. 1473, §1, 01-13-09; Prior code § 66.135]

§5.38.16 Taxi Meters.
A. Taxicabs shall be equipped with a meter which shall be an instrument or device by which charge for transportation by a passenger-carrying vehicle is electronically or mechanically measured or calculated.
B. Every meter shall be installed at the right side of the driver. The reading face of the meter shall at all times be well-lighted and readily discernible to the passengers riding in the taxicab.
C. No person shall driver or operate or engage in the business of operating a taxicab unless the taxicab is equipped with an accurate meter in good operating condition.
D. No person shall drive or operate or engage in the business of operating a taxicab unless the taxicab is equipped with an accurate meter and is at all times used on each of such taxicabs in determining the rate or fare to be charged and collected, subject to the rates established by Council. [Ord. 1473, §1, 01-13-09]
§5.38.17 Receipts.
The driver of a taxicab shall, upon demand of the passenger, render to such passenger a receipt for the amount charged, either by mechanically printed receipt or by a specially prepared receipt, on which shall be the name of the owner, license number, amount of meter reading or charges, and the date of the transaction. [Ord. 1473, §1, 01-13-09]

§5.38.18 Direct route to be traveled; fares not charged when vehicle disabled.
A. Any taxicab driver employed to carry passengers to a definite point shall take the most direct route possible that will carry the passenger safely and expeditiously to his/her destination.
B. In the event any vehicle described herein shall, while under employment, become disabled or break down without fault of the passenger, the time of stoppage shall be deducted from the charge. [Ord. 1473, §1, 01-13-09]

§5.38.19 Acceptance and discharge of passengers.
A. Receipt and discharge of passengers. Drivers of taxicabs shall not receive or discharge passengers in the road way, but shall pull up to the right-hand side as nearly as possible, or in the absence of a sidewalk, to the extreme right-hand side of the road and there receive or discharge passengers, except upon one-way streets, where passengers may be discharged at either the right- or left- hand sidewalk or side of the roadway in the absence of a sidewalk.
B. Refusal to carry orderly passengers prohibited. No driver shall refuse or neglect to convey any orderly person or persons upon request unless previously engaged or unable or forbidden by the provisions herein to do so.
C. Lodging solicitation prohibited. It shall be a violation hereof for any driver of a taxicab to solicit business for any hotel or motel or attempt to divert patronage from one hotel or motel to another.
D. Additional passengers. No driver shall permit any other person to occupy or ride in said taxicab unless the person or persons first employing the taxicab shall consent to the acceptance of additional passenger or passengers. [Ord. 1473, §1, 01-13-09]

§5.38.20 Taxicab Service.
All persons engaged in the taxicab business in the City, operating under the provisions herein, shall maintain a central place of business and keep the same open 24 hours a day for the purpose of receiving calls and dispatching taxicabs. They shall answer all calls received by them for services inside the corporate limits of the City, as soon as they can do so; and, if services cannot be rendered within twenty (20) minutes, they shall then notify the prospective passengers how long it will be before the call can be answered and give the reason therefor. Any licensee who shall refuse to accept a call anywhere in the corporate limits of the City at any time when such licensee has available taxicabs and drivers, shall be deemed to have violated these provisions and the license to such licensee shall be revoked at the discretion of the City Manager. [Ord. 1473, §1, 01-13-09]

§5.38.21 Reports and records.
A. Every holder of a taxicab operator’s license shall keep accurate records of receipts from operations, operating and other expenses, capital expenditures and such other
operating information as may be required by the City Manager. Every holder shall maintain the records containing such information and other data required herein at a place readily accessible for examination by the City Manager at any reasonable time.

B. All accidents arising from or in connection with the operation of taxicabs which result in death or injury to any person or in damage to any vehicle or to any property in an amount exceeding the sum of $400,000 shall be reported with 24 hours from the time of occurrence to the City Manager. [Ord. 1473, §1, 01-13-09]

§5.38.30 Penalty.
Any person violating any of the provisions herein shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount not exceeding $500.00 or by imprisonment not exceeding 90 days, or by both such fine and imprisonment. [Ord. 1473, §1, 01-13-09]

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Chapter 5.44  - MOBILE VENDING DEVICES ON PUBLIC OR PRIVATE PROPERTY

§5.44.1 Definitions.
The following definitions apply to this chapter:

"Approved". Approved by the Oregon Health Division.

"Catering". The preparation of food in an approved food service facility and the transportation of such food for service and consumption at some other site.

"Commissary". A catering establishment, restaurant, or any other place in which food, containers, or supplies are kept, handled, prepared, packaged, or stored, and from which vending machines and mobile units are serviced.

"Community event". Activity specifically approved by the council granting use of street and sidewalk areas within a specifically defined area for a period of time not exceeding ten days to a community based organization. Also included in this definition is the annual Western Days Festival and Farmers Market.

"Conduct business". Carrying, conveying, transporting, selling or offering for sale food or beverage of any type of any type or fresh cut flowers, balloons, souvenirs, other merchandise for immediate delivery, or service either from a mobile vending device or as a pedestrian.

"Limited Service Restaurant". A restaurant serving only pre-wrapped sandwiches, or a single dish or food product, and non-perishable beverages.

"Mobile Vending Device" shall include pedestrians, carts as defined in Section 5.42.10, motorized vehicles, trailers, recreational vehicles, any device in, upon or by which any person or property is or may be transported, moved or drawn any structure or enclosure, which because of its size, construction or use of materials is not regulated by the Uniform Building Code.

"Non-Perishable Foods". Food which is not readily perishable and includes beverages including, but not limited to, soft drinks and fruit juices served in sealed pre-packaged containers; pasteurized alcoholic beverages served in original containers; and coffee or tea.

"Packaged". Bottled, canned, cartoned or securely wrapped.

"Pushcart". A wheeled vehicle of such size and weight that it may be easily moved by no more than two people, and which is serviced daily from its commissary or warehouse for cleaning and supply.

"Sidewalk" means that portion of the street between the curb lines or the lateral lines of a roadway and the adjacent property line intended for the use of pedestrians. [Ord. 1338]

§5.44.2 Permit required.
No person may conduct any mobile vending business (including operation of a mobile food unit) in the city without first obtaining a permit from the City Manager or designee. Site design review is required according to Chapter 80 of the Zoning Code. Any existing facilities at this time are required to come into compliance with the regulations in this Chapter within 60 days of the passage of this ordinance. [Ord. 1338]

§5.44.3 Permit fee.
Each application for a permit to conduct business on a street or sidewalk shall be accompanied by a nonrefundable fee established by council resolution.
(1) Permits issued under this Chapter are not transferable.
(2) A late payment fee shall be charged to all accounts for each 30 days in which the license fees are not paid after the original bill is mailed. The amount of the fee shall be established by council resolution. The unpaid fees, including late payment charges, constitute a debt to the city which the City Manager may initiate legal action to collect. If license fees are not paid within 90 days of the date the original statement is mailed, an eviction notice will be sent. [Ord. 1338]]

§5.44.4 Application.
Applications for a permit to conduct business from mobile vending devices shall be made by a form approved by the City Manager. A separate application shall be required for each mobile container or device to be used for transportation or display. The application shall include, but not be limited to, the following information:
(A) Name and address of applicant;
(B) Type of merchandise to be sold;
(C) A valid copy of all necessary permits required by state or local health authorities;
(D) A signed statement that the permittee shall hold harmless the city, its officers and employees, and shall indemnify the city, its officers and employees for any claims for damage to property or bodily injury to persons occasioned by any activity carried on under the terms of the permit. Permittee shall furnish and maintain public liability, food products liability and property damage insurance to protect the permittee and the city from all claims for damage to property or bodily injury, including death, which may arise from operations under the permit or in connections with it. The insurance shall provide coverage of not less than $100,000 for bodily injury for each person, $300,000 for each occurrence and not less than $300,000 for property damage per occurrence. The insurance shall be without prejudice to coverage otherwise existing therein, and shall name as additional insureds the city, its officers and employees, and shall further provide that the policy shall not terminate or be canceled prior to the completion of the contract without 30 days written notice to the City Manager.
(E) Means to be used in conducting business including, but not limited to, a description of any mobile container or device, to be used for transport or to display merchandise.
(F) A written inspection approved from the City Building Official and the District Fire Marshall certifying the provisions of 5.44.065 have been met.
(G) The location from which business will be conducted and the written consent of the owners of the property adjacent thereto or located thereon. No application shall apply for a total of more than three locations. If consent can not be obtained, the applicant shall specify attempts made to obtain consent, and the City Manager shall determine whether such attempts have been adequate, in the Manager’s sole discretion.
(H) If requested permission to remain on the premises for more than 12 hours in any 24-hour period, written plans showing lawful connection to city sewer and water facilities must be provided except in the case of limited service restaurants and as provided for in Section 5.42.5(2). [Ord. 1338]]

§5.44.5 Inspection.
(1) Prior to the insurance of any permit, the Building Official and Fire Marshall shall inspect and approve any mobile device to be used. The building official shall certify that
the device is structurally and mechanically sound, the design will not create a nuisance or hazard to the public, and the size of the structure meets the requirements of Section 5.42.10 Any pushcart shall be constructed with wheels and brakes or good working order. The Fire Marshall shall certify that a cooking or heating apparatus is in conformance with the provisions of the Uniform Fire Code.

(2) If the mobile vending device is allowed to remain in a permanent or semi-permanent locations in accordance with the provisions of Section 5.42.13, the public works department shall certify that the mobile device is properly connected to city sewer and water facilities. Except that, mobile food units, pushcarts, or limited service restaurants serving only food packaged in individual servings, transported, and stored under conditions meeting the requirements of the Food Sanitation Rules of the Oregon Health Division need not comply with the requirements of the rules pertaining to the necessity of water and sewage systems. Although connection to City sewer and water facilities may not be required, if liquid waste results from the operation of a mobile food unit, the waste shall be stored in a permanently installed retention tank that is of sufficient capacity to hold the liquid waste produced by the mobile food unit. Those wastes shall be drained only into an approved disposal system. [Ord. 1338]

§5.44.6 Location review.

(1) Upon receipt of a application for a permit, the City Manager shall review each location applied for to determine whether such location is within a commercial stays in area and that the use of such location is compatible with the public interest in use of street and sidewalk areas as public right-of-way. In making the determination, the City Manager may consider the width of sidewalk, the proximity and locations of existing street furniture, including but not limited to signposts, lampposts, parking meters, bus shelter, benches, phone booths, and newsstands as well as the presence of bus stops, truck loading zones, taxi stands or hotel zones to determine whether that proposed use would result in pedestrian, traffic, or street congestion.

(2) If the City Manager determines the proposed location is unsuitable, the City Manager shall inform the applicant in writing who may appeal the decision to the planning commission and then to the city council as provided in IZC 90.30.045. [Ord. 1338]

§5.44.7 Form and conditions of permit.

Permits shall be in a form prescribed by the City Manager and shall contain the following conditions:

(1) Each permit shall be issued for a one year period. [Ord. 98-1358]
(2) The permit issued shall be personal only and not transferable in any manner.
(3) The permit is valid only when used at the location designed on the permit.
(4) The permit is subject to the conditions and restrictions of this Chapter.
(5) The permit as it applies to a given location may be suspended by the council for a period up to ten days when council actions providing for a "community event" shall so provide. [Ord. 1338]

(6) The City Manager must find that the mobile vending device will not detract from the appearance of the city and that it will be harmonious with the area in which it will do business. [Ord. 1338]
§5.44.8 Sanitary standards.
All utensils and equipment used by a licensed vendor shall be maintained in a clean and sanitary condition and shall conform to all standards prescribed by state and county law and regulations promulgated pursuant thereto. [Ord. 1338)]

§5.44.9 Exemptions.
This chapter shall not apply to those mobile vendors conducting business only during the annuals Western Days festival and Saturday Farmers Market, in which case said mobile vendors shall be regulated by the Western Days Committee and Chamber of Commerce respectively. [Ord. 1338)]

§5.44.10 Restrictions.
(1) Carts on public property. Any person conducting business on city streets or sidewalks with a permit issued may transport and display food or flowers or balloons or other merchandise upon any mobile device or pushcart, provided that the device occupies no more that 16 square feet of the sidewalk area, and does not exceed three feet in width, excluding wheels, six feet in length, including any handle, and not more than five feet in height, excluding canopies, umbrellas, or transparent enclosure. In area where the sidewalk measures 15 feet or more between the property line and curb, a width of four feet may be allowed. No person may use any device, chair, stand, box container, or table that does not comply with the requirements of this section or place such a device on the street or sidewalk, unless that have a business immediately adjacent to the sidewalk.

(2) No person may conduct business on a sidewalk in any of the following places:
   (a) Within 20 feet of the intersection of two street right-of-ways:
   (b) Within 8 feet of the neighboring property owner adjacent to the property line;
   (c) Within 10 feet of the extension of any building entrance or doorway, to the curb line.

(3) All persons conducting business on a street or sidewalk shall display in a prominent and visible manner the permit issued by the City Manager under the provisions of this article and conspicuously post the price of all items sold.

(4) All person conducting a mobile vending business shall pick up any paper, cardboard, wood or plastic containers, wrappers, or any litter in any form deposited by any person within 25 feet of the place of conducting business. Each person conducting a mobile vending business hall carry a suitable container for the placement of litter by customers or other persons.

(5) All persons conducting business on a sidewalk shall obey any lawful order or a police officer to move to a different permitted location to avoid congestion or obstruction of the street of sidewalk or to remove his or her vending cart entirely from the street or sidewalk if necessary to avoid such congestion or obstruction.

(6) No person may conduct business as defined in this article at a location other than that designated on the permit.

(7) No permittee may make any loud or unreasonable noise of any kind by vocalization or otherwise for the purpose of advertising or attracting attention to the wares.

(8) No permitted cart or device shall be left unattended on a street or sidewalk nor remain on the street or sidewalk between midnight and 6:00 a.m., unless otherwise specifically permitted under the provisions of Subsection 5.44.100.
(9) No permittee may conduct business in violation of the council action providing for a community event.

(10) No vendor shall operate from a motor vehicle in any residential zone of the city. The mobile ice cream vendor is exempt from this Chapter.

(11) No vendor may operate in a residential area of the city between the hours of 8 p.m. and 8 a.m. Vendors in residential zones shall be subject to all applicable parking, noise and vehicle regulations.

(12) No licensee shall:
(a) Operate in a manner which creates a danger to persons or property;
(b) Deliberately hinder or impede pedestrian traffic;
(c) Obstruct the clear vision of the driver of any vehicle approaching or entering an intersection;
(d) Operate in a manner which will hinder emergency or utility services; or
(e) Operate in violation of any of the city's land use regulations. (Ord. 1338)

§5.44.11 Denial or revocation of permit.
(1) The City Manager may deny, revoke or suspend the permit of any person to conduct a mobile vending business if the City Manager finds:
(a) That the person has violated any of the provisions of this chapter;
(b) The written consent of the property owners consenting to the permittee conducting business has been withdrawn;
(c) Any necessary health or other permit has been suspended, revoked or canceled; or
(d) The permittee does not has a currently effective insurance policy in the minimum amount provided in Section 5.42.40 (5).
(e) The permittee has not paid license fees as provided in Section 5.42.35 (2).
(f) Criminal conduct in relation to service provided is determined.

(2) Upon denial or revocation, the City Manager shall give notice of the action to the permit holder in writing stating the action taken and the reasons for it. If the action of the City Manager is a revocation based on 5.44.090(1)(b)(c) or (d), the action shall be effective upon giving the notice in the permittee; otherwise the notice shall contain the further notice that the action becomes final within 10 days unless appealed to the council by filing a written notice of appeal with the City Manager. Any revocation effective immediately may also be appealed to the council by filing a written notice of appeal within 10 days. [Ord. 1338]

§5.44.12 Violation.
The placement of any cart or device on any street or sidewalk in violation of the provisions of this article is declared to be a public nuisance. The City Manager may after the following nuisance procedures in Section 8.4, Article VI of the Independence Municipal Code cause the removal of any cart of device found on a street or sidewalk in violation of this chapter and may store the cart or device until the owner redeems it by paying the removal and storage charges established by the manager. [Ord. 1338]
§5.44.13 Mobile Vendors on private property - additional requirements and restrictions.
No mobile vendor may be located on private property in any residential zone. [Ord. 1338]

§5.44.14 Prohibited solicitation.
It is unlawful for any person to solicit or demand any pecuniary benefit from any vendor in return for the vendor locating a mobile device on any public street or sidewalk in front of any particular business. [Ord. 1338]

§5.44.15 Appeal.
Any decision of the City Manager may be appealed to the City Council upon filing a written appeal with the City Recorder. The appeal must specify the grounds where the Manager failed to follow the terms of this ordinance. The appeal must be filed within 30 days of the decision on the permit. The appeal must be filed by a resident of the City or the applicant. The appeal may be accompanied by any other information the appellant deems appropriate. The Council shall make a decision on the appeal by reviewing the record of the Manager's decision and the appeal. [Ord. 1338]
§6.1.1 Vehicles injuring animals.
Any person operating a vehicle within the city who shall run over, strike, injure, maim or kill any domestic animal shall immediately stop and render aid to such animal, if injured; or provide for the disposition of the carcass, if such animal is killed. In either case, such person shall make due and diligent inquiry to determine the owner of such animal; and if the owner be found, the person shall notify the owner of the occurrence. Whether or not the owner is found, the operator of the vehicle shall report the accident immediately to the chief of police or the Chief's assistant. [Prior code § 44.385]
Chapter 6.5 – Chickens

§6.5.01 Definitions. For purposes of this chapter, the following definitions apply:

“Chicken” means the common domestic fowl \textit{gallus gallus}.
“Chicken Facility” means a combination of a coop and run.
“Coop” means a small enclosure for housing chickens that is properly ventilated, designed to be easily accessed, cleaned and maintained, and at least two (2) square feet per chicken in size.
“Hen” means an adult female chicken.
“Rooster” means a chicken of the male gender, greater than four (4) months old.
“Run” means an outdoor enclosed or fenced area where chickens may feed or exercise.

§6.5.02 Keeping of Chickens.
A. Notwithstanding any conflicting provisions within the Independence Development Code, no person shall keep chickens within the city, except under all of the following conditions:

1. A resident of a single-family dwelling in a residential zone may keep five (5) or fewer chickens on the lot or parcel on which the resident resides, in conformance with this Chapter and upon issuance of a permit under Section 6.5.030 of this Code.
2. Roosters are prohibited.
3. Except when under the personal control of the permittee, chickens shall be confined at all times within a chicken facility.
4. No chicken facility, either temporarily or permanently, shall be located within twenty feet of any adjacent residence, or within ten feet of the permittee’s residence.
5. A chicken facility shall be located in the rear yard of the permittee’s residence, and shall comply with setback requirements of the Development Zone in which it is located.
6. A chicken coop shall be dry and adequately sealed to prevent cold air and moisture from entering the coop; it shall be maintained in good repair to protect the chickens from injury and to prevent entry of other animals that may be dangerous to the chickens.
7. A chicken facility shall provide protective shading and adequate shelter areas designed to minimize harmful exposure to weather conditions.
8. Waste matter shall be removed from the chicken facility as often as necessary to prevent contamination, reduce disease hazards and minimize odors.
9. All food for chickens shall be stored in metal, rodent-proof containers.
10. Storage of bedding materials shall be designed to prevent vermin infestation.
11. Fencing shall be designed and constructed to confine all chickens to the owner’s property.
12. Chickens must be kept in a covered, enclosed coop from dusk to dawn.
13. A chicken coop shall not exceed one hundred and twenty square feet.
B. Prohibitions:
1. Retail sale of eggs from the residence is prohibited.
2. No chickens may be permitted to run at large.
3. Chickens may not be slaughtered or killed in the City except pursuant to the lawful order of state or county health officials, or for the purpose of euthanasia when surrendered to a licensed veterinarian for such purpose, or as otherwise expressly permitted by law.

§6.5.03 Permit Required.
A. Terms; Conditions of Permit. A permit to keep chickens shall be valid for three years from the date of issuance, and may be renewed for additional three year terms. Every permit shall be subject to the following conditions:
1. Application. An application for a permit to keep chickens shall be accompanied by an application fee, in an amount set by resolution of the City Council, and shall include the following:
   a. The name and mailing address of the person to whom the permit will be issued;
   b. The physical address where the chickens will be kept, if different from above;
   c. A sketch plan and affidavit evidencing that the chicken facility will meet the standards in this section;
   d. A certification of completion from a chicken husbandry course, or a completed quiz contained at the end of the City of Independence “Primer for Keeping of Backyard Chickens”; and
   e. When the applicant is not the owner of the property where the chickens will be located, the applicant will obtain signed consent from the property owner for the keeping of chickens on the property.
2. The granting of a permit under this chapter shall be treated as an administrative action, and shall be administered by the City Recorder. Applications will be processed in the following manner:
   a. The application will be reviewed by the City Recorder for completeness, and will not be acted upon until all information as contained in 6.5.030 (A)(1) is received.
   b. Notice of the application will be sent to the property owners abutting the property where the chickens will be housed. Abutting property owners have 10 business days to respond with written comments prior to issuance of a decision.
   c. Within 5 days after the close of the comment period, the application will be reviewed and a decision rendered.
   d. Written notice of the decision will be mailed to the applicant and any interested party that requested a copy of the decision.
   e. Decisions will be based upon the information supplied with the application, and the criteria in subsection 4 below.
   f. A decision may be appealed to the City Manager or designee, either by the applicant or abutting property owner. The appeal must be filed
within 5 days of date of notice, and be accompanied by a fee as established by Council resolution.

3. Renewal.
   a. A permittee may apply for renewal of a permit no later than 5:00 p.m. on the permit expiration date. The application shall be accompanied by an affidavit that the chicken facility meets the standards in this section, together with the permit renewal fee.
   b. A renewal application shall be reviewed by the City in accordance with Section 4 below.
   c. A late fee, in an amount as established Council resolution, shall be charged for any renewal application received after the expiration date. No renewal shall be granted if the application for the renewal is received more than thirty days after the expiration date.

4. Grounds for Denial/Revocation. An application for a permit to keep chickens or a renewal of a permit may be denied or revoked for any of the following reasons:
   a. Applicant provided inaccurate, misleading or incomplete information on the application for, or in connection with the permit.
   b. The permittee failed to comply with the conditions of a permit issued pursuant to this section.
   c. Applicant failed to provide the sketch plan and affidavit in accordance with 6. 5.030 (A)(1)(c) of this Code.
   d. Permittee’s actions present a reasonable doubt about the permittee’s ability to perform permits and Code conditions, or to keep chickens without endangering the public health, safety or welfare.

5. Revocation. In the event of revocation, the City Recorder shall issue a written notice to the permittee specifying the reason(s) for the revocation and provide the permittee with 10 business days to correct the deficiency(ies). If corrected within the 10-day period, the permit will be reinstated.

6. No Transfer. Any permit granted hereunder is personal in nature to the grantee at the premises identified in the application and is non-transferable to another property or another resident of those premises.

§6.5.04 Violation.
A. Violation of any section of this chapter is punishable, upon conviction, by a fine in the maximum amount of $250.00. Each day a violation continues to exist shall constitute a separate violation for which a separate fine or penalty may be assessed.
Chapter 6.6 DOGS

§6.6.1 Definitions.
As used in this chapter, unless the context otherwise indicates:

“Commercial kennel” means any establishment or premises:
1. Operating for profit, where animals are boarded, kept or maintained for any purpose whatsoever; except where the resulting offspring are sold for resale to commercial outlets, or for the further purpose of research, testing or laboratory experimentation;
2. Operating as a nonprofit animal facility whose primary function is to bring aid and comfort to animals, and which has facilities for more than seven permitted animals.

“Dangerous dog” means, a dog that:
1. Without provocation, and in an aggressive manner inflicts serious physical injury on a person or kills a person;
2. Acts as a potentially dangerous dog after having previously committed an act as a potentially dangerous dog; or
3. Is used as a weapon in the commission of a crime.

“Potentially Dangerous Dog” means a dog that:
1. Without provocation and while not on premises from which the keeper may lawfully exclude others, menaces a person; or
2. Without provocation, inflicts physical injury on a person that is less severe than a serious physical injury; or; or
3. Without provocation and while not on premises from which the keeper may lawfully exclude others, inflicts physical injury on or kills a domestic animal.

“Dog” means a male or female dog including a dog which has been neutered or spayed. A Wolf or Wolf-Dog Hybrid will also be considered a “dog” for all purposes of this chapter except where specified as a Wolf or Wolf-Dog Hybrid.

“Keeper” means a person who owns, possesses, controls or otherwise has charge of a dog, other than:
1. A licensed business primarily intended to obtain a profit from the kenneling of dogs;
2. A humane society or other nonprofit animal shelter;
3. A facility impounding dogs on behalf of a city or county; or
4. A veterinary facility.

“Leash” means leash, cord, chain, rope or other such physical restraint.

“Muzzle” means a device constructed of strong, soft material or a metal muzzle such as that used commercially with greyhounds. The muzzle must be made in a manner which will not cause injury to the dog or interfere with its vision or respiration, but must prevent it from biting any person or animal.

“Person” means any individual, firm, association or corporation.
“Private hobby kennel” means any premises where permitted animals are bred for personal use and enjoyment and kept for the exclusive purpose of show, hunting, racing, herding or breeding, where the resulting offspring are neither sold for resale to commercial outlets, nor for the purpose of research, testing or laboratory experimentation.

“Running at large” means any dog shall be considered running at large when:
A. It is off or outside of the premises belonging to the keeper of such dog;
B. It is outside the boundaries of an area designated by the City for use as an “off-leash dog park;” and
C. It is not in the company of and under the control of the keeper by a leash.
In the case of a dangerous dog, the term “running at large” shall also include a dog that is unconfined.

“Unconfined” means a dangerous dog, if such dog is not securely confined indoors, or leashed and muzzled, or confined in a securely enclosed and locked pen or structure upon the premises of the keeper. Such pen or structure must have secure sides and a secure top. If the pen or structure has no bottom secured in the sides, the sides must be embedded into the ground no less than one foot.

(State law reference—Definitions, ORS 609.035; dangerous dog, ORS 609.098.)

§6.6.2 Dog license required.
A. It is unlawful for any keeper of a dog kept within the city to fail to obtain a license from the City for such dog as required pursuant to this section and thereafter to securely fasten a license tag issued by the city to the dog's collar or harness and insure that it is kept on the dog at all times when the dog is not in the immediate physical custody and control of the keeper.

B. Every person owning or having custody of a dog which has a set of permanent canine teeth or is six months old, whichever comes first, shall immediately obtain a license for the dog by paying to the city a license fee as provided by Section 6.6.3. Dog license fees shall be waived for an assistance dog as provided in 6.6.3 D.

C. The keeper of a Wolf or Wolf-Dog Hybrid shall obtain a dog license from the Polk County Sheriff's Office.
(State law reference—Dog license required, exemptions, ORS 609.100; exemption for assistance dogs as defined in ORS 346.680, ORS 609.105.)

§6.6.3 Dog license fees and exceptions.
A. The dog license fee which is due and payable upon the issuance of a license shall be as set forth by resolution of the city council. Persons applying for a neutered or spayed
dog license fee must present to the city department managing dog licenses a certificate from a licensed veterinarian stating that the dog to be licensed has been so neutered or spayed.

B. Licenses shall be valid for one year or three years from the date of issuance or until the transfer of ownership of the dog, whichever first occurs. At the time of issuing a license the city shall supply a suitable identification tag, which shall be fastened to the dog as required by Section 6.6.2.

C. No license shall be issued until a certificate of vaccination for rabies, valid for the license year, is presented to the City.

D. No license fee shall be required for any assistance dog as defined in ORS 346.680.

E. A Wolf or Wolf-Dog Hybrid is not required to obtain a City of Independence dog license. All licensing, regulation, and enforcement for these animals will take place through the Polk County Sheriff’s Office, animal control.


State law reference—Dog license required, exemptions, ORS 609.100.

§6.6.4 Number of dogs permitted.
Within any residential zone, no more than four (4) dogs which are over six months of age shall be allowed to be kept or harbored at any individual dwelling. This subsection shall not apply to any holder of a private hobby kennel license issued pursuant to section 6.6.13.

(Prior Code, § 42.200; Code 2006, § 6.6.4; Ord. No. 1214, § 3, 1990)

§6.6.5 Maintenance.
All dogs in the city shall be maintained in a humane condition and provisions shall be made for adequate food, drinkable water, shelter, exercise and sanitary conditions.

(Prior Code, § 42.140A; Code 2006, § 6.6.5; Ord. No. 1214, § 8, 1990)

State law reference—Offenses against animals, ORS 167.310 et seq.

§6.6.6 Dogs as a public nuisance.
It is unlawful for any person to allow any dog to:

A. Disturb any person by frequent or prolonged noises;
B. Commit acts that would qualify it as a potentially dangerous dog;
C. Chase vehicles or person(s) on premises other than premises from which the keeper of the dog may lawfully exclude others;
D. Damage or destroy property of person other than the keeper of the dog;
E. Scatter garbage on premises other than premises from which the keeper of the dog may lawfully exclude others;
F. Trespass on private property of persons other than the keeper of the dog;
H. Be kept or maintained in such a manner as to disturb others by noxious or offensive odors, or to otherwise endanger the health and welfare of the inhabitants of the city; or
I. Run at large, as defined in 6.6.1.

(Prior Code, § 42.135; Code 2006, § 6.6.6; Ord. No. 1147(part), 1986; Ord. No. 1214, § 7, 1990)

State law reference—Dogs as public nuisances, ORS 609.095.
§6.6.7 Impounding and disposal.
A. When a dog is a public nuisance described by Section 6.6.6, or if the Chief of police or the Chief's designee has reasonable cause to believe the dog is a dangerous dog, the Chief or designee may impound the dog, cite the keeper, or both.
B. When a dog is impounded under subsection A of this section, the Chief of Police shall post in a conspicuous place at the City Hall a notice giving the description of the dog, and the conditions under which the dog was impounded. The notice shall be posted for three days for unlicensed dogs and for five days for licensed dogs. If the impounded dog was licensed, reasonable efforts shall be made to notify the keeper during the five-day period.
C. If the dog has been impounded for any reason other than being a dangerous dog, and the keeper of the dog does not claim it within the timeframes set forth in subsection B of this section, the dog may be released to a responsible person upon payment of the sum of the charges imposed pursuant to Section 6.6.8. If no keeper or other responsible person appears to redeem a dog within the allotted time, or if the dog has been impounded as a dangerous dog, it shall be transported to an approved animal shelter.
D. Notwithstanding the provisions of subsection C of this section, any dog impounded for biting a person shall be held for not less than ten days, during which time a determination will be made as to whether the dog is rabid. Such determination may require destruction of the dog.
E. A dangerous dog running at large, which because of its disposition or diseased condition is too hazardous to apprehend, may be destroyed by a peace officer, dog control officer or by a person acting in defense of self, family or another person.

(Prior Code, § 42.115; Code 2006, § 6.6.7; Ord. No. 1147(part), 1986)

State law reference—Impoundment of dangerous dogs, ORS

§6.6.8 Redemption of impounded dogs.
A. Should the keeper of a dog impounded for public nuisance desire its release, the keeper shall pay an impound fee as is established by resolution of the city council. Any keeper redeeming an impounded dog shall pay in addition to the impound fee, the total of the daily care expenses accrued during the impound period plus any other expenses incurred in the keeping of the dog.
B. If the dog is unlicensed the keeper shall also purchase a license and pay the applicable penalty for failure to have a license. If the keeper is not the owner of the dog, the keeper may request that a license purchased by the keeper under this subsection be issued in the name of the dog owner.
C. In addition to any payment required pursuant to subsections A or B of this section, the City may require as a condition for redeeming the dog that the keeper agree to reasonable restrictions on the keeping of the dog. The keeper must pay the cost of complying with the reasonable restrictions. As used in this subsection, “reasonable restrictions” may include, but is not limited to, sterilization.

(Prior Code, § 42.120; Code 2006, § 6.6.8; Ord. No. 1147(part), 1986)

§6.6.9 Dangerous dogs.
A. No person owning or harboring or having the care of a dangerous dog shall allow or permit such animal to go unconfined on the premises of such person.
B. No person owning or harboring or having the care of a dangerous dog shall allow or permit such dog to go beyond the fully enclosed premises of such person unless such dog is securely leashed and muzzled or otherwise securely restrained and muzzled.
(Prior Code, § 42.125; Code 2006, § 6.6.9; Ord. No. 1147(part), 1986)

§6.6.10 Dangerous dogs - Sale prohibited.
It is unlawful for any person to sell to any other person a dangerous dog within the city limits. The city shall be notified whenever a dog that has been declared dangerous has been relocated.
(Prior Code, § 42.130; Code 2006, § 6.6.10; Ord. No. 1147(part), 1986)

§6.6.11 Biting dogs - City to be notified.
A. The owner of a dog which bites a human being shall immediately notify the city of such bite, giving the name and address of the person bitten, if known.
B. Any person who is bitten by a dog shall forthwith notify the city of such bite, giving a description of the dog and the name and address of the owner, if known.
C. When a doctor, veterinarian or hospital employee has information that a person has been bitten by a dog, such person shall forthwith notify the city, in addition to any state reporting requirements.
(Prior Code, § 42.140; Code 2006, § 6.6.11; Ord. No. 1147(part), 1986)

§6.6.12 Appeal.
Any dog owner, believing him or herself aggrieved by the seizure and impounding of his or her dog, may apply to the municipal judge for the release of such dog, provided such appeal is filed within three days of the date of the seizure and impound, and the municipal judge shall thereupon set a time and place for hearing such application and notify the chief of police; and upon a summary hearing at such time and place, the municipal judge shall have full power to determine whether the dog has been wrongfully impounded and whether it shall be returned to its owner and upon what terms.
(Prior Code, § 42.145; Code 2006, § 6.6.16; Ord. No. 1147(part), 1986; Ord. No. 1214, § 11, 1990)

Kennels

§6.6.13 Kennel license - Conditions for issuance.
The holder of a Private Hobby Kennel License may keep up to seven (7) dogs over six months of age on a lot located in a residential zone. In addition to a finding that there will be no material impact on the surrounding neighborhood, an applicant shall provide proof that the following conditions have been met prior to issuance of a license:
A. Payment of an annual license fee, in addition to the dog license fees established for each individual dog, with such fee to be established by resolution of the city council;
B. Submission of the premises to be used for the keeping of dogs to an annual inspection by the city;
C. Maintenance of humane conditions of shelter, exercise, food, water and sanitary standards. Such standards shall meet the following minimum requirements:
1. Housing structures shall be dry and adequately sealed to prevent cold air and moisture from entering the enclosure, and shall be maintained in good repair to protect the animals from injury.

2. Outdoor facilities shall provide protective shading and adequate shelter areas designed to minimize harmful exposure to weather conditions and to prevent saturation of bedding materials.

3. The primary enclosure for dogs shall be of sufficient size to permit each dog to stand freely, sit, turn about and lie in a comfortable normal position.

4. When restraining devices are used in connection with a primary enclosure intended to permit movement outside the enclosure, such device shall be installed in a manner to prevent entanglement with the devices or other animals or objects and shall be fitted to the dog by a harness or well-fitted collar, other than a choke type collar, and shall not be shorter than six feet or less than three times the length of the animal as measured from the tip of its nose to the base of its tail, whichever length is greater. Whenever restraining devices are used, they shall allow the animal to be able to reach food, water, and shelter.

5. Excrement shall be removed from primary enclosures and areas as often as necessary to prevent contamination, reduce disease hazards and minimize odors. Storage of food supplies and bedding materials shall be designed to prevent vermin infestation.

D. The license granted above is personal in nature to the grantee and shall not be transferable.


§6.6.14 Application Procedure.
Private Hobby Kennel License. Requests to grant, deny, revoke or modify a Private Hobby Kennel License authorized by this chapter shall be treated as an administrative action and shall be processed by the city recorder. Applications will be processed in the following manner:

1. Applications must be submitted on a form provided by the city, along with an application fee as established by Council resolution.

2. The application will be reviewed for completeness, and will not be acted upon until all necessary information is received.

3. Notice of the application will be sent to the property owners abutting the property where the dogs will be housed. Abutting property owners will have 10 business days to respond with written comments prior to issuance of a decision.

4. Within 5 days after the close of the comment period, the application will be reviewed and a decision made.

5. Written notice of the decision shall be mailed to the applicant and any interested party that requested a copy of the decision.

6. If the application is approved, a license will be issued to the applicant at the property on which the Private Hobby Kennel will be located, and is not transferrable.

7. The City Recorder’s decision on an application may be appealed in writing to the City Manager by the applicant or abutting property owner. The appeal must be filed within 5 days of date of the notice of the decision and be accompanied by a fee as
8. The City Manager’s decision on an appeal is final. [Ord. 1224 § 1, 1991: prior code § 42.190]

§6.6.15 Standards for granting, denying or revoking license.
A. A kennel license shall be issued only upon a finding that the dogs will not materially impact the neighborhood in which the kennel would be located. Requests to grant, deny, revoke or modify kennel permits shall be evaluated by considering impacts on the surrounding neighborhood, including, but not limited to, the number of dogs in relation to the density and number of people surrounding the applicant’s property, the size of the space in which the animals will be contained, provisions for the health and safety of the animals, the size and type of dogs, and prior complaints about or convictions of applicants relating to animal husbandry.
B. Receipt by the city of two or more verified and documented complaints regarding violation of any of the provisions of this chapter or of the city's nuisance ordinance within any twelve-month period prior to application for a kennel permit may be grounds for denial of the permit, in addition to any other remedy authorized by law. If multiple complaints are received from a single person or address, such complaints will be verified by the City prior to any denial.
C. Receipt by the city of two or more verified and documented complaints regarding violation of any of the provisions of this chapter or the city's nuisance ordinance within any twelve-month period shall be grounds for the city to revoke or modify a kennel license, in addition to any other remedy authorized by law.
D. The city shall maintain records of all dog complaints for a period of five years. (Prior Code, § 42.200; Code 2006, § 6.6.14; Ord. No. 1224, § 2, 1991)

§6.6.16 Commercial kennels prohibited when.
No person may maintain a commercial kennel in a residential zone or in any location except a commercial zone which lists as a permitted use an animal kennel and which is at least one thousand feet from the nearest residential use of land. [Ord. 1509 § 1, 06-12-2012] (Prior Code, § 42.220; Code 2006, § 6.6.15; Ord. No. 1214, § 5, 1990)
ARTICLE I.  DEFINITIONS

§8.4.1 Definitions.
“Person in charge of property” means an agent, occupant, lessee, contract purchaser or person, other than the owner, having possession or control of the property.
“Public place” means a building, place or accommodation, whether publicly or privately owned, open and available to the general public. [Prior code § 41.110]

ARTICLE II.  ANIMALS AND FOWL

§8.4.2 Animals afflicted with a communicable disease.
No person may permit an animal or bird owned or controlled by the person to be at large within the city if the animal or bird is afflicted with a communicable disease. [Prior code § 41.210]

§8.4.3 Dangerous animals.
No person may permit a wild or domesticated dangerous animal to run at large. [Prior code § 41.220]

§8.4.4 Livestock and poultry.
A. No person may maintain a pigsty, slaughterhouse or tannery, or permit livestock or poultry owned by the person to run at large within the city. The provisions of this section shall not apply to persons keeping cats, dogs or other household pets.
B. Livestock, poultry or other animals or fowls running at large in the city shall be taken up and impounded by a police officer and disposed of in accordance with the procedure provided by ordinance for the disposition of abandoned vehicles. [Prior code § 41.230]

§8.4.5 Removal of carcasses.
No person may permit any fowl or animal carcasses owned by the person or under the person’s control to remain upon the public streets or places, or to be exposed on private property, for a period of time longer than is reasonably necessary to remove or dispose of such carcass. [Prior code § 41.240]

§8.4.5 Rats.
No person owning or occupying property within the city shall allow a condition to exist upon the property which condition attracts wild rats, gives wild rats access to food, or creates
shelter accessible to wild rats. Such prohibited conditions shall include, but are not limited to the following:
A. Keep of any animal so that feces, refuse, food or shelter associated with the keeping of the animal affords food or shelter to wild rats.
B. Allowing any accumulation of rubbish, trash, junk or other material which by reason of its decayed or unused condition affords shelter to wild rats. [Prior code § 41.250]

ARTICLE III. NUISANCES AFFECTING PUBLIC HEALTH

§8.4.7 Designated.
No person may permit or cause a nuisance affecting public health. The following are nuisances affecting the public health and may be abated as provided in this chapter:
A. Privies. An open vault or privy constructed and maintained within the city, except those constructed or maintained in connection with construction projects in accordance with the Oregon State Dept. of Environmental Quality regulations.
B. Debris on Private Property. Accumulations of debris, rubbish, manure and other refuse located on private property that are not removed within a reasonable time and that affect the health, safety or welfare of the city.
C. Stagnant Water. Stagnant water which affords a breeding place for mosquitoes and other insect pests.
D. Water Pollution. Pollution of a body of water, well, spring, stream or drainage ditch by sewage, industrial wastes or other substances placed in or near such water in a manner that will cause harmful material to pollute the water.
E. Food. Decayed or unwholesome food which is offered for human consumption.
F. Odor. Premises which are in such a state or condition as to cause an offensive odor or which are in an unsanitary condition.
G. Surface Drainage. Drainage of liquid wastes from private premises. [Prior code § 41.310]

ARTICLE IV. NUISANCES AFFECTING PUBLIC SAFETY

§8.4.8 Abandoned iceboxes.
No person may leave in a place accessible to children an abandoned, unattended or discarded icebox, refrigerator or similar container which has an airtight door with a lock, snap lock or other mechanism which may not be released for opening from the inside, without first removing such lock or door from such icebox, refrigerator or similar container. [Prior code § 41.410]

§8.4.9 Attractive nuisances.
No owner or person in charge of property may permit:
A. Unguarded machinery, equipment or other devices on such property which are attractive, dangerous and accessible to children;
B. Lumber, logs or piling placed or stored on such property in a manner so as to be attractive, dangerous and accessible to children;
C. An open pit, quarry, cistern or other excavation without erecting adequate safeguards or barriers to prevent such places from being used by children;
D. This section shall not apply to authorized construction projects, if during the course of construction reasonable safeguards are maintained to prevent injury or death to playing children. [Prior code § 41.420]

§8.4.10 Snow and ice removal.
No owner or person in charge of property, improved or unimproved, abutting on a public sidewalk may permit:
A. Snow to remain on the sidewalk for a period longer than the first two hours of daylight after the snow has fallen;
B. Ice to cover or remain on a sidewalk, after the first two hours of daylight after the ice has formed. Such person shall remove ice accumulating on the sidewalk or cover the ice with sand, ashes or other suitable material to assure safe travel. [Prior code § 41.430]

§8.4.11 Weeds, grass and noxious vegetation.
A. Definitions. For purposes of this section the following definitions apply:
   “Noxious vegetation” means:
   1. Poison oak;
   2. Poison ivy;
   3. Blackberry bushes that extend into public property or across a property line;
   4. Vegetation that is:
      a. A health hazard,
      b. A fire hazard,
      c. A traffic hazard because it impairs the view of a public thoroughfare or otherwise makes use of the thoroughfare hazardous;
   5. Weeds or grass more than ten inches high;
   6. Weeds or grass going to seed;
   7. Noxious vegetation does not include agricultural crop grown on property zoned for agricultural purposes, unless that crop is a health, traffic or fire hazard.
   “Person in charge of property” means an agent, occupant, lessee, contract purchaser or person, other than the owner, having possession or control of the property.
B. Noxious vegetation is declared to be a nuisance.
C. Owner Responsibility. No owner or person in charge of property may allow noxious vegetation to be on the person's or her property or on the parking strip or sidewalk area abutting the property. It is the duty of an owner or person in charge of property to cut down or to destroy noxious vegetation.
D. Notice to Abate.
   1. Upon determination by the City Manager or the person's or her designate that noxious vegetation exists on any property, the City Manager shall cause a notice to be mailed to the owner or the person in charge of the property.
   2. The notice to abate shall contain:
      a. A statement that noxious vegetation exists on the property;
      b. A description of the real property, by street address or otherwise, on which or adjacent to which the noxious vegetation exists;
      c. A direction to abate the noxious vegetation within seven days from the date of the notice;
      d. A statement that unless the vegetation is removed within seven days from the
e. A statement that the owner or person in charge of the property may protest the abatement by giving notice to the City Manager within five days from the date of the notice.

3. An error in the name or address of the owner or person in charge of the property shall not make the notice void if the error was caused by the owner or person in charge of the property failing to notify the city of their correct name and address.

4. Abatement by the Owner.
   a. Within the time allowed in this section the owner or person in charge of the property shall remove the noxious vegetation or show that no nuisance exists.
   b. The owner or person in charge of property protesting that no noxious vegetation in fact exists shall file with the City Manager a written statement which shall specify the basis for so protesting. Based upon a physical inspection of the property the City Manager or designate shall make a written determination of whether or not the noxious vegetation exists. Should the City Manager determine that a nuisance does exist, the owner or person in charge of the property may either abate the vegetation within five days after notice of the City Manager’s decision or may appeal the decision to the city council by filing a written notice of appeal with the City Manager within five days from the date of the decision. If the council determines that noxious vegetation does in fact exist, the owner or person in charge of the property shall, within five days after the council determination, abate the noxious vegetation.

5. Abatement by the City.
   a. If the noxious vegetation has not been removed within the time permitted, the City Manager shall cause the vegetation to be removed. The officer charged with abatement shall have the right to enter into or investigate or cause the removal of the noxious vegetation.
   b. The cost of abatement shall be charged at the actual costs incurred by the city, including but not limited to costs of removal of the noxious vegetation, administrative costs and certified or registered letter mailing costs.

6. Assessment of Costs. The City Manager, by registered or certified mail shall forward to the owner or person in charge of the property a notice stating the total amount of the cost of abatement. If the costs of the abatement are not paid by the owner or person in charge of the property within thirty days from the date of the notice of costs, the city may take whatever lawful means available to collect the costs. [Ord. 1283 § 1, 1993: prior code § 41.440]

§8.4.12 Scattering rubbish.
No person may throw, dump or deposit upon public or private property an injurious or offensive substance or any kind of rubbish, trash, debris, refuse or any substance that would mar the appearance, create a stench, detract from the cleanliness or safety of such property, or would be likely to injure an animal, vehicle or person traveling upon a public way. [Prior code § 41.450]
§8.4.13 Accumulation of objects.
It is unlawful for any person to place, leave, store, dump or permit the accumulation on any open lot or other premises, any lumber, yard debris, boxes, barrels, bricks, stones, scrap metal, motor vehicle bodies or parts, or similar materials, rubbish or any articles of junk, which are not removed within fourteen days and that affect the health, safety or welfare of the city. Excepted from this prohibition are construction materials for ongoing construction projects, neatly stacked firewood and compost piles consisting of vegetable matter. [Prior code § 41.455]

§8.4.14 Fences.
A. No person may construct or maintain a barbed-wire fence or allow barbed wire to remain as a part of a fence along a sidewalk or public way, unless such wire is placed not less than six inches above the top of a board or picket fence which is not less than six feet high.
B. No person may install, maintain or operate an electric fence along a street or sidewalk, or along the adjoining property line of another person. [Prior code § 41.470]

§8.4.15 Surface waters and drainage.
A. No owner or person in charge of any building or structure may suffer or permit rainwater, ice or snow to fall from such building or structure on to a street or public sidewalk or to flow across such sidewalk.
B. The owner or person in charge of property shall install and maintain in a proper state of repair adequate drainpipes or a drainage system so that any overflow water accumulating on the roof or about such building is not carried across or upon the sidewalk. [Prior code § 41.480]

ARTICLE V. NUISANCES AFFECTING THE PUBLIC PEACE

§8.4.16 Radio and television interference.
A. No person may operate or use an electrical, mechanical or other device, apparatus, instrument or machine that causes reasonably preventable interference with radio or television reception; provided, that the radio or television receiver interfered with is of good engineering design.
B. This section does not apply to electrical and radio devices licensed, approved and operated under the rules and regulations of the Federal Communications Commission. [Prior code § 41.510]

§8.4.17 Unnecessary noise.
No person may make, assist in making, continue or cause to be made any loud, disturbing or unnecessary noise which either annoys, disturbs, injures or endangers the comfort, repose, health, safety or peace of others. [Prior code § 41.520]

§8.4.18 Loud, disturbing and unnecessary noises designated.
Loud, disturbing and unnecessary noises in violation of 8.4.17 include but are not limited to the following:
A. The keeping of any bird or animal which, by causing frequent or long-continued
noise, shall disturb the comfort and repose of any person in the vicinity;
B. The attaching of a bell to an animal or allowing a bell to remain on an animal;
C. The use of a vehicle or engine, either stationary or moving, so out of repair, loaded or operated as to create any loud or unnecessary grating, grinding, rattling or other noise;
D. The blowing of a steam whistle attached to a stationary boiler, except to give notice of the time to begin or stop work, as a warning of danger, or upon request of proper city authorities;
E. The use of a mechanical device operated by compressed air, steam or otherwise, unless the noise thereby created is effectively muffled;
F. The erection, including excavation, demolition, alteration or repair of a building in residential districts, other than between the hours of seven a.m. and six p.m., except in case of urgent necessity in the interest of public welfare and safety and then only with a permit granted by the city recorder for a period not to exceed ten days. Such permit may be renewed for periods of five days while such emergency continued to exist. If the council determines that the public health, safety and welfare will not be impaired by the erection, demolition, alteration or repair of any building between the hours of six p.m. and seven a.m. and if the council shall further determine that loss or inconvenience would result to any person unless such work were permitted within those hours, the council may grant permission for such work to be done within the hours of six p.m. and seven a.m. upon application therefor being made at the time the permit for the work is awarded or during the progress of the work.

The actual owner of property may do work on property actually occupied by the person between the hours of six p.m. and ten p.m. without obtaining a permit as herein required;
G. The use of a gong or siren upon a vehicle, other than police, fire or other emergency vehicle;
H. The creation of excessive noise on a street adjacent to a school, institution of learning, church or court of justice, while the same are in use, or on a street adjacent to a hospital, nursing home or other institution for the care of the sick or infirm, which unreasonably interferes with the operation of such institution or disturbs or unduly annoys patients;
I. The discharge in the open air of the exhaust of a steam engine, internal combustion engine, motorboat or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises and the emission of annoying smoke;
J. The use or operation of an automatic or electric piano, phonograph, gramophone, victrola, radio, television, loudspeaker or any instrument for sound-producing or any sound-amplifying device so loudly as to disturb persons in the vicinity thereof or in such a manner as renders the use thereof a nuisance. However, upon application to the council, permits may be granted to responsible persons or organizations for the broadcast or amplification of programs of music, news, speeches or general entertainment as a part of a national, state or city event, public festivals or outstanding events of a noncommercial nature. The broadcast or amplification shall not be audible for a distance of more than one thousand feet from the instrument, speaker or amplifier and in no event shall a permit be granted where any obstruction to the free and uninterrupted traffic, both vehicular and pedestrian, will result;
K. The making of a noise by crying, calling or shouting or by means of a whistle, rattle, bell, gong, clapper, horn, hammer, drum, musical instrument or other device for the
purpose of advertising goods, wares or merchandise, attracting attention or inviting patronage of a person to a business. However, newsboys may sell newspapers and magazines by public outcry;
L. The conducting, operating or maintaining of a garage within one hundred feet of a private residence, apartment, rooming-house or hotel in such manner as to cause loud or disturbing noises to be emitted therefrom between the hours of eleven p.m. and seven a.m. [Prior code § 41.525]

§8.4.19 Notices and advertisements.
A. No person may affix or cause to be distributed any placard, bill, advertisement or poster upon real or personal property, public or private property, without first securing permission from the owner or person in control of the property. This section shall not be construed as an amendment to or a repeal of any regulation now or hereafter adopted by the city regarding the use of and the location of signs and advertising.
B. No person, either as principal or agent, may scatter, distribute or cause to be scattered or distributed on public or private property any placards, advertisements or other similar material.
C. This section does not prohibit the distribution of advertising material during a parade or approved public gathering. [Prior code § 41.530]

§8.4.20 Nuisances subject to abatement.
A. The acts, conditions or objects specifically enumerated and defined in Sections 8.4.2 through 8.4.19 are declared to be public nuisances and such acts, conditions or objects may be abated by any of the procedures set forth in Sections 8.4.21 through 8.4.33 of this chapter.
B. In addition to those nuisances specifically enumerated within this chapter, every other thing, substance or act which is determined by the council to be injurious or detrimental to the public health, safety or welfare of the city is declared to be a nuisance and may be abated as provided in this chapter. [Prior code § 41.540]

ARTICLE VI. ABATEMENT PROCEDURE

§8.4.21 Abatement notice - Posting.
Upon determination by the council that a nuisance as defined in this or any other ordinance of the city exists, the council shall forthwith cause a notice to be posted on the premises where the nuisance exists, directing the owner or person in charge of the property to abate such nuisance. [Prior code § 41.610]

§8.4.22 Notice to owner.
At the time of posting, the city recorder shall cause a copy of such notice to be forwarded by registered or certified mail, postage prepaid, to the owner or/and person in charge of the property at the last-known address of such owner or other person. At a minimum, the City shall utilize the records of the Polk County Assessor or the City utility department to determine the last known address. (Prior code § 41.615)
§8.4.23 Notice - Contents.
The notice to abate shall contain:
A. A description of the real property, by street address or otherwise, on which such
nuisance exists;
B. A direction to abate the nuisance within five days from the date of the notice;
C. A description of the nuisance;
D. A statement that unless such nuisance is removed the city may abate the nuisance
and the cost of abatement shall be a lien against the property;
E. A statement that the owner or other person in charge of the property may protest the
abatement by giving notice to the city recorder within five days from the date of the notice.
[Prior code § 41.620]

§8.4.24 Certificate of mailing and posting.
Upon completion of the posting and mailing, the person posting and mailing the notice
shall execute and file a certificate stating the date and place of such mailing and posting.
[Prior code § 41.625]

§8.4.25 Sufficiency of posted notice.
An error in the name or address of the owner or person in charge of the property or the
use of a name other than that of the owner or other person shall not make the notice void
and in such a case the posted notice shall be sufficient. [Prior code § 41.630]

§8.4.26 Abatement by owner.
A. Within five days after the posting and mailing of the notice as provided in Section
8.4.21, the owner or person in charge of the property shall remove the nuisance or show
that no nuisance exists.
B. The owner or person in charge protesting that no nuisance exists shall file with the
city recorder a written statement which shall specify the basis for so protesting.
C. The statement shall be referred to the council as a part of the council's regular
agenda at the next succeeding meeting. At the time set for consideration of the abatement,
the owner or other person may appear and be heard by the council and the council shall
thereupon determine whether or not a nuisance in fact exists and such determination shall
be entered in the official minutes of the council. Council determination shall be required
only in those cases where a written statement has been filed as provided.
D. If the council determines that a nuisance does in fact exist, the owner or other person
shall, within five days after such council determination, abate such nuisance. [Prior code §
41.640]

§8.4.27 Abatement by the city.
A. If within the time allowed the nuisance has not been abated by the owner or person
in charge of the property, the council may cause the nuisance to be abated.
B. The officer charged with abatement of such nuisance shall have the right at
reasonable times to enter into or upon property to investigate or cause the removal of a
nuisance.
C. The City Recorder shall keep an accurate record of the expense incurred by the city
in abating the nuisance and shall include therein a charge of twenty percent of the
expense for administrative overhead. [Prior code § 41.650]

§8.4.28 Assessment of costs.
The City Recorder, by registered or certified mail, postage prepaid, shall forward to the owner or person in charge of the property a notice stating:
A. The total cost of abatement including the administrative overhead;
B. That the cost as indicated will be assessed to and become a lien against the property unless paid within thirty days from the date of the notice;
C. That if the owner or person in charge of the property objects to the cost of the abatement as indicated, the objector may file a notice of objection with the city recorder not more than ten days from the date of the notice. [Prior code § 41.660]

§8.4.29 Objections to assessment.
Upon the expiration of ten days after the date of the notice, the council in the regular course of business shall hear and determine the objections to the costs to be assessed. [Prior code § 41.665]

§8.4.30 City liens.
If the costs of the abatement are not paid within thirty days from the date of the notice, an assessment of the costs as stated or as determined by the council shall be made by resolution and shall thereupon be entered in the docket of city liens, and, upon such entry being made, shall constitute a lien upon the property from which the nuisance was removed or abated. [Prior code § 41.670]

§8.4.31 Lien enforcement.
The lien shall be enforced in the same manner as liens for street improvements are enforced, and shall bear interest at the maximum rate allowed by law, or such lesser rate as the City Manager may from time to time provide. Such interest shall commence to run from the date of entry of the lien in the lien docket. [Prior code § 41.675]

§8.4.32 Assessment error.
An error in the name of the owner or person in charge of the property shall not void the assessment nor will a failure to receive the notice of the proposed assessment render the assessment void, but it shall remain a valid lien against the property. [Prior code § 41.680]

§8.4.33 Summary abatement.
The procedure provided by this chapter is not exclusive but is in addition to procedure provided by other ordinances. The City Manager, or such other persons as the City Manager may designate, may proceed to abate a health or other nuisance which unmistakably exists and from which there is an imminent danger to human life or property. The cost of such summary abatement shall be assessed against the owner of the real property on which the nuisance exists, shall be a lien against the real property and may be enforced and collected by the same procedures as set forth in this chapter for abatement and assessment. [Prior code § 41.710]
ARTICLE VII. VIOLATIONS

§8.4.34 Violation - Penalty.
A. Each day's violation of a provision of this chapter constitutes a separate offense.
B. The abatement of a nuisance is not a penalty for violating this chapter, but is an additional remedy. The imposition of a penalty does not relieve a person of the duty to abate a nuisance. [Prior code § 41.720]

Chapter 8.5 Reserved for Expansion
Chapter 8.6 Reserved for Expansion
Chapter 8.7 Reserved for Expansion
Chapter 8.8  OZONE-DEPLETING COMPOUNDS

§8.8.1 City policy.
The city council finds and declares that it is the policy of the city to reduce the use of ozone-depleting compounds, to recycle them and to encourage the substitution of less harmful substances. [Ord. 1209 § 1, 1990]

§8.8.2 Use prohibited.
The use of any ozone-depleting compound in the manufacture, production, cleansing, degreasing or sterilizing of any substance or product is prohibited effective on or before January 1, 1991. [Ord. 1209 § 2, 1990]

§8.8.3 CFC coolant prohibited.
The sale of CFC coolant for motor vehicles in containers weighing less than fifteen pounds, handheld halon fire extinguishers for home use, party streamers and noisemakers containing CFCs, disposable containers of chilling agents containing CFCs, food containers or other food packaging made of polystyrene foam containing CFCs, and CFC-containing fluids used in motor vehicle air conditioners, is prohibited effective on or before January 1, 1991. [Ord. 1209 § 3, 1990]

§8.8.4 Recycling, recovery and proper disposal.
The city will enter into timely negotiations with the recycling franchisee and other interested parties to institute and promote a program for recycling, recovery and proper disposal of plastics and ozone-depleting compounds. [Ord. 1209 § 4, 1990]

§8.8.5 Conservation of fossil fuels and use of alternative fuels encouraged.
The city council finds and declares that it is the policy of the city to encourage the conservation of fossil fuels, such as coal, oil and natural gas, and encourage the use of alternative fuels and renewable energy sources such as solar, wind, geothermal, biomass and hydroelectric power. [Ord. 1209 § 5, 1990]

§8.8.6 Tree-planting and conservation program to be implemented.
The city will implement, by separate ordinance, a program of tree-planting and conservation of existing trees to counteract greenhouse gas buildup. [Ord. 1209 § 6, 1990]

§8.8.7 Violations – Penalty
Violations shall be punishable as follows:
  1) A fine not to exceed $250.00 for the first violation in a one-year period.
  2) A fine not to exceed $500.00 for the second and each subsequent violation in a one-year period. [Ord. 1209 § 7, 1990]
Chapter 8.12 PRIVATE ALARM SYSTEMS

§8.12.1 Definitions.
As used in this chapter, the following definitions shall apply:

“Alarm” means any mechanical or electrical device or assembly of equipment, designed or arranged to signal the occurrence of an illegal entry or other activity requiring urgent attention and to which the police are expected to respond.

“Alarm user” means any person, firm, partnership or corporation of any kind in control of any building, premises, structure or facility upon which an alarm is maintained.

“False alarm” means an alarm signal to which the city police respond with any emergency service personnel or equipment when a situation requiring a response by the police does not in fact exist and which signal is caused by the inadvertence, negligence or intentional act or omission of an alarm user, or a malfunction of the alarm. The following shall not be considered false alarms:

1. Alarms caused by the testing, repair or malfunction of telephone equipment or lines, where the Independence police department has been notified in advance of the testing or repair;
2. Alarms caused by an Act of God, including earthquakes, floods, windstorms, thunder or lightning;
3. Alarms caused by an attempted illegal entry of which there is visible evidence;
4. Alarms caused by the testing, repair or malfunction of electrical utility equipment or lines, where the Independence police department has been notified in advance of the testing or repair. [Ord. 1208 § 1, 1990]

§8.12.2 False alarm response - Fees.
Alarm users shall pay a fee for each false alarm response by the city police during a calendar year according to a fee schedule established by resolution of the city council from time to time. [Ord. 1208 § 2, 1990]

§8.12.3 Customer response time.
The chief of police, at the person's or her discretion, is authorized to charge, in addition to the false alarm fee, actual costs incurred by the Independence police department for all time spent by the Independence police department fifteen minutes after notification, or attempted notification, of the owner or authorized representative of the premises. [Ord. 1208 § 3, 1990]
Chapter 8.16  RATPROOFING

§8.16.1 Definitions.
For the purposes of this chapter the following definitions apply:

Building. The term “building” means any structure or dwelling, whether public or private, which is devoted to or designed for occupancy, or for the transaction of business, for the rendering of professional service, for amusement, for the display, sale or storage of goods, wares or merchandise, or for the performance of work or labor, including hotels, apartment buildings, rooming-houses, motels, office buildings, public buildings, stores, theaters, markets, restaurants, grain elevators, abattoirs, warehouses, workshops, factories and all other houses, outhouses, sheds, barns and other structures on premises used for business or dwelling purposes, whether the same be occupied or not.

Health Officer. The term “health officer” means the city health officer, commissioner, director of health or any duly authorized representative.

Occupant. The term “occupant” means the individual, partnership or corporation using or occupying any building or part thereof, whether owner or lessee. In the case of a vacant building, the term “occupant” means the owner or the person who as agent of the owner undertakes to care for the same for the owner.

Owner. The term “owner” means the actual owner or owners of a building within the city, whether individuals, partnerships or corporations and the agent thereof, and also the lessee or lessees thereof when, under the terms of a lease, the lessee is responsible for maintenance and repairs.

Rat Eradication. The term “rat eradication” means the elimination or extermination of rats within buildings of any kind by any or all measures such as poisoning, fumigation, trapping or clubbing.

Rat Harborage. The term “rat harborage” means any condition which provides shelter or protection for rats, thus favoring their multiplication and continued existence in, under or outside a building of any kind.

Ratproofing. The term “ratproofing”, as used in this chapter applies to a form of construction to prevent the ingress of rats into buildings from the exterior or from one building to another. It consists essentially of the closing of all actual or potential openings in the exterior walls, ground or first floors, basements, roofs and foundations, that may be reached by rats from the ground by climbing or by burrowing, with material or equipment impervious to rat gnawing. [Prior code § 40.110]

§8.16.2 Requirement of rat-free buildings.
It is ordained and required that all buildings or structures in the city shall be freed of rats and maintained in a rat-free condition to the satisfaction of the health officer. [Prior code § 40.120]

§8.16.3 Rat eradication upon notice of health officer.
That whenever the health officer notifies the occupant or occupants of a building in writing that there is evidence of rat infestation of the building, the occupant or occupants shall immediately institute rat eradication measures and shall continuously maintain such measures in a satisfactory manner until the premises are declared by the health officer to be free of rat infestation. Unless such measures are undertaken within five days after
receipt of notice, it shall be construed as a violation of the provisions of this chapter and occupant shall be held responsible therefor. [Prior code § 40.125]

§8.16.4 Time limitation.
Whenever the health officer notifies the owner of any building in writing that there is evidence of the need of ratproofing the building, the owner shall take immediate measures for ratproofing the building, and unless such work and improvements have been completed by the owner in the time specified in the written notice, in no event to be less than fifteen days, or within the time to which a written extension may have been granted by the health officer, then the owner shall be deemed guilty of an offense under the provisions of this chapter. [Prior code § 40.130]

§8.16.5 Maintenance of buildings.
The owner, agent or occupant in charge of all rat-freed and/or ratproofed buildings or structures shall maintain them in a rat-free and/or ratproof condition and repair all breaks or leaks that may occur in the ratproofing without a specific order of the health officer. [Prior code § 40.135]

§8.16.6 Removal of ratproofing unlawful.
It is unlawful for the owner, occupant, contractor, public utility company, plumber or any other person to remove the ratproofing from any building or structure for any new openings that are not closed or sealed against the entrance of rats. [Prior code § 40.140]

§8.16.7 Removal of harborage required.
Whenever conditions inside or under any building or structure provide such extensive harborage for rats that the health officer deems it necessary to eliminate such harborage, the health officer may require the owner or occupant in charge of any such building or structure to install suitable cement floors in basements, or require such owner or occupant to correct such rat harborage as may be necessary in order to facilitate the eradication of rats. [Prior code § 40.145]

§8.16.8 Storage of food for animals.
All food and feed within the city for feeding chickens, cows, pigs, horses and other animals shall be stored in rat-free and ratproof containers, compartments or rooms unless stored in a ratproof building. [Prior code § 40.150]

§8.16.9 Accumulation of garbage and wastes unlawful.
It is unlawful for any person to place, leave, dump or permit to accumulate any garbage or trash in any building, structure or premises so that the same shall afford food or harborage for rats, or to dump or place on any premises, land or waterway any dead animals or waste vegetable or animal matter of any kind. [Prior code § 40.155]

§8.16.10 Accumulation of objects unlawful.
It is unlawful for any person to accumulate or permit the accumulation on any open lot, or other premises, any lumber, boxes, barrels, bricks, stones, scrap metal, motor vehicle bodies or parts, or similar materials, rubbish or any articles of junk, which provide rat
harborage, unless the same shall be placed on open racks that are elevated not less than eighteen inches above the ground, evenly piled or stacked. [Prior code § 40.160]

§8.16.11 Inspections.
The health officer is empowered to make such inspections of the interior and exterior of any building or structure as, in the person's opinion, may be necessary to determine full compliance with this chapter, and the health officer may make periodic inspections at intervals of not more than forty-five days of all ratproofed buildings to determine evidence of rat infestation and the existence of new breaks or leaks in the ratproofing. When any evidence is found indicating the presence of rats or openings through which rats may enter such buildings again, the health officer shall serve the owner or occupants with written notice to abate the conditions found. [Prior code § 40.165]

§8.16.12 Adoption of rules, regulations and standards.
The health officer is empowered to adopt rules, regulations and standards in aid of the construction and enforcement of this chapter which are not inconsistent with the terms and provisions thereof. [Prior code § 40.170]

§8.16.13 New buildings.
Every building hereafter constructed in the city shall be ratproof. A ratproof building is one constructed to such a manner and of such material as to prevent the ingress of rats. [Prior code § 40.175]
CHAPTER 8.19 SMOKING IN PUBLIC PLACES

§8.19.01 PURPOSE.
The purposes of this chapter are: (1) to protect the public health, safety and welfare by prohibiting smoking in public places and places of employment, (2) to prohibit the traditionally and historically recognized nuisance of noxious smoke pollution, (3) to guarantee the right of nonsmokers to breathe smoke-free air, and (4) to recognize that the need to breathe smoke-free air shall have priority over the desire to smoke. [Ord. 1477 § 1, Aug. 2009]

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

ENCLOSED AREA. Any structure with a ceiling and three or more permanent or temporary walls.

PLACE OF EMPLOYMENT. Every enclosed area under the control of a public or private employer that employees frequent during the course of employment.

PUBLIC PLACE. Any City-owned or managed park and recreational facilities, including parks, trails, open space and special use areas, and any enclosed area to which the public is invited or in which the public is permitted including but not limited to banks, bars, education facilities, health facilities, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, theaters, and waiting rooms. A private residence is not a “public place” unless it is used as a child care, adult day care, or health care facility.

SMOKING. Shall mean and include inhaling, exhaling, burning, or carrying any lighted cigarette, cigar, weed, plant, or other tobacco like product or substance in any manner or in any form. [Ord. 1477 § 1, Aug. 2009]

§8.19.03 SMOKING PROHIBITED IN PLACES OF EMPLOYMENT.
(A) Smoking is prohibited in all places of employment.
(B) No employer shall permit smoking by any person in a place of employment. [Ord. 1477 § 1, Aug. 2009]

§8.19.04 WORKPLACES AND PUBLIC PLACES THAT MUST BE SMOKE FREE.
(A) All City-owned or managed parks & recreational facilities.
(B) Bars and taverns, including bar areas of restaurants.
(C) Bowling centers.
(D) Bus Shelters.
(E) Bingo halls.
(F) Private and fraternal organizations.
(G) Employee break rooms.
(H) Restaurants.
(I) Private offices and commercial office buildings.
(J) Retail and wholesale establishments.
(K) Manufacturing plants and mills.
(L) Truck stops.
(M) Child and adult day-care.  
(N) Assisted living facilities.  
(O) Movie theaters and indoor entertainment venues.  
(N) Hotels and motels (Exception: up to 25% of guest rooms may be designated as smoking rooms by the owner or entity in charge).  
(O) Work vehicles that are not operated exclusively by one employee.  

§8.19.05 PLACES WHERE SMOKING IS NOT REGULATED.  
(A) Private residences, unless the private residence is used as a child care facility, an adult care facility or a health care facility.  
(B) Up to 25% of rented sleeping rooms in a hotel or motel may be designated as smoking-allowed rooms and all smoking rooms on the same floor must be contiguous.  
(C) Smoking in certified smoke shops or cigar bars. Smoke shops and cigar bars must be certified by the Department of Human Services and abide by specific guidelines.  
(D) Smoking of non-commercial tobacco for American Indian ceremonial purposes.  

§8.19.06 NO SMOKING.  
Smoking is prohibited and no person shall smoke:  
(A) In any city building, including public restrooms located on city property;  
(B) Ten (10) feet of any entrance(s), exit(s), window(s) or air intake vent(s) of all city buildings; and  
(C) In any City-owned or managed parks and recreational facilities, including all parks, trails, open space, and special use areas such as:  
1. All city sport playing fields, including, but not limited to, baseball fields, soccer fields, and football fields, during a group activity, including but not limited to, spectator areas and bleachers; and  
2. Public tennis courts, public basketball courts, the city Swimming Pool, including, but not limited to, spectator areas and bleachers;  
(D) The restrictions of this section shall not apply to persons traveling in a motor vehicle nor to persons walking on sidewalks, parking lots, or other pedestrian pathways so long as they continue to move.  
(E) “No Smoking” signs, which identify the area where smoking is prohibited, shall be clearly, sufficiently, and conspicuously posted in every building or other area where smoking is prohibited by this chapter, by the owner, manager or other person having control of such building or other area, including private residences used as a child care, adult day care or health care facility, provided, however, that the absence of a “no smoking” sign shall not justify a violation of nor preclude enforcement of this section.  

§8.19.07 PENALTIES.  
(A) It shall be a violation of this chapter for every day any person who owns, manages, operates or otherwise controls the use of any premises, subject to regulation under this chapter, fails to comply with any provisions herein.
(B) It shall be a violation of this chapter for any person to smoke in any area where smoking is prohibited by the provisions of this chapter.

(C) Any person who violates this chapter shall be guilty of a violation as follows:
   1. $100 for a first violation within a 12-month period;
   2. Not less than $100 nor more than $200 for a second violation within a 12-month period;
   3. Not less than $250 nor more than $500 for each additional violation of this chapter within a 12-month period.

(D) An employer or private citizen may file a citizen complaint to enforce this chapter. [Ord. 1477 § 1, Aug. 2009]

§8.19.08 OTHER LAWS.

This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws. [Ord. 1477 § 1, Aug. 2009]
Chapter 8.20 SOLID WASTE MANAGEMENT*
*Prior history: Prior Ordinance # 1246, as amended by #1384; Prior code §§ 69.010-69.180.

§8.20.1 Compliance with requirements of franchise.
Those participating in source separation programs shall comply with reasonable requirements established by the franchisee to ensure quality control necessary to assure successful processing and marketing. Such requirements shall be filed in writing with and be approved by the City Manager prior to implementation. [Ord. 1385 § 1 (part), 2000]

§8.20.2 Container requirements.
Solid waste containers shall meet the following requirements:
1. No solid waste container provided by a customer shall exceed sixty pounds gross loaded weight nor thirty-two gallons in size. Cans should be tapered with a smaller bottom than top opening. [Ord. 1385 § 1 (part), 2000]
2. Sunken containers shall not be used in new construction. A franchisee is not required to service an underground container unless the person responsible for it places the container above ground prior to collection.
3. All containers shall be rigid, rodent-proof and fireproof.
4. The user shall provide safe access to the pick-up point so as not to jeopardize the safety of the driver of a collection vehicle or the motoring public or to create a hazard or risk to the person providing the service. When the council finds that a private bridge, culvert or other structure or road is incapable of safely carrying the weight of the collection vehicle, the collector shall not enter on such structure or road. The user shall prove a safe alternative access point or system.

§8.20.3 Location of collectors.
To protect the privacy, safety, pets and security of customers and to prevent unnecessary physical and legal risk to the collectors, a residential customer shall place the container to be emptied outside of any locked or latched gate and outside of any garage or other building. [Ord. 1385 § 1 (part), 2000]

§8.20.4 Limit on containers.
No stationary compactor or compacting device shall exceed the safe loading design limit or operation limit of the collection vehicles provided by the franchisee serving the service system. All stationary compactors or compacting devices shall comply with applicable federal and state safety regulations. Upon petition of a group of customers reasonably requiring special service, the council may, where economically feasible, require the franchisee to provide subcontract provisions for vehicles capable of handling specialized loads. [Ord. 1385 § 1 (part), 2000]

§8.20.5 Transportation of wastes.
Any vehicle or equipment used by any person to transport solid wastes shall be so loaded and operated to prevent the wastes from dropping, sifting, leaking, blowing or otherwise escaping from the vehicle onto any public right-of-way or lands adjacent thereto. Any and
all wastes escaping from any container, vehicle or equipment during waste collection shall be collected and properly disposed of by the person transporting the waste. [Ord. 1385 § 1 (part), 2000]

§8.20.6 Approval of containers required.
No person shall place hazardous waste out for collection by the franchisee nor place hazardous waste in any container, box or vehicle owned or operated by the franchisee or by the city without the prior permission of the office of the franchisee and of the City Manager, respectively. [Ord. 1385 § 1 (part), 2000]

§8.20.7 Limits on placement of materials.
No person shall place material in or remove material from a solid waste collection container without permission from the owner of the container. [Ord. 1385 § 1 (part), 2000]

§8.20.8 Unauthorized removal of solid waste.
No unauthorized person shall remove solid waste place out for collection or resource recovery. [Ord. 1385 § 1 (part), 2000]

§8.20.9 Special volume requirements.
Where a customer requires an unusual volume of service or a special type of service requiring substantial investment in equipment, a franchisee may require a contract with the customer as necessary to finance and assure amortization of such equipment. The purpose of this provision is to assure that such equipment not become a charge against other rate payers who are not benefited. [Ord. 1385 § 1 (part), 2000]

§8.20.10 Blocking access to containers.
No person shall block access to any container or drop box or roll off box supplied by a franchisee. A franchisee may charge extra, if applicable, for return service to such blocked container or drop box or roll off box. [Ord. 1385 § 1 (part), 2000]

§8.20.11 Public Health wastes.
Every person who generates or produces wastes shall remove or have removed all putrescible wastes at least every seven days. More frequent removal may be required to protect the public health. All wastes shall be removed at sufficient frequency as to prevent health hazards, nuisances or pollution. [Ord. 1385 § 1 (part), 2000]

§8.20.12 Containers to be maintained.
The producer or generator of waste shall clean both cans and containers and shall keep the area around such cans or containers free from accumulated wastes. A franchisee shall provide periodic maintenance to containers owned or used by a franchisee. [Ord. 1385 § 1 (part), 2000]

§8.20.13 Violation – Penalty.
Any person who violates any provision of this chapter shall incur a civil penalty not to exceed one thousand dollars a day for each day of the violation. Penalties in this section are not in lieu of other remedies as provided in this chapter. Each day in violation is a
separate offense, provided, however, that two or more such continuing offenses may be joined in the same action. [Ord. 1385 § 1 (part), 2000]
Chapter 9.2 EMERGENCY POWERS

§9.2.1 Definitions
A. ‘Emergency’ includes any man-made or natural event or circumstance causing or threatening loss of life, injury to person or property, human suffering or financial loss, and includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills or releases of oil or hazardous material as defined in ORS 466.605, contamination, utility or transportation emergencies, disease, blight, infestation, civil disturbance, riot, sabotage and war.
B. ‘Major disaster’ means any event defined as a ‘major disaster’ by the Act of May 22, 1974, P.L. 93-288.

§9.2.2 Emergency Declaration
In the event of an ‘emergency’ as defined above, the Mayor shall have authority to declare that a state of emergency exists in the city of Independence. In the event of the Mayor’s death or inability to act, the Council President shall have the authority to declare an emergency. In the event of the Mayor’s and the Council President’s death or inability to act, the City Manager shall have the authority to declare the state of emergency. In the event of the Mayor’s, Council President’s, and the City Manager’s death or inability to act, the Chief of Police shall have the authority to declare a state of emergency.

§9.2.3 Police Powers During a State of Emergency
During a state of emergency, the City Manager or the City Manager’s designee shall have the authority to:

A. Exercise, within the City, all reasonable police powers necessary to reduce vulnerability of the City to loss of life, injury to persons or property and human suffering and financial loss resulting from emergencies, and to provide for recovery and relief assistance for the victims of such occurrences;
B. Suspend provision of any order or rule of the City, if the City Manager or the City Manager’s designee determines and declares that strict compliance with the provisions of the order or rule would in any way prevent, hinder or delay mitigation effects of the emergency;
C. Impose a general curfew;
D. Close streets, alleys and parking areas to motor vehicle and/or pedestrian traffic;
E. Control, restrict and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation or other means, the use, sale or distribution of food, water, feed, fuel, clothing and other commodities, materials, goods and services;
F. Prescribe and direct activities in connection with the use, conservation, salvage and prevention of waste of materials, services and facilities, including but not
limited to, production, transportation, power and communication facilities, training, and supply of medical care, nutrition, housing rehabilitation, education, welfare, child care, recreation, consumer protection and other essential civil needs; and

G. Take any other action that may be necessary for the management of resources during a state of emergency.

§9.2.4 Effect of Rules and Orders During an Emergency
A. All rules and orders issued hereunder shall have the full force and effect of City law during the state of emergency. All City ordinances or codes inconsistent with this ordinance shall be inoperative during the state of emergency, to the extent such inconsistencies exist.
B. The authority exercised hereunder may be exercised with respect to the entire City or to any specified part thereof.

§9.2.5 Compensation for Seizure of Property
When real or personal property is taken under powers granted herein, the owner of the property shall be entitled to reasonable compensation from the City.

§9.2.6 Termination of State of Emergency
The Mayor or other person authorized to declare the state of emergency shall terminate the state of emergency by proclamation when the emergency no longer exists, or when the threat of an emergency has passed. The state of emergency may also be terminated at any time by majority vote of the City Council. When the state of emergency is terminated, the powers granted to the City Manager shall terminate.

§9.2.7 Penalty
Any person who willfully fails or refuses to abide by any rules or orders issued under §9.2.3 or to obey the lawful commands issued in connection therewith of any enforcement officer or person charged with the responsibility of enforcing the state of emergency shall be guilty of a Class C misdemeanor. [Chapter 9.2 by Ord. 1424 § 1, 2003]

Chapter 9.3 Reserved for Expansion
Chapter 9.4 OFFENSES GENERALLY

§9.4.1 State Criminal Code Adopted - Exceptions
The 2004 Criminal Code of the State of Oregon, as printed and published by the Legislative Counsel Committee, including selective laws relating to juvenile court proceedings, alcohol, liquors and controlled substances, including the penalties therefor, is hereby adopted in its entirety, save and except any sections thereof pertaining to felonies. In addition, any amendments and/or additions to the Criminal Code adopted and made laws by the 2003 Legislature are also adopted and made a part of the ordinance codified in this section. [Ord 1426 § 1, 2003; prior Ord. 1398 § 1, 2001; Ord. 1377 § 1, 1999; prior, Ord. 1280 § 1, 1993: prior code § 44.110) Ord. 97-1354]

§9.4.2 Failure to appear.
A. No person, having been by municipal court order released from custody upon a release agreement or security release on the condition that the person subsequently appear personally in connection with a charge against the defendant, shall intentionally or knowingly fail to appear.
B. No person shall intentionally or knowingly fail to appear before the municipal court pursuant to a citation issued and served under the authority of this code or ORS 133.065.
C. No person shall intentionally or knowingly fail to appear before the municipal court pursuant to an order issued by the municipal judge.
D. Failure to appear on a criminal offense is a Class A misdemeanor.
E. Failure to appear on a civil infraction is a Class C misdemeanor. [Ord. 1244 § 1, 1991: prior code § 44.940]

§9.4.3 Giving False Information to Police Officers.
It shall be unlawful for any person to knowingly give any false, untrue, or misleading information to a police officer with intent to hinder, delay, impede or mislead said officer in the prosecution of their official work, or with the intent to obstruct justice, while the officer is acting in their official capacity. [Ord. 1442 § 1, 2005]

Chapter 9.5 Reserved for Expansion
Chapter 9.6 Reserved for Expansion
Chapter 9.7 Reserved for Expansion
Chapter 9.8  OFFENSES AGAINST PUBLIC PEACE AND DECENCY

§9.8.1 Urinating in public.
No person shall, while in or in view of a public place, urinate or defecate, except in toilets provided for that purpose. [Ord. 1279 § 1 (part), 1993; Ord. 1227 § 2, 1993: prior code § 44.1005]

§9.8.2 Interference with Police and Police Equipment.
A.  No person shall interfere with a police officer in performance of his or her duty.
B.  "Interfere" includes, but is not limited to:
   (a) Physical contact with a police officer, vehicle, animal, or item of police equipment, when the contact affects the officer's performance of duty in an official capacity.
   (b) Verbal abuse or production of noise intended and sufficient to prevent a police officer from adequately communicating when communication is necessary for the duty being performed.
   (c) Electronic interruption or blocking of police communications.
   (d) Mechanical or electronic disruption of effective use of police equipment, including, but not limited to, vehicle speed detection devices.
C.  Violation of this section is a violation. [Ord. 1352]

§9.8.3 Fighting in Public.
No person shall engage in mutual physical contact with the intent to cause physical injury to each other while in, or in view of, a public place. [Ord. 1378 § 1, 1999]
Chapter 9.12 OFFENSES RELATING TO PROPERTY

§9.12.1 Creation of hazards not allowed.
No person shall create a hazard by:
A. Intentionally maintaining or leaving in a place accessible to children a container with a compartment of more than one and one-half cubic feet capacity and a door or lid which locks or fastens automatically when closed and which cannot be easily opened from the inside; or
B. Being the owner or otherwise having possession of property upon which there is a well, cistern, cesspool, excavation or other hole of a depth of four feet or more and a top width of twelve inches or more, and intentionally failing or refusing to cover or fence it with a suitable protective construction. [Prior code § 44.845]

§9.12.2 Obstruction of building entrances not allowed.
No person shall obstruct any entrance to any building or loiter unnecessarily about or near any entrance, stairway or hall leading to any building. [Prior code § 44.710]

§9.12.3 Obstruction of passageways not allowed.
A. No person shall, except as otherwise permitted by ordinance, obstruct, cause to be obstructed or assist in obstructing pedestrian or vehicular traffic on any sidewalk or street.
B. The provisions of this section shall not apply to the delivery of merchandise or equipment; provided, that no person may permit such merchandise or equipment to remain on any street or sidewalk beyond a reasonable time.
C. No person shall permit any merchandise, equipment or other obstruction to remain on any street or sidewalk.
D. No person shall use any street or sidewalk, or any portion thereof, for selling, storing or displaying merchandise or equipment except as may otherwise be provided by ordinance.
E. No unauthorized person shall deposit any earth, gravel or debris upon any street or sidewalk. [Prior code § 44.715]

§9.12.4 Lodging.
No person shall lodge in a car, outbuilding or other place not intended for that purpose without permission of the owner or person entitled to the possession thereof. [Prior code § 44.820]

§9.12.5 Game Deterrent Devices. No person shall use or allow the use of liquefied propane (LP) gas cannons, commonly used in fowl or animal hazing operations. [Ord. 1472, § 1, 12-09-08]
§9.13.1 Definitions. For purposes of this Ordinance, the following definitions shall apply:

(a) Chief of Police. The Chief of Independence Police Department or his/her designee.

(b) Chronic Nuisance Property. Real property upon which three or more nuisance activities have resulted in the issuance of citations or arrests by police officers to any person associated with the property, including any owner, tenant, occupant, guest, patron, or employee during any consecutive one hundred twenty (120) day period. Every subsequent nuisance activity within one hundred twenty (120) days from an order finding the property to be a chronic nuisance, excluding any time during which the property is closed, shall be considered an independent violation of this ordinance. The issuance of citations shall constitute a prima facie case that the nuisance activities have occurred, subject to the responsible person having the right to contest whether the nuisance activities actually occurred in the subsequent abatement action.

(c) Innocent tenant. A tenant, as defined below in subsection 9.13.1(j), which has a valid defense pursuant to Section 9.13.6 herein.

(d) Nuisance Activities. Any commission, solicitation to commit, attempt to commit (as defined by ORS 161.405), or conspiracy to commit (as defined by ORS 161.455), the following activities, behaviors, or criminal conduct:

1) Abandoned Auto as provided in the Independence Municipal Code;

2) Accumulation of Objects as provided in the Independence Municipal Code.

3) Alcoholic liquor violations as provided in ORS 471.105 through ORS 471.482;

4) Animal Abuse or Neglect as provided ORS 167.315 through 167.330; or Cruelty to Animals as provided in the Independence Municipal Code;

5) Animal or Dog Fighting as provided in ORS 167.355 or ORS 167.330;

6) Arson or related offences as provided in ORS 164.315 through 164.335;
7) Assault as provided in ORS 163.160 through ORS 163.185, or the Independence Municipal Code;

8) Burglary and related offenses as provided in ORS 164.215 through 164.235 or the Independence Municipal Code;

9) Consumption and Open Containers Prohibited as provided in the Independence Municipal Code;

10) Criminal Mischief as provided in ORS 164.345 through 164.365 or the Independence Municipal Code;

11) Criminal Trespass as provided in ORS 164.243 through 164.265 or the Independence Municipal Code;

12) Discharging a Weapon as provided in ORS 166.220 or the Independence Municipal Code;

13) Disorderly Conduct as provided in ORS 166.025 or the Independence Municipal Code;

14) Forgery, Fraud, Identity Theft and related offenses as provided in ORS 165.007 through 165.845 or the Independence Municipal Code;

15) Harassment as provided in ORS 166.065 or the Independence Municipal Code;

16) Illegal Gambling as provided in ORS 167.117, and/or ORS 167.122 through 167.127;

17) Intimidation as provided in ORS 166.155 through 166.165;

18) Menacing as provided in ORS 163.190 or the Independence Municipal Code;

19) Prohibited Exposure as provided in the Independence Municipal Code;

20) Prostitution or related offenses as provided in ORS 167.007, ORS 167.012, and ORS 167.017;

21) Public Indecency as provided in ORS 163.465 or the Independence Municipal Code;

22) Rape as provided in ORS 163.375;
23) Runaway and Harboring A Runaway as provided in ORS 419B.150 or the Independence Municipal Code.

24) Sex Abuse, Contributing to the Delinquency of a Minor, or sexual misconduct as provided in ORS 163.415 through 163.445;

25) Theft as provided in ORS 164.015 through 164.162 or the Independence Municipal Code;

26) Unlawful Entry in to a Motor Vehicle as provided in ORS 164.272 or the Independence Municipal Code;

27) Unlawful Possession of a Firearm and related charges as provided in ORS 166.180 through 166.638 or the Independence Municipal Code;

28) Unlawful Manufacture, Delivery, or Possession of a Controlled Substance or related offenses as provided in ORS 167.203, ORS 475.005 through 475.285, and/or ORS 475.940 through 475.995;

29) Unnecessary Noise as provided in the Independence Municipal Code;

[Ord. 1464, 2008]

(e) Owner. The person or persons holding or claiming legal or equitable title or interest in the property.

(f) Permit. To suffer, allow, consent to, acquiesce by failure to prevent, or expressly assent or agree to an act, or failure to act.

(g) Person. Any natural person, association, partnership, corporation, or other form of legal entity or entity in fact capable of owning or using property.

(h) Property. Any real property including land and that which is affixed, incidental or appurtenant to land, including but not limited to any structures and any motor vehicles, recreational vehicles, mobile homes, or travel trailers, located thereon whether permanent or not.

(i) Responsible Party. Includes the following:

(1) Any owner of the property, or the owner’s manager, agent, or other person in control of the property on behalf of the owner; or

(2) Any other person having or claiming possession of all or any part of the property, including any bailee, lessee, or tenant who participates in the nuisance activity.
(j) Tenant. A residential tenant as defined by the Oregon Residential Landlord and Tenant Act, and any other person holding or claiming the real property under the terms of a lease.

§9.13.2 Violation. Any property used or maintained as Chronic Nuisance Property within the City of Independence is declared to be a nuisance hereunder and shall be enjoined and abated.

§9.13.3 Procedure.

(a) After the first, and second occurrence of any of the actions described in Section 9.13.1(d) within a one hundred twenty (120) day period, the Chief of Police shall notify the responsible party of the specifically alleged incidents which violate this ordinance and the remedies available to the City under this ordinance.

(b) Service under this provision is sufficient if it is personally served or sent via certified mail, return receipt requested, addressed to such person at the address of the property where the incident occurred, and to such owner, or such owner’s agent, as shown on the tax rolls of Polk County.

(c) A copy of the notice shall be served on the owner, and occupant if such person is different than the owner, and shall be posted at the property at least ten (10) days prior to the commencement of any legal proceedings by the City.

(d) The failure of any person to receive actual notice as provided above shall not invalidate or otherwise affect the proceedings under this chapter.

§9.13.4 Complaint Agreement.

(a) After the notification, but prior to the commencement of legal proceedings by the City Attorney, the responsible party may enter into an agreement with the Chief of Police to voluntarily abate the nuisance activities giving rise to the violation. Such compliance agreement shall be in writing and be signed by the responsible party and the Chief of Police.

(b) The Chief of Police may agree to postpone the filing of legal proceedings for no more than thirty (30) days.

(c) If the agreement does not result in the abatement of the nuisance or if no agreement concerning the abatement has been reached within thirty (30) days, the Chief of Police may refer the matter to the City Attorney to commence legal proceedings.
§9.13.5 Penalty/Mitigation of Penalty.

(a) In the event the court determines the property to be chronic nuisance property, the court shall:

(1) Order that the property be closed and secured against all use and occupancy for not more than ninety (90) days; and/or

(2) Impose upon the responsible party a fine in the amount of $500.00 for the first violation of this ordinance, and $1,000.00 for each subsequent violation that occurs within one year; and/or

(3) Order reimbursement of all costs incurred by the City, including staff time and police investigation; and/or

(4) Order any other remedy deemed to be appropriate to abate the nuisance.

(b) In establishing the length of closure of the property, the court may consider any of the following factors, as may be appropriate:

(1) The actions taken by the responsible party to correct or mitigate the nuisance activities on the property;

(2) Whether the activities at the property were repeated or continuous;

(3) The magnitude or gravity of the problem;

(4) Any other factor deemed to be relevant by the court;

(5) Any impact the closure may have on an innocent tenant.

(c) In establishing the amount of any fine, the court may consider any of the following factors, as may be appropriate:

(1) The actions taken by the responsible party to correct or mitigate the nuisance activities on the property;

(2) Whether the activities at the property were repeated or continuous;

(3) The magnitude or gravity of the problem;

(4) The cost to the City of investigating and correcting or attempting to correct the nuisance activities;

(5) Any other factor deemed to be relevant by the court.
(d) Notwithstanding subsection (1) of this section, the court shall not order an innocent tenant to vacate the chronic nuisance property unless the court finds that the responsible party(ies) can pay the tenant’s costs of relocation. In order to ensure that an innocent tenant’s relocation costs are paid by the responsible party(ies), the court shall require the responsible party(ies) to post a security deposit with the court in an amount deemed reasonable by the court.

(e) In the event that the owner is ordered to pay costs, the court clerk shall provide the City Recorder with a copy of the order, and such costs, if not paid within thirty (30) days, shall become a lien against the property.

§9.13.6 Burden of Proof; Affirmative Defense.

(a) In an action alleging a violation of this Chronic Nuisance Property ordinance, the City shall have the initial burden of proof to show by a preponderance of the evidence that the property is chronic nuisance property.

(b) It is a defense to an action brought pursuant to this ordinance that a responsible party could not, in the exercise of reasonable care or diligence, determine that the property had become chronic nuisance property, or could not, in the exercise of reasonable care and diligence, control the conduct leading to the finding that the property is chronic nuisance property. It is no defense that the responsible party was not at the property at the time of the incidents leading to the chronic nuisance situation.

§9.13.7 Expedited Relief; Notice; Cost Reimbursement

(a) In addition to any other remedy available to the City under this ordinance, and in the event that it is determined by the City Manager that the property is chronic nuisance property and is an immediate threat to the public safety and welfare, the City may immediately take any necessary action to eliminate the threat to the public safety and welfare, including closure of the chronic nuisance property and ordering all occupants, including innocent tenants, to vacate the property.

(b) Should the City find it necessary to close the property, the City shall post at the property a notice to abate the nuisance within twenty-four (24) hours. If the nuisance is not abated within twenty-four (24) hours, the City may close the property for so long as necessary to eliminate the threat to the public safety and welfare. Any time during which the property is closed pursuant to this section shall not be credited toward a closure ordered by the court under Section 6.
(c) The responsible party(ies) shall pay to the City all costs reasonably incurred by the City to effect a closure. If the responsible party(ies) fail to pay such costs within thirty (30) days of billing, such costs shall be made a lien against the property. Responsible party(ies) may appeal the imposition or amount of costs by filing a written notice of appeal with the City Recorder not later than thirty (30) days after the costs are billed. Once notice of appeal is filed, the responsible party’s liability for costs shall be stayed pending the City Counsel’s decision regarding the appeal.

§9.13.8 Enforcement of Closure Order; Costs; Attorney Fees.

(a) The City may physically secure the property against the use or occupancy in the event that the responsible party(ies) fail to do so within the time specified by the court or the City Manager as provided in Section 9.13.7.

(b) The responsible party(ies) shall pay the reasonable relocation costs of a tenant, as defined by ORS 90.100, if without actual notice the tenant moved into the property after the owner(s), or agent thereof, received a second notice pursuant to Section 9.13.3.

(c) In any action brought pursuant to this ordinance, the court shall award reasonable attorney fees to the prevailing party to be determined pursuant to Oregon Rule of Civil Procedure 68(C).

(d) Any responsible parties assessed costs and/or attorney fees under to this ordinance shall be jointly and severally liable for the payment thereof to the City.

[Ord. 1450, 10-11-05]

§9.13.9 Severability.

The provisions of this Ordinance are severable, and if any phrase, clause or part of this Ordinance is found by a court of competent jurisdiction to be invalid or unenforceable, each and every remaining phrase, clause and part shall nonetheless remain in full force and effect. [Ord. 1450, 10-11-05]

Chapter 9.14 Reserved for Expansion
Chapter 9.15 Reserved for Expansion
§9.16.1 Curfew.
A. No minor under the age of fifteen years shall be in or upon any street, highway, park, alley or other public place within the city between the hours of nine thirty p.m. and four a.m. of the following morning; provided, that on and during any night immediately preceding a day upon which the public school will be closed such hours shall be ten p.m. to four a.m. of the following morning.
B. No minor of the age of fifteen years or over, but under the age of eighteen years, shall be in or upon any street, highway, park, alley or other public places within the city between the hours of ten thirty p.m. and four a.m. of the following morning; provided, that on and during any night immediately preceding a day upon which the public schools will be closed, such hours shall be twelve midnight to four a.m. of the following morning.
C. The provisions of subsections A and B of this section shall not apply to any minor accompanied by a parent, guardian, or any other person twenty-one years of age or over and authorized by the parent or by law to have the care and custody of the minor, or to any minor who is then engaged in a lawful pursuit or activity which required the person's presence in such public places during the hours specified in this section. [Prior code § 44.360]
D. Exemption. It shall be a defense to any prosecution under this ordinance if the court finds that a minor was in violation at such time as the minor had received a Permit for Expressive Activity from the City. [Ord. 97-1355]
E. Permit for Expressive Activity. A minor who desires to engage in "expressive activity" at such times as would otherwise be prohibited by the "curfew" ordinance may do so by first obtaining a permit from the City. The application for the permit shall describe the type of expressive activity. It shall also describe the time(s) when such activity shall be undertaken. A permit shall be obtained at least 48 hours prior to the activity. The application for the permit shall be signed by the minor, and countersigned by the minor's parents/guardians. There shall be no fee for the permit. As used in this ordinance, the term "expressive activity" shall include those forms of religious, associational, or speech activity that are beyond the ability of the City to prohibit by virtue of the federal and state constitutions. This definition shall not be construed to expand the scope of the term "expressive activity". The permit shall be issued for a period not to exceed 24 hours. The permit shall be issued for a period not to exceed 24 hours and shall be carried about the person at all times that they are within the term "expressive activity". [Ord. 97-1355]

§9.16.10 Definitions
“truancy” shall mean unauthorized absence from school
“truant” shall mean a person under the age of 18 years who, without prior authorization, is not in school during school hours.
“law enforcement personnel” shall mean any police officer, deputy sheriff, juvenile officer
“legal representative” shall mean parent or legal guardian
“attendance supervisor” shall mean the person or office designated to track the attendance of students [Ord. 1408 § 1, 2002]
§9.16.11 Procedure for Identifying Truants
A. Every person between the ages of 7 and 18 years who has not completed the 12th grade is required to attend a state acknowledged full-time school during the entire school term.
B. Whenever law enforcement personnel have a reasonable basis to suspect that a particular individual may be a truant as defined herein, the law enforcement personnel may encounter the individual and require identification and then immediately contact the attendance supervisor to determine if the absence has been excused.
C. If after proceeding according to subsection (b) above it is determined the individual is a truant, the law enforcement personnel may take custody of the individual and thereafter:
   1. may deliver the individual to his/her school attendance supervisor; and
   2. may issue the individual a referral for violation of this Chapter. [Ord. 1408 § 1, 2002]

§9.16.12 Sanctions
A. First-time violations of this ordinance shall constitute an Infraction and shall require an appearance before the Juvenile Department Sanction Court which shall impose sanctions.
B. A second violation of this ordinance shall constitute an infraction and shall require subsequent appearance before the Juvenile Department Sanction Court which shall impose graduated sanctions in accordance with the youth’s first appearance.
   (c) Any violation of this ordinance after the second violation shall constitute a misdemeanor offense and shall require an appearance before the Juvenile Department of the Circuit Court. [Ord. 1408 § 1, 2002]

§9.16.13 Coordination with other Remedies
A. The remedies and sanctions in this ordinance supplement those remedies and sanctions that exist pursuant to state law concerning both the truant and the legal representative;
B. A single offense may receive multiple sanctions. [Ord. 1408 § 1, 2002]

§9.16.14-19 Reserved

§9.16.20 Harboring Minors
It is unlawful for any person to knowingly harbor a runaway child. As used in this Section:
   “To harbor” means to provide lodging, whether or not for compensation, without first notifying the Police Department; and
   “Knowingly” means with actual knowledge or under circumstances that would lead a person of common intelligence to believe that the child was a runaway; and
   “Runaway child” means an unmarried child under 18 years of age who, without consent of the parent or other person having legal custody of that child, leaves and stays away from the home or other dwelling place provided for the child by that person. [Ord. 1410 § 1, 2002]
Chapter 9.20 DRUG-FREE ZONES

§9.20.1 Drug-free zone designated.
A. The following described property is designated as a drug-free zone:
   From the west side of Second Street east to the Willamette River, between Ash creek
   and the south side of D Street, including Riverview Park.
B. Such designation shall be valid for an initial period of two years. Thereafter, the
council may extend the designation as it deems appropriate. The removal of the
designation shall be by ordinance. [Ord. 1275 1 (part), 1993]

§9.20.2 Civil exclusion.
A. A person is subject to exclusion for a period of ninety days from the public streets,
   sidewalks, public property and other public ways in the designated drug-free zone if that
   person has been arrested or otherwise taken into custody for either the unlawful
distribution of a controlled substance pursuant to ORS 475.992 or for the unlawful delivery
   of an imitation controlled substance pursuant to ORS 475.991 within that drug-free zone.
B. If a person excluded from a drug-free zone is found therein during the exclusion
   period, that person is subject to immediate arrest for criminal trespass in the second
degree pursuant to ORS 164.245. [Ord. 1275 § 1 (part), 1993]

§9.20.3 Issuance of exclusion notices.
The chief of police is designated as the person in charge of the public streets, sidewalks,
public property and public ways in drug-free zones for purposes of issuing exclusion
notices in accordance with this chapter. The chief of police may authorize employees of
the police department to issue exclusion notices in accordance with this chapter. [Ord.
1275 §1 (part), 1993]

§9.20.4 Procedure.
At the time a person is arrested for violation of either the unlawful distribution of a
controlled substance or the delivery of an imitation controlled substance as provided by
ORS 475.991 or ORS 475.992 within a drug-free zone, the officer making such arrest may
deliver to the person a written notice excluding the person from the drug-free area. The
notice shall specify the area from which the person is excluded and contain information
concerning the right to appeal the exclusion notice to the City Manager or the person’s or
her designate. The person to whom the exclusion notice is issued shall sign a written
acknowledgement of receipt of the exclusion notice. If that person refuses to do so, the
arresting officer shall make a written record of the refusal. [Ord. 1275 § 1 (part), 1993]

§9.20.5 Appeal and variance.
The person to whom an exclusion notice is issued shall have a right to an appeal from the
issuance of the notice.
A. 1. An appeal of the exclusion must be filed, in writing, within five calendar days of the notice’s issuance. A hearing on the appeal shall be held within five calendar days after receipt of the appeal.

2. If no appeal is taken the exclusion shall take effect on the day after the notice’s issuance. If an appeal is taken, the expulsion shall be stayed during the pendency of the appeal.

3. The city shall have the burden to show by a preponderance of evidence that the exclusion is based on conduct proscribed by ORS 475.991 or ORS 475.992. Copies of documents in its control and which are intended to be used by the city at the hearing shall be made available to the appellant at least two days prior to the hearing.

B. 1. A determination by a court having jurisdiction of the matter, that the officer who issued the exclusion notice, at that time had probable cause to arrest the person to whom the exclusion notice was issued for violation of ORS 475.991 or 475.992, shall be prima facie evidence that the exclusion was based on conduct proscribed by those statutes.

2. Variances from an exclusion may be granted at any time during the exclusion period by either the City Manager or designate, only for reasons relating to the health or well-being of the person excluded.

3. All variances shall be in writing, for a specific period of time and only to accommodate a specific purpose, all of which shall be stated on the variance. The person shall keep the variance on the person’s or her person at all times the person is within the drug-free zone. In the event a person having a variance is found to be outside the scope of the variance’s terms, the variance shall immediately become void and that person is thereupon subject to arrest for trespass.

4. In the event a person holding a variance is arrested for conduct prohibited by state or federal law involving controlled substances, the variance shall immediately become void and that person shall be ineligible for any new variances for a period of one year from the date of the arrest. [Ord. 1275 § 1 (part), 1993]
§9.21.1 A person selling or offering for sale drug paraphernalia may not locate the drug paraphernalia in a location where the drug paraphernalia is visible to the public or accessible without assistance by the seller or the seller's agent or employee.

§9.21.2 For the purposes of this section, "drug paraphernalia" means all equipment, products and materials of any kind which are marketed for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of Oregon Revised Statutes 475.840 to 475.980. Drug paraphernalia includes, but is not limited to:

(a) Kits marketed for use or designed for use in unlawfully planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
(b) Kits marketed for use or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;
(c) Isomerization devices marketed for use or designed for use in increasing the potency of any species of plant which is a controlled substance;
(d) Testing equipment marketed for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances;
(e) Scales and balances marketed for use or designed for use in weighing or measuring controlled substances;
(f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, marketed for use or designed for use in cutting controlled substances;
(g) Separation gins and sifters marketed for use or designed for use in removing twigs and seeds from, or in otherwise cleaning, or refining marijuana;
(h) Containers and other objects marketed for use or designed for use in storing or concealing controlled substances; and
(i) Objects marketed for use or designed specifically for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:
   1) Metal, wooden, acrylic, glass, stone, plastic or ceramic pipes with or without screens, permanent screens or hashish heads;
   2) Water pipes;
   3) Carburetion tubes and devices;
   4) Smoking and carburetion masks;
   5) Roach clips, meaning objects used to hold burning material that has become too small or too short to be held in the hand, such as a marijuana cigarette;
   6) Miniature cocaine spoons and cocaine vials;
   7) Chamber pipes;
   8) Carburetor pipes;
9) Electric pipes;
10) Air-driven pipes;
11) Chillums;
12) Bongs;
13) Ice pipes or chillers; and
14) Lighting equipment specifically designed for the growing of controlled substances.

§9.21.3 Drug paraphernalia does not include hypodermic syringes or needles.

§9.21.4 In determining whether an object is drug paraphernalia, a trier of fact should consider, in addition to all other relevant factors, the following:

(a) Instructions, oral or written, provided with the object concerning its use;
(b) Descriptive materials accompanying the object which explain or depict its use;
(c) National and local advertising concerning its use;
(d) The manner in which the object is displayed for sale;
(e) The existence and scope of legitimate uses for the object in the community; and
(f) Any expert testimony which may be introduced concerning its use.

§9.21.5 Violation of this section is a civil infraction. Each day of violation constitutes a separate offense.

§9.21.6 In addition to the penalty provided by subsection 9.21.5 of this chapter, a violation of this chapter is declared to be a public nuisance and shall be subject to summary abatement as provided in Section 8.4, Nuisances, Article VI – Abatement Procedure. [Ord 1515 § 1, Nov. 2012]

Chapter 9.22 Reserved for Expansion
Chapter 9.23 Reserved for Expansion
§9.24.1 Possession of firearms.
A. As used in this chapter, “firearm” means a pistol, revolver, gun, rifle, including a miniature weapon, spring gun, air gun, BB gun or other weapon which projects a missile or shot by force of gunpowder or any other explosive, by spring or by compressed air, jet or rocket propulsion.
B. It is unlawful for any person to possess or carry a firearm, loaded or unloaded, in a park, public building, school, school premises, school parking lot or school premises used in connection with public passenger transportation.
C. The prohibitions in this section do not apply to:
   1. A peace officer acting within the scope of duty, to any government employee authorized or required by their employment or office to carry or use firearms or to any person authorized by permit of the chief of police to possess or discharge a firearm;
   2. Any person issued a lawful concealed weapons permit, (unless an area has been deemed a weapon-free zone by the Independence Municipal Judge);
   3. The possession of a bow and arrow in an archery range duly established and supervised as a part of a formal program of education by any recognized institution of learning;
   4. Persons authorized by written permission of the chief of police to discharge blank ammunition for a lawful purpose; or
   5. Hunters using the Riverview Park dock facility as access for boat hunting.
[Ord. 1468 § 1, 2008; Ord. 1249 § 1, 1991: prior code § 44.186]

§9.24.2 Discharging a weapon.
A. A person commits the offense of discharging a weapon if he or she discharges a firearm, air rifle, pellet gun, bow and arrow, sling shot, catapult or other device capable of propelling a shot, arrow or other projectile with force sufficient to cause risk of injury to person or property, within the limits of the city.
B. This section shall not apply to:
   1. A peace officer who shall discharge a firearm in the line of the official duty;
   2. The discharge of an arrow in an archery range duly established and supervised as a part of a formal program of education by any recognized institution of learning;
   3. Any person justified in using deadly physical force under the provisions of Oregon Revised Statutes, Chapter 161;
   4. Adult persons (age 18 years or older) utilizing a pellet gun to euthanize a Nutria which has been caught in a trap on private property, and with permission of the property owner. Persons so discharging a weapon under this exemption must first notify the Independence Police Department to advise their name, location and approximate time they will be using the weapon. (ODFW rules {OAR 635-056} states trapping of Nutria is permitted, but transport and/or release of the animal is not allowed). [Ord. 1468 § 1, 2008; Ord. 1207 § 1, 1990: prior code § 44.185]

§9.24.3 Concealed weapons.
Except as provided in ORS 166.260 and 166.291, as now constituted and hereafter amended, no person shall carry concealed about the person's person or carry concealed
in a vehicle a revolver, pistol or other firearm; any knife other than an ordinary pocket knife; any dirk, dagger or stiletto; any metal knuckles; or any other weapon by the use of which injury could be inflicted upon the person or property of another. For purposes of this section, an “ordinary pocket knife” is one with a maximum blade length of three and one-half inches, which is not a switchblade or spring-blade knife. [Prior code § 44.180]

§9.24.4 Fireworks.
The following sections of the Oregon Fireworks Law, together with all acts and amendments applicable to cities which are now in effect are adopted by reference and made a part of this chapter: ORS 480.110, 480.120, 480.130, 480.140(1), 480.150. [Prior code § 44.190]

Chapter 9.25 Reserved for Expansion
Chapter 9.26 Reserved for Expansion
Chapter 9.27 Reserved for Expansion
§9.28.1 Prohibited conduct defined.
As used in this chapter, “prohibited conduct” includes violation of, solicitation to violate, attempt to violate or conspiracy to violate any provisions of ORS Chapter 475, except that “prohibited conduct” does not include violation of, solicitation to violate, attempt to violate or conspiracy to violate ORS 475.992(4)(f) and also does not include solicitation, attempt or conspiracy to deliver for no consideration less than five grams of the dried leaves, stems and flowers of the plant Cannabis family Moraceae. [Ord. 1204 § 1, 1989]

§9.28.2 Forfeiture counsel.
The Independence city attorney is designated as forfeiture counsel for purposes of representing the city in forfeiture actions or proceedings under Chapter 791, Oregon Laws 1989. [Ord. 1204 § 2, 1989]

§9.28.3 Proceeds to be credited to general fund.
In accordance with Section 10, Chapter 791, Oregon Laws 1989, the balance of the proceeds from property forfeited, after other distributions, shall be credited to the general fund and used as directed by the City Manager. [Ord. 1204 § 3, 1989]
CHAPTER 9.30 CRIMINAL HISTORY RECORD CHECK POLICIES CONCERNING APPLICANTS FOR EMPLOYMENT AND CERTAIN VOLUNTEERS

§9.30.1 PURPOSE
(A) In order for the City government to operate effectively, persons selected for employment or as a public service volunteer with the City of Independence must have the highest degree of public trust and confidence.

(B) All City employees and public service volunteers represent the City to its citizens. Many City employees and volunteers have responsibilities to regulate and maintain public health and safety. Some City employees have the ability and authority to bind the City contractually, have access to public funds and property, and possess access to privileged and proprietary information submitted to the City in confidence.

(C) There is a need to protect youths from harmful or dangerous encounters and to that end a review of the criminal records of those who volunteer with youth in the City is necessary and appropriate.

(D) Tow truck drivers interact with the public in stressful situations (accidents, disabled vehicles, etc.) in which they can be taken advantage of by the tow truck driver. Therefore, it is necessary and appropriate that the tow truck driver's criminal record history is reviewed.

(E) Liquor license applicants are required to apply to the City for recommendation to the Oregon Liquor Control Commission (OLCC) in their licensing process. It is necessary and appropriate that such applicants' criminal record history is reviewed in the City's recommendation process.

§9.30.2 PROCEDURE
(A) All applicants for employment and appointed volunteers with the City will be required to authorize the City to conduct a criminal offender information check through the OSP LEDS system.

(B) A member of the Police Department trained and authorized to perform criminal history checks through the LEDS system will conduct the check on the prospective employee or volunteer and orally report to the Human Resources Department that the applicant’s records indicates "no criminal record" or "criminal record". If the applicant’s record is reported as "criminal record", the City will, under OAR 257-010-0025, request a written criminal history report from the OSP Identification Services Section. Human Resources will make the written criminal history record available to the appropriate official for his or her consideration in making the selection.

(C) The written criminal history record on persons that are not hired or appointed as a volunteer will be retained in accordance with the requirements of the City General Records Retention Schedule and thereafter will be destroyed in accordance with city records.
policies. The criminal history record of applicants and volunteers with a criminal history that are hired or appointed will become a part of the confidential personnel files of that employee or volunteer. Access to confidential personnel files is limited to only authorized persons who have an official need to access such files that is sanctioned by law or regulation.

(D) Non-profit organizations serving youth in the community, including, but not limited to YMCA, Nite Court, youth baseball, youth basketball, youth soccer and youth football organizations may request that the Police Department perform criminal history checks. Subject to workload priorities and staff availability, the Police Department may perform such criminal record checks on the prospective youth volunteers. The Police Department shall confirm only if a criminal record exists, without any detail of such record. The youth volunteer organization may request criminal record history directly with the Oregon State Police pursuant to state statute and administrative rule.

(E) Criminal history checks of contracted tow truck drivers and liquor license applicants shall be performed by the Police Department. [Ord. 1462, 12-11-07]
§10.4.1 Short title.
This chapter may be cited as the “Independence Uniform Traffic Ordinance.” [Prior code § 52.110]

§10.4.2 Motor Vehicle Code adopted - Exceptions
The 2004 Motor Vehicle Code of the State of Oregon, as printed and published by the Legislative Counsel Committee, including selective laws relating to infraction procedures, administrative procedures for state agencies, and Motor Vehicle and Aircraft Fuel Taxes, including the penalties therefor, is hereby adopted in its entirety, save and except any sections thereof pertaining to felonies. In addition, any amendments and/or additions to the Vehicle Code adopted and made laws by the 2003 Legislature are also adopted and made a part of the ordinance codified in this section. [Ord 1427 § 1, 2003; prior Ord. 1399 § 1, 2001; Ord. 1376 § 1, 1999; prior, Ord. 1280 § 2, 1993: prior code § 52.120 Ord. 97-1353]]

§10.4.3 Definitions.
In addition to those definitions contained in the ORS chapters set out in Section 10.4.2, the following words or phrases, except where the context clearly indicates a different meaning, mean:

“Bus stop” means a space on the edge of a roadway designated by sign for use by buses loading or unloading passengers.

“Holiday” means New Year’s Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and any other day proclaimed by the council to be a holiday.

“Loading zone” means a space on the edge of a roadway designated by sign for the purpose of loading or unloading passengers or materials during specified hours of specified days.

“Taxicab stand” means a space on the edge of a roadway designated by sign for use by taxicabs.

“Traffic control device” means a device to direct vehicular or pedestrian traffic and parking, including but not limited to a sign, signaling mechanism, barricade, button or street or curb marking installed by the city or other authority.

“Traffic lane” means that area of the roadway used for the movement of a single lane of traffic.

“Vehicle”, as used in subsequent sections of this chapter, includes bicycles. [Prior code § 52.130]
§10.4.4 Words and phrases.
As used in this chapter, the singular includes the plural, and the masculine includes the feminine. [Prior code § 52.135]

Chapter 10.5   Reserved for Expansion
Chapter 10.6   Reserved for Expansion
Chapter 10.7   Reserved for Expansion
Chapter 10.8  ADMINISTRATION AND ENFORCEMENT

§10.8.1  City council – Powers and authority.
A. Subject to state laws, the city council shall exercise all municipal traffic authority for the city except those powers specifically and expressly delegated under this title or by another ordinance.
B. The powers of the council shall include but not be limited to:
   1. Designation of through streets;
   2. Designation of one-way streets;
   3. Designation of truck routes;
   4. Designation of city-owned or leased lots, or property on which public parking will be permitted;
   5. Designation of parking meter zones;
   6. Restriction of the use of certain streets by any class or kind of vehicle to protect the streets from damage;
   7. Authorization of greater maximum weights or lengths for vehicles using city streets than specified by state law;
   8. Initiation of proceedings to change speed zones;
   9. Revision of speed limits in parks;
C. The city council shall, by resolution:
   1. Install traffic control devices to implement this title and other traffic control measures. Such installations shall be based on the standards contained in the Oregon Manual on Uniform Traffic Control Devices for Streets and Highways;
   2. Establish, maintain, remove or alter the following classes of traffic controls:
      a. Crosswalks, safety zones and traffic lanes,
      b. Intersection channelization and areas where drivers of vehicles shall not make right, left or U-turns, and the time when the prohibition applies,
      c. Parking areas and time limitations, including the form of permissible parking (e.g., parallel or diagonal);
   3. Issue oversize or overweight vehicle permits;
   4. Establish, maintain, remove or alter traffic control signals;
   5. Establish, maintain, remove or alter loading zones and stops for all vehicles;
   6. Designate certain streets as bridle paths and prohibit horses and animals on other streets;
   7. Temporarily block or close streets. [Prior code § 52.210]

§10.8.2  City council – Delegation of powers.
The city council may delegate powers set forth in Section 10.8.10 at their discretion. Duties exercised thereafter by the City Manager or the person's designate shall be reported to the council at the regular meeting immediately following their implementation, and the council may reject or modify such action. This reporting requirement may be dispensed with when the council so orders. [Prior code § 52.215]

§10.8.3  City council regulations – Standards.
The regulations of the city council and City Manager or the person's designate shall be based upon:
A. Traffic engineering principles and traffic investigations;
B. Standards, limitations and rules promulgated by the State Highway Division;
C. Other recognized traffic control standards. [Prior code § 52.225]

§10.8.4 Temporary control devices allowed when.
Under conditions constituting a danger to the public, the City Manager or designee may install temporary control devices deemed by the Manager to be necessary. [Prior code § 52.220]

§10.8.5 Police and fire officers – Authority.
A. It is the duty of police officers to enforce the provisions of this chapter.
B. In the event of a fire or other public emergency, officers of the police and fire department may direct traffic as conditions require, notwithstanding the provisions of this chapter. [Prior code § 52.230]

§10.8.6 Obedience to and alteration of control devices.
A. No person shall disobey the instruction of a traffic officer or a traffic control device.
B. No unauthorized person shall install, move, remove, obstruct, alter the position of, deface or tamper with a traffic control device. [Prior code § 52.235]

§10.8.7 Existence of device evidence of lawful installation.
The existence of a traffic control device shall be prima facie evidence that the device was lawfully authorized and installed. [Prior code § 52.240]

§10.8.8 Vehicle impoundment.
A. Whenever a vehicle is placed in a manner or location that constitutes an obstruction to traffic or a hazard to public safety, a police officer shall order the owner or operator of the vehicle to remove it. If the vehicle is unattended, the officer may cause the vehicle to be towed and stored at the owner's expense. The owner shall be liable for the costs of towing and storing, notwithstanding that the vehicle was parked by another, or that the vehicle was initially parked in a safe manner but subsequently became an obstruction or hazard.
B. The disposition of a vehicle towed and stored under authority of this section shall be in accordance with the provisions of Chapter 10.32, relating to impoundment and disposition of vehicles abandoned on the city streets.
C. The impoundment of a vehicle will not preclude the issuance of a citation for violation of a provision of this title.
D. Stolen vehicles may be towed from public or private property and stored at the expense of the vehicle owner.
E. Whenever a police officer observes a vehicle parked in violation of a provision of this title, if the vehicle has four or more unpaid parking violations outstanding against it, the officer may, in addition to issuing a citation, cause the vehicle to be impounded. A vehicle so impounded shall not be released until all outstanding fines and charges have been paid. Vehicles impounded under authority of this subsection shall be disposed of in the same manner as provided in subsection B of this section. [Prior code § 52.910]
Chapter 10.10  TOWING PROCESS

§10.10.1 Authority to Tow.
Any police officer may, without prior notice, order a vehicle towed when the police officer reasonably believes that the vehicle's operator is driving uninsured. [Ord. 1301]

§10.10.2 Post tow notice
After a vehicle has been towed pursuant to this Ordinance, notice shall be provided to the registered owner(s) and any other person(s) who reasonably appears to have an interest in the vehicle. Notice shall be personally served or mailed by the Police Department to such persons within 48 hours after the tow of the vehicle, Saturdays, Sundays and holidays excluded, and shall state:
A. The vehicle has been towed,
B. The location of the vehicle and that it may be reclaimed only upon evidence that the claimant is the owner or person entitled to possession;
C. The address and telephone number of the person or facility that may be contacted for information and the charges that must be paid before the vehicle will be released and the procedures for obtaining the release of the vehicle;
D. The vehicle and its contents are subject to a lien for the towing and storage charges and will be subject to sale by the towing and storage facility where the vehicle is located.
E. A hearing may be requested to contest the validity of the tow.
F. The time in which a hearing must be requested and the method of requesting a hearing.
G. That an application for a hearing must be filed with and received by the Municipal Judge not later than 5 business days after the vehicle was towed. [Ord. 1301]

§10.10.3 Exemption from notice
No notice need be provided pursuant to this ordinance when:
A. A vehicle does not display license plates or other identifying markings by which the registration or ownership of the vehicle can be determined, or,
B. When the identity of the owner of the vehicle is not available from the appropriate motor vehicle licensing and registration authority and when the identity and address of the owner and/or other persons with an interest in the vehicle cannot otherwise be reasonably determined. [Ord. 1301]

§10.10.4 Request for a hearing
Written notice of the opportunity to contest the validity of the tow of a vehicle, together with a statement of the time in which a hearing may be requested and the method of requesting a hearing, must be given to each person who seeks to redeem a vehicle which has been to-wed pursuant to this ordinance. This information will be made available by the tow company or other facility holding said vehicle. [Ord. 1301]
§10.10.5 Request for a hearing
After a vehicle has been towed pursuant to this ordinance the owner(s) and any other persons who reasonably appears to have an interest in the vehicle are, upon timely application filed with the Municipal Judge, entitled to request a hearing to contest the validity of the tow or intended tow of the vehicle. [Ord. 1301]

§10.10.6 Deadline for hearing.
Application for a hearing must be filed with and received by the Municipal Judge not later than 5 business days after the vehicle was towed. [Ord. 1301]

§10.10.7 Judicial waiver.
The Municipal Judge may, for good cause shown, grant a request for hearing filed after the foregoing time requirements have expired. [Ord. 1301]

§10.10.8 Basis for hearing request
The request for hearing must be in writing and shall state the grounds upon which the person requesting the hearing believes the tow or proposed tow invalid, or, for any other reason, unjustified. The request for hearing will also contain such other information, relating to the purposes of this ordinance, as the Municipal Judge may require.[Ord. 1301]

§10.10.9 Judicial hearing
The Municipal Judge shall set and conduct an administrative hearing on the matter within 14 days from receipt of a proper request filed pursuant to this ordinance. In all cases where a vehicle has been towed and not yet released, however, the Municipal Judge shall set and conduct the hearing on the next regularly scheduled Municipal Court day, whichever is sooner. [Ord. 1301]

§10.10.10 Burden of Proof
At the hearing, the City shall have the burden of proving by a preponderance of the evidence that there were reasonable grounds to believe that the vehicle was being operated in violation of ORS 806.010. The police officer who ordered the vehicle impounded may submit an affidavit to the Municipal Judge in lieu of making a personal appearance at the hearing. [Ord. 1301]

§10.10.11 Rulemaking authority
The Municipal Judge shall make any necessary rules and regulations regarding the conduct of such hearings, consistent with this ordinance. [Ord. 1301]

§10.10.12 Order
If the Municipal Judge finds that the towing and impoundment of the vehicle was proper, the Municipal Judge shall enter an order supporting the removal and shall find that the owner or person entitled to possession of the vehicle is liable for the usual and customary towing and storage costs. The Municipal Judge may also find the owner or person entitled to possession of the vehicle liable for the costs of the hearing. [Ord. 1301]
§10.10.13 Order of improper tow.
If the Municipal Judge finds that the towing and impoundment of the vehicle was improper, the Municipal Judge shall order the vehicle released to the person entitled to possession and shall enter a finding that the owner or person entitled to possession of the vehicle is not liable for any towing and storage charges resulting from the impoundment. If there is a Hen on the vehicle for towing and storage charges, the Municipal Judge shall order it paid by the City. [Ord. 1301]

§10.10.14 Final decision.
The decision of the Municipal Judge is final, is not appealable to the City Council, and is only appealable to Circuit Court by Writ of Review. Any person who has a hearing scheduled and fails to appear at such hearing without good cause shown, as determined by the Municipal Judge, shall not be entitled to have such hearing rescheduled. The owner(s) and any other person who have an interest in the vehicle are only entitled to one hearing for each tow of that vehicle. [Ord. 1301]

§10.10.15 Storage charges
Any private company that tows and stores any vehicle pursuant to this ordinance shall have a lien on the vehicle, in accordance with ORS 87.152, for the just and reasonable charges for the tow and storage services performed. The company may retain possession of that vehicle, consistent with this ordinance and Oregon law until towing and storage charges have been paid. [Ord. 1301]

§10.10.16 Release of vehicle.
A vehicle towed pursuant to this ordinance shall be immediately released to the person(s) entitled to lawful possession upon proof of compliance [Ord. 1301]

Chapter 10.11 Reserved for Expansion
Chapter 10.12 TRAFFIC RULES GENERALLY

§10.12.1 Rules of the road.
In addition to state law, the following shall apply to the operation of vehicles upon the streets of the city:
A. The operator of a vehicle shall not back the vehicle unless the movement can be made with reasonable safety and without interfering with other traffic, and shall yield the right-of-way to moving traffic and pedestrians.
B. The operator of a vehicle in the traffic lane shall have the right-of-way over an operator of a vehicle departing from a parking space.
C. No operator of a vehicle shall pull away from a curb or other parking area without giving an appropriate turn signal when other traffic may be affected.
D. Where a stop sign is erected at or near the entrance to an intersection, the operator of a vehicle approaching shall bring the vehicle to a stop before crossing a stop line or crosswalk; or, if none, then before entering the intersection. Stopping at a point which does not yield an unobstructed view of traffic on the intersecting street shall not constitute compliance with the requirements of this section.
E. Notwithstanding an indication by a traffic control device to proceed:
   1. No operator of a vehicle shall enter an intersection unless there is sufficient space on the opposite side of the intersection to accommodate the person's vehicle without obstructing the passage of other vehicles;
   2. No operator shall enter a marked crosswalk, whether or not at an intersection, unless there is sufficient space on the opposite side of the crosswalk to accommodate the person's vehicle without obstructing the passage of pedestrians. [Prior code § 52.310]

§10.12.2 Crossing private property.
No operator of a vehicle shall proceed from one street to an intersecting street by crossing private property. This provision shall not apply to the operator of a vehicle who stops on the property for the purpose of procuring or providing goods or services. [Prior code § 52.315]

§10.12.3 Emerging from vehicle.
No person shall open the door of a motor vehicle into a traffic lane without first ascertaining that it can be done in safety. [Prior code 52.320]

§10.12.4 Unlawful riding.
A. No operator shall permit a passenger and no passenger shall ride on a vehicle upon a street except on a portion of the vehicle designed or intended for the use of passengers. This provision shall not apply to an employee engaged in the necessary discharge of a duty, or to a person riding within a truck body in space intended for merchandise.
B. No person shall board or alight from a vehicle while the vehicle is in motion upon a street. [Prior code § 52.325]

§10.12.5 Clinging to vehicles.
No person riding upon a bicycle, motorcycle, coaster, rollerskates, sled or other device shall attach the device or the person to a moving vehicle upon a street. Nor shall the
operator of a vehicle upon a street knowingly allow a person riding on any of the above vehicles or devices to attach themselves, the vehicle or the device to the person's vehicle. [Prior code § 52.330]

§10.12.5 Sleds on streets.
No person shall use the streets for traveling on skis, toboggans, sleds or similar devices, except where authorized. [Prior code § 52.335]

§10.12.6 Damaging sidewalks and curbs.
A. The operator of a motor vehicle shall not drive upon a sidewalk or roadside planting strip except to cross at a permanent or temporary driveway.
B. No unauthorized person shall place dirt, wood or other material in the gutter or space next to the curb of a street with the intention of using it as a driveway.
C. No person shall remove a portion of a curb or move a motor vehicle or device moved by a motor vehicle upon a curb or sidewalk without first obtaining authorization and posting bond, if required. A person who causes damage shall be held responsible for the cost of repair. [Prior code § 52.340]

§10.12.7 Obstructing streets.
A. No unauthorized person shall obstruct the free movement of vehicles or pedestrians using the streets.
B. No person shall park or stand a vehicle in such a manner or location that it constitutes a hazard to public safety or an obstruction on the street. [Prior code § 52.345]

§10.12.8 Removing glass and debris.
A party to a vehicle accident or a person causing broken glass or other debris to be upon a street shall remove the glass and other debris from the street. [Prior code § 52.350]

§10.12.9 Speed limits in public parks.
No person shall drive a vehicle upon any street in any public park of this city at a speed exceeding fifteen miles per hour, unless signs erected indicate otherwise. [Prior code § 52.355]

§10.12.11 Vehicles discharging flames.
No person shall operate any motor vehicle on any street or public property of the city in such a manner or with the vehicle in such condition that fire or flames are discharged from the vehicle. [Prior code § 52.360]

§10.12.10 Illegal cancellation of traffic citations.
No person shall cancel any traffic citation in any manner except when approved by the municipal judge. [Amended Ord. 1485 § 1, Dec 2009] [Prior code § 52.365]

§10.12.11 Vehicle weight restrictions.
No person shall operate upon any street or bridge in this city a vehicle the weight of which exceeds the maximum for such street or bridge, as such maximum may be posted by sign erected by the city. In addition to any penalty provided in this code for the violation of this
section, any person convicted of a violation of this section may be required by the court to pay the cost of repairing any street or bridge damaged by reason of such violation, which cost may exceed the cost of repairing the damage proximately caused by the violation. [Prior code § 52.370]

Chapter 10.13 Reserved for Expansion
Chapter 10.14 Reserved for Expansion
Chapter 10.15 Reserved for Expansion
§10.16.1 Use of sidewalks.
A pedestrian shall not use a roadway for travel when a sidewalk is available. [Prior code § 52.560]

§10.16.2 Pedestrians must use crosswalks.
No pedestrian shall cross a street other than within a crosswalk in blocks with marked crosswalks. [Prior code § 52.565]

§10.16.3 Crossing the street.
A pedestrian shall cross a street at a right angle, unless crossing within a crosswalk. [Prior code § 52.570]

§10.16.4 Obedience to traffic lights and bridge and railroad signals.
A. At an intersection where a pedestrian control light is in operation, no pedestrian shall start to cross the street except when the walk signal is illuminated. Where only vehicle control lights are in operation, no pedestrian shall start to cross the street except when the green light is illuminated.
B. No pedestrian shall enter or remain upon a railroad grade crossing, an openable bridge, or the approach thereto beyond a crossing gate or barrier, after an operation signal indication has been given.
C. No pedestrian shall pass through, around, over or under a crossing gate or barrier at a railroad grade crossing or bridge while the gate or barrier is closed or is being opened or closed. [Prior code § 52.575]
§10.20.1 Exemption.
The provisions of this chapter regulating the parking or standing of vehicles shall not apply to an emergency service vehicle (police, fire, ambulance), or any vehicle of the city, county or state or public utility while necessarily in use for construction or repair work on a street, or a vehicle owned by the United States while in use for the collection, transportation or delivery of mail. [Amended by Ord. 1439, §1, 2004; Prior code § 52.460]

§10.20.2 Parking – Method.
A. No person shall stand or park a vehicle in a street other than parallel with the edge of the roadway, headed in the direction of lawful traffic movement and with the curbside wheels of the vehicle within twelve inches of the edge of the curb, except where the street is marked or signed for angle parking; provided, however, if a vehicle is totally within the markings of a parallel parking area, it shall not be deemed in violation of this subsection, notwithstanding it is more than twelve inches from the curb.
B. Where parking space markings are placed on a street, no person shall stand or park a vehicle other than in the indicated direction and, unless the size or shape of the vehicle makes compliance impossible, within a single marked space.
C. The operator who first begins maneuvering the person's motor vehicle into a vacant parking space on a street shall have priority to park in that space, and no vehicle operator shall attempt to deprive the first operator of the first's priority or block the person's access.
D. Whenever the operator of a vehicle discovers that the person's vehicle is parked close to a building to which the fire department has been summoned, the operator shall immediately remove the vehicle from the area, unless otherwise directed by police or fire officers. [Prior code § 52.410]

§10.20.3 Parking – Time limits.
The city council may, by resolution establish maximum limits to the number of consecutive units of time during which a vehicle may be parked upon the city streets within areas designated by such resolution. Signs shall be posted in the areas so designated declaring the maximum so established. Except as otherwise provided, no person shall park any vehicle upon any street for a period of time in excess of that maximum permitted for the place where the vehicle is parked, as such maximum time is established, designated and posted as herein provided. [Prior code § 52.416]

§10.20.4 Parking – Extension of time.
Where maximum parking time limits are designated by sign, movement of a vehicle within a block shall not extend the time limits for parking. [Prior code § 52.455]

§10.20.5 Lights on parked vehicle.
No lights need be displayed upon a vehicle that is parked in accordance with this chapter upon a street where there is sufficient light to reveal a person or object at a distance of at least five hundred feet from the vehicle. [Prior code § 52.450]
§10.20.6 Prohibited parking, stopping or standing.

A. Definitions:
1. Beauty strip: As used in this subsection, the area between the curb and the sidewalk. [Amended Ord 1494 §1, Aug 2010]
2. Vehicle: As used in this subsection “vehicle” includes any motor vehicle, boat, motor truck, truck tractor, trailer, pull trailer, utility trailer, camp trailer, camper shell, canopy, bus, motor home, house trailer, vacation trailer, manufactured home, tractor, implement of husbandry, article of machinery, or any parts thereof. In addition “Vehicle” also includes any motor vehicle as those terms are defined in the Oregon Vehicle Code. [Amended Ord 1494 §1, Aug 2010]
3. Stopping /Standing: In reference to vehicles, the terms “stopping” and “standing” will be used interchangeably for the purposes of this subsection. [Amended Ord 1494 §1, Aug 2010]

B. In addition to the Oregon Vehicle Code vehicle laws prohibiting parking, no person shall stop or park a vehicle except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control signal, in any of the following places:
1. Alongside any curb which is painted yellow or which has signs indicating that parking or stopping is prohibited; [Amended Ord 1494 §1, Aug 2010]
2. For an amount of time which exceeds the amount of time permitted as indicated by signs restricting the duration of parking or standing; [Amended Ord 1494 §1, Aug 2010]
3. So that it is not completely within the lines indicating the limits of angle parking spaces where angle parking is allowed; [Amended Ord 1494 §1, Aug 2010]
4. In a manner that causes the vehicle to occupy more than one designated parking stall in areas where stalls are indicated by markings on the street or curb; [Amended Ord 1494 §1, Aug 2010]
5. Upon any street, parking strip, alley or public way for:
   a. The display of the vehicle or equipment for sale or trade,
   b. The servicing or repair of the vehicle or equipment unless servicing or repairs are necessitated by an emergency situation,
   c. The storage of the vehicle or equipment,
   d. With reference to subdivision (3) of this subsection, a vehicle shall be conclusively determined to have been parked for storage if it is permitted to remain in substantially the same position for a continuous period of seventy-two (72) hours or more. [Amended Ord 1494 §1, Aug 2010] [ Ord. 1206 § 1, 1989: prior code § 52.415 ]
6. Upon, or over a sidewalk, or upon that portion of a driveway which intersects a sidewalk. [Amended Ord 1494 §1, Aug 2010] [ Ord. 1330 § 1 ]
7. Upon a bridge, viaduct, or other elevated structure used as a street or within a street tunnel, unless authorized; [Amended Ord 1494 §1, Aug 2010]
8. In an alley other than for the expeditious loading or unloading of persons or materials, but in no case for a period in excess of thirty (30) consecutive minutes; [Amended Ord 1494 §1, Aug 2010]
9. Any connected combination of vehicles and trailer on a street or parking strip at any time within the city if the combination thereof, is longer than twenty-three (23) feet or wider than seven (7) feet, except:
   a. When engaged in the delivery or receipt of cargo and when no facilities for the receipt or discharge of the cargo exists except from the street or parking strip, or
   b. When the person in charge is immediately engaged in the maintenance or repair of public or private property adjacent to a street or parking strip and no off-street parking is reasonably available,
   c. No person in charge of any combination of vehicles and trailers engaged in the delivery or receipt of cargo under the circumstances authorized in subsection 1 of this section shall park in such a manner that any part thereof shall project or be more than fifteen (15) feet into the street when measured at right angles from the face of the curb nearest to the vehicle or combination thereof; [Amended Ord 1494 §1, Aug 2010]
10. In a properly marked bike lane, including such time as the vehicle is being used for the temporary loading or unloading of passengers or materials; [Amended Ord 1494 §1, Aug 2010]
11. Upon private property without the consent of the owners or persons in charge of such private property. [Amended Ord 1494 §1, Aug 2010] [10.20.6 Amended by Ord. 1439, § 2, 2004]
12. Within an intersection; [Ord 1494 §1, Aug 2010]
13. On a crosswalk; [Ord 1494 §1, Aug 2010]
14. Within 25 feet from the intersection of curb lines or, if none, within 15 feet of the intersection of property lines at an intersection; [Ord 1494 §1, Aug 2010]
15. Within 10 feet from the intersection of an alley; [Ord 1494 §1, Aug 2010]
16. Within 30 feet of an official flashing beacon, stop sign, or traffic control sign located at the side of the roadway; [Ord 1494 §1, Aug 2010]
17. Within 15 feet of the driveway entrance to a fire station; [Ord 1494 §1, Aug 2010]
18. Within 10 feet of a fire hydrant; [Ord 1494 §1, Aug 2010]
19. In front of a private driveway or public or private alley; [Ord 1494 §1, Aug 2010]
20. On a curb; [Ord 1494 §1, Aug 2010]
21. Alongside or opposite a street or highway excavation or obstruction when such stopping, standing or parking would obstruct traffic; [Ord 1494 §1, Aug 2010]
22. On the roadway side of a vehicle stopped or parked at the edge or beside the curb of a highway or street (commonly known as double parking); [Ord 1494 §1, Aug 2010]
23. At a place where official traffic signs have been erected prohibiting, limiting or restricting standing and parking; [Ord 1494 §1, Aug 2010]
24. Within a 25 foot radius of the intersection of the centerline of a highway and a railway crossing; [Ord 1494 §1, Aug 2010]
25. On a beauty strip. [Ord 1494 §1, Aug 2010]

§10.20.7 Use of loading zone.
No person shall stand or park a vehicle for any purpose or length of time, other than for the expeditious loading or unloading of persons or materials, in a place designated as a loading zone when the hours applicable to that loading zone are in effect. In no case, when the hours applicable to the loading zone are in effect, shall the stop for loading and
unloading of materials exceed the time limits posted. If no time limits are posted, then the use of the zone shall not exceed thirty minutes. [Prior code § 52.425]

§10.20.8 Unattended vehicle.
No operator or person in charge of a motor vehicle shall park it or allow it to be parked on a street, on other property open to public travel or on a new or used car lot without first stopping the engine, locking the ignition, removing the ignition key from the vehicle and effectively setting the brake. If the vehicle is attended, the ignition key need not be removed. [Prior code § 52.430]

§10.20.9 Unattended vehicle – Action by police officer.
Whenever a police officer shall find a motor vehicle parked unattended with the ignition key in the vehicle in violation of Section 10.20.8, the police officer is authorized to remove the key from vehicle and deliver the key to the person in charge of the police station. [Prior code § 52.435]

§10.20.10 Standing or parking of buses and taxicabs.
The operator of a bus or taxicab shall not stand or park the vehicle upon a street in a business district at a place other than a bus stop or taxicab stand, respectively; except, that this provision shall not prevent the operator of a taxicab from temporarily stopping the person's vehicle outside a traffic lane while loading or unloading passengers. [Prior code § 52.440]

§10.20.11 Restricted use of bus and taxicab stands.
No person shall stand or park a vehicle other than a taxicab in a taxicab stand, or a bus in a bus stop; except that the operator of a passenger vehicle may temporarily stop for the purpose of and while actually engaged in loading or unloading passengers, when stopping does not interfere with a bus or taxicab waiting to enter or about to enter the restricted space. [Prior code § 52.445]

§10.20.12 Illegally parked vehicle – Citation.
1. Whenever a vehicle without an operator is found parked in violation of a restriction imposed by this ordinance, the officer finding the vehicle shall take its license number and any other information displayed on the vehicle which may identify its owner, and shall conspicuously affix to the vehicle a traffic citation for the operator to answer to the charge against the operator or pay the penalty imposed within five days during the hours and at a place specified in the citation. [Ord. 1482 § 1, Nov. 2009; Prior code § 52.810]
2. Violations of Sections 10.20.2 through 10.20.11 shall be punishable by a fine in an amount set by resolution of the City Council. Such fine shall be recoverable from the owner or person in possession of the vehicle, or from said vehicle in the nature of an in rem proceeding. The Municipal Court of the City shall have authority to levy such penalty against such vehicle in an in rem proceeding. [Ord. 1482 § 1, Nov. 2009]

§10.20.13 Illegally parked vehicle – Citation – Failure to comply.
If the operator does not respond to a traffic citation affixed to such vehicle within a period of five days, the municipal court may send to the owner of the vehicle to which the traffic
citation was affixed a letter informing the owner of the violation and warning the owner that, in the event the letter is disregarded for a period of five days, a warrant for the person’s arrest will be issued. [Prior code § 52.815]

§10.20.14 Owner responsibility.
The owner of a vehicle placed in violation of a parking restriction shall be responsible for the offense, except where the use of the vehicle was secured by the operator without the owner’s consent. [Prior code § 52.820]

§10.20.15 Registered owner presumption.
In a prosecution of a vehicle owner, charging a violation of a restriction on parking, proof that the vehicle at the time of the violation was registered to the defendant shall constitute a presumption that the defendant was then the owner in fact. [Prior code § 52.825]

§10.20.20 Unattended Minors in Vehicles.
It is unlawful for any person having the care and custody of a minor under 6 years of age to leave such minor unattended in a locked vehicle, or to leave such minor unattended in an unlocked vehicle for more than 15 minutes. A minor is unattended within the meaning of this Section if the oldest person with the minor is under the age of 10 years. [Ord. 1409 § 1, 2002]

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Chapter 10.28 ABANDONED VEHICLES GENERALLY

§10.28.1 Definitions.
"Abandoned' means, in addition to it's ordinary meaning any vehicle which is either unlicensed, inoperative, junked, partially or completely dismantled, or used for storage purposes.
"Building' means a permanent, four-sided, roofed structure built or used for the shelter or enclosure of persons, animals, chattels, or property of any kind.
"Costs" means the expense of removing, storing and selling an impounded vehicle.
"Chief of police" includes any authorized law enforcement officer of the city.
"Owner" means any individual, firm, corporation or unincorporated association with a claim, either individually or jointly, of ownership or any interest, legal or equitable, in a vehicle.
"Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, or any portion of such vehicle or device, except devices used exclusively upon stationary rails or tracks. The definition of a vehicle includes wheeled devices which do not require licensing by the State of Oregon. [Ord. 1327]

§10.28.2 Application of chapter.
This chapter shall apply to all abandoned vehicles now in the possession of the city as well as to abandoned vehicles that are hereafter impounded. [Prior code § 50.140]

§10.28.3 Vehicles affected.
It is unlawful to park, store or leave or permit the parking, storing or leaving of any vehicle of any kind for a period of time in excess of seventy-two hours on any public property or in excess of seven days on any private property, which is in an abandoned condition, whether attended or not unless the same is completely enclosed within a building. Lawfully authorized and operated automobile wrecking yards located in an industrial zone are exempt from the requirements of this section. [Ord. 1259 § 1, 1992; Ord. 1154 § 1, 1986; prior code § 43.110]

Exempt from the provisions of this section are unlicensed vehicles which do not otherwise meet the definition of an abandoned vehicle and which are parked on a concrete, asphalt or gravel driveway or pad on private property. In no case, however, shall there be more than one unlicensed vehicle per household at any one time on private property within the city. [Ord. 1327]

(See Independence Development Code subchapter 75 relating to yards for additional
restrictions.)

§10.28.4 Abandoned vehicles for commercial use.
When used in connection with a business enterprise properly operated in the appropriate business zone pursuant to the zoning laws of Independence, it is unlawful to park, store or leave or permit the parking, storing or leaving of an abandoned vehicle of any kind on such private property for a period of time in excess of fifteen days, unless the same is completely enclosed within a building. Lawfully authorized and operated automobile wrecking yards located in an industrial zone are exempt from the requirements of this Section. (Ord. 1327)

§10.28.5 Vehicle service on public streets
It is unlawful to disassemble, construct, reconstruct, repair and/or service vehicles of any kind in or upon any street, road, alley or other public thoroughfare in the city except for emergency service, provided, however, that such emergency service shall not extend over a period of four hours, and the same does not interfere with or impede the flow of traffic. [Ord. 1327]

§10.28.6 Nuisance - duty to remove.
Any vehicle parked, stored, left or permitted to be parked, stored or left in violation of this Chapter shall constitute a nuisance detrimental to the health, safety and welfare of the inhabitants of the city. It is the duty of the owner of the property, and it shall also be the duty of the registered owner of the vehicle or the person in charge of said vehicle, either to remove the same from the city or to have the same housed completely enclosed within a building. [Ord. 1327]

§10.28.7 Notice of nuisance-Public property
A. It is the duty of the police department, whenever a vehicle is found abandoned upon the streets, alleys, or other public way in the same position for a period of seventy-two hours to:
   1. Make a routine investigation to discover the owner and request compliance-and to provide notice of removal; or
   2. If the owner cannot be identified or contacted, to place a notice of removal upon the windshield, or some other part of the vehicle easily seen by the passing public.
   3. The contents of the notice under this section shall comply with the requirements under 10.28.16

§10.28.8 Notice of nuisance-Private property
A. It is the duty of the police department, whenever a vehicle is found abandoned upon private property for a period of seven days to:
   1. Make a routine investigation to discover the vehicle or property owner and request compliance and to provide notice of removal; or
   2. If the vehicle or property owner cannot be identified or contacted, to place a notice of removal upon the windshield, or some other part of the vehicle easily seen by the passing public or to send notice of removal to the property owner by certified mail.
   3. The contents of the notice under this section shall comply with the requirements
§10.28.9 Impoundment.
A. An abandoned vehicle which remains in the same position for a period of seventy-two hours on public property or seven days on private property, after an owner has been requested to remove it or after a notice to remove has been posted upon the vehicle, and no person has appeared to show good cause why the vehicle should not be moved, shall constitute a nuisance.
B. It is the duty of the police department to remove, store and dispose of, under the provisions of this chapter, any vehicle constituting a nuisance.
C. After impoundment, the chief of police shall cause the vehicle to be appraised. [Prior code § 50.130]

§10.28.10 Immediate custody and removal of vehicle constituting hazard.
A. The City may immediately take custody of a vehicle that is disabled, abandoned, parked or left standing unattended on a road or highway right of way and that is in such a location as to constitute a hazard or obstruction to motor vehicle traffic using the road or highway.
B. As used in this section, a "hazard or obstruction" includes, but is not necessarily limited to:
   1. Any vehicle that is parked so that any part of the vehicle extends within the paved portion of the travel lane.
   2. Any vehicle that is parked so that any part of the vehicle extends within the traffic lane or bicycle lane:
   C. As used in this section, "hazard or obstruction" does not include parking in a designated parking area along any street or, except as described in subsection (2) of this section, parking temporarily on the shoulder of the highway as indicated by a short passage of time and by the operation of the hazard lights of the vehicle, the raised hood of the vehicle, or advance warning with emergency flares or emergency signs.
D. After taking a vehicle into custody under this section the Chief of Police is required to give the notice described under this code and, if requested, provide a hearing.
E. The authority in this section to remove and take vehicles into custody is in addition to any authority to remove and take vehicles into custody under this code.
F. Subject to state law, vehicles and the contents of vehicles removed and taken into custody under this section are subject to a lien as provided under ORS 819.160.
G. Vehicles removed under this section shall be appraised within a reasonable time by a person authorized to perform such appraisals under ORS 819.230.
H. Vehicles removed and taken into custody under this section are subject to sale or disposition under this code if the vehicles are not reclaimed or returned to the owner or person entitled thereto.

(See Independence Municipal Code 10.20 for additional parking restrictions.)

§10.28.11 Hearing to contest validity of removal and custody.
A person provided notice under this ordinance or any other person who reasonably appears to have an interest in the vehicle may request a hearing under this section to
contest the validity of the removal and custody under this ordinance or proposed removal and custody of a vehicle under this ordinance by submitting a request for hearing with the Police Chief not more than five days from the mailing date of the notice. The five-day period in this section does not include holidays, Saturdays or Sundays. Except as otherwise provided under state law a hearing under this section shall comply with all of the following:

1. If a request for hearing is received before the vehicle is taken into custody and removed, the vehicle shall not be removed unless the vehicle constitutes a hazard.
2. A request for hearing shall be in writing and shall state grounds upon which the person requesting the hearing believes that the custody and removal of the vehicle is not justified.
3. Upon receipt of a request for a hearing under this section, the City shall set a time for the hearing within 72 hours of the receipt of the request and shall provide notice of the hearing to the person requesting the hearing and to the owners of the vehicle and any lessors or security interest holders shown in the records of the Department of Transportation, if not the same as the person requesting the hearing. The 72-hour period in this subsection does not include holidays, Saturdays or Sundays.

§10.28.12 Determination on removal and custody.
A. If the hearings officer finds, after hearing and by substantial evidence on the record that the custody and removal of a vehicle was:
1. Invalid, the hearings officer shall order the immediate release of the vehicle to the owner or person with right of possession. If the vehicle is released under this paragraph, the person to whom the vehicle is released is not liable for any towing or storage charges. If the person has already paid the towing and storage charges on the vehicle, the City shall reimburse the person for the charges. New storage costs on the vehicle will not start to accrue until 24 hours after the time the vehicle is officially released to the person under this paragraph.
2. Valid, the hearings officer shall order the vehicle to be held in custody until the costs of the hearing and all towing and storage costs are paid by the party claiming the vehicle. If the vehicle has not yet been removed, the hearings officer shall order its removal.
B. A person who fails to appear at a hearing under this section is not entitled to another hearing unless the person provides reasons satisfactory to the hearings officer for the person’s failure to appear.
C. The hearings officer is only required to provide one hearing under this section for each time the City takes a vehicle into custody and removes the vehicle or proposes to do so.
D. A hearing may be used to determine the reasonableness of the charge for towing and storage of the vehicle. Towing and storage charges set by law, ordinance or rule or that comply with law, ordinance or rule are reasonable for purposes of this subsection.
E. The hearings officer shall provide a written statement of the results of a hearing held under this section to the person requesting the hearing.
F. Hearings held under this section may be informal in nature, but the presentation of evidence in a hearing shall be consistent with the presentation of evidence required for contested cases under ORS 183.450.
G. The hearings officer at a hearing under this section may the City Manager or their
designee, but shall not have participated in any determination or investigation related to taking into custody and removing the vehicle that is the subject of the hearing.

H. The determination of a hearings officer at a hearing under this section is final and is not subject to appeal.

§10.28.13 Inventory of unclaimed vehicles.
The Chief of Police shall, from time to time, transmit to the City Manager an inventory of all unclaimed motor vehicles subject to sale as provided in Sections 10.28.14 and 10.28.15. After this transmittal, such vehicles shall come into the custody and control of the City Manager. [Prior code § 51.150]

§10.28.14 Disposition of motor vehicles valued at greater than one thousand dollars.
Any motor vehicle appraised at a value greater than one thousand dollars under Section 2.21.9, and not redeemed for a period of sixty days after the date of mailing notice pursuant to Section 2.21.10, or the taking of the vehicle into the custody of the city, whichever is later, may be disposed of by the City Manager in accordance with Section 2.21.6 (F) and (H). [Prior code § 51.165]

§10.28.15 Disposition of motor vehicle appraised at one thousand dollars or less.
Any motor vehicle appraised at a value of one thousand dollars or less under Section 2.21.9, will be released to the tow company removing the vehicle. That tow company will be required to comply with ORS in regards to release of the vehicle to its owner or the transferring of title to a new owner.

§10.28.16 Notice prior to removal; methods; contents.
If the City proposes to take custody of a vehicle under this ordinance, the City shall provide notice and shall provide an explanation of procedures available for obtaining a hearing under 10.28.11, 10.28.12. Except as otherwise provided under state law, notice required under this section shall comply with all of the following:

(1) Notice shall be given by affixing a notice to the vehicle with the required information. The notice shall be affixed to the vehicle at least 24 hours before taking the vehicle into custody. The 24-hour period under this subsection includes holidays, Saturdays and Sundays.

(2) Notice shall state all of the following:
(a) That the vehicle will be subject to being taken into custody and removed by the City if the vehicle is not removed before the time set by the City.
(b) The statute, ordinance or rule violated by the vehicle and under which the vehicle will be removed.
(c) The place where the vehicle will be held in custody or the telephone number and address of the City that will provide the information.
(d) That the vehicle, if taken into custody and removed by the City, will be subject to towing and storage charges and that a lien will attach to the vehicle and its contents.
(e) That the vehicle will be sold to satisfy the costs of towing and storage if the charges are not paid.
(f) That the owner, possessor or person having an interest in the vehicle is entitled to a hearing, before the vehicle is impounded, to contest the proposed custody and removal if
a hearing is timely requested.

(g) That the owner, possessor or person having an interest in the vehicle may also challenge the reasonableness of any towing and storage charges at the hearing.

(h) The time within which a hearing must be requested and the method for requesting a hearing.

§10.28.17 Notice after removal; method; contents.
A. If the City takes custody of a vehicle, the City shall provide, by certified mail within 48 hours of the removal, written notice with an explanation of procedures available for obtaining a hearing under this ordinance to the owners of the vehicle and any lessors or security interest holders as shown in the records of the Department of Transportation. The notice shall state that the vehicle has been taken into custody and shall give the location of the vehicle and describe procedures for the release of the vehicle and for obtaining a hearing. The 48-hour period under this subsection does not include holidays, Saturdays or Sundays.
B. Any notice given under this section after a vehicle is taken into custody and removed shall state all of the following:
   1. That the vehicle has been taken into custody and removed and the statute, ordinance or rule under which the vehicle has been taken into custody and removed.
   2. The location of the vehicle or the telephone number and address of the Police Department.
   3. That the vehicle is subject to towing and storage charges, the amount of charges that have accrued to the date of the notice and the daily storage charges.
   4. That the vehicle and its contents are subject to a lien for payment of the towing and storage charges and that the vehicle and its contents will be sold to cover the charges if the charges are not paid by a date specified by the City.
   5. That the owner, possessor or person having an interest in the vehicle and its contents is entitled to a prompt hearing to contest the validity of taking the vehicle into custody and removing it and to contest the reasonableness of the charges for towing and storage if a hearing is timely requested.
   6. The time within which a hearing must be requested and the method for requesting a hearing.
   7. That the vehicle and its contents may be immediately reclaimed by presentation to the Chief of Police of satisfactory proof of ownership or right to possession and either payment of the towing and storage charges or the deposit of cash security or a bond equal to the charges with the City.

§10.28.18 Procedure for vehicles that have no identification markings.
If there is no vehicle identification number on a vehicle and there are no registration plates and no other markings through which the Department of Transportation could identify the owner of the vehicle, then the City is not required to provide such notice and the vehicle may be removed and disposed of as though notice and an opportunity for a hearing had been given.

§10.28.19 Inventory.
All impounded vehicles shall be inventoried by a police officer as soon as reasonably
possible after the impoundment. The officer conducting the inventory shall make a written record of the condition of the vehicle and of any personal property located therein, including all self-contained items. Locked containers shall be inventoried as a singular item and shall not be forced open unless special circumstances exist which justify the opening of the container under the policy reasons set forth above. The glove box, the trunk, and all other closed compartments of the vehicle shall be inspected, provided they are unlocked or a key is available to unlock said compartments. Objects found within the vehicle shall be scrutinized only to the extent necessary to identify them. Once the inventory is completed, the vehicle shall be secured in a safe place. [Ord. 1315]

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Chapter 10.36 BICYCLES

§10.36.1 Application.
A. No parent of any minor child, and no guardian of any minor ward, shall authorize or knowingly permit any such minor child or ward to violate any of the provisions of this chapter.
B. Provisions of this chapter relating to bicycles shall apply whenever a bicycle is operated upon any street or public path set aside for the exclusive use of bicycles, subject to those exceptions stated herein. [Prior code § 52.510]

§10.36.2 Registration required.
No person who resides within the city shall ride or propel a bicycle on any street or public property unless such bicycle has been registered with the chief of police. The chief of police shall register a bicycle, providing the applicant submits satisfactory proof of ownership of the bicycle and evidences reasonable knowledge of safety rules. No fee shall be charged for registering bicycles. [Prior code § 52.515]

§10.36.3 Inspection of bicycle required.
The chief of police shall inspect each bicycle before registering, and shall refuse to register any bicycle which the Chief determines is in unsafe mechanical condition. [Prior code § 52.520]

§10.36.4 Transfer of ownership.
Upon the sale or other transfer of a registered bicycle, the registered owner may, upon proper application and without payment of a fee, have the registration assigned to the purchaser or to another bicycle owned by the applicant. [Prior code § 52.525]

§10.36.5 Bicycle dealers.
Every person engaged in the business of buying secondhand bicycles shall maintain a record of every bicycle purchased, giving the name and address of the person from whom purchased, a description of such bicycle by name or make, the frame number thereof and the registration number, if any, found thereon. [Prior code § 52.530]

§10.36.6 Rental agencies.
A rental agency shall not rent or offer any bicycle or rent unless the bicycle is registered and such bicycle is equipped with all equipment required by this chapter. [Prior code § 52.535]

§10.36.7 Bicycle operating rules.
In addition to observing all other applicable provisions of this chapter and state law, a rider of a bicycle upon a street shall:
A. Not ride upon a sidewalk within the area specifically designated by resolution of the city council;
B. On a two-way street, ride to the extreme right, except when preparing for a left turn. On a one-way street, ride to the extreme curbside of the traffic lane and with the direction of travel designated for that lane. If the curb lane is designated for left-turn or right-turn
only, and the operator is not intending to turn, the bicyclist shall operate in the through lane;
C. Not operate a bicycle in a careless or reckless manner which endangers or would be likely to endanger [him]self, another or any property. Racing or trick riding shall be included in this offense;
D. Not leave a bicycle, except in a bicycle rack. If no rack is provided, the cyclist shall leave the bicycle so as not to obstruct any roadway, sidewalk, driveway or building entrance. Nor shall the cyclist leave the bicycle in violation of the provisions relating to the parking of motor vehicles.
E. Any person riding a bicycle upon a sidewalk shall yield the right-of-way to any pedestrian, and shall give audible signal before overtaking and passing such pedestrian. [Prior code § 52.540]

§10.36.8 Impoundment.
A. It is unlawful to leave a bicycle on public or private property without the consent of the person in charge or the owner thereof.
B. A bicycle left on public property for a period in excess of twenty-four hours may be impounded by the police department.
C. In addition to any citation issued, a bicycle parked in violation of this chapter may be immediately impounded by the police department.
D. If a bicycle impounded under this chapter is licensed, or other means of determining its ownership exist, the police shall make reasonable efforts to notify the owner. An impounding fee of one dollar shall be charged to the owner. No impounding fee shall be charged to the owner of a stolen bicycle which has been impounded.
E. A bicycle impounded under this chapter which remains unclaimed shall be disposed of in accordance with the city's procedures for disposal of abandoned or lost personal property. [Prior code § 52.545]
CHAPTER 10.37  SKATEBOARDS, ROLLERBLADES, NON-MOTORIZED SCOOTERS AND BICYCLES IN BUSINESS DISTRICTS AND CITY PARKING LOTS

§10.37.1 Definitions
‘Business District’, for the purposes of this ordinance, means all the area inside the boundaries as illustrated on the attached map. Ed. Note: see map on following page. [Ord. 1452, 12-13-05; prev. Ord. 1448, 06-28-05; Ord. 1413 §1, 10-22-02]

§10.37.2 Operation of Skateboards, Rollerskates, Rollerblades, Non-Motorized Scooters and Bicycles Prohibited
A. No person shall ride or operate a skateboard, rollerskates or non-motorized scooter upon any sidewalk, alley, street or place open to the public within the downtown business district of the City as defined above.
B. No person shall ride or operate a bicycle upon any sidewalk within the business district of the City as defined above. [Ord. 1413 §1, 10-22-02]

§10.37.3 Penalties
Violation of any provision of this Chapter is punishable by a fine of up to $75.00. [Ord. 1413 §1, 10-22-02]
Chapter 12.1 PUBLIC WORKS PROJECTS GENERALLY

§12.1.1 Specifications and Standards for Public Works Construction adopted.
The document entitled “City of Independence Specifications and Standards for Public Works Construction” is adopted for use on all public works construction within the city. [Ord. 1134 § 1, 1985]

§12.1.2 Construction bids.
The council may, in its discretion, direct the city recorder to advertise for bids for construction of all or any part of the improvement project on the basis of the council-approved engineer's report and before the passage of the resolution, or after the passage of the resolution and before the public hearing on the proposed improvement, or at any time after the public hearing; provided, however, that no contract shall be let until after the public hearing has been held to hear remonstrances and oral objections to the proposed improvement. [Prior code § 32.210]

§12.1.3 Bids-Advertisement.
The city shall invite bid proposals for doing work by giving notice of such work by publication of notice in two successive issues, one week apart, in a newspaper of general circulation in the city, and such notice shall state where the specifications for such work can be obtained and the bid requirements and conditions as provided by this chapter. The first notice shall not be more than thirty nor less than ten days prior to the date of bid opening. [Prior code § 32.220]

§12.1.4 Bid requirements.
Every proposal of a bid shall be accompanied by a check, certified by a responsible bank, and made payable to the order of the city, in an amount equal to five percent of the aggregate bid. Such certified check shall be held by the city as security for the performance of the bid, and should any successful bidder fail or refuse, within ten days of notice of acceptance of notice as the person's bid, to enter into a contract and furnish an acceptable performance bond as herein provided, the certified check of such bidder shall be forfeited to the city as liquidated damages. Upon acceptance of the bid proposal, execution of the contract for doing such work or improvement, and upon the filing of a surety bond for the faithful performance of the contract, the certified check shall be returned to the bidder. [Prior code § 32.240]

§12.1.5 Contracts.
Contracts shall be let to the lowest responsible bidder; provided, that the council shall have the right to reject any and all bids when the council shall deem such bids unreasonable, unsatisfactory, or not in conformance with the conditions and specifications of the work. [Prior code § 32.230]
§12.1.6 Bid refusals.
If any successful bidder shall neglect or refuse to enter into the contract that is herein provided, the city council shall immediately advertise for proposals covering the portions of the work or improvements as may have been awarded to such contractor. [Prior code § 32.250]

§12.1.7 Contract breach.
If a contractor does not complete the person's contract within the time limited in the contract, or with such further time as the council may grant, the council may relet the unfinished portion of the work in the same manner as described in this chapter, reletting the work in the first instance; and the delinquent contractor shall forfeit the cost of subletting the unfinished work, and shall be liable for the excess cost, if any there be, for such unfinished work over and above the original bid proposal made. [Prior code § 32.260]

§12.1.8 Excess of estimates.
If the council finds, upon opening bids for the work of such improvement, that the lowest responsible bid is substantially in excess of the engineer's estimates, it may, in its discretion, provide for holding a special hearing of objection to the proceeding with the improvement on the basis of such bid; and it may direct the city recorder to publish one notice thereof in a newspaper of general circulation in the city. [Prior code § 32.270]

§12.1.9 Compliance with state statutes.
Provisions of Oregon Revised Statutes Chapter 279, which relate to public contracts, together with all amendments that are now or may have been enacted to any of these sections, are incorporated as part of this chapter; and all bid proposals, contracts and performance bonds, for which provision is made by this chapter; must conform to these statutory provisions. [Prior code § 32.280]
§12.2.1 Initiating a local improvement.
Council may consider the initiation of a local improvement district upon a petition by affected property owners, upon staff's recommendation, or upon its own motion.

§12.2.2 Methods and procedures.
The following sections are the methods and procedures for making public improvements in the city; for levying and collecting special assessments therefor; and for the creation and apportionment of assessment liens. [Prior code § 32.110]

§12.2.3 City engineer survey and report.
Whenever the council shall deem it necessary, upon its own motion or upon the petition of the owners of one-half of the property to benefit specially from the improvement, to make any street, sewer, sidewalk, drain or other public improvement to be paid for in whole or in part by a special assessment according to benefits, then the council shall, by motion, direct the city engineer to make a survey and written report for such project and file the same with the city recorder. Unless the council shall direct otherwise, such report shall contain the following matters:
A. A map or plat showing the general nature, location and extent of the proposed improvement and the land to be assessed for the payment of any part of the cost thereof;
B. Plans, specifications and estimates of the work to be done; provided, however, that where the proposed project is to be carried out in cooperation with other governmental agency, the engineer may adopt the plans, specifications and estimates of such agency;
C. An estimate of the probable cost of the improvement, including any legal, administrative and engineering costs attributable thereto;
D. An estimate of the unit cost of the improvement to the specially benefited properties;
E. 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 properties specially benefited;
F. The description and assessed value of each lot, parcel of land, or portion thereof, to be specially benefited by the improvement, with the names of the record owners thereof and, when readily available, the names of the contract purchasers thereof;
G. A statement of outstanding assessments against property to be assessed. [Prior code § 32.120]

§12.2.4 Survey and report-Council action.
After the city engineer's report shall have been filed with the city recorder, the council may thereafter by motion approve the report, modify the report and approve it as modified, require the engineer to supply additional or different information for such improvement, or it may abandon the improvement. [Prior code § 32.130]

§12.2.5 Council approval-Notice.
After the council shall have approved the engineer's report as submitted or modified, the council shall, by resolution, declare its intention to make such improvement, provide the manner and method of carrying to the improvement, and shall direct the recorder to give
notice of such improvement by two publications, one week apart, in a newspaper of
general circulation within the city, and by mailing copies of such notice by certified mail to
the owners to be assessed for the costs of such improvement, which notice shall contain
the following matters:
A. That the report of the city engineer is on file in the office of the recorder and is
subject to public examination;
B. That 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 first publication of
notice, at which objections and remonstrances to such improvement will be heard by the
council; and that if, prior to such hearing, there shall be presented to the recorder valid,
written remonstrances of the owners of fifty-one percent of the property to be specially
affected by such improvement, then the improvement will be suspended for at least six
months. Owners of property to be specially affected shall include those persons who are
purchasing property under contract if, under the terms of their contract, they are required
to pay such assessments; and in all other cases, owners shall be those persons who
appear on the records of the county clerk for the county of Polk and records of the Polk
County assessor's office or the assessor's office in which the property is located;
C. A description of the property to be specially benefited by the improvement, the
owners of such property and the engineer's estimate of the unit cost of the improvement to
the property to be specially benefited, and the total cost of the improvement to be paid for
by special assessments to benefited properties. [Prior code § 32.140]

§12.2.6 Contracts for public improvements.
The council may provide in the improvement resolution that the construction work may be
done in whole or in part by the city, by a contract, or by any other governmental agency, or
by any combination thereof; provided, all contracts for public improvements of a total
amount of more than one thousand dollars shall be bid according to Section 39 of the
Charter of Independence. [Prior code § 32.150]

§12.2.7 Order of abandonment of improvement-Determined by council.
At the time of the public hearing on the proposed improvement, if the written
remonstrances shall represent less than the amount of property required to defeat the
proposed improvement, then, on the basis of the hearing of written remonstrances and oral
objections, if any, the council may, by motion, at the time of the hearing or within sixty days
thereafter, order the improvement to be carried out in accordance with the resolution; or
the council may, on its own motion, abandon the improvement. [Prior code § 32.160]

§12.2.8 Assessment ordinance passed when.
After the aforesaid public hearing on the proposed improvement, and after the council has
moved to proceed with the improvement, it may pass an ordinance assessing the various
lots, parcels of land, or parts thereof, to be specially benefited, with their apportioned share
of the cost of the improvement; but the passage of such an 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. [Prior code § 32.310]
§12.2.9 Method of assessment.
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 district consistent with the benefits derived;
B. Use any method of apportioning the sum to be assessed as is just and reasonable between the properties determined to be specially benefited;
C. Authorize payment by the city of all or any part of the cost of any such improvement when, in the opinion of the council, the topographical or physical conditions, or unusual or excessive public use, or other character of the work involved warrants only a partial payment or no payment by the benefited property of the costs of the improvement;
D. Nothing contained in this chapter shall preclude the council from using any other available means of financing improvements, including federal or state grants-in-aid, sewer charges or fees, revenue bonds, general obligation bonds or any other legal means of finance. In the event that such other means of financing improvements are used, the council may, in its discretion, levy special assessments according to the benefits derived to cover any remaining part of the costs of the improvement. [Prior code § 32.315]

§12.2.10 Preassessment.
A. Council may levy an assessment prior to construction of a local improvement as provided herein. When the estimated cost of a local improvement has been ascertained on the basis of a City Engineer's estimate of costs, the award of a contract or any other basis acceptable to Council, the City Engineer shall prepare the proposed assessment roll for the lots within the local improvement district and, after its approval by the City Manager, shall file it in the Office of the City Recorder and submit it to Council.
B. Notice of the proposed assessment shall be given in accordance with this ordinance. The proposed assessment roll shall be considered by Council and processed by staff in accordance with the procedures described in this ordinance.
C. If the initial assessment has been made on the basis of estimated cost and, upon completion of the improvement, the actual cost is found to be greater than the estimated cost, Council may make a definite or supplemental assessment for the additional cost. Proposed assessments upon the respective lots within the local improvement district for the proportionate share of the deficit shall be made, notices sent, a public hearing held and opportunity for objections 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 or supplemental assessment spread by ordinance. The deficit assessments shall be entered in the City lien docket, notices published and mailed, and the collection of the assessment made in accordance with the provisions of this ordinance relating to the original assessment. Council may hold the preassessment hearing concurrently with any other hearing required.
D. If assessments have been made on the basis of estimated cost and, upon completion of the improvement project, the cost is found to be less than the estimated cost, Council shall, following public hearing, declare the same by ordinance; and when so declared, the excess amounts shall be entered on the City lien docket as a credit upon the appropriate assessment. Thereafter, the person who paid the original assessment, or his or her legal representative or successor, shall be entitled to repayment of the excess amounts. If the property owner has filed an application to pay the assessment by
installment, she or he shall be entitled to such refund only when such installments, together with interest thereon, are fully paid. If the property owner has neither paid such assessment nor filed an application to pay in installments, the amount of such refund shall be deducted from such assessment, and the remainder shall remain a lien on such property until legally satisfied.

§12.2.11 Final report; notice of public hearing; installment applications.
A. When the improvement has been completed, the cost shall be determined by adding to the contract price of the work or, if not contracted, the City work crew cost of the work, the cost of right-of-way, condemnation expenses, cost of engineering, supervision, inspection, advertising, legal expenses, and any other necessary and proper expenses, which costs and expenses shall be a part of the amounts to be assessed to the benefited properties.
B. The final report of the above costs shall be submitted to Council, and when the final report has been approved by motion of Council, the engineering staff of the City of Independence shall prepare a proposed assessment roll ordering and describing each lot to be assessed, with the names of the owners, and shall levy against those lots in a manner directed by Council and provisions of ordinances applicable to special assessments. The proposed assessment roll shall be submitted for the approval of the City Manager. The City Manager may require the engineering staff to make any changes or modifications in the proposed assessment roll. When the proposed assessment roll has been approved by the City Manager, she or he shall file it with the City Recorder and refer it to Council for review, modification, acceptance or rejection by Council.
C. When the proposed assessment roll is received for filing Council shall publish a notice of the time and place of a public hearing in a newspaper or general circulation published in Polk County at least 10 days before the public hearing. The notice shall state that at the public hearing Council will, at a stated time and place, consider oral and written remonstrances to the proposed assessment roll, and that written remonstrances should be filed with the City Recorder prior to the public hearing. This notice shall state that within 30 days after Council passage of the ordinance confirming the assessment roll, the owner of the assessed properties may file with the City Recorder, on a form provided for the purpose, an application to pay the assessment in whole or in part on an installment basis, as provided by the Bancroft Bonding Act, ORS 223.205 to 223.300, which is hereby adopted by reference and made a part of this ordinance. This notice shall also state that, if the assessment is not eligible under the provisions of the Bancroft Bonding Act, or if the owner of the assessed property does not apply to use the installment basis, all or part of the assessment shall be excluded from the installment payment procedure and shall be paid in full by cash within 30 days of the date of entry in the unbonded lien docket.
D. The City Recorder shall, at least 10 days before the public hearing, mail a notice to each owner of property to be assessed, which notice shall be deposited in the Post Office in the City, postage prepaid, addressed to such owners at their last known address. If the address of the owner is unknown to the Recorder, she or he shall mail the notice to the owner or his or her agent at the address where the property to be assessed is located. The mailed notice shall show the amount proposed to be assessed to the addressee, owner or property proposed to be assessed.
E. The contents of the application to pay assessments on the installment basis shall be
§12.2.12 Public hearing; ordinance confirming assessments; lien recording.
Council shall hold a public hearing on the proposed assessment roll at the time and place stated in the notice of public hearing. Council may continue the hearing.

After hearing the remonstrances, if any, Council may refer the proposed assessment roll to the City Manager for correction or adjustment, or may make corrections or adjustments, and shall pass an assessment ordinance confirming the assessment roll, including any corrections or adjustment, providing for the assessment of the benefited properties, and for the apportionment of the assessment to the individual lots within the local improvement district.

Immediately after Council has approved the assessment ordinance, the City Manager shall enter the assessments in the City unbonded lien docket, which assessments shall be a lien and charge upon the respective lots against which they are placed. Such liens shall be first and prior to all other liens or encumbrances insofar as the laws of Oregon allow.

After applications have been made by the owners of assessed property to have the assessments bonded under Bancroft Bonding Act to provide for the installment payment procedure, the City Manager shall make proper entry in the unbonded lien docket and transfer such assessments from the unbonded lien docket to the bonded lien docket, as provided by ORS 223.230.

If there is no response from a property owner within 30 days after the notice of assessment is mailed, the City Manager shall verify the ownership of the property with a licensed title company or by any other means and shall mail a copy of the assessment notice to the owner so identified by certified mail. The City Manager shall establish policies regarding the acceptance of applications after 30 days from the date notice is mailed. The City Manager may require a late filing fee from any delinquent applicant.

§12.2.13 Writs of review and suits in equity.
Subject to the curative provisions of Section 12.2.220 and the rights of the city to reassess, as provided in Section 12.2.23, proceedings for writs of review and suits in equity may be filed not earlier than thirty days nor later than sixty days after the filing of written objections as provided herein. A property owner who has filed written objections with the city recorder prior to the public hearing may have the right to apply for a writ of review based upon the city council exercising its functions erroneously or arbitrarily or exceeding its jurisdiction to the injury of some substantial right of such owner, if the facts supporting such claim have been specifically set forth in the written objections. A property owner who has filed written objections with the city recorder prior to the public hearing may commence a suit for equitable relief based upon a total lack of jurisdiction on the part of the city; and if notice of the improvement shall not have been sent to the owner, and if the owner did not have actual knowledge of the proposed improvement prior to the hearing, then the owner may file written objections alleging lack of jurisdiction with the city recorder within thirty days after receiving notice or knowledge of the improvement. No provision of this section shall be construed to lengthen any period of redemption or so as to affect the running of any statute of limitation. Any proceeding on a writ of review or suit in equity shall be abated if proceedings are commenced and diligently pursued by the city council to remedy or cure the alleged errors or defects. [Prior code § 32.320]
§12.2.14 Notice of assessment.
Within ten days after the ordinance levying assessments has been passed, the city recorder shall send by certified mail a notice of assessment to the owner of the assessed property and publish notice of such assessment twice in a newspaper of general circulation in the city, the first publication of which shall be made not later than ten days after the date of assessment ordinance. The notice of assessment shall recite the date of the assessment ordinance and shall state that upon the failure of the owner of the property assessed to make application to pay the assessment in installments within ten days from the date of the first publication of notice, or upon failure of the owner to pay the assessment in full within thirty days from the date of the assessment ordinance, then interest will commence to run on the assessment, and that the property assessed will be subject to foreclosure; and the notice shall further set forth a description of the property assessed, the name of the owner of the property and the amount of each assessment. [Prior code § 32.325]

§12.2.15 Lien docket.
After passage of the assessment ordinance by the council, the city recorder shall enter in the docket of city liens a statement of the amounts assessed upon each particular lot, parcel of land, or portion thereof, together with a description of the improvement, the name of the owners, and the date of the assessment ordinance. Upon such entry in the lien docket, the amount so entered shall become a lien and charge upon the respective lots, parcels of land, or portions thereof which have been assessed for such improvement. All assessment liens of the city shall be superior and prior to all other liens or encumbrances on property insofar as the laws of the state of Oregon permit. Interest shall be charged at a rate to be established from time to time by ordinance of the city council, such rate approximating the rate of interest available in the market-place for municipal bonds, until paid, on all amounts not paid within thirty days from the date of the assessment ordinance; and after expiration of thirty days from the date of such assessment ordinance, the city may proceed to foreclose or enforce collection of the assessment liens in the manner provided by the general law of the state of Oregon; provided, however, that the city may, at its option, enter a bid for the property being offered at a foreclosure sale, which bid shall be prior to all bids except those made by persons who would be entitled under the laws of the state of Oregon to redeem such property. [Prior code § 32.330]

§12.2.16 Interest rate.
The maximum rate of interest per annum charged on unpaid public improvement assessments pursuant to Section 12.2.150 shall be twelve percent per annum. [Prior code § 32.331]

§12.2.17 Assessment errors.
Claimed errors in the calculation of assessment shall be called to the attention of the city recorder, who shall determine whether there has been an error in fact. If the recorder shall find that there has been an error in fact, the recorder shall recommend to the council an amendment to the assessment ordinance to correct such error; and upon enactment of such amendment, the city recorder shall make the necessary correction in the docket of
§12.2.18 Deficit assessment.
In the event that an assessment shall be made before the total cost of the improvement is ascertained, and if it is found that the amount of the assessment is insufficient to defray the expenses of the improvement, the council may, by motion, declare such deficit and prepare a proposed deficit assessment. Council shall set the date for hearing of objections to the deficit assessment, and direct the city recorder to publish one notice thereof in a newspaper of general circulation in the city. After such hearing, the council shall make a just and equitable deficit assessment by ordinance, which shall be entered in the docket of city liens as provided by this ordinance; and notices of the deficit assessment shall be published and mailed, and the collection of the assessment shall be made in accordance with Sections 12.2.14 and 12.2.15. [Prior code § 32.340]

§12.2.19 Assessment credits.
If, upon the completion of the improvement project, it is found that the assessment previously levied upon any property is more than sufficient to pay the costs of such improvements, then the council must ascertain and declare the same by ordinance; and when so declared, the excess amounts must be entered on the lien docket as a credit upon the appropriate assessment. In the event that any assessment has been paid, the person who paid the same, or the person's legal representative, shall be entitled to the repayment of such rebate credit, or the portion thereof which exceeds the amount unpaid on the original assessment. [Prior code § 32.345]

§12.2.20 Improvement proceedings - Abandonment and rescission.
The council shall have full power and authority to abandon and rescind proceedings for improvements made under this chapter at any time prior to the final completion of such improvements; and if liens have been assessed upon any property under such procedure, they shall be canceled, and any payments made on such assessments shall be refunded to the person paying the same, the person's assigns or legal representatives. [Prior code § 32.350]

§12.2.21 Foreclosure.
The City may proceed to foreclose or enforce any lien to which it shall be entitled pursuant to any method provided by law. The City shall impose a penalty in the amount of ten (10) percent of the outstanding principal and interest of the lien to recover the costs associated with foreclosure if the account is not paid within 30 days after mailing a certified notice of delinquency to the owner.

§12.2.22 Assessment validity.
No improvement assessment shall be rendered invalid by reason of a failure of the engineer’s report to contain all of the information required by Section 12.2.18, or by reason of a failure to have all of the information required to be in the improvement resolution, the assessment ordinance, the lien docket or notices required to be published and mailed, nor by any property as required by this chapter, or by reason of any other error, mistake, delay, omission, irregularity or other act, jurisdictional or otherwise, of any of the
proceedings or steps herein specified, unless it appears that the assessment is unfair or unjust in its effect upon the person complaining; and the council shall have the power and authority to remedy and correct all such matters by suitable action and proceedings. [Prior code § 32.355]

§12.2.23 Reassessment. Whenever any assessment, deficit, or reassessment for any improvement which has been made by the city has been or shall be set aside, annulled, declared or rendered void, or its enforcement restrained by any court of this state, or any federal court having jurisdiction thereof, or when the council shall be in doubt as to the validity of such assessment, deficit assessment or reassessment, or any part thereof, then the council may make a reassessment in the manner provided by the laws of the state of Oregon. [Prior code § 32.360]

§12.2.24 Written consent-Notice not required. Other provisions of the chapter notwithstanding, the provisions of Section 12.2.5, insofar as they require publication and mailing of notice of intent to improve, shall not be required where owners of all assessable property within the proposed improvement have consented in writing to such improvement, and by such written consent have waived the requirements of notice thereof. [Prior code § 32.410]

§12.2.25 Improvements in progress. Any street, sewer or other public improvement properly commenced and in process under any of the ordinances repealed hereby shall be specifically excluded from the provisions of this chapter, and shall be completed under the ordinance under which they were commenced. [Prior code § 32.510]

§12.2.26 Land use report. Whenever the construction of a public improvement will have a significant impact on present or future land uses and the local improvement has not been considered in connection with a land use decision made pursuant to the Land Development Code, the City Manager shall cause to be prepared a land use report discussing the land use impacts of the improvement and considering the policies and findings of the Comprehensive Plan and Land Development Code. The report shall be transmitted to Council and considered for adoption at the time of the public hearing specified in this ordinance.

§12.2.27 Notice for land use decision. When a land use decision must be made by Council in connection with an assessment district, a notice of the hearing shall be sent by mail to any owner of property within 150 feet of the proposed improvement. The notice shall specify the time and place of the hearing, the nature and location of the proposed improvement, and the department of the City from which additional information can be obtained. This notice shall be in addition to the requirements of this ordinance.

§12.2.28 Land use hearing and findings. Council may hold a hearing on the land use impacts of a proposed improvement concurrently with the public hearing for the assessment of the property. Council shall
determine whether the improvement is consistent with the policies and findings of the Comprehensive Plan and Land Development Code. Council shall adopt findings in support of its determination.

§12.2.29 Segregation.
When property which is subject to a lien for local improvements is partitioned or a lot line is adjusted, the property owner may apply to the City to segregate the original liens to the new parcels of property. The property owner shall submit an application developed by the City Manager to the City Engineer. The City Engineer shall calculate new assessment figures for the partitioned properties utilizing the original assessment formula employed by Council when it levied the original assessments. No lien shall be placed against any parcel that does not constitute a valid buildable lot in accordance with the Land Development Code. No application for segregation shall be considered by the City Engineer if the original liens are delinquent. The application shall be accompanied by a fee in an amount equal to two (2) percent of the assessments to be segregated not to exceed the sum of $1, 000. No segregation of an assessment shall be approved which impairs the security of the municipal lien. No segregation shall be approved which results in the placement of a lien whose amount is greater than twice the assessed value of the new parcels. The City Engineer shall notify the City Manager of all segregation applications which have been approved by the City Engineer. The City Manager shall immediately make any adjustments to the municipal lien dockets.

Chapter 12.3  Reserved for Expansion
Chapter 12.4  Reserved for Expansion
§12.5.1 Definitions.
As used in Sections 12.5.1 and 12.5.12 through 12.5.18 the masculine includes the feminine and neuter, and the singular includes the plural. The following words mean:
A. “Owner” means the person in whose name real property is assessed for tax purposes according to the latest assessment roll in the office of the county assessor for Polk County, Oregon. [Prior code § 33.141]

§12.5.2 Sidewalk specifications.
A. All sidewalks hereafter constructed within the city shall be constructed of concrete cement compounded of portland cement, clean sand, clean gravel and water in sufficient quantities to achieve a twenty-eight-day compressive strength of at least two thousand five hundred pounds per square inch when tested in accordance with applicable standards of the American Society for Testing Materials.
B. All sidewalks shall be three and five-eighths inches minimum thickness and five and three-eighths inches minimum thickness across driveways.
C. Sidewalks shall have a fall of .025 inches per foot from the property line toward the curb, and shall be so laid that the street side of the walk shall be at an elevation equal to that of the curb of the street, unless the City Manager shall otherwise authorize.
D. Sidewalks shall be divided into square blocks of no greater dimension than seven feet, by joints running across the walk at right angles to their length. Each joint shall be plainly marked with a deep cutter two inches in width. The edges of all blocks shall be smoothly marked with a three-inch edger and be free from broom marks. All walks and driveways shall receive a broom finish.
E. Driveway portions of sidewalks shall be scribed in a like fashion, and shall be poured independent of walks and curbs, and shall be separated from such walks and curbs by a cold joint or one-half inch expansion joint.
F. Sidewalks may be surfaced with brick, quarry-tile or other similar material upon satisfaction of the following conditions:
1. The city building official files with the City Manager a written declaration of the person’s or her opinion that the proposed surface will not result in a significant increase in cost to the city of maintenance.
2. The city building official files with the City Manager a written declaration of the person’s or her opinion that the proposed surface will not result in a significant increase in hazard to the public.
3. The owner of the property abutting the sidewalk files with the city an instrument, recordable in the deed records of Polk County and running with the land, covenanting to keep the sidewalk in good repair at the owner's own expense, and promising to make all needed repairs on demand from the City Manager. [Prior code §33.110]

§12.5.3 Location.
All sidewalks shall be laid adjacent the street curb, except:
A. Where an existing portion of sidewalk already exists within the block on or near the property line, all sidewalks upon that side of the street and within the block where the existing property line sidewalk exists shall be constructed adjacent the property line;
B. Where the city council by resolution shall provide otherwise. [Prior code § 33.120]

§12.5.4 Width.
All sidewalks hereafter constructed or repaired shall be of the following minimum width, exclusive of any curb:
A. If within a C-2 commercial zone as defined by the zoning ordinance of this city, or adjacent any property owned, used or to be used for school or public education purposes - eight feet;
B. Elsewhere - five feet, except curb line walks shall be five feet inclusive of curb surface. [Prior code § 33.130]

§12.5.5 Sidewalk beds.
A. Where the earth is in an undisturbed condition, no bed other than the earth needs to be used.
B. Where the earth has been disturbed, either through leveling or clearing, then a sidewalk bed of sand or small gravel not less than three inches shall be placed before the sidewalk cement is poured. [Prior code § 33.140]

§12.5.6 Construction permit required-Sidewalks.
A. No person, firm, corporation or unit of government other than the city shall construct any sidewalk without first applying for and receiving a permit to so construct such sidewalk from the City Manager.
B. No sidewalk shall be constructed by any person, firm, corporation or unit of government other than the city without the construction thereof being inspected by the City Manager and approved by the Manager as conforming to the standards of the city. [Prior code §33.150]

§12.5.7 Curb specifications.
A. All curbs hereinafter constructed upon public streets within the city shall be of concrete cement and shall be set so that their top and the alignment and distance from the established street grades and centers are as prescribed in the approved project plans or as approved by the City Manager.
B. Curbs shall be constructed sixteen inches high, perpendicular on the back, six inches wide at the top, not less than eight inches wide at the bottom, and shall be sloped at the front. The back of the curbs at the top shall be finished with not greater than a one-half inch radius tool. The front edge shall be finished with a one-inch radius tool. Each curb shall be fitted with an expansion joint filled with suitable material every fifteen feet.
C. No curb cut or driveway approach through a curb shall be permitted except that the cut shall be smoothed and the portion of curb remaining shall be no less than one inch nor more than two inches above the level of the adjoining paving. [Prior code §33.160]

§12.5.8 Construction permit required-Curbs.
A. No person, firm, corporation or unit of government other than the city or state of Oregon Highway Division shall construct any curb or make any cut or alteration in any existing curb without first obtaining from the City Manager a permit for such construction, cut or alteration.
B. No curb shall be constructed, nor shall any cut or alteration be made in any existing curb without the construction thereof being inspected by the City Manager and approved by the Manager as conforming to the standards of the city. [Prior code §33.170]

§12.5.9 Driveway specifications.
No driveway shall be used or maintained unless the traveled portion thereof, exclusive of that portion used as sidewalk, shall be paved between the property line and the curb line with concrete cement or asphaltic cement. [Prior code § 33.180]

§12.5.10 Planting wells.
A. Planting wells on sidewalks for trees or other vegetation are permitted on sidewalks provided that:
   1. The well measures no more than three feet in any lateral direction;
   2. No less than one foot of sidewalk is constructed between the curb and edge of the planting well;
   3. No less than four feet of sidewalk is constructed between the planting well and the property line; and
   4. The planting well shall be so constructed as to provide protection against growth of weeds or wild grass.
B. Planters on sidewalks are permitted on sidewalks provided that:
   1. The planter measures no more than four feet in any lateral direction and no more than three feet in height;
   2. The planter is placed no more than one foot from any building;
   3. If the planter is placed adjacent to the curb; such planter is placed in no parking areas; and
   4. A minimum passageway of six feet is available for pedestrian traffic at all times.
C. Approval by the city of any sidewalk planting well or planter shall not obligate the city to maintain the same, and maintenance of the well and any plantings therein shall be the obligation of the owner of the adjoining property. [Ord. 1150 § 1, 1986: prior code § 33.185]

§12.5.11 Sidewalk eating areas.
A. As an exception to the obstruction prohibitions set forth in Section 9.12.3 of this code pertaining to obstructing passageways, cafe and restaurant owners or proprietors who wish to operate a sidewalk eating area shall obtain a permit for the sidewalk eating area. The sidewalk eating area shall meet the following requirements:
   1. The sidewalk eating area’s boundaries shall be the business’ property lines and an outer line not less than five feet from all streets, curbs or permanent landscaping;
   2. The sidewalk eating area shall only be used from May 14th until October 1st of each year and daily from store opening until dusk;
   3. All tables, chairs and accessories shall be removed from public property during seasons when the sidewalk eating area is not in use;
   4. The owner or proprietor shall accept liability for any damage claims arising from the existence of the sidewalk eating area or for any costs arising from the abatement of any public nuisance arising from the existence of the sidewalk eating area.
B. An owner or proprietor who wishes to obtain a permit for a sidewalk eating area shall
submit to the City Manager an application containing:
   1. The dimensions of the proposed eating area and distances to applicable streets, curbs and permanent landscaping;
   2. The specific beginning and ending dates of planned seasonal use and the planned hours of daily operation;
   3. Any information requested by the City Manager concerning care and management of the area;
   4. A statement that the applicant accepts liability and holds the city harmless for damage claims arising from the existence of the sidewalk eating area or for any costs arising from the abatement of any public nuisance arising from the existence of the sidewalk eating area;
   5. A certificate of liability insurance in an amount not less than one hundred thousand dollars.
C. The City Manager shall review each application and the site of the requested permit for a sidewalk eating area. The City Manager shall issue the permit if the request meets the requirements of subsection A of this section and the sidewalk eating area does not violate any city ordinance. The permit shall state the area boundaries, date of termination and hours of operation.
D. As used in this section the term “sidewalk eating area” means an area of city sidewalk in front of a restaurant or cafe for which provision is made for consumption of food or nonalcoholic beverages. The term does not include preparation or sale of food or alcoholic beverages. [Ord. 1150 § 2, 1986: prior code § 33.190]

§12.5.12 Repair and maintenance-Owner responsible.
The person owning the real property adjacent to or abutting on a public sidewalk, shall, at the person's sole cost and expense, keep the sidewalk in good repair and free of hazards to persons lawfully on or adjacent to such sidewalk. The person owning the real property adjacent to or abutting on a public sidewalk shall be liable for any injuries or other damages resulting from a defective sidewalk which he or she is obligated to repair under this section, and the person shall, furthermore, hold harmless and indemnify the city for any costs the city may incur as a result of the defective sidewalk. [Prior code § 33.142]

§12.5.13 Duty to report defective sidewalks.
Whenever a public sidewalk is found to be defective, out of repair, or hazardous by any officer of the city, or by any other person, a report thereof shall be made to the City Manager. The City Manager shall thereafter report such defective, out of repair, or hazardous sidewalk to the city council. [Prior code § 33.143]

§12.5.14 Defective walks declared nuisance.
After receiving the report of the City Manager referred to in Section 12.5.13 the city council, by resolution, may declare the defective, out of repair or hazardous sidewalk a nuisance, and direct that the defect or hazardous condition be eliminated or that the sidewalk be placed in a state of good repair. [Prior code § 33.144]

§12.5.15 Notice to owner.
Within five days after the passage of the resolution referred to in Section 12.5.14, the City
Manager shall give notice to the owner of the real property adjacent to or abutting on the sidewalk of the defect therein, the state of disrepair thereof, or of the hazard resulting therefrom, and of the determination that such condition constitutes a nuisance, by sending to such owner, by certified mail, at the person's address as shown on the last tax assessment roll in the office of the county assessor of Polk County, Oregon, a copy of such resolution and a copy of this chapter. [Prior code § 33.145]

§12.5.16 Repairs to city specifications.
All repairs undertaken pursuant to this chapter shall be according to city specifications as set forth in the provisions of this chapter, a copy of which shall at all times be available for public inspection in the office of the city recorder. [Prior code § 33.146]

§12.5.17 Failure of owner to repair.
If the owner does not correct the defect, or eliminate the hazard in, or make repairs to the sidewalk as required by the resolution within the time specified therein, the City Manager may cause such defect or hazard to be eliminated or such repair to be made by the city and assess the cost thereof against the property abutting thereon and adjacent thereto. [Prior code § 33.147]

§12.5.18 Assessment of costs of repair.
The assessment of the costs of eliminating the defect or hazard or making the repair to the sidewalk shall be declared by ordinance, and it shall be entered into the docket of city liens and shall thereupon become a lien against the property. The collection and enforcement of the lien shall be accomplished in the same manner as in the case of the collection and enforcement of the street liens, but irregularities or informalities in the procedure shall be disregarded. [Prior code § 33.148]
§12.6.1 Distance from property lines.
A. All curblines on the west side of Second Street from the north line of Monmouth Street to the south line of B Street shall be ten feet from the abutting property line, and all curblines on the east side of Second Street from the north line of C Street to the south line of B Street shall be ten feet from the abutting property line and shall conform to the official grades of the street and shall be uniform as to material, dimensions and distances from the property lines along which they are built and shall be composed of cement concrete and shall be six inches at the top and eight inches at the bottom and fourteen inches in height and depth; and the spaces between the curblines and the sidewalk shall be filled with earth on a level with the sidewalk and in the space may also be planted flowers and ornamental shrubbery for the purpose of beautifying the city.

B. All curblines on the west side of Second Street from the south line of Monmouth Street to the north line of E Street shall be ten feet from the property line abutting thereto, and all curblines on the east side of Second Street from the south line of C Street to the south line of E Street shall be ten feet from the abutting property line and shall conform to the official grade of the street and shall be uniform as to material, dimensions and distances from the property lines along which they are built and shall be composed of cement concrete and shall be eight inches at the bottom and six inches at the top and fourteen inches in height and depth; and the spaces between the curblines and the sidewalk may be filled with earth on a level with the sidewalk and in the spaces may be planted shrubbery, ornamental, and flowers for the purpose of beautifying the city.

C. All curblines on B Street between First and Second Streets in the city shall be ten feet from the property line; and on E and D Streets in the city they shall be built fourteen feet from the property lines abutting thereon and shall conform to the official grades of the streets and shall be uniform as to material, dimensions and distances from the property lines along which they are built and shall be composed of cement concrete and shall be eight inches at the bottom, six inches at the top and fourteen inches in height and depth; and the spaces between the sidewalk and the curblines shall be filled in with earth to a level with the sidewalk and planted to rose bushes and ornamental shrubbery for the purpose of beautifying the city.

D. All curblines on Main Street shall be fourteen feet from the abutting property lines. All curblines on Log Cabin and Sag Streets shall be fourteen feet from the abutting property lines. On Marsh Street the curblines on the west side thereof shall be ten feet from the abutting property lines and on the east side thereof the curblines shall be fourteen feet from the abutting property lines thereto. All curblines on Jew, Williams, Picture, Boatlanding, Grand and Oak Streets shall be fourteen feet from the abutting property lines, and all of such curblines shall be uniform as to materials, dimensions and distances from the property lines and shall conform to the official grades of the streets along which they are built and shall be constructed of cement concrete, and shall be six inches at the top and eight inches at the bottom and fourteen inches in height and depth; and the space between the curblines and the sidewalks shall be filled with earth on a level with the sidewalks and shall be seeded to yard grass and kept well sprinkled during the dry season by the abutting property owners in front of their respective abutting property to keep the grass thereon green and may be set to rose bushes or other ornamental shrubbery for the purpose of beautifying the city.
purpose of beautifying the city, and such grass shall be kept mowed and shrubbery well trimmed.

E. All curblines in the city, on all streets lying south of E. A. Thorp's Town of Independence, west of Second Street, and south of E Street on east side of Second Street shall be fourteen feet from the abutting property lines, and all such curblines shall be of uniform size and dimension, also as to materials used therein, and shall be concrete curblines and shall be fourteen inches in height, eight inches wide at the bottom and six inches wide at the top; and the spaces between the sidewalk and such curblines shall be filled with earth on a level with the sidewalk and shall be seeded to yard grass and kept sprinkled during the dry season by the abutting property owners in front of their respective abutting property to keep the grass green thereon during such dry season, and may also be set to rose bushes or other ornamental shrubbery for the beautifying of the city; and such grass shall be kept mowed and shrubbery well trimmed at proper times and season; provided, however, C Street and E Street are excepted from the operations of this chapter.

F. All curblines in the city, on all streets lying south of E. A. Thorp's Town of Independence west of Second Street and south of E Street on east side of Second Street shall be fourteen feet from the abutting property lines, excepting the curblines on Third Street between A and B Streets in the city, which shall be eighteen feet from the abutting property lines; and all such curblines shall be of uniform size and dimensions, also as to lines, and shall be fourteen inches in height, eight inches wide at the bottom and six inches wide at the top, and be of concrete material; and the spaces between the sidewalk and such curblines shall be filled with earth on a level with the sidewalk and shall be seeded to yard grass and kept sprinkled during the dry season in each year by the abutting property owners in front of their respective abutting property and may also be set to rose bushes, or other ornamental shrubbery, for the purpose of beautifying the same, and such grass shall be kept mowed and the shrubbery well trimmed at proper times and seasons, provided, however, curblines on C Street shall be eighteen feet from property lines abutting thereon. [Prior code § 30.110]

§12.6.2 Space between curblines and sidewalks.

A. All abutting property owners within the corporate limits of the city shall keep the space between the curblines built in the street abutting to their property and the sidewalk built on the street and adjacent to their property, lots or blocks filled with rich soil or earth to a level with such sidewalk and shall sow the same to lawn grass and may plant flowering shrubbery thereon and shall at all times keep such parking in a neat and attractive condition by keeping such grass mown and shrubbery trimmed so as to make the same an ornament to such parking and, during the dry summer and fall months of each year, shall keep such parkings well sprinkled with water so as to keep such grass green, all of which shall be done at the expense of such property owner.

B. In case any such property owner shall neglect to comply with the provisions of subsection A of this section or any part thereof, the city marshal shall give such delinquent property owner five days’ notice to proceed to comply with the provisions of subsection A of this section and, if such property owner has not so complied therewith at the expiration of such time, then the city marshal shall proceed to carry out the provisions of subsection A of this section, keeping a strict account of all expenses incurred by reason thereof, and report the same to the city council at its next regular meeting thereafter; and such expens-
es shall become a lien upon such abutting property, lots or blocks, or parts thereof liable therefor and shall be collected in the same manner street improvement assessments are collected. [Prior code § 30.210]

Chapter 12.7  Reserved for Expansion
Chapter 12.8  Reserved for Expansion
Chapter 12.9  Reserved for Expansion
Chapter 12.10 Reserved for Expansion
Chapter 12.11  OFF-STREET PUBLIC PARKING FACILITIES

§12.11.1 Initiation of proceedings-Resolution of intent.
A. Whenever the common council of the city shall deem it necessary to acquire or develop an off-street public parking facility to be paid for in whole or in part by special assessment according to the benefits, then the common council shall, by resolution, declare the necessity for such an off-street and public parking facility and direct the City Manager to make a survey and written report for such project and file the same with the city recorder. That resolution may be adopted upon the council's own initiative, or upon the petition of the owners of one-half of the area of property to benefit specially from a proposed off-street motor vehicle parking facility. The benefited area shall not include any property upon which is located an existing public commercial off-street parking lot or facility operated for revenue and which is not operated for convenience of customers.
B. The resolution of intent shall contain a preliminary description of the land to be acquired or improved for the off-street parking district, or a preliminary description of a general area within which the land shall be acquired or improved.
C. The resolution of intent shall contain a preliminary description of the land proposed to be assessed for special benefits for such off-street public parking facility.
D. The resolution of intent shall contain a preliminary description of the type of improvement to be made on the land in question. [Prior code § 31.110]

§12.11.2 Survey and written report.
Upon direction by the city council, the City Manager shall make a survey and written report for the off-street public parking facility and file the same with the city recorder. Unless the council shall direct otherwise, such report shall contain, when applicable, the following matters:
A. A map or plat showing the general nature, location and extent of the proposed off-street parking facility and the lands to be assessed for the payment of all or any part of the cost thereof;
B. The plans, specifications and estimates of the work to be done;
C. An estimate of the probable cost of the acquisition and improvement, including any legal, administrative and engineering costs attributable thereto;
D. 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 costs of the improvement to the properties specially benefited;
E. A legal description of the land to be acquired, together with the names of all persons claiming an interest of record in and to the land in question and individual parcels thereof and, when readily available, the names of any contract purchasers of the land and tenants and parties in possession thereof;
F. The description and assessed value of each lot, parcel of land, or a portion thereof to be specifically benefited by the off-street parking facility, with the names of the persons claiming an interest therein of record and, when readily available, the names of contract purchasers thereof;
G. A statement of outstanding assessments, if any, against property to be assessed for such improvements;
H. An estimate of the unit cost of the improvement to the specially benefited properties
by applying the recommended assessment procedure;
I. The amount of city participation, if any, recommended by the City Manager;
J. A proposed time table for the completion of the project;
K. A proposed method of interim financing. [Prior code § 31.120]

§12.11.3 Survey and written report—Council review.
After the City Manager's report shall have been filed with the city recorder, the council shall thereafter, by motion, give preliminary approval to the report, modify the report and give preliminary approval to it as modified, require the City Manager to supply additional or different information for such improvements, and give preliminary approval to the report as supplemented, or it may abandon the improvement. [Prior code § 31.125]

§12.11.4 Notice of hearing.
After the council shall have given preliminary approval to the City Manager's report as submitted, modified or supplemented, the council shall, by resolution, declare its intention to proceed with the off-street parking facility improvement and provide the proposed manner and method of carrying out the improvement. The council shall, thereupon, set a time and place for a public hearing to be held on the improvement, and shall direct the recorder to give notice of such improvement and of such public hearing by publishing, in a newspaper published in and of general circulation in the city, a notice of its intention to establish an off-street motor vehicle parking facility. The notice shall be published once a week for two consecutive weeks, making three publications in all, and will also be posted in three public places in the city for not less than two consecutive weeks prior to the hearing. The notice shall contain the following matters:
A. A statement that the city council has declared its intention to make an off-street parking facility improvement in the city and to assess the cost or portion thereof to benefited properties;
B. A statement that a tentatively approved report of the City Manager, setting forth the detail of the proposed improvement, is on file in the office of the city recorder and is subject to public examination;
C. A statement that the city council will hold a public hearing on the proposed off-street parking facility improvement, and a statement of the time and place at which the hearing will be held;
D. A statement that at the hearing the city council will hear objections and remonstrances to the proposed improvement, and a further statement that if, prior to such hearing, there shall be presented to the recorder written objections by more than one-half of the owners of property proposed to be assessed, based either upon percentage of area or upon the percentage of assessed valuation within the proposed assessment and benefited area, then the improvement will be abandoned for at least one year;
E. A description of the property to be specially benefited by the improvement, including the names of the owners of such property as are contained in the City Manager's report, and the City Manager's estimate of the unit cost of the improvement to the property to be specially benefited, and the estimate of the total cost of the improvement to be paid for by special assessment to benefited properties;
F. A statement that the matters set forth in the notice are the best available estimates only and are not necessarily exact and permanent, and that all matters in the basic plan
are subject to change by the city council at or subsequent to the hearing. [Prior code § 31.130]

§12.11.5 Additional notice to owners.
The City Manager is authorized to give additional notice to the owners of property within the area of the proposed assessment by mailing copies of the notice to the owners at the last address had for them by the city. That additional notice is not mandatory, and shall not be considered as a part of the necessary service of process herein. [Prior code § 31.135]

§12.11.6 Publication and posting of notice deemed sufficient.
The publication in the newspaper and the posting of the notice as provided in this chapter is deemed notice to the owners of all parcels of land described in the notice of the pendency of the proceedings for the establishment of the off-street motor vehicle parking facility and the proposed assessment therefor, regardless of whether or not those individuals are named in the notice. Any person who has actual notice of any proposed action or assessment hereunder, and fails to object to the proceedings, shall be deemed to have waived any absence or defect in the notice of method of service thereof. [Prior code § 31.160]

§12.11.7 Hearing.
At the time and place of the public hearing on the proposed improvement, the council shall hear written and oral objections and remonstrances to the proposed improvement and procedure. If written objections shall be received by the council from more than one-half of the owners of property proposed to be assessed, based either upon percentage of area or upon the percentage of the assessed valuation within the proposed assessment and benefited area, then improvement shall be abandoned for at least one year. 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 improvement to be carried out in accordance with the terms of an ordinance provided therefor; or the council may, on its own motion, abandon the improvement. The ordinance may adopt the plan set forth in the manager's report either in whole or in part, or it may adopt the plan in whole or in part as amended or supplemented by the council after the hearing. [Prior code § 31.140]

§12.11.8 Manner of doing work.
The council may provide in the improvement ordinance for the acquisition of necessary property for the improvement and that the construction work may be done in whole or in part by the city, by a contract or by any other governmental agency, or by any combination thereof. [Prior code § 31.145]

§12.11.9 Purchase of property-Contract bids.
A. The council may, at its discretion, at any time either before or during the initiation of proceedings to provide public off-street parking facilities as herein contemplated, obtain options for the purchase of specific property for such purposes or enter into binding agreements for the purchase of property for such purposes, and may obtain preliminary
bids for the improvement of such property. The costs of such property may be taken into consideration in determining the assessment to benefited properties, regardless of whether or not the same was purchased or optioned prior to the initiation of the procedure. Preliminary bids shall be based upon the tentatively approved City Manager's report. If, after the ordinance to improve is passed, there has been no substantial change in the tentatively approved manager's report, then the preliminary bids may be accepted by the city; and a contract for the improvement may be entered into with low preliminary bidder. Nothing herein contained shall be construed to prevent the council from waiting until after the ordinance to improve in order to make its first call for bids or in order to obtain its first options or contract for the purchase and acquisition of property.

B. In the event that any part of the work of the improvement is to be done under contract bids, then the council shall determine the time and manner of advertising for bids; and the contract shall be let to the lowest responsible bidder; provided, that the council shall have the right to reject all bids when they are deemed unreasonable or unsatisfactory. The city shall provide for the bonding of all contractors for the faithful performance of any contract let under its authority; and the provisions thereof, in case of default, shall be enforced by an action in the name of the city. [Prior code § 31.150]

§12.11.10 Cost of property acquisition and improvement-Report. Upon completion or substantial completion of the project, the City Manager shall make a report to the city council showing the actual cost of the acquisition of properties and improvement thereof. [Prior code § 31.155]

§12.11.11 Assessments. The procedure for levying, collecting and enforcing special assessments for public improvements or other services to be charged against property specially benefited by any of such improvements or repair under the provisions of this chapter shall be made as provided by the charter and ordinances of the city and by the provisions of the Oregon Bancroft Bonding Act (ORS 223.205-223.295) together with existing or future amendments thereto and thereof. [Prior code § 31.170]

§12.11.12 Compliance with chapter provisions. The provisions of this chapter are advisory and are not mandatory and are not meant to require any dispensable jurisdictional requirements not required by an applicable constitutional provision or the charter of the city; and a substantial compliance with the terms of this chapter is sufficient compliance, regardless of the subject matter to which the requirements apply. [Prior code § 31.165]
§12.12.1 Permit-Required.
No person shall organize or participate in a parade which may disrupt or interfere with traffic without obtaining a permit. A permit shall always be required of a procession of people utilizing the public right-of-way and consisting of fifteen or more persons or five or more vehicles. [Prior code § 52.610]

§12.12.2 Permit-Application-Issuance.
A. Application for parade permits shall be made to the chief of police at least fifteen days prior to the intended date of the parade, unless the time is waived by the Chief.
B. Applications shall include the following information:
   1. The name and address of the person responsible for the proposed parade;
   2. The date of the proposed parade;
   3. The desired route, including assembling points;
   4. The number of persons, vehicles and animals which will be participating in the parade;
   5. The proposed starting and ending time;
   6. The application shall be signed by the person designated as chairman.
C. If the chief of police, upon receipt of the application, determines that the parade can be conducted without endangering public safety and without seriously inconveniencing the general public, the chief shall approve the route and issue the permit.
D. If the chief of police determines that the parade cannot be conducted without endangering public safety or seriously inconveniencing the general public, the chief may:
   1. Propose an alternate route;
   2. Propose an alternate date;
   3. Refuse to issue a parade permit.
E. The chief of police shall notify the applicant of the person's decision within five days of receipt of the application.
F. If the chief of police proposes alternatives or refuses to issue a permit, the applicant shall have the right to appeal the person's decision to the city council. [Prior code § 52.615]

§12.12.3 Permit denied-Appeal to council.
A. An applicant may appeal the decision of the chief of police by filing a written request of appeal with the city recorder within five days after the chief of police has proposed alternatives or refused to issue a permit.
B. The council shall schedule a hearing date following the filing of the written appeal with the city recorder, and shall notify the applicant of the date and time that the applicant may appear either in person or by a representative. [Prior code § 52.620]

§12.12.4 Permit revocable.
The chief of police may revoke a parade permit if circumstances clearly show that the parade can no longer be conducted consistent with public safety. [Prior code § 52.630]
§12.12.5 Funeral procession-Permit not required.
A permit shall not be required to conduct a funeral procession.
A. The procession shall proceed to the place of interment by the most direct route which is both legal and practicable.
B. The procession shall be accompanied by adequate escort vehicles for traffic control purposes.
C. All motor vehicles in the procession shall be operated with their lights turned on.
D. No person shall unreasonably interfere with a funeral procession.
E. No person shall operate a vehicle that is not part of the procession between the vehicles of a funeral procession. [Prior code § 52.635]

§12.12.6 Interference with parade not permitted.
A. No person shall unreasonably interfere with a parade of parade participant.
B. No person shall operate a vehicle that is not part of a parade between the vehicles or persons comprising a parade. [Prior code § 52.625]
Chapter 12.13  PARK TREES, STREET TREES AND SHRUBS

§12.13.1 Definitions. For the purpose of this Chapter 12.13, the following definitions shall apply:

“Board”. The City Tree Advisory Board, established under the Parks and Recreation Board, IMC 2.11.1 (B).

“Park Trees”. Trees, shrubs, bushes and all other woody vegetation in public parks, public trails and all areas owned by the City or to which the public has free access as a park.

“Street Trees”. Trees, shrubs, bushes and all other woody vegetation on land lying within the public right-of-way on all streets, alleys or other public rights-of-way within the City.

§12.13.2. Unless otherwise delegated to the Board or Council by this Chapter, the City Manager or his or her duly authorized representative is charged with the enforcement of this Chapter.

§12.13.3. Duties and Responsibilities of the Board. In addition to those duties outlined in IMC 2.11.1.D.2, the Board shall:

1. Establish a tree inventory of street trees and park trees. The inventory shall be updated periodically, not less frequently than every three years.

2. When requested by the City Council, consider, investigate, make findings upon, report and recommend to the City Council any special matter or questions arising within the scope of its duties and responsibilities.

3. Perform all other duties assigned the Board by this IMC §12.13.

§12.13.4. Size Classes and Tree Species to be Planted. The Board shall review and maintain the City list of desirable street trees, in three size classes based on mature height: Small (under 25 feet), Medium (25 to 45 feet) and Large (over 45 feet). Efforts shall be made to ensure a diversity of tree species. The Board shall also maintain the list of trees not suitable for planting as park or street trees.

§12.13.5. Spacing. The spacing of street trees will be in accordance with the three tree species classes listed in Section 12.13.4, and no trees may be planted closer together than the following: Small trees, 15 feet; Medium trees, 25 feet; Large trees, 35 feet except in special plantings designed or approved by a licensed landscape architect.

§12.13.6. Distance from Curbs, Street Corners, Fire Hydrants and Street Lights, and Utilities.
1. No street tree may be planted closer than five feet to any curb, unless planted with a root guard or other appropriate device to prevent damage by the roots to streets, curbs and sidewalks.

2. No street tree shall be planted within twenty feet of any street corner, measured from the point of nearest intersecting curbs or curb lines.

3. No street tree shall be planted within ten feet of any fire hydrant or street light.

4. No street tree shall be placed under or within 10 lateral feet of any overhead utility wire, underground water line, sewer line, transmission line or other utility, other than a species designated as a Small tree under Section 12.13.4.

§12.13.7. Public Tree Care.

1. The City may plant, trim, prune, maintain and remove, trees, plants and shrubs within or extending over all public streets, public rights-of-way, parking strips and public grounds, or may require any adjacent land owner to take such actions, as may be necessary to ensure public safety or to preserve or enhance the beauty of such streets, public rights-of-way and public grounds. Failure of a property owner to comply with this section, after thirty days’ notice by the City Recorder, shall be deemed a violation of this chapter.

2. The City may remove, cause to be removed, or require any owning or adjacent property owner to remove any tree, plant or shrub which, by reason of its size, location or condition, constitutes a threat to public health or safety, or a hazard to any sewer line, electric power line, gas line, water line or other public improvements or facilities, or is affected with any injurious fungus, disease, insect or other pest. Failure of a property owner to comply with this section, after thirty days’ notice by the City Recorder, shall be deemed a violation of this chapter. The removal of such trees, plants or shrubs located on private property shall be in the manner provided for the abatement of noxious vegetation as provided in IMC 8.4.11.

§12.13.8. Tree Topping.

1. Except as provided in IMC 12.13.8.2, below, it shall be unlawful for any person to top any street tree, park tree or other tree on public property, unless prior application is made to and approved by the Board. For the purposes of this section, to “top” a tree is defined as the severe cutting back of limbs to stubs within the tree’s crown to such a degree so as to remove the normal canopy and cause unnatural disfigurement to the tree.
2. The section shall not apply in cases of emergency caused by storm damage or other unexpected casualty; provided, the person who directs or performs such emergency tree topping shall make a report of such tree topping promptly to the Board, including the grounds for the emergency.


1. The owner of the property on which any street tree is situated, and the owner of any tree overhanging any street or public right-of-way shall regularly prune the branches so that the branches shall not significantly obstruct the light from any street lamp or obstruct the view of any street intersection, and so that there shall be a clear space of 13 feet above the street surface or 9 feet above the curb line.

2. All tree pruning of street trees shall be done in conformance with the American National Standards Institute A-300 standards for tree care operations.

3. The City shall have the right to prune any tree, shrub or plant on private property when it significantly obstructs the light of any street lamp or impairs the view of a public street or any traffic control sign or device. The pruning of such trees, shrubs or plants shall be in the manner provided for the abatement of noxious vegetation as provided in IMC 8.4.11.

4. Tree limbs that grow near high voltage electrical conductors shall be maintained clear of such conductors by the responsible electric utility in compliance with any franchise agreement. Except as otherwise provided in such franchise agreement, a utility tree trimming policy shall be subject to review and approval by the Board prior to any trimming by a utility company.


1. It shall be unlawful for any person to remove, destroy, break or injure any tree, shrub or plant in a public place, or place a sign, poster, handbill or other thing on any tree growing in a public place, or to cause or permit any wire charged with electricity to come into contact with any such tree, or to allow any gaseous, liquid or solid substance which is harmful to such trees to come into contact with their roots or leaves, with the following exceptions:

   a. The tree is dangerous and may be made safe only by its removal.

   b. The tree is dead or dying, and its condition cannot be reversed. Prior to removal, the condition of the tree must be confirmed in writing by a licensed arborist.
c. The tree is diseased and presents a potential threat to other trees within the City, unless removed. Prior to removal, the condition of the tree must be confirmed in writing by a licensed arborist.

d. The tree is causing damage to nearby public or private facilities which cannot be corrected through normal tree maintenance.

e. Removal of the tree is required to make room for trees growing on either side, in accordance with the Street Tree Plan.

2. Under the circumstances listed above in IMC 12.13.10.1, the Board may conditionally approve removal of the tree with a requirement to replace the tree(s) removed with a tree recommended in the City’s approved Street Tree List.

3. If a tree is removed from the subject area without Board approval, the Board may cause the tree to be replaced by a suitable tree with a minimum of a 3” caliper and assess the person responsible for the cost of the replacement, including the cost of the tree, labor and any administrative costs.

4. Removal of historic or landmark trees is within the jurisdiction of the Independence Historic Preservation Commission, per Chapter 15.8.10 – Review of Demolitions.

§12.13.11. Removal of stumps. All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

§12.13.12. Review by City Council. Any person aggrieved by a decision of the Board may appeal such decision to the City Council by filing a written notice setting forth the basis for the appeal with the City Recorder, within ten days of decision issuance. The fee for such appeal shall be established by resolution of the City Council. Action taken by the City Council on appeal is final. [Ord. 1516, § 4, Dec. 2012]
Chapter 12.14, Street Naming and Addressing.

§12.14.01 Uniform System. Streets shall be named and structures numbered in accordance with the City of Independence “Street Naming and Addressing Standards”, adopted separately by City Council resolution. [Ord. 1478 Ord. §1, Sept. 2009]

§12.14.02 Designation of Street Names and Numbers. Streets shall be designated with names or numbers consistent with the adopted Standards. All street names, numbers and directional prefixes shall be subject to approval by the City Manager or designee. [Ord. 1478 Ord. §1, Sept. 2009]

§12.14.03 Placing Numbers. It shall be the duty of every owner or agent in charge of any structure to have the proper number or numbers placed thereon and in accordance with the adopted Standards. [Ord. 1478 Ord. §1, Sept. 2009]

§12.14.04 Appeals. (A) The City Manager or designee’s decision is final unless a written request for review is requested within ten (10) days following the date the decision is mailed. (B) New road names, renaming of roads, assignment or reassignment of addresses requiring changes to existing addresses shall be considered final unless written objections are received within ten (10) days of the mailing of the address/road name decision.” [Ord. 1478 Ord. §1, Sept. 2009]


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Chapter 12.18 Reserved for Expansion
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Chapter 0.21  CITY PARKS

§12.21.1 Definitions.
As used in this chapter:

“Authorized liquor concessionaire” means a person who has obtained a special permit from the city council and any necessary license from the Oregon Liquor Control Commission.

“Class I fireworks” means any combustible or explosive composition or substance, or any combination of such compositions or substances, or any other article which was prepared for the purpose of providing a visible or audible effect by combustion, explosion, deflagration or detonation, and includes blank cartridges or toy cannons in which explosives are used, balloons which require fire underneath to propel the same, firecrackers, torpedoes, skyrockets, Roman candles, bombs, rockets, wheels, colored fires, fountains, mines, serpents or any other article of like construction or any article containing any explosive or inflammable compound, or any tablets or other device containing any explosive substances or inflammable compound, except those devices listed as Class II fireworks.

“Class II fireworks” means:
1. Sparklers, toy pistol paper caps, toy pistols, toy canes, snakes, smoke-producing devices or other devices in which paper caps containing .25 grains or less of explosive compound are used, and when the rate of burning and the explosive force of the materials in such devices are not greater than an equivalent weight of F.F.F.G. black powder, and when such devices are so constructed that the hand cannot come in contact with the cap when in place for explosion, and the major explosive force is contained or dispelled within the housing or shell of the device, there is no visible flame during discharge, there is no flaming or smoldering of any of the components or parts of the device after discharge, and the device does not produce sufficient heat to readily ignite combustible materials upon which the device may be placed;
2. Cone fountains, cylindrical fountains, fitter sparklers, ground spinners, illuminating torches and wheels, as defined in ORS 480.127.

“Commercial purposes” means to sell or expose for sales any food, beverage, merchandise, article or thing, or charge an admission fee.

“Park” means a park, playground, swimming pool, ballfield, recreation center or any other area in the city, owned or used by the city, and devoted to active or passive recreation.

“Person” means any person, firm, partnership, association, corporation, nonprofit corporation, company or organization of any kind. [Ord. 1239 § 1, 1991; Ord. 1178 § 1 (part), 1988: prior code § 45.010]

§12.21.2 Use of parks encouraged.
The parks are maintained for the recreation of the public and the greatest possible use is encouraged, subject only to such regulation as will preserve the parks for the purposes for which they are laid out and the enjoyment, convenience and safety of all concerned. [Ord. 1178 § 1 (part), 1988: prior code § 45.015]
§12.21.3 Park operating policy.
A. Except for unusual and unforeseen emergencies, city parks shall be open to the public every day of the year during designated hours. The City Manager may establish opening and closing hours for each individual park, which hours shall be posted therein for public information.
B. A park, or portion thereof, may be reserved for picnics, reunions, concerts, noncommercial activities or public gatherings. Reservations shall be made through the City Manager on an approved application form, subject to the conditions listed below:
   1. That the proposed activity or use of the park will not unreasonably interfere with or detract from the promotion of public health, welfare, safety or recreation;
   2. That the proposed activity or use of the park will not unreasonably interfere with or detract from the general public enjoyment of the park;
   3. That the proposed activity or use is not reasonably anticipated to incite violence, crime or disorderly conduct;
   4. That the proposed activity will not entail unusual, extraordinary activity, burdensome expenses or police operation by the city;
   5. That the facility desired has not been reserved for other use at the day and hour requested in the application;
   6. That any applicable permit deposits and fees have been paid prior to the date of the requested usage of the park facility;
   7. That the applicant agrees to any other conditions reasonably imposed on an application form approved by the city council.
C. A park, or portion thereof, may be used for commercial purposes only after obtaining a written permit from the city. Permits shall be issued by the City Manager upon a finding that the applicant has met the conditions set forth in subsection B of this section, plus the following conditions:
   1. Provide an application fee and a deposit, which is refundable at the termination of the permit if the applicant has met all other conditions and obligations of the permit;
   2. For any person selling or dispensing food or beverage of any kind, submits documentation that he or she has obtained all health, sanitary and permit licenses from the state and county;
   3. Provides proof of public liability insurance in the amount of one hundred thousand to three hundred thousand dollars bodily injury and fifty thousand dollars property damage or a three hundred thousand dollar combined single limit policy;
   4. Provides a signed indemnity agreement agreeing to hold the city harmless for the person's or her acts and for the acts of any employees or agents;
   5. Agrees to any other conditions reasonably imposed on an application form approved by the city council.
D. In lieu of requiring individual applications for commercial activities, a single permit may be granted to sponsors of public events in which two or more commercial applicants will be in attendance. A permit shall be issued upon a finding that the sponsor has met the conditions set forth in subsection B of this section and the following conditions:
   1. Provides an application fee and a deposit which is refundable at the termination of the permit if the sponsor has met all other conditions and obligations of the permit;
   2. Provides documentation of the required state and county health, sanitary and permit licenses for those commercial activities selling or dispensing food or beverages;
3. Provides proof of public liability insurance in the amount of one hundred thousand dollar to three hundred thousand dollar bodily injury and fifty thousand dollar property damage or a three hundred thousand dollar combined single limit policy;
4. Provides a signed indemnity agreement agreeing to hold the city harmless for acts of the sponsor, its employees or agents acting in behalf of the sponsor of the public event;
5. Agrees to any other conditions reasonably imposed on an application form approved by the city council.

E. Duration of Permits. Any permit granted in accordance with subsection B or C of this section shall be for a period not to exceed five consecutive days. No person shall be allowed to obtain more than four permits within any calendar year. [Ord. 1178 § 1 (part), 1988: prior code § 45.020]

F. Fees and Deposits. Fees and deposits for use of City parks shall be adopted by Resolution of the City Council. [Ord. 1466, 2008]

§12.21.4 Activities prohibited-Exceptions.
The following activities shall be prohibited, except under specified conditions:
A. Use of Alcoholic Beverages in Parks. It is unlawful for any person to possess or consume any alcoholic beverage in a park, except under the following conditions:
   1. The alcoholic beverage is obtained from an authorized liquor concessionaire at a park, as defined in Section 12.21.1;
   2. The alcoholic beverage is packaged in an individual container; and
   3. The alcoholic beverage is consumed in an area specifically designated by the city council.
   4. At no time will any person who is visibly intoxicated, enter or remain in any City Park.
B. Sale, Possession, Use and Discharge of Fireworks.
   1. It is unlawful for any person to sell, keep or offer for sale, expose for sale, possess, use, explode or have exploded any Class I fireworks in any park, except as authorized by the state fire marshal.
   2. In addition to the prohibitions listed immediately above, it is also unlawful for any person to sell, keep or offer for sale, expose for sale, possess, use, explode or have exploded any Class II fireworks in any park during the Western Days Celebration, the dates of which shall be determined annually by the city council. Additionally, during Western Days events, the Western Days Commission may establish their own rules of conduct to add to this list of prohibited acts.
   3. It is unlawful for any person to sell, offer for sale or expose for sale any Class II fireworks in any park at any time.
C. Overnight Use of Parks. It is unlawful for any person to set up tents or any other temporary shelter or to use house trailers, campers, RV's or automobiles for the purpose of overnight camping in any city park unless such camping shall be in a designated RV park or unless first obtaining written consent from the City Manager.
D. Hunting and Firearms. It is unlawful for any person to hunt, trap or pursue wildlife at any time, or to use, carry or possess firearms, air rifles, spring guns, bows and arrows, slings or any other form of weapon potentially harmful to wildlife and/or human safety, or any instrument that can be loaded with and fire blank cartridges or any kind of trapping device, or any weapon designated as “dangerous” by the laws of the state of Oregon. Excepted from this provision are instruments loaded with blank cartridges used at
bonafide, licensed track and field events, sporting events or organized and licensed black-
powder shooting events. Further excepted are hunters using the park facility as access for
boat hunting. In this exception, hunters must ensure that their guns are unloaded.

E. Animals. It is unlawful for any person to permit any domestic or other animal to run at
large in a park, except as allowed within designated off-leash dog parks, subject to IMC
12.21.4.T, below. Horseback riding shall be confined solely to vehicle roadways and
designated bridle paths. Where permitted horses shall be thoroughly broken and properly
restrained, ridden with due care and not be allowed to graze or go unattended. [Ord. 1512
§ 1, 2012]

F. Swimming. No person shall swim in any areas posted as a “no swimming area”. No
person shall use a public dock for the purpose of ingress or egress while swimming in the
Willamette River.

G. Boating. It is unlawful for any person to navigate, direct or handle any boat in such a
manner as to unjustifiably or unnecessarily annoy or frighten or endanger the occupants of
any other boat or swimmer.

H. Kindling Fires. It is unlawful for any person to light, kindle or use any fire in any park
except in fireplaces, stoves or receptacles provided for that purpose.

I. Vandalism. It is unlawful for any person to break, destroy or damage any shrubs,
grass, trees, plants, flowers, fences, buildings, tables, benches, seats or any other lands or
property or improvements of any kind within city parks.

J. Dumping Refuse or Debris in Parks. It is unlawful for any person to throw, leave or
deposit any bottle, broken glass, ashes, wastepaper or other rubbish, or break any glass in
any park, except at such places or in such receptacles as may be designated or provided
by the city.

K. Park Traffic Regulations. It is unlawful for any person to drive any automobile or
other vehicle as defined in the Oregon Motor Vehicle Code within such parks contrary to
the rules and regulations set forth in the Oregon Motor Vehicle Code or any ordinance of
the city for the operation of vehicles operating within the city limits. It is unlawful for any
person to disobey any of the signs erected for the direction of traffic within such parks
pursuant to this chapter, or any rules made pursuant to this chapter.

L. Repealed.

M. No person shall blow, spread or place any nasal or other bodily discharge or spit,
urinate or defecate on the floors, walls, partitions, furniture, fittings or any portion of a
public convenience station located in any park in the city, or in any other place in such
park, excepting directly into the particular fixture provided for that purpose.

N. No person shall place a bottle, can, cloth, rag or metal, wood or stone substance in
the plumbing fixtures in such stations.

O. Repealed.

P. No person shall bathe nor use public facilities for bathing purposes at a public park,
except in facilities specifically designated for bathing or showering.

Q. No person shall participate in intimidating behavior, such as blocking a walkway or
walking more than three people abreast while not yielding to other pedestrians.

R. During those events with large attendance (Western Days, Mexican Fiesta, Hop
Festival, etc), the Police Chief shall have the right to limit or prohibit animals and the use of
bicycles, skate boards, skates or other wheeled devices in all City parks.

S. The commission of any criminal act or violation of any city ordinance. [Added by Ord.
§12.21.5 Permits subject to ordinances and regulations.
All permits issued by the city shall be subject to city ordinances. The person to whom such permits are issued shall be bound by the rules, regulations and ordinances as fully as though the same were inserted in such permits. Any person or persons to whom such permits shall be issued shall be liable for any loss, damage or injury sustained by any person whatever by reason of the negligence of the person or persons to whom such permit shall be issued. The City Manager shall have the power to revoke any permit upon a finding that a person has violated any rule, regulation or ordinance of the city. [Ord. 1178 § 1 (part), 1988; prior code § 45.025]

§12.21.6 Permits to be exhibited.
Any person claiming to have a permit from the city shall produce and exhibit such permit upon the request of any authorized person who may desire to inspect the same. [Ord. 1178 § 1 (part), 1988; prior code § 45.035]

§12.21.7 Exclusion from parks.
A. A police officer may exclude a person who violates a provision of Section 12.21.4 from any or all parks for a period of not more than thirty days.
B. Written notice shall be given to a person excluded from the parks. The notice shall specify the dates of exclusion and shall be signed by the issuing officer. Warning of consequences for failure to comply shall be prominently displayed on the notice.
C. A person receiving notice may, within five days, appeal in writing to the city manager to have the written notice rescinded or the period shortened. At any time within the thirty days a person receiving a notice may apply in writing to the city manager for a temporary waiver from the effects of the notice for good reason. The waiver shall be in writing and shall contain the time period of the waiver, and shall be kept in the possession of the person at all times while in the park.
D. If a person excluded from a park is found therein during the exclusion period, that person is subject to immediate arrest for criminal trespass in the second degree pursuant to ORS 164.245. [Ord. 1314] [Ord. 1279 § 1 (part), 1993; Ord. 1247 § 2, 1991: Ord. 1178 § 1, 1980: prior code § 45.045]


Chapter 12.22 – 12.39 Reserved for Expansion
§12.40.1 Purpose. The purpose and intent of this Ordinance is to:
A. Comply with the provisions of the 1996 Telecommunications Act as they apply to local governments, telecommunications carriers and the services those carriers offer;
B. Promote competition on a competitively neutral basis in the provision of telecommunications services;
C. Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to businesses institutions and residents of the City;
D. Permit and manage reasonable access to the public rights of way of the City for telecommunications purposes on a competitively neutral basis and conserve the limited physical capacity of those public rights of way held in trust by the City;
E. Assure that the City's current and ongoing costs of granting and regulating private access to and the use of the public rights of way are fully compensated by the persons seeking such access and causing such costs;
F. Secure fair and reasonable compensation to the City and its residents for permitting private use of the public right of way;
G. Assure that all telecommunications carriers providing facilities and/or services within the City, or passing through the City, register and comply with the ordinances, rules and regulations of the City;
H. Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare of its citizens;
I. Enable the City to discharge its public trust consistent with the rapidly evolving federal and state regulatory policies, industry competition and technological development.

§12.40.2 Jurisdiction and Management of the Public Rights of Way
A. The City has jurisdiction and exercises regulatory control over all public rights of way within the City under authority of the City charter and state law.
B. Public rights of way include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including the subsurface under and air space over these areas.
C. The City has jurisdiction and exercises regulatory control over each public right of way whether the City has a fee, easement, or other legal interest in the right of way. The City has jurisdiction and regulatory control over each right of way whether the legal interest in the right of way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.
D. No person may occupy or encroach on a public right of way without the permission of the City. The City grants permission to use rights of way by franchises and permits.
E. The exercise of jurisdiction and regulatory control over a public right of way by the City is not official acceptance of the right of way, and does not obligate the City to maintain or repair any part of the right of way.
F. The City retains the right and privilege to cut or move any telecommunications facilities located within the public rights of way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency.
§12.40.3 Regulatory Fees and Compensation Not a Tax
A. The fees and costs provided for in this Ordinance, and any compensation charged and paid for use of the public rights of way provided for in this Ordinance, are separate from, and in addition to, any and all federal, state, local and City taxes as may be levied, imposed or due from a telecommunications carrier, its customers or subscribers, or on account of the lease, sale, delivery or transmission of telecommunications services.
B. The City has determined that any fee imposed by this Ordinance is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees are not imposed on property or property owners. These fees are not new or increased fees.

DEFINITIONS
§12.40.4 Definitions: For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined herein shall be given the meaning set forth in the Communications Policy Act of 1934, as amended, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996. If not defined there, the words shall be given their common and ordinary meaning.

Aboveground Facilities - see “Overhead Facilities.”
Affiliated Interest - shall have the same meaning as ORS 759.010.
Cable Act - shall mean the Cable Communications Policy Act of 1984, 47 U.S.C. 521, et seq., as now and hereafter amended.
Cable Service - means the one-way transmission to subscribers of video programming, or other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
City - means the City of Independence, an Oregon municipal corporation, and individuals authorized to act on the City's behalf.
City Council - means the elected governing body of the City of Independence, Oregon.
Control or Controlling Interest - means actual working control in whatever manner exercised.
City Property - means and includes all real property owned by the City, other than public rights of way and utility easements as those are defined herein, and all property held in a proprietary capacity by the City, which are not subject to right of way franchising as provided in this Ordinance.
Conduit - means any structure, or portion thereof, containing one or more ducts, conduits, manholes, handholes, bolts, or other facilities used for any telegraph, telephone, cable television, electrical, or communications conductors, or cable right of way, owned or controlled, in whole or in part, by one or more public utilities.
Days - means calendar days unless otherwise specified.
Duct - means a single enclosed raceway for conductors or cable.
FCC or Federal Communications Commission - means the federal administrative agency, or its lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.
Franchise - means an agreement between the City and a Grantee which grants a privilege to use public right of way and utility easements within the City for a dedicated purpose and for specific compensation.
Grantee - means the person to which a franchise is granted by the City.
Oregon Public Utilities Commission or OPUC - means the statutorily created state agency in the State of Oregon responsible for licensing, regulation and administration of certain telecommunications carriers as set forth in Oregon Law, or its lawful successor.
Overhead or Aboveground Facilities - means utility poles, utility facilities and telecommunications facilities above the surface of the ground, including the underground supports and foundations for such facilities.
Person - means an individual, corporation, company, association, joint stock company or association, firm, partnership, or limited liability company.
Private Telecommunications Network - means a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service, by a person for the exclusive use of that person and not for resale, directly or indirectly. "Private telecommunications network" includes services provided by the State of Oregon pursuant to ORS 190.240 and 283.140.
Public Rights of Way - include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including the subsurface under and air space over these areas, but only to the extent of the City's right, title, interest or authority to grant a franchise to occupy and use such streets and easements for telecommunications facilities. "Public rights of way" shall also include utility easements as defined below.
State - means the State of Oregon.
Telecommunications - means the transmission between and among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.
Telecommunications Carrier - means any provider of telecommunications services and includes every person that directly or indirectly owns, controls, operates or manages telecommunications facilities within the City.
Telecommunications Facilities - means the plant and equipment, other than customer premises equipment, used by a telecommunications carrier to provide telecommunications services.
Telecommunications Service - means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.
Telecommunications System - see “Telecommunications Facilities” above.
Telecommunications Utility - has the same meaning as ORS 759.005(1).
Underground Facilities - means utility and telecommunications facilities located under the surface of the ground, excluding the underground foundations or supports for "Overhead facilities."
Usable Space - means all the space on a pole, except the portion below ground level, the 20 feet of safety clearance space above ground level, and the safety clearance space
between communications and power circuits. There is a rebuttable presumption that six feet of a pole is buried below ground level.

**Utility Easement** - means any easement granted to or owned by the City and acquired, established, dedicated or devoted for public utility purposes.

**Utility Facilities** - means the plant, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, cable, wires, plant and equipment located under, on, or above the surface of the ground within the public right of way of the City and used or to be used for the purpose of providing utility or telecommunications services.

REGISTRATION OF TELECOMMUNICATIONS CARRIERS

**§12.40.5 Purpose:** The purpose of registration is:

A. To assure that all telecommunications carriers who have facilities and/or provide services within the City comply with the ordinances, rules and regulations of the City.

B. To provide the City with accurate and current information concerning the telecommunications carriers who offer to provide telecommunications services within the City, or that own or operate telecommunications facilities within the City.

C. To assist the City in the enforcement of this Ordinance and the collection of any city franchise fees or charges that may be due the City.

D. To assist the City in monitoring compliance with local, state and federal laws as they apply to grantees under this Ordinance.

**§12.40.6 Registration Required:** Except as provided in Section 8 hereof, all telecommunications carriers having telecommunications facilities within the corporate limits of the City, and all telecommunications carriers that offer or provide telecommunications service to customer premises within the City, shall register with the City on forms to be provided by the Public Works Department which shall include the following:

A. The identity and legal status of the registrant, including any affiliates.

B. The name, address and telephone number of the officer, agent or employee responsible for the accuracy of the registration statement.

C. A description of the registrant’s existing or proposed telecommunications facilities within the City.

D. A description of the telecommunications service that the registrant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the City.

E. Information sufficient to determine whether the registrant is subject to public right of way franchising under this Ordinance.

F. Information sufficient to determine whether the transmission, origination or receipt of the telecommunications services provided or to be provided by the registrant constitutes an occupation or privilege subject to any business tax imposed by the City.

G. Information sufficient to determine that the applicant has applied for and received any certificate of authority or permit required by the FCC or the OPUC to provide telecommunications services within the City.

H. Information sufficient to determine that the applicant has applied for and received any construction permit, operating license or other approvals required by the FCC to have telecommunications facilities within the City.

I. If the registrant has applied for and received a city business license, list the license...
number. J. Such other information as the City may reasonably require.

§12.40.7 Registration Fee
Each application for registration as a telecommunications carrier shall be accompanied by a nonrefundable registration fee in an amount to be determined by resolution of the City Council.

§12.40.8 Exceptions to Registration
The following telecommunications carriers are excepted from registration:
A. Telecommunications carriers that are owned and operated for its own use by the State or a political subdivision of this State.
B. A private telecommunications network, provided that such network does not occupy any public rights of way of the City.

CONSTRUCTION STANDARDS
§12.40.9 Responsibility of Owner
The owner of the telecommunications facilities to be constructed and, if different, the grantee, is responsible for performance of and compliance with all provisions of Sections 10 through 28.

§12.40.10 Construction Codes
Telecommunications facilities shall be constructed, installed, operated and maintained in accordance with all applicable federal, state and local codes, rules and regulations including the National Electrical Code and the National Electrical Safety Code.

§12.40.11 General
No person shall commence or continue with the construction, installation or operation of telecommunications facilities within a public right of way except as provided in Sections 12 through 28.

§12.40.12 Construction Permits
No person shall construct or install any telecommunications facilities within a public right of way without first obtaining a construction permit, and paying the construction permit fee established in Section 17 of this Ordinance. No permit shall be issued for the construction or installation of telecommunications facilities within a public right of way:
A. Unless the telecommunications carrier has first filed a registration statement with the City pursuant to Sections 5 through 8 of this Ordinance; and
B. Unless the telecommunications carrier has first applied for and received a franchise pursuant to Sections 34 through 41 of this Ordinance.

§12.40.13 Permit Applications
Applications for permits to construct telecommunications facilities shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:
A. That the facilities will be constructed in accordance with all applicable codes, rules
and regulations.
B. That the facilities will be constructed in accordance with the franchise agreement.
C. The location and route of all facilities to be installed underground.
D. The location and route of all facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public rights of way. Existing facilities shall be differentiated on the plans from new construction.
E. The location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public rights of way along the underground route proposed by the applicant. A cross section shall be provided showing new or existing facilities in relation to the street, curb, sidewalk or right of way.
F. The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the public rights of way.
G. The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction.

§12.40.14 Engineer’s Certification
All permit applications shall be accompanied by the certification of a registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

§12.40.15 Construction Schedule
All permit applications shall be accompanied by a written construction schedule, which shall include a deadline for completion of construction. The construction schedule is subject to approval by the Public Works Department.

§12.40.16 Traffic Control Plan
All permit applications shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with Uniform Manual of Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

§12.40.17 Construction Permit Fee
Unless otherwise provided in a franchise agreement, prior to issuance of a construction permit, the applicant shall pay a permit fee in an amount to be determined by resolution of the City Council.

§12.40.18 Issuance of Permit
If satisfied that the applications, plans and documents submitted comply with all requirements of this Ordinance and the franchise agreement, the Public Works Department shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as they may deem necessary or appropriate.
§12.40.19 Notice of Construction
The permittee shall notify the Public Works Department not less than two (2) working days in advance of any excavation or work in the public rights of way.

§12.40.20 Locates
The permittee shall comply with the rules adopted by the Oregon Utility Notification Center regulating the notification and marking of underground facilities.

§12.40.21 Compliance with Permit
All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The Public Works Department and their representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements.

§12.40.22 Display of Permit
The permittee shall maintain a copy of the construction permit and approved plans at the construction site and shall display the permit. Plans shall be made available for inspection by the Public Works Department or their representatives at all times when construction work is occurring.

§12.40.23 Noncomplying Work
Upon order of the Public Works Department, all work which does not comply with the permit, the approved plans and specifications for the work, or the requirements of this Ordinance, shall be removed at the sole expense of the permittee.

§12.40.24 Completion of Construction
The permittee shall promptly complete all construction activities so as to minimize disruption of the city rights of way and other public and private property. All construction work within city rights of way, including restoration, must be completed within 120 days of the date of issuance of the construction permit unless an alternate schedule has been approved pursuant to the schedule submitted and approved by the appropriate city official as contemplated by Section 15.

§12.40.25 As-Built Drawings
Within sixty (60) days after completion of construction, the permittee shall furnish the City with two (2) complete sets of plans drawn to scale and certified to the City as accurately depicting the location of all telecommunications facilities constructed pursuant to the permit, in a format acceptable to the City Engineer.

§12.40.26 Restoration of Public Rights of Way and City Property
A. When a permittee, or any person acting on its behalf, does any work in or affecting any public rights of way or city property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to at least as good a condition as existed before the work was undertaken, unless otherwise directed by the City and as determined by the City Engineer.
B. If weather or other conditions do not permit the complete restoration required by this
Section, the permittee shall temporarily restore the affected rights of way or property. Such temporary restoration shall be at the permittee's sole expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule shall be subject to approval by the City.

C. If the permittee fails to restore rights of way or property to at least as good a condition as existed before the work was undertaken, the City shall give the permittee written notice and provide the permittee a reasonable period of time not exceeding thirty (30) days to restore the rights of way or property. If, after said notice, the permittee fails to restore the rights of way or property to as good a condition as existed before the work was undertaken, the City shall cause such restoration to be made at the expense of the permittee.

D. A permittee or other person acting in its behalf shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such rights of way or property.

§12.40.27 Landscape Restoration
A. All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, repair or replacement of telecommunications facilities, whether such work is done pursuant to a franchise or permit shall be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work.

B. Any trees, shrubs or other landscaping that show substantial damage within eighteen (18) months of completion of the construction, which damage can be attributed to permittee’s construction activities, must be replaced at the sole expense of the permittee.

C. All restoration work within the public rights of way shall be done in accordance with landscape plans approved by the City.

§12.40.28 Performance and Completion Bond
Unless otherwise provided in a franchise agreement, a performance bond written by a corporate surety acceptable to the City, and authorized to transact business in Oregon, equal to at least 100% of the estimated cost of constructing permittee’s telecommunications facilities within the public rights of way of the City shall be deposited before construction is commenced.

A. The performance bond shall remain in force until sixty (60) days after substantial completion of the work, as determined in writing by the City, including restoration of public rights of way and other property affected by the construction.

B. The performance bond shall guarantee, to the satisfaction of the City:
   1. timely completion of construction;
   2. construction in compliance with applicable plans, permits, technical codes and standards;
   3. proper location of the facilities as specified by the City;
   4. restoration of the public rights of way and other property affected by the construction;
5. the submission of "as-built" drawings after completion of the work as required by this Ordinance; and
6. timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

LOCATION OF TELECOMMUNICATIONS FACILITIES

§12.40.29 Location of Facilities
All facilities located within the public right of way shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a franchise agreement:
A. Grantee shall install its telecommunications facilities underground unless the City specifically permits attachments to utility poles or other aboveground facilities.
B. Grantee shall install its telecommunications facilities within an existing underground duct or conduit whenever surplus capacity exists within such utility facility, unless grantee demonstrates to the satisfaction of the City that such installation is not feasible.
C. A grantee with permission to install overhead facilities shall install its telecommunications facilities on pole attachments to existing utility poles only, and then only if surplus space is available.
D. Whenever any existing electric utilities, cable facilities or telecommunications facilities are located underground within a public right of way of the City, a grantee with permission to occupy the same public right of way must also locate its telecommunications facilities underground.
E. Whenever any new or existing electric utilities, cable facilities or telecommunications facilities are located or relocated underground within a public right of way of the City, a grantee that currently occupies the same public right of way shall relocate its facilities underground concurrently with the other affected utilities to minimize disruption of the public right of way, absent extraordinary circumstances or undue hardship as determined by the City and consistent with state law.

§12.40.30 Interference with the Public Rights of Way
No grantee may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public rights of way by the City, by the general public or by other persons authorized to use or be present in or upon the public rights of way. All such facilities shall be moved by the grantee, temporarily or permanently, as determined by the City at the sole expense of the grantee. All use of public rights of way shall be consistent with City codes, ordinances and regulations.

§12.40.31 Relocation or Removal of Facilities
Within thirty (30) days following written notice from the City, a grantee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any telecommunications facilities within the public rights of way whenever the City shall have determined that such removal, relocation, change or alteration is reasonably necessary for:
A. The construction, repair, maintenance or installation of any city or other public improvement in or upon the public rights of way.
B. The operations of the City or other governmental entity in or upon the public rights of way.
C. The public interest.

§12.40.32 Removal of Unauthorized Facilities
Within thirty (30) days following written notice from the City, any grantee, telecommunications carrier, or other person that owns, controls or maintains any unauthorized telecommunications system, facility or related appurtenances within the public rights of way of the City shall, at its own expense, remove such facilities or appurtenances from the public rights of way of the City. A telecommunications system or facility is unauthorized and subject to removal in the following circumstances:
A. One year after the expiration or termination of the grantee’s telecommunications franchise.
B. Upon abandonment of a facility within the public rights of way of the City. A facility will be considered abandoned when it is deactivated, out of service, or not used for its intended and authorized purpose for a period of ninety (90) days or longer. A facility will not be considered abandoned if it is temporarily out of service during performance of repairs or if the facility is being replaced.
C. If the system or facility was constructed or installed without the prior grant of a telecommunications franchise.
D. If the system or facility was constructed or installed without the prior issuance of a required construction permit.
E. If the system or facility was constructed or installed at a location not permitted by the grantee’s telecommunications franchise or other legally sufficient permit.

§12.40.33 Coordination of Construction Activities
All grantees are required to cooperate with the City and with each other.
A. By January 1 of each year, grantees shall provide the City with a schedule of their proposed construction activities in, around or that may affect the public rights of way.
B. Each grantee shall meet with the City, other grantees and users of the public rights of way annually or as determined by the City to schedule and coordinate construction in the public rights of way.
C. All construction locations, activities and schedules shall be coordinated, as ordered by the City Engineer, to minimize public inconvenience, disruption or damages.

TELECOMMUNICATIONS FRANCHISE
§12.40.34 Telecommunications Franchise
A telecommunications franchise shall be required of any telecommunications carrier who desires to occupy public rights of way of the City.

§12.40.35 Application
Any person that desires a telecommunications franchise shall file an application with Public Works Department which includes the following information:
A. The identity of the applicant, including all affiliates of the applicant.
B. A description of the telecommunications services that are or will be offered or provided by the applicant over its telecommunications facilities.
C. A description of the transmission medium that is being used or will be used by the applicant to offer or provide such telecommunications services.
D. Engineering plans, specifications and a network map of the facilities located or to be located within the City, all in sufficient detail to identify:
   1. the location and route requested for applicant's proposed telecommunications facilities;
   2. the location of all aboveground and underground public utility, telecommunication, cable, water, sewer, storm drainage and other facilities in the public rights of way along the proposed route;
   3. the location(s), if any, for interconnection with the telecommunications facilities of other telecommunications carriers;

E. If applicant is proposing to install aboveground facilities, to the extent that they will be using utility poles, evidence that surplus space is available for locating its telecommunications facilities on existing utility poles along the proposed route.

F. If applicant is proposing an underground installation in existing ducts or conduits within the public rights of way, provide information in sufficient detail to identify:
   1. the excess capacity currently available in such ducts or conduits before installation of applicant's telecommunications facilities;
   2. the excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's telecommunications facilities.

G. If applicant is proposing an underground installation within new ducts or conduits to be constructed within the public rights of way:
   1. the location proposed for the new ducts or conduits;
   2. the excess capacity that will exist in such ducts or conduits after the installation of applicant's telecommunications facilities.

H. The area or areas of the City the applicant desires to serve and a preliminary construction schedule for build-out to the entire franchise area.

I. Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.

J. Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the telecommunications facilities and services described in the application.

K. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the telecommunications services proposed.

L. Whether the applicant intends to provide cable service, video dial tone service or other video programming service.

M. An accurate map showing the location of any existing telecommunications facilities in the City that applicant intends to use or lease.

N. A description of any services or facilities that the applicant will offer or make available to the City and other public, educational and governmental institutions and at what cost.

O. A description of applicant's access and line extension policies.

P. Such other information as may be requested by the City Manager or their designee.

§12.40.36 Application and Review Fee

A. Applicant shall reimburse the City for such reasonable costs as the City incurs in
entering into the franchise agreement.
B. An application and review fee of $2,000 shall be deposited with the City as part of
the application filed pursuant to Section 35 above. Expenses exceeding the deposit will be
billed to the applicant or the unused portion of the deposit will be returned to the applicant
following the determination granting or denying the franchise.

§12.40.37 Determination by the City
The City shall issue a written determination granting or denying the application in whole or
in part, applying the standards listed below. If the application is denied, the written
determination shall include the reasons for denial. The standards to be applied by City
are:
A. The financial and technical ability of the applicant.
B. The legal capacity of the applicant.
C. The capacity of the public rights of way to accommodate the applicant's proposed
facilities.
D. The capacity of the public rights of way to accommodate additional utility and
telecommunications facilities if the franchise is granted.
E. The damage or disruption, if any, of public or private facilities, improvements,
service, travel or landscaping if the franchise is granted.
F. The public interest in minimizing the cost and disruption of construction within the
public rights of way.
G. The service that applicant will provide to the community and region.
H. The effect, if any, on public health, safety and welfare if the franchise is granted.
I. The availability of alternate routes and/or locations for the proposed facilities.
J. Applicable federal and state telecommunications laws, regulations and policies.

§0.40.38 Rights Granted
No franchise granted pursuant to this Ordinance shall convey any right, title or interest in
the public rights of way, but shall be deemed a grant to use and occupy the public rights of
way for the limited purposes and term stated in the franchise agreement.

§0.40.39 Term of Grant
Unless otherwise specified in a franchise agreement, a telecommunications franchise
granted hereunder shall be in effect for a term of five years.

§0.40.40 Franchise Territory
Unless otherwise specified in a franchise agreement, a telecommunications franchise
granted hereunder shall be limited to a specific geographic area of the City to be served by
the franchise grantee, and the public rights of way necessary to serve such areas.

§0.40.41 Franchise Fee
Each franchise granted by the City is subject to the City's right, which is expressly
reserved, to fix a fair and reasonable compensation to be paid for the privileges granted;
provided, nothing in this Ordinance shall prohibit the City and a grantee from agreeing to
the compensation to be paid.. The compensation shall be subject to the specific payment
terms and conditions contained in the franchise agreement.
§0.40.42 Amendment of Grant
Conditions for amending a franchise:
A. A new application and grant shall be required of any telecommunications carrier that desires to extend or locate its telecommunications facilities in public rights of way of the City which are not included in a franchise previously granted under this Ordinance.
B. If ordered by the City to locate or relocate its telecommunications facilities in public rights of way not included in a previously granted franchise, the City shall grant an amendment without further application.
C. A new application and grant shall be required of any telecommunications carrier that desires to provide a service which was not included in a franchise previously granted under this Ordinance.

§0.40.43 Renewal Applications
A grantee that desires to renew its franchise under this Ordinance shall, not less than 180 days before expiration of the current agreement, file an application with the City for renewal of its franchise which shall include the following information:
A. The information required pursuant to Section 35 of this Article.
B. Any information required pursuant to the franchise agreement between the City and the grantee.

§0.40.44 Renewal Determinations
Within 90 days after receiving a complete application under Section 43 hereof, the City shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards. If the renewal application is denied, the written determination shall include the reasons for non-renewal.
A. The financial and technical ability of the applicant.
B. The legal ability of the applicant.
C. The continuing capacity of the public rights of way to accommodate the applicant's existing and proposed facilities.
D. The applicant's compliance with the requirements of this Ordinance and the franchise agreement.
E. Applicable federal, state and local telecommunications laws, rules and policies.
F. Such other factors as may demonstrate that the continued grant to use the public rights of way will serve the community interest.

§0.40.45 Obligation to Cure As a Condition of Renewal
No franchise shall be renewed until any ongoing violations or defaults in the grantee’s performance of the agreement, or of the requirements of this Ordinance, have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the City.

§0.40.46 Assignments or Transfers of System or Franchise
Ownership or control of a majority interest in a telecommunications system or franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the prior consent of the City, which consent shall not be unreasonably withheld or delayed,
and then only on such reasonable conditions as may be prescribed in such consent.
A. Grantee and the proposed assignee or transferee of the franchise or system shall
provide and certify the following information to the City not less than one hundred and
twenty (120) days prior to the proposed date of transfer:
   1. Complete information setting forth the nature, terms and condition of the proposed
      transfer or assignment;
   2. All information required of a telecommunications franchise applicant pursuant
      Section 35 with respect to the proposed transferee or assignee;
   3. Any other information reasonably required by the City.
B. No transfer shall be approved unless the assignee or transferee has the legal,
technical, financial and other requisite qualifications to own, hold and operate the
telecommunications system pursuant to this Ordinance.
C. Unless otherwise provided in a franchise agreement, the grantee shall reimburse
the City for all direct and indirect fees, costs, and expenses reasonably incurred by the City
in considering a request to transfer or assign a telecommunications franchise.
D. Any transfer or assignment of a telecommunications franchise, system or integral
part of a system without prior approval of the City under this Section or pursuant to a
franchise agreement shall be void and is cause for revocation of the franchise.

§0.40.47 Revocation or Termination of Franchise
A franchise to use or occupy public rights of way of the City may be revoked for the
following reasons:
A. Construction or operation in the City or in the public rights of way of the City without
   a construction permit.
B. Construction or operation at an unauthorized location.
C. Failure to comply with Section 46 herein with respect to sale, transfer or assignment
   of a telecommunications system or franchise.
D. Misrepresentation by or on behalf of a grantee in any application to the City.
E. Abandonment of telecommunications facilities in the public rights of way.
F. Failure to relocate or remove facilities as required in this Ordinance.
G. Failure to pay taxes, compensation, fees or costs when and as due the City.
H. Insolvency or bankruptcy of the grantee.
I. Violation of material provisions of this Ordinance.
J. Violation of the material terms of a franchise agreement.

§0.40.48 Notice and Duty to Cure
In the event that the City believes that grounds exist for revocation of a franchise, the City
shall give the grantee written notice of the apparent violation or noncompliance, providing
a short and concise statement of the nature and general facts of the violation or
noncompliance, and providing the grantee a reasonable period of time not exceeding thirty
(30) days to furnish evidence:
A. That corrective action has been, or is being actively and expeditiously pursued, to
   remedy the violation or noncompliance.
B. That rebuts the alleged violation or noncompliance.
C. That it would be in the public interest to impose some penalty or sanction less than
   revocation.
§0.40.49  Public Hearing
In the event that a grantee fails to provide evidence reasonably satisfactory to the City as provided in Section 48 hereof, the City Manager shall refer the apparent violation or non-compliance to the City Council. The City Council shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.

§0.40.50  Standards for Revocation or Lesser Sanctions
If persuaded that the grantee has violated or failed to comply with material provisions of this Ordinance, or of a franchise agreement, the City Council shall determine whether to revoke the franchise, or to establish some lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:
A. Whether the misconduct was egregious.
B. Whether substantial harm resulted.
C. Whether the violation was intentional.
D. Whether there is a history of prior violations of the same or other requirements.
E. Whether there is a history of overall compliance.
F. Whether the violation was voluntarily disclosed, admitted or cured.

§0.40.51  Other City Costs
All grantees shall, within thirty (30) days after written demand therefor, reimburse the City for all direct and indirect costs and expenses incurred by the City in connection with any modification, amendment, renewal or transfer of the franchise or any franchise agreement.

GENERAL FRANCHISE TERMS
§0.40.52  Facilities
Each grantee shall provide the City with an accurate map or maps certifying the location of all telecommunications facilities within the public rights of way. Each grantee shall provide updated maps annually.

§0.40.53  Damage to Grantee's Facilities
Unless directly and proximately caused by willful, intentional or malicious acts by the City, the City shall not be liable for any damage to or loss of any telecommunications facility within the public rights of way of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the public rights of way by or on behalf of the City, or for any consequential losses resulting directly or indirectly therefrom.

§0.40.54  Duty to Provide Information
Within ten (10) days of a written request from the City, each grantee shall furnish the City with information sufficient to demonstrate:
A. That grantee has complied with all requirements of this Ordinance.
B. All books, records, maps and other documents, maintained by the grantee with respect to its facilities within the public rights of way shall be made available for inspection.
by the City at reasonable times and intervals.

§0.40.55 Nondiscrimination
A grantee shall make its telecommunications services available to any customer within its franchise area who shall request such service, without discrimination as to the terms, conditions, rates or charges for grantee's services; provided, however, that nothing in this Ordinance shall prohibit a grantee from making any reasonable classifications among differently situated customers.

§0.40.56 Service to the City
If the City contracts for the use of telecommunication facilities, telecommunication services, installation, or maintenance from the grantee, the grantee shall charge the City the grantee's most favorable rate offered at the time of the request charged to a similar user within Oregon for a similar volume of service, subject to any of grantee's tariffs or price lists on file with the OPUC. With the City's permission, the grantee may deduct the applicable charges from fee payments. Other terms and conditions of such services may be specified in a separate agreement between the City and grantee.

§0.40.57 Compensation for City Property
If any right is granted, by lease, franchise or other manner, to use and occupy city property for the installation of telecommunications facilities, the compensation to be paid for such right and use shall be fixed by the City.

§0.40.58 Cable Franchise
Telecommunication carriers providing cable service shall be subject to the cable franchise requirements in Ordinance 89-114, or such other franchise that shall be in effect.

§0.40.59 Leased Capacity
A grantee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers; provided that the grantee shall notify the City that such lease or agreement has been granted to a customer or lessee.

§0.40.60 Grantee Insurance
Unless otherwise provided in a franchise agreement, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the City, and its elected and appointed officers, officials, agents and employees as co-insured:

A. Comprehensive general liability insurance with limits not less than
   1. Three Million Dollars ($3,000,000) for bodily injury or death to each person;
   2. Three Million Dollars ($3,000,000) for property damage resulting from any one accident; and,
   3. Three Million Dollars ($3,000,000) for all other types of liability.

B. Automobile liability for owned, non-owned and hired vehicles with a limit of One Million Dollars ($1,000,000) for each person and Three Million Dollars ($3,000,000) for each accident.

C. Worker's compensation within statutory limits and employer's liability insurance with
limits of not less than One Million Dollars ($1,000,000).
D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars ($3,000,000).
E. The liability insurance policies required by this Section shall be maintained by the grantee throughout the term of the telecommunications franchise, and such other period of time during which the grantee is operating without a franchise hereunder, or is engaged in the removal of its telecommunications facilities. Each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the City, by registered mail, of a written notice addressed to the Public Works of such intent to cancel or not to renew."
F. Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the grantee shall obtain and furnish to the City evidence that the grantee meets requirements of this Section.

§0.40.61 General Indemnification
Each franchise agreement shall include, to the extent permitted by law, grantee's express undertaking to defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its telecommunications facilities, and in providing or offering telecommunications services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this Ordinance or by a franchise agreement made or entered into pursuant to this Ordinance.

§0.40.62 Performance Surety
Before a franchise granted pursuant to this Ordinance is effective, and as necessary thereafter, the grantee shall provide a performance bond, in form and substance acceptable to the City, as security for the full and complete performance of a franchise granted under this Ordinance, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations or permits of the City. This obligation is in addition to the performance bond required by Section 28 for construction of facilities.

GENERAL PROVISIONS
§0.40.63 Governing Law
Any franchise granted under this Ordinance is subject to the provisions of the Constitution and laws of the United States, and the State of Oregon and the ordinances and Charter of the City.
§0.40.64  Written Agreement
No franchise shall be granted hereunder unless the agreement is in writing.

§0.40.65  Nonexclusive Grant
No franchise granted under this Ordinance shall confer any exclusive right, privilege, license or franchise to occupy or use the public rights of way of the City for delivery of telecommunications services or any other purposes.

§0.40.66  Severability and Preemption
If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decision, the remainder of the Ordinance shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant and portion of this Ordinance shall be valid and enforceable to the fullest extent permitted by law. In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Ordinance, then the provision shall be read to be preempted to the extent and or the time required by law. In the event such federal or state law, rules or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding, without the requirement of further action on the part of the City, and any amendments hereto.

§0.40.67  Penalties
Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Ordinance shall be fined not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00) for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs.

§0.40.68  Other Remedies
Nothing in this Ordinance shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Ordinance.

§0.40.69  Captions
The captions to sections throughout this Ordinance are intended solely to facilitate reading and reference to the sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this Ordinance.

§0.40.70  Compliance with Laws
Any grantee under this Ordinance shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all ordinances, resolutions, rules and regulations of the City heretofore or hereafter adopted.
or established during the entire term any franchise granted under this Ordinance, which are relevant and relate to the construction, maintenance and operation of a telecommunications system.

§0.40.71 Consent
Wherever the consent of either the City or of the grantee is specifically required by this Ordinance or in a franchise granted, such consent will not be unreasonably withheld.

§0.40.72 Application to Existing Ordinance and Agreements
To the extent that this Ordinance is not in conflict with and can be implemented with existing ordinance and franchise agreements, this Ordinance shall apply to all existing ordinance and franchise agreements for use of the public right of way for telecommunications.

§0.40.73 Confidentiality
The City agrees to use its best efforts to preserve the confidentiality of information as requested by a grantee, to the extent permitted by the Oregon Public Records Law. [Ord. 98-1363]

Chapter 12.41 Reserved for Expansion
Chapter 12.42 Reserved for Expansion
Chapter 12.43 Reserved for Expansion
Chapter 12.44 CABLE REGULATIONS

§12.44.1 Purpose: The purpose and intent of this Ordinance is to:
A. Comply with the provisions of the 1996 Telecommunications Act as they apply to local governments, cable television carriers and the services those carriers offer;
B. Promote competition on a competitively neutral basis in the provision of cable television services;
C. Encourage the provision of advanced and competitive cable television services on the widest possible basis to businesses institutions and residents of the City;
D. Permit and manage reasonable access to the public rights of way of the City for purposes of providing cable services on a competitively neutral basis and conserve the limited physical capacity of those public rights of way held in trust by the City;
E. Assure that the City's current and ongoing costs of granting and regulating private access to and the use of the public rights of way are fully compensated by the persons seeking such access and causing such costs;
F. Secure fair and reasonable compensation to the City and its residents for permitting private use of the public right of way;
G. Assure that all Cable carriers providing facilities and/or services within the City, or passing through the City, register and comply with the ordinances, rules and regulations of the City;
H. Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare of its citizens;
I. Enable the City to discharge its public trust consistent with the rapidly evolving federal and state regulatory policies, industry competition and technological development.

§12.44.2 Jurisdiction and Management of the Public Rights of Way
A. The City has jurisdiction and exercises regulatory control over all public rights of way within the City under authority of the City charter and state law.
B. Public rights of way include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including the subsurface under and air space over these areas.
C. The City has jurisdiction and exercises regulatory control over each public right of way whether the City has a fee, easement, or other legal interest in the right of way. The City has jurisdiction and regulatory control over each right of way whether the legal interest in the right of way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.
D. No person may occupy or encroach on a public right of way without the permission of the City. The City grants permission to use rights of way by franchises and permits.
E. The exercise of jurisdiction and regulatory control over a public right of way by the City is not official acceptance of the right of way, and does not obligate the City to maintain or repair any part of the right of way.
F. The City retains the right and privilege to cut or move any cable facilities located within the public rights of way of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency.
§12.44.3 Regulatory Fees and Compensation, Not a Tax
A. The fees and costs provided for in this Ordinance, and any compensation charged and paid for use of the public rights of way provided for in this Ordinance, are separate from, and in addition to, any and all federal, state, local and City taxes as may be levied, imposed or due from a Cable provider, its customers or subscribers, or on account of the lease, sale, delivery or transmission of cable television services.
B. The City has determined that any fee imposed by this Ordinance is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees are not imposed on property or property owners. These fees are not new or increased fees.

DEFINITIONS
§12.44.4 Definitions: For the purpose of this Ordinance the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive. Words not defined herein shall be given the meaning set forth in the Communications Policy Act of 1934, as amended, the Cable Communications Policy Act of 1984, the Cable Television Consumer Protection and Competition Act of 1992, and the Telecommunications Act of 1996. If not defined there, the words shall be given their common and ordinary meaning.

Aboveground Facilities - see "Overhead Facilities".
Affiliated Interest - shall have the same meaning as ORS 759.010.
Cable Act - shall mean the Cable Communications Policy Act of 1984, 47 U.S.C. §521, et seq., as now and hereafter amended.
Cable Service - means the one-way transmission to subscribers of video programming, or other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.
City - means the City of Independence, an Oregon municipal corporation, and individuals authorized to act on the City's behalf.
City Council - means the elected governing body of the City of Independence, Oregon.
Control or Controlling Interest - means actual working control in whatever manner exercised.
City Property - means and includes all real property owned by the City, other than public rights of way and utility easements as those are defined herein, and all property held in a proprietary capacity by the City, which are not subject to right of way franchising as provided in this Ordinance.
Conduit - means any structure, or portion thereof, containing one or more ducts, conduits, manholes, handholes, bolts, or other facilities used for any telegraph, telephone, cable television, electrical, or communications conductors, or cable right of way, owned or controlled, in whole or in part, by one or more public utilities.
Days - means calendar days unless otherwise specified.
Duct - means a single enclosed raceway for conductors or cable.
**FCC or Federal Communications Commission** - means the federal administrative agency, or its lawful successor, authorized to regulate and oversee Cable providers, services and providers on a national level.

**Franchise** - means an agreement between the City and a Grantee which grants a privilege to use public right of way and utility easements within the City for a dedicated purpose and for specific compensation.

**Grantee** - means the person to which a franchise is granted by the City.

**Oregon Public Utilities Commission or OPUC** - means the statutorily created state agency in the State of Oregon responsible for licensing, regulation and administration of certain utility providers as set forth in Oregon Law, or its lawful successor.

**Overhead or Aboveground Facilities** - means utility poles, utility facilities and cable facilities above the surface of the ground, including the underground supports and foundations for such facilities.

**Person** - means an individual, corporation, company, association, joint stock company or association, firm, partnership, or limited liability company.

**Public Rights of Way** - include, but are not limited to, streets, roads, highways, bridges, alleys, sidewalks, trails, paths, public easements and all other public ways or areas, including the subsurface under and air space over these areas, but only to the extent of the City's right, title, interest or authority to grant a franchise to occupy and use such streets and easements for cable facilities. “Public rights of way” shall also include utility easements as defined below.

**State** - means the State of Oregon.


**Cable provider** - means any provider of cable television services and includes every person that directly or indirectly owns, controls, operates or manages cable facilities within the City.

**Cable Facilities** - means the plant and equipment, other than customer premises equipment, used by a Cable provider to provide cable television services.

**Telecommunications Utility** - has the same meaning as ORS 759.005(1).

**Underground Facilities** - means utility and cable facilities located under the surface of the ground, excluding the underground foundations or supports for "Overhead Facilities."

**Usable Space** - means all the space on a pole; except the portion below ground level, the 20 feet of safety clearance space above ground level, and the safety clearance space between communications and power circuits. There is a rebuttable presumption that six feet of a pole is buried below ground level.

**Utility Easement** - means any easement granted to or owned by the City and acquired, established, dedicated or devoted for public utility purposes.

**Utility Facilities** - means the plant, equipment and property including but not limited to the poles, pipes, mains, conduits, ducts, cable, wires, plant and equipment located under, on, or above the surface of the ground within the public light of way of the City and used or to be used for the purpose of providing utility or cable television services.

**REGISTRATION OF CABLE PROVIDERS**

**§12.44.5 Purpose:** The purpose of registration is:
A. To assure that all Cable providers who have facilities and/or provide services within the City comply with the ordinances, rules and regulations of the City.
B. To provide the City with accurate and current information concerning the Cable providers who offer to provide cable television services within the City, or that own or operate Cable facilities within the City.
C. To assist the City in the enforcement of this Ordinance and the collection of any city franchise fees or charges that may be due the City.
D. To assist the City in monitoring compliance with local, state and federal laws as they apply to grantees under this Ordinance.

§12.44.6 Registration Required: Except as provided in Section 9 hereof, all Cable providers having Cable facilities within the corporate limits of the City, and all Cable providers that offer or provide cable service to customer premises within the City, shall register with the City on forms to be provided by the Public Works Department, which shall include the following:
A. The identity and legal status of the registrant, including any affiliates.
B. The name, address and telephone number of the officer: agent or employee responsible for the accuracy of the registration statement.
C. A description of the registrant's existing or proposed Cable facilities within the City.
D. A description of the cable services that the registrant intends to offer or provide, or is currently offering or providing, to persons, firms, businesses or institutions within the City.
E. Information sufficient to determine whether the registrant is subject to public right of way franchising under this Ordinance.
F. Information sufficient to determine whether the transmission, origination or receipt of the cable television services provided or to be provided by the registrant constitutes an occupation or privilege subject to any business tax imposed by the City.
G. Information sufficient to determine that the applicant has applied for and received any certificate of authority or permit required by the FCC or the OPUC to provide cable television services within the City.
H. Information sufficient to determine that the applicant has applied for and received any construction permit, operating license or other approvals required by the FCC to have Cable facilities within the City.
I. If the registrant has applied for and received a city business license, list the license number.
J. Such other information as the City may reasonably require.

§12.44.7 Registration Fee: Each application for registration as a Cable provider shall be accompanied by a nonrefundable registration fee in an amount to be determined by resolution of the City Council.

§12.44.8 Exceptions to Registration: The following Cable providers are excepted from registration:
A. Cable providers that are owned and operated for its own use by the State or a political subdivision of this State.
§12.44.9  **Responsibility of Owner:** The owner of the Cable facilities to be constructed and, if different, the grantee, is responsible for performance of and compliance with all provisions of Sections 10 through 28.

§12.44.10  **Construction Codes:** Cable facilities shall be constructed, Installed, operated and maintained in accordance with all applicable federal, state and Local codes, rules and regulations including the National Electrical Code and the National Electrical Safety Code.

§12.44.11  **General:** No person shall commence or continue with the construction, installation or operation of Cable facilities within a public right of way except as provided in Sections 12 through 29.

§12.44.12  **Construction Permits:** No person shall construct or install any Cable facilities within a public right of way without first obtaining a construction permit, and paying the construction permit fee established in Section 18 of this Ordinance. No permit shall be issued for the construction or installation of Cable facilities within a public right of way:
A. Unless the Cable provider has first filed a registration statement with the City pursuant to Sections 6 through 9 of this Ordinance; and
B. Unless the Cable provider has first applied for and received a franchise pursuant to Sections 35 through 42 of this Ordinance.

§12.44.13  **Permit Applications:** Applications for permits to construct Cable facilities shall be submitted upon forms to be provided by the City and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:
A. That the facilities will be constructed in accordance with all applicable codes, rules and regulations.
B. That the facilities will be constructed in accordance with the franchise agreement.
C. The location and route of all facilities to be installed underground.
D. The location and route of all facilities to be located under the surface of the ground, including the line and grade proposed for the burial at all points along the route which are within the public rights of way. Existing facilities shall be differentiated on the plans from new construction.
E. The location of all existing underground utilities, conduits, ducts, pipes, mains and installations which are within the public right of way along the underground route proposed by the applicant. A cross section shall be provided showing new or existing facilities in relation to the street, curb, sidewalk or right of way.
F. The construction methods to be employed for protection of existing structures, fixtures, and facilities within or adjacent to the public rights of way.
G. The specific trees, structures, improvements, facilities and obstructions, if any, that applicant proposes to temporarily or permanently remove or relocate, together with a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction.
§12.44.14 Engineer's Certification: All permit applications shall be accompanied by the certification of a registered professional engineer that the drawings, plans and specifications submitted with the application comply with applicable technical codes, rules and regulations.

§12.44.15 Construction Schedule: All permit applications shall be accompanied by a written construction schedule, which shall include a deadline for completion of construction. The construction schedule is subject to approval by the Public Works Department.

§12.44.16 Traffic Control Plan: All permit applications shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with Uniform Manual of Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic.

§12.44.17 Construction Permit Fee: Unless otherwise provided in a franchise agreement, prior to issuance of a construction permit, the applicant shall pay a permit fee in an amount to be determined by resolution of the City Council.

§12.44.18 Issuance of Permit: If satisfied that the applications, plans and documents submitted comply with all requirements of this Ordinance and the franchise agreement, the Public Works Department shall issue a permit authorizing construction of the facilities, subject to such further conditions, restrictions or regulations affecting the time, place and manner of performing the work as they may deem necessary or appropriate.

§12.44.19 Notice of Construction: The permittee shall notify the Public Works Department not less than two (2) working days in advance of any excavation or work in the public rights of way.

§12.44.20 Locates: The permittee shall comply with the rules adopted by the Oregon Utility Notification Center regulating the notification and marking of underground facilities.

§12.44.21 Compliance with Permit: All construction practices and activities shall be in accordance with the permit and approved final plans and specifications for the facilities. The Public Works Department and their representatives shall be provided access to the work site and such further information as they may require to ensure compliance with such requirements.

§12.44.22 Display of Permit: The permittee shall maintain a copy of the construction permit and approved plans at the construction site and shall display the permit. Plans shall be made available for inspection by the Public Works Department or their representatives at all times when construction work is occurring.

§12.44.23 Noncomplying Work: Upon order of the Public Works Department, all work which does not comply with the permit, the approved plans and specifications for the work,
or the requirements of this Ordinance, shall be removed at the sole expense of the permittee.

§12.44.24 Completion of Construction: The permittee shall promptly complete all construction activities so as to minimize disruption of the city rights of way and other public and private property. All construction work within city rights of way, including restoration, must be completed within 120 days of the date of issuance of the construction permit unless an alternate schedule has been approved pursuant to the schedule submitted and approved by the appropriate city official as contemplated by Section 16.

§12.44.25 As-Built Drawings: Within sixty (60) days after completion of construction, the permittee shall furnish the City with two (2) complete sets of plans drawn to scale and certified to the City as accurately depicting the location of all Cable facilities constructed pursuant to the permit, in a format acceptable to the City Engineer.

§12.44.26 Restoration of Public Rights of Way and City Property:
A. When a permittee, or any person acting on its behalf, does any work in or affecting any public rights of way or city property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such ways or property to at least as good a condition as existed before the work was undertaken, unless otherwise directed by the City and as determined by the City Engineer.
B. If weather or other conditions do not permit the complete restoration required by this Section, the permittee shall temporarily restore the affected rights of way or property. Such temporary restoration shall be at the permittee's sole expense and the permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Any corresponding modification to the construction schedule shall be subject to approval by the City.
C. If the permittee fails to restore rights of way or property to at least as good a condition as existed before the work was undertaken, the City shall give the permittee written notice and provide the permittee a reasonable period of time not exceeding thirty (30) days to restore the rights of way or property. If, after said notice, the permittee fails to restore the rights of way or property to an as good a condition as existed before the work was undertaken, the City shall cause such restoration to be made at the expense of the permittee.
D. A permittee or other person acting in its behalf shall use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such rights of way or property.

§12.44.27 Landscape Restoration:
A. All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, repair or replacement of Cable facilities, whether such work is done pursuant to a franchise or permit shall be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of work.
B. Any trees, shrubs or other landscaping that show substantial damage within eighteen (18) months of completion of the construction, which damage can be attributed to permittee’s construction activities, must be replaced at the sole expense of the permittee.

C. All restoration work within the public rights of way shall be done in accordance with landscape plans approved by the City.

§12.44.28 Performance and Completion Bond: Unless otherwise provided in a franchise agreement, a performance bond written by a corporate surety acceptable to the City, and authorized to transact business in Oregon, equal to at least 100% of the estimated cost of constructing permittee's Cable facilities within the public rights of way of the City shall be deposited before construction is commenced.

A. The performance bond shall remain in force until sixty (60) days after substantial completion of the work, as determined in writing by the City, including restoration of public rights of way and other property affected by the construction.

B. The performance bond shall guarantee, to the satisfaction of the City:
   1. timely completion of construction;
   2. construction in compliance with applicable plans, permits, technical codes and standards;
   3. proper location of the facilities as specified by the City;
   4. restoration of the public rights of way and other property affected by the construction;
   5. the submission of “as-built” drawings after completion of the work as required by this Ordinance; and
   6. timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

LOCATION OF CABLE FACILITIES

§12.44.29 Location of Facilities: All facilities located within the public right of way shall be constructed, installed and located in accordance with the following terms and conditions, unless otherwise specified in a franchise agreement:

A. Grantee shall install its Cable facilities underground unless the City specifically permits attachments to utility poles or other aboveground facilities.

B. Grantee shall install its Cable facilities within an existing underground duct or conduit whenever surplus capacity exists within such utility facility, unless grantee demonstrates to the satisfaction of the City that such installation is not feasible.

C. A grantee with permission to install overhead facilities shall install its Cable facilities on pole attachments to existing utility poles only, and then only if surplus space is available.

D. Whenever any existing electric utilities, cable facilities or Cable facilities are located underground within a public right of way of the City, a grantee with permission to occupy the same public right of way must also locate its Cable facilities underground.

E. Whenever any new or existing electric utilities, cable facilities or Cable facilities are located or relocated underground within a public right of way of the City, a grantee that currently occupies the same public right of way shall relocate its facilities underground concurrently with the other affected utilities to minimize disruption of the public right of way,
absent extraordinary circumstances or undue hardship as determined by the City and consistent with state law.

§12.44.30 Interference with the Public Rights of Way: No grantee may locate or maintain its cable facilities so as to unreasonably interfere with the use of the public rights of way by the City, by the general public or by other persons authorized to use or be present in or upon the public rights of way. All such facilities shall be moved by the grantee, temporarily or permanently, as determined by the City at the sole expense of the grantee. All use of public rights of way shall be consistent with City codes, ordinances and regulations.

§12.44.31 Relocation or Removal of Facilities: Within thirty (30) days following written notice from the City, a grantee shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any Cable facilities within the public rights of way whenever the City shall have determined that such removal, relocation, change or alteration is reasonably necessary for:
A. The construction, repair, maintenance or installation of any city or other public improvement in or upon the public rights of way.
B. The operations of the City or other governmental entity in or upon the public rights of way.
C. The public interest.

§12.44.32 Removal of Unauthorized Facilities: Within thirty (30) days following written notice from the City, any grantee, Cable provider, or other person that owns, controls or maintains any unauthorized cable system, facility or related appurtenances within the public rights of way of the City shall, at its own expense, remove such facilities or appurtenances from the public rights of way of the City. A cable system or facility is unauthorized and subject to removal in the following circumstances:
A. One year after the expiration or termination of the grantee’s cable franchise.
B. Upon abandonment of a facility within the public rights of way of the City. A facility will be considered abandoned when it is deactivated, out of service, or not used for its intended and authorized purpose for a period of ninety (90) days or longer. A facility will not be considered abandoned if it is temporarily out of service during performance of repairs or if the facility is being replaced.
C. If the system or facility was constructed or installed without the prior grant of a cable franchise.
D. If the system or facility was constructed or installed without the prior issuance of a required construction permit.
E. If the system or facility was constructed or installed at a location not permitted by the grantee’s cable franchise or other legally sufficient permit.

§12.44.33 Coordination of Construction Activities: All grantees are required to cooperate with the City and with each other.
A. By January 1 of each year, grantees shall provide the City with a schedule of their proposed construction activities in, around or that may affect the public rights of way.
B. Each grantee shall meet with the City, other grantees and users of the public rights
of way annually or as determined by the City to schedule and coordinate construction in the public rights of way.
C. All construction locations, activities and schedules shall be coordinated, as ordered by the City Engineer, to minimize public inconvenience, disruption or damages.

CABLE FRANCHISE
§12.44.34 Cable franchise: A Cable franchise shall be required of any Cable provider who desires to occupy public rights of way of the City.

§12.44.35 Application: Any person that desires a Cable franchise shall file an application with Public Works Department which includes the following information:
A. The identity of the applicant, including all affiliates of the applicant.
B. A description of the cable television services that are or will be offered or provided by the applicant over its Cable facilities.
C. A description of the transmission medium that is being used or will be used by the applicant to offer or provide such cable television services.
D. Engineering plans, specifications and a network map of the facilities located or to be located within the City, all in sufficient detail to identify:
   1. the location and route requested for applicant's proposed Cable facilities;
   2. the location of all aboveground and underground public utility, telecommunication, cable, water, sewer, storm drainage and other facilities in the public rights of way along the proposed route;
   3. the location(s), if any, for interconnection with the Cable facilities of other Cable providers;
E. If applicant is proposing to install aboveground facilities, to the extent that they will be using utility poles, evidence that surplus space is available for locating its Cable facilities on existing utility poles along the proposed route.
F. If applicant is proposing an underground installation in existing ducts or conduits within the public rights of way, provide information in sufficient detail to identify:
   1. the excess capacity currently available in such ducts or conduits before installation of applicant's Cable facilities;
   2. the excess capacity, if any, that will exist in such ducts or conduits after installation of applicant's Cable facilities.
G. If applicant is proposing an underground installation within new ducts or conduits to be constructed within the public rights of way:
   1. the location proposed for the new ducts or conduits;
   2. the excess capacity that will exist in such ducts or conduits after the installation of applicant's Cable facilities.
H. The area or areas of the City the applicant desires to serve and a preliminary construction schedule for build-out to the entire franchise area.
I. Financial statements prepared in accordance with generally accepted accounting principles demonstrating the applicant's financial ability to construct, operate, maintain, relocate and remove the facilities.
J. Information in sufficient detail to establish the applicant's technical qualifications, experience and expertise regarding the Cable facilities and services described in the application.
K. Information to establish that the applicant has obtained all other governmental approvals and permits to construct and operate the facilities and to offer or provide the cable television services proposed.
L. Whether the applicant intends to provide cable service, video dial tone service or other video programming service.
M. An accurate map showing the location of any existing Cable facilities in the City that applicant intends to use or lease.
N. A description of any services or facilities that the applicant will offer or make available to the City and other public, educational and governmental institutions and at what cost.
O. A description of applicant's access and line extension policies.
P. Such other information as may be requested by the City Manager or their designee.

§12.44.36 Application and Review Fee:
A. Applicant shall reimburse the City for such reasonable costs as the City incurs in entering into the franchise agreement.
B. An application and review fee of $2,000 shall be deposited with the City as part of the application filed pursuant to Section 36 above. Expenses exceeding the deposit will be billed to the applicant or the unused portion of the deposit will be returned to the applicant following the determination granting or denying the franchise.

§12.44.37 Determination by the City: The City shall issue a written determination granting or denying the application in whole or in part, applying the standards listed below. If the application is denied, the written determination shall include the reasons for denial. The standards to be applied by City are:
A. The financial and technical ability of the applicant.
B. The legal capacity of the applicant.
C. The capacity of the public rights of way to accommodate the applicant's proposed facilities.
D. The capacity of the public rights of way to accommodate additional utility and Cable facilities if the franchise is granted.
E. The damage or disruption, if any, of public or private facilities, improvements, service, travel or landscaping if the franchise is granted.
F. The public interest in minimizing the cost and disruption of construction within the public rights of way.
G. The service that applicant will provide to the community and region.
H. The effect, if any, on public health, safety and welfare if the franchise is granted.
I. The availability of alternate routes and/or locations for the proposed facilities.
J. Applicable federal and state laws, regulations and policies.

§12.44.38 Rights Granted: No franchise granted pursuant to this Ordinance shall convey any right, title or interest in the public rights of way, but shall be deemed a grant to use and occupy the public rights of way for the limited purposes and term stated in the franchise agreement.
§12.44.39  **Term of Grant:** Unless otherwise specified in a franchise agreement, a Cable franchise granted hereunder shall be in effect for a term of five years.

§12.44.40  **Franchise Territory:** Unless otherwise specified in a franchise agreement, a Cable franchise granted hereunder shall be limited to a specific geographic area of the City to be served by the franchise grantee, and the public rights of way necessary to serve such areas.

§12.44.41  **Franchise Fee:** Each franchise granted by the City is subject to the City's right, which is expressly reserved, to fix a fair and reasonable compensation to be paid for the privileges granted; provided, nothing in this Ordinance shall prohibit the City and a grantee from agreeing to the compensation to be paid. The compensation shall be subject to the specific payment terms and conditions contained in the franchise agreement.

§12.44.42  **Amendment of Grant:** Conditions for amending a franchise:
A. A new application and grant shall be required of any Cable provider that desires to extend or locate its Cable facilities in public rights of way of the City which are not included in a franchise previously granted under this Ordinance.
B. If ordered by the City to locate or relocate its Cable facilities in public rights of way not included in a previously granted franchise, the City shall grant an amendment without further application.
C. A new application and grant shall be required of any Cable provider that desires to provide a service which was not included in a franchise previously granted under this Ordinance.

§12.44.43  **Renewal Applications:** A grantee that desires to renew its franchise under this Ordinance shall, not less than 180 days before expiration of the current agreement, file an application with the City for renewal of its franchise which shall include the following information:
A. The information required pursuant to Section 36 of this Article.
B. Any information required pursuant to the franchise agreement between the City and the grantee.

§12.44.44  **Renewal Determinations:** Within 90 days after receiving a complete application under Section 44 hereof, the City shall issue a written determination granting or denying the renewal application in whole or in part, applying the following standards. If the renewal application is denied, the written determination shall include the reasons for non-renewal.
A. The financial and technical ability of the applicant.
B. The legal ability of the applicant.
C. The continuing capacity of the public rights of way to accommodate the applicant's existing and proposed facilities.
D. The applicant's compliance with the requirements of this Ordinance and the franchise agreement.
E. Applicable federal, state and local laws, rules and policies.
F. Such other factors as may demonstrate that the continued grant to use the public rights of way will serve the community interest.

§12.44.45 Obligation to Cure As a Condition of Renewal: No franchise shall be renewed until any ongoing violations or defaults in the grantee's performance of the agreement, or of the requirements of this Ordinance have been cured, or a plan detailing the corrective action to be taken by the grantee has been approved by the City.

§12.44.46 Assignments or Transfers of System or Franchise: Ownership or control of a majority interest in a cable system or franchise may not, directly or indirectly, be transferred, assigned or disposed of by sale, lease, merger, consolidation or other act of the grantee, by operation of law or otherwise, without the prior consent of the City, which consent shall not be unreasonably withheld or delayed, and then only on such reasonable conditions as may be prescribed in such consent.
A. Grantee and the proposed assignee or transferee of the franchise or system shall provide and certify the following information to the City not less than one hundred and twenty (120) days prior to the proposed date of transfer:
   1. Complete information setting forth the nature, terms and condition of the proposed transfer or assignment;
   2. All information required of a Cable franchise applicant pursuant Section 36 with respect to the proposed transferee or assignee;
   3. Any other information reasonably required by the City.
B. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial and other requisite qualifications to own, hold and operate the cable system pursuant to this Ordinance.
C. Unless otherwise provided in a franchise agreement, the grantee shall reimburse the City for all direct and indirect fees, costs, and expenses reasonably incurred by the City in considering a request to transfer or assign a Cable franchise.
D. Any transfer or assignment of a Cable franchise, system or integral part of a system without prior approval of the City under this Section or pursuant to a franchise agreement shall be void and is cause for revocation of the franchise.

§12.44.47 Revocation or Termination of Franchise: A franchise to use or occupy public rights of way of the City may be revoked for the following reasons:
A. Construction or operation in the City or in the public rights of way of the City without a construction permit.
B. Construction or operation at an unauthorized location.
C. Failure to comply with Section 47 herein with respect to sale, transfer or assignment of a cable system or franchise.
D. Misrepresentation by or on behalf of a grantee in any application to the City.
E. Abandonment of Cable facilities in the public rights of way.
F. Failure to relocate or remove facilities as required in this Ordinance.
G. Failure to pay taxes, compensation, fees or costs when and as due the City.
H. Insolvency or bankruptcy of the grantee.
I. Violation of material provisions of this Ordinance.
J. Violation of the material terms of a franchise agreement.
§12.44.48 Notice and Duty to Cure: In the event that the City believes that grounds exist for revocation of a franchise, the City shall give the grantee written notice of the apparent violation or noncompliance, providing a short and concise statement of the nature and general facts of the violation or noncompliance, and providing the grantee a reasonable period of time not exceeding thirty (30) days to furnish evidence:
A. That corrective action has been, or is being actively and expeditiously pursued, to remedy the violation or noncompliance.
B. That rebuts the alleged violation or noncompliance.
C. That it would be in the public interest to impose some penalty or sanction, less than revocation.

§12.44.49 Public Hearing: In the event that a grantee fails to provide evidence reasonably satisfactory to the City as provided in Section 49 hereof, the City Manager shall refer the apparent violation or non-compliance to the City Council. The City Council shall provide the grantee with notice and a reasonable opportunity to be heard concerning the matter.

§12.44.50 Standards for Revocation or Lesser Sanctions: If persuaded that the grantee has violated or failed to comply with material provisions of this Ordinance, or of a franchise agreement, the City Council shall determine whether to revoke the franchise, or to establish some lesser sanction and cure, considering the nature, circumstances, extent and gravity of the violation as reflected by one or more of the following factors:
A. Whether the misconduct was egregious.
B. Whether substantial harm resulted.
C. Whether the violation was intentional.
D. Whether there is a history of prior violations of the same or other requirements.
E. Whether there is a history of overall compliance.
F. Whether the violation was voluntarily disclosed, admitted or cured.

§12.44.51 Other City Costs: All grantees shall, within thirty (30) days after written demand therefor, reimburse the City for all direct and indirect costs and expenses incurred by the City in connection with any modification, amendment, renewal or transfer of the franchise or any franchise agreement.

GENERAL FRANCHISE TERMS
§12.44.52 Facilities: Each grantee shall provide the City with an accurate map or maps certifying the location of all Cable facilities within the public rights of way. Each grantee shall provide updated maps annually.

§12.44.53 Damage to Grantee's Facilities: Unless directly and proximately caused by willful, intentional or malicious acts by the City, the City shall not be liable for any damage to or loss of any cable facility within the public rights of way of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the public rights of way by or on behalf of the City, or for any consequential losses resulting directly or indirectly therefrom.
§12.44.54 **Duty to Provide Information:** Within ten (10) days of a written request from the City, each grantee shall furnish the City with information sufficient to demonstrate:
A. That grantee has complied with all requirements of this Ordinance.
B. All books, records, maps and other documents, maintained by the grantee with respect to its facilities within the public rights of way shall be made available for inspection by the City at reasonable times and intervals.

§12.44.55 **Nondiscrimination:** A grantee shall make its cable television services available to any customer within its franchise area who shall request such service, without discrimination as to the terms, conditions, rates or charges for grantee's services; provided, however, that nothing in this Ordinance shall prohibit a grantee from making any reasonable classifications among differently situated customers.

§12.44.56 **Service to the City:** If the City contracts for the use of telecommunication facilities, telecommunication services, installation, or maintenance from the grantee, the grantee shall charge the City the grantee's most favorable rate offered at the time of the request charged to a similar user within Oregon for a similar volume of service, subject to any of grantee's tariffs or price lists on file with the OPUC. With the City's permission, the grantee may deduct the applicable charges from fee payments. Other terms and conditions of such services may be specified in a separate agreement between the City and grantee.

§12.44.57 **Compensation for City Property:** If any right is granted, by lease, franchise or other manner, to use and occupy city property for the installation of Cable facilities, the compensation to be paid for such right and use shall be fixed by the City.

§12.44.58 **Leased Capacity:** A grantee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its Customers; provided that the grantee shall notify the City that such lease or agreement has been granted to a customer or lessee.

§12.44.59 **Grantee Insurance:** Unless otherwise provided in a franchise agreement, each grantee shall, as a condition of the grant, secure and maintain the following liability insurance policies insuring both the grantee and the City, and its elected and appointed officers, officials, agents and employees as co-insured:
A. Comprehensive general liability insurance with limits not less than:
   1. Three Million Dollars ($3,000,000) for bodily injury or death to each person;
   2. Three Million Dollars ($3,000,000) for property damage resulting from any one accident; and,
   3. Three Million Dollars ($3,000,000) for all other types of liability.
B. Automobile liability for owned, non-owned and hired vehicles with a limit of One Million Dollars ($1,000,000) for each person and Three Million Dollars ($3,000,000) for each accident.
C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars ($1,000,000).
D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than Three Million Dollars ($3,000,000).

E. The liability insurance policies required by this Section shall be maintained by the grantee throughout the term of the Cable franchise, and such other period of time during which the grantee is operating without a franchise hereunder, or is engaged in the removal of its Cable facilities. Each such insurance policy shall contain the following endorsement: "It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the City, by registered mail, of a written notice addressed to the Public Works of such intent to cancel or not to renew."

F. Within sixty (60) days after receipt by the City of said notice, and in no event later than thirty (30) days prior to said cancellation, the grantee shall obtain and furnish to the City evidence that the grantee meets requirements of this Section.

§12.44.60 **General Indemnification:** Each franchise agreement shall include, to the extent permitted by law, grantee's express undertaking to defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from, and against any and all damages, losses and expenses, including reasonable attorney's fees and costs of suit or defense, arising out of, resulting from or alleged to arise out of or result from the negligent, careless or wrongful acts, omissions, failures to act or misconduct of the grantee or its affiliates, officers, employees, agents, contractors or subcontractors in the construction, operation, maintenance, repair or removal of its Cable facilities, and in providing or offering cable television services over the facilities or network, whether such acts or omissions are authorized, allowed or prohibited by this Ordinance or by a franchise agreement made or entered into pursuant to this Ordinance.

§12.44.61 **Performance Surety:** Before a franchise granted pursuant to this Ordinance is effective and as necessary thereafter, the grantee shall provide a performance bond, in form and substance acceptable to the City, as security for the full and complete performance of a franchise granted under this Ordinance, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the grantee to comply with the codes, ordinances, rules, regulations or permits of the City. This obligation is in addition to the performance bond required by Section 29 for construction of facilities.

GENERAL PROVISIONS

§12.44.62 **Governing Law:** Any franchise granted under this Ordinance is subject to the provisions of the Constitution and laws of the United States, and the State of Oregon and the ordinances and Charter of the City.

§12.44.63 **Written Agreement:** No franchise shall be granted hereunder unless the agreement is in writing.

§12.44.64 **Nonexclusive Grant:** No franchise granted under this Ordinance shall confer any exclusive right, privilege, license or franchise to occupy or use the public rights of way of the City for delivery of cable television services or any other purposes.
§12.44.65  **Severability and Preemption:** If any article, section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this Ordinance is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, or superseded by state or federal legislation, rules, regulations or decision, the remainder of the Ordinance shall not be affected thereby but shall be deemed as a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof, and each remaining section, subsection, sentence, clause, phrase, provision, condition, covenant and portion of this Ordinance shall be valid and enforceable to the fullest extent permitted by law. In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Ordinance, then the provision shall be read to be preempted to the extent and or the time required by law. In the event such federal or state law, rules or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding, without the requirement of further action on the part of the City, and any amendments hereto.

§12.44.66  **Penalties:** Any person found guilty of violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this Ordinance shall be fined not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00) for each offense. A separate and distinct offense shall be deemed committed each day on which a violation occurs.

§12.44.67  **Other Remedies:** Nothing in this Ordinance shall be construed as limiting any judicial remedies that the City may have, at law or in equity, for enforcement of this Ordinance.

§12.44.68  **Captions:** The captions to sections throughout this Ordinance are intended solely to facilitate reading and reference to the sections and provisions contained herein. Such captions shall not affect the meaning or interpretation of this Ordinance.

§12.44.69  **Compliance with Laws:** Any grantee under this Ordinance shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all ordinances, resolutions, rules and regulations of the City heretofore or hereafter adopted or established during the entire term any franchise granted under this Ordinance, which are relevant and relate to the construction, maintenance and operation of a cable system.

§12.44.70  **Consent:** Wherever the consent of either the City or of the grantee is specifically required by this Ordinance or in a franchise granted, such consent will not be unreasonably withheld.

§12.44.71  **Application to Existing Ordinance and Agreements:** There are no existing franchises extant for cable services.
§12.44.72  Confidentiality: The City agrees to use its best efforts to preserve the confidentiality of information as requested by a grantee, to the extent permitted by the Oregon Public Records Law. [Ord. 1402, 12-31-01]
Chapter 13.1 PUBLIC UTILITIES GENERALLY

§13.1.1 Public utility defined.
As used in this chapter, the term "public utility" means and includes all persons, firms and corporations serving customers within the city or running transmission lines in or through the city for the service or transmission of electricity, water, gas or telephone service. [Prior code § 72.110]

§13.1.2 Alteration of services-Permit required.
No public utility operating within the city without a franchise from the city shall extend, alter or modify its services or facilities without having first obtained a permit therefor from the city recorder as provided in this chapter. [Prior code § 72.120]

§13.1.3 Permit application-Fee.
Permits as herein provided shall be issued only upon a written application by the public utility upon forms to be prescribed by the city recorder with the approval of the city council. Each application shall be accompanied by a fee equal to one percent of the cost of the proposed extension, alteration or modification, but in no event less than ten dollars. [Prior code § 72.130]

Each application for a permit shall be accompanied by a written agreement by the public utility to indemnify the city for all damage to city property or facilities and to indemnify and save the city harmless from the claims and demands of all persons for personal injury and property damage caused directly or indirectly as a result of the applicant's work and activities under such permit. [Prior code § 72.140]

§13.1.5 Application approval by city council.
Before approval of any such application and issuance of any permit the city recorder shall submit the application to the city council which shall first determine that the work covered by the application will not interfere with any programs of the city or with the use by the city of streets and other facilities, and that the work will be carried out in such a manner as to afford maximum protection to the public. [Prior code § 72.150]

§13.1.6 Relocation of facilities.
Any public utility operating within the city without a franchise from the city shall relocate their facilities upon ten days' written notice given by the city pursuant to a determination by the city council that such relocation is necessary in order to accommodate city improvements of any nature. In the event that public utility shall not comply with the notice within the prescribed time, the city may, at its discretion, remove or relocate such facilities and charge the cost of such removal or relocation to the public utility owning the same. The time allowed for relocating as prescribed herein may be extended upon a showing by
the public utility of the necessity for such extension. [Prior code § 72.160]

§13.1.7 Annual fee.
All public utilities operating within the city without a franchise shall pay to the city an annual fee, which shall be payable quarterly on or before 15th of March, June, September, and December of each year for the periods ending February 28, May 31, August 31, and November 30 prior to the payable date, equal to seven percent of its gross annual receipts obtained from its subscribers and customers residing within the city. Gross annual receipts as used herein shall include all sums obtained from city subscribers and customers including service charges, late charges, connection fees, or other revenues obtained from said subscribers and customers. [Ord. 1417, 02-11-03] [Prior code §72.170]

Chapter 13.2 Reserved for Expansion
Chapter 13.3 Reserved for Expansion
Chapter 13.4 Reserved for Expansion
ARTICLE I. GENERALLY

§13.5.1 Definitions.
“Commercial and industrial service” means service available to commercial and industrial customers, including mercantile establishments, stores, offices, public buildings not otherwise classified, public and private hospitals, schools, churches, mercantile and industrial establishments combined with residences, and apartment houses except those in which service to each apartment is metered separately.

“Dwelling unit” means a facility designed for permanent or semi-permanent occupancy and provided with kitchen, sleeping and sanitary facilities.

“Fire protection service” means an unmetered connection to the public water mains intended only for the extinguishment of fires and the flushing necessary for its proper maintenance.

“Residential service” means service to single-family residences and to individual apartments or flats where service is furnished through a separate meter for each individual apartment or other such dwelling unit.

“Service lines” means the line or pipe connecting the water main to the water meter.

“Temporary service” means a line connecting the nearest water main to the premises, in lieu of a permanent main adjacent to the users' property.

“Water main” means a pipe or conduit two inches or larger in inside diameter laid in a public street, right of way or easement to which a service line is connected. Generally, water mains smaller than six inches in inside diameter will not be permitted. [Prior code § 73.010]

§13.5.2 Construction to conform to standards.
All public or private water distribution systems to be connected to the municipal water system, whether publicly or privately constructed, shall conform to standards of design, sizing, materials and workmanship prescribed by the city. Failure to meet standards shall be grounds for refusal to allow connection to the municipal water system. Service connections will not be made until the system is approved and accepted. [Prior code § 73.015]

§13.5.3 Construction inspection and approval.
Reasonable notice shall be given to the city to inspect and test all work in connection with the construction of water mains by private contractors. Mains shall meet construction standards, and standards for leakage tests and bacteriological tests prior to acceptance. [Prior code § 73.020]

§13.5.4 Tampering with pipes unlawful.
Connections to water distribution mains for the purpose of extending such lines or for providing water service shall be made only by employees of the city in the normal performance of their duties. It is unlawful for any person to attach to or to detach from any water main or connection through which water is supplied by the city from the municipal water system, or to interfere in any manner or tamper with such pipes or connections,
without having first obtained the written consent of the city. [Prior code § 73.025]

§13.5.5 Valves and appurtenances-Unlawful to operate.
It is unlawful for any person, other than an employee of the public works department in the normal performance of that person’s duties, to operate valves and appurtenances connected with the municipal water system. In addition, fire hydrants may be operated by personnel of a fire department or district in performance of their regular duties. Fire hydrants shall not be used for purposes other than firefighting, flushing mains and filling street cleaning and similar equipment, unless application for service has been made and the meter set to measure water use for private purposes, as provided in Section 13.5.12. Operation of fire hydrants by use of any wrench other than the standard fire hydrant wrench designed for that purpose is prohibited. [Prior code § 73.030]

§13.5.6 Public fire protection.
Consistent with its primary purpose of providing adequate potable water for residential, commercial and industrial use, the water distribution system shall be designed to provide public fire protection by means of fire hydrants located as directed by the chief of Polk County Fire District #1 or a corresponding official in any fire district that may be authorized to serve the city. Fire hydrants shall be installed and maintained at the expense of the fire department or fire district, except that hydrants in new subdivisions shall be paid for by the developer. The main system shall be designed insofar as possible to provide fire flows recommended by the insurance services office. All mains, constructed or reconstructed, upon which fire protection depends, shall be a minimum of six inches in diameter and wherever possible, shall be looped to provide flow from two or more directions. [Prior code § 73.035]

§13.5.7 Contamination of water unlawful.
A. It is unlawful for any person to in any way contaminate or pollute the water in the reservoirs or pipes of the municipal water system or in any fountain, hydrant or source or place of storage of the water supply of the city or any of its inhabitants.
B. It is unlawful for any person to throw any rubbish, debris or any other thing into any water reservoir belonging to the city. [Prior code § 73.040]

§13.5.8 Special contracts to sell water.
Notwithstanding the provisions of this chapter, the Independence city council may, at its discretion, enter into special contracts to sell water at other than the water rates established by this chapter in situations where special considerations exist justifying charges other than regular rates. [Prior code § 73.045]

ARTICLE II. CONDITIONS OF SERVICE

§13.5.9 Application for connection to city water system.
Each person desiring to connect to the municipal water system shall make application in conformance with the requirements of IMC 13.20.3.
§13.5.10 Service lines and meters-sizing.  
The size of the service line and meter shall generally be at the option of the user. The city shall ensure that the size of the connection requested is reasonable for the use intended and is within the capabilities of the distribution system without diminishing the quality of service to other users in the vicinity. Minimum size of connection shall be three quarters of an inch inside diameter. The size of meter shall not exceed the size of service line. [Prior code § 73.055]

§13.5.11 Meters to be owned by city.  
All water meters shall be owned and maintained by the city. Meters may be tested, repaired, relocated and interchanged by the city as required without regard to who paid the initial cost of the meter and installation so long as the premises continues to be supplied through the meter adequate for its needs. [Prior code § 73.060]

§13.5.12 Users to be individually metered.  
Each premises served by the municipal water system shall be individually metered. Service to more than one user, or multiple meters for the same user, shall not be combined for the purpose of obtaining a more favorable water rate. Multiple unit housing complexes, condominiums, mobile home parks, and similar users may be served through master meters if all the dwelling units are under common ownership or under the control of a homeowner association. [Prior code § 73.065]

§13.5.13 Meter accuracy.  
The city will, upon written request, test any customer’s meter without cost to such customer unless such tests are requested more than once every twelve months. The user may be charged for making additional tests during an annual period. All meters used to measure quantities of water for determining charges shall be maintained in such condition as to register within an accuracy of plus or minus two percent the amount of water passing through the meter. Meters used and accuracy of measurements shall conform to standards set by the American Water Works Association. If a meter is found to register water use with an error greater than two percent, billings shall be adjusted to correct the error for a period not exceeding the six months prior to the test. [Prior code § 73.070]

§13.5.14 Meter-Change in size.  
Size of the meter serving a premises may be changed at the request of the user upon payment of the estimated cost of making the change. Increase in size will require increase in the size of the service line in most cases. Meter size will not be changed for any premises more frequently than once per year. Meter size shall determine the minimum charge. [Prior code § 73.075]

§13.5.15 Connection of service.  
A. The point of delivery shall be at a mutually acceptable location, from the city water main adjacent to the property line, or curb line of the premises upon which the water service is to be utilized by the user.  
B. The city shall not be required to install or maintain more than one service extension from its distribution mains to supply the same class of service to any one user on any
particular premises. Each user shall furnish, own, install and maintain at the user's own ex-

C. Where service is to be newly established at a point of delivery, requiring that the
city install a service pipe, the user shall, at the time of application for service, pay the city a
connection charge, as set forth in Section 13.5.35.
D. All plumbing and equipment located beyond the point of delivery, including outside
hydrants and faucets, shall be connected to the service extension, at the expense of the
user and in such a manner that all water used by the user shall pass through the meter.

§13.5.16 Access to premises.
Employees of the city shall have access, upon proper identification, to all premises at
which city water is being used for the purpose of determining that no hazard exists to the
public water system as a result of the manner in which the water is being used, and to
allow the city employees to take readings from any water meter located on the premises.
Such access shall be at reasonable hours and shall not interfere with the customer's
normal use of the person's premises. [Prior code § 73.080]

§13.5.17 Damage to facilities-User responsible.
Each user of water shall protect the user's facilities so that hot water cannot be returned to
the water mains. Users will be charged for the expense of repairs for meters and pipe lines
damaged by hot water. [Prior code § 73.090]

§13.5.18 Private booster pumps prohibited.
No booster pumps shall be installed by a user for the purpose of increasing water pressure
or delivery without the express written permission of the city. [Prior code § 73.095]

§13.5.19 Interruption of service-Notification.
Wherever practical, users will be notified in advance of any planned interruption of service
or shut down of mains for repair or alterations. The city assumes no responsibility for
providing uninterrupted water service and will not be liable for damages resulting from
such interruptions. [Prior code § 73.100]

§13.5.20 Plumbing to be kept in repair.
A. It is the responsibility of the user to keep the user's piping and fixtures in good
repair to prevent damage to premises and waste of water. The city shall not be responsible
for damage to property resulting from turning on or continuing water service to premises
with defective plumbing.
B. The user shall be responsible for the installation and maintenance of all piping,
plumbing and equipment on the user's premises connected or to be connected to city's
distribution system. The city shall not be liable for any loss or damage of any nature
whatsoever caused by any defect in the user's piping or the user's equipment upon the
premises of the user. The city does not assume the duty of inspecting the user's piping,
plumbing and equipment and shall not be responsible therefor. This section shall not apply
to any inspection responsibilities assumed by the city building inspector in conjunction with
issuance of building permits. [Prior code § 73.105]
§13.5.21 Electrical grounding.
The city shall not be responsible for the use of its water distribution system for grounding of electrical circuits. Use of nonmetallic materials in mains and service lines precludes reliance on the water system for electrical grounding. [Prior code § 73.110]

§13.5.22 Temporary service agreement.
A. In certain instances where, in the judgment of the City Manager, construction of a water main to serve a given piece of property is not advisable or feasible, water service may be provided by a temporary connection to some other main, pending construction of a permanent main to serve the property. Such temporary connection shall be acknowledged by the applicant, who shall execute a waiver of remonstrance applicable to assessment for a permanent water main in the future. Such acknowledgment and waiver shall be recorded in deed records of Polk County, and shall be binding upon subsequent owners.
B. When temporary service is desired, the applicant may be required to advance to the city a sum equal to the estimated cost of labor and material, including reasonable overhead charges, necessary to install and remove such service connection. At the termination of the service period, that portion of the advance which remains after deduction of the actual costs of labor and material necessary to connect and disconnect such service (less the salvage value of material removed), will be refunded to the applicant, after application of the advance to any unpaid fees or charges for water service. [Prior code § 73.115]

§13.5.23 Abandonment of service lines and water mains.
A. The City Manager may cause the removal or abandonment of any unused service line when its further need is not apparent and when in the City Manager’s judgment removal is appropriate to reduce leakage or future maintenance responsibility. Subsequent service to the properties that would have been served by the unused line shall be treated as a new service.
B. Within ninety days of the date of written notice from the city, customers shall connect at their expense to the new meter location provided at the customer's property line where a new water main is constructed to serve the property and there is an abandonment of the existing water main. [Prior code § 73.120]

§13.5.24 Temporary water pump station-Installation.
A. In certain instances where, in the judgment of the City Manager, it is not practicable to provide adequate water flows to any area through the use of traditional water service methods, the city may, at its option, elect to serve the area through the installation and operation of a temporary water pump station.
B. As used in this section and Section 13.5.25, unless the context otherwise requires, a “temporary water pump station” or “temporary pump station” means any self-contained pump station designed, constructed and installed by the city with the intent of future relocation. [Prior code § 73.125]

§13.5.25 Temporary water pump station-Payment.
A. At such time that any person requests water service requiring a temporary pump
station, the City Manager shall review such request and if approved, shall cause the improvement to be installed.

B. The person requesting such service, and any person who shall make use of the pump system during future operation, shall pay for such service in a lump sum, before connection to the system, according to the following formula:
   1. Total payment equals the sum of fire flow plus domestic water use, calculated in gallons per minute, times ten dollars per gallon per minute;
   2. Fire flow equals one thousand gallons per minute unless otherwise specified by the chief local fire official;
   3. Domestic water use shall be calculated according to the water demand estimate method used in the Uniform Plumbing Code, where one housing unit shall be considered to be thirty fixture units.

C. All funds paid to the city pursuant to this section shall be submitted to the water fund. [Prior code § 73.130]

§13.5.26 Sprinkling and irrigation restricted.
The city may restrict the use of water for sprinkling and irrigation purposes at such times and in such manner as may be necessary to maintain adequate service for other purposes. [Prior code § 73.135]

ARTICLE III. CHARGES, BILLINGS AND COLLECTIONS

§13.5.27 Water fund created.
A special fund is created known as the water fund, and the Finance Director shall deposit in this fund all proceeds of the charges imposed under this chapter. The water fund shall be used solely and exclusively for paying all or part or any part of the cost of operation, maintenance and repair of the water system; administration costs; planning and construction; and payments of the principal and interest on any debts of the city water system.

§13.5.28 Fees, rates and charges-Council authority.
All fees, rates and charges for water services shall be established by resolution of the city council.

§13.5.29 Water service billing.
A. All billings for water service shall be made monthly on the basis of the amount of water used during the previous monthly period, and the monthly minimum (‘base rate’). No reduction of amounts billed will be made by reason of loss of water due to waste caused by leakage of equipment of the customer, except as provided in Section 13.20.11 (A).
B. If, for any reason, it is impossible or impractical to read the meter, consumption may be estimated, based on the previous history of use, until the meter can be read.
C. Water billing and collection procedures shall be performed as provided in Chapter 13.20 of the Municipal Code.

§13.5.30 Computation and collection of charges.
All collections for user service charges shall be made by the appropriate city department. User service charges shall be computed and payable as provided in this chapter.
§13.5.31 Billing-Mailing address.
Bills for water service charges shall be mailed to the address specified in the application for permit to make the connection, or the address in the application for water service submitted pursuant to Chapter 13.20 whichever was submitted most recently, unless or until a different owner or user of the property is reported in writing to the City not less than 25 days before the next billing.

§13.5.32 Fraud prevention devices.
The city reserves the right to install such meters or other devices as may be necessary for the detection and prevention of fraud or waste without notice to the customer. Whenever flat rate service is furnished for a special use and a demonstrated abuse of such service occurs, the city may, upon written notice to the customer, meter such service and bill, under an applicable schedule, for water supplied. [Prior code §73.155]

§13.5.33 Damage to meter equipment-user responsible.
Should damage result to metering equipment by reason of the customer's molestation or willful neglect of the equipment, the city will repair or replace such equipment and may require payment by the customer for the costs incurred. [Prior code § 73.160]

§13.5.34 Rate schedule.
A. The monthly rates and charges for residential, commercial and industrial water service shall be adopted by resolution of the Council. [Amended by Ord. 1429 §1, 02-24-04]
B. For all services outside the corporate limits of the city, a surcharge of one hundred percent shall be added to the inside rate and charges, except as otherwise established by written agreement approved by the city council. [Ord. 1429 §1, 2004; Ord. 1231 §1, 1991; Ord. 1176 § 1, 1988; Ord. 1166 §§ 1, 2, 1987; prior code § 73.190]

§13.5.35 Service connections-Charges.
A. Where service is to be newly established at a point of delivery, requiring that the city install a service pipe, the customer shall, at the time of application for service, pay the city a connection charge. The connection charge shall be established by resolution of the city council.
B. Costs of the meter will be paid by the customer for all meters and they become property of the city. [Prior code § 73.195]
ARTICLE IV. CROSS-CONNECTION AND BACKFLOW

ARTICLE V. EXTENSION OF WATER MAINS

§13.5.47 Extensions.
A. Extension of mains will be made by the city, where grades of streets, avenues, etc., have been established by law, along streets dedicated to public use, county roads, highways or upon other satisfactory rights-of-way; provided, that pressure conditions permit service to the desired location, that sanitary conditions do not render the extension inadvisable, and that the city has sufficient water supply developed to provide for the additional demands without serious detriment to those already being served.
B. An applicant for water service requiring an extension of eight-inch diameter or smaller main shall advance to the city an amount determined by multiplying the footage of main to be installed by:

\[
\begin{align*}
\text{\$} & \quad 9.50 \text{ for two-inch and four-inch diameter mains} \\
\text{\$} & \quad 15.40 \text{ for six-inch diameter mains} \\
\text{\$} & \quad 21.80 \text{ for eight-inch diameter mains}
\end{align*}
\]

(*Mains of 2 and 4-inch diameter are of nonstandard size and are installed only where, in city's judgment, there is no possibility of further extensions or of future requirement for fire protection service.)

and then reducing the product so obtained by the extension allowance determined in accordance with subdivision (3)(a) of this subsection. For mains larger than eight-inch diameter, the applicant shall advance the estimated installed costs less the extension allowance. The size of mains will be determined by the city based on present service requirements and if expectations of the future expansion of the water system. Where projects require the extension of mains having diameters larger than eight inches, mains that cross over canyons, water courses or other obstacles on supports above the ground or that require boring under highways, railroad tracks or other obstacles, additional participation by applicant shall be required. The applicant will also be required to advance the costs of breaking and replacing pavements where mains must be installed in streets to supplement or to increase the capacity of existing mains; provided, that such mains have been in existence for a period of not less than ten years. Such money advance to the city will be regarded as customer advance and all or part may be subject to refund to the applicant or to applicant's assignee when such assignment is on file with the city, in accordance with the following:

1. General Extension. During the first five years following completion of the extensions, customer advances will be subject to partial refunds in the event that the service pipes of applicant's permanent service, other than for fire protection services are connected directly to the mains for which an advance was paid. The city shall determine the amount of the partial refund which shall be based on the length and feet and the number of customers being served by that part of the extension to be used to serve the applicant. The cash advance, if any, to be made by the applicant and refunds of cash advances, if any, to be made to existing customers shall be determined as if the applicant had been among those for whom the extension was originally constructed and shall be reduced by one-sixtieth part for each full month the extension has been in service. In no event will the total refund to any customer exceed the customer's advance and no refunds will be made after the
extension has been in service for five years.

2. Extensions to Service Tracts or Subdivisions. For a period not exceeding five years from the date of the completion of the extension, refunds will be made to the applicant or to the person’s assignees when such assignment is on file with the city, for each bona fide and permanent service pipe, other than for fire protection services, connected directly to the extension for which an advance has been made. The amount of the refund will be the amount of the extension allowance for each customer less one-sixtieth of such amount of each full month from the date of completion of the extension to the date of the connection of service to the new customer; provided, however, that the total payments thus made by the city shall not exceed the amount of the original advance without interest, and that no refunds will be made unless the number of actual active services exceeds the number for which refunds have already been made. Refunds will be made once each year for a period of five years for each permanent connection during the preceding twelve months.

3. Provisions Applicable to All Extensions.
   a. For each permanent, full time, residential customer the extension allowance shall be two hundred sixty-six dollars. The extension allowance for other than residential service, except for fire protection service, shall be equal to the estimated annual revenue, as determined by the city immediately available from the customer or the customers to be served divided by the average annual residential revenue at currently effective rates times the residential extension allowance of two hundred sixty-six dollars.
   b. No interest will be paid by the city on customer advances on or refunds thereof.
   c. The “footage of mains to be installed”, as used to determine the amount of customer advance, shall include the mains, if any, that are installed to increase capacity where existing mains are of insufficient size.
   d. Extensions may be made across private property only on delivery to the city of rights-of-way acceptable to the city.
   e. The size, type and quality of materials and location of the lines and facilities shall be specified by the city and the actual construction will be done by the city or by a contractor acceptable to it.
   f. The sole and exclusive title to any extension constructed under these rules shall be vested in the city.
   g. All facilities beyond the point of delivery shall be furnished, installed, owned and maintained by the customer.
   h. Point of delivery shall be from a city main that is adjacent to the property line, or curb line, of the premises to be served.
   i. Any extension of water mains (other than a service connection) shall be considered as a new and separate extension. [Prior code □ 73.215]

Chapter 13.6 Reserved for Expansion
Chapter 13.7 Reserved for Expansion
Chapter 13.8 Reserved for Expansion
Chapter 13.9 Reserved for Expansion
§13.10.1 Definitions.
Unless the context specifically indicates otherwise, the meaning of terms used in this chapter shall be as follows:

“Biochemical oxygen demand (BOD)” means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at twenty degrees Centigrade, expressed in milligrams per liter.

“Building drain” means that part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet outside the inner face of the building wall.

“Building sewer” means the extension from the building drain to the public sewer or other place of disposal, also called house connection.

“Combined sewer” means a sewer intended to serve as a sanitary sewer and a storm sewer, or as an industrial sewer and a storm sewer.

“Easement” means an acquired legal right for the specific use of land owned by others.

“Floatable oil” means oil, fat or grease in a physical state such that it will depurate by gravity from wastewater by treatment in an approved pretreatment facility. A wastewater shall be considered free of floatable fat if it is properly pretreated and the wastewater does not interfere with the collection system.

“Garbage” means solid wastes from the domestic and commercial preparation, cooking and dispensing of food, and from the handling, storage and sale of produce.

“Industrial user” means any nongovernmental, nonresidential user of a publicly owned treatment work which discharges more than the equivalent of twenty-five thousand gallons per day (gpd) of sanitary wastes and which is identified in the Standard Industrial Classification Manual, 1972, Office of Management and Budget, as amended and supplemented under one of the following divisions:

Division A - Agriculture, Forestry and Fishing.
Division B - Mining.
Division D - Manufacturing.
Division E - Transportation, Communication, Electric, Gas, and Sanitary Services.
Division I - Services.

In determining the amount of a user's discharge for purposes of industrial cost recovery, the grantee may exclude domestic wastes or discharges from sanitary conveniences.

“Industrial waste” means that portion of the wastewater emanating from an industrial user which is not domestic waste or waste from sanitary conveniences.

“Natural outlet” means any outlet, including storm sewers and combined sewer overflows, into a watercourse, pond, ditch, lake or other body of surface or groundwater.

“pH” means the logarithm of the reciprocal of the hydrogen-ion concentration. The concentration is the weight of hydrogen ions, in grams, per liter of solution. Neutral water, for example, has a pH value of 7 and a hydrogen-ion concentration of 10^-7.

“Properly shredded garbage” means the wastes from the preparation, cooking and dispensing of foods that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle greater than one-half inch in any dimension.
“Public sewer” means a common sewer controlled by a governmental agency or public utility.

“Sanitary sewer” means a sewer intended to carry only sanitary or sanitary and industrial wastewaters from residences, commercial buildings, industrial plants and institutions.

“Sewage” means the spent water of a community.

“Sewer” means a pipe or conduit that carries wastewater or drainage water.

“Slug” means any discharge of water or wastewater which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than fifteen minutes more the five times the average twenty-four hour concentration or flows during normal operation and shall adversely affect the collection system and/or performance of the wastewater treatment works.

“Stormdrain” (sometimes termed “storm sewer”) means a sewer intended to carry only stormwaters, surface runoff, street wash waters and drainage.

“Superintendent” means the superintendent of the wastewater treatment works of the city or the person's authorized representative.

“Suspended solids” means total suspended matter that either floats on the surface of, or is in suspension in water, wastewater or other liquids, and that is removable by laboratory filtering as prescribed in Standard Methods for the Examination of Water and Wastewater and referred to as non-filterable residue.

“Unpolluted water” means water of quality equal to or better than the effluent criteria in effect or water that would not cause violation of receiving water quality standards and would not be benefited by discharge to the sanitary sewers and wastewater treatment facilities provided.

“Wastewater” means the spent water of a community. From the standpoint of source, it may be a combination of the liquid and water-carried wastes from residences, commercial buildings, industrial plants and institutions, together with any groundwater, surface water and stormwater that may be present. “Wastewater” means sewage.

“Wastewater facilities” means the structures, equipment and processes required to collect, carry away and treat domestic and industrial wastes and dispose of the effluent.

“Wastewater treatment works” means an arrangement of devices and structures for treating wastewater, industrial wastes and sludge. Sometimes used as synonymous with “waste treatment plant” or “wastewater treatment plant” or “water pollution control plant” or “sewage treatment plant”.

“Water course” means a natural or artificial channel for the passage of water either continuously or intermittently. [Prior code § 70.010]

§13.10.2 Chapter provisions not exclusive.
No statement contained in this chapter shall be construed to interfere with any additional requirements that may be imposed by the state or county. [Prior code § 70.100]

§13.10.3 Waste deposited on public or private property unlawful.
It is unlawful for any person to place, deposit or permit to be deposited in any unsanitary manner on public or private property within the city or in any area under the jurisdiction of the city, any human or animal excrement, garbage or other objectionable waste. [Prior code § 70.020]
§13.10.4 Privy, septic tank and cesspool not allowed for disposal of wastewater. Except as provided in this chapter, it is unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of wastewater. [Prior code § 70.040]

§13.10.5 Connection required. The owner(s) of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes, situated within the city and abutting on any street, alley or right-of-way in which there is located a public sanitary or combined sewer of the city, is required at the owner(s) expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public sewer in accordance with the provisions of this chapter, within sixty days after date of official notice to do so. [Prior code § 70.050]

§13.10.6 Connection permit required. No unauthorized person(s) shall uncover, make any connections with or opening into, use, alter or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the superintendent. [Prior code § 70.110]

§13.10.7 Connection fee. A. The fee for connection of existing buildings to the sewer shall be two hundred dollars except that, if an existing building contains several distinct units as, for example, a multiunit residential building containing several distinct dwelling units, the fee shall be two hundred dollars for the first unit and one hundred dollars for each additional unit. B. The fee for connection of new single-family residences to the sewer shall be four hundred dollars for each residence. C. The fee for connection of new multiunit residential buildings to the sewer shall be four hundred dollars for the first dwelling unit and two hundred dollars for each additional unit. D. The fee for connection of new commercial or industrial buildings to the sewer shall be ten dollars per one hundred square feet of floor space of the building. E. The fee for connection of new mobile home court spaces to the sewer shall be one hundred fifty dollars for each space. F. As used in this section, the term “existing” means fully constructed and finished on or before July 22, 1976, and the term “new” means fully constructed and finished after July 22, 1976. G. The fees set forth in this section shall accompany the application for sewer connection permits. The fees set forth in this section shall be in addition to costs each applicant shall pay for the installation and connection of such sewer as provided by the ordinances of the city. [Prior code § 70.120]

§13.10.8 Connection standards. The connection of the building sewer into the public sewer shall conform to the requirements of applicable building and plumbing codes or other applicable rules and regulations of the city, or the procedures set forth in appropriate specifications of the A.S.T.M. and the W.P.C.F. Manual of Practice No. 9. All such connections shall be made gas tight and watertight and verified by proper testing. Any deviation from the prescribed
procedures and materials must be approved by the superintendent before installation. [Prior code § 70.190]

§13.10.9  Connection to be made by city.
The applicant for the building sewer permit shall notify the superintendent seventy-two hours in advance when the building sewer is ready for inspection and connection to the public sewer. The connection and testing shall be made by the city. [Prior code § 70.200]

§13.10.10  Excavations for sewer installation-Barricades and lights required.
All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city. [Prior code § 70.210]

§13.10.11  Connection cost-Owner responsibility.
All costs and expense incidental to the installation and connection of the building sewer shall be borne by the owner(s). The owner(s) shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer. [Prior code § 70.130]

§13.10.12  Operation and maintenance of facilities-Owner responsibility.
The owner(s) shall operate and maintain the private wastewater disposal facilities in a sanitary manner at all times, at no expense to the city. [Prior code § 70.090]

§13.10.13  Private system allowed when.
Where a public sanitary or combined sewer is not available under the provisions of Section 13.10.5, sewer shall be connected to a private wastewater disposal system complying with the regulations of the state and/or county. [Prior code § 70.060]

§13.10.14  Private system fee.
Before commencement of construction of a private wastewater disposal system the owner(s) shall first obtain a written permit signed by the superintendent. The application for such permit shall be made on a form furnished by the city, which the applicant shall supplement by any plans, specifications and other information as are deemed necessary by the superintendent. A permit and inspection fee of four hundred dollars shall be paid to the city at the time the application is filed. [Prior code § 70.070]

§13.10.15  Connection required when sewer available.
At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in Section 13.10.5, a direct connection shall be made to the public sewer within sixty days in compliance with this chapter, and any septic tanks, cesspools and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material. [Prior code § 70.080]

§13.10.16  Separate sewers required for each building.
A separate and independent building sewer shall be provided for every building; except
§13.10.17 Old building sewers allowed when.
Old building sewers may be used in connection with new buildings only when they are found, on examination and test by the superintendent, to meet all requirements of this chapter. [Prior code § 70.150]

§13.10.18 Sewer construction-Standards.
The size, slope, alignment, materials of construction of all sanitary sewers including building sewers, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the building and plumbing code or other applicable rules and regulations of the city. In the absence of suitable code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the A.S.T.M. and W.P.C.F. Manual of Practice No. 9 shall apply. [Prior code § 70.160]

§13.10.19 Sewer construction-Elevation.
Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer. [Prior code § 70.170]

§13.10.20 Prohibited connections.
No person(s) shall make connection of roof downspouts, foundation drains, areaway drains or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer. [Prior code § 70.180]

§13.10.21 Discharge of untreated sewage to natural outlet unlawful.
It is unlawful to discharge to any natural outlet within the city, or in any area under the jurisdiction of the city, sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provisions of this chapter. [Prior code § 70.030]

§13.10.22 Discharge of certain unpolluted waters to sewer not permitted.
No person(s) shall discharge or cause to be discharged any unpolluted waters such as stormwater, surface water, groundwater, roof runoff, subsurface drainage or cooling water to any sewer. [Prior code § 70.220]

§13.10.23 Discharge of water and wastes to sewer-Restrictions.
A. No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:
   1. Any gasoline, benzene, naphtha, fuel oil or other flammable or explosive liquid, solid or gas;
   2. Any waters or wastes containing toxic or poisonous solids, liquids or gasses in sufficient quantity, either singly or by interaction with other wastes to injure or interfere with
any sewage treatment process, constitute a hazard to humans or animals, create a public
nuisance, or create any hazard in the receiving waters of the sewage treatment plant,
including but not limited to cyanides in excess of two mg/l or CN in the wastes as dis-
charged to the public sewer;
3. Any waters or wastes having a pH lower than 5.5 or having any other corrosive
property capable of causing damage or hazard to structures, equipment and personnel of
the sewage works;
4. Solid or viscous substances in quantities or of such size capable of causing
obstruction to the flow in sewers, or other interference with the proper operation of the
sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings,
metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch
manure, hair and fleshings, entrails and paper dishes, cups, milk containers, etc., either
whole or ground by garbage grinders.
B. No person shall discharge or cause to be discharged the following described
substances, materials, waters or wastes if it appears likely in the opinion of the
superintendent that such wastes can harm either the sewers, sewage treatment process or
equipment, having an adverse effect on the receiving stream, or can otherwise endanger
life, limb, public property or constitute a nuisance. In forming the person's opinion as to the
acceptability of these wastes, the superintendent will give consideration to such factors as
to quantities of subject wastes in relation to flows and velocities in the sewers, materials of
construction of the sewers, nature of the sewage treatment process, capacity of the
sewage treatment plant, and other pertinent factors. The substances prohibited are:
1. Any liquid or vapor having a temperature higher than one hundred fifty degrees (65
degrees C);
2. Any water or waste containing fats, gas, grease or oils, whether emulsified or not, in
excess of one hundred mg/l or containing substances which may solidify or become
viscous at temperatures between thirty-two and one hundred fifty degrees (0 and 65
degrees C);
3. Any garbage that has not been properly shredded. The installation and operation of
any garbage grinder equipped with a motor of three-fourths horsepower (0.76 hp metric) or
greater shall be subject to the review and approval of the superintendent;
4. Any waters or wastes containing strong acid iron pickling wastes or concentrated
plating solutions whether neutralized or not;
5. Any waters or wastes containing iron, chromium, copper, zinc and similar
objectionable or toxic substances; or wastes exerting an excessive chlorine requirement,
to such degree that any such material received in the composite sewage at the sewage
treatment works exceeds the limits established by the superintendent for such materials;
6. Any waters or wastes containing phenols or other taste- or odor-producing
substances, in such concentrations exceeding limits which may be established by the
superintendent as necessary, after treatment of the composite sewage, to meet the
requirements of the state, federal or other public agencies of jurisdiction of such discharge
to the receiving waters;
7. Any radioactive wastes or isotopes of such half-life or concentration as may exceed
limits established by the applicable state or federal regulations;
8. Any waters or wastes having a pH in excess of 9.5;
9. Materials which exert or cause:
a. Unusual concentrations of inert suspended solids (such as, but not limited to, Fullers earth, lime slurries and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride and sodium sulfate),

b. Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions),

c. Unusual BOD, chemical oxygen demand or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works,

d. Unusual volume of flow or concentration of wastes constituting “slugs” as defined in Section 13.10.1

10. Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed, or are amenable to treatment only to such degree that the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters. [Prior code § 70.240]

§13.10.24 Storm sewers.
Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the superintendent and other regulatory agencies. Unpolluted industrial cooling water or process waters may be discharged, on approval of the superintendent, to a storm sewer, combined sewer, or natural outlet. [Prior code § 70.230]

§13.10.25 Superintendent authority.
A. If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in Section 13.10.23, and which in the judgment of the superintendent, may have a deleterious effect upon the wastewater facilities, processes, equipment or receiving waters, or which otherwise create a hazard to life or constitute a public nuisance, the superintendent may:
   1. Reject the wastes;
   2. Require pretreatment to an acceptable condition for discharge to the public sewers;
   3. Require control over the quantities and rates of discharges; and/or
   4. Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges.

B. When considering the above alternatives the superintendent shall give consideration to the economic impact of each alternative on the discharger. If the superintendent permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the superintendent. [Prior code § 70.250]

§13.10.26 Interceptors required when-Location and maintenance.
Grease, oil and sand interceptors shall be provided when, in the opinion of the superintendent, they are necessary for the proper handling of liquid wastes containing floatable grease in excessive amounts, or any flammable wastes, sand or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the super-
intendent, and shall be located as to be readily and easily accessible for cleaning and inspection. In the maintaining of these interceptors the owner(s) shall be responsible for the proper removal and disposal by appropriate means of the captivated material and shall maintain records of the dates, and means of disposal which are subject to review by the superintendent. [Prior code § 70.260]

§13.10.27 Pretreatment.
Where pretreatment or flow-equalizing facilities are provided or required for any waters or wastes, they shall be maintained continuously in satisfactory and effective operation by the owner(s) at the person's expense. [Prior code § 70.270]

§13.10.28 Industrial cost recovery system.
A. All industrial users shall be required to pay that portion of the federal assistance grant under PL 92-500 allocable to the treatment of waste from such users.
B. The system for industrial cost recovery shall be implemented and maintained according to the following requirements:
   1. Each year during the industrial cost recovery period, each industrial user of the treatment works shall pay its share of the total federal grant amount divided by the recovery period.
   2. The industrial cost recovery period shall be equal to thirty years or the useful life of the treatment works, whichever is less.
   3. Payments shall be made by industrial users no less often than annually. The first payment by an industrial user shall be made not later than one year after such user begins use of the treatment works.
   4. An industrial user's share shall be based on all factors which significantly influence the cost of the treatment works, such as strength, volume and flow rate characteristics. As a minimum, an industry's share shall be based on its flow versus treatment works capacity except in unusual cases.
   5. An industrial user's share shall be adjusted when there is a substantial change in the strength, volume or flow rate characteristics of the user's wastes, or if there is an expansion or upgrading of the treatment works.
   6. An industrial user's share shall not include any portion of the federal grant amount allocable to unused or unreserved capacity.
   7. An industrial user's share shall include any firm commitment to the city (sanitary district or county) of increased use by such user.
   8. An industrial user's share shall not include an interest component.
C. This requirement applies only to those features of wastewater treatment and transportation facilities which have been constructed with federal assistance administered by the U.S. Environmental Protection Agency under PL 92-500. [Prior code § 70.275]

§13.10.29 Observation and testing.
When required by the superintendent, the owner(s) of any property serviced by a building sewer carrying industrial wastes shall install a suitable structure together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling and measurement of the wastes. Such structures, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved
by the superintendent. The structure shall be installed by the owner at the person's expense, and shall be maintained by the owner so as to be safe and accessible at all times. [Prior code § 70.280]

§13.10.30 Determination of compliance-Information required.
The superintendent may require a user of sewer services to provide information needed to determine compliance with this chapter. These requirements may include:
A. Wastewaters discharge peak rate and volume over a specified time period;
B. Chemical analyses of wastewaters;
C. Information on raw materials, processes and products affecting wastewater volume and quality;
D. Quantity and disposition of specific liquid, sludge, oil, solvent or other materials important to sewer use control;
E. A plot plan of sewers of the user's property showing sewer and pretreatment facility location;
F. Details of wastewater pretreatment facilities;
G. Details of systems to prevent and control the losses of materials through spills to the municipal sewer. [Prior code § 70.290]

§13.10.31 Tests and measurements.
All measurements, tests and analyses of the characteristics of waters and wastes to which reference is made in this chapter shall be determined in accordance with the latest edition of Standard Methods for the Examination of Water and Wastewater, published by the American Public Health Association. Sampling methods, location, times, durations and frequencies are to be determined on an individual basis subject to approval by the superintendent. [Prior code § 70.300]

§13.10.32 Special agreement allowed.
No statement contained in this chapter shall be construed as preventing any special agreement or arrangement between the city and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the city for treatment, subject to payment, therefor, by the industrial concern. [Prior code § 70.310]

§13.10.33 Damage to wastewater facilities prohibited.
No person(s) shall maliciously, willfully or negligently break, damage, destroy, uncover, deface or tamper with any structure, appurtenance or equipment which is a part of the wastewater facilities. [Prior code § 70.320]

§13.10.34 Entry for inspection authorized.
The superintendent and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing pertinent to discharge to the community system in accordance with the provisions of this chapter. [Prior code § 70.330]

§13.10.35 Information to be confidential.
The superintendent or other duly authorized employees are authorized to obtain
information concerning industrial processes which have a direct bearing on the kind and source of discharge to the wastewater collection system. The industry must establish that the revelation to the public of the information in question might result in an advantage to competitors. [Prior code § 70.340]

§13.10.36 Lien on property.  
The cost of the connection of a building sewer under Section 13.10.110 of this chapter is delinquent thirty days after the completion of the connection in accordance with Section 13.10.90 of this chapter and thereafter shall be a charge upon and a lien upon the lot or parcel of land served by the building sewer, and shall be collected as other liens of the city are enforced. [Prior code § 70.360]
CHAPTER 13.11 CROSS CONNECTION REQUIREMENTS

§13.11.1 Definitions:
“Customer” means a utility consumer of the City of Independence, including residential, commercial, public, or industrial users. [Ord. 98-1359]
“State” shall mean any agency of the State of Oregon charged with responsibility for establishing administrative regulations pertaining to cross connection requirements. (Ord. 98-1359)
“Cross-connection” means any physical connection or arrangement of piping or fixtures between two otherwise separate piping systems, one of which contains potable water and the other non-potable water or industrial fluids of questionable safety, through which, or because of which, backflow or back-siphonage may occur into the potable water system. Other types of cross-connections include but are not limited to connectors such as swing connections, removable sections, four-way plug valves, spools, dummy sections of pipe, swivel or changeover devices, sliding multi-port tube, and solid connections. [Ord. 98-1359]
“Controlled cross-connections” means a connection between a potable water system and a nonpotable water system, with an approved backflow-prevention device properly installed that will continuously afford the protection commensurate with the degree of hazard. [Ord. 98-1359]

§13.11.2 Inspection of premises for compliance.
The customer's system should be open for inspection at all reasonable times to authorized representatives of the city to determine whether cross-connections or other structural or sanitary hazards, including violations of these regulations, exist. When such a condition becomes known, the City Manager or Designee shall deny or immediately discontinue service to the premises by providing a physical break in the service line until the customer has corrected the condition(s) in conformance with the state and city statutes relating to plumbing and water supplies, and the regulations adopted pursuant thereto. [Ord. 98-1359]

§13.11.3 Backflow-prevention device-Required when.
An approved backflow-prevention device shall also be installed on each service line to a customer’s water system at or near the property line, or immediately inside the building served, but in all cases before the first branch line leading off the service line whenever the following conditions exist:
A. In case of premises having an auxiliary water supply which is not or may not be of safe bacteriological or chemical quality and which is not acceptable as an additional source by the City Manager or Designee, the public water system shall be protected against backflow from the premises by installing a backflow prevention device in the service line appropriate to the degree of hazard.
B. In the case of premises on which any industrial fluid or any other objectionable substance is handled in such a fashion as to create an actual or potential hazard to the public water system, the public system shall be protected against backflow from the premises by installing a backflow-prevention device in the service line appropriate to the degree of hazard. This shall include the handling of process waters and waters originating
from the utility system which have been subject to deterioration in quality.
C. In the case of premises having (1) internal cross-connections that cannot be 
permanently controlled, or (2) intricate plumbing and piping arrangements, or where entry 
to all portions of the premises is not readily accessible for inspection purposes, making it 
impracticable or impossible to ascertain whether or not dangerous cross-connections exist, 
the public water system shall be protected against backflow from the premises by installing 
a backflow-prevention device in the service line.
D. Hard plumbed accessory components such as irrigation systems, are required to 
meet the standards of this ordinance. [Ord. 98-1359]

§13.11.4 Backflow-prevention device-Types required.
The type of protection device required under subsections A, B and C of Section 13.11.30 
shall depend upon the degree of hazard which exists, as follows:
A. An approved air-gap or an approved RP device shall be installed where the sub-
stance which could backflow is hazardous to health, e.g., sewage treatment plants, 
sewage pumping stations, chemical manufacturing plants, plating plants, hospitals, 
mortuaries, carwashes, and medical clinics.
B. An approved double check valve assembly shall be installed where the substance 
which could backflow is objectionable but does not pose an unreasonable risk to health.
C. An approved pressure vacuum breaker shall be installed where the substance which 
could backflow is objectionable, but does not pose an unreasonable risk to health and 
where there is no possibility of back pressure in the downstream piping. A shutoff valve 
may be installed on the line downstream of a pressure vacuum breaker. [Ord. 98-1359]

§13.11.5 Backflow-prevention device-Specifications.
A. Any backflow-prevention device required herein shall be of a model and size 
approved by the City Manager or Designee.
B. The term “approved backflow-prevention device” means a device that has been 
manufactured in full conformance with the standards established by the American Water 
Works Association, entitled:
AWWA C506-78 Standards for Reduced Pressure Principle and Double Check Valve 
Backflow Prevention Devices and, have met completely the laboratory and field perfor-
mane specifications of the Foundation for Cross-Connection Control and Hydraulic 
Research of the University of Southern California, established by:
Specifications of Backflow Prevention Devices - No. 69-2, dated March 1969, or the 
most current issue.
Said AWWA and FCCC&HR standards and specifications have been adopted by the city. 
Final approval shall be evidenced by a certificate of approval issued by an approved 
testing laboratory certifying full compliance with said AWWA standards and FCCC&HR 
specifications.
C. The following testing laboratory has been qualified by the City Manager or Designee 
to test and certify backflow preventers:
Foundation for Cross-Connection Control and Hydraulic Research 
University of Southern California 
University Park 
Los Angeles, California 90007
D. Testing laboratories other than the laboratory listed above will be added to an approved list as they are qualified by the City Manager or Designee.

E. Backflow preventers which may be subjected to back pressure or back siphonage that have been fully tested and have been granted a certificate of approval by said qualified laboratory and are listed on the laboratory's current list of “Approved Devices” may be used without further test or qualification. [Ord. 98-1359]

§13.11.6 Tests and certified inspections.
A. It shall be the duty of the customer-user at any premises where backflow prevention devices are installed to have certified inspections and operational tests made at least once per year. In those instances where the City Manager or Designee deems the hazard to be great enough, the City Manager or Designee may require certified inspections at more frequent intervals. These inspections and tests shall be at the expense of the water user, and shall be performed by the device manufacturer's representative, by city public works department personnel, or by a certified tester approved by the Oregon State Health Division. All testers in the City shall have confined space entry training. The customer-user shall notify the City Manager or Designee in advance when the tests are to be undertaken so that the City Manager or Designee or the director's representative may witness the tests if so desired. Disposition of test results shall be as provided in state law.

B. These devices shall be repaired, overhauled or replaced at the expense of the customer-user whenever the devices are found to be defective. Records of such tests, repairs and overhaul shall be kept, and an original copy shall be sent to the City Manager or Designee in a timely manner. [Ord. 98-1359]

§13.11.7 Existing protection devices-Permitted when.
All presently installed backflow-prevention devices which do not meet the requirements of this chapter, but were approved devices for the purposes described herein at the time of installation, and which have been properly maintained, shall, except for the inspection and maintenance requirements under Section 13.11.2, be excluded from the requirements of these rules so long as the City Manager or Designee is assured that they will satisfactorily protect the utility system. Whenever the existing device is moved from the present location, or requires more than minimum maintenance, or when the City Manager or Designee finds that the maintenance constitutes a hazard to health, the unit shall be replaced by a backflow-prevention device meeting the requirements of this chapter. [Ord. 98-1359]

§13.11.8 Existing protection devices-Discontinuance when.
If an existing backflow device required by this chapter is not tested and maintained, or it is found that a backflow-prevention device has been removed or bypassed, service will be discontinued until such conditions or defects are corrected. [Ord. 98-1359]

§13.11.9 Conflicting regulations.
In the event that a conflict exists or develops between any provision of this ordinance and the Uniform Plumbing code, then the codes shall be interpreted as mutually consistent, if possible. In the event that the interpretation and application can not be reconciled, then this code shall prevail. [Ord. 98-1359]
§13.11.10 Mobile units.
Any mobile apparatus which uses the City of Independence system or water from any premises within the city must obtain a permit and shall either have an adequate air gap or backflow assembly. [Ord. 98-1359]

§13.11.11 Fire Systems.
A. An approved double check valve assembly shall be the minimum protection for fire systems using piping materials that is not approved for potable water use and/or which does not provide for periodic flow through during each 24 hour period.
B. If antifreeze is used to keep fire sprinkler system from freezing a R.P. device will be required. [Ord. 98-1359]
Chapter 13.12 SEWER SERVICE RATES AND CHARGES

§13.12.1 Definitions.

"BOD (biochemical oxygen demand)" means the quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at twenty degrees Centigrade, expressed in milligrams per liter.

"Collection system" means the system of public sewer facilities operated by the city and designed for the collection of sanitary sewage.

"Commercial user" means any premises used for commercial or business purposes which is not an industry as defined in this chapter.

"Domestic waste" means any wastewater emanating from dwellings or from domestic activities which are performed outside the home in lieu of a home activity directly by or for private citizens, including but not limited to floor drains in an accessory building, RV cleanouts.

"Equivalent residential unit (ERU)" means a volume of wastewater for which the City incurs the same costs for operations and maintenance of the public sewer system as it would for the average volume of domestic wastes discharged from an average residential dwelling unit in the treatment works service area. For the purpose of making this determination the city shall utilize available records or accurate indicators of water use. The city shall have the right to require, as a condition of using the public sewer system, the submission of any and all records or other information necessary to determine the rate of water consumption by the user. Where a user believes the person's wastewater discharge to the sewer system is substantially different than the person's water consumption, an appropriate adjustment shall be made providing the user demonstrates the user's actual wastewater discharge to the satisfaction of the city. The volume attributed to an ERU where the BOD, suspended solids or other characteristic of the wastewater discharged by a user is significantly greater than a domestic waste shall be adjusted to account for the difference in the costs of treatment.

"Industrial user" means any nongovernmental, nonresidential user of the public treatment works discharging more than the equivalent of twenty-five thousand gallons per day of wastewater and identified in the North American Industry Classification System (NAICS), under the following sectors:

11 Agriculture, Forestry, Fishing and Hunting
21 Mining, Quarrying and Oil and Gas Extraction
22 Utilities
31-33 Manufacturing
48-49 Transportation and Warehousing
56 Administrative and Support and Waste Management and Remediation Services
62 Health Care and Social Assistance
81 Other Services (Except Public Administration)

A user in these divisions may be excluded from the industrial category if it is determined that the user will only introduce domestic wastes and wastes from sanitary conveniences into the sewer system.

"Industrial waste" means that portion of the wastewater emanating from an industrial user which is not domestic waste or waste from sanitary conveniences, including but not
limited to toilets, lavatories, or showers.

“Operation and maintenance” means all activities, goods and services which are necessary to maintain the proper capacity and performance of the treatment works. The term “operation and maintenance” includes replacement as defined hereinafter.

“Person” means any individual, firm, company, association, society, corporation or group.

“Premises” means a tract of land, including its buildings.

“Public treatment works” means a treatment works owned and operated by the City.

“Replacement” means acquisition and installation of equipment, accessories or appurtenances which are necessary during the service life of the treatment works to maintain the capacity and performance for which such works are designed and constructed.

“Service area” means all the area served by the treatment works and for which there is one uniform user charge system.

“Sewage treatment plant” means an arrangement of devices and structures used for treating sewage.

“Shall” is mandatory, “may” is permissible.

“Suspended solids” means solids that either float on the surface or are in suspension in water, sewage or other liquids, and which are removable by laboratory filtering.

“Treatment works” means all facilities for collecting, pumping, treating and disposing of sewage. “Treatment system” and “sewer system” shall be equivalent terms for “treatment works”.

“User” means the owner, occupant or other person authorized to request services or responsible for the payment therefor for any property or facility inside or outside the city using any part of the public treatment works of the city.

“User charge” means the monthly charge levied on all users of the public treatment works, and shall, at a minimum, cover each user’s proportionate share of the cost of operation and maintenance (including replacement).

“Wastewater” means water-carried human, animal or industrial waste, together with such ground, surface and storm waters as may be present. The term “sewage” means wastewater. [Prior code §71.210]

§13.12.2 Use of city sewer system outside city limits-Surcharge.
Any person connected to and using the city sewage disposal system while outside the city limits shall pay a one hundred percent surcharge, based on the rate of sewer charge set by resolution for the use of the city sewage disposal system. [Prior code § 71.135]

§13.12.3 Sewer fund created.
A special fund is created to be known as the sewer fund and the Finance Director shall deposit in this fund all proceeds of the sewer charges imposed under this chapter. The sewer fund shall be used solely and exclusively for paying all or part or any part of the cost of planning, construction or operation and maintenance of the city sewer system. [Prior code § 71.140]

§13.12.4 Sewer user charges.
A. User charges shall be levied on all users of the public treatment works. The user
charges shall, at a minimum, cover the cost of operation and maintenance, replacement, system planning and construction and other administrative costs of such treatment works. The user charge system shall distribute these costs in proportion to each user's contribution to the wastewater loading of the treatment works. The minimum charge shall be that cost equivalent to treatment of the wastewater from an average residential dwelling unit.

B. There shall be assigned to each user an appropriate number of ERU's and this number shall represent the ratio of the wastewater produced by the user to the wastewater produced by the average residential dwelling unit; provided, however, that each residential user discharging only domestic waste into the sewer system shall be levied a user charge calculated on the basis of the use of one ERU per dwelling unit.

C. The user charge shall be calculated by multiplying the total number of ERU's for each user by a constant cost factor. This cost factor shall be set at six dollars and seventy-five cents until such time as it is revised as provided in Section 13.12.5.

D. Should any user believe that the user has been assigned an incorrect number of ERU's, that user may apply for review of the user charge as provided in Section 13.12.8.

E. If it has been determined by the city that a user is assigned an incorrect number of ERU's, the city shall reassign a more appropriate number of ERU's to that user and shall notify that user of such reassignment.

F. Records of all rates and the number of ERU's assigned to each user, as well as the wastewater characteristics forming the basis of the ERU, shall be kept on file with the city recorder and shall be open for public inspection.

G. The sewer user charge for all occupied property shall begin sixty days after the sewer service becomes available or the day that connection is made to the public sewer system, whichever occurs first. The sewer user charge for all unoccupied property shall begin within thirty days after the property is ready for occupancy or on the first day of occupancy, whichever occurs first. All unoccupied property which is ready for occupancy at the time the sewer service becomes available shall be treated as occupied property. Once the sewer user charge has commenced, no credit shall be given for vacancy. [Prior code § 71.220]

§13.12.5 Review and revision of rates.
The sewer user charges established in Section 13.12.4 shall, at a minimum, be reviewed as part of the annual budget process and revised periodically to reflect actual costs of operation, maintenance and replacement of the treatment works and to maintain the equitability of the user charges with respect to proportional distribution of the costs of operation and maintenance. The user charges for residential, commercial and industrial sewer service shall be adopted by resolution of the City Council. [Prior code § 71.230]

§13.12.6 Notification.
Each user will be notified, at least annually, in conjunction with a regular bill, of the sewer user charge and that portion of the user charges which are attributable to wastewater treatment services. [Prior code § 71.240]

§13.12.7 Handling of funds.
A. Bills for sewer user charges shall be mailed to the address specified in the application for permit to connect to the sewer system, unless or until a different owner or
user of the property is reported to the department of public works.
B. All collections of sewer user charges shall be made by the Finance Director by and through the department of public works. Sewer user charges shall be computed as provided in Section 13.12.4 and shall be payable as provided in Chapter 13.20.
C. The Finance Director is directed to deposit in the sewer fund all of the gross revenues received from charges, rates and penalties collected for the use of the sewerage system as herein provided.
D. The revenues thus deposited in the sewer fund shall be used exclusively for the operation, maintenance and repair of the sewerage system; administration costs; expenses of collection of charges imposed by this chapter and payments of the principal and interest on any debts of the sewerage system of the city. [Prior code § 71.260]

§13.12.8 Appeals.
Appeal of amount of charges and/or the number of ERU’s assigned to a user shall be made in writing to the City Manager within ninety days of receipt of the user fee. The Manager shall respond in writing within ninety days of receipt of the appeal. If the user wishes to appeal further, they shall request in writing that the City Manager place their specific appeal on the next scheduled regular city council session. The decision of the city council shall be final. [Prior code § 71.270]

§13.12.9 Entering property.
Employees of the city shall have the right to enter upon the private premises of any property served by the city sewer system for the purpose of inspection and for the enforcement of the provisions of this chapter. [Prior code § 71.155]
Chapter 13.13  

STORMWATER UTILITY

§13.13.1  Definitions

'City'. The City of Independence, a municipality, and its authorized employees.

'Customer'. A person in whose name service is rendered as evidenced by the signature on the application/contract for stormwater, sanitary sewer or water service, or in the absence of a signed instrument, by the receipt and payment of bills regularly issued in his/her name.

'Developed'. An area which has been altered by grading or filling of the ground surface, or by construction of any improvement or other impervious surface area, which affects the hydraulic properties of the location.

'Duplex'. A single building which contains two single-family units and shall be calculated as one ERU per unit.

'Equivalent Residential Unit (ERU)'. An area which is estimated to place approximately equal demand on the city’s storm drainage system as a single-family unit. One ERU shall be equal to 3,250 square feet of impervious surface.

'High Intensity Residential'. Residential properties that have an ERU value established based on measured impervious surface area. High Intensity Residential properties are designated as multi-family housing and include four or more units.

'Impervious Surface'. Any surface area which either prevents or retards saturation of water into the land surface, or a surface which causes water to run off the land service in greater quantities or at an increased rate of flow from that present under natural conditions pre-existent to development. Common impervious surfaces include, but are not limited to, rooftops, concrete or asphalt sidewalks, walkways, patio areas, driveways, parking lots or storage areas, graveled, oiled or macadam surfaces or other surfaces which similarly impede the natural saturation or runoff patterns which existed prior to development.

'Light Intensity Residential'. Properties that are equivalent to one ERU per unit and are classified as a single-family unit, duplex or triplex.

'Single Family Unit (SFU)'. That part of a building or structure which contains one or more rooms with bathroom and kitchen facilities designed for occupancy by one family and where the units are sold and deeded as individual units. A SFU is presumed to have 3,250 square feet of impervious surface area for the purposes of this chapter.

'Stormwater'. Water from precipitation, surface or subterranean water from any source.

'Stormwater System'. Any structure or configuration of ground that is used to accumulate or direct the flow of stormwater, or by its location becomes a place where stormwater flows or is accumulated, including but not limited to pipes, sewers, curbs, gutters, manholes, catch basins, ponds, open drainageways and their appurtenances.

'Triplex'. A single building which contains three single-family units and shall be calculated as one ERU per unit.

§13.13.2  Establishment and Use of a Stormwater Utility Fee.

A stormwater utility fee shall be paid by each residential and non-residential customer and shall be established by resolution of the City Council for single family units and equivalent residential units. Funds from the stormwater utility shall be used for planning, design, construction, operation, maintenance and administration of storm drainage facilities,
including repayment of indebtedness, and for all expenses for the operation and management of the stormwater utility.

The City Council may, on an annual basis by resolution, change the fees based upon revised estimates of the cost of properly managing, maintaining, extending and constructing public stormwater facilities.

§13.13.3 Calculation of Stormwater Utility Fee. Property not used for single-family dwelling purposes shall be considered to be furnished service in proportion to the amount of the property’s impervious surface. Each 3,250 square feet of impervious surface on the property shall be considered an ERU, and the minimum service charge for each ERU shall be that established for a single-family unit.

The number of ERU’s for properties shall be as established by the Stormwater Utility Formation report prepared by PacWest Engineering in March, 2005, or as recalculated following a formal appeal process. The number of ERU’s for each property shall be rounded to the nearest whole number of ERU’s.

§13.13.4 Billings and Collection
Request for water or sewer service will automatically initiate appropriate billing for storm drainage services. If development of a parcel does not require initiating water or sewer service, the creation of an impervious surface from which storm water may be discharged into public drainage facilities shall initiate the obligation to pay the fees and charges established by the Stormwater Utility.

The Stormwater Utility fee shall be billed and collected with the monthly city utility bill. The fee shall become due and payable at the same time as other city utility fees. Stormwater billing and collection procedures shall be performed as provided in Chapter 13.20 of the Municipal Code.

§13.13.5 Recovery of Unpaid Fees
Any fee due which is not paid when due may be recovered in an action at law by the City. In addition to any other remedies or penalties provided by City ordinance. Fees not paid promptly when due shall be collectable pursuant to collection efforts or other lawful remedies of the City. The City may discontinue any utility services provided by the City until the customer’s stormwater utility fees are paid in full. The City Manager is empowered and directed to enforce this provision against delinquent customers.

§13.13.6 Well & Septic Tank Users
Developed properties that are served by wells and/or septic tanks shall also be required to participate in the stormwater utility. If these properties are not served by other city utilities, then billing for stormwater service shall occur upon creation of an impervious surface from which storm water may be discharged into public drainage facilities.
If a well or septic tank user is delinquent on stormwater utility fee payments in an amount equal or greater than $250, the City may pursue collection efforts and place a lien on the property in the amount of the unpaid fees.

§13.13.7 Appeal Policy
Upon application and submittal of a $250 application fee, a customer may seek a reduction of the monthly charge for stormwater service. The Community Development Director or their designee shall consider the application. The customer must show to the city’s satisfaction the amount of permanent reduction to the amount of impervious surface for the property.

Charges will be adjusted (increased or decreased) for the property if the change to the measured impervious area results in a change to the calculated number of ERU’s for the subject property. If the number of ERU’s remains the same or increases, the $250 application fee will be retained by the City as an administrative fee for reviewing the application. If the number of ERU’s decreases, the $250 application fee will be refunded to the customer as a $250 credit to their utility account.

Any adjustment made shall continue until the property is further developed. Upon further development of the property, another application may be made by the customer.

§13.13.8 Administration
The Community Development Director shall be responsible for the administration of the stormwater utility (except for the billing and collection of funds), including the development and/or modification of administrative procedures, maintenance programs, capital improvements, operations and maintenance standards and related activities.

The Finance Director or their designee shall be responsible for the billing and collection of funds. [Chapter 13.13 added by Ord. 1446 § 1, 2005]

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Chapter 13.20 UTILITY BILLING AND COLLECTION PROCEDURES

§13.20.1 Definitions.
“Applicant” means a person, eighteen years of age or older, or emancipated, who:
1. Applies for utility service; or
2. Reapplies for utility service at a new or existing location after service has been discontinued.
“Customer” means a person who has applied for, been accepted and is currently receiving service.
“Utility service” means city water service, stormwater service and sewer services. [Ord. 1435 § 2 (part), 2004; Ord. 1238 § 1 (part), 1991: prior code § 74.001]

§13.20.2 Utility service billing.
Billings for water, stormwater and sewer utility services shall be combined into one bill and shall be made monthly on the basis of the amount of service used during the previous monthly period. If, for any reason, it is impossible or impractical to read a water meter, water consumption may be estimated, based on the previous history of use on that property, until the meter can be read. Bills are due and payable on demand and will become delinquent if not paid within fifteen days after they become due and payable. The City will apply amounts received from customers first to stormwater charges, then sewer charges, then to late charges, if any, and then to water charges. [Ord. 1238 § 1 (part), 1991: prior code § 74.005]

§13.20.3 Application for utility service.
A. A written application for utility service must be made where:
1. Service is requested to be supplied to a property; or
2. Service has been involuntarily discontinued in accordance with this chapter, and the applicant subsequently seeks to have service restored; or
3. Service has been voluntarily discontinued and a request to restore service has not been made within twenty days.
B. An application is a request for utility service. An application for service shall not be accepted until the applicant:
1. Pays a deposit as established in Section 13.20.5 (A); or
2. Satisfies the credit screening criteria set forth in Section 13.20.5 (B); and
3. Supplies the following information on a form supplied by the city:
   a. The date of the application;
   b. Name and address of applicant applying for service;
   c. The location of the property to be served;
   d. The date on which the applicant will be ready for service;
   e. Address to which utility bills shall be mailed;
   f. The name, address and signature of the owner of the property;
   g. Owner and occupant’s 1) agreement to abide by this code and any written rules or regulations adopted for the utility system; and 2) consent to lien the property being served in the amount of past due amounts and charges, in the event of non-payment; and
   h. Such other information as the City Manager may require. [Ord. 1435 §2 (part),
C. Two or more parties who join to make application for service shall be jointly and individually liable for charges incurred, and shall be sent a single billing.
D. Contracts, other than applications, may be required prior to service where, in the opinion of the city, special circumstances exist.
E. If a premises is connected to the city utility system without application, the premises will be disconnected. Before a new connection is made, the applicant shall pay a tampering fee set by resolution of the City Council, plus amounts of all service used.
F. In no case shall a utility service be turned on until the terms of this section have been complied with, and until all appropriate fees and charges have been paid.

§13.20.4 Customer and Owner responsible for bills.
Payment of utility bills shall be the responsibility of the utility customer.
A. The customer shall be responsible for utility charges incurred until service is voluntarily terminated in accordance with the provisions of Section 13.20.70 (A)(1).
B. In cases where the customer is not the same as the owner and customer is delinquent on their account, the owner of the property shall be liable for all past due amounts and charges. [Ord. 1435 §2 (part), 2004; Ord. 1238 § 1 (part), 1991: prior code § 74.015] The owner’s responsibility for payment of bills shall not be reduced or waived because of the city’s attempts to collect from the customer, so long as the owner is sent notice of the delinquent billings.
C. If utility bills are paid and kept current, utility service will not be discontinued upon the order of any other person other than the customer to enforce vacation of the premises or for other reasons.

§13.20.5 Deposits.
A. All applicants shall be required to pay a deposit as established by Resolution of the City Council as a guarantee of the applicant’s performance of the agreement for service, unless the applicant can provide proof of satisfactory credit in accordance with Subsection B of this section, or can obtain a written co-obligor agreement from a person with satisfactory credit.
B. Satisfactory credit exists when the applicant or co-obligor has can demonstrate that the applicant or co-obligor has not been delinquent on payments to the City for utility services for more than thirty days on more than two occasions during a three-year period, the City has not discontinued utility service to the applicant or co-obligor, for nonpayment of bills during that three-year period, and the applicant or co-obligor is not currently delinquent in the payment of the applicant or co-obligor’s utility bills.
C. Co-obligors shall be mailed copies of all service disconnection notices delivered to the applicant.
D. Co-obligors shall be responsible for all delinquent amounts accrued by their co-obligee. [Ord. 1497 § 1 (part), Dec. 2011; Ord. 1435 §2 (part), 2004; Ord. 1238 § 1 (part), 1991: prior code § 74.020]

§13.20.6 Refund of deposits.
A. Upon discontinuance of service, the city will refund the balance of the customer's deposit after application of the deposit and any accrued interest to any unpaid bills for
utility service furnished by the city.
B. After the customer has paid bills for service for twelve consecutive billings without
failure to pay a utility bill for more than two occasions, and no discontinuation of service for
nonpayment of utility bills, and the customer is not currently delinquent in the payment of
the customer’s utility bills, the city will promptly refund the customer’s deposit. [Ord. 1238 §
1 (part), 1991: prior code § 74.025]

§13.20.7 Discontinuance of utility service.
A. Utility service shall be discontinued:
   1. Where a customer requests the city to discontinue service or to close an account;
   2. Where dangerous or emergency conditions exist at the premises to which service is
      provided;
   3. For failure to pay for utility service within the time frames established in Section
      13.20.8. Failure to pay for one utility shall be caused for discontinuance of any or all city
      utilities;
   4. For failure to abide by the terms of a payment agreement, if authorized in writing in
      advance by the finance director or designate, as established in Section 13.20.12(D);
   5. Where service is being obtained fraudulently;
   6. For failure to abide by any of the conditions or agreements contained in the signed
      application for service.
B. Voluntary Discontinuance. Every customer who is about to vacate any premises
   supplied with service by the utility, or who for any reason wishes to have such service
   discontinued, shall give five days’ notice in advance of specified date of discontinuance of
   service to the utility. Until the city has received such notice, the customer shall be held
   responsible for all service rendered to the premises.
C. Service shall be discontinued for nonpayment of bills as provided in Section 13.20.8.
   Service may also be discontinued for violation of any other provisions of this chapter five
   days after the date written notice to the customer from the City that the violation must
   cease is sent to the customer by first class mail to the customer’s last known address;
   provided, however, that where fraudulent use of services is detected, or where a
   dangerous condition is found to exist on the customer’s premises, service may be discon-
   tinued without advance notice.
D. Once service has been discontinued, no person other than an authorized city
   employee may reconnect the service. The customer of any property where service has
   been unlawfully reconnected shall be assessed a tampering fee, adopted by resolution of
   the City Council. The customer shall also be charged any actual damage done to the
   property of the city. [Ord. 1238 § 1 (part), 1991: prior code § 74.030]

§13.20.8 Notice and termination of service for delinquent bills.
Utility charges not paid within fifteen days after they become due and payable shall be
deemed to be delinquent. When a utility account is delinquent, a late fee shall be applied,
as established by Resolution of the City Council. The customer, owner and/or other
designated person will be notified by first class mail of such delinquency and given seven
calendar days from the date of the notice in which to make payment or request a hearing
as provided in Section 13.20.12.
   13.20.8.1 If payment is not received or hearing requested by the due date shown on
the delinquent notice, the customer and/or occupant will be notified in writing by personal
delivery or by posting a notice on the premises that service to the premises shall be
discontinued if payment is not received within forty-eight hours. The notice shall also
indicate that responsibility for payment of any unpaid balance shall be the responsibility of
the property owner and may be placed as a lien against the premises as authorized by this
code and service application.

13.20.8.2 Utility services shall not be turned off after 2:00 p.m. in the afternoon nor shall
utility services be turned off on Fridays, weekends, or the day before a regular holiday.

13.20.8.3 If the full payment of the delinquent amount is not made by the date
designated on the turn-off notice, the utility may be immediately turned off. At the time
utility service is turned off, a notice shall be posted on the premises indicating the utility
service has been turned off, and that a posting fee will be imposed. The notice will also
state that service may be restored by payment of the delinquent amounts, any outstanding
fees or charges, and all interest that has accrued thereon, reestablishment of the deposit
required by Section 13.20.5 and payment of the reinstatement fee adopted by resolution of
the City Council.

13.20.8.4 Prior to the restoration of service by the city, the fees and charges
enumerated in section 13.20.9 shall be paid, unless a deferred payment schedule is
approved by the Finance Director, or designee. A deferred payment schedule that is
violated shall not be renewed by the City.

13.20.8.5 Utility charge. Utility service charges shall become a lien against the
premises to which the services were provided from and after the date the charges are
entered into the city’s lien docket and the lien docket shall remain accessible for inspection
by anyone interested to ascertain the amount of such charges against the property.
Whenever a bill for utility service remains unpaid ninety days after it has been rendered,
and the amount of such bill exceeds $250.00, the lien thereby created may be foreclosed
in a manner provided for in Oregon Revised Statutes 223.610, or in any other manner
provided for by law or by city ordinance.

13.20.8.6 Pre-termination Notice Charge. Any delinquent account that remains unpaid
at the time that a pre-termination notice is posted on the premises in accordance with
section 13.20.8.1 shall be imposed a posting fee, which shall be added to the account. The
posting fee shall be set by Resolution of the City Council.

13.20.8.7 Delinquent utility accounts totaling less than twenty-five dollars ($25.00) shall
not be turned off unless circumstances indicate the service has been abandoned. [Ord.
1497 § 1 (part), Dec. 2011; Ord. 1435 § 2 (part), 2004; Ord. 1238 § 1 (part), 1991: prior
code § 74.035]

§13.20.9 Reinstatement of service.
A. Where a utility service is disconnected for violation of laws, rules, or regulations-for
fraudulent use of service, or for nonpayment, reinstatement of service will not be made
until all five of the following conditions are met:

1. All past-due amounts, including all outstanding fees and charges have been paid in
full;

2. A deposit as required by Section 13.20.5 has been established or restored;

3. Interest at the rate of two percent per month, accruing on all accounts from the date
of delinquency must be paid;
4. A reinstatement fee as established in subsection B of this section has been paid; and
5. A tampering fee, if applicable, as established in Section 13.20.7 (D), has been paid.

B. A reinstatement fee shall be charged and collected from the customer prior to re-
connection of service. The amount of the fee will be established by resolution of the City Council. [Ord. 1238 § 1 (part), 1991: prior code § 74.040]

§13.20.10 Refusal of service.
Service may be denied to any person:
A. Who is responsible for unpaid bills for utility service provided to any premises within
the City of Independence utility service area, until such bill and all related charges are paid
in full;
B. Until restitution has been made for any damage or loss of revenue to the City
resulting from the person's tampering with or bypassing water meters or locking devices;
C. Applying for service under a different name when the original applicant or customer
still resides at premises for which services are requested and services to the premises
have been disconnected for nonpayment of bills; [Ord. 1238 § 1 (part), 1991: prior code §
74.045]

§13.20.11 Adjustment of water bills.
A. Unusually high water bills resulting from leakage occurring in the customer's plumbing
system will be adjusted for a period not to exceed the previous two months, upon
notification by the customer, so long as the leakage is corrected within thirty days after its
discovery. The basis for the adjustment will be reduction of the water utility bill by one-half
the excess over the customer's normal bill. [Ord. 1238 § 1 (part), 1991: prior code §
74.050]
B. Billings which the city has made erroneously may be corrected retroactively for a period
not to exceed one year upon acknowledgement by the city of the error. [Prior code §
73.185]

§13.20.12 Hearings on disputed bills.
A. Any customer wishing to dispute their utility bill charges may submit to the City
Manager a written request for a hearing on the disputed bill. The request must be filed
within seven calendar days from the date of the utility bill. Upon filing of a request for
hearing, all proceedings relative to collection of the disputed bill shall be stayed until the
final decision is made.
B. The City Manager or designate shall schedule a hearing on the disputed charges and
shall notify the complaining party in writing of the time, place and date of such hearing.
Upon conclusion of the hearing, the City Manager or designate shall make a final
determination as to the amount due and owing on the disputed bill and shall notify the cus-
tomer in writing of the decision.
C. If the decision is that there are charges due and owing, the customer shall have
seven calendar days from the date of service of the notice to make full payment. Failure to
make payment within seven days shall result in a forty-eight-hour termination of service
notices provided in Section 13.20.8
D. If, in the judgment of the City Manager or designate, the public's interest can be
protected and at the same time the burden on the customer reduced, a written agreement
arranging for partial payment or a payment schedule can be accepted. [Ord. 1238 § 1 (part), 1991: prior code § 75.055]

§13.20.13 Nonrefundable cleaning fee.
Applicants requesting service in order to clean unoccupied rental properties may, in lieu of paying a deposit as required in Section 13.20.5, pay a nonrefundable fee which shall entitle the applicant to water for a period not to exceed thirty days in an amount not to exceed eight units. The fee will be determined by resolution of the City Council. Water usage exceeding eight units shall result in termination of service and the requirement of an application for renewed service in accordance with the requirements contained in Sections 13.20.3, 13.20.4, and 13.20.5. [Ord. 1238 § 1 (part), 1991: prior code § 75.060]

§13.20.14 Utility charges considered a debt.
Utility service charges levied in accordance with this chapter shall be a debt due to the city, which, if not paid within fifteen days after it shall be due and payable, shall be deemed delinquent and may be recovered by civil action, in addition to other lawful remedies, in the name of the city against the applicant, co-applicant, or both. Discontinuance of service shall be a remedy in addition to the remedies provided herein for nonpayment of delinquent accounts. [Ord. 1238 § 1 (part), 1991: prior code § 75.065]
Chapter 13.24 SYSTEM DEVELOPMENT CHARGES

§13.24.1 Definitions.
For purposes of this chapter, the following mean:
“Capital improvements” means public facilities or assets used for any of the following:
1. Water supply, treatment and distribution;
2. Sanitary sewers, including collection, transmission, treatment and disposal;
3. Storm sewers, including drainage and flood control;
4. Transportation, including but not limited to streets, sidewalks, bike lanes and paths, street lights, traffic signs and signals, street trees, public transportation, vehicle parking and bridges; or
5. Parks and recreation, including but not limited to mini-neighborhood parks, neighborhood parks, community parks, public open space and trail systems, buildings, courts, fields and other like facilities.
“Development” means conducting a building or mining operation, making a physical change in the use or appearance of a structure or land, which increases the usage of any capital improvements or which creates the need for additional or enlarged capital improvements.
“Improvement fee” means a fee for costs associated with capital improvements to be constructed after July 1, 1991.
“Land area” means the area of a parcel of land as measured by projection of the parcel boundaries upon a horizontal plane with the exception of a portion of the parcel within a recorded right-of-way or easement subject to a servitude for a public street or scenic or preservation purpose.
“Parcel of land” means a lot, parcel, block or other tract of land that is occupied or may be occupied by a structure or structure or other use, and that includes the yards and other open spaces required under the zoning, subdivision or other development ordinances.
“Qualified public improvements” means a capital improvement that is:
1. Required as a condition of development approval;
2. Identified in the plan adopted pursuant to Section 13.24.80 of this code; and
3. Not located on or contiguous to a parcel of land that is the subject of the residential development approval.
“Reimbursement fee” means a fee for costs associated with capital improvements constructed or under construction on the date the fee is adopted pursuant to Section 13.24.40 of this code.
“System development charge” means a reimbursement fee, an improvement fee or a combination thereof assessed or collected at the time of increased usage of a capital improvement, at the time of issuance of a development permit or building permit, or at the time of connection to the capital improvement. “System development charge” includes that portion of a sewer or water system connection charge that is greater than the amount necessary to reimburse the city for its average cost of inspecting and installing connections.
with water and sewer facilities. "System development charge" does not include fees assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, the cost of connection or hook-up fees for sanitary sewers or water lines, or the cost of complying with requirements or conditions imposed by a land use decision. [Ord. 1241 § 1 (part), 1991: prior code § 35.001]

§13.24.2 Purpose.
The purpose of the system development charge is to impose an equitable share of the public cost of capital improvements upon those developments that create the need for or increase the demands on capital improvements. This charge shall be collected at the time of the development of properties which contribute to increases in the need for those facilities. [Ord. 1241 § 1 (part), 1991: prior code § 35.005]

§13.24.3 Chapter provisions not exclusive.
The system development charge imposed by this code is separate from and in addition to any applicable tax, assessment, charge, fee in lieu of assessment or fee otherwise provided by law or imposed as a condition of development. A systems development charge is to be considered in the nature of a charge for service rendered or facilities made available, or a charge for future services to be rendered or facilities to be made available in the future. [Ord. 1241 § 1 (part), 1991: prior code § 35.010]

§13.24.4 System development charge established.
A. Unless otherwise exempted by the provisions of this chapter or other local or state law, effective July 1, 1991 a systems development charge is imposed upon all new development within the city, and all new development outside the boundary of the city that connects to or otherwise uses the sanitary sewer system or water system of the city. B. System development charges for each type of capital improvement may be created through application of the methodologies described in Section 13.24.5. The amounts of each system development charge shall be adopted initially by council resolution. Changes in the amounts shall also be adopted by resolution, except changes resulting solely from inflationary cost impacts. Inflationary cost impacts shall be measured and calculated each January by the City Manager or manager's designee and charged accordingly. Such calculations will be based upon changes in the Engineering News Record Construction Index (ENR Index) for Seattle, Washington. [Ord. 1241 § 1 (part), 1991: prior code §35.015]

§13.24.5 Fees and charges-Methodology.
A. The methodology used to establish the reimbursement fee shall consider the cost of then-existing facilities, prior contributions by then-existing users, the value of unused capacity, rate-making principals employed to finance publicly owned capital improvements and other relevant factors identified by the council. The methodology shall promote the objective that future systems users shall contribute an equitable share of the cost of then-existing facilities. B. The methodology used to establish the improvement fee shall consider the cost of projected capital improvements needed to increase the capacity of the systems to which the fee is related and shall provide for a credit against the improvement fee for the
construction of any qualified public improvement.
C. The methodologies used to establish systems development charges shall be adopted by resolution of council. The specific systems development charge may be adopted and amended concurrent with the establishment or revision of the systems development charge methodology. The City Manager shall review the methodologies established under this section periodically and shall recommend amendments, if and as needed, to the council for its action.
D. Except when authorized in the methodology adopted under subsection A of this section, the fees required by this code which are assessed or collected as part of a local improvement district or a charge in lieu of a local improvement district assessment, or the cost of complying with requirements or conditions imposed by a land use decision are separate from and in addition to the systems development charge and shall not be used as a credit against such charge.
E. The methodology may also provide for a credit as authorized in Section 13.24.11. [Ord. 1241 § 1 (part), 1991: prior code § 35.020]

§13.24.6 Compliance with state law.  
The revenues received from the systems development charges shall be budgeted and expended as provided by state law. Such revenues and expenditures shall be accounted for as required by state law. Their reporting shall be included in the city’s comprehensive annual financial report required by ORS Chapter 294. [Ord. 1241 § 1 (part), 1991: prior code § 35.025]

§13.24.7 Expenditure restrictions.  
A. System development charges shall not be expended for costs associated with the construction of administrative office facilities that are more than an incidental part of other capital improvements.
B. System development charges shall not be expended for costs of the operation or routine maintenance of capital improvements. [Ord. 1241 § 1 (part), 1991: prior code § 35.030]

§13.24.8 Capital improvement plan.  
The plan for capital improvements required by state law as the basis for expending public improvement charge component of systems development charge revenues shall be the adopted facilities plans and the capital improvements plan (CIP) of the city, or the capital improvement plan of any other governmental entity with which the city has cooperative agreement for the financing of commonly-used public improvements by the collection of system charges, provided such plans conform with state law and are consistent with the city's CIP and the city's comprehensive plan. [Ord. 1241 § 1 (part), 1991: prior code § 35.035]

§13.24.9 System development charge-Collection.  
A. The system development charge is payable upon issuance of:
   1. A building permit;
   2. A development permit, including a manufactured home placement permit;
   3. A development permit for development not requiring the issuance of a building permit; or
4. A permit to connect to the water or sewer system.
B. If no building, development or connection permit is required, the system development charge is payable at the time the usage of the capital improvement is increased.
C. If development is commenced or connection is made to the water or sewer systems without an appropriate permit, the system development charge is immediately payable upon the earliest date that a permit was required, and it will be unlawful for anyone to continue with the construction or use constituting a development until the charge has been paid or payment secured to the satisfaction of the City Manager.
D. Any and all persons causing, constructing, conducting, occupying or using the development or making application for the needed permit, or otherwise responsible for the development, are jointly and severally obligated to pay the charge, and the City Manager may collect the charge from any of them. The City Manager or the manager's designee shall not issue any permit or allow connection described in subsection A of this section until the charge has been paid in full or until an adequate security arrangement for its payment has been made, within the limits prescribed in this section.
E. (1) A systems development charge shall be paid in cash when due, or in lieu thereof, the applicant may exercise the person's or her right under ORS 223.208 to pay the systems development charge in installments. Should the applicant make such an election and file an application as provided in ORS 223.215, the charge shall thereupon become a first lien on the property occupied by the development and shall have the same effect as an assessment lien for a public improvement and shall be duly recorded in the docket of city liens.
   (2) The City Manager may only accept the delivery of a written application to pay in installments if the written agreement is secured by collateral satisfactory to the City Manager or the manager's designee. The collateral may consist of mortgage or trust deeds of real property, or an agreement secured by surety bond issued by a corporation licensed by state law to give such undertakings, or by cash deposit, letter of credit or other like security acceptable to the City Manager. [Ord. 1241 § 1 (part), 1991: prior code § 35.040]

§13.24.10 Exemptions.
A. Structures and uses established and existing on or before July 1, 1991 are exempt from a system development charge to the extent of the structure or use then existing and to the extent of the parcel of land as it is constituted on that date. Structures and uses affected by this subsection shall pay the water or sewer charges pursuant to the terms of this code upon the receipt of a permit to connect to the water or sewer system.
B. Additions to single-family dwellings that do not constitute the addition of a dwelling unit, as defined by the State Uniform Building Code, are exempt from all portions of the system development charge.
C. An alteration, addition, replacement or change in use that does not increase the parcel's or structure's use of the public improvement facility are exempt from all portions of the system development charge.
D. A project financed by city revenues is exempt from all portions of the system development charge. [Ord. 1241 § 1 (part), 1991: prior code § 35.045]

§13.24.11 Credits.
A. A system development charge shall be imposed when a change of use of a parcel or
B. A credit shall be given for the cost of a qualified public improvement associated with a development. If a qualified public improvement is located partially on and partially off the parcel that is the subject of the residential development approval, the credit shall be given only for the cost of the portion of the improvement not located on or wholly contiguous to the property. The credit provided for by this subsection shall be only for the improvement fee charged for the type of improvement being constructed and shall not exceed the improvement fee even if the cost of the capital improvement exceeds the applicable improvement fee.

C. Applying the methodology adopted by resolution, the City Manager may grant a credit against the public improvement charge, the reimbursement fee, or both, for a capital improvement constructed as part of the development that reduces the development’s demand upon existing capital improvements or the need for future capital improvements or that would otherwise have to be constructed at city expense under existing council policies.

D. In situations where the amount of credit exceeds the amount of the system development charge, the excess credit is not transferable to another development. It may be transferred to another phase of the original development. Credit shall not be transferable from one development to another. [Ord. 1241 § 1 (part), 1991: prior code § 35.050]

§13.24.12 Segregation and use of revenue.
A. All funds derived from a particular type of system development charge are to be segregated by accounting practices from all other funds of the city. That portion of the system development charge calculated and collected on account of a specific facility system shall be used for no purpose other than those set forth in this chapter.

B. The City Manager shall provide the city council with an annual accounting, based on the city’s fiscal year, for system development charges showing the total amount of system development charge revenues collected for each type of facility and the projects funded from each account. [Ord. 1241 § 1 (part), 1991: prior code § 35.055]

A. A person aggrieved by a decision regarding the propriety of an expenditure of system development charge revenues may appeal the decision or the expenditure to the city council by filing a written request with the City Manager describing with particularity the decision and the expenditure from which the person appeals.

B. An appeal of an expenditure must be filed within two years of the date of the alleged improper expenditure. Appeals of any other decision required or permitted to be made by the City Manager under this chapter must be filed within fifteen days of the date of the decision.

C. All appeals shall state:
1. The name and address of the appellant;
2. The nature of the determination being appealed;
3. The reason the determination is incorrect; and
4. What the correct determination of the appeal should be or how the correct
determination should be derived. An appellant who fails to file such statement within the
time permitted waives his/her objections, and the appeal shall be dismissed.
D. Unless the appellant and the city agree to a longer period, an appeal shall be heard
within thirty days from the receipt of the written appeal. At least ten working days prior to
the hearing, the city shall mail notice of the time and location thereof to the appellant.
E. The city council shall hear and determine the appeal on the basis of the appellant's
written statement and any additional evidence he/she deems appropriate. At the hearing
the appellant may present testimony and oral argument personally or by counsel. The city
may present written or oral testimony at this same hearing. The rules of evidence as used
by courts of law do not apply.
F. The appellant shall carry the burden of proving that the determination being appealed
is incorrect and what the correct determination should be.
G. The council shall determine whether the City Manager's decision or the expenditure
is in accordance with this chapter and the provisions of ORS 223.297 and may affirm,
modify or overrule the decisions. If the council determines that there has been an improper
expenditure of system development charge revenues, the council shall direct that a sum
equal to the misspent amount shall be deposited within one year to the credit of the
account or fund from which it was spent.
H. The city council shall render its decision within thirty days after the hearing date and
the decision of the council shall be final. The decision shall be in writing but written findings
shall not be made or required unless the council, in its discretion, elects to make findings
for precedential purposes. Any legal action contesting the council's decision on the appeal
shall be filed within sixty days of the council's decision.
I. A legal action challenging the methodologies adopted by the council shall be filed
within sixty days from the council's decision. [Ord. 1241 § 1 (part), 1991: prior code
§35.060]

After July 1, 1991, no person may connect any premises for service, or cause the same to
be connected, to any sanitary sewer, water system or storm sewer system of the city
unless the appropriate systems development charge has been paid or payment has been
secured as provided in this chapter. [Ord. 1241 § 1 (part), 1991: prior code § 35.065]
Chapter 15.1 GENERAL PROVISIONS

§15.1.1 Definitions.
Whenever appropriate in applying the provisions of this title, the following definitions apply:

“Appointing authority” means the city council of Independence, Oregon.

“Building official” means the person designated by the council as the building administrator.

“Building department” means the office of the Independence building official.

“City” means the city of Independence, Polk County, Oregon.

“Fire chief” means the chief of the Polk County fire district No. 1.

“Mobile home” means a vehicular portable structure built to the specifications and standards of the state of Oregon on a chassis and designed to be used without a permanent foundation as a dwelling when connected to utility facilities. Each mobile home shall bear a state of Oregon plate certifying compliance with the above standards.

“Modular or factory-built home” means a factory-built dwelling unit designed to be transported to a site and the construction meets the standards of the Oregon Prefabricated Structures Code.

“Public use structure” includes but is not limited to apartment houses, hotels, schools, places of amusement, playground structures and structures used in connection with public passenger transportation. [Ord. 1155 § 1986; prior code § 80.185]

§15.1.2 Mobile home placement permit.
No mobile home shall be occupied within the city without first obtaining a placement permit and satisfactory inspection of placement on the site, electrical connections and plumbing connections. [Prior code § 80.160]

§15.1.3 Modular homes.
No modular or factory-built home shall be located in the city until such modular or factory-built home has been certified by the state of Oregon as meeting all state requirements. [Prior code § 80.165]

§15.1.4 Sidewalks required.
No building permit shall be issued for the construction or conversion of any building used for dwelling, commercial or public uses located upon property adjoining any street or street right-of-way not served by a street-side sidewalk unless such sidewalk shall or will be constructed to the specification and locations as prescribed by the city as a part of the construction or conversion of the building. The building official may set a future date for completion of sidewalk work as a condition of issuing a building permit. [Prior code §80.170]

§15.1.5 Premise identification.
Numbers or addresses shall be placed on all new and existing buildings in such a position
as to be plainly visible and legible from the street or road fronting the property. Such numbers or addresses shall contrast with their background. [Prior code § 80.175]

§15.1.6 Gasoline storage restricted.
A. No person, business or entity may store or keep more than five gallons of gasoline in the city except upon the following conditions:
   1. In the tank of a self-propelled motor vehicle; or
   2. In an industrial or commercial zone when used in conjunction with a business located on the same property upon which the gasoline is stored.
B. Any gasoline stored in excess of five gallons shall be stored in tanks of such weight, thickness and material as shall be approved by the Polk County fire district No. 1. Approval of a gasoline storage tank shall be evidenced by a written certificate of approval, which shall be prominently displayed upon the pump or at some other conspicuous place on the premises.
C. Under no condition shall a certificate of approval be issued:
   1. For storage of gasoline for a tank of larger capacity than ten thousand gallons; or
   2. For more than three tanks of ten thousand gallons capacity each or the equivalent thereof in small tanks on any lot or tract fifty by one hundred feet or less in area. [Ord. 1205 § 1, 1989: prior code § 80.176]

§15.1.7 Siding of garages, hangars and outbuildings.
Garages, hangars and other outbuildings larger than one hundred twenty square feet shall have siding materials, roofing materials and trim similar in appearance or complementary to the residence. [Ord. 1215 § 1, 1990: prior code § 80.185A]

§15.1.8 Compliance with zoning and subdivision ordinances.
No building permits or mobile home placement permit shall be issued if the parcel of land upon which the building or mobile home is to be erected or located on or is located on would be in violation of the zoning ordinance or subdivision ordinance of the city. A subdivision shall be deemed to be in violation of the zoning ordinance for the purpose of issuing building permits so long as streets, curbs, drainage structures, utilities and other improvements remain uncompleted. The building official shall determine the compliance with zoning and subdivision ordinance for the purpose of issuing building permits. [Prior code § 80.180]

§15.1.9 State electrical inspections.
Enforcement of the electrical code and inspection of electrical conductors, equipment and wiring; installation, alteration and repair; shall be provided by the state of Oregon, Department of Commerce, except, that the building official shall enforce and administer the provisions of this title relating to the placement, plumbing connections and electrical connections of mobile homes in the city. [Prior code § 80.230]

§15.1.10 Enforcement.
The building official as defined in Section 15.1.10 shall administer and enforce this title, except that provisions of the fire code shall be administered and enforced by the chief of Polk County fire district No. 1. [Ord. 1155 § 2, 1986; prior code § 80.210]
§15.1.11 Amendments.
The codes, laws and rules adopted by this title as the city of building codes are adopted as constituted on July 1, 1978, and as thereafter amended. The regularly adopted amendments to the codes, laws and rules by the state of Oregon, the State Department of Commerce and the State Fire Marshal shall be effective as of the effective date of the change and shall be enforceable by the city as of such date. [Prior code § 80.215]

§15.1.12 Fees.
The fees for permits under this title shall be the fees prescribed by the Department of Commerce, state of Oregon. The city may set any permit fee at an amount lower than the fees adopted by the state of Oregon or set a fee for a permit which the state of Oregon has failed to set a fee by proper resolution. [Prior code § 80.220]

§15.1.13 Application of title.
The provisions of the codes, laws, rules and regulations adopted by this title apply to all buildings, structures and mobile homes in the city. [Prior code § 80.225]
§15.2.1 Building code adopted.
A publication, a copy of which is on file with the Building Official, marked and entitled Uniform Building Code Standards, 1998 Edition, is hereby adopted in its entirety for the city, for regulating and controlling building code standards in the city; said building code by this reference is made a part of this ordinance as though fully set out herein. [Ord. 1380 § 2 (part), 2000; (prior, Ord. 1260 § 1 (part), 1992: Ord. 1212 § 1 (part), 1990: Ord. 1156 § 1 (part), 1986: prior code § 80.105]

§15.2.2 Structural Specialty Code and Fire and Life Safety Code adopted.
A publication, a copy of which is on file with the Building Official, marked and entitled Oregon State Structural Specialty Code and Fire and Life Safety Code, 1998 Edition, is hereby adopted in its entirety, as the codes of the city for regulating and controlling the construction, reconstruction, remodeling, enlargement, alteration, repair, moving, removal, conversion, demolition, occupancy, equipment use, height, area and maintenance of buildings or structures of the city; said Structural Specialty Code and Fire and Life Safety Code by this reference is made a part of this ordinance as though fully set out herein. [Ord. 1380 § 2 (part), 2000; (prior, Ord. 1260 § 1 (part), 1992: Ord. 1212 § 1 (part), 1990: Ord. 1156 § 1 (part), 1986: prior code § 80.110]

§15.2.3 Plumbing code adopted.
A publication, a copy of which is on file with the Building Official, marked and entitled Oregon State Plumbing Specialty Code Statutes and Administrative Rules, 2000 edition, is hereby adopted in its entirety as the plumbing code for the city for regulating and controlling the erection, installation, alteration, addition, repair, relocation, replacement, maintenance or use of plumbing systems in the City; said Plumbing Code by this reference is made a part of this chapter as though fully set out herein. [Ord. 1380 § 2 (part), 2000; (prior, Ord. 1260 § 1 (part), 1992: Ord. 1212 § 1 (part), 1990: Ord. 1156 § 1 (part), 1986: prior code § 80.115]

§15.2.4 Mechanical Specialty Code and Mechanical Fire and Life Specialty Code adopted.
A publication, a copy of which is on file with the Building Official, marked and entitled State of Oregon Mechanical Specialty Code and Mechanical Fire and Life Specialty Code, 2000 edition, is hereby adopted in its entirety as the mechanical code for the City for regulating and controlling the design, construction, installation, quality of materials, location, operation, maintenance of heating, ventilating, cooling, refrigeration systems, incinerators and heat producing appliances, except boilers and pressure vessels regulated by the state of Oregon, Boiler and Pressure Vessel Law, in the City; said Mechanical Code by this reference is made a part of this ordinance as though fully set out herein. [Ord. 1380 § 2 (part); (prior, Ord. 1260 § 1 (part), 1992: Ord. 1212 § 1 (part), 1990: Ord. 1156 § 1 (part), 1986: prior code § 80.120]

§15.2.5 Electrical code adopted.
A book or publication, marked and entitled National Electrical Code, 1991 Edition, and a
§15.2.6 Sign code adopted.
A certain book or publication, a copy of which is on file with the Building Official, marked and entitled Uniform Sign Code, 1997 edition, hereinafter referred to as Sign Code, is adopted in its entirety, except Section 303 of the Sign Code is amended to read as follows:

Section 303. The following signs shall not require a sign permit. These exemptions shall not be construed as relieving the owner of the sign from the responsibility of its erection and maintenance, and its compliance with the provisions of this code or any other law or ordinance regulating the same:

1. Temporary “For Sale” and Political Signs.
2. Professional name plates not exceeding one square foot in area.
3. Bulletin boards not over 10 square feet in area for public, charitable or religious institutions which the same are located on the premises of the institutions under limits of this ordinance.
4. Signs denoting the architect, engineer or contractors engaged upon the project under construction when placed upon the job-site and not exceeding 32 square feet in area.
5. Occupational signs denoting only the name and profession of an occupant in a commercial building, public institutional building or dwelling house, and not exceeding two square feet in area, under limits of this ordinance.
6. Memorial signs or tablets, names of buildings and date of erection when cut into any masonry surface or when constructed of non-combustible materials; and not to exceed 10 square feet in area.
7. Official traffic or other municipal signs, legal notices, railroad crossing signs, danger signs and such temporary emergency or non-advertising signs as may be approved by the Building Official.
8. Repair permit (to remove an existing sign from its structure for repair and to replace the sign on the sign structure without making structural alterations), as the sign code for the city for regulating and controlling the design of materials, construction, location, electrification and maintenance of signs and sign structures not located in a building in the city; and the Sign Code so adopted and on file with the recorder is referred to and by this reference made a part of this chapter as though fully set out herein. [Ord. 1380 § 2 (part), 2000; (prior, Amended during 1993 codification; prior code § 80.130)]

§15.2.7 Dangerous building abatement code adopted.
A publication, a copy of which is on file with the City of Independence Building Official, marked and entitled Uniform Code for the Abatement of Dangerous Buildings, 1997
edition, is hereby adopted in its entirety as the building abatement code for the City for regulating and controlling the repair, vacation, demolition and abatement of dangerous buildings in the City; said code by this reference is made part of this ordinance as though fully set out herein. [Ord. 1380 § 2 (part), 2000; (Ord. 1260 § 1 (part), 1992; Ord. 1212 § 1 (part), 1990: Ord. 1156 § 1 (part), 1986: prior code § 80.135)]

§15.2.8 Fire code adopted.
A publication, a copy of which is on file with the City of Independence Building Official, marked and entitled 2003 International Fire Code, as adopted and amended by the State of Oregon, is hereby adopted in its entirety as the fire code for the City of regulating the hazards from storage, handling and use of hazardous substances, materials and devices and conditions hazardous to life, property and the use or occupancy of buildings or premises in the City; said code by this reference is made a part of this ordinance as though fully set out herein. [Ord. 1440 § 1, 2004; (Ord. 1380 § 2 (part), 2000;Ord. 1260 § 1 (part), 1992; Ord. 1212 § 1 (part), 1990: Ord. 1156 § 1 (part), 1986: prior code § 80.140]

§15.2.9 Housing code adopted.
A book or publication, a copy of which is on file with the Building Official, marked and entitled Uniform Housing Code, 1997 Edition, is hereby adopted in its entirety as the Housing Code for the City for the protection of life, limb, health, property, environment and for the safety and welfare of the consumer, general public and the owners and occupants of residential buildings or portions thereof used or designed for human habitation in the City; said code is by this reference made a part of the ordinance as though fully set out herein. [Ord. 1380 § 2 (part), 2000; (Ord. 1260 § 1 (part), 1992; Ord. 1212 § 1 (part), 1990: Ord. 1156 § 1 (part), 1986: prior code § 80.145]

§15.2.10 Solar Specialty Code adopted.
A certain publication, a copy of which is on file with the city recorder, marked and entitled Solar Specialty Code, 1991 Edition, hereinafter is adopted in its entirety as the solar specialty code for the city for the regulation of the solar structures in the city; and the Solar Specialty Code so adopted and on file in the office of the recorder is referred to and by this reference is made a part of this chapter as though fully set out herein. (Amended during 1993 codification; prior code § 80.183)

§15.2.11 Agricultural buildings.
Appendix Chapter 15 of the Structural Code entitled “Agricultural Buildings” shall be in effect in the city. [Prior code § 80.150]

§15.2.12 Excavation and grading.
Appendix Chapter 70 of the Structural Code entitled “Excavation and Grading” shall be in effect in the city. [Prior code § 80.155]

§15.2.13 Reroofing.
Appendix 32 of the Oregon Structural Specialty Code, entitled “Reroofing”, shall be in effect in the city. [Prior code § 80.157]
§15.2.14 International One and Two Family Dwelling Code adopted.
A publication, a copy of which is on file with the Building Official, marked and entitled
International One and Two Family Dwelling Code, 2000 edition, is hereby adopted in its
entirety, as the codes of the City for regulating and controlling the construction,
reconstruction remodeling, enlargement, alteration, repair, moving, removal, conversion,
demolition, occupancy, equipment use, height, area and maintenance of buildings or
structures of the City; said International One and Two Family Dwelling Code by this
reference is made a part of this ordinance as though fully set out herein. [Ord. 1380 § 1,
2000]
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§15.03.010 Chapter title.
This Chapter shall be known as the “property maintenance regulations,” and is referred to herein as “this Chapter.”

§15.03.020 Purpose.
The purpose of this Chapter is to protect the health, safety and welfare of Independence citizens, to prevent deterioration of existing structures, and to contribute to vital neighborhoods by:
(A) Regulating and abating dangerous and derelict buildings.
(B) Establishing and enforcing minimum standards for buildings and other structures regarding basic equipment, facilities, sanitation, fire safety, and maintenance.

§15.03.030 Scope – Conflict with state law.
The provisions of this Chapter shall apply to all property in the City limits except as otherwise provided by law; however, the provisions of this Chapter do not apply to jails, institutions and similar occupancies as classified by the state-adopted Oregon Structural Specialty Code. In the event that a provision of this Chapter conflicts with a licensing requirement of the Oregon State Department of Human Resources the state licensing requirements shall be followed.

§15.03.040 Application.
Any alterations to buildings, or changes of their use, which may be a result of the enforcement of this Chapter shall be done in accordance with applicable building codes as adopted by the City of Independence.

§15.03.050 Use of summary headings.
This Chapter makes use of summary headings (in boldface type) on Chapters, sections, and subsections to assist the reader in navigating the document. In the event of a conflict in meaning between the bold heading and the following plain text, the meaning of the plain text shall apply.

§15.03.060 Definitions – Generally.
For the purpose of this Chapter, certain abbreviations, terms, phrases, words and their derivatives shall be construed as specified in this Chapter. Words used in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine and the feminine the masculine. “And” indicates that all connected items or provisions apply. “Or” indicates that the connected items or provisions may apply singly or in combination. Terms, words, phrases and their derivatives used, but not specifically defined, in this Chapter either shall have the meanings defined in other Chapters of this code or if not defined, shall have their commonly accepted meanings. If a conflict exists between a definition in other Chapters and a definition in this Chapter, the definitions in this Chapter shall apply to actions taken pursuant to this Chapter.
§15.03.070 Definitions.

“Abatement of a nuisance” means the act of removing, repairing, or taking other steps as may be necessary in order to remove a nuisance.

“Accessory structure” means any structure not intended for human occupancy which is located on residential property. Accessory structures may be attached to or detached from the residential structure. Examples of accessory structures include: garages, carports, sheds, and other non-dwelling buildings; decks, awnings, heat pumps, fences, trellises, flag poles, tanks, towers, exterior stairs and walkways, and other exterior structures on the property.

Apartment House. See Dwelling Classifications.

“Approved” means meets the standards set forth by applicable provisions of the Independence Municipal Code including any applicable regulations for electric, plumbing, building, or other sets of standards included by reference in this Chapter.

“Basement” means the usable portion of a building which is below the main entrance story and is partly or completely below grade.

“Boarded” means secured against entry by apparatus which is visible off the premises or is not both lawful and customary to install on occupied structures.

“Building” means any structure used or intended to be used for supporting or sheltering any use or occupancy.

“Building, existing” means a building constructed and legally occupied prior to the adoption of this Chapter, and one for which a building permit has been lawfully issued and has not been revoked or lapsed due to inactivity.

“Building Official” means the building official, code enforcement officer or authorized representative charged with the enforcement and administration of this Chapter.

“Carbon monoxide alarm” means a devise that detects carbon monoxide: produces a distinctive audible alert when carbon monoxide is detected; is listed by Underwriters laboratories as complying with ANSI/UL 2034 or ANSI/UL 2075 or any other nationally recognized testing laboratory or an equivalent organization; and operates as a distinct unit, as two or more single station units wired to operate in conjunction with each other, or as part of a system that includes carbon monoxide detectors.

“Carbon monoxide source” means a heater, fireplace, furnace, appliance, or cooking source that uses coal, wood, petroleum products, and other fuels that emit carbon monoxide as a by-product of combustion. Petroleum products include, but are not limited to, kerosene, natural gas, or propane.

“Ceiling height” means the clear distance between the floor and the ceiling directly above it.

“Court” means a space, open and unobstructed to the sky, located at or above grade level on a lot and bounded on three or more sides by walls of a building.

Dangerous Building. See “Dangerous structure.”

“Dangerous structure” means any structure which has any of the conditions or defects described in IMC 15.03.380.

“Derelict building” means any structure which has any of the conditions or defects described in IMC 15.03.370(A).

“Dwelling” means any structure containing dwelling units, including all dwelling classifications covered by this Chapter.

**Dwelling Classifications.** Types of dwellings covered by this Chapter include:

- **“Apartment house”** means any building or portion of a building containing three or more dwelling units, which is designed, built, rented, leased, let, or hired out to be occupied for residential living purposes.

- **“Hotel”** means any structure containing dwelling units that are intended, designed, or used for renting or hiring out for sleeping purposes by residents on a daily, weekly, or monthly basis.

**Manufactured Dwelling.** The term “manufactured dwelling” includes the following types of single-family dwellings:

- **“Residential trailer”** means a structure constructed for movement on the public highways that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy, that is being used for, or is intended to be used for, residential purposes, and that was constructed before January 1, 1962.

- **“Mobile home”** means a structure constructed for movement on the public highways that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy, that is being used for, or is intended to be used for, residential purposes, and that was constructed between January 1, 1962, and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction.

- **“Manufactured home”** means a structure constructed for movement on the public highways that has sleeping, cooking, and plumbing facilities, that is intended for human occupancy, that is being used for, or is intended to be used for, residential purposes, and that was constructed in accordance with federal manufactured housing construction and safety standards and regulations.

- **“Manufactured dwelling”** does not include any unit identified as a recreational vehicle by the manufacturer.

- **“Motel.”** For purposes of this Chapter, a “motel” shall be defined the same as a “hotel.”

- **“Single-family dwelling”** means a structure containing one dwelling unit, including adult foster care homes.

- **“Single-room occupancy housing unit”** means a one-room dwelling unit in a hotel providing sleeping, cooking, and living facilities for one or two persons in which some or all sanitary or cooking facilities (toilet, lavatory, bathtub or shower, kitchen sink, or cooking equipment) may be shared with other dwelling units.

- **“Social care facilities”** means any building or portion of a building which is designed, built, rented, leased, let, hired out or otherwise occupied for group residential living purposes, which is not an apartment house, single-family dwelling or two-family dwelling. Such facilities include, but are not limited to, retirement facilities, assisted living facilities, residential care facilities, halfway houses, youth shelters, homeless shelters and other group living residential facilities.

- **“Two-family dwelling”** means a structure containing two dwelling units, also known as a “duplex.”

- **“Dwelling unit”** means one or more habitable rooms that are occupied by, or in the case of an unoccupied structure or portion of a structure, are designed or intended to be occupied by, one person or by a family or group living together as a single housekeeping
unit that includes facilities for living and sleeping and, unless exempted by this Chapter in IMC 15.03.230 and 15.03.240, also includes facilities for cooking, eating, and sanitation.

“Exit (means of egress)” means a continuous, unobstructed means of escape to a public way, as defined in the building code in effect in the City.

“Exterior property area” means the portions of a property outside the exterior walls and roof of any structure.

“Extermination” means the elimination of insects, rodents, vermin, vector or other pests at or about the affected building.

“Floor area” means the area of clear floor space in a room exclusive of fixed or built-in cabinets or appliances.

“Habitable room or space” means a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas are not considered habitable space.

“Hazardous materials” means materials defined by the current adopted fire code as hazardous.

Hotel. See Dwelling Classifications.

“Human habitation” means the use of any residential structure or portion of the structure in which any person remains for continuous periods of two hours or more or for periods which will amount to four or more hours out of 24 hours in one day.

“Immediate danger” means any condition posing a direct, immediate threat to human life, health, or safety.

“Infestation” means the presence within or around a structure of insects, rodents, vermin, vector or other pests to a degree that is harmful to the structure or its occupants.

“Inspection” means the examination of a property by a person authorized by law for the purpose of evaluating its condition as provided by this Chapter.

“Inspector” means an authorized representative of the building official or code enforcement officer whose primary function is the inspection of properties and the enforcement of this Chapter.

“Interested party” means any person or entity that possesses any legal or equitable interest of record in a property including but not limited to the holder of any lien or encumbrance of record on the property.

“Kitchen” means a room used or designed to be used for the preparation of food.

“Lavatory” means a fixed wash basin connected to hot and cold running water and the building drain and used primarily for personal hygiene.

“Maintenance” means the work of keeping property in proper condition to perpetuate its use.

Manufactured Dwelling. See Dwelling Classifications.

Motel. See Dwelling Classifications.

“Occupancy” means the lawful purpose for which a building or part of a building is used or intended to be used.

“Occupant” means any person (including an owner, tenant or operator) using a building, or any part of a building, for its lawful, intended use.

“Occupied” means used for an occupancy.

“Operator” means any person who has charge, care or control of a building or part of a building.
“Outdoor area” means all parts of property that are exposed to the weather including the exterior of structures built for human occupancy. This includes, but is not limited to, open and accessible porches, carports, garages, and decks; accessory structures; and any outdoor storage structure.

“Owner” means the person whose name and address is listed as the owner of the property by the county tax assessor in the county assessment and taxation records.

“Plumbing” or “plumbing fixtures” means any water pipes, vent pipes, garbage or disposal units, waste lavatories, bathtubs, shower baths, installed clothes-washing machines or other similar equipment, catch basins, drains, vents, or other similarly supplied fixtures, together with all connection to water, gas, sewer, or vent lines.

“Property” means real property and all improvements or structures on real property, from property line to property line.

“Public right-of-way” means any sidewalk, beauty strip, alley, street, or pathway, improved or unimproved, that is dedicated to public use.

“Repair” means the reconstruction or renewal of any part of an existing structure for the purpose of its maintenance.

“Resident” means any person (including owner, tenant or operator) hiring or occupying a room or dwelling unit for living or sleeping purposes.

“Residential property” means real property and all improvements or structures on real property used or, in the case of unoccupied property, intended to be used for residential purposes including any residential structure, dwelling, or dwelling unit as defined in this Chapter and any mixed-use structures which have one or more dwelling units. Hotels that are used exclusively for transient occupancy, as defined in this Chapter, are excluded from this definition of residential property.

“Residential rental property” means any property within the City on which exist one or more dwelling units which are not occupied as the principal residence of the owner.

“Residential structure” means any building or other improvement or structure containing one or more dwelling units as well as any accessory structure. This includes any dwelling as defined in this Chapter.

“Responsible Person” means an agent, occupant, lessee, tenant, contract purchaser, owner, or other person having possession or control of property or the supervision of any construction project.

“Shall,” as used in this Chapter, is mandatory.

Single-Family Dwelling. See Dwelling Classifications.

Single-Room Occupancy Housing Unit. See Dwelling Classifications.

“Sink” means a fixed basin connected to hot and cold running water and a drainage system and primarily used for the preparation of food and the washing of cooking and eating utensils.

“Sleeping room” means any room designed, built, or intended to be used as a bedroom as well as any other room used for sleeping purposes.

“Smoke alarm or detector” means an approved detection device for products of combustion other than heat that is either a single station device or intended for use in conjunction with a central control panel and which plainly identifies the testing agency that inspected or approved the device.
“Structure” means that which is built or constructed, an edifice or building of any kind, or any piece or work artificially built up or composed of parts joined together in some definite manner, including but not limited to buildings.

“Substandard” means in violation of any of the minimum requirements as set out in this Chapter.

“Supplied” means installed, furnished or provided by the owner or operator.

“Swimming pool” means an artificial basin, chamber, or tank constructed of impervious material, having a depth of 18 inches or more, and used or intended to be used for swimming, diving, or recreational bathing.

“Toilet” means a flushable plumbing fixture connected to running water and a drainage system and used for the disposal of human waste.

“Toilet compartment” means a room containing only a toilet or only a toilet and lavatory.

“Transient occupancy” means occupancy of a dwelling unit in a hotel where the following conditions are met:

1. Occupancy is charged on a daily basis and is not collected more than six days in advance;
2. The lodging operator provides maid and linen service daily or every 2 days as part of the regularly charged cost of occupancy;
3. The period of occupancy does not exceed 30 days; and
4. If the occupancy exceeds 5 days, the resident has a business address or a residence other than at the hotel.

Two-Family Dwelling. See Dwelling Classifications.

“Unoccupied” means not used for occupancy.

“Unsecured” means any structure in which doors, windows, or apertures are open or broken so as to allow access by unauthorized persons.

“Yard” means an open, unoccupied space, other than a court, unobstructed from the ground to the sky, and located between a structure and the property line of the lot on which the structure is situated.

Article II. Standards

§15.03.080 Maintenance – Generally.

No Responsible Person shall maintain or permit to be maintained any property which does not comply with the requirements of this Chapter. All properties shall be maintained to the building code requirements in effect at the time of construction, alteration, or repair and shall meet the minimum requirements described in this Chapter.

§15.03.090 Display of address number.

Address numbers posted shall be the same as the number listed on the county assessment and taxation records for the property. Dwellings shall have a minimum of three-inch-high address numbers and commercial buildings shall have a minimum four-inch-high address numbers. All address number shall be posted in a conspicuous place on a contrasting background so they may be read from the listed street or public way. Units within apartment houses shall be clearly numbered or lettered.
§15.03.100 Accessory structures.
All accessory structures on residential property shall be maintained structurally safe and sound and in good repair. All accessory structures, including exterior steps and walkways, shall be maintained free of unsafe obstructions or hazardous conditions.

§15.03.110 Roofs.
The roof of any structure shall be structurally sound, tight, and have no defects which might admit rain. Roof drainage shall be adequate to prevent rainwater from causing dampness in the walls or interior portion of the building and shall channel rainwater into approved receivers. Temporary use of tarps, sheet plastics and similar products shall be limited to a 30 day duration. Up to two (2), 60 day extensions may be granted by the City if needed because of bad weather or other emergency conditions.

§15.03.120 Chimneys.
Every masonry, metal, or other chimney shall remain adequately supported and free from obstructions and shall be maintained in a condition which ensures there will be no leakage or backup of noxious gases. Every chimney shall be reasonably plumb. Loose bricks or blocks shall be rebonded. Loose or missing mortar shall be replaced. Unused openings into the interior of the structure must be permanently sealed using approved materials.

§15.03.130 Foundations and structural members.
Foundation elements shall adequately support the building and shall be free of rot, crumbling elements, or similar deterioration. The supporting structural members in every structure shall be maintained structurally sound, showing no evidence of deterioration or decay which would substantially impair their ability to carry imposed loads.

§15.03.140 Exterior walls and exposed surfaces.
(A) Every exterior wall and weather-exposed exterior surface or attachment shall be free of holes, breaks, loose or rotting boards or timbers and any other conditions which might admit rain or dampness to the interior portions of the walls or the occupied spaces of the building.
(B) All exterior wood surfaces shall be made substantially impervious to the adverse effects of weather by periodic application of an approved protective coating of weather-resistant preservative, and be maintained in good condition. Wood used in construction of permanent structures and located nearer than 6 inches to the earth shall be treated wood or wood having a natural resistance to decay.
(C) Exterior metal surfaces shall be protected from rust and corrosion.
(D) Every section of exterior brick, stone, masonry, or other veneer shall be maintained structurally sound and be adequately supported and tied back to its supporting structure.

§15.03.150 Stairs and porches.
Every stair, porch, and attachment to stairs or porches shall be so constructed as to be safe to use and capable of supporting the loads to which it is subjected and shall be kept in sound condition and good repair, including replacement as necessary of flooring, treads, risers, and stringers that evidence excessive wear and are broken, warped, or loose.
§15.03.160 Handrails and guardrails.
Every handrail and guardrail shall be firmly fastened, and shall be maintained in good condition, capable of supporting the loads to which it is subjected, and meet the following requirements:

(A) Handrails and guardrails required by building codes at the time of construction shall be maintained or, if removed, shall be replaced.

(B) Where not otherwise required by original building codes, exterior stairs of more than three risers which are designed and intended to be used as part of the regular access to unit shall have handrails. Interior stairs of more than three risers that connect between floors shall have handrails. When required handrails are installed they shall have a minimum height of 30 inches and maximum height of 38 inches, measured vertically from the nosing of the treads. They shall be continuous the full length of the stairs and shall be returned or shall terminate as per building code.

(C) Where not otherwise required by original building codes, porches, balconies or raised floor surfaces located more than 30 inches above the floor or grade below shall have guardrails. Open sides of stairs with a total rise of more than 30 inches above the floor or grade below shall have guardrails no less than 34 inches in height measured vertically from the nosing of the tread. When required guardrails are installed, they shall have intermediate rails or ornamental closures which will not allow passage of an object four inches or more in diameter.

§15.03.170 Windows.
All windows shall be maintained in good condition and meet the following requirements or as required by building codes at the time of construction:

(A) Every habitable room shall have at least one window facing directly to an exterior yard or court or shall be provided with approved artificial light. Except where approved artificial light is provided, the minimum total glass area for each habitable room shall be eight percent of the room’s floor area, except for basement rooms where the minimum shall be four percent. These exceptions to the current code shall not apply where any occupancy has been changed or increased contrary to the provisions of this Chapter.

(B) Every habitable room shall have at least one window that can be easily opened or another approved device to adequately ventilate the room. Except where another approved ventilation device is provided, the total openable window area in every habitable room shall be equal to at least one-fortieth of the area of the room. Windows required for secondary escape purposes in sleeping rooms must also meet the requirements outlined in subsection D of this section.

(C) Every bathroom and toilet compartment shall comply with the light and ventilation requirements for habitable rooms as required by subsections A and B of this section, except that no window shall be required in bathrooms or toilet compartments equipped with an approved ventilation system.

(D) Windows in sleeping rooms that are provided to meet emergency escape or rescue requirements described in IMC 15.03.300(A) shall have a sill height of no more than 44 inches above the floor or above an approved, permanently installed step. The step must not exceed 12 inches in height and must extend the full width of the window. The top surface of the step must be a minimum of 6 feet from the ceiling above the step.
(E) Windows in sleeping rooms that are provided to meet emergency escape or rescue requirements described in IMC 15.03.300(A) shall have a minimum net clear opening at least 20 inches wide, at least 22 inches high, and, if constructed after July 1, 1974, at least 5.7 square feet in area.

(F) Every window required for ventilation or emergency escape shall be capable of being easily opened and held open by window hardware. Any installed storm windows on windows required for emergency escape must be easily openable from the inside without the use of a key or special knowledge or effort.

(G) All windows within 10 feet of the exterior grade that open must be able to be securely latched from the inside as well as be openable from the inside without the use of a key or any special knowledge or effort. This same requirement shall apply to all openable windows that face other locations that are easily accessible from the outside, such as balconies or fire escapes, regardless of height from the exterior grade.

(H) Every window shall be substantially weather-tight, shall be kept in sound condition and repair for its intended use, and shall comply with the following:

1. Every window sash shall be fully supplied with glass window panes without open cracks and holes.
2. Every window sash shall be in good condition and fit weathertight within its frames.
3. Every window frame shall be constructed and maintained in relation to the adjacent wall construction so as to exclude rain as completely as possible and to substantially exclude wind from entering the dwelling.

§15.03.180 Doors.

(A) Every dwelling or dwelling unit shall have at least one door leading to an exterior yard or court, or in the case of a two-family dwelling or apartment, to an exterior yard or court or to an approved exit. All such doors shall be openable from the inside without the use of a key or any special knowledge or effort. All screen doors and storm doors must be easily openable from the inside without the use of a key or special knowledge or effort.

(B) In hotels and apartment houses, exit doors in common corridors or other common passageways shall be openable from the inside with one hand in a single motion, such as pressing a bar or turning a knob, without the use of a key or any special knowledge or effort.

(C) Every door to the exterior of a dwelling unit shall be equipped with a lock designed to discourage unwanted entry and to permit opening from the inside without the use of a key or any special knowledge or effort.

(D) Every exterior door shall comply with the following:

1. Every exterior door shall be able to be securely locked and every exterior door, door hinge, door lock, and strike plate shall be maintained in good condition.
2. Every exterior door, when closed, shall fit reasonably well within its frame and be weather-tight.
3. Every door frame shall be constructed and maintained in relation to the adjacent wall construction so as to exclude rain as completely as possible, and to substantially exclude wind from entering the dwelling.

(E) Every existing interior door and door frame shall be maintained in a sound condition for its intended purpose with the door fitting within the door frame.
§15.03.190 Interior walls, floors, and ceilings.
   (A) Every interior wall, floor, ceiling, and cabinet shall be constructed and maintained in a safe and structurally sound condition, free of large holes and serious cracks, loose plaster or wallpaper, flaking or scaling paint, to permit the interior wall, floor, ceiling and cabinet to be kept in a clean and sanitary condition.
   (B) Every toilet compartment, bathroom, and kitchen floor surface shall be constructed and maintained to be substantially impervious to water and to permit the floor to be kept in a clean and sanitary condition.

§15.03.200 Interior dampness.
   Every structure, including basements and crawl spaces shall be maintained reasonably free from dampness to prevent conditions conducive to decay, mold growth, or deterioration of the structure.

§15.03.210 Insect and rodent harborage.
   Every structure shall be kept free from insect and rodent infestation, and where insects and rodents are found, they shall be promptly exterminated. After extermination, proper precautions shall be taken to prevent reinfestation.

§15.03.220 Cleanliness and sanitation.
   The interior and exterior of every structure shall be constructed in a safe and structurally sound condition to permit the interior and exterior to be maintained in a clean and sanitary condition. The interior/exterior of every structure shall be free from accumulation of rubbish, unused appliances, discarded furniture or garbage which is affording a breeding ground for insects and rodents, producing dangerous or offensive gases, odors and bacteria, or other unsanitary conditions, or a fire hazard.

§15.03.230 Bathroom facilities.
   (A) Except as otherwise noted in this Chapter, bathroom facilities shall be maintained in a safe and sanitary working condition.
      (1) Every dwelling unit shall be provided with a toilet, lavatory, and a bathtub or shower.
      (2) Every commercial building shall be provided with toilet and lavatory facilities. Exception: Toilet facilities may be located in an adjacent building on the same property for all commercial or industrial uses, except Drinking and Dining establishments.
   (B) In hotels, apartment houses and social care facilities where private toilets, lavatories, or baths are not provided, there shall be on each floor at least one toilet, one lavatory, and one bathtub or shower, each provided at the rate of one for every 12 residents. Required toilets, bathtubs, and showers shall be in a room, or rooms, that allow privacy.
   (C) When there are practical difficulties involved in carrying out the provisions of this section for hotels, apartment houses and social care facilities where private toilets, lavatories or baths are not provided, the building official may grant modifications for individual cases. The building official shall first find that a special and individual reason makes the requirements of this section impractical and that the modification is in
conformance with the intent of this section and that such modification does not result in the provision of inadequate bathroom facilities in the dwelling.

§15.03.240 Kitchen facilities.
(A) Every dwelling unit shall contain a kitchen sink apart from the lavatory basin required under IMC 15.03.230, with the exception of single room occupancy housing units which shall comply with IMC 15.03.350(B) and social care facilities complying with subsection C of this section.
(B) Except as otherwise provided for in subsection C of this section and IMC 15.03.350(B) and (C), every dwelling unit shall have approved service connections for refrigeration and cooking appliances.
(C) Social care facilities may be provided with a community kitchen with facilities for cooking, refrigeration, and washing utensils.

§15.03.250 Plumbing facilities.
(A) Every plumbing fixture or device shall be properly connected to a public or an approved private water system and to a public or an approved private sewer system.
(B) Commercial structures shall be provided with plumbing systems that comply with the Oregon Structural Specialty Code.
(C) All required sinks, lavatory basins, bathtubs and showers shall be supplied with both hot and cold running water. Every dwelling shall be supplied with water-heating facilities adequate for each dwelling unit which are installed in an approved manner, properly maintained, and properly connected with hot water lines to all sinks, lavatory basins, bathtubs and showers. Dwelling water-heating facilities shall be capable of heating enough water to permit an adequate amount of water to be drawn at every facility. Water capable of being drawn from bathtubs and showers shall not exceed 120°F.
(D) In every structure, all required plumbing or plumbing fixtures shall be:
   (1) Properly installed, connected, and maintained in good working order;
   (2) Kept free from obstructions, leaks, and defects;
   (3) Capable of performing the function for which they are designed; and
   (4) Installed and maintained so as to prevent structural deterioration or health hazards.
(E) All plumbing repairs and installations shall be made in accordance with the provisions of the plumbing code adopted by the City.

§15.03.260 Heating equipment and facilities.
(A) All heating equipment, including that used for cooking, water heating, heat, and clothes drying shall be:
   (1) Properly installed, connected, and maintained in safe condition and good working order;
   (2) Free from leaks and obstructions and kept functioning properly so as to be free from fire, health, and accident hazards; and
   (3) Capable of performing the function for which they are designed.
(B) Every dwelling unit shall have a heating facility capable of maintaining a room temperature of 68°F at a point 3 feet from the floor in all habitable spaces.
   (1) Portable heating devices may not be used to meet the dwelling heat requirements of this Chapter.
(2) No inverted or open flame fuel burning heater shall be permitted. All heating
devices or appliances shall be of an approved type.

§15.03.270 Electrical system, outlets, and lighting.
(A) Any structure using power must be connected to an approved source of electric
power. Every electric outlet and fixture shall be maintained and safely connected to an
approved electrical system. The electrical system shall not constitute a hazard to the
occupants of the building by reason of inadequate service, improper fusing, improper
wiring or installation, deterioration or damage, or similar reasons.
(B) In addition to other electrical system components that may be used to meet cooking,
refrigeration, and heating requirements listed elsewhere in this section, the following
outlets and lighting fixtures are required:
   (1) Every habitable room shall contain at least 2 operable electric outlets or one outlet
       and one operable electric light fixture.
   (2) Every toilet compartment or bathroom shall contain at least one supplied and
       operable electric light fixture and one outlet. Every laundry, furnace room, and all similar
       nonhabitable spaces shall have one supplied electric light fixture available at all times.
   (3) Every public hallway, corridor, and stairway in apartment houses, hotels and social
care facilities shall be adequately lighted at all times with an average intensity of
illumination of at least one foot-candle at principal points such as angles and intersections
of corridors and passageways, stairways, landings of stairways, landings of stairs and exit
doorways, and at least one-half foot-candle at other points. Measurement of illumination
shall be taken at points not more than 4 feet above the floor.

§15.03.280 Sleeping room requirements.
   Every room used for sleeping purposes:
   (A) Shall be a habitable room as defined in this Chapter; and
   (B) Shall have natural or approved artificial light, ventilation, and windows or other
       means for escape purposes as required by this Chapter.

§15.03.290 Overcrowding.
   No dwelling unit shall be permitted to be overcrowded. A dwelling unit shall be
considered overcrowded if there are more than 2 residents per bedroom and
living/sleeping room in the dwelling unit. (Example: a two-bedroom unit with a living room
could have no more than 6 residents.)

§15.03.300 Emergency exits.
   (A) Every sleeping room shall have at least one operable window or exterior door
approved for emergency escape or rescue that is openable from the inside to a full, clear
opening without the use of special knowledge, effort, or separate tools. Windows used to
meet this requirement shall meet the size and sill height requirements described in IMC
15.03.170(D). All below grade windows used to meet this requirement shall have a window
well the full width of the window, constructed of permanent materials with a three-foot
clearance measured perpendicular to the outside wall. Window wells with a vertical depth
greater than 44 inches shall be equipped with a permanently affixed ladder or steps usable
with the window in the full open position.
(B) Required exit doors and other exits shall be free of encumbrances or obstructions that block access to the exit.

(C) All doorways, windows and any device used in connection with the means of escape shall be maintained in good working order and repair.

(D) In addition to other exit requirements, in hotels and apartment houses:
   1. All fire escapes shall be kept in good order and repair.
   2. Every fire escape or stairway, stair platform, corridor or passageway which may be one of the regular means of emergency exit from the building shall be kept free of encumbrances or obstructions of any kind.
   3. Where doors to stair enclosures are required by the Independence Municipal Code to be self-closing, the self-closing device shall be maintained in good working order and it shall be unlawful to wedge or prop the doors open.
   4. Windows leading to fire escapes shall be secured against unwanted entry with approved devices which permit opening from the inside without the use of a key or any special knowledge, effort or tool.
   5. Where necessary to indicate the direction of egress, every apartment house and hotel shall have directional signs in place, visible throughout common passageways, that indicate the way to exit doors and fire escapes. Emergency exit doors and windows shall be clearly labeled for their intended use.

§15.03.310 Smoke alarms and Carbon Monoxide alarms.

Smoke alarms or detectors shall be required to be maintained as was required at the time of construction of the dwelling. Notwithstanding the provisions of the requirement at the time of construction, a single station smoke alarm or detector shall be located in all buildings where a room or area therein is designated for sleeping purposes either as a primary use or use on a casual basis. A single station smoke alarm or detector shall be installed in the immediate vicinity of the sleeping rooms and on each additional story of the dwelling, including basements, cellars and attics with habitable space. Required smoke alarms shall not be located within kitchens or garages, or in other spaces where temperatures can fall below 40°F (38°C). All alarms and detectors shall be approved, shall comply with all applicable laws, shall be installed in accordance with the manufacturer's instructions and shall be operable.

A properly functioning carbon monoxide alarm shall be installed for all new dwelling construction and all dwelling units for sale, lease or rent. A carbon monoxide alarm shall be located: (1) in each bedroom or within 15 feet outside of each bedroom door (bedrooms on separate floor levels in a structure consisting of two or more stories shall have separate carbon monoxide alarms); and (2) in any enclosed common area within the dwelling, if the common area is connected by door, ductwork or ventilation shaft to a carbon monoxide source located within or attached to the dwelling.

Allowable carbon monoxide alarm systems:
   - Single station alarms.
   - Household carbon monoxide detection systems.
   - Combination smoke/carbon monoxide alarms.

§15.03.320 Hazardous materials.

(A) When paint is applied to any surface of a structure, it shall be lead-free.
(B) Property shall be free of dangerous levels of hazardous materials, contamination by toxic chemicals, or other circumstances that would render the property unsafe.

(C) No residential property shall be used as a place for the storage and handling of highly combustible or explosive materials or any articles which may be dangerous or detrimental to life or health. No residential property shall be used for the storage or sale of paints, varnishes or oils used in the making of paints and varnishes, except as needed to maintain the dwelling.

(D) All structures shall be kept free of friable asbestos.

§15.03.330 Maintenance of facilities and equipment.

In addition to other requirements for the maintenance of facilities, such as bathrooms, kitchens, etc., and equipment described in this Chapter:

(A) All facilities in structures shall be constructed and maintained to properly and safely perform their intended function.

(B) All facilities or equipment present in a structure shall be maintained to prevent structural damage to the building or hazards of health, sanitation, or fire.

§15.03.340 Swimming pools.

A swimming pool may be located within a required rear yard or side yard provided that the pool meets the setback requirements for the zone in which the pool is located. Any pool installed shall be protected against accidental entry by a fence not less than 48 inches in height with a self-closing, self-locking gate not less than 48 inches from the edge of the pool.

§15.03.350 Special standards for single-room occupancy housing units.

In addition to meeting requirements for residential structures defined elsewhere in this Chapter, structures containing single-room occupancy housing units shall comply with the following:

(A) Either a community kitchen with facilities for cooking, refrigeration, and washing utensils shall be provided on each floor, or each individual single-room occupancy housing unit shall have facilities for cooking, refrigeration and washing utensils. In addition, facilities for community garbage storage or disposal shall be provided on each floor.

(B) When there are practical difficulties involved in carrying out the provisions of this subsection where each individual single-room occupancy housing unit is not provided with facilities for cooking, refrigeration and washing utensils, the building official may grant modifications for individual cases. The building official shall first find that a special and individual reason makes the requirements of this section impractical and that the modification is in conformance with the intent of this section and that such modification does not result in the provision of inadequate cooking, refrigeration and utensil washing facilities for the single-room occupancy housing units.

(C) Where cooking units are provided in individual single-room occupancy housing units, they shall conform to the requirements set forth below:

(1) All appliances shall be hard-wired and on separate circuits or have single dedicated connections;

(2) All cooking appliances shall be fixed and permanent, except microwave ovens;
(3) The Mechanical Specialty Code, as adopted, shall be used for setting standards for cooking appliances. Cabinets over cooking surfaces shall be not less than 30 inches above the cooking surface. Reduced clearances are permitted in accordance with the listing and labeling of the range hoods or appliances;

(4) All cooking appliances shall be installed so as to provide a minimum clear work space in front of the appliance of 24 inches.

Article III. Dangerous and Derelict Structures

§15.03.360 Dangerous and derelict structures – Generally.
No property shall contain any dangerous or derelict structure as described in this Chapter. All such dangerous or derelict structures shall be repaired or demolished.

§15.03.370 Derelict structures.
(A) A derelict structure is any building, structure, or portion thereof that meets any of the following criteria:
   (1) Has been ordered vacated by the Building Official pursuant to IMC 15.03.385, 15.03.390 and 15.03.400; or
   (2) Has been declared a dangerous structure by the Building Official; or
   (3) Is left unsecured and unoccupied for over 10 days; or
   (4) Is occupied in violation of Chapter 15.03.390 IMC;
   (5) Has, while vacant, had a nuisance declared by the City on the property upon which it is located;
   (6) Is partially burned and unoccupied for over 30 days; or
   (7) Is partially destroyed from wind, water, earthquake or other natural causes and unoccupied for over 30 days.

(B) Any property which has been declared by the building official to include a derelict structure shall be considered in violation of this Chapter until:
   (1) The structure has been demolished and the lot cleared and graded after approval is issued by the City, with final inspection and approval by the Building Official; or
   (2) The owner has demonstrated to the satisfaction of the Building Official that the property is free of all conditions causing its status as a derelict structure.

§15.03.380 Dangerous structures.
(A) Any building, structure, or portion thereof which has any or all of the following conditions or defects, to the extent that life, health, property, or safety of the public or person(s) entering the interior are endangered, shall be deemed to be a dangerous structure, declared a nuisance, and such condition or defects shall be abated pursuant to IMC 15.03.410.

(B) High Loads. Whenever the stress in any materials, member, or portion of a structure, due to all dead and live loads, is more than one and one-half times the working stress or stresses allowed for new buildings of similar structure, purpose, or location.

(C) Weakened or Unstable Structural Members or Appendages.
   (1) Whenever any portion of a structure has been damaged by fire, earthquake, wind, flood, or by any other cause to such an extent that the structural strength or stability is
materially less than it was before such catastrophe and is less than the minimum requirements for new buildings of similar structure, purpose, or location; or

(2) Whenever appendages, including parapet walls, cornices, spires, towers, tanks, statuaries, or other appendages or structural members which are supported by, attached to, or part of a building, are in a deteriorated condition or otherwise unable to sustain the design loads which are specified in this code.

(D) Buckled or Leaning Walls, Structural Members. Whenever the exterior walls or other vertical structural members list, lean, or buckle to such an extent that a plumb line passing through the center of gravity does not fall inside the middle one-third of the base.

(E) Vulnerability to Earthquakes, High Winds.

(1) Whenever any portion of a structure is wrecked, warped, buckled, or has settled to such an extent that walls or other structural portions have materially less resistance to winds or earthquakes than is required in the case of similar new construction; or

(2) Whenever any portion of a building, or any member, appurtenance, or ornamentation on the exterior thereof is not of sufficient strength or stability, or is not so anchored, attached or fastened in place so as to be capable of resisting a wind pressure of one-half of that specified in current code for new buildings of similar structure, purpose, or location without exceeding the working stresses for such buildings.

(F) Insufficient Strength or Fire Resistance. Whenever any structure which, whether or not erected in accordance with all applicable laws and ordinances:

(1) Has in any nonsupporting part, member, or portion, less than 50 percent of the strength or the fire-resisting qualities or characteristics required by law for a newly constructed building of like area, height, and occupancy in the same location; or

(2) Has in any supporting part, member, or portion less than 66 percent of the strength or the fire-resisting qualities or characteristics required by law in the case of a newly constructed building of like area, height, and occupancy in the same location.

(G) Risk of Failure or Collapse.

(1) Whenever any portion or member or appurtenance thereof is likely to fail, or to become disabled or dislodged, or to collapse and thereby injure persons or damage property; or

(2) Whenever the structure, or any portion thereof, is likely to partially or completely collapse as a result of any cause, including but not limited to:

(a) Dilapidation, deterioration, or decay;

(b) Faulty construction;

(c) The removal, movement, or instability of any portion of the ground necessary for the purpose of supporting such structure; or

(d) The deterioration, decay, or inadequacy of its foundation.

(H) Excessive Damage or Deterioration. Whenever the structure exclusive of the foundation:

(1) Shows 33 percent or more damage or deterioration of its supporting member or members;

(2) Shows 50 percent damage or deterioration of its nonsupporting members; or

(3) Shows 50 percent damage or deterioration of its enclosing or outside wall coverings.
(I) Demolition Remnants On-Site. Whenever any portion of a structure, including unfilled excavations, remains on a site for more than 30 days after the demolition or destruction of the structure.

(J) Fire Hazard. Whenever any structure is a fire hazard as a result of any cause, including but not limited to: dilapidated condition, deterioration, or damage; inadequate exits; lack of sufficient fire-resistive construction; or faulty electric wiring, gas connections, or heating apparatus.

(K) Other Hazards to Health, Safety, or Public Welfare.

(1) Whenever, for any reason, the structure or any portion thereof is manifestly unsafe for the purpose for which it is lawfully constructed or currently is being used; or

(2) Whenever a structure is structurally unsafe or is otherwise hazardous to human life, including but not limited to whenever a structure constitutes a hazard to health, safety, or public welfare by reason of inadequate maintenance, dilapidation, unsanitary conditions, obsolescence, fire hazard, disaster, damage, or abandonment.

(L) Public Nuisance.

(1) Whenever any structure is in such a condition as to constitute a public nuisance known to the common law or in equity jurisprudence; or

(2) Whenever the structure has been so damaged by fire, wind, earthquake or flood or any other cause, or has become so dilapidated or deteriorated as to become:

(a) An attractive nuisance; or

(b) A harbor for vagrants or criminals.

(M) Chronic Dereliction. Whenever a derelict structure, as defined in this Chapter, remains unoccupied for a period in excess of 6 months or period less than 6 months when the structure or portion thereof constitutes an attractive nuisance or hazard to the public.

(N) Violations of Codes, Laws. Whenever any structure has been constructed, exists, or is maintained in violation of any specific requirement or prohibition applicable to such structure provided by the building regulations of this Chapter, or any law of this state or City relating to the condition, location, or structure or buildings.
Article IV. Abatement of Dangerous or Derelict Structures

§15.03.385 Notice of status as derelict or dangerous structure.
When the Building Official determines that a structure is a derelict or dangerous structure, the Building Official shall send an Order to Correct to any Responsible Person, as provided in Article V of this Chapter. If necessary, the Order to Correct may include an order to vacate as described in IMC 15.03.390 and 15.03.400.

§15.03.390 Statement of actions required.
In addition to the information required to be included in the Order to Correct under IMC 15.03.610, in the case of a dangerous or derelict structure, the Building Official may include any of following in the Order to Correct:

(A) If the Building Official has determined that the building or structure must be vacated, the Order to Correct shall require that the building or structure be vacated within a time certain from the date of the Order to Correct, as determined by the Building Official.

(B) If the Building Official has determined that (1) the building or structure is vacant, (2) that the building or structure is structurally sound and does not present a fire hazard, and (3) the building or structure has presented or is likely to present a danger to individuals who may enter the building or structure even though they are unauthorized to do so, the Order to Correct shall require that the building or structure be secured against unauthorized entry by means which may include but are not limited to the boarding up of doors and windows.

(C) If the Building Official has determined that the building or structure must be demolished, the Order to Correct shall require that the building be vacated, that all required permits be secured, and that the demolition be completed within such time as the Building Official shall determine is reasonable.

(D) Statements advising that if any required repair or demolition work (without vacation also being required) is not commenced within the time specified, the Building Official will order the building vacated and posted to prevent further occupancy until the work is completed, and may proceed to cause the work to be done and charge the costs thereof to any or all Responsible Persons.

§15.03.400 Notice of unsafe occupancy.

(A) Posting Notice. If the Building Official orders that a building or structure be vacated or demolished, the Building Official shall cause a notice to be posted at or upon each exit of the building or structure that the Building Official can access. The notice shall be in substantially the following form:

DO NOT ENTER
UNSAFE TO OCCUPY

It is a violation of Chapter 15.03 of the City Code to occupy this building or to remove or deface this notice.

Building Official
City of Independence
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(B) Compliance. Upon issuance by the Building Official of an order to vacate or demolish and the posting of an unsafe building notice, no person shall remain in or enter any building which has been so posted, except that entry may be made to repair, demolish or remove such building pursuant to a validly issued permit.

No person shall remove or deface any such notice after it is posted until the required repairs, demolition or removal have been completed and a certificate of occupancy issued. Any such removal or defacement shall constitute a violation of this Chapter.

§15.03.410 Abatement of dangerous structures.
All structures or portions thereof which are determined after inspection by the Building Official to be dangerous as defined in this Chapter are hereby declared to be public nuisances and shall be abated by repair, rehabilitation, demolition, or removal in accordance with the procedures specified in Article V of this Chapter. If the building official determines that a structure is dangerous, as defined by this Chapter, the building official may commence proceedings to cause the repair, vacation or demolition of the structure.

§15.03.420 Inspections required – Right of entry.
(A) Inspections. All buildings, structures, or other improvements regulated by this Chapter and all construction work for which a permit is required shall be subject to inspection by the Building Official.

(B) Right of Entry. Whenever the Building Official has reasonable cause to suspect that a violation of any provision of this Chapter or Chapter 15.2 of the Independence Municipal Code exists, or when necessary to investigate an application for or revocation of any approval under any of the procedures described in this title, the Building Official may enter on any site or into any structure for the purpose of investigation; provided, that no premises shall be entered without first obtaining the consent of the owner or person in control of the premises if other than the owner, or by obtaining an administrative search warrant.

(C) Administrative Search Warrant. If consent cannot be obtained, the Building Official shall secure an administrative search warrant from the City’s municipal court before further attempts to gain entry, and shall have recourse to every other remedy provided by law to secure entry.

§15.03.430 Reserved.

§15.03.440 Occupancy of property after notice of violation.
(A) If an Order to Correct has been issued pursuant to Article V of this Chapter, and if the affected structure is or becomes vacant, it shall be unlawful to reoccupy or permit reoccupancy of the unit(s) until the necessary permits are obtained, corrections made, and permit inspection approvals given.

(B) Notwithstanding subsection A of this section, the building official may permit reoccupancy of the structure if, in the building official’s opinion, all fire and life safety hazards have been rectified.
§15.03.450 Illegal residential occupancy.
When a property has an illegal residential occupancy, including but not limited to occupancy of tents, campers, motor homes, recreational vehicles, or other structures or spaces not intended for permanent residential use or occupancy, or spaces constructed or converted without permit, the residential use shall be discontinued or the structure must brought into compliance with the present regulations for a building of the same occupancy.

§15.03.460 Interference with repair, demolition, or abatement prohibited.
It is unlawful for any person to obstruct, impede, or interfere with any person lawfully engaged in:
(A) The work of repairing, vacating, warehousing, or demolishing any structure pursuant to the provisions of this Chapter;
(B) The abatement of a nuisance pursuant to the provisions of this Chapter;
(C) The performance of any necessary act preliminary to or incidental to such work as authorized by this Chapter or directed pursuant to it.

§15.03.470 Violations.
(A) A violation of this Chapter or Chapter 15.2 of the Independence Municipal Code shall be subject to an administrative civil penalty not to exceed $5,000 for each offense, or in the case of a continuing offense, not more than $1,000 for each day of the offense, and shall be processed in accordance with the procedures set forth in set out in Article V of this Chapter.
(B) Each violation of a separate provision of this Chapter shall constitute a separate infraction, and each day that a violation of this Chapter is committed or permitted to continue shall constitute a separate infraction.
(C) A finding of a violation of this Chapter shall not relieve the responsible party of the duty to abate the violation. The penalties imposed by this section are in addition to and not in lieu of any remedies available to the City.
(D) If a provision of this Chapter is violated by a firm or corporation, the officer or officers or person or persons responsible for the violation shall be subject to the penalties imposed by this Chapter.

§15.03.480 – reserved for expansion.
§15.03.490 – reserved for expansion.

Article V. Enforcement

§15.03.500 Definitions.
For the purposes of this article, the following definitions shall apply:
"Board of Appeals" means the City Planning Commission acting as the Construction Code Board of Appeals.
"Violation" means the failure to comply with a provision of this Chapter or Chapter 15.2 of the Independence Municipal Code
“Voluntary compliance agreement” means an agreement, whether written or oral, between the Building Official and a Responsible Person which is intended to resolve a violation.

§15.03.510 Use of language.  
As used in this article, pronouns indicating the masculine gender shall include the feminine gender; singular pronouns shall include the plural; and “person” shall, where appropriate, include any partnership, corporation, unincorporated association, municipality, the state of Oregon, or other entity.

§15.03.520 Reference to state law.  
Any reference to a state statute incorporates into this article by reference the statute in effect on the effective date of the ordinance codified in this article.

§15.03.530 Culpability and liability.  
(A) Acts or omissions to act which are designated as a violation by any City ordinance do not require a culpable mental state as an element of the violation.  
(B) Each Responsible Person shall be jointly and severally liable for any all violations, the amount of any civil penalties issued and the cost of any abatement or enforcement actions taken by the City, as provided in this Chapter.

§15.03.540 Effect of this article.  
Nothing in this article shall be construed as a waiver of any assessment, bail, or fine ordered by the municipal court prior to January 1, 2010.

§15.03.550 Severability.  
The provisions of this article are severable. If any section, sentence, clause or phrase of this article is adjudged to be invalid by a court of competent jurisdiction, that decision shall not affect the validity of the remaining portions of this article.

§15.03.560 Reports of violations.  
All reports or complaints of violations covered by this article shall be made or referred to the Building Official.

§15.03.570 Assessment.  
(A) Assessment. When an alleged violation is reported to the City of Independence, the Building Official shall review the facts and circumstances surrounding the alleged violation and if the Building Official determines a violation has occurred, he or she will proceed with enforcement actions as provided in this Article.  
(B) Sufficiency of Evidence. The Building Official shall not proceed further with the matter if the Building Official determines that there is not sufficient evidence to support the allegation of violation, or if the Building Official determines that it is not in the best interest of the City to proceed.

§15.03.580 Notice of violation and Civil Penalty.  
Upon a determination by the Building Official that any person has violated a provision of this Chapter or Chapter 15.2 of the Independence Municipal Code,
the Building Official may issue a notice of violation and impose upon the violator and/or any other Responsible Person an administrative civil penalty as provided by this article. This authority in no way precludes the Building Official from attempting to secure voluntary compliance with the requirements of the Code.

§15.03.590 - .600 Reserved for expansion

§15.03.610 Order to Correct.
(A) Prior to issuing a notice of violation and imposing an administrative civil penalty, the Building Official shall issue an order to correct the violation (Order to Correct) to one or more Responsible Persons. The Order to Correct shall allow the Responsible Person a reasonable amount of time that is not less than 5 calendar days, nor more than 30 calendar days to remedy the violation. Where the Responsible Person can demonstrate extreme hardship that would prevent the Responsible Person from remedying the violation within 30 days, the Building Official may grant the Responsible Person additional time to remedy the violation. The Order to Correct shall be delivered as provided in IMC section 15.03.640.
(B) Following the date and time by which the violation must be remedied as required by the Order to Correct, the Building Official shall determine whether such correction has been completed. If the required correction has not been completed by the date or time specified in the Order to Correct, the Building Official may issue a notice of violation and assess an administrative civil penalty to each Responsible Person to whom the Order to Correct was issued.

§15.03.620 Immediate remedial action required when.
Notwithstanding the remedial time period allowed by IMC 15.03.610, if the Building Official determines that the violation presents an immediate danger to the environment or to the public health, safety or welfare, or that any continuance of the violation would allow the Responsible Person to profit from the violation, the Building Official may require immediate remedial action. If, in such cases, the Building Official is unable to serve a notice of violation on the Responsible Person or, if after such service the Responsible Person refuses or is unable to remedy the violation, the City may proceed to remedy the violation as provided in IMC 15.03.790.

§15.03.630 Knowing, Intentional or Repeat Violations.
Notwithstanding IMC section 15.03.610, the Building Official may issue a notice of civil violation and assess an administrative civil penalty without having issued an Order to Correct where the Building Official determines that the violation was knowing, intentional, or a repeat of a similar violation.

§15.03.640 Notice of violation.
Notice Requirements. A notice of violation issued under this article shall either be personally delivered or sent by both first class mail and registered or certified mail, return receipt requested. Any such mailed notice shall be deemed received for purposes of any time computations under this Chapter three days after the date it is mailed if it is mailed to an address within this state, and seven days after
the date it is mailed if it is mailed to an address outside this state. Every notice shall:

(A) Describe the alleged violation, including any relevant code provision numbers, ordinance numbers, or other identifying references;
(B) State that the City intends to assess an administrative civil penalty for the violation and state the amount of the civil penalty;
(C) State the date on which the Order to Correct was issued and the time by which correction was required, or, if the penalty is imposed pursuant to IMC section 15.03.630, state the basis for concluding that the violation was knowing, intentional, or repeated;
(D) State that the Responsible Person may challenge the assessment of the administrative civil penalty to the Board of Appeals;
(E) Describe the appeal process and the deadline for informing the City that the Responsible Person is challenging the assessment of the administrative civil penalty; and
(F) At the discretion of the Building Official, include information regarding the possibility of entering into a voluntary compliance agreement with the City.

§15.03.650 Penalty Considerations.
In assessing an administrative civil penalty authorized by this section, the Building Official shall consider:
(A) The Responsible Person’s cooperativeness and past history in taking steps to correct the violation;
(B) Any prior violations of this Chapter, Chapter 15.2 of the Independence City Code, or other City ordinances or code sections;
(C) The gravity and magnitude of the violation;
(D) Whether the violation was repeated or continuous; and
(E) Whether the violation was caused by an unavoidable accident, negligence, or an intentional act.

§15.03.660 Appeal.
Any person who is issued a notice of violation may challenge the assessment of the administrative civil penalty to the Board of Appeals. The provisions of IMC 15.03.683 shall govern any requested appeal. An administrative civil penalty imposed hereunder shall become final upon expiration of the time for filing an appeal, if no appeal is timely filed with the Board of Appeals.

§15.03.670 Voluntary compliance agreement.
(A) Effect of Agreement.
(1) The Building Official may enter into a voluntary compliance agreement with the Responsible Person. The agreement shall include time limits for compliance and shall be binding on the Responsible Person.
(2) The fact that a person alleged to have committed a violation enters into a voluntary compliance agreement shall not be considered an admission of having committed the violation for any purpose.
(3) The City shall halt further processing of the violation during the time allowed in the voluntary compliance agreement for the completion of the necessary corrective action. The City shall take no further action concerning the violation, other than steps necessary to terminate the enforcement action, if all terms of the voluntary compliance agreement are satisfied.

(B) Failure to Comply with Agreement. The failure to comply with any term of the voluntary compliance agreement constitutes an additional and separate violation, and shall be handled in accordance with the procedures established by this article, except that after the voluntary compliance agreement has been executed no Order to Correct be given before a notice of violation is issued. The City may also proceed to enforce the violation that gave rise to the voluntary compliance agreement.

§15.03.680 – reserved for expansion

§15.03.681 Continuing Violations.
Each day the violator fails to remedy a violation shall constitute a separate violation.

§15.03.682 Administrative civil penalty not exclusive.
The administrative civil penalty authorized by this Chapter may be imposed in addition to: (1) assessments or fees for any costs incurred by the City in remediation, cleanup, or abatement, and (2) any other actions authorized by law, provided that the City shall not issue a citation to Municipal Court for a violation of this Chapter or Chapter 15.2 of the Independence Municipal Code.

§15.03.683 Appeal procedures.
(A) Appeal Contents. Any recipient of a notice of violation issued pursuant to this article may, within 14 days after receipt of the notice, appeal in writing to the Board of Appeals. The written appeal shall be accompanied by an appeal fee in an amount set by Council resolution and shall include:

(1) The name and address of the appellant;
(2) The nature of the matter being appealed;
(3) The reason appellant claims the Building Official’s determination is incorrect; and
(4) Appellant’s desired determination of the appeal.

If timely appealed, the administrative civil penalty shall become final, if at all, only upon issuance of the Board of Appeals’ decision affirming the Building Official’s assessment.

(B) Hearing Date and Notice. Unless the appellant and the City agree to a longer period, an appeal shall be heard by the Board of Appeals within 30 days of the City’s receipt of appellant’s notice of intent to appeal. At least 10 days prior to the hearing, the City shall mail notice of the time and location of the appeal hearing, by registered or certified mail return receipt requested, to the appellant.

(C) Hearing Procedure. The Board of Appeals shall hear and determine the appeal on the basis of the appellant’s written statement and any additional evidence the Board of Appeals deems appropriate. At the hearing, the appellant
may present testimony and oral argument personally or through counsel. The burden of proof shall be on the Building Official to show a violation. The rules of evidence as used by courts of law do not apply.

(D) Decision. The Board of Appeals shall issue a written decision within 10 days of the hearing date. The written decision of the Board of Appeals is final.

(E) Fee Refundability. The appeal fee is non-refundable; except that if the Building Official’s assessment of an administrative civil penalty is not affirmed on appeal, the Board of Appeals may refund all or part of the appeal fee upon appellant’s motion.

§15.03.684 Unpaid Penalties.

(A) Penalty Collection. Failure to pay an administrative civil penalty within 10 days after the penalty becomes final shall constitute a violation of this Chapter. Each day the penalty is not paid shall constitute a separate violation. The Building Official is authorized to collect the penalty by any administrative or judicial action or proceeding authorized by subsection (2) of this section, other provisions of this Chapter, or state statute.

(B) Assessment Lien. If an administrative civil penalty is imposed on a Responsible Person because of a violation of any provision of this Chapter or Chapter 15.2 of the Independence Municipal Code, and the penalty remains unpaid 30 days after such penalty becomes final, the City Recorder may assess the full amount of the unpaid penalty, including any interest, against any real property owned by the Responsible Person and shall enter the assessment as a lien in the City’s lien docket. At the time the assessment is made, the City Recorder shall notify the Responsible Person by first class mail that the penalty has been assessed against real property owned by the Responsible Person and has been entered in the City’s lien docket. The lien shall be enforced in the same manner as all City liens. Interest shall accrue on the amount of the unpaid penalty at the rate of nine percent (9%) from the date of entry of the lien in the lien docket.

(C) Additional Penalties. In addition to enforcement mechanisms authorized elsewhere in this Chapter, failure to pay an administrative civil penalty imposed pursuant to this Chapter or Chapter 15.2 of the Independence Municipal Code shall be grounds for withholding issuance of requested permits or licenses, issuance of a stop work order, if applicable, or revocation or suspension of any issued permits or certificates of occupancy.

§15.03.690 – reserved for expansion.
§15.03.700 – reserved for expansion.
§15.03.710 – reserved for expansion.
§15.03.720 – reserved for expansion.
§15.03.730 – reserved for expansion.
§15.03.740 – reserved for expansion.
§15.03.750 – reserved for expansion.
§15.03.790 Remedial action by City – Costs.

(A) If a violation is not remedied within the time required by the Order to Correct, the City may, after obtaining a warrant to enter the property and abate the violation and charge the costs of abatement back to any Responsible Person.

(B) In the case of an immediate danger to the public health, safety or welfare declared under IMC 15.03.620, without waiting for the expiration of the time period provided in the Order to Correct, the City may abate the violation and charge the remedial cost back to any Responsible Person, after obtaining a warrant to enter the property and abate the violation. If the immediate danger constitutes an emergency threatening immediate death or physical injury to persons or the environment, the City may abate the violation without obtaining a warrant if the delay associated with obtaining the warrant would result in increased risk of death or injury, and may charge the remedial costs back to the Responsible Person.

(C) The Building Official shall have the right at reasonable times to enter into or upon property in accordance with law to investigate or to remedy alleged violations. This provision does not authorize a warrantless entry when a warrant is required by state or federal law.

(D) The finance officer shall keep an accurate record of all costs incurred by the City in abating a violation. The finance officer shall notify the Responsible Person by certified mail, return receipt requested, of these costs, and advise the Responsible Person that the costs will be assessed to and become a lien against the Responsible Person’s real property if not paid within 30 days of the notice, and shall further notify the Responsible Person that the Responsible Person is entitled to a hearing to contest the amount of the costs to be assessed.

(E) The Responsible Person shall be entitled to request a hearing to consider the amount of the costs assessed to remedy the alleged violation. That hearing shall be conducted pursuant to the procedures established in IMC 15.03.683.

(F) If the remedial costs are not paid within the time limits provided in IMC 15.03.684, the finance officer shall follow the procedures for lien filing and docketing as contained in IMC 15.03.684.

§15.03.800 – reserved for expansion.

§15.03.810 Enforcement – Rules and regulations.

The Building Official is authorized to promulgate any rules he or she considers necessary to enforce this Chapter. To be effective, such rules must be approved by the City Council by resolution.
§15.03.840 – reserved for expansion.
§15.03.850 – reserved for expansion.
§15.03.860 – reserved for expansion.
§15.03.870 – reserved for expansion.
§15.03.880 – reserved for expansion.
§15.03.890 – reserved for expansion.
§15.03.900 – reserved for expansion.

[Ord. 1500 § 1, 12-13-11; Ord. 1469 § 1, 06-10-08]

Chapter 15.4  Reserved for Expansion
Chapter 15.5  Reserved for Expansion
Chapter 15.6  Reserved for Expansion
Chapter 15.7 ZERO LOT LINE CONSTRUCTION

§15.7.1 Zero lot line construction defined.
“Zero lot line construction” means residential construction which shares one or more common walls along a property line and each side is owned by a different property owner. [Prior code § 80.240]

§15.7.2 Existing zero lot line construction.
Conversion to zero lot line construction shall be permitted in accordance with the following minimum requirements:
   Fire Wall. One-half inch gypsum board shall be added to each side of the zero lot line wall and it shall extend from the floor to the ceiling. From the ceiling to the roof, five-eighths inch gypsum board shall be added to each side of the zero lot line wall and along five feet of the underside of the roof on each side of the zero lot line wall. [Prior code § 80.250]

§15.7.3 New zero lot line construction.
Construction of new zero lot line construction shall be permitted in accordance with the following minimum requirements:
   A. Fire Wall. Five-eighths inch gypsum board shall be installed on each side of the zero lot line wall extending from the foundation to the roof and along five feet of the underside of the roof on each side of the zero lot line wall.
   B. Insulation. For sound barrier purposes, the space between each side of the zero lot line wall shall be filled with insulation. [Prior code § 80.260]
§15.8.1 Purpose.
The designation of historic resources allows the city to formally recognize and protect significant elements of Independence history; enhance the visual character of the city, foster public appreciation of and civic pride in the beauty of the city and the accomplishments of the past; strengthen the local economy by protecting and enhancing the city's attractiveness to residents, tourists and visitors; stabilize and improve property values within the city; promote private and public use of historic resources for education, prosperity and the general welfare of the people. [Ord. 1254 § 1 (part), 1992: prior code § 27.001 (part)]

§15.8.2 Chapter applicability.
This chapter is applicable to all properties in the Independence historic district and to all historic resources located outside the Independence historic district which have been designated by the city as historic landmarks. [Ord. 1254 § 1 (part), 1992: prior code § 27.001 (part)]

§15.8.3 Definitions.
For the purpose of carrying out the intent and purposes of this chapter, words, phrases and terms, as used in this chapter, shall be deemed to have the meaning ascribed to them in this section.

"Alteration" means the addition to, removal of or from, physical modification of, or material change to any exterior part or portion of a historic resource, including designated fences, signs or trees and accessory buildings. Alteration shall not include painting or necessary repairs.

"Certificate of appropriateness" means written authority granted by the city following a review procedure for exterior alteration, removal or demolition of a historic resource or new construction within a historic district.

"Commission" means the Independence historic preservation commission.

"Demolish" means to raze, destroy, dismantle, deface, materially neglect or abandon or in any other manner cause partial or total ruin of a designated historic resource.

"Exterior" means any portion of the outside of a historic resource or any addition thereto.

"Historic district" means a geographic area no less than two acres including all land and streets with a high concentration of historical, architectural or archeological resources which has been designated by the Independence city council. Exact boundaries shall be established by ordinance and mapped.

"Historic landmark" means a designated historic resource outside of a historic district.

"Historic resource" means a designated building, site, object, fence, sign, tree or structure of architectural, historic or archaeological significance.

"Interested person" means:

1. Any occupant, owner, agent for the owner or purchaser of real property for which an application for designation of a historic district, historic resource or certificate of appropriateness is being made;

2. Owners of record of property on the most recent property tax assessment roll where such property is located within one hundred feet of the property which is the subject of the
§15.8.4 Historic preservation commission—Powers and duties.
A. An Independence historic preservation commission (commission), consisting of seven members, shall be appointed by the mayor and subject to confirmation by the city council.
B. The commission shall have the following powers and duties:
   1. Conduct or cause to be conducted an ongoing survey and inventory of historic resources;
   2. Recommend to the city council the adoption of criteria and prescriptive standards to be used by the commission in reviewing applications required by this chapter;
   3. Participate in, promote, conduct or delegate to other interest groups public information, education and interpretive programs pertaining to historic preservation issues;
   4. Make recommendations to the city council concerning designations of historic districts, relevant ordinances and resolutions, preservation-related items upon referral from the city council and conflicts of land use as they relate to the historic resources of the community;
   5. Perform other functions that may be designated by the city council pertinent to historic preservation.
C. The following matters must be submitted to the commission for its approval or decision:
   1. Historic landmark and resource designations;
   2. Historic district nominations;
   3. Applications for certificates of appropriateness. [Ord. 1254 § 1 (part), 1992: prior code § 27.010]

§15.8.5 Certificate of appropriateness—Application and review.
A. The procedures established by this section are applicable to all actions taken under the authority of this chapter unless specifically established otherwise. All actions for exterior alteration, removal or demolition of a historic resource or new construction within a historic district shall be initiated by submission of a request for a certificate of appropriateness, in a format provided by the city.
B. Any action required or authorized under the terms of this chapter may be initiated by the city council, the historic preservation commission, or by any other interested person. Initiations by the city are made without prejudice towards the outcome.
C. Submission of Application. Applications for review by the commission must be submitted at least thirty days in advance of the next regularly scheduled public meeting of the historic preservation commission unless waived by the city when legal notice can otherwise be achieved. All documents or evidence relied upon by the applicant shall be submitted to the city and made available to the public at least twenty days prior to the meeting date. If additional documents, evidence or written materials are provided in support of a quasi-judicial application less than twenty days prior to the public hearing, any party shall be entitled to a continuance of the hearing. Such a continuance shall not be
subject to the limitations of ORS 227.178.

D. Method of Review. Requests for designation of a historic district or for demolition of a historic resource shall be heard by the commission at a public hearing. Notices shall be sent to all interested persons at least twenty days prior to the hearing. All other actions shall be reviewed by the commission at a public meeting after which interested persons shall be notified in writing of the findings and decision of the commission, and the right to have the matter reconsidered by the commission at a public hearing. An interested person shall not be entitled to an appeal before the city council of any determination by the commission until after a public hearing has been held in accordance with the provisions of this subsection.

E. Relationship to Other Land Use Reviews. Projects which require an historic review may also require other land use reviews. If other reviews are required, the review procedures may be handled concurrently.

F. Decision. All decisions, whether to approve or deny the request, must be in writing and must specify the basis for the decision.

G. Appeals. Any interested person may, within fifteen days from the date of a final decision, appeal a decision of the historic preservation commission to the city council by filing a written notice of appeal. The filing of such notice shall have the effect of suspending any challenged permits pending final determination by the city council. Upon receipt of the notice, a public hearing shall be set for the next regular city council meeting which is at least thirty days from the date of receipt of the notice. [Ord. 1254 § 1 (part), 1992: prior code § 27.015]

§15.8.6 Designation of historic resources-Application and review.

A. Application Contents. An application for designation of a resource must include the following information:

1. A written description of the boundaries of the proposed district or the location of the proposed resource or property to be evaluated;
2. A map illustrating the boundaries of the proposed district or the location of the proposed resource of the property to be evaluated;
3. A statement explaining the following:
   a. The reason(s) why the proposed district, resource or property should be designated,
   b. The reason(s) why the proposed boundaries of the proposed district are appropriate for designation,
   c. The potential impact, if any, that designation of the proposed district or resource would have on the owners, surrounding residents and other property owners in the area.

B. Review Criteria. The commission must find that all of the following criteria has been met in order to approve a proposed resource or district:

1. The proposed resource or district has historical significance because:
   a. There is an association with the life or activities of a person, group, organization, or institution that has made a significant contribution to the city, county, state or nation;
   b. There is an association with an event that has made a significant contribution to the city, county, state or nation;
   c. There is an association with broad patterns of political, economic or industrial history in the city, county, state or nation;
   d. Existing land use surrounding the resource contributes to the integrity of the
historic period represented;
   e. The resource contributes to the continuity or historic character of the street,
   neighborhood and/or community; or
   f. The property is fifty years old or older in conjunction with other criteria listed
   above.
2. The proposed resource or district has architectural significance because:
   a. It is an example of a particular architectural style, building type and/or convention;
   b. It has a high quality of composition, detailing and/or craftsmanship;
   c. It is an example of a particular material and/or method of construction;
   d. The resource retains its original design features, materials and/or character;
   e. It is the only remaining, or one of a few remaining resources of a particular style,
   building type, design, material or method of construction; or
   f. It is a visual landmark.
3. The proposed resource or district is listed on the National Register of Historic Places.
4. The proposed site has potential to yield information significant in prehistory or
   history. [Ord. 1254 § 1 (part), 1992: prior code § 27.020]

§15.8.7 Rerating or removal of historic resource designation.
A. Purpose. Periodically it may be necessary to rerate or remove the designation of a
   historic resource. Rerating or removal is an effort to reflect changing conditions,
   community values or needs.
B. Review Criteria. The commission must find that one of the following criteria is met in
   order to approve a rerating or remove a resource from the historic inventory:
   1. The inventory was in error;
   2. Additional research has uncovered an association with a person, group, organization,
      institution or events that have made a significant contribution to the city, county, state
      or nation or additional research has been compiled regarding the architectural significance
      of a structure or style;
   3. Alterations to the structure have caused it to more closely approximate the historical
      character, appearance or material composition of the original structure;
   4. Alterations to the structure have removed distinguishing features or otherwise altered
      the exterior such that the existing rating is no longer justified;
   5. The reasons for designating the historic resource no longer apply. [Ord. 1254 § 1
      (part), 1992: prior code § 27.025]

§15.8.8 Review of exterior alterations.
A. Purpose. The purpose of reviewing alterations to historic resources is to encourage
   the preservation of characteristics which led to its designation as a historic resource.
   Review is required for all exterior alterations or additions to historic resources.
B. Exemptions from Review. Historic review is not required for interior alterations or for
   repair, maintenance, and replacement with comparable materials, or a change in paint
   color, nor is review required where there is no change in appearance or material
   composition, from the existing structure.
C. For all other requests, the commission must find that one of the following criteria has
   been met in order to approve an alteration request:
   1. The proposed alteration will cause the structure to more closely approximate the
historical character, appearance or material composition of the original structure than the existing structure; or

2. The proposed alteration is compatible with the historic characteristics of the area and with the existing structure in massing, size, scale, materials and architectural features.

D. The commission shall use the Secretary of the Interior’s standards of rehabilitation, listed below, as guidelines in determining whether the proposed alteration meets the review criteria.

E. The following standards are to be applied to rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility:

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining exterior characteristics of the building and its site and environment.

2. The historic character of a property shall be retained and preserved. The removal of historic material or alteration of features and spaces that characterize a property shall be avoided.

3. Each property shall be recognized as a physical record of its time, place and use. Changes that create a false sense of historical development, such as adding conjectural features of architectural elements from other buildings, shall not be undertaken.

4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.

5. Distinctive features, finishes and construction technique or examples of craftsmanship that characterize a historic property shall be preserved.

6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical or pictorial evidence.

7. Chemical or physical treatments, such as sandblasting, that cause damage to historic material shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.

8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale and architectural features to protect the historic integrity of the property and its environment.

10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

F. Conditions of Approval. In approving an alteration request, the city may attach conditions which are appropriate for the promotion and/or preservation of the historic or architectural integrity of the historic resource. All conditions must relate to a review criteria.

§15.8.9 New construction within a historic district-Application and review.

A. Purpose. The purpose of reviewing the exterior design of new construction within an
historic district is to ensure that new structures over one hundred square feet are compatible with the character of that district.

B. Application Contents.
   1. A site plan showing the location of the structure on the site, setback dimensions, the location of driveways and landscape areas, and the general location of structures on adjacent lots;
   2. Elevations sufficient in detail to show the general scale, bulk building materials and architectural elements of the structure.

C. Review Criteria. The commission must find that the request meets the following applicable criteria in order to approve the new construction request:
   1. The development maintains any unifying development patterns such as sidewalk and street tree location, setbacks, building coverage and orientation to the street.
   2. The structure is of similar size and scale of surrounding buildings, and as much as possible reflects the craftsmanship of those buildings.
   3. Building materials are reflective of and complementary to existing buildings within the district. [Ord. 1254 § 1 (part), 1992: prior code § 27.035]

§15.8.10 Review of demolitions.
A. Purpose and Applicability. Demolition of historic resources is an extreme and final measure. The purpose of reviewing demolition requests involving historic resources is to explore all possible alternatives for preservation. This section is applicable to designated historic resources and to all buildings in the city over seventy-five years old.

B. Application Contents. All demolition applications must be submitted to the commission for a public hearing and shall contain the following information:
   1. A description of the previous and existing uses of the structure and the intended future use of the property;
   2. A drawing showing the location of the building on the property and any other buildings which will remain;
   3. The overall height of the building and the general type of construction;
   4. A written statement describing why demolition of the property is sought and what measures have been taken to seek alternative disposition of the resource.

C. Review Criteria. The commission must find that the request meets at least one of the following applicable criteria in order to approve a demolition request:
   1. The structure cannot be economically rehabilitated on the site to provide a reasonable income of residential environment compared to other structures in the general area.
   2. There is a demonstrated public need for the new site which outweighs any public benefit which might be gained by preserving the subject buildings on the site.
   3. The proposed development, if any, is compatible with the surrounding area considering such factors as location, use, bulk, landscaping, and exterior design.
   4. If the building is proposed to be moved, the new site and surrounding area will benefit from the move.
   5. The building has been declared by the building official to be dangerous pursuant to the Uniform Code for the Abatement of Dangerous Buildings.

D. Following a public hearing on the application to demolish, the commission may either approve the request or invoke a stay of up to one hundred eighty days to the demolition.
During the stay, the commission will notify the owner of potential rehabilitation programs and benefits and encourage public or private acquisition and restoration of the resource. The applicant shall be required to advertise the building for sale, such advertisement to be published in a publication most likely to be read by persons interested in the purchase or removal of a historic resource. The name and address of such publications shall be kept on file with the city.

E. City-Initiated Demolitions. Prior to the issuance of a notice to abate issued pursuant to the Uniform Code for the Abatement of Dangerous Buildings, the building official must give at least thirty days written notice to the commission of existing Uniform Building Code violations and an opinion of the structural condition of the property. At a public hearing the commission shall determine, after making findings in accordance with the review standards established in subsection C of this section, whether to authorize the building official to proceed without further review by the commission, or whether to attempt to seek alternative disposition of the property. Should alternative disposition of the property be sought, the commission shall follow the procedural requirements established in subsection D of this section. Notwithstanding a declaration by the commission to seek alteration, disposition of property, no action taken by the commission shall violate any of the procedural time-lines established in the Uniform Code for the Abatement of Dangerous Buildings once a formal notice to abate has been issued by the building official. [Ord. 1254 § 1 (part), 1992: prior code § 27.040]

§15.8.11 Maintenance and repair of architectural features.
Nothing in this chapter shall be construed to prevent the ordinary maintenance or repair of any exterior architectural features which do not involve a change in design, material or the outward appearance of a resource, nor to prevent the construction, reconstruction, alteration or demolition of such feature(s) which the city's building official shall certify in writing required by an emergency affecting the public safety. [Ord. 1254 § 1 (part), 1992: prior code § 27.045]

§15.8.12 Public projects.
All projects sponsored by the city or other governmental agencies is subject to the same review as private projects. [Ord. 1254 § 1 (part), 1992: prior code § 27.050]

§15.8.13 Violation-Penalty.
Any violation of any provision of this chapter shall result in a restraining order, stop-work order or fine, the sum of which shall be set by resolution of the city council and any other remedy authorized by the laws of the state of Oregon. None of the remedies listed above shall be exclusive. [Ord. 1254 § 1 (part), 1992: prior code § 27.055]
Chapter 15.9  MULTIPLE-UNIT HOUSING TAX INCENTIVE PROGRAM

§15.9.1 Generally.
Having found that multiple-unit housing meeting the qualifications of ORS 307.610(4) would not otherwise be built in the designated core area without certain tax benefits, the provisions of ORS 307.600 to 307.690 are adopted to stimulate the construction of rental housing in the designated core area of the city, to emphasize the development of vacant or under-utilized sites, to construct units at rental rates accessible to a broad range of the public and to improve the balance between the residential and commercial nature of the area. [Ord. 1255 § 1 (part), 1992: prior code § 94.005]

§15.9.2 Property tax exemption-Eligible property.
To be eligible for the property tax exemption provided by this chapter, a structure must:
A.  Be a multiple-unit structure having ten or more rental dwellings, not designed or used as transient accommodations and not including hotels and motels but including such elements benefiting the public as described in this chapter and approved by the city council;
B.  Be housing which is constructed after July 1, 1975 and completed on or before January 1, 1998;
C.  Be located within the designated core area: Polk County Map 8 4 29AC, Tax Lot #4800, as more particularly described in Exhibit "A" attached to the ordinance codified in this chapter and by this reference incorporated herein. [Ord. 1255 § 1 (part), 1992: prior code § 94.010]

§15.9.3 Preapplication conference.
A.  The applicant shall request that the director of community development schedule a preapplication conference. Thirty days prior to the date scheduled for the preapplication conference, each applicant shall submit in writing, the following information:
   1. The applicant's name, address and telephone number;
   2. A preliminary sketch, drawn to approximate scale of one inch equals twenty feet, which shows the site plan and major features of the proposed development;
   3. A written statement which generally describes the location of the proposed development; the number, size and type of dwelling units; dimensions of structures, public and private access; parking and circulation plans; landscaping; uses; and a description of the public benefit the applicant proposes to include in the person's or her project.
B.  Prior to the preapplication conference the department of community development shall review the information supplied by the applicant and contact, for purposes of facilitating the application process, advisory bodies, departments or agencies which may be affected by or have an interest in the proposed development.
C.  The applicant shall meet with staff of the department of community development in the preapplication conference and discuss the applicant's proposed development. After this conference, the department of community development shall provide the applicant with a written summary of the meeting, including applications for any required land use actions and recommendations to inform the applicant in preparation of the exemption application. [Ord. 1255 § 1 (part), 1992: prior code § 94.015]
§15.9.4 Application procedure.
A. A person seeking an exemption shall submit a final application to the director of community development no later than September 1st of the calendar year immediately prior to the first assessment year for which the exemption is requested. The applicant shall submit a verified application for exemption in writing on forms furnished by the city which must show:
   1. The applicant's name, address and telephone number;
   2. A legal description of the property and the assessor's property account number for the site, and indication of site control;
   3. A detailed description of the project including the number, size and type of dwelling units; dimensions of structures, parcel size, proposed lot coverage of buildings and amount of open space; type of construction, public and private access; parking and circulation plans; design of the structures; landscaping; uses; a description of the public benefits which the applicant proposes to include in the project; and economic feasibility studies or market analysis when appropriate. Certification by an architect licensed to practice in the state of Oregon that the proposed building design(s) comply with all applicable building, fire/life/safety, American Disability Act Codes and all applicable local, state and federal codes shall be required;
   4. A description of the existing use of the property including a justification for the elimination of existing sound or rehabilitable housing;
   5. A site plan and supporting materials, drawn to a minimum scale of one inch equals twenty feet, which shows in detail the development plan of the entire project, showing streets, driveways, sidewalks, pedestrian ways, off-street parking and loading areas, location and dimension of structures, use of land and structures, major landscaping features and design of structures. The site plan shall bear the stamp of an engineer licensed to practice in the state of Oregon;
   6. The applicant or its agent will submit sewer, water and storm drain plans, profiles, cross sections and all necessary construction details with the stamp of an engineer licensed to practice in the state of Oregon. The engineer will provide a soil report with recommendations for foundation design and pavement sections. Any new development creating ten thousand square feet or greater of new impervious area must also comply with Subchapter 80 of the city's stormwater management requirements;
   7. A letter from the city utilities department stating that the proposed use can be served by existing sewer and water services;
   8. At the time the application is submitted, applicants shall pay an application fee of four hundred dollars. The city shall pay the county assessor one hundred dollars for each application which is approved. The fee required by this section shall be in addition to any other fees required by the city such as land use fees or system development fees;
   9. A statement from the director of community development that the property is properly zoned and that all land use permits have been obtained or are not required and that all development and building permit fees and system development charges have been paid in full. [Ord. 1255 § 1 (part), 1992: prior code §94.020]

§15.9.5 Public benefits.
A. In order to qualify for the exemption provided by this chapter, the applicant must show how the project will benefit the general public. Public benefits include required design
elements, a showing of how the project will extend public benefits beyond the period of the exemption, rental rates which are accessible to a broad income range of the general public, existing utilization of the proposed project site and any other benefits of the project to the general public.

B. The applicant must propose and agree to include in the proposed project three or more design elements benefiting the general public which may consist of, but not be limited to:
   1. Recreation facilities;
   2. Open spaces;
   3. Common meeting rooms;
   4. Day care facilities;
   5. Senior care facilities;
   6. Facilities supportive of the arts;
   7. Facilities for the handicapped;
   8. Service or commercial uses which are permitted needed at the project site but not available for economic reasons;
   9. Special architectural features; and
   10. Dedication of land or facilities for public use.

C. Public benefits provided by this section are not necessarily required to be available to the public at large. The city council shall determine if the project proposed by the applicant provides sufficient public benefit. [Ord. 1255 § 1 (part), 1992: prior code § 94.025]

§15.9.6 Change of use.
Notwithstanding the zone of the property on which the proposed project is to be located, no change of occupancy permit or building permit for change of use of multifamily units constructed under the provisions of this chapter will be issued unless specifically authorized by the city council. Such a change may be authorized by the council on the basis of the owner's justification of need to remove the housing resource. [Ord. 1255 § 1 (part), 1992: prior code § 94.030]

§15.9.7 Application-Review.
A. The city council may approve the application if it finds that:
   1. The project will provide a public benefit as provided in Section 15.9.4
   2. That the project is in conformance with the comprehensive plan and zoning regulations.

B. The city council shall review the final application within ninety days of its filing and approve, deny or approve the application subject to reasonable conditions. Final action by the council shall be by resolution that shall contain the owner's name and address, a description of the subject multiple-unit housing, either the legal description of the property or the assessor's property account number, and the specific conditions upon which the approval of the application is based.

C. If the application is denied, a notice of denial shall be sent to the applicant within ten days following the denial. The notice shall state the reasons for denial.

D. If the application is approved, on or before April 1st following approval, the director of community development shall file with the county assessor and send to the applicant at the person's or her last known address a copy of the resolution approving the application. In
addition, for each application which is approved, the director of community development shall file with the county assessor on or before April 1st following approval, a document listing the same information otherwise required to be in an ordinance approving an application under this chapter. [Ord. 1255 § 1 (part), 1992: prior code § 94.035]

§15.9.8 Termination of exemption.
A. If, after an application has been approved, the city council finds that construction of multiple-unit housing was not completed on or before January 1, 1998, or that any provision of this act is not being complied with, or any agreement made by the owner or requirement made by the city council is not being or has not been complied with, the city shall send a notice of termination of the exemption to the owner’s last known address.
B. The notice of termination shall state the reasons for the proposed termination, and shall require the owner to appear before the city council at a specific time, not less than twenty days after mailing the notice, to show cause, if any, why the exemption should not be terminated.
C. If the owner fails to show cause why the exemption should not be terminated, the city council shall adopt a resolution stating its findings terminating the exemption. A copy of the resolution shall be filed with the county assessor and a copy sent to the owner at the person’s or her last known address, within ten days after its adoption. [Ord. 1255 § 1 (part), 1992: prior code § 94.040]

§15.9.9 Extensions.
Notwithstanding the provisions of Section 15.9.8, if the city finds that construction of the multiple-unit housing was not completed by January 1, 1998 due to circumstances beyond the control of the owner, and that the owner has been acting and could reasonably be expected to act in good faith and with due diligence, the city may extend the deadline for completion of construction for a period not to exceed twelve consecutive months. [Ord. 1255 § 1 (part), 1992: prior code § 94.045]

Chapter 15.10 – 15.24 Reserved for Future Expansion
§15.25.10 Short Title of Ordinance.
Independence City Code Sections 15.25.1 through 15.25.81 shall be known as the “Sign Ordinance” and may be so cited and pleaded. [Ord. 1388; 2001]

§15.25.20 Purpose.
The City Council of the City of Independence, Oregon, finds and declares that, in order to protect the health, safety, property and welfare of the public and to improve the neat, clean, orderly and attractive appearance of the community it is necessary to regulate the construction, erection, maintenance, electrification, illumination, type, size, number and location of signs.

§15.25.30 Scope.
No person shall erect, construct, enlarge, alter, move, improve, convert, equip, use, or maintain any sign, or cause or permit the same to be done, contrary to or in violation of any of the provisions of the Sign Ordinance. No person in control of any premises within the City of Independence, Oregon, shall permit thereon any sign which violates the provisions of the Sign Ordinance.

§15.25.50 Definitions.
For the purpose of this ordinance, words used in the present tense include the future, the singular number includes the plural, the word “shall” is mandatory and not directory and the word “building” includes “structures” except “sign structures”. Any definitions included herein take precedence over the Uniform Sign Code definitions.

Area means the area contained within lines drawn between or around the outermost points of a sign, including cutouts, but does not include essential sign structure, foundations or supports. The area of a sign having two display surfaces facing in opposite traffic directions shall be computed by measuring the largest face. For signs having two or more display surfaces, the area is the maximum area of the surfaces that can be seen from any one point.

Awning A temporary shelter supported entirely from the exterior wall of a building.

Banner Signs, as used in this ordinance, shall mean and include every type of decoration or banners displayed over or upon the city streets of the City of Independence on a temporary or seasonal basis, whether attached to utility poles or any other structure.

Billboard is an advertising sign with sign height over ten feet from the ground surface, on which same is located, to the top of such billboard, and sign area greater than seventy-two (72) square feet, on which the copy is designed to be periodically changed and which is not located on the premises to which such advertising copy pertains.

Bulletin Board is a public service display for temporary messages.

Canopy A structure, other than an awning, made of cloth or metal with frames attached to a building and carried by a frame supported by the ground or sidewalk but shall not mean a completely enclosed structure.
Changing Image Sign is any sign which, through the use of moving structural elements, flashing or sequential lights, lighting elements, or other automated method, results in movement, the appearance of movement or change of sign image or text.

Cutout means every type of display in the form of letters, figures, character, representations or others in cutout or irregular form attached to or superimposed upon an advertising sign.

Directional and Safety Sign means any sign intended solely for directing and establishing the safe and orderly passage of pedestrians and/or vehicles.

Director shall mean the Planning Director.

Display Surface means the area made available by the sign structure for the purpose of displaying a message.

Electronic Message Center is an electronically controlled sign with all its controls. The sign fact consists of recessed lamp bulbs with display copy.

Erect means to build, construct, attach, hang, place, suspend or affix, and shall also include the painting of wall signs.

Essential Sign Structure. Reasonably minimal physical structure whose sole purpose is to adequately support the sign and which does not contain any message, light, or configuration which is intended to inform or attract the attention of the public. Sign structures which do not comply with this definition are considered as part of the sign for the purpose of computing sign area.

Freestanding Sign means a sign supported by one or more columns, uprights or braces in or on the ground, not attached to or forming part of a building.

Grade means the elevation or level of the street measured at the center line of the street that the sign faces.

Ground Sign shall include any sign supported by one or more uprights or braces placed upon the ground and not attached to any building, limited to 5 feet in height.

Height means the distance between grade and top of sign structure.

Illuminate Sign means a sign illuminated by an interior or exterior light source, which exterior light source is primarily designed to illuminate such sign.

Incombustible Material means any material which will not ignite at or below a temperature of one thousand two hundred degrees Fahrenheit and will not continue to burn or glow at that temperature. Test for an incombustible material shall be conducted as specified in the Uniform Building Code.

Integrated Shopping Center means a premises planned and developed as a unit, which has an undivided or non-segregated parking area, that is advertised as a center and which has multiple occupancy.

Marquee shall include any hood of permanent construction projecting from the wall of a building above an entrance and extending over a thoroughfare.

Nonstructural Trim means a molding, batten, cap, nailing strip, lattice, letter walkway attached to a sign structure.

Obscene Sign is a sign which contains words or pictures in which the dominant theme, taken as a whole, appeals to the prurient interest in sex or is patently offensive because it affronts the contemporary community standard relating to the description or representation of sexual material which is without redeeming social value.

Off Premise means any sign, including but not limited to, a painted sign, temporary sign, permanent sign or outdoor advertising sign or billboard, which sign advertises goods,
products or services which are not sold, manufactured or distributed on or from the
premises or facilities or not located on the premises on which the sign is located.

   Pole Sign shall include any sign supported by one or more uprights or braces placed
upon the ground and not attached to or forming part of a building.

   Projecting Sign means a sign other than a wall sign which projects beyond the
building face to which it is attached.

   Projection means the distance by which a sign extends over public property or beyond
the building line.

   Reader Board means any sign not permanently attached to the ground or building and
capable of being moved from place to place, including signs attached to vehicles and
trailers.

   Roof Sign shall mean a sign erected upon the roof.

   Seasonal Sign is a temporary sign relating to the celebration or observance of a
holiday or special event placed at or around the time of the holiday or special event and
removed within a reasonable time thereafter.

   Sign means any written message, light (other than a light used primarily to illuminate a
building or premises), emblem, time-temperature display, street clock, figure or
mannequin, painting, drawing, device, structure, fixture, portable merchandise display,
placard, poster or any other thing that is designed, used or intended for advertising
purposes or to inform or to attract the attention of the public and includes the sign
structure, display surfaces and all other component parts of the sign.

   Temporary Sign means any sign, banner, pennant, valance or advertising display
constructed of cloth, canvas, light fabric, cardboard, plywood, wood, wall board, plastic,
sheet metal or other similar light materials with or without frames, which is not permanently
erected or permanently affixed to any sign structure, sign tower, or building and which is
not an electric sign or an internally illuminated sign.

   Time and Temperature Sign shall mean an electronically controlled time and
temperature display.

   Uniform Sign Code shall mean the Uniform Sign Code as adopted by the City of
Independence, Oregon.

   Wall Façade for Signs means a sign structure designed for the placement of principal
or secondary signs and erected upon the top of a wall or on a wall or parapet of a building
in the same general plane as the wall.

   Wall Sign shall mean a sign which is painted on or attached to or erected against the
wall, window, or parapet of a building or structure or against the faces or ends of a
marquee or canopy on a wall façade for signs with the exposed face of the sign in a
plane parallel to the plane of said wall or face and projecting not more than 12 inches
therefrom. Wall Sign also means and includes principal or secondary sign erected in
supporting or ornamental columns attached to and located under an overhanging roof,
which sign is erected in a plane generally parallel to the nearest face of the building.

   Window Sign means a sign that is applied to, attached to, or located within the interior
of a window.

§15.25.110 Permits Required, Information Required in Application.
It shall be unlawful for any person to erect, alter or relocate within the City any sign without
first obtaining any required sign permit from the director and paying any fee required by
Section 15.25.140 hereof or to erect a sign not specifically authorized by this ordinance. Applications for sign permits shall be made upon forms provided by the director. The director may require the filing of sufficient information to determine compliance with the sign ordinance and the zoning ordinance.

§15.25.120 Permit Issuance.  
It shall be the duty of the director, upon the filing of an application for a permit, to examine such plans and specifications and other data and the premises upon which it is proposed to erect the sign or other advertising structure and, if it shall appear that the proposed structure is in compliance with all the requirements of the Sign Ordinance and all other laws and ordinances of the City, the permit shall then be issued.

§15.25.130 Permit Void if Sign Not Erected Within 120 Days.  
If the work authorized under a permit has not been completed within 120 days after date of issuance, the permit shall become null and void. If reasonable cause for extension is approved by the Director, an extension may be granted.

§15.25.140 Permit Fees.  
Every applicant, before being granted a permit hereunder, shall pay to the City of Independence a permit fee for each sign or other advertising structure regulated by the sign ordinance. Said fees shall be established by resolution of the City Council.

§15.25.150 Fee and Permit Exemptions.  
The following signs shall be constructed, located, erected, displayed, and maintained so as to comply with all provisions and regulations of this ordinance, provided, however, that no fee and no permit or application will be required for such signs:

1) Temporary signs for nonprofit organizations (15.25.420), temporary political signs not exceeding 4 square feet (15.25.430), and temporary Real Estate “for sale” signs not exceeding 4 square feet in residential zones or 32 square feet in commercial or industrial districts (15.25.440) when located on the owner’s property and not on any power poles, street sign or traffic poles, or upon any public property.
2) Professional name plates not exceeding 2 square feet in area.
3) On-Premise bulletin boards not over ten square feet in area for public, charitable or religious institutions.
4) Signs denoting the architect, engineer or contractors engaged upon the project under construction when placed upon the job site and not exceeding 32 square feet in area.
5) Occupational signs denoting only the name and profession of the occupant in a commercial building, public institutional building or dwelling house, and not exceeding 2 square feet in area, under limits of the Sign Ordinance.
6) Memorial signs or tablets, names of buildings and date of erection when cut into any masonry surface or when constructed of incombustible materials and not to exceed 10 square feet in area.
7) Official traffic or other municipal signs, legal notices, railroad crossing signs, danger signs and such temporary emergency or non-advertising signs as may be approved by the Director.
8) Structures intended for a separate use such as phone booths, Goodwill containers, etc.
9) Temporary signs not exceeding 4 square feet.
10) Window Signs.
11) Historical site plaques.
12) Official flags of the United States of America, counties, municipalities, official flags of foreign nations, and flags of internationally and nationally recognized organizations.
13) Directional and safety signs.
14) Sandwich (“A) Board, Reader Board or Temporary Signs – Provided that:
   (a) The height does not exceed 48 inches (30 inches if within 20 feet of an intersecting street).
   (b) The width does not exceed 30 inches (24 inches if within 20 feet of an intersecting street).
   (c) No more than one sign per business.
   (d) The sign is located immediately adjacent to the building or immediately adjacent to the curb and not on the sidewalk proper.
   (e) The sign is displayed only during hours when the business is open to the public.
   (f) The sign is located in the area between the street frontage and the business frontage.
   (g) The sign is made by a person or firm that is lawfully established to manufacture and/or produce commercial signs including signs painted freehand.

§15.25.160 Permit – Revocable at Will.
All rights and privileges acquired under the provisions of this ordinance or any amendment thereto, are mere permits revocable at any time by the city council.

§15.25.180 Revocation of Permits.
The Director is hereby authorized and empowered to revoke any permit issued to him or her upon failure of the holder thereof to comply with any provision of the Sign Ordinance. Sign permits issued based on inaccurate information shall be null and void.

§15.25.210 Construction Standards.
All signs shall be designed and constructed to withstand wind pressure loads and seismic loads and dead loads as required in the Uniform Sign Code.

§15.25.220 Construction Standards for Temporary Signs.
All temporary signs shall be constructed to the following standards: All exposed parts of the sign shall be constructed of such materials or treated in such a manner that normal rainfall or other moisture shall not harm, deface or otherwise affect the sign.

§15.25.230 Unsafe, Damaged, Obsolete, or Illegal Signs to be Removed and/or Repaired; Procedure for Removal by City.
All signs, including exempt signs, together with their supports, braces, and guys shall be maintained in a safe and secure manner. If the Director shall find that any sign or other advertising structure regulated by Independence Sign Code is unsafe or insecure or has been constructed or erected or is being maintained in violation of the provisions of this
ordinance or of the Uniform Sign Code, he shall give written notice to the permittee or owner thereof. If the permittee or owner fails to remove or alter the structure so as to comply with the standards herein set forth within 30 days after such notice, such sign or other advertising structure which is an immediate peril to persons or property [is] to be removed summarily and without notice. Should the permittee or owner of the property fail to remove or alter the sign or advertising structure as directed, he shall become subject to punishment, upon conviction thereof, under the provisions of Independence City Code 15.25.810.

§15.25.320 Non-Conforming Signs.
If, at the time of passage of this Ordinance, a sign does not conform to the provisions of the Ordinance, said sign may be continued and maintained in reasonable repair. This "grandfather" status, however, shall not prevent the City from taking action where a clear and immediate threat to the public safety and welfare exists. Non-conforming signs, which are structurally altered, relocated, or replaced, shall comply immediately with all provisions of this ordinance. If a non-conforming sign is destroyed by any cause to the extent of more than 60 percent of its value, then and without further action by the Planning Commission, the sign shall be subject to all applicable regulations of the Ordinance. For the purpose of this Ordinance, the value of any sign shall be the estimated cost to replace the sign in kind, as determined by the Building Inspector. Section 12.25.150(14)(g) supercedes and takes precedence over this section of the Independence Sign Ordinance.

§15.25.330 Banner Signs.
1) Permits.
(a) No person, firm, corporation, or association shall display or cause to be displayed over or upon the city streets of the City of Independence, Oregon, any banner signs without having first obtained a permit, said permit being subject to the approval and authorization of the Public Works Superintendent.

(b) A request for a banner permit shall be on forms provided by the City and shall show the approximate location of the proposed installation or installations, height above street or sidewalk, location on pole or building, the approximate size of banner sign to be displayed; whether the banner sign is to be attached to utility poles, buildings or other structures, together with the date of installation and the date of removal.

(c) Upon satisfactory evidence that all requirements of this ordinance have been fully complied with by the applicant, and upon satisfactorily showing that permission of the property owner has been obtained and that all conditions, rules, and regulations required by said property owner have been complied with, the Public Works Superintendent shall issue a permit for the installation as requested, providing that, in his judgment, no other requirements or additional safeguards other than those mentioned herein, would be in the interest of the public safety.

2) Insurance Requirement. The grantee shall file with the permit application a certificate of insurance naming the City of Independence and the property owner as additional insured at a minimum of $1,000,000 combined single limit bodily injury and property damage. Said insurance to be for the protection of any persons sustaining bodily injury or property damage resulting from the placement, maintenance, or removal of said banner signs.
3) Installation/Removal Requirements.
   (a) Banner signs, other than those installed by utility company crews, are to be installed from a mechanical hoist or OSHA approved procedures and equipment, so that the individuals making installations do not have to climb utility poles.
   (b) The holder of a permit for a banner sign shall be responsible for the maintenance of said banner sign in a safe condition at all times and for its safe and prompt removal upon the expiration of the permit authorized or in the event said sign may become a hazard upon the public streets at any time.
   (c) Banners shall be prohibited as a permanent sign and are limited to 30 days, unless an extension is approved by the Planning Commission.
   (d) The Public Works Superintendent as well as the property owner involved, shall have the right to remove or cause to be removed any unauthorized, not maintained, improperly hung banners, or banners that are a hazard upon the public street without notice to the person, firm, corporation or association responsible for the display of the banner sign.

4) Private Commercial Advertising. Section 15.25.330(1-3) does not apply to banners used for private commercial advertising that are contained wholly on private property. Other sections of the sign ordinance apply as appropriate.

§15.25.340 Procedure for Obtaining Variance and Appeals.
Any person desiring a variance of the Sign Ordinance must first make application for a sign permit and have such permit denied or have the Director fail to issue the permit. The applicant may appeal the decision to the Planning Commission, with or without a request for a variance.

The Planning Commission shall have the power and duty to hear and decide appeals by the sign permit applicant from a decision of the Director denying or failing to grant, vary or revoke a sign permit. The Planning Commission may also make recommendations to the Council for changes to the Sign Ordinance.

§15.25.360 Appeals Without Petition for Variance.
In appeals to the Planning Commission from decision of the Director denying a sign permit in connection with which no petition for variance has been filed, the Planning Commission’s scope of review shall be limited to determining whether or not the decision is in accordance with the requirements of the Sign Ordinance and accordingly, affirm or reverse his decision. No variance from the requirements of the Sign Ordinance shall be granted or allowed. If the decision is reversed, a copy of said decision shall be forwarded to the City Manager and the Director.

§15.25.380 Appeals With Petition for Variance.
In appeals from decision of the Director denying or refusing to grant a sign permit in connection with which the appealing party or any other interested party has filed a Petition for Variance, the Planning Commission shall have the power and duty to hear, decide and grant or deny the requested variance from the provisions or requirements of the Sign Ordinance. The Planning Commission shall follow the requirements of the Independence
Zoning Code pertaining to Variances, except that the Planning Commission shall also be required to find that the granting of the variance will not be contrary to the general objective of the Sign Ordinance of moderating the size, number and obtrusive placement of signs and the reduction of clutter. Variances can be granted under the variance procedures herein to alleviate unusual hardships or extraordinary circumstances which exist. The variance granted shall be the minimum required to alleviate the hardship or extraordinary circumstances and the hardship or circumstance shall not be self-imposed.

§15.25.410 Prohibited Signs. No sign shall be constructed or erected:
1) Which purports to be, or is an imitation of, or resembles an official traffic sign or signal, which bears the words “STOP”, “GO SLOW”, “CAUTION”, “DANGER”, “WARNING”, or similar words.
2) Which, by reason of its size, location, movement, content, coloring or manner of illumination may be confused with or construed as a traffic control device; or which hides from view any traffic or street sign or signal.
3) Which are off-premise signs and billboards which advertises or publicizes an activity, business, product or service not conducted on the premises upon which such signs are maintained.
4) Which rotates or has a rotating or moving part except those that conform to Section 15.25.210 of this ordinance and have all moving parts at least eight (8) feet above ground level. Rotating signs must conform to all sections of this ordinance including those relating to size and height restrictions. Reader board signs shall not be allowed to rotate. Barber poles are excepted from this provision.
5) Which consists of banners, flags, posters, pennants, ribbons, streamers, strings or light bulbs, spinners or elements creating sound or smell which are signs defined by the code, except holiday decorations.
6) Which shall be located so as to substantially obstruct the view of a sign on adjoining property when viewed from a distance of 200 feet at any point 4 feet above the roadway grade of the traffic lane closest to the street property line.
7) Which shall be erected at the intersection of any street in such a manner as to obstruct free and clear vision.
8) Which flash; except for signs conveying time, temperature, no sign shall be wholly or partially illuminated by an internal or external light source that is flashing or intermittent.
9) Wall graphics or murals except by permission of the City Council.
10) Signs attached to utility, streetlights, or traffic control standard poles or otherwise located in the public right-of-way without a permit.
11) Signs in a dilapidated or hazardous condition.
12) Signs on doors, windows, or fire escapes that restrict free ingress or egress.
13) Swinging signs.
14) Changing Image Sign (See Definition).
15) Signs which focus or flash a beam of light into the eyes of a driver of a motor vehicle upon a street within 200 feet from such sign.

§15.25.420 Temporary Signs for Nonprofit Organizations.
Temporary advertising signs, advertising picnics, bazaars, luncheons, breakfasts, etc., of churches, service clubs, fraternal organizations and other non-profit or charitable
organizations, may be erected for a period not to exceed 2 weeks before the event advertised. Each such sign shall confirm to all provisions of the Sign Ordinance. All such signs shall be removed by the sponsoring organization not later than 5 days following the event. Any such signs which have not been removed within 5 days after the event shall be removed by the City of Independence, and the sponsoring organization, or, if such cannot be found, the owner of the property upon which the sign was erected, shall be charged the cost of removing such sign.

§15.25.430 Temporary Political Signs.
Temporary political signs, purporting to advertise candidates or issues, may be erected on private property, during the campaign for a period of 60 days prior to the election in which such candidates or issues are to be voted upon. Such signs shall conform to all other applicable provisions of the Sign Ordinance, and shall be removed not later than the fifth day following such election. Any such signs which have not been removed by the sixth day following such election may be removed by the City of Independence, and the owner of the property upon which the sign was erected shall be charged the cost of removing such sign. Such signs shall not exceed 6 square feet in area.

§15.25.440 Temporary “For Sale” Signs.
A temporary “For Sale” sign, not exceeding 4 square feet in area or a maximum dimension of 4 feet, may be erected on private property, provided that it advertises the sale, lease or rental of only the property upon which it is erected. One additional “For Sale” or “Open House” sign limited to the same size may be placed on private property with consent of the person in possession of the property and outside of vision clearance areas.

§15.25.450 Temporary Subdivision Signs.
A temporary subdivision sign may be erected upon a tract of land or a subdivision advertising the sale of the tract or the lots in the tract and not exceeding 42 square feet in area. The sign shall be reduced in size by 6 square feet for each lot less than 7 in the subdivision.

§15.25.460 Temporary Garage and Lawn Sale Signs.
Temporary advertising sign advertising a garage or lawn sale may be erected as provided under Independence City Code Sections 15.25.220, 15.25.510 and 15.25.520.

§15.25.510 Specific Signs Permitted in any Residential Zone.
The following signs and no other are permitted in any residential zone:

1) One permanent ground sign for each subdivision or Planned Unit Development, not exceeding 24 square feet in sign area, 5 feet in height or 6 feet in length; or 1 wall sign not exceeding 32 square feet in area. Such sign shall denote only the name of the subdivision or Planned Unit Development. It shall be located only at the principal entrance to a subdivision or Planned Unit Development.

2) One permanent sign for apartment houses, rest homes, and churches which may be one ground sign not exceeding 24 square feet in sign area, 8 feet in height or 6 feet in length or one wall sign not exceeding 24 square feet in area.
§15.25.520 General Requirements of Signs in any Residential Zone.
Shall conform to the following requirements:

1) No sign shall be illuminated with or by a flashing or intermittent light source. All 
lights shall be directed away from and not be reflected upon adjacent premises. All 
ilumination shall be indirect.

2) No permitted sign shall be animated, shall rotate, or shall contain moving parts.

3) Where a building fronts on two or more streets, the permitted sign shall be erected 
and maintained on or in front of the principal side of the building.

4) No ground sign shall be erected or maintained within 7 feet from back of sidewalk. If 
no sidewalk exists the sign shall be placed 25 feet from approximate centerline of abutting 
street. Permitted signs shall conform to all other location requirements of the Sign 
Ordinance.

§15.25.610 General Requirements for Signs in Commercial and Industrial Zones.

1) Every business shall be allowed a total sign area, including both permanent and 
temporary signs, but excluding directional and safety signs; of ¾ square feet per property 
frontage foot to a maximum of 150 square feet. If all signs are wall signs, a total of 1.5 
square feet to a total maximum of 300 square feet are allowed. Signs in commercial and 
industrial zones shall also conform to the requirements of Independence City Code 
15.25.610 through 15.25.660.

2) In addition, every business shall be allowed a temporary display of signs and 
banners for special promotions provided that the promotional displays are used no more 
than one time per month and for no more than 10 consecutive days and do not exceed the 
area allotted in part (1) of this section.

§15.25.615 Projecting Sign Requirements.

1) **Distance.** The minimum clearance from the grade or sidewalk below to the lowest 
portion of the sign shall be 8 feet, except barber poles which may have a six-foot minimum. 
Barber poles may not project more than 18 inches from the building surface.

2) **Height.** The maximum height of the sign shall be not more than 25 feet from the 
level of the street. It must also not be more than 3 feet above the top of the parapet wall or 
the roof line of the wall, whichever is higher.

3) **Projection Limitation.** Projection shall conform with Table 4 of the Uniform Sign 
Code.

4) **Each** business shall be allowed a maximum of three wall signs.

§15.25.635 Wall Facades for Signs.

1) Except as provided in subsection (2) of this section, wall facades for signs may 
extend the full length of the wall to which they are attached but shall not exceed a height 
above the roof line of the wall or the top of the parapet greater than 4 feet.

2) If a wall façade for signs extends the full length of the wall, the maximum height of 
the wall façade shall not exceed 4 feet measured from the roof line directly behind the wall 
to the top of the wall façade. If it is less than full length, there shall be 5 feet clearance at 
the end of a wall and such façade shall conform to the Uniform Building Code.

3) The supporting structure for all wall facades for signs shall be completely enclosed 
so as not to be visible from any public street, alley or adjacent property.
§15.25.640 Limitation on Signs Attached to Marquees.
Signs attached to, or hung from a marquee shall be completely within the borderline of the marquee outer edge. Signs located on the faces of a marquee shall be regulated as wall signs. Signs may be located under a marquee if a vertical clearance of 8 feet is maintained between the sign and the grade below. No supporting member of any sign suspended under a marquee shall pierce or extend through the marquee. Under-the-marquee signs shall be limited to a vertical height of 14 inches and a maximum sign area of 6 square feet.

§15.25.645 Advertising Limited on Awnings and Canopies.
No advertising shall be placed on any awning or canopy except that the name of the owner and the business, industry or pursuit conducted within the premises may be painted or otherwise permanently placed in a space not exceeding 8 inches in height on the front and side portions thereof.

§15.25.650 Signs Permitted for Second Story Business.
Businesses maintained on the second floor of a two-story building, except businesses which also occupy all of a portion of the first floor, shall be entitled to fifty percent of the dimensions and distances set forth in this sign regulation, excepting no projecting signs shall be permitted above the second story of the building, unless otherwise provided in the Sign Ordinance.

§15.25.655 Signs for Integrated Shopping Centers.
1) Signs permitted by this section shall be the only signs permitted in an integrated shopping center. Specific permitted signs are:
   (a) One freestanding sign for the center for each street frontage on a designated arterial or designated collector street. The height of such sign is limited to 25 feet. The maximum height may be increased 5 additional feet if the added portion is used solely for ornamental sign design and if it does not contain any advertising message or symbol. Portions of such sign used solely for ornamental sign design erected in the area above the principal portion of the sign and within the 5 additional feet of maximum height permitted by this paragraph shall not be computed in determining sign area. Sign area of such sign is limited to 150 square feet.
   (b) Temporary promotional or sign displays for a center-wide promotion or event, to be removed immediately upon cessation of such event or promotion.
   (c) Directional signs identifying vehicle entrance and exists, limited to 8 square feet in area and 4 feet in height.
   (d) On-premise directional sign limited to 8 square feet in area, designed primarily to be used only to identify and locate an office, entrance, exit, telephone or similar place.
   (e) Temporary signs as provided in Independence City Code 15.25.401 through 15.25.460.
2) Special signs for individual businesses in integrated shopping centers are:
   (a) One wall sign for each facing or frontage on a designated arterial or designated collector street or parking lot.
   (b) One under-marquee sign for each frontage for each business.
§15.25.660 Signs Within Setbacks.
Where the supporting member of any sign is to be erected within a special setback area established pursuant to the Independence Zoning Ordinance, no permit shall be issued for such sign until the person who will own the sign and the owner of the premises upon which the sign will be erected, enter into a written agreement with the City of Independence, Oregon, providing for removal of such supporting member when necessary. The agreement shall provide that the sign owner and the owner of the premises, their administrators, executors, heirs, successors and assigns shall be jointly and severally liable for removal of the sign after 60 days' written notice from the Building Official. Such notice shall be given by the City of Independence when necessary. The agreement shall further provide that if the persons responsible for removal of the supporting member do not remove it, the City of Independence may do so at expense of such persons and that the cost of expense may be a lien against such land or premises and may be collected or foreclosed in the same manner as liens entered in the docket of the City. The agreement shall also provide that the owner of the affected premises and the owner of the sign shall not be entitled to any damages or compensation on account of moving or removing of the supporting member or portion thereof. This provision shall not be construed as denying the owner of such property of the right to compensate for any land taken for the widening of any street. The agreement shall be acknowledged before an officer authorized to take acknowledgements to deeds and who is to authorize the same to be of record. The City of Independence shall cause such agreement to be recorded at the office of the county officer having custody of the deed records for Polk County.

§15.25.700 Uniform Sign Code Still in Effect.
The provisions of the Uniform Sign Code, as adopted from time to time are still in full force and effect.

§15.25.750 Periodic Review and Assessment.
The Code Enforcement Officer of the City of Independence will periodically review and assess the conformity of existing signs to this Ordinance.

§15.25.810 Penalties.
Any violation of the provisions of this chapter shall be a violation of the Independence City Code and shall result in a restraining order, stop-work order or fine and any other remedy authorized by the laws of the State of Oregon. None of the remedies listed above shall be exclusive.
Chapter 16.1 COMPREHENSIVE PLAN*

* Editor's Note: The full text of the city Comprehensive Plan and the Comprehensive Land Use Plan Map, with amendments, are on file for general reference at the office of the city recorder.

§16.1.1 Comp Plan Adopted.

The city comprehensive plan, entitled “City of Independence, Comprehensive Plan”, dated October 1979, incorporated into this code by a reference in its entirety, including text and appendices, figures and maps, is adopted as the comprehensive plan of the city. The Comprehensive Land Use Plan Map of the city, entitled Exhibit 1, is adopted as the comprehensive land use plan map for the city. [Comp Plan Amended by Ord. 1422 § 1, 07-10-03, Ord. 1400 § 1, 12-13-01; Comp Plan Map Amended by Ord. 1400 § 2, 12-13-01; Prior code § 92.110]

Chapter 16.2 REGULATIONS AND MAPS*

* Editor's Note: The full text of the Independence Zoning Ordinance, with amendments, is on file for general reference at the office of the city recorder.

§16.2.1 Zoning Regulations and Zoning Maps.

The Zoning Map for the city, the Flood Hazard Boundary Map for the city and the Greenway Development District Map for the city incorporated into this code by reference, are adopted. [Zoning Map Amended by Ord. 1400 § 2, 12-13-01; Prior code § 91.110]
CHAPTER 16.3  MEASURE 37 CLAIMS

§16.3.1 - Purpose. This Real Property Compensation Ordinance is intended to implement the provisions added to Chapter 197 of Oregon Revised Statutes by Ballot Measure 37 (November 2, 2004). These provisions establish a prompt, open, thorough and consistent process that enables property owners an adequate and fair opportunity to present their claims to the city; preserves and protects limited public funds; and establishes a record of the city's decision capable of circuit court review.

§16.3.2 – Definitions. As used in this Ordinance, the following words and phrases mean:

Claim. A claim filed under Ballot Measure 37. A claim shall reflect the consolidation of any and all claims that the owner has pertinent to a parcel/unit of real property.

Exempt Land Use Regulation. A land use regulation that:
(a) Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;
(b) Restricts or prohibits activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;
(c) Is required in order to comply with federal law;
(d) Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or
(e) Was enacted prior to the date of acquisition of the property by the owner or a family member of the owner who owned the subject property prior to acquisition or inheritance by the owner, whichever occurred first.

Family Member. Includes the wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, stepchild, grandparent, or grandchild of the owner of the property, an estate of any of the foregoing family members, or a legal entity owned by any one or combination of these family members or the owner of the property.

Land Use Regulation. Includes:
(a) Any statute regulating the use of land or any interest therein;
(b) Administrative rules and goals of the Land Conservation and Development Commission;
(c) Local government comprehensive plans, zoning ordinances, land division ordinances, and transportation ordinances;
(d) Metropolitan service district regional framework plans, functional plans, planning goals and objectives; and
(e) Statutes and administrative rules regulating farming and forest practices.

Owner. The present owner of the property, or any interest therein.

Valid Claim. A claim submitted by the owner of real property that is subject to a land use regulation adopted or enforced by the city that restricts the use of the private real property in a manner that reduces the fair market value of the real property.

§16.3.3 – Claim Filing Procedures.
(1) A person seeking to file a claim under sections 1 - 7 of this ordinance must be the present owner of the property that is the subject of the claim at the time the claim is
submitted. The claim shall be filed with the city manager’s office, or another city office if so
designated by the city manager.
(2) A claim shall include:
(a) The name(s), address(es) and telephone number(s) of all owners, and anyone with any
interest in the property, including lien holders, trustees, renters, lessees, and a description
of the ownership interest of each;
(b) The address, tax lot, and legal description of the real property that is the subject of the
claim, together with a title report issued no more than 30 days prior to the submission of
the claim that reflects the ownership interest in the property, or other documentation
reflecting sole ownership of the property by the claimant, and the date the property was
acquired;
(c) The current land use regulation(s) that allegedly restricts the use of the real property
and allegedly causes a reduction in the fair market value of the subject property;
(d) The amount of the claim, based on the alleged reduction in value of the real property
supported by an appraisal by an appraiser licensed by the Appraiser Certification and
Licensure Board of the State of Oregon; and
(e) Copies of any leases or Covenants, Conditions and Restrictions (“CCR’s”) applicable to
the real property, if any, that impose restrictions on the use of the property.
(f) If the claim is filed by a "family member" of the owner, the member shall file proof of the
family relationship through certified copies of such documents as birth certificates, death
certificates, wedding licenses, etc.
(g) A certified list of all current property owners, as identified by the County tax assessor’s
office, within 300 feet of the subject property.
(3) Notwithstanding a claimant’s failure to provide all of the information required by
subsection (2) of this section, the city may review and act on a claim.
(4) The claim form shall state that the acceptance of the claim form does not constitute a
determination that said claim is complete, or that the waiver shall be approved, or that
compensation shall be paid.

§16.3.4 – City Manager Investigation and Recommendation.
(1) Following an investigation of a claim, the city manager shall forward a recommendation
to the city council that the claim be:
(a) Denied;
(b) Investigated further;
(c) Declared valid, and waive or modify the land use regulation, or compensate the
claimant upon completion of an appraisal; or
(d) Evaluated with the expectation of the city acquiring the property by condemnation.
(2) If the city manager’s recommendation is that a claim be denied, and no elected official
informs the city manager within 14 days that the official disagrees, then the city manager
may deny the claim. If an elected official objects, then the city manager shall wait an
additional seven days to see whether two more elected officials object to the proposed
denial. If they do, then the city manager shall schedule a work session with the city council.
If not, the city manager may deny the claim.

§16.3.5 - City Council Public Hearing. The City Council shall conduct a public hearing
before taking final action on a recommendation from the City Manager. Notice of the
public hearing shall be provided to the claimant, to owners and occupants of property within 300 feet of the perimeter of the subject property, and neighborhood groups or community organizations officially recognized by the City Council whose boundaries include the subject property.

§16.3.6 – City Council Action on Claim.
(1) Upon conclusion of the public hearing, and prior to the expiration of 180 days from the date the claim was filed, the City Council shall:
   (a) Determine that the claim does not meet the requirements of Measure 37 and this Ordinance, and deny the claim; or
   (b) Adopt a Resolution with findings therein that supports a determination that the claim is valid and either direct that the claimant be compensated in an amount set forth in the Resolution for the reduction in value of the property, or remove, modify or direct that the challenged land use regulation not be applied to the property.
(2) The City Council's decision to waive or modify a land use regulation or to compensate the owner shall be based on whether the public interest would be better served by compensating the owner or by removing or modifying the challenged land use regulation with respect to the subject property.

§16.3.7 – Processing Fee.
(1) The city manager shall maintain a record of the city's costs in processing a claim, including the costs of obtaining information required by section 3 of this ordinance which a property owner does not provide to the city. Following final action by the city on the claim at the local level, the city manager shall send to the property owner a bill for the actual costs, including staff and legal costs, that the city incurred in reviewing and acting on the claim. [Section 16.3 added by Ord. 1441, § 1, 2004]